CHAPTER 6

6. PARTICULARISTIC STUDY OF THE IMPACT OF AMENDMENTS

This chapter is the most comprehensive chapter in the entire treatise as it appraises in detail not only the structural framework of the Amendment Acts but also discusses the political and social repercussions that transpired from these amendments. It reconnoitres the four amendments which have transformed and galvanized Indian democracy. The four crucial amendments that have been placed under the scanner are 42nd Amendment Act and 44th Amendment Act, 73rd Amendment Act and the most recent 86th Amendment Act. These amendments have been by far the most momentous amendments. It would not been an exaggeration if one calls them the foundation stones on which the Indian polity is built. It deserves to be noted here that the impact and operationalisation of each amendment is preceded by its historical backdrop and its broad features. Each amendment is then critiqued in terms of its ground reality in the end.

6.1. Egalitarian Polity--- 42nd and 44th Amendment Act

Often conflict is preceded by narratives of conflicts. Once it breaks out, it acquires a self-reinforcing logic. The same happened with the 42nd Amendment. It came into force just before the end of the Emergency, a tumultuous period marked by the coup d'état of democracy. In order to understand the Amendment, it becomes essential to look at the vista of facts and circumstances which led to it. It deserves attention that Mrs. Gandhi’s government pushed through 19 Amendments to the Constitution and promulgated 463 laws, 96 ordinances, 30 regulations and enacted 114 President Acts for States which were under President’s rule. According to the noted Constitutional expert N.A. Palkhivala, the Gandhi Government treated the constitution as its “private property and dealt with Indian law as its personal background.” However it was the 42nd Amendment Act which garnered attention, both blandishments and ire. The year 1973 was indeed a watershed in the constitutional history of India. Until then it looked as if Parliament was a democratic institution committed to the goals of abolition of all semblance of feudalism, introduction of land reforms, and the pursuit of Directive Principles of State Policy mentioned in Article 39(b) and (c). While the

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1 An Open Letter to the Prime Minister in the Illustrated Weekly of India, April 17, 1977
earlier amendments up to 1973 were aimed at securing to Parliament the power to legislate without question in regard to the goals just mentioned, the amendments made subsequently appear to be aimed at securing more power to the executive. The road signposts clearly changed from democracy to authoritarianism.²

Mrs. Gandhi’s government was able comprehensively to block legal assaults on the state of emergency by pushing a series of amendments to the constitution through the subservient Parliament. These amendments also protected Mrs. Gandhi’s fragile electoral mandate. An overview of Mrs. Gandhi’s key constitutional amendments reveals the extent to which the legislature had collapsed. First, the 38th amendment barred judicial review of emergency proclamations. Second, courts lost jurisdiction to hear election petitions, hence insulating Mrs. Gandhi’s fragile perch in Rae Bareli. Third, the 41st amendment brought in absolute immunity from criminal liability for the president, the prime minister and provincial governors. And finally the most controversial amendment passed during the emergency, the 42nd amendment, comprised 20 tightly packed pages that centralized political power and made judicial challenge well-nigh impossible.³ Enacted to eliminate ‘impediments to the growth of the Constitution’, the amendment virtually remoulded the original Constitution through sweeping changes --- substantive and symbolic…..This amendment was a manifestation of India’s distinct shift to the political left. "⁴

6.2. Episodes that triggered the implementation of the 42nd Amendment Act: In Retrospect

Following the unforeseen death of Prime Minister Lal Bahadur Shastri, Mrs. Gandhi obtained national office in January 1966. She quickly proved her electoral mettle in the general election of 1967. The rhetoric of “Garibi Hatao” helped her win a landslide mandate in 1971, but her power and popularity were short-lived and ephemeral and soon dwindled. Her reputation suffered a major setback in 1975, mainly because of high inflation. The combined triggers of inflation caused by the 1973 oil shock, poor management of food grains and commodities, rising unemployment, and increasing corruption in government gave rise to an atmosphere of economic and political uncertainty.

² O.Chinnappa Reddy, the Court and the Constitution of India----Summits and Shallows, p.65-66
⁴ Zia Mody, 10 Judgements That Changed India, Penguin Books, 2013
The 1971 elections had taken place after she had nationalized banks. The “Garibi Hatao” slogan had led the poor and uneducated to believe that the wealth of the rich that lay in banks would be distributed among them. But no such thing happened. Instead, the prices of essential commodities rose steeply. There was disillusionment in the country.\textsuperscript{5}

Oil prices, as a result of the 1973 Arab–Israeli war, rose from US $2.06 per barrel to US $11.45.\textsuperscript{6} State trading in food grains promoted by Minister of Planning D. P. Dhar, failed miserably thereby increasing food scarcity and poverty. Heavily regulated private industry for years had not been producing enough jobs to absorb the rural unemployed. Rumours about the Government’s organizational incompetence to implement reform were also spreading gradually.

Dissent against Ms Gandhi’s methods grew, not just within her own party and the political establishment but also in trade unions and student movements across the country.\textsuperscript{7} Trade union militancy peaked with the 1974 railway strike. Further in Gujarat the Navnirman Movement and in Bihar the Total Revolution backed by the Gandhian Jayaprakash Narayan, proved to be the two most noxious movements against Mrs. Gandhi’s hegemony.

\textbf{6.2.1. Supersession of Judges}

Another incident which lowered the reputation and significance of Mrs. Gandhi was the elevation of A.N. Ray as the Chief Justice of India. Though Golaknath\textsuperscript{8} which denied to Parliament the power to amend the Constitution so as to alter, abridge or take away any of the Fundamental rights guaranteed by Part III, was overruled by Kesavanand, the political executive found it unacceptable as the Supreme Court reserved to itself the power to pronounce upon the question whether or not an amendment offended the basic structure. The Court had also reserved to itself and denied to the Parliament the exclusive authority to determine whether any law was towards securing any of the Directive Principles mentioned in Article 39. This resentment of the political executive resulted in one of the grossest abuses of executive power.

\textsuperscript{5} Shanti Bhushan, Because of the 44th amendment, Indian Express, July 2, 2015
\textsuperscript{6} D.K. Borooah to the Rajya Sabha, 5 November 1976, The speech was later published as a pamphlet, Shri D.K. Borooah on Constitution (Forty-Fourth Amendment) Bill, AICC, New Delhi 1976, p.8
\textsuperscript{7} 40 years on, the ‘Emergency’ still haunts Indian politics, The National, June 25, 2015 at http://www.thenational.ae/world/south-asia/20150625/40-years-on-the-emergency
\textsuperscript{8} Golaknath v. State of Punjab, AIR 1967 SC 1643
In 1973 when the question of appointing a successor to the Chief Justice arose, three senior judges, Justices Shelat, Grover and Hegde were superseded and bypassed despite their seniority and experience. Instead a loyalist to Ms Gandhi and their junior A. N. Ray was elevated as Chief Justice of India. Mohan Kumarmangalam, one of Mrs. Gandhi’s ministers went to the extent of justifying the supersession to Parliament by articulating that, “In appointing a person as Chief Justice, I think we have to take into consideration his basic outlook, his attitude to life, and his politics. We, as a government, have a duty to take the philosophy and outlook of a judge into account in coming to the conclusion whether he should or should not lead the Supreme Court at this time. This is our own prerogative which the Constitution has entrusted to us.”

Nonetheless many considered it to be an executive assault on the independence of the judiciary and deplored the move. Dissenting opinions poured in from various quarters. CK Daphtary, who had served as India’s first-ever Solicitor General, called it “the blackest day in the history of democracy.” The veteran constitutional expert A. G. Noorani was worried about the politicization of judges and held that neither the press nor the Bar was sufficiently alert to the threats to judicial independence. Unless these challenges were met, he warned, ‘we might as well resign ourselves to the loss of individual liberty in India’. A former Chief Justice of Bombay, M.C. Chagla condemned the supersession of Justice A.N. Ray on April 25, 1973 as “the beginning of the end of the independent judiciary.” The Supreme Court Bar Association also called the appointment “a blatant and outrageous attempt at undermining the independence and impartiality of the judiciary, and lowering the prestige and dignity of the Supreme Court.”

Detractors like the seasoned Sarvodaya leader Jayaprakash Narayan even queried about the out-of-turn promotions through a letter and wrote to the Premiere asking whether these were intended to make the Supreme Court “a creature of the government of the day”.

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10 Samanth Subramanian, 40 years on, the ‘Emergency’ still haunts Indian politics, The National, June 25, 2015 available at http://www.thenational.ae/world/south-asia/20150625/40-years-on-the-emergency-still-haunts-indian-
11 An article by William Borders in the Globe and Mail, quoted in Satyavani, November 12, 1976
turn Mrs. Gandhi responded that the move became inevitable because a mechanical adherence to the ‘seniority principle had led to an unduly high turnover of chief justices’.  

6.2.2. The Allahabad Verdict

This episode in fact proved to be the edifice on which the 42nd Amendment was constructed. Raj Narain, the Socialist Party candidate defeated by Indira Gandhi in the parliamentary elections, lodged cases of election fraud and misuse of state machinery during elections against Mrs. Gandhi in the Allahabad High Court. Shanti Bhushan, the noted advocate argued for Raj Narain.

On June 12, 1975 the Allahabad high court adjudged that Indira Gandhi had won from the Rai Bareilly parliamentary constituency by adopting illegal means. Justice Jagmohanlal Sinha of the Allahabad High Court found the Prime Minister guilty of fraudulent election practices, excessive election expenditure, and of using government machinery and officials for party purposes. He held Indira Gandhi guilty of corrupt practices under Section 123 (7) of the Representation of the People Act, 1951. In his brilliant essay Justice with a Fine Balance, the noted lawyer AG Noorani discloses the concluding words of Justice Sinha: “I regret my inability to accept her evidence, on one point; her plea has no legs to stand on, on another; and that it does not bear any scrutiny, on a third.”

She was indicted of using Yashpal Kapoor, a gazetted officer who was still in government employment, for election work, for using the state police to build a dais, for using electricity from the state electricity department. It was also found that the UP government constructed high rostrums to allow her to address her election meetings ‘from a dominating position’. The verdict thus declared Mrs. Gandhi’s election null and void, unseated her as a parliamentarian and as prime minister, and banned her from running for elections for a further six years. However, Justice Sinha allowed Mrs. Gandhi a stay of twenty days on his order, to allow an appeal in the Supreme Court.

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13 Letter from Indira Gandhi to Jayaprakash Narayan of 9 June 1973 and his reply of 27 June 1973, both in Jayaprakash Narayan Papers
14 http://news.bbc.co.uk/onthisday/hi/dates/stories/june/12/newsid_2511000
16 Ibid.,
As a consequence of this decision, there was a wave of protests across the country led by Morarji Desai, J.P. Narayan, Raj Narain, Satyendra Narayan Sinha and many more who demanded her resignation. On the other side, there was a coterie of the yes-men and sycophants who were busy rallying in her favour. Almost 516 party MPs signed a resolution urging her to stay on. Ten thousand Congress members from Karnataka signed a similar appeal, in blood. The Congress stood steadfast behind Indira. Sanjay organised rallies, forcing the entire fleet of Delhi’s buses to take people to the venues. 1761 DTC buses were requisitioned by the All India Committee for organizing rallies in support of Smt. Indira Gandhi between June 12, 1975 and June 25, 1975. Both mother and son patronized coteries everywhere, including in the bureaucracy. 18

Thus instead of quitting and taking the moral responsibility of her actions, Mrs. Gandhi chose to challenge the verdict in the Supreme Court. On 23 June 1976 the Supreme Court began hearing Mrs Gandhi’s petition. Justice V.R. Krishna Iyer was the vacation judge and late Shri Nani Palkhivala appeared for Mrs Gandhi along with Shri F.S. Nariman who was then the Additional Solicitor General. The Supreme Court in its decisive verdict denied complete stay on the Allahabad High Court judgment and in turn granted only a conditional stay. That meant that the Prime Minister could attend Parliament, he said, but could not vote there until her appeal was fully heard and pronounced upon. 19 Justice V. R. Krishna Iyer upheld the High Court judgement and ordered all privileges and salary Gandhi received as an MP be stopped, and that she be debarred from voting. 20 He said “…I hereby pass a stay of the order of the High Court under appeal. The petitioner will remain a Member of the Lok Sabha, will be entitled to sign the Register kept in the House for that purpose and attend the Sessions of the Lok Sabha, but she will neither participate in the proceedings nor vote nor draw remuneration in her capacity as Member of the Lok Sabha.” 21

Disinclined to step down, and egged on by power-hungry colleagues, Mrs Gandhi spotted an un-used provision in the Constitution. She took recourse to article 352 of the Constitution and chose to declare ‘internal emergency’ on June 26, 1975 just to remain in office. With the help of a pliant President – Mr Fakhruddin Ali Ahmed – she transformed herself into a dictator. This encouraged the members of the Congress Party to crush dissent, ride roughshod over government officials and declare Indira Gandhi the supreme leader. This

20 Dilip Hiro, Inside India Today, Routledge Revivals, Routledge, 2013, p.262
21Smt. Indira Nehru Gandhi Vs Raj Narain & Another, 24 June 1975, Supreme Court(http://www.indiankanoon.org/doc/1240174/)
regime also wrought havoc on the Constitution and shackled every institution including Parliament, the Judiciary and the media.

This judgement was the one that led Mrs. Gandhi towards making the fateful decision to impose a nationwide Emergency. She wanted to convince the world that the emergency had to be imposed in order to secure the nation from the right reactionary forces and from the Ultra Left.

6.2.3. Emergency Scripted and Imposed

The Emergency of 1975 is often touted as the darkest period in the history of India post-independence. If in the extensiveness of its evils, it was an aberration in the history of Indian democracy, it also ‘was the culmination of long tendencies’.\textsuperscript{22} It is an undisputed fact that with this one proclamation, there was a seismic shift of power from the Parliament to the Prime Minister and her executive.

The imposition of emergency has been encapsulated in a well written document entitled “A Tale of Two Emergencies” by L.K. Advani which draws analogies in the methods adopted to stay in power between the Chancellor of Germany Hitler and the Iron Lady Mrs Gandhi. In 1933 Hitler’s Nazi Party with only 44%, took advantage of the extraordinary provisions of the Weimar Constitution and subverted it. Hitler made President Hindenberg invoke the Republic’s Article 48 which gave emergency powers and signed a decree for the protection of the people and the state. Similarly in 1975 Mrs Gandhi too exploited the Constitution. She made the President F. Ahmad invoke the Republic’s Article 352 which gave emergency powers and suspended the enforcement of Fundamental rights. The Emergency legislation permitted arrest without trial, imposed censorship and denied people the right if equality, life and personal liberty. In a way India was Nazified by Indira Gandhi.

However it has come to light that it was the former West Bengal chief minister Siddhartha Shankar Ray who gave Indira the idea of Emergency\textsuperscript{23}. This was disclosed by none other than Mrs Indira Gandhi’s former aide R.K. Dhawan. Urging Mrs Gandhi not to resign from the post the Allahabad verdict, were her son Sanjay and the Chief Minister of West Bengal, Siddhartha Shankar Ray. It is believed that Siddhartha Shankar Ray played an important role in the decision to declare the Emergency: It was his suggestion, and Indira

\textsuperscript{22} Arun Shourie, Institutions in the Janata Phase, Popular Prakashan Pvt. Ltd., Bombay, p.xi
\textsuperscript{23} Sonia And Maneka Gandhi Had No Qualms About Emergency, Says Indira Gandhi's Former Aide Huff Post India 24/06/2015 at http://www.huffingtonpost.in/2015/06/24/emergency-gandhi-family
Gandhi acted on it. In fact, Indira Gandhi told me (Pranab Mukherjee) subsequently that she was not even aware of the constitutional provisions allowing for the declaration of a state of Emergency on grounds of internal disturbance, particularly since a state of Emergency had already been proclaimed as a consequence of the Indo-Pak conflict in 1971.  

Indian democracy was throttled in the ill-fated midnight of 25th June 1976, when President Fakruddin Ali Ahmed, issued a proclamation on the advice of then Prime Minister Mrs Indira Gandhi, declaring a State of Emergency:

“In exercise of the powers conferred by clause (1) of Article 352 of the Constitution, I, Fakhruddin Ali Ahmed, President of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by internal disturbances.”

The next day the same was acknowledged on an unscheduled radio broadcast by Mrs Gandhi who told the entire nation that an emergency had been declared, and all civil liberties suspended. She announced ‘The President has proclaimed Emergency’: ‘There is nothing to panic about.’ This, she said, was a necessary response to ‘the deep and widespread conspiracy which has been brewing ever since I began to introduce certain progressive measures of benefit to the common man and woman of India.’ ‘Forces of disintegration’ and ‘communal passions’ were threatening the unity of India. ‘This is not a personal matter,’ she claimed. ‘It is not important whether I remain Prime Minister or not.’ Still, she hoped that conditions would ‘speedily improve to enable us to dispense with this Proclamation as soon as possible’. She shared the same sentiment in a note to her friend Pupul Jayakar who was away in the United States, that emergency, was ‘intended to enable our turn to normal democratic functioning’ that the action was taken in response to the ‘increasing violence’ caused by a ‘campaign of hate and calumny.’ However the real reasons lay somewhere else.

Thus within 13 days of Allahabad High Court Judgement, Emergency was proclaimed on 26th June 1975 which lasted till 21st March 1977 for a period of 19 months. Emergency was proclaimed in 1975 under article 352 of the Constitution and on 27 June 1975 a Presidential order was made under Article 359 (1) suspending the right of every person to move any court for the enforcement if any of the fundamental rights conferred by Article 14, 21 and 22 of the Constitution for the period during which the Emergency was in operation.

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24 Pranab Mukherjee, The Dramatic Decade: The Indira Gandhi Years, Aleph, Rupa & Co.
This culmination of trends has been commented upon by several observers. Romesh Thapar, once a member of Mrs Gandhi’s kitchen cabinet, thought that the suspension of democracy ‘ was the culmination of a process of manipulative politics set in many years earlier, and very often the handiwork of supposedly democratic men.’ B.K. Nehru, High Commissioner in London during the Emergency, wrote that Jawaharlal Lal Nehru and Shastri knew “what a Constitution was… (its) Checks and balances.” But Indira Gandhi “in the effort to have a populist image …went on the concept of committed bureaucracy, committed judiciary.”

6.2.4. Excesses Committed During the Emergency

The Emergency turned a democratic Republic into a dictatorial fiefdom. According to sociologist Shiv Visvanathan, the Emergency was "a pilot plant, a large-scale trial for totalitarianisms and emergencies that came later". Mr Advani compares the Emergency era in India to the Nazi rule in Germany. With a single stroke if the President’s pen, the largest democracy on earth was shoved down to the level of tin-pot dictatorships then so omnipresent in the Third World countries.

Perhaps one of the most incisive comments on the emergency is in the form of a poem entitled ‘Gandhi at a Cross- Road’ which was composed and read on the All India Radio during Emergency:

To the Gandhi standing on a pedestal I said:
To me you seem a Traffic Inspector
Made permanent
On government post…
Again I said to him:
These assess are grazing on green grass
Right under your nose
What’s the use of your lathi, then…”

Emergency gave a rude shock to civil liberties which were ruthlessly crushed. The Union Government had suspended the three Articles in the Constitution which normally guarantee the citizen ‘equal protection of the laws’ (Article 14), protection of ‘life and

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30 Maseeh Rahman, Crawling Through The Emergency Opinion, The Outlook, 24 June 2015
person; liberty’ (Article 21), and protection against unwarranted arrest and detention (Article 22), and had so amended the Maintenance of Internal Security Act as to exempt the authorities from stating the reasons(s) for which person had been arrested.\footnote{Dilip Hiro, \textit{op.cit.}, p. 263} It armed the government with the power to suspend Article 19 of the Constitution, from which flowed much of our democratic rights such as freedom of speech and expression; freedom to assemble peacefully; to form associations and unions; to move freely all over the country; to buy, hold and sell property; and to practice any profession or occupation, trade or business. As a consequence of the suspension of Article 21 which lays down that no one should be deprived of personal liberty except in accordance with the procedures established by law, the Government was able to:

1. Prohibit and punish any expression of opinion unpalatable to it
2. Suppress publication of any news
3. Confiscate any printed matter or literature including foreign periodicals,
4. Prohibit any meeting, public or private
5. Arrest any person and detain him in custody without any obligation to disclose the grounds of detention and prescribe such conditions and length of detention as it desired.

Under the new rules, the Centre had the power to give directions to the states. It could tell courts not to entertain people who wanted their rights to be enforced. Most of it was the brainchild of Siddhartha Shankar Ray, who was the chief minister of West Bengal and a brilliant lawyer. Only a coterie comprising Ray, Indira's close aide R.K. Dhawan, Bansi Lal, minister of state for home affairs, Om Mehta and Delhi's lieutenant governor Krishan Chand knew of these plans. The lamp of Indian democracy had remained extinguished for twenty-one long months until the Emergency was lifted in March 1977, and parliamentary elections were held after a one-year delay.

\textbf{6.2.5. Crackdown on the Press}

The biggest casualty in the course of emergency was the fourth estate of democracy, the Press. The 1975 ‘emergency’ was marked most notoriously by pre-censorship of the
newspapers and a blanket ban on the dissemination of any information unpalatable to the authorities. An iron curtain of sorts descended on the country. 34

Mr Vidya Charan Shukla, Information and Broadcasting Minister, who acted as India's very own Joseph Goebbel, imposed Press censorship with an atypical zeal, cutting electric supply to presses, monitored almost every story that was printed and used All India Radio and government sponsored documentaries as vehicles for pro-government propaganda very deftly. It would not be wrong to say that the Government exercised ingenious techniques to control the Press and journals. They included prepublication of censorship, withholding of government advertising and even motion picture advertisements, pressure on newspaper owners to remove editors and key journalists who were showing too much independence, serving of notices to show cause why the newspaper presses should not be forfeited, “ the bringing of irrelevant but expensive and time-consuming charges on remote financial matters against the management of resistant newspapers “, “ demands for crippling monetary deposits as surety for “good behaviour”, and even cutting of electric power or telephone or telegraphic service from offending journals.35

Bahadur Shah Zafar Marg, Delhi's Fleet Street where most of the national dailies had their offices, was hard hit by the long power cuts.36 In fact 60 papers were under some form of heavy censorship throughout the Emergency.37 This was followed by the arrest of senior journalists on the flimsiest of grounds. At this juncture Mrs Gandhi’s remark that “not a dog had barked” was authoritative in tone and tenor. Nevertheless, it was a fact that the press had caved in.38

By February 1976, the Government through Press ordinances had abolished the Press Council and set up a news agency under the auspices of the government. The news agency Samachar was created by the merger between the Press Trust of India(PTI) and the United News of India (UNI) 39 which became the official spokesperson of the Government. The censorship also lifted the legal immunity of the journalists reporting Parliament and through the passage of the new law. Further the Prevention of Publication of Objectionable Matter

36 Shah Commission of Inquiry—Interim Report I, GOI, March 1978, p.34
38 Kuldip Nayar, Mrs. Gandhi’s Misrule, Mainstream, VOL LIII No. 27, New Delhi June 27, 2015
39 Vernon Hewitt, Political Mobilisation and Democracy in India: States of emergency, Routledge, p.124
(PPOMA) on February 11, 1976 approved by the Parliament gave the Government the authority to punish the publishers and authors for defying the Government. By this decree the press was restrained from publishing news of a large number of events at home and abroad or was allowed to make a passing reference to such events along lines dictated by the Government. This included coverage of riots, arrests of opposition leaders or releases, public protests, public statements of opposition leaders etc. H.N. Mukherjee (CPI) argued in the Lok Sabha that the introduction of these three ordinances alone scuttled the freedom of information as established throughout India.40

The harrowing experience of the nightmare of Emergency has been recounted as follows, “Press censorship was imposed, accreditation of 51 Pressman was cancelled, facilities for the journalists was withdrawn, their foreign visits restricted, 253 of them were detained under MISA and the Defence of India Rules (DIR) for one reason or the other; 36 newspapers were refused advertisements and 18 of them banned during the Emergency.”41

Reports of open dissidence were naturally verboten, but in fact even stories mildly critical of the administration were not permitted 42 LK Advani in his prison diary narrated the nature of news in one of his entries of July 4 which reads as follows : following the censorship of the Press there was hardly any difference between one paper and another. All were dull and drab, inane and insipid –mere reproductions of official hand-out.43

Another interesting feature that appeared during emergency was the categorization of newspapers which was done to adjudge the attitude of the newspapers in the light of their cooperation with the Government. They were categorized as:

<table>
<thead>
<tr>
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<th>A Friendly</th>
<th>A+ Positively Friendly,</th>
<th>A- Friendly but with some reservations</th>
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<tr>
<td>B Hostile</td>
<td>B+ Continuously hostile</td>
<td>B-Less hostile than before</td>
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<tr>
<td>C Neutral</td>
<td>C+ Shift from neutral side towards positive side</td>
<td>C-Shift from neutral position towards hostile attitude</td>
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</tbody>
</table>

**Source:** Shah Commission of Inquiry-Interim Report I, 1978, p.39

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40 Lok Sabha Debates 1976, p.121  
41 White Paper on the Misuse of Mass Media During the Internal Emergency, Government of India, August 1977, pp. 1-87  
Inevitably, newspapers fell silent; All India Radio became a trumpet. Censorship was too selective and eccentric. On June 11 Vinoba Bhave’s ashram was raided for copies of its journal Maitree. Mainstream Magazines and journals including Bombay Weekly, Himmat, The monthly Seminar, the Weekly Mainstream, Janata, Quest, Srujana, Bhumi, Freedom First, Frontier, Sadhana, Tughlak, Swarajya and Neerikshak were censored and banned. The erudite Sham Lal and the Time of India Group accepted press censorship without a whimper and K.K. Birla’s the Hindustan Times surrendered even more abjectly. The Illustrated Weekly of India converted the magazine into a house journal of the dynasty.

Correspondents of The Los Angeles Times, The Times of London, The Daily Telegraph, The Washington Post, Christian Science Monitor were expelled. Reporters of The Economist and The Guardian left after receiving threats. The BBC withdrew its correspondent, Mark Tully. A law granting immunity to journalists covering Parliament was repealed. And as many as 253 journalists were placed under arrest. These included Kuldip Nayar of the Indian Express, K. R. Sunder Rajan of the Times of India and K. R. Malkani of the Motherland. Kuldip Nayar of The Indian Express was detained for organizing a protest of journalists in Delhi. “I was arrested without prior notice - it stupefied me,” veteran journalist Kuldip Nayar recalled, as he spoke about the days of emergency in 1975. Ramesh Thapar, once very close to Mrs Gandhi, closed down his Seminar. His sister, Dr Romila Thapar, who kept her distance from politics, was harassed by income-tax sleuths for many days. The Home Ministry told Parliament in May 1976 that 7,000 persons had been held for circulating clandestine literature opposing the Emergency. Kishore Kumar was banned by All India Radio after he refused to support the Youth Congress. Veteran journalist S.V. Jayasheela Rao said, “Owners were not in a position to defy the government. It was not easy to pass the copy by hoodwinking censor officers.” Perhaps the most abiding lesson of the Emergency is that freedom of the press comes at a price

44 Mastering the Drill of Democracy, The Hindu, June 26, 2015
48 Kuldip Nayar, Emergency was a curse on India, The Statesman, New Delhi, 25 June, 2015
But amongst those who defied Gandhi were Ramnath Goenka of the Indian Express and Cushrow Irani of the Statesman who left the lead editorial space blank as a mark of protest. Both refused to toe the government line, resisting threats and blandishments alike. Rather they artfully reproduced, without comment, reports on the Indian situation in the foreign press, under such neutral headings as ‘News Digest’ or ‘What our Contemporaries Say’.

Ashok Mahadevan a senior journalist anonymously registered his creative dissent by resorting to subterfuge. He came up with a 22 words long obituary in the classified ads in the Times of India on June 28, 1975, three days after the Emergency was declared and became the talk of the town. Even the Wall Street journal took note of it. It read as follows:


Mr Gnani, a reporter in a newspaper in Chennai, recalls that an interesting side-effect of the Emergency was that the press started covering civic issues and human interest stories due to censorship. “The Censor wanted to kill newspapers by delaying approvals. Along with letting pages go blank, sometimes innocuous stuff like how to make onion raita (salad) would be printed since political news could not be taken.” A reporter for the Bombay weekly Blitz told his English friend: ‘My paper is a supporter of the Emergency. But if we only sing the praises of the Government, what will our readers think of us?’ Thus the rigid censorship that was imposed soon after the emergency was proclaimed, gave the press and journalists little scope for criticism and discussion of official policies.

6.2.6. Detentions Galore

Another blood curding excess committed during this period were the Midnight Arrests. All opposition activists in the country were detained. Coomi Kapoor, a victim of emergency recounts, all the arrests were to be made simultaneously so that there was an element of surprise, and those on the list could not be forewarned and thus evade arrest. Within four days of the declaration of the Emergency, an amendment came into effect in the

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52 Maseeh Rahman, op.cit., Outlook 24 June 2015
54 Times of India, When a smartly worded obituary exposed the death of Democracy, June 27 2015
MISA rules, doing away with the obligation to communicate the grounds for detention to all those detained on 25 June and the following days. The Police was asked to register fabricated FIRs under the Defence of India Rules against Opposition activists. Lakhs of false FIRs were registered. Thousands of persons were detained under the Maintenance of Internal Security Act. The law was amended to mandate that no grounds of detention were necessary to be provided. According to Amnesty International, 1, 40, 000 persons were detained without trial during emergency and of them 60, 000 were Sikhs. The Shah Commission, which probed the excesses of the Emergency, put the number of people detained and arrested under MISA and Defence of India Rules across the country at 1, 10, 806. This was twice the number of arrests during the 1942 Quit India movement throughout the subcontinent. An estimated 36, 000 people were in jail under MISA, detained without trial. These were rather ecumenically spread across the states of the Union, 1, 078 from Andhra Pradesh, 2, 360 from Bihar and so on down the letters of the alphabet, until one reached 7, 049 from Uttar Pradesh and 5, 320 from West Bengal.

There was absolutely no remedy available, under Article 21 or any other, to that in preventive detention even if they were put behind bars through an order made in bad faith because all fundamental rights were suspended for the duration. MISA – the Maintenance of Internal Security Act came to be known by the name of Maintenance of Indira and Sanjay Act. The first man to be picked up was naturally the Lok Nayak Jayaprakash Narayan, who had been resting at the Gandhi Peace Foundation at Rouse Avenue, New Delhi, after having addressed the crucial public meeting at Ramlila Grounds.

The next important person to be booked was Morarji Desai who was staying at Duplex Road. He had cornered and embarrassed Indira Gandhi by a successful fast-unto-death he had undertaken some months ago demanding fresh assembly elections in Gujarat. Many other prominent leaders including Atal Bihari Vajpayee, Lal Krishna Advani, George Fernandes, Nanaji Deshmukh, A.K. Gopalan, Madhu Dandavate, Madhu Limaye and Ramakrishna Hegde Charan Singh, Ashok Mehta, Piloo Mody were also arrested.

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58 For details see Shah Commission of Inquiry- Third and Final Report, GOI, August 6, 1978  
62 Ramchandra Guha, op.cit., p.356  
simultaneously. Narendra Modi, who was then a swayamsevak of the RSS, went incognito, disguising himself as a Sikh, and, along with thousands of fellow RSS workers, campaigned against the Emergency. Several leading political leaders, who opposed the Emergency, including former the Chief Ministers Ramakrishna Hegde and J.H. Patel, the former Prime Minister H.D. Deve Gowda, socialist leaders M. Chandrashekar, S. Venkataram, Bandagadde Ramesh, Michael Fernandes and Lawrence Fernandes, were also arrested in the city under the Maintenance of Internal Security Act (MISA). There were instances when people were killed in detention like the Rajan case of Kerala and the Snehalata Reddy case of Bangalore. Coomi Kapoor narrates how her former boss K.R. Malkani, editor of the Jana Sangh–RSS–controlled Motherland newspaper, whose bold, sometimes sensational reports and stridently anti-Gandhi line had personally infuriated the PM, became the first person to be arrested in Delhi.

The ill-treatment of the political detainees became a ubiquitous phenomenon during the Emergency. In Emergency Retold Kuldip Nayar details the torture of Lawrence Fernandes who was picked up from his house in Bangalore, to find the whereabouts of his brother, George Fernandes. The book records his testimony in the following way, “They were ten policemen and they started giving me the works. Four lathis broke one after the other as they directed blows to all parts of my body. I was writhing in pain on.” Others like Morarji Desai and Jayaprakash Narayan were kept in solitary confinement, Mrinal Gore was kept in the company of two women—a leper and lunatic—and with common toilet facilities and Jayaprakash Narayan released with damaged kidneys.

Apparently even the aristocrats were not spared. The Rajmatas of Gwalior and Jaipur, old political opponents of Mrs Gandhi, were jailed under an act supposedly meant for black-marketers and smugglers. Gayatri Devi, an MP representing the Swatantra Party, and her stepson Lt Col Bhawani Singh were arrested under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPSA), 1974. Some gold and dollars were

64 Ibid.,
65 Ibid.,
67 Supra note 54
68 Ibid
70 O.P. Mathur, Indira Gandhi and the Emergency as Viewed in the Indian novel, Sarup and Sons, New Delhi, 2004, pp.8-9
seized from their residences. The former Maharani of Jaipur was lodged in the Tihar Jail. Narrating her Tihar experience before the Shah Commission, Gayatri Devi said there was no sanitation and no running water. The public latrines had failed, and inmates had to use the drain instead. She was kept near the “phansi kothi” for condemned prisoners, which was where they had also put up Vijaya Raje Scindia, a Jana Sangh leader and former Maharani of Gwalior.\(^{72}\)

Thus the atrocities that were meted out to the people were very much against the letter and spirit of the rule of law. This became all the more clear when the Attorney-General, Niren De, argued that the rule of law existed "only within the four corners of the Constitution; natural rights did not exist outside it".\(^{73}\)

### 6.2.7. Justice Subverted

The executive government was not content with the supersession of the three judges of the Supreme Court in the matter of appointment of Chief Justice. The judiciary as an institution had to be kept under the thumb. So the policy of transfer of judges was resorted to and fourteen hand-picked high court judges were transferred from the Courts of their origin to far-off places.\(^{74}\) Justice V.R. Lalit an additional judge of Bombay High Court and Justice R.N. Agarwal of Delhi High Court were reverted back as district and sessions judges against the recommendations of the Chief Justice and the Law Minister.\(^{75}\)

However, the sabotage of judiciary didn’t halt here rather it reached its apogee in the ADM Jabalpur v. Shivakant Shukla case. An inerasable chapter of judicial solecism was recorded when Supreme Court led by Chief Justice A.N. Ray in ADM Jabalpur v. Shivakant Shukla\(^ {76}\) popularly called as the Habeas Corpus case held that in view of the Presidential order dated 27 June 1975 no person had any locus standi to move any writ petition under Article 226 before a high court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention of the ground that the order was not under or in

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\(^{72}\) [The Dark night returns?, The Week, June 14, 2015](#)


\(^{74}\) [Times of India, September 9, 1977, p.9](#)

\(^{75}\) [Times of India, September 30, 1977, p.1](#)

\(^{76}\) [AIR 1976 SC 1207](#)
compliance with the Act or was illegal or was vitiated by *mala-fides* factually or legally or was based on extraneous consideration.⁷⁷

The unanimous verdict of nine High Courts relating to Habeas Corpus—that Article 21 is not the sole repository of life and liberty and that a detainee has a right of Habeas Corpus during the Emergency—was reversed by a 4:1 verdict of the Supreme Court.⁷⁸ This case is regretted even today by the Supreme Court as a case of grave error and discomfiture just like the United States Supreme Court’s declaration in the Dred Scott case, that a slave was a private property that ultimately resulted in the civil war and like the decision in the *Liversidge versus Anderson* (House of Lords, 1942) case, blasting all civil and political rights of citizens in wartime, makes English judges run for cover even now.⁷⁹

In the Habeas Corpus case, Chief Justice Ray held unapologetically, "There is no record of any life of an individual being taken away either in our country during Emergency or in England or America during the emergency in their countries. It can never be reasonably assumed that such a thing will happen. Some instances from different countries were referred to by some counsel for the respondents as to what happened there when people were murdered in gas chambers or people were otherwise murdered. Such instances are intended to produce a kind of terror and horror and are abortive in character. People who have faith in themselves and in their country will not paint pictures of diabolic distortion and mendacious malignment of the governance of the country".⁸⁰

However, Supreme Court Justice H R Khanna took a principled stand against attacks on the Constitution and attempts to subvert justice. He was the only dissenter in the five-member Bench that ruled against habeas corpus, allowing the government to detain a person indefinitely.

Following the Shivkant Shukla case, the Supreme Court in its judgment delivered on 25 January 1977 in *Union of India V. Bhanudas* went a step further. It was the most antidemocratic and anti-people verdict which was rendered by the premier court of the country. It ruled that the Presidential Orders suspending enforcement of fundamental rights impose

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⁷⁷ O, Chinnappa Reddy, op.cit., p.69
⁸⁰ Supra note 74
blanket bans on any and every judicial enquiry and investigation into the validity of an order depriving a person of his personal liberty and that the Court was debarred from even granting relief in the shape of giving facilities to a detainee to be taken from his place of detention to his home or to an examination hall or for special medical treatment under a doctor of his choice or for any other facility because that would be enforcing fundamental right through the aid of the Court.

The consequence of these two disastrous judgments was that the writ of habeas corpus was in substance suspended and the Rule of Law was supplanted. Arbitrary detentions increased, conditions and treatment of detainee in jail worsened and the executive in many cases became a law unto itself.

6.2.8. The Sterilisation Drive

Thousands of people, predominantly those with deformities or from ethnic, religious and other minorities, were sterilized without their consent for eugenic reasons and for “cleansing the Fatherland of ReighnlandBastarde” in Nazi Germany, Japan and the United States of America. In Germany alone in January 1934 an estimated 300,000 to 400,000 people were sterilized under the law. However the likes of the sterilization measures which were undertaken during the Emergency in 1976 in India were intended to control the booming population in the country and to the surprise of all this was "15 times the number of people sterilized by the Nazis", according to the science journalist Mara Hvistendahl. The principle of the Indian socialist government's sterilization program was, "Who refuses sterilization shall not eat"

Forcible sterilization drives, heavy-handed slum clearances to "beautify and de-congest" Delhi, banning of industrial strikes, linking worker bonuses to productivity, concessions to big capitalists, attacks on progressives, and "disciplining" of the poor - all pointed towards Nazification of the country. During the Emergency, sterilizing humans had

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81 Priti Saxena, Preventive Detention and Human Rights, Deep and Deep Publications, New Delhi, 2007, p.94
82 Soli J. Sorabjee, Human Rights During Emergency http://www.allahabadhighcourt.in/event/humanrightsduringemergency.html
almost become an obsession with the Prime Minister's son Sanjay Gandhi, the Voldemort of the Emergency. As part of his Five-point programme for social reform Sanjay believed that forced sterilization was the only way to control birth rate. It was reported that he ordered the police to accompany doctors and medical teams to scour the countryside in vans, forcing people to undergo a sterilization operation, with or without their consent.\textsuperscript{87}

Here it is worth mentioning that quite often Mrs Gandhi would employ the imagery of medicine, disease, health in her Emergency discourses in order to justify the declaration of emergency. She consistently referred to the ‘disease that the country had developed’ and to the threat of ‘paralysis’ that faced the government from the opposition.

During Emergency, Sanjay Gandhi was allowed to do more or less what he wanted in the Union Territory of Delhi. This was his particular bailiwick, where his experiments in slum clearance and sterilization were first carried out.\textsuperscript{88} In this enterprise he was assisted by his closest aides Lt. Governor, Kishen Chand, his secretary Navin Chawla, Vidyaben Shah and the enigmatic Rukhsana Sultana. The notorious Dujana House, inaugurated in April 1976, came to epitomize the forced sterilizations. “It was surprising that there were many prominent women involved in getting other women into Dujana House to be sterilized,” says political activist John Dayal.\textsuperscript{89}

The family planning programme became increasingly oppressive in the areas directly under Sanjay’s control. Sterilisations were performed on an unprecedented scale in the states of Haryana, Western Uttar Pradesh and Delhi. After a police attack on the Muslim village of Uttawar, southwest of Delhi, 800 vasectomies were performed - giving Uttawar. As the Indian Express noted, “it had the dubious distinction of probably having every eligible male sterilized.”\textsuperscript{90} When some people complained to Indira Gandhi about the excesses of the programme, her advice to them was, ‘Meet Sanjay Gandhi about this matter.’ Of course, nobody risked going to jail complaining to Sanjay Gandhi.\textsuperscript{91}

\textsuperscript{87}Carol Dommermuth-Costa, Indira Gandhi: Daughter of India, Twenty-First Century Books, 2001, p.104
\textsuperscript{88}Ramachandra Guha, The Living Legacy Of Sanjay Gandhi, The Telegraph, 11 September 2010
\textsuperscript{89}Documentary by John Dayal ‘When the trains ran on time: A film on 1975 Internal Emergency in India.’
\textsuperscript{90}The Indian Express, 8 March 1977
\textsuperscript{91}Ashish Bose, Headcount: Memoirs of a Demographer, Penguin Books India, 2010, pp.159-160
During September 1976 alone 1.7 million people were sterilised, equalling the annual average for the preceding ten years.\textsuperscript{92} Between June 25, 1975 and March 1977, an estimated 11 million men and women were sterilized using such tactics. Another 1 million women were inserted with IUDs.\textsuperscript{93} Hundreds were being killed from botched sterilizations - according to official statistics, 1774 if them. There was no way to count the numbers who were being hauled away to sterilization camps against their will.\textsuperscript{94}

More horror stories were coming in. The Shah Commission reports cites the case of an old man who claimed he was too old to have children. However, the bureaucrat insisted he undergo a vasectomy as quotas had to be met. The quota raj of the Emergency acquired a more sinister tone as bureaucrats exceeded quotas to express their loyalty to the regime.\textsuperscript{95} As noted by Vena Soni\textsuperscript{96}, these policies were ‘more intensive and aggressive than any other birth control programme in India’ and were arguably the state’s greatest infringement of human rights during this period.

Those who had undergone a vasectomy were too embarrassed to talk about it. It was viewed by these villagers as ‘a radical violation of one’s body, and for some, a purpose in life’ and many who had received the operation found it difficult to discuss.\textsuperscript{97} The Shah Commission also found that the target of 4.3 – million sterilizations set by the government of India was exceeded by 190 per cent.\textsuperscript{98}

People in Rajasthan with more than three children were banned from holding any government job unless and until they had been sterilized. In Madhya Pradesh, irrigation water was withheld from village fields until sterilization quotas were met.

Among the pressures put on local officials was the suspension of their salaries unless sterilization quotas were met. In the last six months of 1976, 6.5 million people were

\textsuperscript{92}Davidson R. Gwatkin, Political Will and Family Planning: The Implication of India’s Emergency Experience, Population and Development Review, 1979, p.29
\textsuperscript{98}Emergency’s useful scars, The Indian Express, July1, 2015
sterilized, including men (often elderly forcibly given vasectomies). The State of Uttar Pradesh had to bear the major brunt of the sterilisation drive. The state quota for Uttar Pradesh had been set at 400,000, but the chief minister raised it to 1.5 million, presumably to please Sanjay (Sanjay Gandhi, Indira Gandhi’s son). Some 700,000 operations were actually performed, a phenomenal increase over the previous year’s total of 129,000. Further teachers were told that they must submit to sterilization or lose a month’s salary. In addition to that there was great resentment among school teachers, who had been asked to conduct house-to-house surveys in pursuance of the sterilization campaign. As many as 150 teachers were arrested for defying orders. Health department officials in Uttar Pradesh had their pay withheld until they met their quotas for sterilization.

Situations worsened in the state of Bihar as public food rations were denied to families with more than two children. The local government refused to put in a much-needed village well until “100 percent of eligible couples” underwent sterilizations

The strongest and most sweeping legislative measure, on the verge of becoming a law, is in Maharashtra. The Maharashtra bill calls for compulsory sterilization of all men with three living children. Failure to comply would result in forcible sterilization under arrest.

The Indian Press published stories advertising the rewards for sterilization, titled, “Medical Benefits for Three Kids only” or “Cut in Jail Term for Sterilization.” When districts fell behind in meeting their sterilization quotas, poor urban men of all ages were rounded up by the police and transported to vasectomy camps on the outskirts of India’s cities, where they were sterilized. The result was nothing less than a nation mobilized for “war” on population.

With the focus almost solely on these measures to achieve the required number of operations, Emergency sterilisation was completely detached from family planning. There is much evidence that Emergency authorities sterilized people as punishment. The biographer of

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99 Angela Franks McFarland, Margaret Sanger's Eugenic Legacy: The Control of Female Fertility, 2005 -, p.171
100 India: Mandatory sterilization dilemma, http://home.ica.net/~drw/
101 Ramchandra Guha, op.cit., p.371
Rajiv Gandhi, Vinod Mehta aptly observed that, particularly in the Northern regions of India, ‘the dreaded Nasbandi...struck demonic terror’ 105 Emma Tarlo’s anthropological study 106 has also found many testimonials to such terror in her conversations with Delhi residents, including one worker who claimed he would stay indoors most of the time and would venture out only when absolutely necessary.

Clearly, emergency sterilizations functioned as much more than family planning. They became a means of government authorities exerting power, in ways that were embedded within the broader politics and climate of the State of Emergency.

6.2.9. The Three Gross Amendments

The grossest abuse of legislative power came with the three amendments which sought to legitimatize, institutionalize and immunize the office and the individual that is Indira Gandhi the Premiere. Taken together, these amendments robbed the Constitution of its soul and turned India into a dictatorship. While amendments 38 and 39 were designed to meet the immediate legal challenge to the dictatorship, the 42nd Amendment was meant to institutionalize it.

On August 1, 1976 came the thirty –eight amendment making the satisfaction of the President in regard to proclamation of emergency under Articles 352 and 360 final conclusive, and non-justiciable. The 38th Amendment barred the review of proclamations of the Emergency, judicial review of overlapping proclamations, of ordinances promulgated by the President or by Governors, and of laws that contravened the Fundamental Rights. 107 It safeguarded the declaration of an internal emergency, President’s rule in states, and promulgation of ordinances, and put them beyond the reach of the courts. 108 In particular it codified and enlarged the State's power to remove fundamental rights from its citizens during states of emergency. 109

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108 Indira’s emergency in India, dailytimes.com.pk
Ten days later another amendment saw the light of the day in Indira Gandhi’s regime. The 39th Amendment as it came to be called has been chronicled as the fastest Constitutional Amendment in India’s History. It added a new Article 392A to the Constitution of India by which the election of the Prime Minister and the Speaker cannot be challenged in any court in the country. It can be rather challenged before a committee formed by the Parliament itself. The Amendment was placed in the Ninth Schedule, beyond judicial review.

The amendment was a blatant attempt to undo and overrule the decision of the Allahabad High Court which had set aside the election of Indira Gandhi. It was a first of its kind which made the electoral offences committed by the Prime Minister as non-justiciable. It was introduced in the Lok Sabha on August 7, 1975 and passed that very day after a two hour “debate”. Its passage in the Rajya Sabha was also very swift. It was introduced on August 8, 1975 and passed that very day. On August 9, all state legislatures were summoned to ratify this amendment and on August 10, 1975 it received the President’s assent. The reason for this over speeding was the Congress Party’s desire to pre-empt the Supreme Court which was to begin hearing Indira Gandhi’s appeal against the Allahabad High Court judgement on August 11, 1975. 110 The inspiration for this came from the Nazis wherein Nazi leader Joachim von Ribbentrop who later became Hitler’s External affairs Minister advocated a new legal system since “Adolf Hitler too like any other common mortal can be tried under the same paragraph of the penal law.” 111

It was further declared that no law made by the Parliament before the commencement of the thirty–ninth amendment in so far as it related to election petitions and matters connected therewith shall apply or shall be deemed ever to have applied to or in relation to the election of any person who was Prime Minister; such election shall not be deemed to be void before such commencement ; and notwithstanding any order made by any court such election shall continue to be valid in all respects and any findings on which such order was based shall be deemed to have always been void and of no effect.

This was followed up with the Election Laws Amendment Act passed on August 5, 1975 specifically to nullify the points upheld by Justice Jagmohanlal Sinha of the Allahabad High Court against Indira Gandhi. It was to be applicable retrospectively to ‘any election held before the commencement of this Act to either House of the Parliament or either house of the

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110 Surya Prakash, Congress’s Subversion of the Constitution, Pioneer, 25June 2010
111 Arun Jaitley, The Godwin Exchange, The Outlook, March 12, 2014
legislature of the State.’¹¹² By this amendment the law was amended to say that if a government official while on official duty assisted a candidate in an election, he “shall not be deemed to have assisted” the candidate. It also changed the legally effective date for an official’s resignation from government service.¹¹³

### 6.3. 42nd Amendment is put on the anvil

The biggest game changer amendment was the 42nd which almost rewrote the Constitution, gave unfettered powers to Parliament to change the Constitution, invalidated the Supreme Court ruling in the Kesavanand Bharti case that the government couldn’t change the basic structure of the Constitution and made the emergency declaration by the President ‘non-justiciable’—that is, above challenge in the courts.¹¹⁴

Soon after the judgment of the Allahabad High Court on June 12, 1975, Mrs Gandhi and the Congress Party spoke repeatedly of the need to change the Constitution so that it kept pace with the times and did not hinder fulfilment of the people’s aspirations.¹¹⁵ Mrs Gandhi had instructed Swaran Singh, then her Minister of External Affairs to prepare a report “to study the question of amendment of the Constitution in the light of experience”. Swaran Singh presented a report that went on to be the draconian 42nd Constitutional Amendment Act of 1976. This Amendment altered and trampled over every portion of the Constitution, including its Preamble. The design of Swaran Singh’s Report and the ensuing 42nd Amendment was to make the Parliament sovereign by according it unbridled powers to amend any part of the Constitution.

The proposals and suggestions that coalesced into the 42nd amendment were varied and complex. They had been interspersed in some way or the other in the early years of 1970. One version which surfaced during the AICC meeting in 1976 related to the arguments for a strong centre and a committed judiciary. Others focused on the controversial role the judiciary had played in regard to social reform and proposed a series of radical changes to the higher judiciary, abolishing its ability to review parliamentary legislation, and even proposals that India switch to a presidential system. Francine Frankel had noted that ‘one of the most important purposes of the 42nd Amendment, according to the law minister, had been to

¹¹² Dilip Hiro, op. cit., p.265
¹¹⁴ Supra note 108
¹¹⁵ Shrimati Indira Gandhi, Lok Sabha Debates, Vol.LXV, No. 3, 27 October, 1976, p.146
reverse the effect of the Supreme Courts’ 1973 judgement in the Kesavanand Bharati case, that parliament could not amend the basic structure of the constitution.”\textsuperscript{116}

The then Law Minister H.R.Gokhale\textsuperscript{117} also impressed upon the urgent need to amend the Constitution. In the course of his debate on the 40\textsuperscript{th} constitution Amendment bill in the Parliament, H.R. Gokhale observed:

“The Present Constitution was framed years back when the situation was different; and the document was a result of compromises of different forces existing at the time. The urgency of that time was to free the country from the shackles of imperialism; so long as it went on, it was all right but conditions did not remain static. The constitution is after all only an instrument, a means to an end in itself. We have to start the exercise of looking at the provisions of the Constitution, and formulate a new framework, again chosen by the people themselves.”\textsuperscript{118}

6.4. Constitution of Swaran Singh Committee

It was at the 75\textsuperscript{th} Congress session of the party held at the Kama Gata Maru Nagar, that the then Congress Party President, Shri D.K.Barooah felt the need to amend the Constitution.\textsuperscript{119} He stated that a rigid Constitution which was incapable of being attended to meet the aspirations of the people and the changing needs of the times invariably collapsed. Flexibility and responsiveness to the aspirations of changing society were the essence of any living organism that was the Constitution.\textsuperscript{120}

Thus with this determination to make our Constitution an instrument of change at Kama Gata Maru Nagar, the Party formally declared:

“The Congress urges that our Constitution be thoroughly re-examined in order to ascertain if the time has not come to make adequate alterations in it so that it may continue as a living document effectively responding to the current need of the people and the demands of the present.”\textsuperscript{121}

\textsuperscript{118}Reply to the House of the People Debate, 7 August 1975
\textsuperscript{119}Rajya Sabha Debate, 4 November 1976, p.101
\textsuperscript{120}The Tribune, 29 December 1975
\textsuperscript{121}Ibid.,
In the pursuance of the above call given in the political resolution passed by the party, the Congress President D.K. Barooah called upon his party men to create public opinion in favour of the urgently needed statute change. He said the Constitution must be modernized to some extent. He added that there should be debate on this matter among Congressmen and the general public so that there was a public opinion in favour of much needed Constitutional changes.122

He further added that any demand for the new Constitutional Assembly was outrightly misplaced and those who demanded it lacked perspective and foresight. He ruled out thus the possibility of convening any assembly for effecting the statue changes.

In order materialize this objective, the Congress President D.K. Barooah appointed a twelve member Committee on 26 February 1976 with Swaran Singh as the head of the panel. This has been registered in the annals of constitutional history as Swaran Singh Committee. The committee was intended to study and suggest amendments of the Constitution. Discussions were held during March 1976 to July 1976. It involved formulating proposals in tentative form and then publicizing it though press and radio so that a national debate could be induced for ascertaining the views of one and all.

The purpose behind this committee was to obtain a set of recommendations that will ensure

(i) immunity to Indira from legal challenges such as the Allahabad High Court verdict of 12 June 1975 (ii) that she is rendered immune from any prosecution and (iii) unfettered powers to her actions in the sense that they are not called into question by the higher judiciary. 123

After a few meetings with two rounds of revisions and working under utmost secrecy, the Swaran Singh Committee report was presented to the Congress President Barooah on 3 April 1976. The tentative proposals were finally discussed and adopted at the meeting of the All India Congress Committee, held in New Delhi on 29 May, 1976. Eventually the Swaran Singh Committee after its meeting of 27 July 1976 made its recommendations under 20 heads which are as follows:

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123 Ananth V. Krishna India Since Independence: Making Sense Of Indian Politics, Pearson Education India, 2011 p.165
While making these recommendations, the Committee had kept before it certain important objectives. It proposed as follows. “Our Constitution has functioned without any serious impediment during the past 26 years and more. While this is so, difficulties have been thrown up from time to time in the interpretation of some of its provisions, more particularly where they concern the right of Parliament to be most authentic and effective instrument to give expression and content to the sovereign will of the people. It is the scheme of the Constitution that the three main pillars of our parliamentary democracy, namely, the Legislature, the Executive, and the Judiciary have to function harmoniously if we are to achieve our desired objectives of securing to all citizens justice, social, economic and political. Ours is a dynamic, moving and changing society, and the need to quicken the pace of socio-economic progress of our people has never been more urgent. Some of the amendments to the Constitution that we have proposed have been conceived in this spirit. The Committee would like to emphasize that the respect of the people for the three organs of our democracy and their confidence in these organs have to be sustained and strengthened. An attempt has been made to clarify and define, where possible, with greater precision their respective functions in the light of the experience gained, so that our democratic institutions may work smoothly in an atmosphere of complete understanding.”

The Committee had among several things, included a categorical statement against the Presidential form of Government. Rajni Patel too commented on the futility of abandoning Parliamentary Government in favour of Presidential system. While addressing a convention organised by Bombay Regional Committee of the Congress Party, he stressed the need for reforms that would ensure a system where the prime minister elected by the popular vote was not subjected to the vexatious pulls and pressures. It aimed to substitute the expression “Sovereign Democratic Secular Socialist Republic “for Sovereign Democratic Republic” and insert the words “integrity” after the word ‘unity.

The Committee widened the scope of Article 31C and placed the Directive Principles at a pedestal which was higher than the Fundamental rights. It also ensured that provision should, be made that no such law shall affect the special safeguards or rights conferred on the minorities, or the Scheduled Castes, the Scheduled Tribes or Other Backward Classes under the Constitution. The other important recommendations of the Committee are to introduce

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124 Swaran Singh Committee Report, (1976) 2 SCC (Jour) 45
125 Ibid.,
126 Ibid.,
free legal aid to the poor, and worker's participation in management and family planning to the Constitution. These will be incorporated in the chapter on Directive Principles of State Policy, giving discretion to the government to frame laws on the subject.\textsuperscript{127}

With regard to the amendment of the Constitution it sought to insert a new clause in Article 368 to the effect that any amendment of the Constitution passed in accordance with the requirements specified in that article shall not be called in question in any court on any ground. According to this recommendation Article 368, which confers upon Parliament the constituent power\textsuperscript{128} to amend by way of addition, variation or repeal of any provision of the Constitution, should be further clarified by the addition of a sub-clause in effect saying that no amendment shall be called into question in any court on any ground. The Committee reasons that any amendment to the Constitution, following the prescribed procedure, is a part of the Constitution, the supreme law, which of course cannot be challenged in any court and

The Committee also tried to clip the powers of the Judiciary. In 1954 a special Sub-Committee appointed by the Congress Working Committee, presided over by Shri Jawaharlal Nehru, made the following recommendation, which the Working Committee accepted at its meeting held on May 22, 1954:

"Right to issue directions, orders, or writs should be restricted to cases in which there has been substantial failure of justice or where public interest so requires. Delete 'for any other purpose' from the last sentence of Article 226(1)." \textsuperscript{129}

Keeping in view the recommendations of the special Sub-Committee headed by Shri Jawaharlal Nehru, and having regard to the several points of view expressed, the Committee would recommend the amendment of Article 226 in the following manner:

(i) The words "and for any other purpose" may be deleted.

(ii) The existing power of the High Courts to issue writs for the enforcement of fundamental rights will continue. A new clause may be inserted in Article 226 to the effect that the power conferred by clause (1) of that Article to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court in cases in which there has been

\textsuperscript{127} Swaran Singh panel: More weighty recommendations, India Today, June 17, 2014
\textsuperscript{128} Supra note 20
\textsuperscript{129} Ibid.,
a contravention of any provision of the Constitution other than any fundamental right enumerated in Part III, or the contravention of any provision of a statutory law where such contravention has resulted in substantial failure of justice. The exercise of this power should, however, be subject to the proviso that where an alternative remedy is available under the Constitution or any provision of a statutory law, no such direction, order or writ shall be issued.

(iii) Another new clause may be added to provide that a court empowered to issue a writ under this Article shall not issue any interim stay or injunction or any other such interim order unless prior notice of the proposal to move the court in that behalf is served on the respondent and copies of all documents in support of the plea for stay or injunction or any other such interim order are filed in the court and served on the opposite party and opportunity given to the respondent to be heard. 130

The scope of the writ jurisdiction of the High Courts and the Supreme Court is to be limited, according to the Swaran Singh Committee. No writ under Article 32 or 226 is to lie in three specific matters:
(a) any matter concerning revenue or concerning any act ordered or done in the collection thereof
(b) any matter relating to land reforms, and procurement and distribution of food grains.
(c) election matters. 131

It also recommended the setting up of Administrative Tribunals and All India Labour Appellate Tribunals. There is no doubt that the Swaran Singh Committee leans towards consideration of administrative efficiency as against the marginally expeditious redress now available against the non-use, abuse, misuse of administrative powers.132

The Committee also proposed changes to Article 227. It proposed the deletion of the word "tribunals" from Article 227, which presently gives the High Court’s powers of "superintendence over all courts and tribunals" throughout their jurisdiction. It also suggested that the Supreme Court should have the power to transfer a pending case in the High court of any State to the High Court of another State. Another suggestion that was tabled was that as in the case of the Supreme Court, provision should also be made for the appointment of a

130 Ibid.,
131 1976) 2 SCC (Jour) 17 p.21
132 Ibid., p.22
‘Distinguished jurist’ as a judge of the High court. The committee also considered a proposal for the creation of an All India Judicial Service.

Under Article 71 and 329-A of the Constitution, disputed elections in relation to the offices of President, Vice-President, Prime Minister and Speaker are to be decided by an authority or body to be created by a law of Parliament. Thus on the issue of disqualification for membership of Parliament and State Legislatures it suggested the constitution of a body to determine the questions of disqualification composed of nine members, three each from Rajya Sabha and Lok Sabha and three to be nominated by the President. Initially this power was being exercised by the President and Governor in consultation with the Election Commission and in accordance with the Commission’s advice.

Another ground of disqualification for any Member of Parliament or State Legislature was if he holds any office of Profit under the government. This would be piloted by amending Article 201(1).

While suggesting more changes, it brought Articles 77(3) and 166(3) regarding Rules of Business, Articles 80(3) and 171(5) relating to Nominations to the Rajya Sabha and State Legislative Councils, Articles 82 and 170 regarding Delimitation of Constituencies, Article 311 concerning services also under its purview.

Articles related to Quorum Clause (3) and(4) of Articles 100 and 189 were marked for deletion while Articles 118(1) and 208 were earmarked for amendment so as to confer specific power on the two Houses of Parliament and the State Legislatures respectively to make for regulating quorum.

The Emergency until then could be declared only in the whole of the country during external aggression or internal disturbances. But the Committee made a suggestion apropos emergency article 352 that the President may declare Emergency under Article 352 in any part of the country and lift it from any part where emergency has been clamped.

In its inventory of changes, the Committee made strong proposals with regard to the federal setup. Agriculture and Education are subjects of prime importance to the country's rapid progress towards achieving desired socio-economic changes. Till then education featured as a State subject but as per the recommendations of the Committee, it was to be transferred to the concurrent list. The proposed amendment do not oust State jurisdiction in
this field altogether; nor is it to be expected that the Centre will, without close consultation and co-ordination, pass overriding laws which the States may not be able to implement. The Committee rightly, therefore, emphasizes "Centre-State" co-ordination in the matters; it does not speak of central hegemony.  

Another modification which it suggested was to give Centre the power to deploy police or other similar forces under its own superintendence and control in any state. Initially the Center had to consult the States before exercising its power. It also suggested the addition of Family Planning to entry No. 20 in the Concurrent List related to economic and social planning.

By giving Parliament the power to enact legislation to provide safeguard against the abuse or misuse of Fundamental Rights and the power to penalize the offenders. The Committee strengthened the autocratic rule of Indira Gandhi from the back door. The Committee also drew attention to the protracted judicial processes which often results into denial of justice. Suitable provisions were also advocated regarding pending suits and their disposal in the Courts.

The Committee also felt that a chapter on fundamental duties for the citizen should be included along with the existing fundamental rights in the constitution. The Swaran Singh committee, presumably after scrutinising some of the constitutions like that of Japan, Vietnam and Netherlands, has formulated an eight-point code of fundamental duties. These are: (1) to respect and abide by the constitution and the laws, (2) uphold the sovereignty of the nation and function in such a way as to sustain and strengthen its unity and integrity, (3) respect the democratic institutions enshrined in the constitution and not do anything which may impair their dignity or authority, (4) defend the country and render national service, including military service, when called upon to do so, (5) adjure communalism in any form, (6) render assistance and cooperation in the implementation of the directive principles of state policy, and promote the common good of the people, so as to sub serve the interest of social and economic justice, (7) abjure violence, protect and safeguard public property, and refrain

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133 Upendra Baxi, Constitutional Changes: An Analysis of the Swaran Singh Committee Report, Supreme Court Cases, p.28
134 Duty is right, rights are left, India Today, April 9, 2015
from doing anything which may cause damage and destruction to such property, and (8) pay taxes according to law.\textsuperscript{135}

To safeguard the fundamental duties from being challenged in any court of law the committee has suggested the inclusion of an explicit provision that "no law imposing such penalty shall be called in question in any court on the ground of infringement of any of the fundamental rights or on the ground of repugnancy to any other provisions of the constitution."

After the publication of the Swaran Singh Committee Recommendations a wide ranging national debate was initiated. It had a good number of persons from all walks of life like ex-judges, lawyers, public men as participants. Professor Upendra Baxi came up with encomiums for the committee. Considering the Committee’s recommendations as an example of high statesmanship, he said “The Swaran Singh Committee on constitutional changes has performed its tasks with remarkable expedition and wisdom. It has unequivocally affirmed faith in the parliamentary form of government.”\textsuperscript{136}

Even though there were many emergency restraints on press and many political figures were put behind the bars, all the same there were innumerable discussion groups, seminars, symposiums, cores of articles in journals and periodicals throughout the country by lawyers, bar associations and forums and agencies. Here it will not be out of place to detail here the views expressed by these bodies on the recommendations of the Swaran Singh Committee.

Political parties like the CPI, A.D.M.K and the Muslim League went all the way to support the move for constitutional change. The CPI backed the Congress party panel report. In addition the CPI also wanted the deletion of property right and of the provision for judicial reviews of law passed by Parliament having a constitutional bearing because the Courts had been striking down every progressive constitutional amendment of legislature.\textsuperscript{137}

Shri Bhupesh Gupta, M.P. and Shri Rajeshwara Rao, the Party General Secretary embraced the proposed amendment of the Preamble to the Constitution, the supremacy of Parliament which was being placed beyond judicial challenge, the limited writ jurisdiction of

\textsuperscript{135} Ibid
\textsuperscript{136} Upendra Baxi, op.cit., p.17
\textsuperscript{137} G.G.Mirchadani, Subverting the Constitution, 1977, p.74
the High Court which came in the way of social change. They also desired the expansion of the Directive Principles which should be enlarged so as to include the workers right for collective bargaining and wanted that service tribunals with the employee’s representations on them should be established.\(^{138}\)

However CPM leader Shri E.M.S. Namboodaripad, a former Kerala Chief Minister opposed the recommendations of Swaran Singh Committee because it contained dangerous provisions regarding the balance between Center and the States, the Executive, Legislature and Judiciary. He also criticized that the recommendations were not in tune with the Federal character of the Constitution.\(^{139}\)

Palkhivala, a leading constitutional lawyer expressed optimism towards the additions such as the suggestion to put agriculture and education in the Concurrent list, the proposal to amend Article 352 and the establishment of Administrative tribunals. However there were many issues to which he expressed his dislike. The suggestion to restrict the freedom with the objective of implementation of Directive Principles was also adversely commented upon:

“In your sun-set years your children will be asking you, where were you when the proposal to take away freedom was put to public debate.”\(^{140}\)

Similarly the considered opinion of a National Seminar organised in October 1976 at Vithal Bhai Patel in New Delhi was that the Bill should not be proceeded with on the ground of both of procedure and substance. During the course of the Seminar C.K. Daphtary, Former Attorney General of India, held that the bill would alter the democratic structure and form of the Constitution; the executive would be very powerful and fundamental rights would be struck off. He wanted that a referendum should be held before the adoption of the Bill.

6.5. The Making of the 42\(^\text{nd}\) Amendment Act

The amendment was drafted at two levels: The Prime Minister and her coterie of Ministers who established the policy content and the Law Minister who did the actual drafting. However the real brain behind it was Siddhartha Shankar Ray, Chief Minister of Bengal. Ray would consult Mrs Gandhi quite often about constitutional changes to be made, who agreed with him mostly. Collaborating with him were D.K. Barooah and Rajni Patel. All

\(^{138}\) M.C.J.Kagzi, op.cit, p. 25  
\(^{139}\) The Tribune, October, 1976  
\(^{140}\) N.A. Palkhivala, Reshaping the Constitution, The Illustrated Weekly of India, Vol. XCVII, No. 28, July 4, 1976, p.10
three thought that the Swaran Singh Report was inadequate and thought of beefing it up. Barooah was most intensively involved in then drafting and so was H.R. Gokhale. It was the Law Minister led the team of drafters and acted as the link with the drafting officers in his ministry.

The axle around which the wheel turned was the Prime Minister. As Gokhale revealed later ‘ although the instruction for each amendment and modification was first given to him (Gokhale) either by Siddhartha (S.S.Ray) or some aide of the Prime Minister, he always approached her for confirmation. Her reply was always somewhat as follows, “ Yes the members of the party are pressing hard for it, the Chief Ministers are also asking for it, you are yourself seeing the situation in the country in serious. What has to be done, this has to be implemented.”

The drafters concentrated on increasing the Central government’s and the Prime Minister’s authority, willing to sacrifice democracy for this greater cause and using the amendment’s social revolutionary provisions towards this end. Through this amendment Mrs. Gandhi wanted to consolidate the things that she had achieved by the Emergency.

After the drafts of the amending bill were discussed by a committee officially chaired by Gokhale, it was taken up by two lengthy cabinet meetings on 21 and 22 August. The meetings which were often chaired by Y.B. Chavan in the absence of the Prime Minister had only general discussion and no dissent. A week after the first cabinet meeting, the Law Minister introduced the amendments in Parliament. Consideration was scheduled to begin on October 25.

6.6. The Amendment matures during the course of debates

The Constitution (Forty- Fourth) Amendment Bill 1976, which was later renumbered as the Constitution (Forty–second) Amendment Act 1976, was introduced in the Lok Sabha on September 1, 1976. Incorporating most of the recommendations of the Swaran Singh Committee, the bill was debated and passed at a special session of Parliament. Nevertheless in the week before the special session of the Parliament and during the course of the debates, attacks on the proposed changes assumed greater intensity and became more pungent.

141 Excerpt from B.N. Tandon’s Diary dated 26 October 1980 quoted in Granville Austin, Working a Democratic Constitution, p. 375
The opposition presented a ‘Statement by Intellectuals’ endorsed by five hundred signatures, presented it to the President, Prime Minister Speaker and Chairman of the Rajya Sabha on 25 October. It called for the postponement of the bill on the ground that Parliament, having extended its own life, was morally barred from amending the Constitution. The petition stated, “…we feel that it is improper and unwise to rush the Constitution (44th Amendment) Bill through Parliament. A Parliament which has outlived its term and yet proceeds with such drastic amendments bears the grave responsibility of undermining the very democratic foundations of our society and State which were laid during a long struggle for freedom…”

The debate to boycott the Constitution debate was taken at a meeting where those present were Satyendra Narain Singh, and Digvijay Narain Singh (Congress O), Bhanu Pratap Singh (BLD), Virendra Aggarwal (Jana Sangh), Samar Guha and Surendra Mohan (Socialist party), Era Sezhiyan (DMK), Samar Mukherjee (CPI-M), Tridib Chaudhary (RSP) and Krishan Kant and Mrs Lakshmi Kantamma (Congressmen for Democracy).

It commenced with a national Seminar of the Opposition parties and prominent individuals who adopted a census statement on October 18, 1976 urging the postponement of the bill. It said:

“This national seminar is of the considered opinion that enactment of the Constitution (44th Amendment) Bill by the present parliament should be stayed on the grounds both of procedure and substance. There is in the country, on account of the Emergency, a climate of oppression and fear in which no free and open debate is possible. Leaders of political parties and of public opinion are in jail, meetings have until recently been discouraged if not totally banned, and the Press has been effectively gagged. The denial of fundamental freedom of expression and of association and the erosion of judicial processes have created a situation in which it is impossible for the people to know, discuss and understand the sweeping and drastic constitutional amendments being proposed in their name, but certainly not to their benefit although this is so alleged. The honest and democratic alternative would be for the Government to face the people, whom it claims to serve, in fair and free elections which are in any case long overdue. Not to do so, and to rush the 44th Amendment through what is a rump Parliament in an atmosphere in which no free debate has been permitted or is

142 GG Mirchandani, op.cit., p.88
143 Ibid.,p.83
indeed possible, would be to institutionalize the emergency with added powers and present
the people with a fait accompli.”

On October 24, 1976 in a statement under the banner of “Citizens for Democracy”,
several eminent jurists, educationists and leaders of various parties sought postponement of
consideration of the changes till the elections to the Lok Sabha were held. It also published a
major pamphlet called Democracy and Constitution which was authored by S.P.Sathe,
V.M.Tarkunde, V.A. Naik, E.M.S. Namboodripad and the Chief Editor of the Indian Express.
Speaking at one of the meetings Chagla said the present Parliament has no right to amend the
Constitution since its mandate which was for five years was over. The extension according to
the provisions in the constitution, while observing the law had broken the spirit of the
Constitution, he added.

Another statement on behalf of the National Committee for Review of the
Constitution was issued by the Convener Krishan Kant, M.P. on October 25, 1976 who
described the 44th Amendment Bill as “totally unnecessary and regressive, and that sweeping
or far-reaching changes in the Constitution cannot and must not, be made except on the basis
of free and fair elections, which are long overdue.”

The All India Swatantra Party at a special session in Madras also passed a resolution
in the last week of October stating that the existing electorate did not give any mandate to the
ruling party to alter the Constitution in any manner it liked. It categorically declared that the
present Parliament or for that matter, any Parliament, is not legally competent to alter the
basic structure of the Constitution. Besides this legal objection, the resolution said the party
also objected to the bill on principles of democratic and political propriety.

The eminent lawyer Shanti Bhushan compared the amendment to a boxing match”
which had earlier been publicized as well-contested but in fact the hands of one of the boxers
were tied behind him and the other boxer was given two to three pairs of gloves to fight
with.” Another challenging voice was that of P.G.Mavalankar who called the amendment a
‘Constitution Alteration Exercise …a dishonest move on the part of the government.”

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144 Cited in Ibid., p. 84
145 Ibid., 93
146 Ibid., p. 86
147 Lok Sabha Debates, Fifth Series, Vol.65, no. 3, col.95
Madhu Limaye wrote during her detention, that Article 31D ‘will act as [the] grave-digger of freedom.’ Others like K. Santhanam said that it would pave for virtual one party-rule. According to him the expanded Article 31C practically repeals the Fundamental rights. Unfettered Parliamentary supremacy would make for constitutional instability which will be exploited by the revolutionary extremists and communal elements.

According to Tarkunde the provision allowing the Central Government to send its forces unbidden into a state and control them, was a gross encroachment on the state’s responsibility for law and order.

Critics agreed that creation of tribunals would expedite the judicial process, but feared that individuals appointed to them might be poorly qualified and politically biased. M.C. Chagla pointed out that appeals from tribunals to the High Courts could be denied by legislation, forcing “a man wronged by a tribunal’ to go all the way to the Supreme Court in Delhi to seek relief.

With the judiciary under such fire, even Communist Party Marxist statesman E.M.S. Namboodaripad gave it grudging support. He accepted that his party has never subscribed to supremacy of the judiciary but he also accepts that ‘in a number of cases the judiciary has acted as a check on the arbitrary actions of executive authorities as well as in scrutinizing legislative enactment with a view to checking whether the rights of citizens are being curtailed.

A meeting of women from different walks of life led by Miss Maniben Patel pleaded unanimously for withdrawal of the 44th amendment bill since it was considered to be inimical to the larger interests. A statement adopted by the meeting said “We condemn this undemocratic and contemptuous attitude of the Government.”

In its Editorial of October 29 the Statesman elaborated the dangers that would entail if the amendment was unscrupulously approved “the ultimate arguments against the omnibus 44th amendment are not legal but moral and practical. A nation should do what plain good sense dictates. Only those powers should be assumed that are absolutely essential for

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149 In Democracy and Constitution, Citizens for Democracy, p.37
150 M.C. Chagla speaking at a meeting organised by Citizens for Democracy
152 G.Mirchandani op.cit., 142
implementing the socialist programme, for bringing to the people ‘justice, social economic and political’........ put in the hands of a set of people with less scruples for judicial or legal niceties, this concentration of power can be very, very dangerous.”

However the wide ranging criticism was rebutted by many people. It first came from Mrs Gandhi’s end who intervened in the discussion in the Lok Sabha and said Parliament had the “unfettered, unqualified and unbridgeable right “to make changes in the Constitution. She rather considered the bill as the cure for the ills of the political system.

The Prime Minister spoke to the Lok Sabha again in term of the seamless web. The amendment was to ‘restore the health of our democracy…. [and was] responsive to the aspirations of the people’, she said. Its incorporation of secular and socialist in the preamble ‘will provide the frame of reference to all’. The new anti-national activities provision was necessary to protect national unity and integrity. She linked the article and her emergency in the same breadth, asking what was the agitation before Emergency ‘except to throw aside the Constitution?’ In the light of this, the opposition’s criticism for the amending bill was ‘not so plausible’.153

This stance was supported by the opinions of Law Minister H.R.Gokhale, West Bengal Chief Minister S.S. Ray and the Chairman of the Congress Committee on the Constitutional changes. In one of the forceful speeches in defence of the bill Gokhale told a TV interviewer that the amending provisions of the Constitution were a safety valve. He said if the Constitution was rigid then there was always a chance of violent changes taking place. He reiterated the arguments that: Parliament was supreme because it represented the people, Parliament could now give effect to the Directive Principles by law.154

In an eloquent speech on October 26, 1976 Swaran Singh too defended the changes proposed by the Bill and said “we need not be apologetic about that’. Asserting it as a matter of right, he claimed that the Congress had the mandate of the people to make structural changes in the Constitution and was implementing the mandate without shirking its responsibility.

153 Lok Sabha Debates, Fifth Series, Vol. 65 . , no.3
154 Lok Sabha Debates, Fifth Series, Vol. 65, no. 1 col. 49-65
Another categorical avowal came from the side of Siddhartha Shankar Ray who said
if natural rights and civil rights could be altered why not the Fundamental rights which were
an amalgam of both.\textsuperscript{155}

6.6.1. Debates in the Lok Sabha

Parliament was summoned on the morning of October 25, 1976 to consider the forty
second Amendment. According to the news agency Samachar, three hundred and seventy of
the Lok Sabha Membership had attended the session. The others had boycotted it or were in
jail.

The Lok Sabha debate began on October 25 whereby the first three days were devoted
to intensive debates and deliberations. The clause by clause consideration of the Bill in the
Lok Sabha began on October 28 and reached its finality on November 1. The bill was then
passed to the Rajya Sabha where no amendment was accepted and the bill was passed in the
shape in which it was sent to it by the Lok Sabha. The Lok Sabha passed it on November 2.

As most of the opposition leaders were put behind the bars, the debates and
discussions were considered to be undemocratic and lopsided by many M.P.s Even the
reportings of the proceedings of Parliament were censored. P.G.Mavalankar rebuked the Law
Minister Gokhale on the issue of not consulting the Opposition by saying that

“…It is wrong to say that there has been a free debate. The Law Minister says that the
opposition is politically motivated. This is a strange argument, coming from a strange corner.
My charge is that it is the Government which has come with this Bill with a political
Motivation and they expect a non-political reaction to this political motivation..! In normal
times, I would have tabled amendments with a view to effecting improvements, etc. But
because this has been done in an abnormal fashion, in an extraordinary fashion, in a most
undemocratic fashion, what is good for giving amendments?”\textsuperscript{156}

According to S.A. Shamim the absence of the opposition marked a failure on the part
of the Congress party. He said, ” The Prime Minister has involved the Congress party; she has
involved Parliament m people within Parliament. There are people without people who

\textsuperscript{155}G.G. Mirchandani, op.cit.p.90
\textsuperscript{156}Lok Sabha Debates, Vol. LXV, No. 3.col. 98, 1977
supported her otherwise, they are not supporting her now because the methods which are being employed are not convincing and seem to be immoral.”\textsuperscript{157}

The general debate in the House of People virtually began with Samar Mukherjea who vociferously declared his party’s position on the amendment later staged a walk out. He said:

1. The Constituent Assembly should consist of members directly elected by the people.
2. The system of proportional representation should be adopted for the election of members of the Constituent Assembly.
3. A minimum period of six months should be given for free discussion on the various aspects of the Constitution.
4. The Emergency should be lifted, the pre-censorship withdrawn, the political prisoners including M.P. released, the MISA and DIR and the Press Objectionable Matter Act and other repressive legislation repealed and the Opposition should be given as much freedom to propagate its views.
5. An All Parties’ Committee should be formed to supervise the elections with powers to make rules for preventing corrupt practices and misuse of official machinery.”\textsuperscript{158}

Eli Sezhiyan\textsuperscript{159} also bitterly complained about the kind of discussion on the Constitution. Citing the instances of repression of public and free debate on the floor of the House, Eli Sezhiyan too left. However all this had very little effect on the debate. Speaker after speaker extolled the Amendment. Some members of the Congress Party like Algesan took the rather smug view that they were destined to rule. In a self-conceited way he said, “History shows that the Congress Government knows the pulse of the nation and hence it brings in amendments according to the aspirations of the people”\textsuperscript{160}Swaran Singh too pointed out that the Congress had the opposite mandate for the amendment.

This argument became more contorted in the hands of P.R.D. Munsi, who upheld the move of Congress Party as nonpartisan and definitive:

He said, “The Indian National Congress and Government did consider it proper seeing the situation of the country, to make some amendments in the Constitution to bring about

\textsuperscript{157} Lok Sabha Debates, Vol. LXV, No. 3.col. 70, 1977
\textsuperscript{158} Lok Sabha Debates, Vol. LXV, No. 1.col. 30-31, 1977
\textsuperscript{159} Lok Sabha Debates, Vol. LXV, No. 1.col. 102-118, 1977
\textsuperscript{160} Lok Sabha Debates, Vol. LXV, No. 1.col. 138, 1977
socio-economic changes which we had promised when we went to the poll in 1971. Therefore, in that context, the Bill which came before us cannot be treated as a Party Committee Bill. The Bill before the House expresses the views and aspirations of the people of the country.\textsuperscript{161}

Notwithstanding that the debate was of very general nature yet one theme that dominated the debate was the attack on the judiciary. Concomitant with the assault on the judiciary was the declaration of the right of the Parliament to amend the Constitution. The debate was dominated by Mr. H.R. Gokhale’s sentiments. While insisting that the Congress was not trying to denigrate the judiciary, he maintained that they (judiciary) were many generations behind in their thinking,\textsuperscript{162} verbose in their judgments,\textsuperscript{163} and generally confusing because they produced an array of views.\textsuperscript{164}

A concurrent view came from Maya Ray who too did not want the Supreme Court to become a Third Chamber or a Super, Parliament.\textsuperscript{165} Similarly the judiciary attracted the ire of J. Rao who criticized the “wafer thin majorities” that decide important constitutional issues.\textsuperscript{166}

Swaran Singh characterized the amendments relating to the courts as comparatively moderate. When reviewing the amendments he said the courts had transgressed the limits prescribed for them. Parliamentary supremacy was axiomatic, it was ‘chaotic and … unacceptable to Parliament…. [that] a single judge sitting in a remote part of the country …[could ] declare [ an Act ] ultra vires’ and tribunals would effectively handle highly technical subjects such as taxes, distribution of food grains and civil service matters because their members would have the ‘requisite experience’ and be independent thereby inspiring confidence.\textsuperscript{167}

The discussions on the federal powers were also met with a mixed bag of reactions. M.P.s like S.S. Mohapatra welcomed the increase in the powers of the Center and called it a “great service” done by the amendment while K. Manoharan regretted that education was being transferred from the exclusive State Legislative list to the Concurrent list. He also

\textsuperscript{161} Lok Sabha Debates, Vol. LXV, No. 1.col. 172, 1977
\textsuperscript{162} Ibid. No.4. Col.11, 1977
\textsuperscript{163} Ibid. No.4. Col.14-15, 1977
\textsuperscript{164} Ibid. No.4. Col. 15, 1977
\textsuperscript{165} Ibid. No.3, col. 75, 1977
\textsuperscript{166} Ibid. No.1. Col.58, 1977
\textsuperscript{167} Lok Sabha Debates, Fifth Series, Vol. 65, no 2, col. 22-43
questioned the new police powers which were being assigned to the union. His contention was that already there were many subjects which were taken away from the state pool and by vesting the Center with more subjects and powers, it would tantamount to an imbalance in the sanctimonious federal structure of the Constitution. He thus reasoned that “Law and order situation is basically a state subject, and it is being covertly taken over by the Central Government. I do not know what the motive is, but this is quite an unnecessary clause. I wish it must be deleted and the State government must be given those rights.”\textsuperscript{168}

On similar lines of reasoning, K. Mayathevar too recommended that “Government of India to drop the entire amendment...because we fear that this will amount to encroachment into the State Subject of law and order.”\textsuperscript{169} N. Sreekantan Nair also disapproved of the provisions that gave the Center the power to send police forces into the States. He believed that by deploying armed forces without the consent of the State governments would bring in armed clashes between the Center and the Central forces. It was akin to bringing in an internal warfare. Protesting against the new powers, he said the powers “cut at the root of what remains of the conception of a federal Constitution.”\textsuperscript{170}

The addition of the phrase secular in the preamble also drew flak and suspicion from many members like Frank Anthony, Ibrahim Sulaiman who feared that the new secularism might not continue to propagate a Gandhian tolerance to other religions. It was seen as inaugurating a new kind of ideological transplant of an allegedly scientific humanism. The introduction of Fundamental duties was also subjected to criticism. Indrajit Gupta pointed out that it had only declaratory effect since there were no penalties attached to it. He also condemned new clause 31-D, who feared that “it will be utilized by the authorities against the trade unions; it will be used to suppress and penalize strikes and legitimate trade union activities.... What is it for ....”\textsuperscript{171}

Attempts to introduce radical amendments to the concept of partial emergency, on the issue of empowering the Center in the deployment of armed forces were all rejected. As the discussions were nearing its close Professor S.L. Saxena commented that that day “will go

\textsuperscript{165} Lok Sabha Debates, Vol. LXV, No. 2, col. 54, 1977
\textsuperscript{166} Ibid. No.7, col.34, 1977
\textsuperscript{167} Ibid. No.2, col.91, 1977
\textsuperscript{170} Ibid., No.1, col.79, 1977
down as the darkest day in the history of the Lok sabha.”\textsuperscript{172} P.G.Mavalankar went one step further and obliquely linked these proposals with the current Emergency when he said:

“The concentration of power, centralization of authority, deification of one or perhaps two individuals, shutting down all free opinion,cornering the judiciary and regimenting the citizenry ----all these are on the Dictator’s menu. They are certainly not on the Democrat’s table.”\textsuperscript{173}

In the final reckoning, 366 members voted in favour of the Bill, with 4 dissents which included P.G.Mavalankar, S.L.Saxena, Ram Hedao and Jambuwant Dhote.\textsuperscript{174}

6.6.2. Debates in the Rajya Sabha

The Rajya Sabha was not in a mood to entertain too much of general debate on the amendment and that is why it allowed minimal opposition. Resisting the bill, Krishan Kant tabled his suggestions and held that the new changes had many democratic implications. He summed them as follows:

1. The present Parliament which has outlived its period of legitimacy and is hanging on the thin poisonous thread of the emergency provisions of the Constitution has no right to adopt a practically a new Constitution.
2. The present period of emergency with all its curbs on the freedom of Press and the person is not the time to try and build a consensus of the people which is necessary to back up the Constitution of any country.”\textsuperscript{175} This view was countered by members like Mulk Govinda Reddy that it was not correct.\textsuperscript{176}

As usual, in this House too ire and anger were directed against the Supreme Court. D.K.Barooah made an acerbic carp about the educational qualifications of the judges and said “M.Sc’s and after going to a Law College for two years have become lawyers and judges”.\textsuperscript{177} A congruent anti-judiciary view was voiced by Mrs Indira Gandhi who explained that judges because of their political ambitions were skirting their responsibility. Citing it as a case of conflict of interests she justified the introduction of this amendment as it exposed the threat that was long festering under the surface in the judicial system. She said, “Most judges do not

\begin{thebibliography}{9}
\bibitem{172} Ibid., No.8.col.159
\bibitem{173} Ibid., No.8.col.142
\bibitem{175} Ibid., p.30-32
\bibitem{176} Ibid., p.62
\bibitem{177} Ibid., p.110
\end{thebibliography}
jump into the political arena. But one did. These acts highlighted the dangers we face. In a way we should be thankful to Justice Subha Rao. ..” 178

There were demands for the protection of minorities as well. N.H. Kumbha asked that the backward classes who are singled out for special treatment should not be just drawn from the Hindus and the Sikhs. Rather it should be an egalitarian exercise. The debate then began to centre around the problems of political and economic rights. Members like Ambika Soni favoured the changes as it would later the “vintage constitution” into something which would be efficiently salubrious for the young. Meanwhile there were members like B.N. Banerjee who felt that the “Directive Principles should not merely adorn the Constitution but should be made an active weapon for introducing socio-economic changes in the country.” 179

This view was also shared by B.C. Bhagwati and L.S. Saring who framed it in the following manner, “…the Constitution and democracies are not things to be moulded in the same mould. It is not like the algebraic formula \((a+b)^2\) is equal to \(a^2 + b^2 + 2ab\). The Constitution is a document not only a political document, but also it reflects, in a way, the economic aspirations of the people.” 180 But this too met with opposition with the demand of its complete withdrawal.

Nevertheless the clause that dealt with anti-national activities drew immense attention. While B.N. Banerjee and B.C. Bhagwati were satisfied with the Prime Minister’s assurance that the clause would be judiciously used but still there were members like I. Sinha, U.K.L. Gowda and C.K. Daphtary who were apprehensive of its misuse which became more vocal in their speeches K.S. Malle Gowda went to the extent of making a fervent appeal of withdrawing the “ominous” Article 31D to Mrs Gandhi. He feared that “Article 31- D can be misused effectively to prevent the emergence of a good opposition and it can be misused to give a serious blow to our infant democracy.” 181

In contrast to the Lok Sabha, it was thus observable that the arguments by the opposition in the Rajya Sabha were very feebly stated. In order to rupture this formal consensus, a slew of attempts were made by Bhupesh Gupta and his colleagues to negative the amendment by proposing radical alternatives. He contended that the introduction of the words ‘socialist’ and secular’ would prove to be undemocratic in the long run because

178 Ibid., 216-217
179 Ibid., p.52
180 Ibid., p.186
181 Ibid. p.83
that would mean anyone or any political party who opposed socialism or secularism will make himself open to the charge of undermining the basis of the Constitution.

In another attempt he wanted to introduce judicial review for clauses dealing with anti-national activities. Others like Mrs Kulkarni wanted to expand the scope of “anti-national activities” to cover “anti-social activities.” However Gokhale was not convinced and the motion was negatived.

Amendments to the Directive Principles supported by S.A. Hashmi, Bhupesh Gupta and Khursheed Ali Khan also met a similar fate. The House also rejected the proposal for a Standing Committee of Parliament and the State Legislatures to review and investigate all matters relating to and for the implementation of the Directive principles.

Bhupesh Gupta and his troop also failed to convince the House that the life of the Lok Sabha or State Assemblies should not be extended beyond five years or that the House and not just the President shall be final arbiter in election disputes. He also tried to limit the new emergency provisions and made an effort to shift the dangerous reservoir of undefined power from the President to the Parliament. But all his attempts were foiled thereby paving the way for the Amendment.

Despite all the dissent, the Rajya Sabha passed the Forty-second Amendment on 11 November with 190 votes to nil, with no changes to the version received from the Lok Sabha. The Bill was eventually ratified by thirteen of twenty-two state legislatures, starting with Haryana on November 15 and ending with Uttar Pradesh on December 11. The President signed the amendment on 18 December 1976.

In the foregoing passages we have thus waded through the developments that preceded the making of the 42nd Amendment Act. In this context we can also say that this historic amendment was not the consequence of an isolated incident but there were a conglomerate of events which led to its fructification. In the next segment of the chapter the features and the impact of the amendment shall be examined.

182 Ibid., p. 332
183 Ibid., p. 345, 364, 370
184 Ibid., 496
185 Ibid., 508
6.7. Features of the Act

The 42\textsuperscript{nd} Constitutional Amendment Act is the greatest insult hurled at the sacred Constitution of India and is at the same time one of the lasting legacies of the Emergency. This controversial Act had the dubious distinction of being called a mini-Constitution as it sought to rewrite the Constitution by amending a large number of provisions of the Constitution. It consisted of fifty-nine sections, of which 57 deal with substantive and permanent changes in the text of the Constitutions while the last two are transitional in nature. To be more precise, it runs through the entire the length and breadth of the Constitution–right from the Preamble down to Article 368 and the legislative lists as well.

The reverend Constitutional expert, Shri D.D. Basu puts it in brief thus:

“Special mention should, however be made of the 42\textsuperscript{nd} Amendment Act, 1976 by which, the Congress Government, taking advantage of its monolithic control over the Union as well as the State Legislatures, effected comprehensive changes in the Constitution, overturning some of its bedrocks. So widespread and drastic was the impact of this Amendment Act that it would be proper to call it an Act for ‘revision’, rather than ‘amendment’ of the Constitution.”\textsuperscript{186}

Another view was put forward by P.G.Mavalankar who articulated that “This is a massive measure of 59 clauses and it contain(s) far-reaching and sweeping changes. to call it a minor piece of legislation is a mockery of words.”\textsuperscript{187}

The 59-clause bill inserted two new Parts (IV-A and XIV-A) and 11 new articles (31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A and 257A). It substituted new Articles for articles 103, 150, 192, 226 and amended the Preamble and the Seventh Schedule and Articles 31C, 39, 55, 74, 77, 81, 82, 83, 100, 102, 105, 118, 145, 166, 170, 172, 189, 191, 194, 208, 217, 225, 227, 228, 311, 312, 312, 330, 352, 353, 356, 357, 358, 359, 366, 368 and 371F.\textsuperscript{188}

\textsuperscript{186} D.D.Basu, Introduction to the Constitution of India, 18\textsuperscript{th} Edition, p.396
\textsuperscript{187} Lok Sabha Debates, Vol. LXV No. 3, 1977
\textsuperscript{188} G.G. Mirchandani, Subverting the Constitution, Abhinav Publications, New Delhi, 1977, p.83
6.7.1. Changes in the Preamble

The issue of characterizing the constitution as ‘Socialist’ has been proposed before in 1948 by KT Shah, who made a strong plea to include the words ‘Secular’ and ‘Socialism’. But this socialist aspect was opposed by Ambedkar as unacceptable because he believed that “If you state in the Constitution that the social organization of the State shall take particular form, you are, in my judgment, taking away the liberty of the people to decide what should be the social organisation in which they wish to live.” However it was the 42nd Amendment which explicitly changed the Preamble to “Sovereign, Socialist Secular Democratic Republic” from what it used to be prior to that — “Sovereign Democratic Republic.” Through the Forty-second Amendment Act, the Congress Party wanted to further the teleological ideals of the Constitution. New phrases ‘Secular’ and ‘Socialist’ were added and along with the word Unity of the Nation the word ‘Integrity’ was appended in the Preamble. As many as twenty two members participated in the debate out of which twenty-one members supported the changes in the Preamble and one member P.G.Mavalankar opposed the change. Defending the changes in the Preamble Jagan Nath Rao said “The Preamble is like a golden epigram, so nicely worded that the addition of the two words will make it more attractive.”

Socialism: Socialism has been the declared policy of the Nehruvian Era but it became a part of the Preamble during Indira Gandhi regime who affirmed that “We are fighting for an Indian version of socialism”. As such the word Socialism has not been defined in the Constitution but in the Indian context it means a non-exploitative society. The socialist part of the programme means nationalizing the key industries, redistribution of wealth and power in society, social and economic equity and providing work and equal opportunities to one and all. Defending the changes in the Preamble, Shree Swaran Singh during the debates in Lok Sabha said the amendment sought to ensure that the fruits of development would not be confines to a few hands but would be distributes among large sections of the society.

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190 Constitutional Assembly Debates, Vol.VII, pp.401-402
191 Lok Sabha Debates, Vol.LXV-No. 1, 2, 3, 25 to 27 October 1976
193 Lok Sabha Debates, Vol. LXV-No.1, 25 October 1976, Col.155
194 The Times of India, 14 September, 1976
The socialist intent of the Preamble was then extended by law to the Representation of the People Act, 1951, (RP Act) through an Amendment in 1988, by the Rajiv Gandhi Government. Section 29 A (5) of the Act states that the application for registration of political parties “shall be accompanied by a copy of the memorandum or rules and regulations of the association… and bear allegiance… to the principles of socialism, secularism and democracy.”

It is also worth mentioning that in 2010, with Fali Nariman as its counsel, there was a petition by the Good Governance India Foundation, protesting the usage of the term socialist in the Preamble. But the petition was withdrawn on the advice of the court that it would be taken up at an appropriate time when any political party opposed it.

**Secular:** Secularism has been one of our basic features of our Constitution. Even before the use of this term in the Preamble various Articles viz., Articles 13, 23(2), 25, 26, 27, 28(1), 15, 16, 29(2) of the Constitution threw ample light on the secular aspects. The addition of the word Secular in the Preamble by 42nd Amendment Act only resonates an already existing essential characteristic of the Constitution in the Indian society. The Indian variant of Secularism has not treated secularism as something opposed to religion; rather it means freedom of religion and equality of religion. It emphasizes that there is no state religion in India and the State neither favours nor discriminates on the basis of religion in India.

The addition of this word requires a Government to effectively pursue a policy of non-interference and impartiality in the matters of religion. Unlike the state backed theocracy in Pakistan, the Indian secularism is much more collaborative and consolidative. It demands that in the guise of celebrating certain occasions and events related to religious leaders the Governments should abstain from spending in unproductive functions.

**Integrity:** As to the addition of the word “Integrity” to the “Unity of the Nation” in the Preamble, there are no two opinions. India being a vast country with linguistic, regional, racial and other differences the term “Integrity” will always remind us to put an end to separatist tendencies. It reinforces the concept of national unity. It would also mean that the states have no right to secede from the federation. Furthermore, reasonable restrictions on the freedom of speech and expression of citizens have been imposed in the interest of ‘integrity’ and ‘sovereignty’ of the country.
6.7.2. Directive Principles of State Policy override Fundamental Rights

The 42\textsuperscript{nd} Amendment Bill ensured the supremacy of Directive Principles over Fundamental Rights. Article 31-C which was introduced by the twenty-fifth amendment was further widened so as to cover laws made to secure all or any of the Directive Principles of State Policy and not confined to Article 39(b) and (c).\textsuperscript{196} Any Legislation seeking to promote any aspect of Directive principles of State Policy could not be declared ultra vires on the ground that it conflicted with the Fundamental rights. To further this some new words were inserted in Article 31 of the Constitution. The second Part of Article 31C declares that the Directive Principles shall be fundamental in the governance of the country and it shall be the duty of the state to apply them in making laws. If a chapter on ‘Fundamental Rights’ is a’ must ‘for a State of the modern democratic type with a written Constitution, a chapter on ‘Directive Principles of State Policy’ is a ‘must’ for a welfare state with a written constitution.\textsuperscript{197}

The latter part of the Article 31C was struck down by the Supreme Court in Kesavanand Bharti case. This Article 31C only gave precedence to two Directive Principles namely 39(b) and (c) over three Fundamental rights embodied in Articles 14, 19 and 31. The Congress Party and Parliament was not content with it so far. By the 42\textsuperscript{nd} Amendment Act, the scope of Article 31C was enlarged by substituting the phrase “the principles specified in clause (b) or clause (c) of Article 39”, by “all or any of the principles laid down in Article 39”. This amendment clearly emphasized the significance of Directive principles.

Opinions from all the quarters poured in when this change was introduced. The editorial of the Financial Express articulated that the proposal to give precedence to Directive Principles was not only repugnant to the basic concepts of the original Constitution but also calculated virtually to negate the sanctity of Fundamental rights.\textsuperscript{198} It added “Any enhancement of the powers of Parliament or the executive, at the cost of the citizen’s ambit of freedom, contains in it the prospect of a dangerous concentration of power in the hands of a few. Historic experience shows that freedom is in peril where there is concentration of power.”

Gandhian leader Shriman Narayan also commented on the prospects of the amendment to Article 31. He said “While I would not plead for a capitalist system where the

\textsuperscript{196} O.Chinnappa Reddy, The Court and the Constitution of India ----The Summits and Shallows, OUP, Delhi, p.67
\textsuperscript{197} K.C.Markandan, Directive Principles in the Indian Constitution, Allied publishers Private Ltd., Delhi, 1966, p. vii
\textsuperscript{198} Financial Express, September 3, 1976
interests of a society are sacrificed at the altar of individual greed, I do feel that the new amendment would tend to subordinate the individual citizen to the organised power of the State in a very improper manner. Such a situation may lead to an authoritarian regime in the future.”

Nonetheless the Congress Party went ahead with the amendment to Article 31C on the ground that the Directive Principles should prevail over some of the Fundamental rights because majority of the Directives aimed at securing social and economic justice. The Congress Party suggested that the amendment in Article 31C did not provide for the abolition of Fundamental rights and not even the right to property. It was said that the Fundamental rights would continue to be a part of the Constitution; only some of them would be subordinate to the Directive Principles of state policy. On behalf of the Government it had been stated that this had been done in order to restore the primacy of the directive principles over the Fundamental rights as was intended by the fathers of the constitution itself.

Out of the seventeen members who participated in the discussion, this change was welcomed by fourteen members while two members B.R. Shukla and P.G. Mavalankar had opposed it. When the Lok Sabha began consideration of the Bill on 25 October 1976, H.R. Gokhale observed it as a measure towards assertion of the supremacy of the Parliament and the primacy of Directive Principles of State Policy which aim at establishing a just society free from exploitation and various inequalities.

This amendment in Article 31C was however challenged in the Minerva Mill v. Union of India case, 1980. The Supreme Court by a majority of a decision declared it unconstitutional. As per the Supreme Court, it affected the basic feature of the Constitution namely the balance between Fundamental rights and Directive Principles of state Policy.

6.7.3 Addition of New Directive Principles

The 42nd Amendment Act inserted some new Directive Principles in Part IV of the Constitution. These new Directives have been warmly welcomed by all the sections of the society and largely viewed as a move towards establishing a progressive polity. Four clauses were introduced in part IV of the Constitution.

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200 The Statesman, New Delhi, 11 October, 1976, p.1
201 Lok Sabha Debates, Vol. LXV-No. 1, 2, 3, 25 to 27 October 1976
202 Lok Sabha Debates, Vol. LXV No. 1, 3
203 Sh. Chintamani Panigrahi, Lok Sabha Debates, Vol. LXV., No.8, November 2 1976, col.46
204 AIR Minerva Mills vs. Union of India Case, November 4 1980, S.C. 1790
a. Article 39(a) recommends that “the State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity and shall in particular provide free legal aid by suitable legislation or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”\(^{205}\) This directive was added to ensure equal justice which has been promised to all the citizens by the Preamble and to further the guarantee of equality before law vested in Article 14 which was unmeaning to a poor man so long as he was unable to pay for his legal advisor.

b. Article 39(f) provides that children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth should be protected against exploitation and against moral and material abandonment.\(^{206}\)

c. The participation of workers in the management was a long cherished goal. In all the socialist nations this participation is a must for improving the efficiency of the enterprise. India being a developing country requires workers participation in order to increase production. The inclusion of Article 43 (A) in the constitution is a step in the right direction. Article 43(a) provides that “the state shall take steps by suitable legislation or in any other way, to secure the participation of workers in the management of under-takings, establishment or other organisations in any industry.”\(^{207}\) This would result in a sense of belonging and dedication amongst the workers which will inspire them to achieve maximum results.

d. Another promising Article inserted by way of 42\(^{nd}\) Amendment Act is Article 48(a) which provides that “the state shall endeavor to protect and improve the environment and to safeguard the forest and wildlife in the country.”\(^{208}\) This has led to a string of cases involving environmental jurisprudence.

6.7.4 Obnoxious Article 31D inserted

The most objectionable and obnoxious article inserted by Section (5) of 42\(^{nd}\) Amendment Act was Article 31(D) in the Constitution. It purported to prevent or prohibit anti- national activities and to prevent and prohibit the formation of anti-national associations. It provided immunity to all laws made for prevention or prohibition of so called

\(^{205}\) Clause 8, Ibid.,
\(^{206}\) Clause 7, 42\(^{nd}\) Amendment Act, 1976
\(^{207}\) Clause 9, Ibid.,
\(^{208}\) Clause 10, Ibid.,
anti-national associations. The expressions ‘association’ and ‘anti-national activity’ were also defined and defined so widely that any individual or association could be branded as anti-national, all democratic dissent could be suppressed on that ground, and sycophancy would be patented as patriotism. The span of Article 31-D is so wide that it can take the breath out of democracy leaving a mere carcass behind. Any inconvenient association can be banned under this article. There would be no redress before any impartial tribunal.

As a result of the powers conferred through this amendment, the Government could acquire blanket powers to become a Union Gestapo that would prevent any activity including formation of political or any associations or convening of public meetings. Even if the actions of the Executive were malafide in nature, the aggrieved person could no longer go to the Court to seek justice, because the umbrella articles like 14, 19 or 31 which protect the Fundamental Rights, had been silenced by the Emergency’s new Article 31D.

Before its repeal by the Constitution 43rd Amendment Act, Article 31D read as follows:

1. Notwithstanding anything contained in Article 13, no law providing for
   a) The prevention or prohibition of anti-national activities; or
   b) the prevention of formation of or the prohibition of anti-national associations, shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the right conferred by Article 14, 19, 31

2. Notwithstanding anything in this Constitution, Parliament shall have and the Legislature of state shall not have, power to make laws with respect to any of the matters referred to in sub-clause (a) or sub-clause(b) of the clause(I)

3. Any law with respect to any matter referred to in sub-clause (a) or sub-clause(b) of clause (i) which was in force before the commencement of section (5) of the Constitution (42nd Amendment) Act, 1976 shall continue in force until altered or repealed or amended by Parliament.

4. a) In this article “association” means as association of persons.
   b) Anti –National activity “in relation to an individual association means any action taken by such individual or association:

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209 Supra note 10 at p.67

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i) Which is intended or which supports claim, to bring about on any ground whatsoever, the secession or a part of the territory of India or which incites any individual or association to bring about such secession; or

ii) Which disclaims, questions, threatens, disrupts or is intended to threaten or disrupt the sovereignty and integrity of India or the security of the State or the unity of the nation;

iii) Which is intended, or which is part of the scheme which is intended, to overthrow by force the Government as by law established;

iv) Which is intended or which is part of a scheme, which is intended to create internal disturbance or the disruption of public services;

v) Which is intended or which is a part of a scheme which is intended to threaten or disrupt harmony or the disruption of public services;

c) Anti-National ‘Association’ means an association:

a) Which has for its objects any anti-national activity;

b) Which encourages or aids persons to undertake or engage in any anti-national activity;

c) The members where of undertake or engage in any anti-national activity.  

This clause was endorsed by 8 members and an equal number of members opposed it.

An interesting turn of events took place during the course of the debate in the Rajya Sabha on November 9, 1976, when a staunch supporter of Smt. Indira Gandhi’s emergency Shri Bhupesh Gupta had suddenly turned a ‘hostile witness’. He complained that the Swaran Singh report was nothing but mere eyewash. He added “The recommendations of the Swaran Singh committee, finalized by the AICC disappeared into some lobbies, somewhere into some rooms in the Secretariat, and there the tampering with the recommendations started, by some officials and, may be, by some others, in order to take the opportunity of the Constitutional amendment to push in or smuggle in, many other things which are absolutely unnecessary and irrelevant from the point of view of socio-economic changes that we contemplate under this amendment. And this amendment-Clause (5) - was inducted or smuggled into the Bill behind the back of all of us.”

On the contrary H.R.Gokhale in the Rajya Sabha said that anti-national activities shall not endanger the unity and integrity and sovereignty of the country.
6.7.5 Inclusion of Fundamental Duties

The 42\textsuperscript{nd} Amendment Bill incorporated a new part IV A incorporating the Fundamental Duties. Conventionally rights and duties go together and therefore the addition of duties became imperative as they would greatly help in creating the atmosphere of responsive awareness towards national obligations in the people.

Indira Gandhi, the then Prime Minister, considering the exception of duties as a historic mistake, justifies the inclusion of the same in the Constitution saying that it will strengthen democracy. She said, ‘the moral value of fundamental duties would be not to smoother rights but to establish a democratic balance by making the people conscious of their duties equally as they are conscious of their rights.’

Replying to the discussion on the Fundamental Duties in the Lok Sabha on 29 October 1976, H.R.Gokhale lauded it as “a poem embodying noble ideals, rhythm and harmony with the impress of the hands of Prime Minister.\textsuperscript{215} He further said in the Rajya Sabha that Fundamental Duties were the torch light, the guiding principles on the basis of which a citizen was asked to behave and function.\textsuperscript{216}

The suggestion regarding the inclusion of such duties in the Constitution was made by the Health Minister of India, Dr. Karan Singh on May 29, 1976.\textsuperscript{217} This part has been added in accordance with the recommendations of the Swaran Singh Committee which had suggested eight duties for inclusion in the Constitution.

It had suggested that Parliament may by law provide for the imposition of such punishment as may be considered appropriate for nonconformity with, or refusal to observe, any of these duties. But that suggestion was not, however, accepted while drafting the Bill. Therefore there is no legal sanction behind the chapter on Fundamental Duties which has been inserted by the 42\textsuperscript{nd} Amendment. Though the Swaran Singh Committee had recommended a set of eight duties, the 42\textsuperscript{nd} Amendment inserted some more duties in a modified form in its final list of ten duties. They are as follows:

a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

\textsuperscript{216} H.R.Gokhale, Rajya Sabha Debates, November 1976, Col. 414
\textsuperscript{217} Proposed amendment to the Constitution of India by the Committee appointed by the Congress President Sh. D.K.Barooah on 26 February 1976, p.2
b) To cherish and follow the noble ideals which inspired our national struggle for freedom;

c) To uphold and protect the sovereignty, unity and integrity of India;

d) To defend the country and render National Service when called upon to do so;

e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional and sectional diversities to renounce practices derogatory to the dignity of women;

f) To value and preserve the rich heritage of our composite culture;

g) To protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures;

h) To develop the scientific temper, humanity and spirit of inquiry and reform;

i) To safeguard public property and to abjure violence;

j) To strive towards excellence in all spheres of individual and collectivity so that the nation constantly rises to higher levels of endeavor and achievement.

One more fundamental duty was added to the list by the Eighty-sixth Amendment Act, 2002 which reads as follows:

k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.  

6.7.6 Vicious Emergency Clauses

As per the original article 352, introduced by Dr. Ambedkar, a proclamation of Emergency could not be made in respect of a part of the country. But the 42nd amendment stooped to the levels of viciousness through clauses 48, 49, 52 and 53. The new amendment through Clause (48) said (a) in Clause (I) after the words ‘make a declaration to that effect’, the words ‘in respect of the whole of India or of such part of the territory thereof as may be specified in the proclamation’ shall be inserted. Thus if the Government wanted to punish exclusively any one state, they could bring in Emergency only in that particular State, under the amended Article 352. It was in a way a means of intimidation. Resenting the Clause Shri Bhupesh Gupta said “Sir, it is another controversial clause, absolutely unnecessary. It has been smuggled in like other provisions of the Bill, through the back door behind the back of many people…”


219 Rajya Sabha Debates, November 10, 1976, pp.143-146
Discontented by the amendment of Article 352, Article 353 was now tampered with. The Government wanted the stranglehold of the Union Executive to spread to the neighbouring states too. It was rather an elaboration of Clause 48. In order to achieve this, through Clause 49 a proviso was added to Article 353, saying ‘provided that where a Proclamation of Emergency is in operation only in part of the territory of India, (i) the executive power of the Union to give directions under Clause (a) and (ii) the power of Parliament to make laws under Clause (b) shall extend to any state other than a State in which the proclamation of Emergency is in operation, if and in so far as the security of India or any part thereof is threatened by activities in or in relation to the part of the territory of India in which the proclamation of Emergency is in operation.’

This proviso thus enabled the Executive to assume dictatorial powers, allowing it to act arbitrarily in any State, irrespective of whether Emergency had been declared there or not. Further in order to obviate any judicial interference with any Emergency proclamation, the 42nd Amendment inserted Clause (5) in each of the Articles 352, 356, 360, precluding judicial review of the President’s proclamation ‘on any ground’.

The 42nd Amendment further widened the emergency powers of the Union Government. According to it the period after which the proclamation of emergency ceases is extended from six months to one year. Further, any law made by parliament in exercise of the powers of the State Legislature shall continue indefinitely till altered by the competent legislature or other authority instead of ceasing to operate one year after the expiration of emergency.

6.7.7 Deployment of Armed Forces

The 42nd Amendment Act created a controversial constitutional provision in Article 257-A. The objective of the new Article was to empower the Union to send its armed forces for dealing with any grave situation. While Article 257, passed in 1949, was a sober one, the Emergency Article 257A was a monstrous new Article created by power-hungry Emergency rulers, through the 42nd Amendment.

It is worth noting that Article 257 as passed by the Constituent Assembly was a classic example of cooperative federalism. Dr. Ambedkar wanted the Union to acquire strength by creating strong States with self-respect, and not by giving dictatorial powers to the States, as was sought to be done by the new Emergency Article 257A.

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221 Supra note 3 at p.144
That law and order is a matter within the jurisdiction of a state, therefore the Union
Government before the enactment of the 42nd Amendment Act till then could not interfere in
this sphere except when it became a case of internal disturbance of such an altitude which
was likely to threaten the security of India and any part thereof. The Union Government
could assist the State Governments only when they requested. Thus to empower the Union to
ensure the maintenance of law and order and to intervene of its own in states where the state
government failed to maintain law and order, Article 257-A was added in the Constitution by
42nd amendment in 1976 which read as follows:

i) The Government of India may deploy any armed forces of the Union or any other
force subject to the control of the Union for dealing with any grave situation of law
and order in any state.

ii) Any armed forces or other forces or any contingent or unit thereof deployed clause (I)
in any state shall act in accordance with such directions as the Government of India
may issue and shall not, save as otherwise provided in such directions, be subject to
the superintendence or control of State Government or any officer.

iii) Parliament may, by law, specify the powers, functions privileges and liabilities of the
members of any force or any contingent or unit thereof under clause (I) during the
period of such deployment.\textsuperscript{222}

Thus by firing a single salvo, namely Article 257A during emergency, the sacred
concept of federalism nurtured in our Constitution stood shattered. After this amendment,
Union Government could deploy its armed forces with impunity to deal with a law and order
situation without any request from or consent of the State Government even on trivial
pretexts.

This provision incited many opposition parties and filled their minds with the
suspicion that the Union government could misuse its position in the states where non-
government parties were instated Opposing Clause 43 of the 42nd Amendment Act, Shri V.V.
Swaminathan said in the Rajya Sabha, “By inserting Article 257A, you have added one more
weapon in the armoury of the Central Government.”\textsuperscript{223}

Similarly Shri Bhupesh Gupta, the leader of the CPI party also took strong objection
to the newly inserted Article 257A. He said, “We consider this provision as it is contained in

\textsuperscript{222} Clause 43, 42\textsuperscript{nd} Amendment Act, 1976
\textsuperscript{223} Rajya Sabha Debates, November 10, 1976, pp.85-86
this Constitutional amendment Bill, a serious encroachment upon what we regard as the autonomy of the state, in this context of division of powers, responsibility and authority.....We want a strong and democratic Centre, not just a strong Centre, because, a strong Centre minus democracy, and minus federal principles, would be an authoritarian Centre.”

This amendment was however deleted by the 44th Amendment Act in 1978 and now emergency can be declared only if there was war or external aggression or armed rebellion in the country.

6.7.8. Education transferred to the Concurrent List

Through Clause 57, 42nd Amendment Act sought to either amend the existing entries in the lists of the Seventh schedule or to transpose certain entries or subjects in certain entries from one list to another. The entries or subjects which have been transposed from List II to List III and pro tanto reducing State jurisdiction over several matters are:

1. Administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts - Entry 11A
2. Education –Substitution of Entry 25
3. Weights and measures –Entry 33A
4. Forests and – Entry 17A
5. Protection of wild animals and birds – Entry 17B
6. Population Control and family planning – Entry 20A

As the future of any country depends upon a viable education system, the transfer of the vital subject of education to the Concurrent list was a move meant to bring about uniformity in the education policy throughout India. As Mr. Swaran Singh rightly remarked, “there is an All-India aspect of education to ensure the unity and integrity of the country and from this point of view this provision is salutary”.

6.7.9 42nd Amendment impacts the Executive and the Legislature

The ramifications of 42nd amendment could also be felt with regard to provisions relating to powers, functions and organisation of Legislatures ad Executive on one side. On the one side it decreased the powers of the President and on the other side it vested the

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224 Rajya Sabha Debates, November 10, 1976, pp.93-98
226 Indian Express, Sept. 1976.
Cabinet and the Parliament with limitless powers. The impact of 42nd Amendment can be studied as follows:

6.7.9.1 Powers of the President circumscribed

Ever since the adoption of the Constitution, there has been a controversy as to whether the President could ever refuse to accept the advice of the Council of Ministers or not. There was a great deal of academic debate over the role contemplated in the Constitution of India for the President of the Republic. Dr. Rajendra Prasad gave an edge to the controversy by drawing attention to the fact that ‘there is no provision in the Constitution which in so many words lays down that the President shall be bound to act in accordance with the advice of his Council of Ministers’.

Nonetheless whenever such controversy arose it came to an end with the reassertion that the President was only a dejure head and was bound to act in accordance to the advice of the Council of Ministers. The President’s ‘symbolic’ position was repeatedly stressed. According to Dr. Ambedkar, he is “the head of the State, but not of the Executive”. At the same time, it is suggested that the framers expected the President to be more than a mere rubber stamp, as in Jawaharlal Nehru’s view the President of India would not be an automaton like the President of France: “We did not give him any real powers but we have made his position one of authority and dignity.” The Supreme Court of India also observed in a number of cases that the President had the same position under the Indian Constitution as the King in England. A number of decisions of the Supreme Court have accepted this formal position of the President of India. In cases like Ram Jawaya v. Punjab, 1955, U.N.R. Rao v. Indira Gandhi, 1971, R.C.Cooper v. India, 1970 and Samsher Singh v. Punjab, 1974 the Supreme Court upheld the position of the President as the mere constitutional head who normally acts in all matters including the promulgation of an ordinance on the advice of the Council of Ministers. 227

Earlier there was no express provision to this effect in the Constitution but the position was made abundantly clear by the Clause 13 of the 42nd Amendment that the President cannot refuse to act according to the advice of the Council of Ministers. Thus during the Internal Emergency of June 1975, the language of Article74 (1) was altered and it

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became absolutely imperative for the President to abide by the advice of the P.M. The emergency continued up to the first quarter of 1977 and elections were held in March.  

It was Mrs Indira Gandhi’s authoritarian style of governance, that she was able to wield influence over the then President Dr Fakhruddin Ali Ahmed. She succeeded in promoting the concept that the President was now a politically chosen individual with a hidden support for the ruling party. As a consequence the 42nd constitutional amendment drastically curtailed the President’s powers with respect to the Council of Ministers. This particular amendment in fact revised the whole constitutional structure due to its comprehensive nature mostly affecting the position of the President. Through this amendment they insulted the office of the President and stripped the President’s office of its dignity which was accorded to it by the original article 74.

Article 74(1) after the amendment read as follows:

“There shall be Council of Minister with the Prime Minister at the head to aid and advise with the President who shall, in exercise of his function, act in accordance with such advice.”

The act circumscribed the power of the President to a great extent. Before 1976, Article 74(1) stated that the Council of Ministers is to ‘aid and advise’ the President in the exercise of his functions and Article 74 (2) declared that this advice tendered to the President cannot be inquired in any court. However the Act inserted the word shall thus making the advice of the Council of Ministers binding upon the President. The 42nd Constitutional Amendment (1976) unequivocally stated that the President shall, "act in accordance with such advice". The amendment went into effect from 3 January 1977.

After this there was no scope for the President to apply his discretion though the Janta Party was opposed to this amendment but when during its regime, the acting President V.D. Jatti had shown his reluctance to sign the proclamation for dissolving Legislative Assemblies of nine of the States ruled at that time by the Congress Party, the Janata Party Government pointed to the amended Article 74(1) that he had no option but to act on the advice of the Council of Ministers. Consequently Mr Jatti had to sign the proclamation.

The Janata Party, however, was committed to repeal the change introduced in this regard by the 42nd Amendment Act. In order to achieve this it resorted to diluting the change

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229 Article 74(1) after 42nd Amendment Act, 1976
instead of abrogating the binding character of the advice. The amended Article 74(1) provided for a proviso under the Janata regime which Art read as

“Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.”

6.7.9.2 Disqualification of M.P.’s and M.L.A’s

Under the earlier provision, the President or Governor, as the case may be, was bound to act on the advice of the Election Commission to decide the question whether M.P. or M.L.A. had incurred disqualification, But after the amendment Article 103 reads:

i) If any question arises:
   a) As to whether a member of either house of Parliament has become subject to any of the disqualifications mentioned in clause (I) of Article 102, or,
   b) As to whether a person, found guilty of a corrupt practice at an election to a House of Parliament under any law made by Parliament, shall be disqualified for being a member of either House of the Parliament, or of a House of the Legislatures of a State, or as removal of, or the reduction of a period of, such disqualification, the question shall be refereed for the decision of the President and his decision shall be final.

Before giving any decision on any such question, the President shall consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit.

Similar power has been given to the Governor under Article 192 of the Constitution. Thus the 42nd Amendment Act lays down that it would be the President and Governor who would give the final verdict in the case of disqualifications of the M.P.’s and M.L.A.’s.

6.7.9.3. Quorum in the Houses of Parliament and the State Legislatures

Clause (3) and (4) of both Article 100 and 189 have been deleted by the 42nd Amendment which dealt with the quorum of the Union and State Legislatures. These clauses laid down that in no case the quorum of any House of Parliament or State Legislature should be less than one tenth of its strength. The 42nd Amendment has inserted the following words in Article 118 and 208 of the Constitution which reads as follows:

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231 Article 74(1) of Constitution 44th Amendment Bill
232 Clause 20, 42nd Amendment Bill, 1976

~ 249 ~
Article 118 (I) lays down that “each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedures (including the quorum to constitute a meeting of the House) and the conduct of its business.”

Similarly, Article 208 (I) lays down that “a House of the Legislature of the State may make rules for regulating, subject to the provisions of this Constitution, its procedure (including the quorum to constitute a meeting of the House) and the conduct of its business.” Thus the 42nd Amendment empowers each House to fix its quorum under its rule which may be less than one-tenth.

6.7.9.4. Tenure of the Legislatures extended

The 42nd Amendment extended the tenure of the Lok Sabha and the State Legislatures from five years to six years. Mr Swaran Singh, Chairman of the Constitution Reforms Committee, observed “considering the size of the country and the continuous process of elections to Parliament, State Assemblies and Corporations, Municipalities and Panchayats, these things kept our people preoccupied and exercised over elections all the while. The Amendment raising the tenure to six years sought to prolong this process.”

Amending Articles 83(2) and 172(I), 42nd Amendment Act provided, “Article 83(2) lays down that the House of the People, unless sooner dissolved shall continue for six years, from the date appointed for its first meeting and no longer and the expiration of the said period of “six years” shall operate as a dissolution of the House.”

Similarly Article 172(I) also lays down that every State Legislative Assembly of every state, unless sooner dissolved, shall continue for six years from the date appointed for its first meeting and no longer and the expiration of the said period of six years shall operate as dissolution of the Assembly.”

6.7.9.5. 42nd Amendment castrates the Judiciary

Judiciary became a casualty during the Emergency years greatly. The rule of law was done away with by invoking the fallacious doctrine of the sovereignty of Parliament and secondly by robbing the High Courts by amending Articles 226 and 227 for restricting their jurisdiction. Justice has been taken beyond the reach of the common man by drawing the

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233 Clause 22, 42nd Amendment Bill, 1976
234 Clause 35, Ibid.,
235 Indian Express September 5, 1976
236 Clause 17 of the 42nd Amendment Bill, 1976
237 Clause 30, Ibid.,
litigants to the far away and more costly Supreme Court. To eliminate these features from the Constitution is to destroy the basic fabric of the constitution. The 42nd amendment has done precisely this. The 42nd amendment had an adverse bearing on the Judiciary as it amended a number of clauses dealing with it. Through these Amendments, the Indira Gandhi Government brazenly sought to reduce the power of the judicial review of Constitutional Amendments by the Supreme Court.

Noted constitutional lawyer N.A. Palkhivala\(^ {238} \) lamented that in four respects, the bill aims at altering or destroying the basic features of the Constitution. First it proposes to overthrow the supremacy of the Constitution and to install Parliament (a creature of the Constitution) as the supreme authority to which the Constitution will be subservient. Secondly, the bill seeks to enact that the eternal values enshrined as fundamental rights in the Constitution will no longer be justiciable or operate as brakes on legislative and executive action in most fields. Thirdly, the balance between the executive, the legislature and the judiciary will be rudely shaken, and the executive at the Center will enormously gain in power at the expense of the organs of the State, particularly the judiciary. And finally the bill envisages the enforcement of laws which are held unconstitutional by a majority of the Supreme Courts or the High Courts.

The provisions which suffered the brunt of the Act are as follows:

a. It provided a new Article 131A in the Constitution which provided for the exclusive jurisdiction of the Supreme Court in regard to questions as to the constitutional validity of Central Laws. Where a High Court was satisfied that in a case pending before it or before a court subordinate to it involved questions regarding the constitutional validity of any Central Law or both Central and State Laws, the High Court could refer the questions for decision where a plea to that effect had been made by the Attorney General of India.

   In all such cases, the High Court would prohibit all the proceedings in respect of the case, until the Supreme Court had given authority to give the parties an opportunity of being heard, to decide the question so referred to it and dispose of the case itself or return to the High Court concerned together with a copy of its judgment.

\(^ {238} \) N.A.Palkhivala, The Light of the Constitution9(Forum of Free enterprise, 1976)
for disposal of the case in conformity with such judgment by the High Court or as the case might be, by the court subordinate to it.239

On an application moved by the Attorney General, case pending in several High Courts might be shifted to the Supreme Court if cases involved the same or substantially the same question of general importance. The Supreme Court was also empowered to transfer any case, appeal or other proceedings, if it deems it expedient to do so for the ends of justice, before any High Court to any other High Court. Article 139A was inserted for this purpose.240

b. The 42nd Amendment had inserted a new Article 32 A according to which a Central Law could only be challenged in the Supreme Court.241 But before the 42nd Amendment Act it could be challenged both in Supreme Court and High Court.242

c. Article 228 which had clothed the High Courts with the required power, were subjected to two distortions by the 42nd Amendment Act through its clauses 41 and 42. It curtailed the scope of Article 228, which was related to the transfer of cases to the High Courts and made the High Court’s absolutely powerless and brought them on par with the subordinate courts. For this purpose, it had inserted the words, “It shall withdraw the case and, subject to the provisions of Article 131A may— “in the original Article 228.”243

d. 42nd Amendment further provided through Article 144A (which was later repealed by the Forty-Third Amendment Act, 1977, Sec. 5) that when the Supreme Court sat to determine the constitutional validity of any law, the bench would consist of at least seven judges. And no law could be declared unconstitutional unless two-thirds of the members of the Bench of the Supreme Court supported.244 The Central/State law could not be declared constitutionally invalid unless a majority of two third of the seven Judges held so. This was obviously to get over the 6:5 or 7:6 verdicts that were rendered in Golaknath and Kesavanand Bharati.245

Similarly the 42nd Amendment made it clear that when a High Court was called upon to determine the constitutional validity of a state law, the Bench would

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239 Clause 23 of the 42nd Amendment Bill, 1976 which was later deleted by the 43rd Amendment Act
240 Clause 24, Ibid.,
241 Clause 6, Ibid.,
242 This clause is deleted by 43rd Amendment Act
243 Clause 41, Ibid., This clause is also deleted by 43rd Amendment Act
244 Clause 25, Ibid.,

~ 252 ~
consist of at least five judges. If the strength of a High Court was less than five judges then all of them would sit to determine the question. Article 228 A was inserted for this purpose.\textsuperscript{246}

e. The onslaught on the High Courts worsened even more when the power of the High Court to decide the validity of any Central law was excluded. The writ jurisdiction was substantially curtailed and Article 226 was resubstituted. The power to grant interlocutory order was drastically limited\textsuperscript{247}. It had curtailed the jurisdiction of the High Courts by amendment to Article 226. They could now exercise jurisdiction only in

i. Case where there was a contravention of a statutory provision causing substantial injury to the petitioner and;

ii. Cases where there was an illegality resulting in substantial failure of justice.

In either case, the petitioner had to satisfy the court that he had no other remedy. It was also restricted that the High Courts would not issue an interim order ordinarily except upon notice to the other side an opportunity to be heard. An exception was made in cases where the loss or damage to the petitioner could not be compensated for money.

f. Before 42\textsuperscript{nd} Amendment a State law could be challenged both in the Supreme Court and the High Court. But post amendment, Clause 39 of the Act inserted Article 226 A by which a State law could be challenged only in the High Court.\textsuperscript{248}

g. Finally the amendment also left room for the government to appoint new and differing kinds of judges.\textsuperscript{249} Under the amendment a person could be appointed as a judge to the High Court if he was a ‘distinguished jurist’. A distinguished jurist could just be anything. He need not be a lawyer. He could be an academic, a left-wing radical, a right-wing conservative or even a run of the mill politician.\textsuperscript{250}

\textsuperscript{246} Clause 42, Ibid., This clause is repealed by 43\textsuperscript{rd} Amendment Act
\textsuperscript{247} Supra note at p. 170
\textsuperscript{248} This clause was repealed by the Constitution (Forty-third Amendment )Act, 1977
\textsuperscript{249} Clause 36, 42\textsuperscript{nd} Amendment Bill, 1976
\textsuperscript{250} Rajeev Dhavan, The Amendment –Conspiracy or revolution?, Wheeler Publisher, 1978, Allahabad, p.75
6.7.10. **Creation of an All India Judicial Service proposed**

In this array of dark amendments, there was an affirmative change which was introduced. The amendment amended Article 312 of the Constitution relating to All India Services to provide for the creation of an All India Judicial Service by the Parliamentary law. This radical change was made with a view to ensure greater inter-state coordination and implementation of the policies of the Central Government uniformly throughout the country. Such a service shall not include any post inferior to that of a district judge as defined in article 236.

The concept of All India Judicial Service introduced by that amendment was to have the Judiciary entirely under the control of the Executive as was the case in respect of other All India Services

6.7.10.1. **Constitution of Administrative Tribunals**

The amendment inserted Part XIV-A relating to Tribunals. Among the many innovative provisions adopted by the Forty-second Amendment of the Constitution (1976) a measure of far-reaching importance was the provision for the setting up of Administrative Tribunals. In order to rein in the power of a fiercely independent judiciary, tribunals were set up as allegedly speedy and specialized alternatives to regular courts by the Indira Gandhi regime. Thus, the intention was to create a parallel justice system which was outside the purview of the High Courts. As expected, they were staffed for the most part with executive stooges, raising serious issues about their impartiality and independence. As tellingly noted by Justice Ruma Pal (a former judge of the Supreme Court) in her Tarkunde memorial lecture:

“It has been said of Britain by a British judge that “the reputation of the judiciary for independence and impartiality is a national asset of such richness that one government after another tries to plunder it.” The same could be said of the Indian judiciary.

…The year 1976 saw the Executive deliver what they must have perceived as the coup de grace against a stubbornly independent judiciary by the enactment of the 42nd

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251 Clause 45, Ibid.,
252 P.M.Bakshi, The Constitution of India, p.263
Constitutional amendment which introduced Articles 323A and 323B, authorizing legislatures to create tribunals for adjudicating disputes..." 254

A new chapter Part XIV- A for the constitution of new Tribunals, though innocent-looking were sinister in design; they were to render the existing judicial system completely ineffective.

The 42nd Amendment Act of 1976 brought about a massive change in the adjudication of disputes in the country. Clause 46 of the Act inserted two new Articles viz., 323A and 323B in the Constitution. Article 323A authorizes the Parliament and Article 323B the state legislatures to create tribunals to which the power of adjudication of disputes on various subjects can be transferred while excluding the jurisdiction of the courts in these matters. 255

Section (1) of Article 323-A provides for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India. The power to constitute such Tribunals is vested exclusively in Parliament.

Section (2) of the same Article provides that a law made by Parliament under section (1) may:

(i) Provide for the establishment of an Administrative Tribunal for the Union and a separate Administrative Tribunal for each State or for two or more States;
(ii) Specify the jurisdiction, powers and authority which may be exercised by such tribunals;
(iii) Provide for the procedure to be followed by these tribunals; and
(iv) Exclude the jurisdiction of all courts except the special jurisdiction of the Supreme Court under Article 136.

Article 323-B empowers Parliament or State Legislatures to set up tribunals for matters other than those covered by clause (2) of Article 323-A. The matters to be covered by such tribunals are as follows:

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254 Available at http://radicalhumanist.com
(i) Levy, assessment, collection and enforcement of any tax;
(ii) Foreign exchange, import and export across customs frontiers;
(iii) Industrial and labour disputes;
(iv) Matters connected with land reforms covered by Article 31-A;
(v) Ceiling on urban property;
(vi) Elections to either House of Parliament or Legislatures of the States and
(vii) Production, procurement, supply and distribution of food-stuffs or other essential goods.  

Art. 323A provides for the establishment of administrative tribunals by the Parliament and Art. 323B provides for the establishment of tribunals to adjudicate on the matters specified in the sub-clause with regard to which the respective Legislature had the power to make laws.  

Art. 323A was to be effective only if the Parliament implemented a law in this regard and hence the Administrative Tribunals Act of 1985 was enacted.  

Similarly, tribunals could be set up under Art. 323B only if the necessary legislation was enacted and there are many non-administrative tribunals, such as the Income Tax Appellate Tribunal, Debt Recovery Tribunal, the Customs Excise and Service Tax Appellate Tribunal and the Compensation Tribunals.  

They were concerned with the setting up of Administrative tribunals for determining the disputes relating to recruitment and conditions of service of Union Government servants and servants of the States including the employees of any local or other authority within the territory of India or under the control of the Government of India or a Corporation owned or controlled by the Government.

6.7.10.2. Article 368 distorted

Article 368 is, in a way, the most important Article of the Constitution of India. To put in medical parlance, Article 368 can be called the coronary artery which supplies blood to the heart which in turn pumps blood to the entire body. If the Constitution of India is the heart,

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257 Art. 323A provides for the establishment of administrative tribunals by the Parliament and Art. 323B provides for the establishment of tribunals to adjudicate on the matters specified in the sub-clause with regard to which the respective Legislature had the power to make laws
259 Ibid. at p. 10700.
Article 368 is the coronary artery.\textsuperscript{261} It may be submitted here that this crucial article was also operated surgically to suit the needs of the Government of the day.

Explaining the dangers that accompanied 42\textsuperscript{nd} Amendment Act Shri D.D. Basu admitted that “All previous amendments paled into insignificance after the passing of the 42\textsuperscript{nd} Amendment Act 1976, which would alone illustrate how momentous is the amending power under the Indian Constitution, and how easy it is to change extensive and vital provisions of the Constitution, without any elaborate formalities, when the ruling party has a comfortable majority in the two Houses of Parliament.”\textsuperscript{262}

Two new dictatorial clauses (4) and (5) were added in Article 368 of the Constitution by clause 55 of the 42\textsuperscript{nd} Amendment Bill, 1976. Clause 4 of Article 368 which was added by the 42\textsuperscript{nd} Amendment Act, 1976 stipulated that “no amendment of this constitution (including the provisions of Part III) made or purporting to have been made under this Article …shall be called in question in any court on any ground.” Therefore in India, as of 1976, the Supreme Court of India was precluded from reviewing the constitutionality of constitutional amendments.\textsuperscript{263} There is no doubt on this issue because clause 4 explicitly prohibits the judicial review of constitutional amendments. Moreover Clause 5 also made it clear that Parliament could amend by way of addition, variation or repeal any of the provisions of the Constitution. The amended provision would remove all restrictions on the Parliament’s power of amendment -.in effect Kesavanand Bharti’s basic structure principle would be no longer good law. No Court has the right to declare a constitutional amendment invalid, on any ground.

However clauses (4) and (5) of Article 368 were rendered ultra vires in the Minerva Mills Case\textsuperscript{264} as they exclude judicial review which is a basic feature of the Constitution.

\textit{6.7.10.3. The Undisputed ‘Power of the President to remove difficulties}

Even after totally mutilating Article 368, the Union Government spearheaded by Mrs Gandhi obviously continued to suffer from a great deal of nervousness. This became evident from a very immature Section, not seen in the Constitution of any country. It was the last

\textsuperscript{261} Supra note 3 at p.162
\textsuperscript{262} D.D.Basu, Introduction to the Constitution of India, 18\textsuperscript{th} ed., pp.155-157
\textsuperscript{263} Kemal Gözler, Judicial Review of Constitutional Amendments: A Comparative Study. 2008.p.8
\textsuperscript{264} Minerva Mills Ltd. V, Union of India, AIR 1980 SC 1789 : (1980) 3 SCC 625
section of the 42\textsuperscript{nd} Amendment Act numbered Section 59 which dealt with the ‘Power of the President to remove difficulties.’

It read as follows, “

(1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of the President’s assent to this Act, to the provisions of the Constitution as amended by the Act), the President may, by order, make such provisions …as appear to him to be necessary or expedient for the purpose of removing the difficulty.”

As a result of Section 59, the President was given sweeping powers but in view of the amended Article 74, Presidential powers meant nothing but the power vested in the hands of the Cabinet headed by the Prime Minister, whose advice the President had to statutorily accept. This last section thus marked the dictatorial powers of the highest order which gave Mrs. Gandhi inexhaustible powers to intervene and remove whatever difficulties that would crop up anywhere, during the implementation of the amendments brought in so ruthlessly through the 42\textsuperscript{nd} Amendment Act, irrespective of anything said in any part of the Constitution.

In this brief exposition, it has been sufficiently demonstrated that the Constitution has been practically recast by the Amendment Act, both in extent and depth. The whole episode of the said 42\textsuperscript{nd} Amendment Act showed as to how the whole amending body under the Constitution could be hijacked by some unscrupulous but powerful politicians and as to how the Constitution could easily become a plaything in the hands of the politicians. The next segment shall make a penetrating analysis of the impact of the 42\textsuperscript{nd} Amendment Act primarily of those clauses that have been retained even today.

6.8. Ramifications of 42\textsuperscript{nd} Amendment Act

After traversing the entire length and breadth of 42\textsuperscript{nd} Amendment Act, one can say that despite its acts of omission and commission, it was a historic piece of legislation which cannot be ignored. It not only altered the Constitution drastically but virtually added a new dimension to the constitutional discourse as it affected all the aspects of the Indian polity. Some may call it the epitaph of Mrs. Gandhi while some may call it the rewriting of the Constitution. Nevertheless the vestiges of the Act still remain with us and it is these remnants which are studied in this segment.
6.8.1. Preamble gets expanded

The preamble is the introductory part of the constitution that normally sets out some, or all, of the following: the history of the constitution, the values and aspirations of the people, the nature of the state and the authority under which the constitution is made. The preamble is still one of the oldest and most common ways of incorporating values and may also hold great symbolic significance. The corpus of the Indian Constitution got expanded after the implementation of the 42nd Amendment Act when the Preamble of the Indian Constitution gave explicit commitment to socialism and secularism. These programmes allow the meaningful ‘surfing’ that almost expands the life of the Constitution beyond the ‘original Constitution’. It needs to be mentioned here that it was the Law Minister H.R.Gokhale who on the motion for the Bill to amend the Preamble on 25 October, 1976 in the Lok Sabha and of 4th November, 1976 in the Rajya Sabha advanced the Government’s move for incorporating ‘socialism’ and ‘secularism ‘in the Preamble in the context of government’s implementation of programmes on the two themes.

6.8.1.1. Socialism establishes an Egalitarian society

The Constitutional commitment to the goal of socio-economic justice, as envisaged by the original Preamble to the Constitution of India has been fortified by the Constitution 42nd Amendment at 1976. At the outset it deserves attention that what the Constituent Assembly missed in giving the official citation of socialist has simply been added by the Parliament by way of an amendment in an opportune and defining moment of constitutional evolution.

The reason for the non-inclusion of the term is explained by Granville Austin who observed that the word ‘socialism’ was not added to the original Preamble because there was no consensus as to the meaning of the word, nor were the Indian leaders agreed to copy western idea with its nomenclature. On the other hand they had definite plans for providing specific remedies for the special ills of our country.
Even though several members of the Constituent assembly\(^{270}\) had intellectual and emotional commitment to socialism but it failed to find place in the Constitution of 1950. In this connection members like M.R. Masani observed, “It (the Objective Resolution) does not provide socialism. It would be wrong to provide for such a thing, because this House has no mandate to go in far-reaching changes in the country. These changes can be brought about by a popularly constituted parliament when it comes into existence with the mandate of the people.”\(^{271}\)

Alladi Krishnaswamy Ayyar expressed the same view in the following words, “There is no socialist fervour about the Constitution, while it does not commit the country to any particular form of economic structure on social adjustment, it gives ample scope for future Parliament to evolve any legislation they chose in public interests. In this connection, the various articles, which are Directive Principles of State Policy are not without significance and importance.”\(^{272}\)

But the word had many supporters and was acknowledged as well. Maulana Hasrat Mohani made a strong pitch that India in the Preamble should be called the “Union of Indian Socialist Republics” on the lines of the USSR. Shibban Lal Saksena moved the amendment which, among other things, desired to transform “Bharat into a Sovereign, Independent Democratic, Socialist Republic...” whereas Brajeshwar Prasad wanted “to constitute India into a co-operative common-wealth to establish a socialist order...”\(^{273}\) However all the amendments were negated.

Professor K. T. Shah was of the view that the word ‘Socialist’ should be specifically mentioned in the Preamble.\(^{274}\) He was of the view that socialism was the order of the day in which justice between man and man can be assured, the only order in which the privileges of class exclusiveness, property for exploiting elements can be dispensed with. Explaining the necessity of socialism under the Constitution of India, he observed-

“The term ‘socialist’ I may assure my friends here that what is implied or conveyed…is a state in which equal justice and equal opportunity for everybody is assured min which

\(^{270}\) Op. cit., Granville Austin, p.41
\(^{271}\) CAD Vol. 1, p. 93
\(^{272}\) CAD Vol.VII, p.336
\(^{273}\) Irfan Engineer, Preamble, Secularism and Constitution, Mainstream, VOL LIII, No 8, February 14, 2015
\(^{274}\) CAD Vol. VII, p.399 and 401
everyone is expected to contribute by his labour, by his intelligence …and everyone would be assured of getting all that he needs and all that he wants for maintaining a decent civilized standard of existence.”

From the above observations of Professor Shah one can deduce that the socialistic objective is already there in the Constitution of India, in the garb of Part IV dealing with the Directive Principles of State Policy which are fundamental in the governance of the country. It was for this reason Dr. Ambedkar rejected the suggestion of Professor Shah regarding the mention of the word socialism in the country.

Thus one can see that though the word did not find place in the Preamble of 1950, the Indian leadership espoused socialism in its own way and later even grafted it in the Preamble keeping in mind the exigencies of the times and to combat the challenges to the life of the sovereign state. Pandit Nehru remarked, “I stand for socialism and I hope, India will stand for socialism: and that India will go towards the Constitution of a socialist state, and I do believe that the whole world will go that way.” He was of the view that to establish social and economic conditions, the principal instruments of productions had to be state controlled, and the right to private property had to be restricted, and the profit system replaced by the higher ideal of co-operative service. During the constituent assembly debates, Nehru strongly advocated the abolition of the zamindari system, and the minimum payment of compensation. Ultimately, a compromise was reached in the form of Article 31 of the Constitution, which provided for the right to property as a fundamental right along with the principle of compensation. To achieve this Nehru organised basic institutions and instrumentalities such as the Planning Commission, public sector enterprises, strategic state-managed industries and river projects.

This view was carried forward by Mrs Indira Gandhi who made it clear that India has her own concept of socialism. Prime Minister Indira Gandhi did more: she nationalised key industries, abolished the privy purses, and set urban land ceiling. She explained that the term socialist was used simply to indicate that the goal of the state in India was to secure a

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275 Ibid.,
276 Ibid., p.402
better life for the people’ or ‘an equality of opportunity’. She said that socialism was like democracy interpretable differently in different countries.

This view was later embedded in the Constitution through an amendment as a need was felt to emancipate people and to establish an egalitarian society free from all forms of exploitation—social, political, economic. While emphasizing the necessity of adding the word socialist in the Preamble, Mr Dinesh Chandra Goswami observed—

“It has become necessary because the highest court of the land has completely forgotten the content and they have always interpreted the Constitution in favour of the vested interests and individual rights. Therefore, the time has come when the Preamble, which is the mirror of the Constitution, which shows the directions in which the country is going and which spells out the aspirations of the people, we have to lay down clearly that our is a socialist state and in our future when we interpret any law it must be kept in mind that between community good and individual rights preference must be given to community good.”

B.R. Shukla also while emphasizing the need to amend the Preamble mentioned the objective of socialism in it, observed—

“A developing country like India or any other developing country in the world cannot be emancipated from the century’s long poverty and ignorance unless socialism is accepted as a goal. Therefore if this goal was not clearly spelt out in the Constitution, although in quintessence it was contained, it is our duty to make it unmistakably clear to everybody in this country that socialism is the only system wherein lies the emancipation if the people from the centuries old shackles of poverty and ignorance and that no other system can deliver the goods.”

Moreover the chief architect of this Amendment, Shree Swaran Singh, defending the changes in the Preamble said the inclusion of ‘socialism’ had deepened the socio-economic content of the Constitution. Speaking during the debate on the Bill in the Lok Sabha on October 26, he said the amendment sought to ensure that the fruits of development would not be confined to a few hands but would be distributed among larger sections of the community.

\[280\] The Statesman, 2-7-1976 as cited in Narendra Kumar, Constitution of India, 1997, p.22


\[282\] Ibid., Col.142 as cited in K.C. Markandan, op. cit., p.105
Other things like a strong public sector from the inclusion of ‘socialism’ in the Preamble, he maintained. 283

Even Professor M.C. Kagzi emphasized that the preambular reference to socialism was intended to usher in a socio-economic revolution. He notes—

“ It is meant to end poverty, socio-economic exploitation and inequalities …Justice must be done even to the man standing at the lowest level of the social order …the poor, the weak, the have not.”284 Democratic socialism to which India is committed to aims to end poverty, ignorance, disease and inequality of opportunity.285

Meanwhile an effort was also made to define the expression ‘socialist’ to mean a republic in which there is freedom from all forms of exploitation, social, political and economic through the Constitution (45th Amendment Bill), 1978, but the amendment was not accepted by the Council of States. The term ‘socialist’ thus remains undefined.286

Today we have an Indian variant of socialism which does not mean doctrinaire socialism which insists on State ownership as a matter of policy. Socialism in Indian context never meant a totalitarian or authoritarian regime. Instead it stresses on the establishment of an egalitarian society where every citizen will be able to enjoy the privileges spelled out by the aims and objects if the Preamble. Recently in D.S. Nakara v. Union of India287 the Court has also said that the basic framework of socialism is to provide a decent standard of life and security to the working people. Further in M. Nagraj v. Union of India also it was held that socialism is one of the systematic and structural principles underlying the Constitution.

The socialist ideal is further realized through Article 43-A (inserted by 42nd Amendment Act) which secures the participation of workers in the management of undertakings or establishments or other organisations engaged in any industry.

The insertion of this Article opens a new perspective in industrial relations, particularly relating to discharge, reinstatement, right to back wages on reinstatement.288 This is also an acknowledgement of the principle that the workers have a special place in the

283 G.G. Mirchandani, Subverting the Constitution, New Delhi, p.109
287 Nakara v. Union of India AIR 1983 SC 130 : (1983) 1SCC 305 (paras 32-33)
288 Gujarat Steel Tubes v. Mazdoor Sabha AIR 1980 SC(1896) : (1980) 2SCC 593 (paras 143-144)
socialistic pattern of society. They are no more vendors of toil but are producers of wealth as much as those who supply the capital. It has been held in view of this Article, read with the Preamble to the Constitution and the general principles of social justice, the workers have a right to be heard in the proceeding for winding up of a company for winding up would lead to a termination of their services. 289

For a country like India political democracy has no meaning if it does not embrace economic democracy. And economic democracy is nothing but socialism. 290 Thus the aim of incorporating socialism within the framework of Democratic Polity in India was to establish a welfare state. Former Chief Justice K G Balakrishnan has rightly observed that socialism in a broader sense "means welfare measures for the citizens. It is a facet of democracy. It hasn't got any definite meaning. It gets different meanings in different times". 291

Literally The term ‘socialist’ means a political economic system which advocates state’s ownership of the means of production, distribution and exchange."292 To quote a recent writer,

“Socialism is, first of all, a protest against the material and cultural poverty inflicted by capitalism on the mass of the people. It expresses a concern for the social welfare of the oppressed, the unfortunate and the disadvantaged. It affirms the values of equality, classless society, freedom and democracy. It rejects the capitalist and its competitive ethos as being inefficient in its use of resources …They (socialists) want a new system, whether by reform or by revolution, in which productive wealth is owned and controlled by the community and used for communal ends."293

The word socialism, among others has many other facets as well. It includes state socialism of collectivism which means of production should be owned by the State or brought under State control. Ideological definitions apart, Glossary of Social Studies Terms and Vocabulary defines Socialism as– any one of various systems in which the means of producing goods are owned by the community or the government rather than by private

289 Ibid,
290 C.N. Chitta Ranjan, Nehru and Socialism, Mainstream, Vol. XLIV, No.47, November 17, 1973
293 Tony Benn, Arguments for Socialism, Penguin Books, UK, 1980
individuals with all people sharing in the work and the goods produced.\textsuperscript{294} Thus the connotations of socialism are varied ranging from Gandhian socialism, Fabian Socialism to Scientific Socialism of the Marxist creed.

Besides this, semantically socialism has two principal related meanings: Firstly according to the communist language particularly the Marxian theory, socialism denotes a social and economic system that is supposed to be the transitional stage between capitalism and communism. Here the means of production are taken into social ownership, and the state persists as an administrative machine, upholding a new order of legality, and a new system of rights, in such a way as to permit the emergence of true common ownership, and the eventual abolition of the state.

However when socialism is construed as a broad concept, a concept which is even adhered to by India, then the principal ideas seems to be these:

(i) It lays stress on the belief in equality. This may be variously stated in terms of equal opportunity, egalitarianism, equal pay for equal work etc. The main consideration is that human beings are equally entitled to the things of this world, since they are equal in every respect relevant to their entitlement. All inequalities must therefore be justified, and the onus is on the one who defends them to produce the proof.

(ii) Here the state is seen, not as the legal and ceremonial manifestation of civil society, but rather as a complex administrative device, designed to guarantee individual entitlements, and to distribute benefits among the citizens accordingly. The state is, therefore, primarily concerned with distribution, and must provide and maintain the institutions which ensure that human goods – food, medicine, education, recreation – are made available to everybody on terms that are as equal as possible. Law is resorted to as a means to good order, and to effective administration. But neither it, nor any other aspect of the state machinery, is an end in itself. Moreover, the state is confined to administrative functions, and does not work as a set up as the propagator of religious doctrine, or nationalist ideology.

(iii) Thirdly the broader concept of socialism helps in the elimination of exploitative and discriminatory systems of control. People exert control over each other in various ways – e.g. through the class system, through political institutions, and through hereditary privileges. All such systems violate the fundamental axiom of equality. It ensures that private property is not

\textsuperscript{294} Karen R. Todorov Glossary of Social Studies Terms and Vocabulary, Michigan Department of Education, p.32
allowed to accumulate inordinately or to escape accountability for its use, lest vast systems of private control should emerge and prove damaging to the interests of society. Thus these three main principles together explain most of the details of socialist policy: in particular the attempt to eliminate privilege in all its forms.\textsuperscript{295}

The consequence of this addition is that it enabled the Courts to lean more and more in favour of nationalization and state ownership of industry.\textsuperscript{296} The Supreme Court further observed that so long as private ownership of industries is recognized and governs an overwhelming large proportion of our economic structure, the principle of socialism and social justice cannot be pushed to such an extent so as to ignore completely or to a very large extent, the interest if another section of the public, namely the private owners of the undertaking.\textsuperscript{297}

Socialism in India has thus come to mean (i) providing all people food security, full employment, universal access to education, health and housing. (ii) 21st century socialism will mean the attainment of true people's power through a strengthened democracy. Under socialism, democracy will be based on the economic empowerment of all people and not just on illusionary formal rights granted by the bourgeois democracy. (iii) Socialism in India will mean the end to caste and gender oppression and the attainment of equality among all minorities and marginalized sections. (iv) Multiple types of ownership of means of production, like state controlled, collective and cooperative, will coexist under a centrally planned policy framework.\textsuperscript{298}

It is also to be believed that if the funds had not been utilized in the earlier years, the nation would not have had the infrastructure base of major Irrigation projects, Steel Plants, Fertilizers, Scientific Institutions, Transport, Communication and Electricity. It is these inputs which has made it possible for India to become self-reliant in agriculture and food and even to feed a population which has increased three fold from a period when India had to live from ‘Ship to Mouth’ at the mercy of PL 480 coming from the Super Powers.\textsuperscript{299}

\textsuperscript{296} Excel Wear v. Union of India, AIR 1979 SC 25
\textsuperscript{297} Ibid., p.36

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The success of socialism can be adjudged by the state of Kerala which serves as the ideal example where socialism has flourished and reached great heights. In terms of social indicators, socialism has achieved massive success. Kerala began to progress towards socialism through many reforms and programs to redistribute wealth and advanced many programs for the poorest sections of society. Kerala is beginning to look like a developed country, even though it began as one of the poorest regions in impoverished India. Life expectancy at birth in Kerala is 75, compared to 64 in India and 77 in the United States. "After the latest in a long series of literacy campaigns, the United Nations in 1991 certified Kerala as 100 percent literate. .. Kerala's birth rate hovers near 18 per thousand, compared with 16 per thousand in the United States--and is falling faster. .. In 1981, Kerala's [PQLI - "physical quality of life index"] score of 82 far exceeded all of Africa's, and in Asia only the incomparably richer South Korea (85), Taiwan (87), and Japan (98) ranked higher. And Kerala kept improving. By 1989, its score had risen to 88, compared with a total of 60 for the rest of India. It has managed all this even though it's among the most densely crowded places on earth." Kerala's infant mortality rate is 15.3 per 1, 000 births versus 57.0 for India and 7 for the US. There are over 2, 700 government medical institutions in the state, with 330 beds per 100, 000 population, the highest in the country need.

According to the India State Hunger Index Kerala is has the second-lowest level of hunger of any state in India (after Punjab), the lowest under 5 mortality rate (less than half that of the next lowest - Tamil Nadu) and is ranked as the second best in India for overall performance with regards to hunger (after Punjab) - this is all despite the fact that it used to be one of the poorest and hungriest states in India. The increase in literacy was the result of a "pilot project began in the Ernakulam region, an area of 3 million people that includes the city of Cochin. In late 1988, 50, 000 volunteers fanned out around the district, tracking down 175, 000 illiterates between the ages of 5 and 60, two-thirds of them women. The leftist People's Science Movement recruited 20, 000 volunteer tutors and sent them out to teach. Within a year, it was hoped, the illiterates would read Malayalam at 30 words a minute, copy a text at 7 words a minute, count and write from 1 to 100, and add and subtract three-digit numbers. On February 4, 1990, 13 months after the initial canvass, Indian Prime Minister V.P. Singh marked the start of World Literacy Year with a trip to Ernakulam, declaring it the country's first totally literate district. Of the 175, 000 students, 135, 000 scored 80 percent or better on the final test, putting the region's official literacy rate above 96 percent. Overall, Kerala's experiment with socialism has been massively successful, in democratizing,
developing and in increasing social indicators. As a result of socialism, Kerala has become the most democratic place in India, and along with the Zapatista areas of Chiapas probably the whole world.

6.8.1.2. Secularism Strengthens the Pluralistic Fabric of India

India is a multi-dimensional country inhabited by people professing different religions. It is host to all conceivable religious faiths: Hindus, Muslims, Christians, Sikhs, Jains, Jews, Zoroastrians, four of which were born here, while others were brought in by the successive political and cultural invasions and assimilated by people. It is this tradition of tolerance and assimilation which makes India a mosaic and not a melting pot. As they say, ”India first beckons you, then it slowly seduces, assimilates and transforms you.” Secularism suits the genius of multi-religious, multi caste and multilingual country like India best. A democracy like India is today able to sustain because of this environment of pluralism and respect for and tolerance towards others where there is freedom of practice one’s beliefs. The secular ethos, furrowed deep by Gandhi in the minds of Indians, nurtured a sense of tolerance that has kept Indian society together and democratic. As Gandhi said, ”do not want my house to be walled in on all sides and my windows to be stuffed. I want the cultures of all lands to blow out my house as freely as possible. But I refuse to be blown off my feet by any.”

Legally and in practice, however no discrimination is made or tolerated on the ground of religion. The concept of two nation theory was and in an anti-thesis to the concept of secularism, the main creed of India’s secularism. The Indian Constitution as such seeks to maintain complete religious neutrality and refuses superiority of race, colour creed, religion and region. It seeks to establish equality, toleration, and social justice, in all spheres of life doing away with casteism and communalism. Thus secularism in India is not a particular creed, but a way of life which does not recognize superiority but equality and harmony.

The Constitution of India guarantees perfect impartiality towards all religious communities in the State and grants to profess whatever religion one seeks to follow, India is secular because of the people, its culture and that the ethos of this country are secular.

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Secularism is India’s manifest destiny. This is not to say there are no conflicts between the majority and minority groups. There are periodic outbursts of inter-religious violence, known commonly in India as communal riots. In early 2003, Gujarat, a prosperous western state passed through the worst Hindu-Muslim riots in decades post partition, Hindu fundamentalists have sought to recast Indian politics in a dangerous communal mould. But the Indian state remains secular to the core, as do state institutions, the judiciary, the press and civil society.

The word secular is derived from the Latin term *seculum*, which means an indefinite period of time. Indian secularism has its roots in the French idea of *laicité*, which denotes the strict separation of Church and State – the absence of religious involvement in government affairs and government interference in the religious affairs of its citizens. It is based, loosely, on the idea that every citizen leads two, mutually exclusive, lives: one public, over which the State exercises authority, and one private, including religious beliefs and other such customs, which the State will not legislate upon. The Chamber’s Dictionary defines Secularism as the belief that state, morals and education, should be independent of religion. Thus it is treated as a way of life where religious considerations should be ignored or purposefully excluded and at the same time ethical standards and conduct should be determined exclusively without reference to religion. This view has been propagated by Atheists like Periyar E.V. Ramaswamy, Gora and Humanists like M. N. Roy, Socialists like Lohia.

Before the mid-19th century, term the secular did not attract much attention though it underlined many reports. The Moti Lal Nehru Committee Report on the principles of the Constitution of India in 1928 makes no reference to the word itself though the spirit of the Report is entirely secular. The Karachi resolution adopted in March 1931 to which Gandhi, Pandit Nehru and Maulana Azad were party, stipulates religious neutrality of the State.

Although the term secular was not used anywhere in the Constitution, the founding members were nevertheless clear in their mind as to the meaning of the concept secular. Dr.

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301 M.G. Chitkara, Converts do not make a Nation, APH Publishing, 1998, p.701  
304 Chamber’s Twentieth Century Dictionary, Allied Publishers, 1964, p.1000  
305 Anil Nauriya, Gandhi on Secular Law and State, The Hindu, dated 22-10-2003
B.R. Ambedkar, Chairman of the Drafting Committee, while participating in the debate in the Parliament of the Hindu Code Bill of 1951, explained the secular concept as follows—

“It (secular state) does not mean that we shall not take into consideration the religious sentiments of the people. All that secular state means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. This is the only limitation that the Constitution recognizes.  

In the Constituent Assembly itself, several members held the cogent view in respect of the term secular. The Founding fathers of the Constitution were steadfast in their adherence to their secular idealism and the spirit that permeates the Universal Declaration of Human Rights which also pervades in the Constitution of India. Secularism means not only a bundle of guarantees in respect of freedom of religion and conscience in respect if cultural and educational rights, but also a sense of basic fraternity.

When the word secular pertains to an entity like state then it implies a state or a country that is officially neutral in matters of religion, neither supporting nor opposing any particular religious system. This belief of keeping state affairs free from religion arises out of ideology of secularism. A secular state is to be distinguished not only from a theocracy but also from a state where religion is established. It is a state in which religion has been disestablished.

Further a secular state is not anti-religious but exists and survives only when religion is no longer hegemonic. It admits both atheists and non-atheists and legally sanctions freedoms for all religions but also freedom from itself. Moreover official recognition is not given to any religion and persons are as free to disavow religion as they are to profess one.

This objective has been amply enunciated in many articles of the Constitution both dealing with the equality of status as well as equality of opportunity. They have been further spelled out in the Directive Principles of State policy. In the Indian context, Secularism has never meant negation of religious faiths by the State or by those who govern in the name of the State. Unlike the Western Nations, in India Secularism has always meant equal respect for all the faiths and religions ‘ Sarva Dharma Sambhav’ as it has been called for ages and

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306 Quoted in M.V. Pylee, Constitution of India, p.45
307 D.J. De, The Constitution of India, pp. 86-87
308 IDEA: English-Nepali Glossary of Federalism Terms. Page 56
practiced and prorogated by great savants and saints and rulers of the country.\textsuperscript{310} While pluralism is the keystone of Indian culture and religious tolerance is the bedrock of Indian secularism.\textsuperscript{311}

For a country of sub-continent dimensions like India, secularism becomes not only indispensable to keep away the fissiparous tendencies but it becomes the very pivot on which the multicultural structure is based upon. Many a times the secular ethos and the syncretic culture of India has been subjected to ideological, social and political onslaughts by various fundamentalist outfits. Incidents like Babri Masjid demolition and Godhra carnage still haunt us. Apart from these, the unspeakable atrocities of 1984 against the Sikhs in Delhi after the assassination of Prime Minister Indira Gandhi; and an occasional slaying of proselytizing Christian missionaries clearly presents a grim picture of Indian Secularism.

The rise of communalism, regionalism, and polarization of individuals due to casteism, obscurantism and fundamentalism are warning signals that whip up emotions and cause strife in the name of religion and caste threatening national integration and the very unity of the nation. It is here that secularism becomes relevant. Had it not been inserted, the religious groups or fanatical parties or, fundamentalist forces could have otherwise taken a free ride over the liberal vision of the country.

In India, secularism does not mean mere separation of religion and state but, the abolition of the practice of untouchability and promotion of castelessness. The Constitution of India, abolished untouchability and its practice in any form was prohibited. Besides the Untouchability (Offences) Act was renamed in 1976 as Civil Rights Act. The change in nomenclature was in tune with the aims and aspirations of the people. It is a welcome gesture on the part of various state governments in India, which announced special incentives to the inter-caste married couples, and also preference in government jobs to them on some occasions.

Thus the trend towards secularism received support not only during the nationalist movement but also in post-independence India.

Further secularism based on principled distance acts as a bulwark against the politicization of religion. Only when religion has been distanced from politics can the state do one's best to help or to hinder different sorts of believers and unbelievers in an equal

\textsuperscript{310} Supra note 25 Ibid.,  
\textsuperscript{311} H.K. Saharay, Constitution of India, p.9
The secularism of the Indian Constitution is neither purely procedural nor hypersensitive, but a complex, multi-value doctrine.\textsuperscript{313}

A secular state disestablishes all religions, excludes all religions from the narrower public domain, and it may act neutrally towards all religions. In its benign form, it maintains a principled distance towards all religions and intervenes on behalf of individual rights of members within communities based on previously defined constitutional values. As Bhargava puts it “On this interpretation of separation, a secular state neither mindlessly excludes all religions nor is blindly neutral towards them”\textsuperscript{314}. In its less benign form, it tries to suppress religion and disadvantages overtly religious individuals.

In India state has related to religion in a collaborative manner without privileging one religion over the other and without betraying individual rights for the sake of rights for religious communities.\textsuperscript{315}

It has been cited in the Bal Patil v. Union of India case, the concept of secularism is to put it in a nutshell is that the “State ‘will have no religion.”\textsuperscript{316} Dr. Radhakrishnan, former President of India has explained Secularism in the following manner:\textsuperscript{317}:

“When India is said to be a Secular state, it does not mean we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that State assumes divine prerogatives…We hold that not one religion should be given preferential status …. This view of religious impartiality, a comprehension and forbearance, has a prophetic role to play in the National and International life.”

Though the word secular did not originally appear in the Constitution, the Preamble promised to secure to Indian citizens ‘liberty of thought, expression, belief, faith and worship.’ The freedom of conscience and the rights to profess propagate and practice religion flow out of the idea so expressed in the Preamble. The Preamble read with Articles 14, 15, 16,
25 to 30 emphasizes this aspect and also the concept of secularism embodied in the constitutional scheme. The important components of secularism are as under:

1. Samanta (equality) is incorporated in Article 14;
2. Prohibition against discrimination on the ground of religion, caste etc., is incorporated in Articles 15 and 16;
3. Freedom of speech and expression and all other important freedoms of all the citizens are conferred under Articles 19 and 21;
4. Right to practice religion is conferred under articles 25 to 28
5. Fundamental duty of the State to enact uniform civil laws treating all the citizens as equal is imposed by article 44;
6. Sentiment of majority of the people towards the cow and against its slaughter was incorporated in articles 48.

In the Draft Constitution, the Clause 13 (now Article 25 of the Constitution of India) has provided another elucidation to the following term:

“the Freedom of religious practice guaranteed in the Clause shall not debar the State from enacting laws for the purpose of social welfare and reform.”

Ultimately one of the members Loknath Misra from Orissa participating in the Assembly debates stated ---

“It has been repeated to our ears that ours is a secular state. I accepted this secularism in the sense that our State shall remain unconcerned with religion, and I thought that the secular state of partitioned India was the maximum of generosity of the Hindu dominated territory for its non-Hindu population. I did not of course know what exactly this secularism meant and how far the State intends to cover te life and manners of our people. To my mind, life cannot be compartmentalized and yet I reconcile myself to the new cry.”

Granville Austin has noted the issues of linguistic nationalism on the one hand, and the need for protection of minority rights including their culture and religion on the other.

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318 G.S. Sharma(ed.), Secularism: Its implication for Law and Life in India, Indian Law Institute, New Delhi, 1966
319 P.M.Bakshi, The Constitution of India, p.3
320 CAD Vol.VII, p.823
hand; the social revolution had to precede fundamental rights, of which freedom of religion is a vital component.

For the first time by the 42nd Amendment of the Constitution in 1976 inserted into the Preamble, the term secular but without a concrete definition of the term. Preamble makes Indian State possible and tolerance, a super faith. Nevertheless an attempt was made by the 44th Amendment Act of 1978 which proposed an amendment to Article 366 by inserting the definition of the term. The expression Republic as qualified by the term Secular would come to mean a Republic in which there is equal respect for all religions. However this amendment did not receive much support by the Council of States and hence, the expression remains undefined even

An academic definition of the concept of Secularism in the Indian context has been attempted by Donald Eugene Smith in the following words, “The secular state is a state which gives individual and corporate freedom of religion, is not constitutionally connected to a particular religion, nor does it seek either to promote or interfere with religion.

In India secularism is now declared to be one of the basic features of the Constitution, which is beyond the amending power of the Parliament. The concept of secularism has been “one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.

The accommodating nature of Indian secularism was further highlighted by Radhakrishnan who wrote “Religion in India is not dogmatic. It is a rational synthesis which goes on gathering unto itself new conceptions as philosophy progresses. It is experimental and provisional in its nature.”

With this amendment Secularism has been entrenched in the Constitutional fabric of India. Any possible ambivalence about the Indian State towards the faith and uncertainties lingering around any judicial construction whatsoever has been removed by the Parliament by

321 Granville Austin, op. cit., p.321
322 Cited in Subhash C. Kashyap(ed.), Basic Constitutional Values, 1994, pp.5-6
324 S.R. Bommai v. Union of India, AIR 1994 SC 1918
325 M. Ismail Faruqui v. Union of India, AIR 1995 SC 605
326 Radhakrishnan, Indian Philosophy I, pp.25-26
making ‘secular’ as the character and commitment of plural India, following its explicit incorporation in the Preamble.\footnote{Aparajita Baruha, Op. cit., p. 50}

\section*{6.8.2. Justice becomes accessible and affordable}

Article 39-A was introduced in the Directive Principles of State Policy by the omnibus 42nd Amendment Act of the Constitution, 1976. It reflects the increasing recognition of the fact that legal aid is now regarded as an essential part of the administration of justice. This Article emphasizes that free legal service is an inalienable element of 'reasonable, fair and just' procedure, for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.\footnote{Hussainara Khatoon & Ors vs Home Secretary, State of Bihar (1979 AIR 1369, 1979 SCR (3) 532) http://indiankanoon.org/doc/1373215/}

The Encyclopaedia Britannica defines legal aid as phrase which is acquired by usage and court decisions, a specific meaning of giving to person of limited means grants or for nominal fees, advice or counsel to represent them in court in civil and criminal matters.\footnote{Quoted in Alka Shrivastav, Legal Aid Programme in India-A Constitutional Guarantee, part 13, p. 871}

Justice P.N. Bhagwati has also made the following comments in the case of Khatri v. State of Bihar\footnote{Khatri v. State of Bihar AIR 1981 S.C. at page 926 (Bhagalpur Blinded Prisoners’ case)}, with respect to Article 39A by saying that, “The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence, and whatever is necessary for this purpose has to be done by the State.”

Jurists such as Mauro Cappelletti have also argued that legal aid is essential in providing individuals with access to justice, by allowing the individual legal enforcement of economic, social and cultural rights.\footnote{Francis Regan, The Transformation of Legal Aid: Comparative and Historical Studies, Oxford University Press, 1999, pp. 89–90.}

Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. Lord Denning’s lucid and interesting account of legal aid shows that it has been a blessing for the teeming millions of this country who live below poverty line in tribal, backward and far flung areas look to the judicial authorities for help and legal redress. He has called it as “The greatest revolution in the law since the post-second World has been the evolution of the mechanism of the system for legal aid. It means that in many cases the
lawyers’ fees and expenses are paid for by the state: and not by the party concerned. It is a subject of such importance that I venture to look at the law about costs-as it was-as such it is-and as it should be.” 332 Further in his conclusion, Lord Denning said, “Legal aid has conferred great benefits on a section of the community ---those who only have modest means and on the members of the legal profession ---who are paid by the State for their services. 333

Access to inexpensive and expeditious justice is a basic human right. But, in practice, legal services of all kinds have gone to the highest bidders. Wealthy persons and large corporations receive the highest quality advice. It is thus expected that the fine intricacies of law are not used merely to help out those who have the power of the purse but it should shelter the unlettered and the underprivileged as well. Granville Austin has observed in his seminal work 334 after referring to the 14th Law commission report, “Seeking justice in court was expensive for the common man, often prohibitively so. Two reasons were the cost of the lawyer, and the existence of the fee system, under which the litigant had to pay a fee to register his case.” It is, therefore, essential to provide adequate legal advice and representation to all those, threatened as to their life, liberty, property or reputation, who are not able to pay for it. Moreover equal access to the law for the rich and the poor alike is essential for the maintenance of the rule of law.

Justice Krishna Iyer’s committee rightly said “ Legal aid to the underprivileged segments of the society is not a matter of charity but a matter of right. It is no longer a matter of legal aid to the poor but a matter of essential legal service on the analogy of health service.” 335

Legal Aid is thus a method adopted to ensure that no one is debarred from professional advice and help because of lack of funds. “The provisions of legal aid to the poor are based on humanitarian considerations and the main aim of these provisions is to help the poverty-stricken people who are socially and economically backward 336

With the inclusion of Article 39-A in the Constitution, the State is under an obligation to secure that the legal system promotes justice on a basis of equal opportunity, and shall, in

333 Ibid., at p.116
335 Processual Justice to the People :Report of the Expert Committee on Legal Aid, GOI Publication, New Delhi, 1973
336 C.H. Scott, Legal Aid Past and Present- A Brief Bleak Picture, pp. 4-5.
particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. 337

To achieve this Government of India initially appointed a Committee on Judicature called the “Committee for Implementing Legal Aid Schemes” (CILAS) under the chairmanship of Justice P.N. Bhagwati to effectively implement the legal aid scheme. It encouraged the concept of legal aid camps and Nyayalayas in rural areas. It was also to monitor and implement Legal Aid Programmes on a uniform basis in all the States and Union territories CILAS evolved a model scheme for Legal Aid Programme applicable throughout the country by which several Legal Aid and Advice Boards have been set up in the States and Union territories. CILAS in funded wholly by grants from the central Government.

The Constitution is not a mystic parchment but a pragmatic package of mandates. In view of this, the Judiciary, took upon itself the duty to decode its articles in the context of Indian life’s tearful realities338. The judiciary by its creative interpretations has given an encyclopaedic meaning to the concept of legal aid. Time and again it has been reiterated by our courts that legal aid may be treated as a part of right created under Article 21 and also under Article 14 and Article 22(1) 339 The apex court has held access to justice as a human right340, thus, imparting life and meaning to law. In pursuance of this objective, the court has invoked Article 39-A in three important cases and has interpreted Article 21 in the light of Article 39-A. The observations in one of the cases have even led to the passage of the Legal Services Authorities Act in 1987.

The first step was taken in Sunil Batra v. Delhi Administration341, where the two situations in which a prisoner would be entitled for legal aid were given. First to seek justice from the prison authorities and second, to challenge the decision of such authorities in the court. Thus, the requirement of legal aid was brought about in not only judicial proceedings but also proceedings before the prison authorities which were administrative in nature. The

341 (1978) 4 SCC 494
court has reiterated this again in Hussainara Khatoon v. State of Bihar \(^{342}\) and said: “it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court’s process that he should have legal services available to him. Free legal service to the poor and the needy is an essential element of any reasonable, fair and just procedure.”

In 1986, in another case of Sukdas v. Union Territory of Arunachal Pradesh \(^{343}\) Justice P.N. Bhagwati, while referring to the decision of Hossainara Khatun’s case and some other cases had made the following observations in paragraph 6 of the said judgment:

“Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty because magnifies the impact of the legal troubles and difficulties when they come. Moreover, of their ignorance and illiteracy, they cannot become self-reliant; they cannot even help themselves. The Law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programs for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helplessness. This miserable condition in which the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognized as one of the principal items of the program of the legal aid movement in the country to promote legal literacy. It would be in these circumstances made a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service, legal aid would become merely a paper promise and it would fail of its purpose.”

\(^{342}\) (1980) 1 SCC 98
\(^{343}\) AIR 1986 S.C. 991
6.8.2.1. Legal Aid is institutionalised with the Constitution of National Legal Services Authorities (NALSA)

It was in the above backdrop that the Parliament passed the Legal Services Authorities Act, 1987, which was published in the Gazette of India Extraordinary Part II, Section I No. 55 dated 12th October, 1987. Although the Act was passed in 1987, the provisions of the Act, except Chapter III, were enforced with effect from 9.11.1995 by the Central Government. Chapter III, under the heading “State Legal Services Authorities” was enforced in different States under different Notifications in the years 1995-1998.

The National Legal Services Authority (NALSA) came to be constituted in 1987 under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes. It is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services.

Subsequently State Legal Services Authority have also been constituted in every state to give effect to the policies and directions of the NALSA and to give free legal services to the people and conduct Lok Adalats in the State. The State Legal Services Authority is headed by the Chief Justice of the respective High Court who is the Patron-in-Chief. In every District, District Legal Services Authority has been constituted to implement Legal Services Programmes in the District. The District Legal Services Authority is situated in the District Courts Complex in every District and is chaired by the District Judge who is its ex-officio Chairman.

For each Taluk or Mandal or for group of Taluk or Mandals, Taluk Legal Services Committees are constituted to coordinate the activities of legal services in the Taluk and to organize Lok Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

These authorities provide the aggrieved with a counsel at State expense, pays the required Court fee and bears all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority. Further Section 12 of the Legal Services Authorities Act, 1987 prescribes the list of people who are eligible to draw the benefits of the legal services. These include:
a. A woman or a child;
b. members of the Schedule Caste and Schedule tribes;
c. a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
d. a mentally ill or otherwise disabled person;
e. a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster;
f. A person in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause, of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987);
g. in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Govt., if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Govt., if the case is before the Supreme Court." Limitation as to the income does not apply in the case of persons belonging to the scheduled castes, scheduled tribes, women, children, handicapped, etc.  

6.8.2.2. Achievements so far

The data provided below is a reflection of the success that the legal aid scheme has achieved so far:

1. Until March 31, 2009, about 96.99 lakh people have benefited through legal aid and advice throughout the country in which about 13.83 lakh persons belonging to Scheduled Caste and 4.64 lakh people of Scheduled Tribe communities were beneficiaries.  

2. More than 10.22 lakh people were women and about 2.35 lakh people in custody were also benefitted. 

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346 Ibid
3. The Gram Nyayalayas Act, 2008 came into force in 2009 provides for the establishment of Gram Nyayalayas (Village Courts) at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities. Many States have established the Gram Nyayalayas and many more are in the process of establishing it. The Village Court has jurisdiction over certain civil and criminal matters as well as select legislations mentioned in the Act. 347

4. “Legal Aid Counsel” Scheme which was conceived and introduced by the Honourable Dr. Justice A.S. Anand during his tenure as the Executive Chairman NALSA, has been well received all over the country. To provide immediate legal assistance to those prisoners who are not in a position to engage their own counsel NALSA has initiated Legal Aid Counsel Scheme to provide meaningful legal assistance to under-trial prisoners who, on account of lack of resources or other disabilities, cannot engage a counsel to defend them. Legal Aid Counsel has been provided in most of the courts in the country. Now, Legal Aid Counsel have been attached to each Magisterial Court who provide assistance and defend a person who is not able to engage a counsel, right from the stage he/she is produced in the court by the police.

5. The NALSA has been organizing meetings, seminars and workshops connected with legal services programmes in different parts of the country. The NALSA has developed audio visual spots and publicity material to make the common man aware of the various aspects of the legal services programmes. Documentary films have also been prepared and are being screened in the different parts of the country through Directorate of Field Publicity, Government of India.

6. Under this scheme, Counselling and Conciliation Centres are being set up in all the Districts of the country for guiding and motivating the migrants to resolve their disputes amicably. Such Centres have been set up in most of the Districts.

7. Under the guidance and control of His Lordship, Hon. Mr Justice B.N. Kirpal, Judge, Supreme Court of India and Chairman, Supreme Court Legal Services Committee Supreme Court Legal Services Committee is providing legal aid to eligible persons in

347 The Draft Universal Periodic Report-II prepared by the Government of India
a very effective and meaningful way. Up to 31.12.99 Supreme Court Legal Services Committee has provided legal aid and assistance to 10, 125 applicants.

8. During the Chairmanship of Hon’ble Executive Chairman, Mr Justice Altamas Kabir, the following innovative steps have been introduced in the functioning of NALSA:  

a) A National Plan of Action to be executed by all State Legal Services Authorities and Calendar for activities was put in place.

b) NALSA Regulations on Lok Adalat were published in the Gazette.

c) NALSA Regulations on Free and Competent Legal Services were published in the Gazette of India.

d) Legal Services to Trans-Gender people was taken up as a new project of NALSA

e) Training of Para-Legal Volunteers and engaging them in the front offices of Legal Services Institutions and in the village level legal aid clinics were started.

f) Legal Literacy Programmes in schools and colleges started in an organised manner with the assistance of the Department of Education in all States.


g) School Legal Literacy Clubs set up in all High Schools under the State Legal Services Authorities in order to create legal awareness, obedience to law and spread the philosophy of rule of law amongst the younger generation.

h) Legal Aid Clinics in all villages to be manned by Para-legal Volunteers and panel lawyers. Establishing Legal Aid Clinics in all Gram Panchayats (similar to primary health centres) by engaging competent lawyers as legal consultants in the clinics. Give wide publicity about the clinics with the help of local Self-Government Institutions.

i) Setting-up Legal Aid Clinics in all law colleges and law universities and to encourage students to adopt remote village areas as their area of operation. Retainer lawyers are engaged at Taluk, District, High Court and Supreme Court level for handling legal aided cases.

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348 History of legal movement in India: legal aid movement in India - its development and present status at http://nalsa.gov.in/
7. In about 16.87 lakh Motor Accident Claim cases, more than Rs. 7593 crore has been awarded as compensation.\textsuperscript{349}

8. About 7.25 lakh Lok Adalats have been held throughout the country in which more than 2.68 million cases have been settled.\textsuperscript{350}

\section*{6.8.3. Rise of innovative ADR systems: The Lok Adalats}

It is a known fact that the traditional legal service programme, which is essentially court or litigation, oriented cannot meet the specific needs and the peculiar problems of the poor.\textsuperscript{351} The introduction of Lok Adalats thus added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes.

India has had a long history of resolving disputes through the mediation of village elders. The system of Lok Adalats is an improvement on that and is based on Gandhian principles. This is a non-adversarial system, where by mock courts (called Lok Adalats) are held by the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee, periodically for exercising such jurisdiction as they thinks fit. It does not have jurisdiction on matters related to non-compoundable offences.

Under this scheme, the Lok Adalats are now organized regularly at designated venues, even away from court complexes and the cases which remain unsettled are taken up in the next Lok Adalat. Lok Adalats have thus acquired permanency and continuity.

Justice Ramaswamy says “Resolving disputes through Lok Adalat not only minimizes litigation expenditure, it saves valuable time of the parties and their witnesses and also facilitates inexpensive and prompt remedy appropriately to the satisfaction of both the parties” Lok Adalat has a positive contributory role in the administration of justice. It supplements the efforts and work of the courts. Area of contribution chosen for the purpose specially concerns and helps the common.

It resolves disputes like Motor Vehicle accident cases where the injured or the dependants of the person deceased in the accident have applied for a compensation; Land

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\textsuperscript{349} Supra note at 75
\textsuperscript{350} Ibid.,
\textsuperscript{351} Report on National Juridicare: equal justice – social justice, 1977, Government of India
\end{flushright}
Acquisition cases where the applications have been made to the government claiming compensation; Cases for or against local bodies such as Town Municipality, The Panchayat, The Electricity Board and the like; Cases involving commercial banks Matrimonial or Maintenance cases; Criminal cases which are compoundable as per law; Cases pending in the Labour Courts; Cases before Workmen’s Compensation Commissioner; cases pertaining to consumer grievances.

In Delhi Permanent Lok Adalats have been established in Delhi Vidyut Board, Delhi Development Authority, and Municipal Corporation Of Delhi, MTNL and General Insurance Corporation. These Lok Adalats are becoming popular day-by-day and it is expected that very soon a large number of disputes between public and statutory authorities would start getting settled at pre-litigative stage itself saving the parties from unnecessary expense and litigational inconvenience.

6.8.3.1. Merits of Lok Adalat

1. **Speedy Justice**: Lok Adalats ensure speedier justice because it can be conducted at suitable places, arranged very fast, in local languages too, even for the illiterates. Since one of the conciliators would be a judicial officer the litigants would get impartial and fair guidance. The procedural laws and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat. Hence, Lok Adalats are also known as “People’s Festivals of Justice” The victims and the offender may be represented by their advocate or they can interact with the Lok Adalat judge directly and explain their stand in the dispute and the reasons thereof, which is not possible in a regular court of law.

2. **Justice Pro Bono**: If any case pending in any court is settled in Lok Adalat, parties would get refund of the court fee paid. Justice would be totally inexpensive as the litigants need not spend here anything towards court fees, process fees, postage charges etc. Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost. Thus there is no court fee and no rigid procedural requirement (i.e. no need to follow process given by Civil Procedure Code or Evidence Act), which makes the process very fast. Parties can directly interact with the judge, which is not possible in regular courts.

In Sukh Das v. Union Territory of Arunachal Pradesh, the Apex Court held that failure to provide free legal aid to an accused at the State’s cost would vitiate the trial. The Court has
set aside the conviction of an accused on the ground that he was not provided with legal aid at the time of his trial and thus there was violation of Article 21 of the Constitution.

3. **Solves Problems of Backlog Cases:** Delivering the inaugural address at a seminar on judicial reforms, the President said that “Delays render the common man’s knock on the temple of justice a frustrating experience. Litigants are not able to lead normal lives being unsure of the verdict in their case.” Terming the pending cases as an “explosion of litigation,” she said the current figures reveal that the arrears in HCs exceeded 40 lakh cases and in subordinate courts 270 lakh. The curse of backlogs in India is well known and Andhra Pradesh High Court judge Justice V. V. Rao has gone on to say that it will take 320 years for the Indian Judiciary to clear its backlog.

Thus Lok Adalat is a legislative attempt to decongest the Courts from heavy burden of cases. Lok Adalats, a permanent feature of the functioning of legal services authorities is largely being used as a tool of case management to help the overburdened judiciary… In Lok Adalats, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the award is final and cannot be appealed, not even under Article 226 because it is a judgment by consent. All proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court. Section 25 of the Legal Services Authority Act, 1987 provides that the provisions of the act have an overriding effect notwithstanding anything which is inconsistent with any other law.

The scheme also helps the overburdened Courts to alleviate the burden of arrears of cases and as the award becomes final and binding on both the parties, no appeal is filed in the Appellate Court and, as such, the burden of the Appellate Court in hierarchy is also reduced. Hence, to alleviate the accumulation of cases, the Lok Adalat is the need of the day.

4. **Helps to maintain cordial relations:** The main thrust of Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court. While conducting the proceedings, a Lok Adalat acts as a conciliator and not as an

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352. President tells judiciary to clear backlog of cases, Deccan Herald, New Delhi, July 31, 2010
353. Courts will take 320 years to clear backlog cases: Justice Rao, The Times of India, Hyderabad, March 06, 2010
354. S. Murlidhar at International Conference on ADR, Conciliation, Mediation and Case Management Organized By the Law Commission of India, 2003
arbitrator. Its role is to persuade the parties to hit upon a solution and help in reconciling the contesting differences. Lok Adalat cannot decide the issues nor can it influence or force the parties to decide in a particular way. It encourages consensual arrangements. It is not possible for Lok Adalat to decide upon any issue not acceptable to any of the parties. Lok Adalats are also required to follow the principles of natural justice and other legal principles. The focus in Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court. However, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the award is final and cannot be appealed, not even under Article 226 because it is a judgement by consent. All proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court.

In conclusion, we can find a paradigm shift in the approach of the Supreme Court towards the concept of legal aid from a ‘duty of the accused to ask for a lawyer’ to a ‘fundamental right of an accused to seek free legal aid’. Legal aid is not a charity or bounty, but is a constitutional obligation of the state and right of the citizens. The problems of human law and justice, guided by the constitutional goals to the solution of disparities, agonies, despairs, and handicaps of the weaker, yet larger brackets of Bharat’s humanity is the prime object of the dogma of “equal justice for all”. Thus, legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the downtrodden and weaker sections of the society. Justice Krishna Iyer regards it as a catalyst which would enable the aggrieved masses to re-assert state responsibility, whereas Justice P.N. Bhagwati simply calls it “equal justice in action”.

6.8.4. Fundamental Duties ushers National Solidarity

Though the Constitution (42nd Amendment) Act 1976 is widely considered infamous for initiating various deplorable steps but it deserves credit for the introduction of Article 51-A in the Constitution laying down Fundamental Duties. As defined in Article 51-A, they are not made enforceable by a writ of the Court but it cannot be lost sight of that the ‘Duties’ in part IV A are prefixed by the same word ‘ Fundamental’ which was prefixed by the founding fathers to ‘rights ‘ in Part III.

Prior to the insertion of Article 51A In Chandra Bhawan Boarding v. State of Mysore\textsuperscript{357}, the Supreme Court made the following observation:

“It is a fallacy to think that under our Constitution, there are only rights and no duties. The provision in Part IV enables the Legislatures to impose various duties on the citizens, the mandate of our Constitution is to build a welfare society and that objet may be achieved to the extent the Directive Principles are implemented by legislation.”

The sentiment that was floated long ago materialized into an amendment which brought the Constitution closer to the Indian tradition of duty (dharma).\textsuperscript{358} The trilogy of fundamental rights (FRs), directive principles of state policy (DPs) and fundamental duties (FDs) is the bedrock of the Indian Constitution. Granville Austin calls them as ‘the conscience of the Constitution.’ The renowned academic M.P. Singh calls it a ‘trilogy’ because together they constitute the vision of a particular type of society which the Constitution envisages for India; a society which affords an equal opportunity to its entire people for an all-round development, and in which citizens bear responsibilities towards nation and society as such. This interrelation among the three constituents is manifested more clearly in the judicial decisions, especially in the last two decades, as the judiciary has relied on one of these to interpret the contents of the other or even of the rest of the Constitution.\textsuperscript{359}

Article 51-A reflects the spirit of the French Declaration of the Rights of Man and of the Citizen (August 26, 1789) containing principles which were re-affirmed in the French Constitution. It was added in order to bring our Constitution in line with Article 29(1) of the Universal declaration of Human Rights, 1948 and the Constitutions of Countries like Japan, USSR (articles 118-133), China etc.

Article 29 (1) of the Universal Declaration of Human Rights, 1948 states:

“Everyone has duties to the community in which alone the free and full development of his personality is possible.”

\textsuperscript{358} P. V. Kane, History of Dharmasastra, Vol. 2, Bhandarkar Oriental Research Institute, Poona, p.1665
It is the basic principle of jurisprudence that every right has a correlative duty and every duty has a concomitant right. But the rule is not absolute. It is subjected to certain exceptions in the sense that a person may have a right, but there may not be a correlative duty.\textsuperscript{360}

In view of the duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures imposed on the citizens under article 51-A (g), the Supreme Court has held that it is the duty of the Central Government to take a number of steps in order to make this provision effective, and issued the following directions to the Central Government –

a) To direct all educational institutions throughout India to give weekly lessons in the first ten classes, relating to the protection and improvement of the natural environment including forests, lakes, rivers and wild life.

b) To get text books written for the said purpose and to distribute them free of cost.

c) To introduce short –term courses for training of teachers who teach this subject.

d) Not only the Central Government but also the state Governments and local authorities are to introduce cleanliness weeks when all citizens, including members of the Legislature, Executive and the Judiciary, should render free personal service to keep their local areas free from pollution of land, water and air.\textsuperscript{361}

e) When state is enjoined upon a duty under Article 48-A read with Article 21 of the Constitution to endeavour to protect and improve the environment which would include the water bodies and every citizen is under a duty under Article 51-A to protect and improve environment which are specifically mentioned therein as a part of the environment and when such material resources need to be protected to enable people to enjoy a quality life which is the essence of the right to life guaranteed by Article 21, there would be no constitutional option to convert the land under the lakes and ponds to any use that may alter their character as water bodies in violation of the constitutional mandates to the state and the citizens not only to protect but to improve them.


\textsuperscript{361} M.C. Mehta v.Union of India, AIR 1988 SC 1115
In M.C. Mehta v. Union of India, the Supreme Court observed:

“Articles 21, 47, 48 A and 51 –a (g) of the Constitution of India give a clear mandate to the state to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forest, Lakes, Rivers and wildlife and to have compassion for living creatures. The “Precautionary Principle” makes it mandatory for the State Government to anticipate, prevent and attack the cause of environment degradation.

The National Commission to Review the Working of the Constitution (NCRWC) in its report recommended for inclusion of two more duties in Article 51A: a duty to foster a spirit of family values and responsible parenthood in the matter of education and general well-being of children; and the duty of industrial organisations to provide education to children of their employees.

The Fundamental Duties are not legally binding unless made so by law. In that case, their observance is voluntary. However the Supreme Court has referred to Fundamental Duties in various cases. For example, the Court made a reference to the duty ‘to renounce practices derogatory to the dignity of women’ by laying down guidelines against sexual harassment of women at the work place. It also referred to the duty to show respect to national anthem and national flag and the duty to protect and improve the natural environment.

As a consequence Justice Verma Committee was formed recently to examine the issue of possible amendment to criminal law to provide for quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women, examined many dimensions of violence. It generated public debate on the possible legal and non-legal remedies that need to be considered while providing security to women who face the fear of prospective violence as well as to justice in case they become victim of violence. The Supreme Court has also directed the central government to enact a law for the enforcement of Fundamental Duties in pursuance of the Verma Committee’s recommendations.

365 Bijoi Emmanuel v State of Kerala, AIR 1987 SC 1
The Supreme Court has also referred to these duties in the context of Clause (g) pollution matters and Clause (j) excellence in the civil services and in a string of other matters as well.

In State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamat\textsuperscript{368} the Supreme Court observed that the State and every citizen of India must have compassion for every living creature. The concept of compassion for living creatures enshrined in Article 51-A (g) is based on the background of the rich cultural heritage of India.

In A.I.I.M.S. students’ Union v. A.I.I.M.S.,\textsuperscript{369} a three judge bench of the Supreme Court made it clear that fundamental duties, though not enforceable by a writ of the Court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. The Court further held that the State is in a sense ‘all the citizens placed together’ and therefore though Article 51A does not expressly casts any fundamental duty on the State, the fact remains that the duty of every citizen of India is the duty of the state.

In Rural litigation and entitlement Kendra v. State of Uttar Pradesh,\textsuperscript{370} a complete ban and closing of mining operations carried on Mussorie hills was held to be sustainable by deriving support from the fundamental duty as enshrined in Article 51-a (g) of the Constitution, the Court held that preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation of the state as well as of the individuals.

As laid down in the Chapter on Fundamental Duties, every citizen of India is fundamentally obliged to develop scientific temper and humanism. He is fundamentally bound to strive towards excellence in all spheres of activities so that the nation rises to higher levels of endeavour and achievements. Further it has been incorporated to eradicate superstitions in which India is deeply soaked in and to remove the bone of religious fanaticism, regional chauvinism, parochialism and linguistic frenzy which have ever plagued India and retarded her unification into a cohesive society. In the era of globalization, where the nation as a whole has to complete with other nations of the world so as to survive, excellence cannot be given a go by and certainly not compromised in its entirety.

\textsuperscript{368} (2005) 8 SCC 534
Constitutional enactment of Fundamental duties, if it has to have any meaning, must be used by the Courts as a tool to tab, even a taboo, on state action drifting away from constitutional values.  

6.8.5. Rise of Environmental Jurisprudence as a result of 48-A  

Another welcome addition by the 42nd Amendment Act was the inclusion of Article 48 A which has paved the way for environmental jurisprudence. India has made significant progress in its pursuit of environmental protection over the last decade. As an important first step, the government has officially accepted the coexistence of economic development and environmental protection. The Forty-second Amendment Act also added entries to the concurrent list. The Act inserted a new entry, "Population control and family planning”, and moved "Forests" and "Protection of wild animals and birds, " from the state list to the concurrent list. Some members of the Indian academic community believe that the Forty-second Amendment gave the central government new powers to protect the environment, powers that the center did not previously possess.

Indian Constitution is amongst the few in the world that contains specific provisions of environment protection. Taking cognizance of right to environment as a human right many nations have adopted eco-centric approaches. In the context of human rights, right to life and liberty, pollution free air and water is guaranteed by our Constitution under Articles 21, 48-A and 51-A (g). While classical human rights problems continue to be a major concern, new types of human rights problems have emerged as a result of rapid economic expansion. They include environmental pollution and exploitation of their natural resources by developed countries and multinational corporations. In Japan, as early as 1967, the Basic Law for Environmental Pollution Control was passed. That law made it possible to sue private enterprises on civil grounds and also to take action in criminal law. In Japanese law, as in

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372 Ramakrishna Kilaparti, The Emergence of Environmental Law in the Developing Countries: A Case Study of India, Ecology Law Quarterly, Vol. 12, 1985  

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English Common Law, environmental pollution is called Public nuisance (Ko-gai) to give it a public character even if pollution is caused by private enterprises.\textsuperscript{375}

Article 47 of the Constitution of the Indian Constitution provides that improvement of public health is one of the primary duties of the State. As a sequel to the decisions taken at the U.N. Conference on Human Environment held at Stockholm in 1972, 42\textsuperscript{nd} Amendment Act, 1976 added Article 48-A which states, “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”

Besides the Indian Constitution, many other nations have also read environment in their constitutions. Article 26 of the 1982 Constitution of the Chinese Republic\textsuperscript{376} mentions:

i. “The State protects and improves the living ecological environment and prevents remedies pollution and other hazards to the public.”

ii. The State organizes and encourages afforestation and protection of forests.”

Likewise Article 15 of the Constitution of Afghanistan states, “the State is obliged to adopt necessary measures for forests and the environment” and similarly Article 27(14) of the Srilankan Constitution mentions “the State shall protect, preserve and improve environment for the benefit of the community.”

In India the Directive principles and the Fundamental duties explicitly enunciate the national commitment to protect and improve the environment. More so environmental protection and improvement were further explicitly incorporated into the Constitution by the Constitution (Forty –Second Amendment) act of 1976. The Act clearly spelt out in the amendment to the Preamble of the concept of socialism. In the socialistic pattern of societies, the State pays more attention to the social problems than on any individual problem and pollution is one of them.

The Constitution of India makes three kinds of provisions for the protection of environment: 1) directing and enjoining the duty on the State and Central Governments to protect and improve the environment 2) imposing a duty on the citizens to protect, improve and abstain from polluting the environment and 3) giving fundamental right to live in a good environment and to move the Courts to enforce this right in case of infringement.

\textsuperscript{375} E.S. Venkataramiah, Human Rights and their enforcement in Mahendra P Singh’s, Comparative Constitutional Law-Festschrift in honour of Professor P.K. Tripathi, Eastern Book Company, Lucknow, p.675

\textsuperscript{376} 3 SCW 361
Thus Article 48-A and 51-A (g) have been used by the Courts against various kinds of pollutions. Thus whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Art 48 A. Between 1979 and early 1980’s, the Supreme Court of India assumed a new judicial function of redressing common grievances under what it calls “public interest “or “social action” litigation. Such a new assumed function under the new criterion of justice has been called Judicial Activism and has been resorted to by the High Courts as well. It has created public awareness in environmental matters and to large extent filled the lacuna of law in dealing with environmental issues due to lethargy or lagging behind of the executive or legislative action in the matter. The Judicial Activism and PIL has thus evolved a potent weapon to develop environmental jurisprudence.

As a result the floodgate of environment related litigations have been unleashed since then. A new and radically different kind of cases altered the litigation landscape. Instead of being asked to resolve private dispute, Supreme Court and High Court Judges are now asked to deal with public grievances over flagrant human right violation by State or to vindicate the public policies embodied in statutes or constitutional provisions. This new type of judicial dispensation is called Public Interest Litigation.

In Animal and environment Legal Defence Fund v. Union of India\(^{377}\), the Supreme Court directed the State government to take urgent steps to prevent destruction of damage to the environment, the flora and fauna and wild life in and around the sanctuaries of the National Park.

In Sitaram Chhaparia v. State of Bihar\(^{378}\), where a tyre retarding plant set up in a residential area was emitting carbon dioxide gas and other obnoxious gases from its furnace, he Court observed the protection of the environment was a fundamental duty under Article 51-A of the constitution and directed the respondents to wind up the industry.

Where large scale illegal, unauthorized, unscientific and unsystematic mining activities were undertaken in violation of the provisions of various enactments, rules framed and notifications issued there under and orders of the Supreme Court and High Court, the High Court issued further directions to the State Government to discharge the Constitutional obligations and duties for protection of environment and to implement provisions of various

\(^{377}\) AIR 1997 Sc 1071: (1997) 3 SCC 549

enactments in this regard and to ensure that no further environmental degradation\(^{379}\) took place.

Judicial activism in this sphere has greatly contributed towards moulding of the law in the right direction of balancing sustainable development and right to environment. To achieve this judiciary has developed some principles by gathering support from international environment law.

The Public Trust Doctrine enunciated in the Spawn Motel Case\(^{380}\) as part of the Indian jurisprudence envisages, “the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private use.”\(^{381}\)

Precautionary Principle’s contribution is also substantial in this regard. By taking recourse to Article 48A and Article 51 A (g ) in M.V. Naidu’s case the Supreme Court has observed, “The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake…”\(^{382}\)

In Research Foundation Case, it is observed by the Court, “it is part of principle of sustainable development, it provides for taking protection against specific environmental hazards by avoiding or reducing environmental risks before specific harms are experienced.”\(^{383}\) A logical consequence of this principle is the Polluter pay principle.

This principle was upheld in Vellore Citizen’s Welfare Forum versus Union of India\(^{384}\) and has been accepted as part of the land of India. Thus in order to protect the two lakes, namely, Badkhal lakes and Surajkund Lake in the State of Haryana from environmental degradation, it became necessary to limit the construction activity in the close vicinity of the lakes.\(^{385}\)

\(^{379}\) Ashwini Chobisa v. Union Of India, AIR 2005 NOC 58 (Raj) (DB)
\(^{380}\) M.C.Mehta v.Kamal Nath, (1997) 1 SCC 388
\(^{381}\) Ibid., as per J. Kuldip Singh,
\(^{384}\) (1996)5 SCC 647
\(^{385}\) M.C. Mehta v Union of India (1997)3 SCC 715
Similarly in Animal and Environment Legal Defence Fund v. Union of India \(^{386}\) it had been emulating the case of Pradeep Krishen v Union of India, that the total forest cover in India is far less than the ideal minimum of one-third of total land. Thus no further shrinkage of forest cover can be allowed in India. Further it also ensured that if the reason of shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Park in Madhya Pradesh, there can be no doubt that urgent steps must be taken to prevent the destruction of environment and the flora and fauna in those areas.

A similar effort of balancing was achieved by invoking the principles of Inter-generation equity in the matter of mining of stones that threatened survival of archaeological site in Kerala. The Kerala High Court upheld the petition for stoppage of the project and observed, “It is the duty of every citizen to protect and preserve the ancient and historic monuments for future generations. It is a basic source of study for the archaeologists and are of national importance which cannot be permitted in any way to be interfered with or affected.”\(^{387}\)

The cases given below illustrate how the new scope of the judicial action has helped protection of environment and people from pollution.

In Shri Sachidanand Pandey v. State of West Bengal, \(^{388}\) too the Supreme Court said, “Whenever a problem of ecology was brought before the Court, the Court was bound to bear in mind Articles 48-A and 51 –A(g) of the Constitution.” Moreover in T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad the Andhra Pradesh High Court pointed out that in view of Articles 48-A and 51-A (g), it is evident that the protection of environment is not only the duty of citizens, but it is also the obligation of the State and all other State organs including Courts. \(^{389}\)

The internationally acclaimed Tiger Reserve in the Aravalli Hills ecosystem of India was being destroyed by ambitious mining activities for recovering marble by the Government of Rajasthan. The Supreme Court of India in Tarun Bharat Sangh (NGO) vs. Union of India \(^{390}\) ordered the closure of all the four hundred marble mines around the Sariska Tiger Reserve which threatened wildlife, in accordance with the provisions of the Forest (Conservation) Act, 1980.

\(^{386}\)Animal and Environment Legal Defence Fund v. Union of India (1997)3 SCC 549
\(^{387}\)Niyamavedi v. Government of India Kerala High Court, 6-11-1995
\(^{388}\)AIR 1987 SC 1109
\(^{389}\)AIR 1987 AP 171
\(^{390}\)AIR, 1992, SC 514
In yet another case, Silent Valley, the seat of rich biodiversity in the Western Ghats of India, was threatened with destruction in the 1970s because of the construction of a dam for hydropower generation by the Government of Kerala. Upon the plea of Kerala Sastra Sahitya Parishad (KSSP), an NGO and World Conservation body, the judiciary in Kerala came to the rescue of the fragile ecosystem. The construction of the dam was immediately stopped. If it had not been, the richest biodiversity in the world, after Amazonia, would have been completely destroyed.

Similarly in Ratlam Municipality v. Vardhichand, the residents of Ratlam Municipal area, suffering for a long time from the pungent smell from opens drains approached the Magistrate for a remedy. The Magistrate ordered the Municipality to remove the drains whereupon the Articles 48-A and 51-a (g) and Article 21, issued the directions under Section 113 of the Cr. P.C. to the Municipal council to provide proper drainage system.

Likewise in S. Jagannath v. Union of India Supreme Court directed shrimp culture industry to stop operation in the ecological fragile coastal area as they were affecting environment and coastal ecology. It has been held that owing to commercial aquaculture farming there is degradation of the mangrove ecosystems, depletion of casuarina plantation, pollution of potable waters, reduction in fish catch and blockage of direct approach to the seashore. The groundwater is contaminated due to seepage of impounded water from the aquaculture farms. Thus aquaculture industry operating within coastal regulation shall be liable to compensate the affected persons on the basis of “Polluter Pays principle.”

In T.N. Godavarman Thirumalpad v. Union of India, a three-judge bench of the Supreme Court read Article 48-A and Article 51-A together as laying down the foundation for a jurisprudence of environmental protection and held that “Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures.”

Reading Article 48 A with Articles 51-A (g), 14 and 21 of the Constitution, the Supreme court had deduced the following conclusions:
a) It is a constitutional duty not only of the State but also of every citizen to protect and improve the environment and natural resources of the country.

b) Though neither Article 48-A and 51-A is judicially enforceable by itself it becomes enforceable by expanding the compass of Article 21, so that in case of a failure of the forgoing duties, the Supreme Court or a High Court would entertain a petition under Articles 32 or 226, as a PIL brought by an individual or institutions in the locality or any social action group, even by a letter addressed to the Court.

c) In order to realise it, the Supreme Court directed establishment of primary treatment plans for resumption of their functioning, measures to eliminate cleaning of city, protection of wildlife if sanctuaries and national parks, preservation and improvement of lakes, prohibition of commercial aquaculture farming, preservation of the Taj, restrictions on fishing within the National Park Area, directions to Central Government to indicate measures taken under the Environment Protection Act, 1986, directions on utilization of the Taj for a concert, directions to tackle chaotic traffic directions and vehicular pollution in Delhi. Compensation to workmen, segregation of chemical industries.

d) The Supreme Court directed the Central Government to state all the steps taken since the insertion of this Article 48A for the protection and improvement of environment and also place before the Court its national policy to restore the quality of environment. It has now become the duty if the Central government to direct all the educational institutions throughout India to teach at least for one hour in a week lessons relates to the protection and the improvement of the natural environment including forests, lakes Rivers and wildlife in the first ten classes.

6.8.6. Tribunalisation of Justice

Vast expansion in the functions of the government and emergence of the welfare ideology (where the state plays a key role in the protection and promotion of the economic and social interests and well-being of its citizens) has greatly contributed to the growth of administrative tribunals in a country. Administrative tribunals have emerged not only in India but also in many other countries with the objective of providing a new type of justice - public good oriented justice. In view of this Professor Wade, in the fourth edition of his well-known

“generally speaking, the public wants the best possible article, and is prepared to pay for it. But in administrating social services the aim is different. The aim is not the best article at any price, but the best article that is consistent with efficient administration. Disputes must be disposed of quickly and cheaply, for the benefit of the public purse as well as for that of the claimant.”  

These tribunals manned by technical experts, with flexibility in operations, informality in procedures have gained importance in the adjudication process. The reasons which are usually advanced for the establishment of administrative tribunals are:

a. Ordinary courts are already overburdened with work, and additional jurisdiction would cause a breakdown;
b. The costs of judicial proceedings in ordinary courts would be heavy;
c. The courts of law are slow and the procedure elaborate;
d. Matters involving a public service are best administered by specialists in that service;
e. Policy decisions are best settled by an administrative authority.

Thus the law courts, on account of their elaborate procedures, rules of evidence, legalistic forms and attitudes can hardly do justice to the parties concerned. Judges, brought up in the tradition of law and jurisprudence, are not capable enough to understand technical problems, which crop up in the wake of modern complex economic and social processes. Only administrators having expert knowledge can tackle such problems judiciously. Moreover cheapness, expediency, flexibility, procedural simplicity and availability of special knowledge are the need of the hour. To meet this requirement, a number of administrative tribunals have come into existence.

6.8.6.1. Defining Tribunals

It is not easy to obtain an accurate definition of a tribunal nor is it easy for a semantic point of view to capture the essence of that which is considered to be a tribunal. Therefore a number of definitions and opinions on point are being proffered to provide some insight into what could be regarded as a tribunal.

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400 David Barker and Colin Padfield, Law, Routledge, 2002 p.56
In constitutional terms tribunals are impartial grievance mechanisms which are distinct from both the government as well as the ordinary court system.\textsuperscript{401} “Tribunals are not ordinary courts, but neither are they appendages of Government Departments….We consider that tribunals should properly be regarded as machinery provided by Parliament for Adjudication rather than as part of the machinery of administration.”\textsuperscript{402} Butterworths Legal dictionary describes a Tribunal as “A person or body (who or which is not a court of law but may be presided over by a judge) who (or which), in arriving at the decision in question, is expressly or indirectly required by law to act in a judicial manner to the extent of observing one or more of the rules of natural justice”.\textsuperscript{403}

Another definition of tribunal depicts it as “A board appointed to adjudicate in some matter, esp. one appointed by the Government to investigate a matter of public concern”.\textsuperscript{404}

According to the Indian Supreme court, the word tribunal is wider than court, all courts are Tribunal but all Tribunals are not courts.\textsuperscript{405} A congruent view is maintained by Professor Shukla who holds, “ Tribunal is a body or authority though not a court in the strictest sense, which is invested with a judicial power to adjudicate on questions of law or fact affecting the rights of citizens in the judicial matter.\textsuperscript{406} Another view holds Administrative tribunals, as arbiters or adjudicators of individual rights, tend to operate in some hazy air alongside the system of justice administered by traditional courts and the wider system of public administration that supports executive government.\textsuperscript{407}

A pragmatic meaning is offered by Justice Abella who was sitting on the Ontario Court of Appeal: Designed to be less cumbersome, less expensive, less formal and less delayed, these impartial decision-making bodies were to resolve disputes in their area of specialization more expeditiously and more accessibly, but no less effectively or credibly.\textsuperscript{408}

\textsuperscript{401} Mark Ryan and Steve Foster, Unlocking Constitutional and Administrative Law, Routledge, 2013
\textsuperscript{402} Report of the Committee on Administrative Tribunals and Inquiries, Cmnd 218 (1957) para 40
\textsuperscript{403} Butterworths Australian Legal Dictionary p.1192.
\textsuperscript{404} The Oxford Encyclopedic English Dictionary, p.1540.
\textsuperscript{405} A.C. companies v. P.N. Sharma, A.I.R. 1965 SC 1595
\textsuperscript{406} V.N. Shukla, Constitution of India, 7th Ed. P.325
6.8.6.2. 42nd Amendment Act Introduces Administrative Tribunals

The genesis and proliferation of Tribunals is a milestone in the present day legal system. Tribunals, one of the bodies of administrative adjudication in India, have witnessed much debate in the recent years. According to Seervai, ‘they are agencies created by specific enactments’ to adjudicate upon disputes that may arise in the course of implementation of the provisions of the relevant enactments. They are not a court nor are they an executive body. Rather they are a mixture of both. They are judicial in the sense that the tribunals have to decide facts and apply the impartially, without considering executive policy. They are administrative because the reasons for preferring them to the ordinary courts of law are administrative reasons. They are established by the executive in accordance with statutory provisions. They are required to act judicially and perform quasi-judicial functions. The reason why they were set up was to reduce the workload of courts, to expedite decisions and to provide a forum which would consist of both lawyers and experts in the areas falling under the jurisdiction of the tribunal.409

By the end of laissez faire era, the tribunal system was accepted as an item in the agenda of the modern governments mainly because of the advantages. The initial Diceynism objections against the Administrative tribunal slowly dried up and paved the way later for the growth of administrative law. Welfare State has to discharge a variety of functions hence Tribunalisation as a dispute solving mechanism has come into existence as a supplementary to the traditional judicial system.

42nd Amendment is considered to be the foundation stone of Administrative Tribunals for service matters as it inserted Article 323-A in the Constitution. Prior to the establishment of Administrative Tribunals, quite large number of cases were pending before various courts in respect of various service matters. Therefore the Law Commission, Administrative Reform Commission, Shah Commission, Estimates Committees all recommended for the setting up of Tribunal. While submitting the Bill, there were 68000 service matter cases pending in various courts of the country. The insertion of Article 323A and B in 1976 in the Constitution is no doubt an important landmark in the history of service tribunals.410

It needs to be noted that tribunals existed prior to the 42nd Amendment Act and even prior to the date of the enactment of the Constitution, as Art. 136 provide for the term

‘tribunal’ and further, there were, inter alia, tribunals established under the Industrial Disputes Act of 1947 and under the Life Insurance Corporation Act of 1956. Art. 323A and Art. 323B did not provide for the setting up of the tribunals for the first time in the country, but were rather meant to provide a fillip the tribunal system and provide constitutional authority for the legislations. Further, before 1985 the grievance of Central Government employees were tried by ordinary courts, such suits were normally to be instituted in the lower courts of law, however, a direct approach to the High Court was available in exercise of writ jurisdiction to the High Court under Article 226 of the Constitution. In case of violation of fundamental rights, under Article 14 and 16, even a direct approach to the Supreme Court was possible and still available.

However things changed with the commencement of the 42 Amendment Act. Under clause 46 of the said act a new Part XIV A was inserted after Part XIV of the Constitution namely ‘Part XIV-A Tribunals ‘ Article 323-A Administrative tribunals specially for service Tribunals. The Statement of Objects and Reasons accompanying the Constitutional Amendment bill by which Article 323-A was sought to be inserted in the Constitution stated the following:

“To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters. ... it is considered expedient to provide for administrative tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under Article 136 of the Constitution.”

Administrative tribunals falling within the scope of Article 323A can only be established by Parliament that is only one tribunal of the Union and one for each or two or more states may be established. But under Article 323B Tribunals can be established both by Parliament and State Legislatures with respect to matters falling within their legislative competencies. In addition to that Parliament may by law provide for the jurisdiction, power and authority of such tribunals and prescribe the procedure to be followed by them. The law made by the Parliament may provide for the exclusion of the jurisdiction of all courts except that of the Supreme Court under Article 136 of the Constitution. Other tribunals of similar type may also be established with respect to matters such as tax, foreign exchange, industrial or labour disputes, land reforms, election of legislative bodies etc.

Further these Tribunals are unique in the sense that the Members of these Tribunals are both from the Administrative as well as Judicial side. Each Division Bench comprises of a judicial & administrative Member. The Administrative Tribunals in India are different from the Tribunals functioning in some other countries as the Central Administrative Tribunal (CAT) here was set up solely with the purpose of dealing with the cases relating to the recruitment and conditions of service of persons appointed to public services and posts under the control of the Government and thereby, reducing the burden of the High Courts to that extent.

i. **Enactment of Administrative Tribunals Act 1985**

Parliament in pursuance of Article 323 A and with a view to easing the congestion of pending cases in various High Courts and other Courts in the country has passed Administrative tribunals Act 1985 covering all matters falling within clause (1) of Article 323. As per the Act, the Central government may establish Administrative tribunal for the Central Government employees and even for State Service as well as local bodies and other authorities including the public corporations. Administrative Tribunals were established in November, 1985 at Delhi, Mumbai, Calcutta and Allahabad. Today, there are 17 Benches of the Tribunal located throughout the country wherever the seat of a High Court is located, with 33 Division Benches. In addition, circuit sittings are held at Nagpur, Goa, Aurangabad, Jammu, Shimla, Indore, Gwalior, Bilaspur, Ranchi, Pondicherry, Gangtok, Port Blair, Shillong, Agartala, Kohima, Imphal, Itanagar, Aizwal and Nainital.

The provisions of the Administrative Tribunals Act, 1985 do not, however, apply to members of paramilitary forces, armed forces of the Union, officers or employees of the Supreme Court, or to persons appointed to the Secretariat Staff of either House of Parliament or the Secretariat staff of State / union Territory Legislatures.

A Chairman who has been a sitting or retired Judge of a High Court heads the Central Administrative Tribunal. Besides the Chairman, the authorized strength consists of 16 Vice-Chairmen and 49 Members.

Presently various tribunals have been burgeoning in many jurisdictions and they cover a very wide gamut of jurisdictions. So far the following have been actively operating in India:

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415 http://cgat.gov.in/intro.htm
a. **Industrial Tribunal**

The first tribunal to be set up in India, it has been set up under the Industrial Disputes Act, 1947. It can be constituted by both the Central as well as State governments. The Tribunal looks into the dispute between the employers and the workers in matters relating to wages, the period and mode of payment, compensation and other allowances, hours of work, gratuity, retrenchment and closure of the establishment. The appeal against the decision of the Tribunal lies with the Supreme Court.

b. **Income Tax Appellate Tribunal**

This Tribunal has been constituted under the Income Tax Act, 1961. The tribunal has its benches in various cities and appeals can be filed before it by an aggrieved person against the order passed by the Deputy Commissioner or Commissioner or Chief Commissioner or Director of Income Tax. An appeal against the order of the Tribunal lies to the High Court. An appeal also lies to the Supreme Court if the High Court deems fit.

c. **Foreign Exchange Regulation Appellate Board (FERAB)**

The Board was set up under the Foreign Exchange Regulation Act, 1973. A person who is aggrieved by an order of adjudication for causing breach or committing offences under the Act can file an appeal before the FERAB.

d. **Customs and Excise Revenue Appellate Tribunal (CERAT)**

The Parliament passed the CERAT Act in 1986. The Tribunal adjudicates disputes, Complaints or offences with regard to customs and excise revenue. Appeals from the orders of the CERAT lies with the Supreme Court.

e. **Railway Rates Tribunal**

This Tribunal was set up under the Indian Railways Act, 1989. It adjudicates matters pertaining to the complaints against the railway administration. These may be related to the discriminatory or unreasonable rates, unfair charges or preferential treatment meted out by the railway administration. The appeal against the order of the Tribunal lies with the Supreme Court.
6.8.6.3. **Administrative Tribunals outweigh Ordinary Courts**

Administrative adjudication is a dynamic system of administration, which serves, more adequately than any other method, the varied and complex needs of the modern society. For a country of India’s size, administrative tribunals hold a special import. The characteristics which give the Tribunals an edge over the traditional courts and makes way for effective good governance are as follows:

1. **Ensures expeditious disposal of cases**: The ordinary court system is notoriously dilatory in hearing and deciding cases. Tribunals are much quicker to hear cases. A related advantage of the tribunal system is the certainty that it will be heard on a specific date and not subject to the vagaries of the court system. This being said there have been reports that the tribunal system is coming under increased pressure and is falling behind in relation to its caseload. Tribunals provide specialized and technical resolutions in different situations, ensure greater innovation, flexibility and efficiency in the delivery of governmental programs and strategies, and provide an informal and rapid forum for public hearings, thereby minimizing time and costs related to litigation before ordinary courts.\(^\text{416}\)

2. **Cost Effective**: Tribunals are a much cheaper way of deciding cases than using the ordinary court system. One factor that leads to a reduction in cost is the fact that no specialized court building is required to hear the cases. Also, the fact that those deciding the cases are less expensive to employ than judges, together with the fact that complainants do not have to rely on legal representation, makes the tribunal procedure considerably less expensive than using the traditional court system. These reductions are further enhanced by the additional facts at that there is no court fees involved in relation to tribunal proceedings and that costs are not normally awarded against the loser. As disputes are settled in more convenient and reasonable manner than in trial courts. Administrative adjudication, in most cases, requires no stamp fees as a result, costs are also comparatively lower in administrative tribunals as compared to costs involved in court and the judicial system.\(^\text{417}\) Lastly its procedures are simple and can be easily understood by a layman.

3. **Informal and Less cumbersome**: Tribunals are supposed to be informal. The strict rules relating to evidence, pleading and procedure that apply in courts are not binding in tribunal proceedings. This procedural simplicity of the Act can be appreciated from the fact

\(^{416}\) Guy Régimbald, Canadian Administrative Law, LexisNexis, Markham, Canada, 2008 at p. 3

\(^{417}\) Buras v. Board of Trustees, 367 So. 2d 849, 853 (La. 1979)
that the aggrieved person can also appear before it personally. The provision of this informal situation and procedure tends to suggest that complainants do not need to be represented by a lawyer in order to present their grievance. They may represent themselves or be represented by a more knowledgeable associate. The Government can also present its case through its Departmental officers or legal practitioners. Thus became the Administrative Tribunals an effective and real substitute for the High Courts. Further the lack of formality is strengthened by the fact that proceedings tend not to be inquisitional or accusatorial, but are intended to try to encourage and help participants to express their views of the situation before the tribunal.

4. **Accessible:** The aim of tribunals is to provide individuals with a readily accessible forum in which to air their grievances and gaining access to tribunals is certainly not as difficult as getting a case into the ordinary courts. The final advantage is the fact that proceeding can be taken before a tribunal without necessarily triggering the publicity that might follow from a court case. 418

5. **Flexibility:** A significant provision is that the Administrative Tribunals are not fettered by technical rules of procedure laid down in the C.P.C. or the Indian Evidence Act which binds an ordinary court. The tribunals thus exercise great freedom to adopt appropriate procedure in accordance with the principles of natural justice, to regulate their own proceedings 419. Undoubtedly administrative adjudication has brought about flexibility and adaptability in the judicial as well as administrative tribunals. For instance, the courts of law exhibit a good deal of conservatism and inelasticity of outlook and approach. The justice they administer may become out of harmony with the rapidly changing social conditions. Administrative adjudication, not restrained by rigid rules of procedure and canons of evidence, can remain in tune with the varying phases of social and economic life. At this juncture comments by the Franks Report seem to be relevant:

“Tribunals have certain characteristics which often give them advantages over the courts. These are cheapness, accessibility, freedom from technicality, and expedition and expert knowledge of their particular subject. It is no doubt because of the advantages that Parliament, once it has decided that certain decisions ought not to be made by normal executive or departmental processes, often entrusts them to tribunals rather than to the ordinary courts.” 420

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418 David Kelly, Ruby Hammer and John Hendy, Routledge, 2014, p.91
420 Quoted in Neil Hawke, Introduction to Administrative Law, Routledge, 2013, p.67
6.8.6.4. **Achievements so far**

Chief Justice Lamer acknowledged the centrality of administrative tribunals in Canadian society when he said, quite simply: "the impact of administrative agencies on the lives of individual Canadians is great and likely surpasses the direct impact of the judiciary."[^421] The same view can be held for the Indian society because of the pervasiveness and indispensability of the institution. This dispensation has been successful in offering flexible, swift and relevant justice in numerous cases which has been detailed below:

1. The number of administrative tribunals has rapidly multiplied. As ‘dispensers of justice ‘ administrative tribunals have many plus points like speedy disposal of cases, freedom from the bounds of purely technical rules and consequent ability to give effect to legislatively expressed policy. Judgements of these tribunals are not ordinarily open to review by law counts except on procedural grounds like excess of jurisdiction and bias or error.[^422]

2. Expeditious disposal of cases has been witnessed over the years. For the year 2001 and right up to June, 2006 the overall disposal of cases has exceeded the number of freshly instituted cases, as a result of which the total pendency has reduced. Where the pendency of cases is on higher side in any Bench, Members are being deputed from other Benches to that Bench for wiping out the pendency. The original Applications in the Principal Bench are generally disposed of in four to six months, thus justifying the aim of the Legislature in setting up the Administrative Tribunals to provide a speedy, relatively inexpensive and efficacious remedy to the employees who feel aggrieved[^423]

3. After the constitution of the Tribunal in 1985, in the beginning, under Section 29 of the Administrative Tribunals Act, 1985, the Tribunal received on transfer from the High Courts and Subordinate Courts 13, 350 cases, which were pending there. Thereafter, till November 2001, 3, 71, 448 cases were instituted in the Tribunal. Out of these, 3, 33, 598 cases have already been disposed off. The total number of cases received on transfer as well as those instituted directly at various Benches of the Tribunal till 30.06.2006 is 4, 76, 336, of which the Tribunal has disposed of 4, 51, 751 cases leaving a balance of 24585 cases which constitutes disposal of 94%. The institution of cases in the Tribunal has increased tremendously but the rate of disposal of the cases has also quantitatively increased and in the

[^423]: http://cgat.gov.in/intro.htm
Principal Bench of the Tribunal at New Delhi, the disposal is 94%. During the year 2000, over 91% of cases of the Principal Bench of the Tribunal have been upheld in Writ Petition by the Delhi High Court and so quantitatively also the Tribunal has performed well.  

4. As per the statistics furnished to the Parliamentary Standing Committee by the Ministry of Personnel, Public Grievances and Pensions, from the period 1.1.85 to 28.02.06, the total cases instituted in the Central Administrative Tribunal were 470365, those disposed of were 446369 and those pending were 23996. The Committee noted that the record of disposal of cases of Administrative Tribunals has been excellent as compared to that of the subordinate courts and High Courts.  

6.9. Critiquing the 42nd Amendment Act

On critiquing the amendment, many provisions come to the fore which are either futile or have a negative impact on the Constitution. It needs to be stressed that with all these achievements, this truth cannot be overshadowed that the 42nd amendment virtually destroyed the Constitution. 

Firstly arguments have been advanced against the amendments to the Preamble. The inclusion of these terms has been considered unnecessary because their meanings are already implicit in other provisions of the Constitution and even of the Preamble itself. Specifically, the concept of socialism is implicit in the concept of socio-economic justice. The concept of secularism is already implied in the expression “liberty of thought, expression, belief, faith and worship.” And the idea of national integrity is implied in the wider concept of national unity. Besides it was also argued that the Preamble was unamendable as it was not part of the Constitution Statute. 

The changes in the Preamble were even criticized by learned men like N.A. Palkhivala and Paras Diwan. N.A. Palkhivala even pointed at the futility of the word ‘socialism’ and said “The insertion of the word ‘Socialist’ would instead of clarifying the basic structure of the Constitution, merely makes it dangerously ambiguous. Socialism meant different, even contradictory things to different people. The Constituent Assembly had itself

424 http://cgat.gov.in/intro.htm and http://indianrailwayemployee.com/content/central-administrative-tribunals-cat
rejected the suggestion of some members to put the word ‘Socialist in the Preamble.’” A similar sentiment was voiced by Paras Diwan who too commented on the ambiguity of the term Socialism and called it as “one of the blackest periods of human history ---that when socialism was qualified with the word “National”, it ceased to be “Socialism”, it became “Fascism.”

Second aesthetically the amendment has despoiled to some extent the exquisite linguistic form of the Preamble. As a critic once said, changing the original “sovereign, democratic republic “ into “sovereign, socialist, secular, democratic republic” is like trying to improve upon Shakespearean genius by changing “the rest is silence” into “the rest is complete, weird and baffling silence.”

Moreover India no longer adheres to the ideology of Socialism very stringently. With the advent of Liberalization, Privatization and Globalisation, India has distanced itself with socialism in keeping with the demands of the time. Besides it has not been able to address the widening gap between the rich and the poor. Further there are many aspects which reflect how socialism has failed to deliver. According to the UNICEF Report for 2006, the number of children before completing five years of ages worldwide was 9.7 million, of which 2.1 million or 2.1 percent of the total were in India. The report found that the efforts in India to arrest the trend were insufficient and almost 9.4 million children were unimmunized.

According to UNDP’s Human Development Report for 2006, India has a large human development deficit. India has dropped to 128th position among the 177 countries surveyed in the report. This was a drop of two ranks as compared to the previous report. Praful Bidwai has stated that according to the Global Hunger Index of the International Policy Research Institute (IFPRI), India belongs to the bottom fourth of the world’s nations, with a rank of 94, among 118 countries. It needs serious attention here that India’s hunger index is way behind that of China which is at 47 and lower than Pakistan which is 88.

Besides the chronic hunger, another index of poverty has recently received media exposure through a report of the National Commission of Enterprises in the Unorganized Sector. Among the most revealing and disturbing analyses of India’s disparities scenario is ‘Patterns of Wealth Disparities in India during the Liberalization era. ’

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427 Ram Joshi, Marina Pinto and Louis D'Silva, The Indian Constitution and its Working, Orient Longman, New Delhi, 1979, p.36
428 Arjun Jayadev, Sripad Motiram, and Vamsi Vakulabharanam, Patterns of Wealth Disparities in India during the Liberalisation Era, Vol - XLII No. 38, September 22, 2007
basis of National Sample Survey Data, that there was a perceptible and probably an underestimated increase in the inter-personal wealth in equality in India between 1991 and 2002. The top 10 percent of the population increased its share of total national wealth to 52 percent, while the share of the bottom 10 percent fell to just 0.21 percent.\textsuperscript{429}

In the review of the report on Conditions of Work and Promotion of Livelihoods in the Unorganized sector, 2007, C.T. Kurien has brought out that of the estimated 458 million, (out of a total population of close to 1.1 billion) workforce of the country in early 2005, as high as 92 percent is considered to be made up by informal workers defined as those who do not have employment security, work security or social security.

A shocking revelation is that in our country almost 77 percent of the total population and 79 percent of the workers in the unorganized sector come in the category of poor and vulnerable, which they have a consumer expenditure of less than Rs. 20 a day per capita at today’s prices.\textsuperscript{430}

Another change which did not garner much support was the supersession of the Directive Principles over Fundamental Rights. No doubt Directive Principles are essential in realizing a welfare state but it is also true that Fundamental Rights cannot be sacrificed at the altar of an ideal which is non-justiciable. Even the founding fathers did not intend that Directive Principles should ride roughshod over Fundamental rights.\textsuperscript{431} Besides one should not forget the nightmare of emergency which suspended Fundamental Rights, detained people out of vengeance, muzzled the Press and held democracy to ransom just to realise some narcissist ambition. D.D. Basu, a renowned authority on Constitutional matters too says, “In view of the wide sweep of the numerous Directives, the field for the play of the Fundamental rights has been reduced to a pitiable minimum and one of the essential foundations of democracy has been devalued, if not denigrated.”\textsuperscript{432} Thus our study has unraveled the fact how the tilt towards Directive Principles was completely uncalled for and against the spirit of liberal Democracy.

Another article which was subjected to considerable censure was Article 31D which sought to empower the Parliament to prevent and ban anti-national activities and anti-national associations. It has been discussed thoroughly how under its garb many opposition leaders were put behind the bars on flimsy grounds. Besides there were already too many laws which

\textsuperscript{429} Praful Bidwai, The Question of Inequality, Frontline, 2 November 2007, p.105
\textsuperscript{430} C.T. Kurien, Hidden reality, Frontline, 19 October 2007, pp.74-76
\textsuperscript{431} The Indian Express, 10 November 1976
\textsuperscript{432} D.D. Basu, Constitutional Law of India, Prentice Hall of India, New Delhi, 1977, p.XLIV
were meant to curb unlawful activities and inclusion of such drastic article was nothing but a display of narcissism. It was feared that by a virtue of this Article, the ruling party with a simple majority could crush any opposition party or resistance that stares at its face. Further the article was so widely worded that even a bonafide agitation could be characterized as an anti-national activity. All this thus suggested that there was a Union Gestapo in the making. In short this provision was a serious blow to the very foundation of Democracy and as such was widely criticized. However as revealed by our study, this article was soon deleted by the 43rd Amendment Act, 1977.

Our inquiry of 42nd amendment also informs us that a chapter on Fundamental Duties was appended to our Constitution just like the Socialist countries. But we need to realise the fact that Fundamental duties cannot fulfill all the aspirations and aspirations for which they have been created. Firstly they do not have any legal sanction and secondly their non-compliance will not incur any penalization. Besides that it reiterates the basic philosophy underlying in the Preamble and Constitution. The things which it mentions are already implicitly laid down in the Constitution. It is also a known fact that every right carries corresponding duty thus even if these duties were not incorporated even then they are bound to be performed. Again some of the Fundamental duties like developing scientific temper and spirit of inquiry are impracticable for a country like India which houses people who are mostly illiterate. As B.R. Shukla said, “By incorporating a new chapter prescribing Fundamental duties of the citizens we are going to add further confusion to the already complex and complicated document which is our Constitution.”

Another article which became a source of worry was Article 257A which was first added by the 42nd Amendment Act and then later repealed by the 44th Amendment Act. This provision made the Union more powerful in comparison to the States and was viewed as a major cause of imbalance that had the potential to overturn the federal setup. It has been highlighted in our study that this provision could be invoked to subdue and immobilize the states which were being ruled by opposition parties. Under this article Union Government could take action on its own and its action would be neither subject to the approval of the Parliament nor to the advice of the states.

However the biggest blow to democracy came when the independence of judiciary was subverted. Our study has brought to the fore that how the powerful executive mutilated the powers of the Courts. Further the curtailment of powers of the High Courts to issue writs,

interim orders and stay were hard on the citizens with modest means. The provision that no law could be invalidated except by the decision of not less than two-thirds of the judges constituting the bench was also impracticable.

The amendment has been extolled in our study for establishing Administrative Tribunals as an alternative dispute resolution mechanism. But there are still many loopholes. Firstly they violate the theory of the separation of powers because they sometimes exercise administrative as well as quasi-judicial functions. Besides some tribunals meet in private which can lead to suspicion about the fairness of the decisions. There is also a possibility of political interference by the Government, which can prevent the tribunal from delivering impartial decision. Moreover the people who man the tribunals, are either administrative or technical heads and who may neither have the background of law nor the insight of a seasoned and impartial judge. Another conspicuous defect is the absence of a uniform code of procedure which is pursued in the hierarchy of civil and criminal courts. And lastly the administrative tribunals with their exclusive separate laws and procedures seem to be detached with the celebrated principle of Rule of Law which ensures equality before law for everybody.

The preceding passages have dealt with the consequences of the amendment, both positive and negative on the Indian polity thoroughly. No doubt the amendment was a move of political manoeuvring to tilt the constitutional balance in favour of an autocratic individual but it has also become reminiscent of the undying spirit of the Indian Constitution which fails to give up. The various provisions which remain behind compensate for those clauses which tried to wreck the polity. In the next segment a searching analysis of the 44th Amendment shall be made --- an amendment which was responsible for undoing the several controversial aspects of the 42nd Amendment Act.

6.10. The March of the 44th Amendment

In early 1977 Emergency was terminated and orders were given for the holding of elections to the Lok Sabha. A conglomerate of political parties under the name of Janata Party emerged and decided to fight the Congress. Immediately after coming out of the jails in January 1977, the opposition leaders announced the merger of Congress (O), Bharatiya Lok Dal (BLD) and the Bharatiya Jan Sangh into the new Janata Party.\(^\text{434}\) The Congress was dealt a blow by the sudden defection of Jagjivan Ram, H.N. Bahuguna and Nandini Satpathy who

formed the Congress for Democracy (CFD). Along the DMK, Akali DAL and CPM formed a common front with the Janata Party in order to give a straight fight to Congress and its allies, the CPI and AIADMK.

The new party in alliance with the opposition parties at locality level, sought to exploit the colossal misdeeds committed by the ruling party during the Emergency and wanted to highlight the grave deformities built into the political system through amendments mainly the forty-second amendment. They wanted to create an anti-incumbency atmosphere by mobilizing the people to destabilise the ruling party.

When elections were held in March 1977, a new India was born. People treated the elections as a referendum of emergency. With the popular upsurge in favour of them, the Janata Party and its allies were victorious with 330 out of 542 seats. Congress trailed far behind with only 154 seats, with the CPI its ally getting 7 and the AIADMK 21 seats. Congress was virtually wiped out in India with only 2 out of 234 seats in seven northern states. Reminiscing the elections of 1977 Shri Shanti Bhushan recalls, “The election of 1977 has never taken place anywhere—where the ruling party and a strong prime minister like Mrs Gandhi was able to secure only one out of 350 seats in north India. That is the lesson that every political party learnt—that they could not toy with the rights of the people. After 40 years, I have a sense of satisfaction that we ensured that the conditions of 1975 would not recur.” Thus the 1977 election may be regarded as a major breakthrough which shattered the hegemony of the reigning Congress Party.

Altogether more optimistic was the old India hand Horace Alexander, now eighty-seven and living in retirement in a Quaker home in Pennsylvania. In a letter published in the New York Times Alexander said that ‘the astonishing Indian elections’ showed that ‘the common people of India have political courage’, this derived from Gandhi and the heritage of the freedom movement. In a letter to a fellow Quaker he likewise called the poll verdict ‘a triumph for the common people of India’, adding: ‘Let none ever say that “democratic

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436 The 44th amendment ensured democracy’s survival in India: Shanti Bhushan at http://www.livemint.com/Politics/zwYWp4CHWdDDZ3KY7xHUVK/The-44th-amendment-ensured-democracys-survival-in-India
“liberty” is a bourgeois conception, which is only meaningful to a small number of left-wing intellectuals.\textsuperscript{437}

This way the first ever non-Congress government was formed at the Centre by the newly formed Janata party. The Indian Parliament after the March 1977 elections set itself to the task of restoring the institutional imbalances that were severely disturbed by the Forty – Second Amendment. The Janata Party came to power on a wave of hyperbole, with talk of a second freedom from authoritarian rule and a resounding restoration of democracy.\textsuperscript{438} In its short span stretching over a period of consensus, the Janata regime, tried to undo the evils of the 42\textsuperscript{nd} Amendment Act through discussion and consensus among the political parties. The most important task before this government was to ensure that what happened between June 1975 and March 1977 could never be repeated. This necessitated a constitutional amendment, which required a two-third majority in each House. It is worth mentioning here that while the Janata party had more than a two-third majority in the Lok Sabha, it did not have even one-third of the seats in the Rajya Sabha.

Before heading further it is to be noted that amendments have a stabilizing, regulative and corrective value in a changing political system and the 44\textsuperscript{th} Amendment justifies this. In the name of elimination of tensions, a number of amendments particularly the Forty-Second Amendment, have altered the basic document in a way that could not be envisaged by the fathers of the Constitution. Unequivocally the Forty-Second Amendment virtually eroded the sanctity of the basic framework so heavily so as to bring it down to the level of a ‘subordinate’ document.

The Constitution (Forty-Fourth Amendment Act) was passed on December 20, 1977 by the Lok Sabha. The bill was supported by 318 members while there was only one dissenting vote. The Act which contains 10 clauses removes a small part of the imbalance created by the Forty –Second Amendment. It restored to the Supreme Court and High Courts the power to consider the constitutional validity of any piece of legislation, Central or State.\textsuperscript{439}

It may be recalled that the Forty-Second Amendment had taken away the right of Supreme Court to consider State laws unless they impinge upon Central Laws and of High

\textsuperscript{438} Ramchandra Guha, op. cit., p.388
\textsuperscript{439} Text of the Constitution (Forty-third Amendment) Act, 1977
Courts to consider Central Laws. The Forty Third Amendment, again, deleted the provision for a minimum of seven Supreme Court judges (five High Court judges in the case of a State law) hearing any case involving the constitutional validity of any legislation. Only by a two-thirds majority could a statute be declared by the Supreme Court or a High Court to be invalid. The needless strain caused by this provision compelled the Janata Government at the Center to rush through the Forty –third Amendment. The sweeping Provisions on anti-national activity were also deleted because of the apprehension that any party in power could use this authority to harass or victimize other political parties according to their own will.

Sharp reactions to the members were noticed during the debate of the said Bill. Mr S.N. Misra was reported to have observed that the Bill did not cover the promises made during the elections. Mr P. Mavalankar, Mr Misra and Mr Somnath Chatterjee objected on the ground that the measure was not comprehensive enough.

Mr Mavalankar thought that the whole Bill (Forty-Second Amendment) ought to have been repealed, considering the obnoxious provisions and the ‘cavalier manner’ in which it had been brought. Walking into the trap “set by Mrs Gandhi’s party which might in the end decide not to extend their support to it at all Mr Chatterjee, repealed lock, stock and barrel.

The Janata Party’s stand was much more absolute. Its manifesto had argued that to call the amendment an amendment was a misnomer. It was a radical transformation of a nice constitution into a monstrosity.

The other parties also had strong views on the amendment. Congress for Democracy, through its leader Jagjivan Ram wanted to remove all the “black chapters engrafted on the Constitution”. The Communist party –Marxist too wanted to repeal the Forty –second Amendment Act.

Mr Shanti Bhushan, the then Law Minister, categorically declared that there was no question of the Janata Party and the government going back on the their commitments, Regarding the statement in the manifesto that the Constitution had been amended to ‘sanctify
total concentration of power in the hands of a single individual ‘and that the amendments would be rescinded Mr Shanti Bhushan said that the statement “did not apply to each individual clause but to most of the clauses.”\textsuperscript{446}

Supporting his contention, the Law Minister further observed that the Article on legal aid to poor could not be construed as a provision to sanctify the concentration of power and there was no point in first repealing all the provisions and then, through another exercise restoring some of the very provisions in the Constitution.

The Government, he observed, wanted discussions and consultations to precede any changes in the Constitution, “something that had not been done on the last occasion by the previous government,”\textsuperscript{447} He strongly refuted the charge that this was only “piece meal measure”. As a result of such consultations, the constitutional (43\textsuperscript{rd} Amendment) Bill was introduced unanimously which contained certain provisions, including altering the terms of the Lok Sabha and the State Assemblies from six years to five years. The second aim of the amendment was to repeal the amendments which had fortified Mrs Gandhi, the Prime Minister and the Speaker in respect of disputes about their election. Further it expressed a declaration of good faith by repealing Article 31D which dealt with anti-national activities.

\textbf{6.11. Restoration of Democracy and Paths to Constitutional Propriety}

One of the most important and eloquent passages in the election manifesto of the Janata Party ran as follows:

“The Constitution was amended to sanctify and institutionalise a total concentration of power in the hands of one individual---the Prime Minister. The authoritarian trends that had unfolded themselves over the past few years were embodied in the 42\textsuperscript{nd} Amendment which was bulldozed through Parliament. To call it an amendment is misnomer. It is betrayal of the testament of faith that the founding fathers bequeathed to the people and it subverts the basic structure of the 1950 Constitution. It vitiates the federal principle and upsets the fine principles of balance between the people and the Parliament, the Parliament and the Judiciary, the Judiciary and the executive, the States and the Centre, the Centre and the Government. It is the culmination of a conspiracy to devalue democracy that started with the erosion of the cabinet system, the deliberate and consummate scuttling of democratic

\textsuperscript{446} Ibid.
\textsuperscript{447} Ibid.
processes in the ruling party, and the concentration of all power in the hands of a leader who has been sought to be identified with the nation or even to be placed above it. “

The Janata Party faced the electorate with this manifesto and won the mandate. This electoral victory for the Janata Party reflected the growing resentment of the vast segments of the people, particularly in the urban centres and partly displayed the determination of the rural oligarchy to teach the ruling Congress a bitter lesson for the paltry concessions that were given to the poor in the name of 20-Point Programme.

Thus after rising to power the first task to which the new Government addressed itself, was to remove the distortions brought into the country’s orderly framework of amendments. However it was not possible for the Janata Party to amend the Constitution all by itself. It needed the support of the authors of the amendment that is the Congress Party. Meanwhile V.A. Seyid Muhammad, a lawyer took the view that the Congress should come forward and discuss each Janata proposal on its merits. On 5 September, 1977 Shanti Bhushan declared that he found the attitude of Congress Party pragmatic, flexible and encouraging. 448 But in the month of October the Congress Party was struggling with its own internal problems. This struggle so dominated the Party that the amendment was relegated to the background as a non-priority item at the Congress meeting at Delhi. This did not deter the Janata Party and it went with its plans.

It was on 26 September 1977, when Jyoti Basu called on the Union Law Minister Shanti Bhushan and suggested that there should have been pre-consultation on the Janata Party’s proposals to amend the Constitution.449 Two days later Shanti Bhushan addressed a consultative committee of M.P.’s attached to the Ministry of Law, Justice and Company of Affairs 450 and told them that all the parties including the Congress Party shall be consulted on the issue of amendments.

The amendment fetched various moods and opinions. While N.P. Nanda, M.P. was critical of the proposed Janata Amendment, Jaganath Rao, Congress M.P. on the contrary expressed his support. S.N. Chatterjee, a Communist Party Marxist, M.P. urged the government to repeal the amendment forthwith and begin afresh. M.R. Masani wanted the amendment to be rescinded “lock, stock and barrel” He expressed his ire in an article entitled

448 National Herald, September 7, 1977
449 Statesman, October 29, 1977
450 Statesman, November 4, 1977
“The Forty –Second Amendment must go”\textsuperscript{451}. He was so critical of it that he reduced it into writing where he said, “It is no wonder, then, that of the several attempts at backsliding in which the Janata Government has already indulged, the one that attracts the most widespread concern and alarm is the expressed intention of the Union Government to make a deal with the Congress Opposition and rescind only certain provisions of the amendment, leaving others on the statute book, thus giving legitimacy to that constitutional monstrosity.”

This discussion led to the constitution of a sub-committee of the Cabinet by the Government which consisted of Charan Singh, the Home Minister, Shanti Bhushan, Law Minister, L.K. Advani, Information and Broadcasting Minister and P.C. Chunder, Education Minister, who were together asked to have a fresh look at the Constitution.\textsuperscript{452} The Government wanted to formulate a new constitutional package without any hurry because any haste would render their objective futile. That is why the Law Minister said that the job was a complicated one and they had to protect against further assaults on democracy and democratic functioning. It was therefore a time consuming process.

The new government was in no mood to rush in the amendment. Further it was in no mood to discard the Forty –second Amendment root, branch and blossom. They conceded that notwithstanding its notoriety, the Amendment had some sound features which they felt could be retained. This was also a realistic and practical move on the part of the Government because it was not possible for the Government to pass the amendment on its own, particularly in the Rajya Sabha. They required the consensus and support of the opposition as well. All this paved the way for the beginning of a dialogue between the Government and the Opposition on the tentative proposals for constitutional reform worked out by the Cabinet sub –committee.

At almost the same point there was a digression observed in the stand taken towards 42\textsuperscript{nd} amendment by some Congress members. This change in the mind-set of the Congress members accentuated the appetite of the Government for reform. For instance, Dr. Mohammed, the head of the Congress Parliamentary Panel on Law and Constitution and several other Congress leaders became critical about the Forty-second Amendment and expressed their resentment. Dr. Mohammed remarked, “it is contended that the provision (to ban anti-national activities) will vest the Government with almost draconian and arbitrary

\textsuperscript{451} Indian Express, November 2, 1977
\textsuperscript{452} National Herald, September 6, 1977
powers, enabling it to totally deny civil liberties under Article 19 to individuals and associations opposed to it….There is a great force in these arguments and a ruthless Government may destroy and eliminate all political opposition whether by individuals or parties. It may establish a one-party dictatorship. The danger is great and should be guarded against. ” Meanwhile Soli Sorabji. Additional Solicitor General of India, put pressure on the Government by declaring that the Forty-Second Amendment Act was nothing short of a fraud on the Constitution which had liquidated democracy.”

Like this many provisions of the 42nd Amendment came in for criticism.

In the meantime the proposals were also discussed internally by the Janata Party organs as well. The Executive met for two days to discuss the proposals in detail. The executive approved the Governments proposal to restore the tenure of the Lok Sabha and the State Assemblies to five years and to delete the constitutional provisions that conferred sweeping powers on the State to deal with anti-national activities. The Janata Executive also wanted the Centre’s powers to send police forces to the states removed . The proposals to limit internal emergencies to cases of armed rebellion were also approved. Some of the newspapers like Hindustan times went ahead to call it a brave decision while the others like Times of India hoped that with some give and take there would be a broad consensus among all the political groups on the major changes that need to be made in the Constitution.

The Party executive, while discussing the official formulations for scrapping the obnoxious features of the Forty-second Amendment Act, gave a serious thought to the Preamble. The only change suggested in the course of the discussions was regarding the Preamble. The general feeling of the members was that the democratic character of the Constitution should be emphasized and highlighted. The members wanted to rearrange the words in the Preamble so that it could be read like “democratic, secular, socialist, sovereign, republic “ instead of “ soverign, socialist, secular, democratic, republic.” The members insistence on the democratic character emanated from their harrowing experiences during emergency. An attempt was also made to define socialist and secular. While Socialist was to mean “free from economic, social, religious and political exploitation” on the other hand secular was defined as “equal respect to all religions.” So one could see there was a

453 Statesman, September 26, 1977
454 Statesman October 25, 1977
455 Hindustan Times, 29 October, 1977
456 Times of India, 29 October, 1977
considerable difference in the manner in which the Janata party and the Congress party approached the two concepts while amending the Constitution.

The clause governing the relationship between the President and the Council of Ministers also came in for much detailed discussion. The forty-second amendment had expressed clearly the binding nature of advice tendered by the Council of Ministers on the President and the Janata Party did not introduce any changes in it. Nevertheless it was argued by some members that the binding nature of the advice should be abandoned as it was erroneous. The Law Minister however pointed out that under another provision in the Constitution, the Council of Ministers would lose the right to advise the President after its defeat in the Lok Sabha.

The executive endorsed the Government view that the Chapter on Fundamental Duties should be wiped out because it served no purpose. Also approved was the proposal seeking to restore to the Supreme Court the authority to determine the validity of elections of the President and Vice President which, under a change made during the emergency, was conferred on a special majority. The members readily agreed with the Government that the additions made to the Directive Principles under the 42nd Amendment Act be retained, but the blanket protection given to laws for giving effect to the Directive principles be changed.

Once the endorsement of the official proposals was made by the executive of the Janata’s Parliamentary Wing, the Government went in for a dialogue with the opposition parties in order that a consensus could be evolved. In course of the discussions, the representatives of the Government headed by the Prime Minister Desai and the leaders of the opposition parties in Parliament, reached agreement on a number of proposals for changes in the constitution. Both expressed unanimity in the abrogation of the article which empowered the Centre to deploy its armed forces in the states ‘without their consent’. All agreed in the new form of Article 226 dealing with the writ jurisdiction of the High Courts which was curtailed by the earlier act. The mutual give and take temper was noticeable on what was once a contentious issue. It was decided that the writ issuing powers of the High Courts be enlarged so as to provide remedies in cases where not only statutory rights but also non-statutory rights were violated. Pleas for writs were not to be entertained “for any other purpose” and this expression removed by the forty-second amendment, was not to be restored, for that would enable the courts to give a wide interpretation.
The Government agreed not to press their proposal to change the present arrangement under which the High Court could issue a certificate as to the fitness of a case for appeal to the Supreme Court but to avoid delays it was decided that the High Courts could pronounce upon the appeal while delivering the judgement, instead of considering it later when an application was made for that purpose. It was also suggested to delete article 229A under which the election disputes relating to the President, the Vice-President, the Prime Minister and the Speaker would be disposed off not by the Election Commission as in the case of other citizens, but by a special authority to be named by a statue. Thus the Election Commission’s power in this regard was restored. Agreement was reached with respect to other issues also.

This phase of agreement did not continue for long as fissures of disagreement started to emerge in some cases. One such case concerned the relationship between the Parliament and Judiciary. Under the 42nd Amendment there was no limit on the constituent power of the Parliament and no amendment made by it could be challenged in the Courts. The Government proposed to restore it to the original position. The government enunciated that the original position enunciated by the Supreme Court that the structure of the Constitution would not be touched by the Parliament, be retained. The Congress stood by the side of Parliamentary supremacy but its representative did not object to a suggestion made that the basic features be defined enumerated and incorporated in the Constitution.

In view of the fact that the Government was sincerely interested in a search of unanimity, the government decided to go ahead with a brief measure as a stop gap arrangement and then later with a comprehensive measure to do away with the obnoxious features of the forty-second amendment. The first measure came to be known as Forty-third Amendment Act came into force on April 13, 1978. The Act eliminated few amendments, most important being Article 31D which empowered the State to penalize anti –national activities and armed it with power to ban anti-national activities. The other deletions (article 32A, 13A, 144A and 228A”) aimed at removing the arbitrary restrictions on the jurisdictions of the Supreme Court and High Courts and the large benches and artificial majorities which were made essential for declaring a statute unconstitutional. Thereby the prior jurisdiction of the Courts was restored.

The 45th Constitutional Amendment Bill (renumbered as the 44th Amendment Bill) introduced in the Lok Sabha in May 1978 had far-reaching implications. The Law Minister said that the move will help, “the Constitution such that it will help people of this country in
fulfilling their aspirations and safeguarding their rights and to move towards a more glorious future.” It was a major cleaning up effort. It eliminated wholly the 38th and 39th amendments and the 42nd amendment largely but not wholly. Some of the undesirable features of the 42nd Amendment could not be eliminated owing to the successful resistance of the Rajya Sabha.

The 44th Constitution Amendment Bill seeking to scrap the emergency era distortions was unanimously adopted by the Lok Sabha. The bill incorporated safeguards against the arbitrary authority to promulgate emergency in the country and provided for recourse to a referendum for altering the basic structure of the Constitution which had been defined. The Centre’s newly acquired powers over educational matters and forest were also to be taken away. The new emergency clauses were going to ensure that an internal emergency could only be declared where the Government declaring it was under an armed rebellion. It was also decided that the imposition of President’s rule on the States would not last for more than a year and the basic freedom of the citizens would not be suspended during the emergency. And even if any rights were specially suspended, life and liberty could only be taken away by way of procedure established by law. Also it did away with some of the innovations of the 42nd Amendment Act like the provision for administrative tribunals, deleted fundamental right to property and restored education to the State sphere exclusively.

There were many other controversial amendments which invited immense attention. The proposal for referendum claimed the maximum attention with Janata Party, CPI(M) and the AIADMK for it, and the two Congresses and Muslim League against it. This controversial clause relating to referendum mustered a respectable number of votes, 314 for and 88 against.

However the Bill met with resistance in the Rajya Sabha and it was not an easy passage for it. An amendment to the Constitution requires a majority of two –thirds of those present and voting in both houses of Parliament. However the Janta Party lacked the requisite majority and so the Janata Party was forced to consider some compromises.

Despite this as many as five clauses were struck down. Of these three were harmless--the provision for appointment of administration tribunals, restoration of the subjects of education and forests to the State list, the definitions of the expressions secular and socialist in the Preamble.

The two clauses that were rejected by the Rajya Sabha were extremely important from the perspective of the democratic structure of the polity. One was clause 8 of the 44th
amendment bill which sought to restore the primacy of Fundamental rights over Directive Principles. The Rajya Sabha also discarded the clause which aimed at amending article 368 of the Constitution in order to identify the fundamental rights, free and fair elections and independence of judiciary as fundamental features of the Constitution and provided for endowing the electorate with sovereign power to adopt or reject in a referendum any amendment seeking to abridge or abrogate any of the aforesaid fundamental features. Besides clauses 45 of the 44th amendment bill removed clauses 4 and 5 which the 42nd amendment inserted in article 368 with the purpose of denying the courts the power to pronounce upon the validity of constitutional amendments as well as that of nullifying the Supreme Court’s decision in the Keswanand Bharati case as to the immutability of the basic structure of the Constitution.

The Bill amended by the Rajya Sabha was sent to the Lok Sabha again. The government did not oppose the changes suggested by the Upper House. Thus some vital clauses of the Bill were virtually sacrificed in order to arrive at a compromise. While defending the Janata action a Cabinet Minister said, “Half a loaf is better than no loaf” as the Government foresaw the future. There was a marked shift observed in the political will displayed by the Janata Party when the Bill was being processed. Actually the political reality both inside the Janata Party and outside served to have a clear break with the past. The strain emanating from the conglomerate and coalitional character of the Janata Party had certain dysfunctional consequence as well. Its enormously heterogeneous support base and therefore the absence of a clear clientele dimension had been greatly responsible for its policy of drift and vacillation. Actually the Janata Party had a variegated interest structure at the base. At the level of leadership also the incompatibility in terms of personality structure, interest orientation and overall perspective had been quite conspicuous. All this served to breed strain in the working structure of Janata Party and to prevent the party form developing an agreed view of its relation with the opposition and of the nature and dimension of social, economic and constitutional change. Again the absence of the Janata Party’s majority in the Rajya Sabha and the legal requirement for Rajya Sabha’s concurrence of proposals for constitutional change compelled it to come to terms with the opposition parties particularly the Congress and to seek a wide measure of consensus. This had perverted the Government from going ahead with its pledge to rescind the 42nd amendment.

It retained some of the obnoxious elements of the 42nd amendment. One is article 51A which enumerates the Fundamental duties of the citizens. This whole provision was drafted
by Mrs Gandhi’s the then Law Minister H.R. Gokhale. Similarly the new clause inserted by 42nd Amendment into article 74 had been retained, notwithstanding the fact that the head of the State has an unalterable right to emphasize dissent in the larger interest of the body politic. Thus the 44th amendment bill has not presented a complete break with emergency rule and opens a new vista to effective constitutional rule. Some of the unsavoury features of the 42nd amendment have been retained,

Nevertheless the Janata Party had been successful in restoring the legal rights of the citizens. To that extent, it had been successful in bringing back democracy and created a bulwark against usurpation of power. The most significant measure which the Janata planned was in the direction of pulverization and decentralisation of power. The election manifesto of the party said, “A high degree of centralization or the concentration of power is inconsistent with democracy. The party believed in a polity that ensures decentralisation of economic and political power.” The party tried to spell it out further and in more positive terms in its economic policy statement of November 1977 which said that ‘The Janata Party is of the view that there is need to develop an alternative both to capitalism and communism, The party believes in treading the path of Gandhian socialism based on economic and political decentralization.” The intention was to protect the essential values of Indian democracy against usurpation of power and to provide for a meaningful participation of the people in the decision making processes.

After Janata’s victory, the job of repairing the constitution was supervised by the hard-working law minister Shanti Bhushan. The key amendment to be overturned was the 42nd. To replace its ‘defiling’ provisions, two fresh amendments were drafted, which reverted the term of Parliament and state assemblies to five years, restored the right of the Supreme Court to adjudicate on all election matters (that of the prime minister included), limited the period of President’s Rule in the states, made mandatory the publication of parliamentary and legislative proceedings and made the promulgation of a state of emergency much more difficult. Any such act had now to be approved by a two-thirds majority in Parliament, had to be renewed every six months after a fresh vote on it, and had to be in response to an ‘armed rebellion’ (rather than a mere ‘internal disturbance’, as was previously the case). These changes were intended to curb the arbitrary powers of the executive and to restore the rights
of the courts; in effect, to restore the constitution to what it was before Mrs Gandhi’s emergency-era amendments.457

The drafting of these amendments took time, because of the demands of legal precision and the need to ensure the kind of cross-party support that would make their passing in both Houses of Parliament possible. As these restorations were being debated, the press was reporting avidly on the Shah Commission, while a string of books and memoirs documenting the excesses of the emergency were being published. In this climate of opinion, even the Congress was in no mood to defend the changes in the constitution that its leaders had wrought. That damage was now undone by the freshly drafted 44th Amendment. When this was passed by a comfortable majority on 7 December 1978, among those voting for it were those two old enemies, Morarji Desai and Indira Gandhi.458

The Janata government took immediate steps to dismantle the authoritarian features of the Emergency regime and to restore liberal democracy. It restored Fundamental Rights and full civil liberties to the Press, political parties and individuals. Through the 44th Constitutional Amendment Act, it modified the 42nd Amendment passed during the Emergency, repealing those of its provisions which had distorted the Constitution. The right of the Supreme Court and High Courts to decide on the validity of Central or state legislation was also restored.459

Many of the members of the Janata Party were not happy with the 10 clause Forty – Third Amendment Act. They wanted that a more comprehensive Bill should be brought forth to repeal the Forty-second Amendment Act lock, stock and barrel. That was done on 15 May 1978 when the Forty –fourth Constitution Amendment Bill was introduced by Law Minister Shanti Bhushan in the Lok Sabha. This was adopted on 23 August of the same year by 355 members in favour and none against. The Rajya sabha deleted from it five clauses –8, 35, 44, 45 and 47.460

Clause 8 sought to confine the protection afforded by Article 31C only to laws giving effect to the policy of State towards securing the Directive Principles specified in clauses (b) and (c) of Article 39. This would have the effect of restoring that Article to the form in which it stood before the amendment made to that Article by the 42nd Amendment Act. The forty-second Amendment had inserted a new part XIVA in the Constitution, and that Part

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457 Ramchandra Guha, p.388
459 Bipin Chandra et. al., op.cit., p.332
460 D.C. Gupta, op. cit., p.447
had authorized Parliament to set up administrative tribunals for the purpose of settling disputes and complaints involving civil servants working under the Union and state governments or working under any local or other authority within the authority within the territory of India under the control of the Government of India. The forty-fourth Constitution Amendment Bill sought to delete this part but the Rajya Sabha did not agree to this.

Article 44 had sought to amend Article 366 to include therein provision for defining the expression secular and socialism as used in the Preamble of the Constitution. This was omitted by the Rajya Sabha. Article 45 sought to amend Article 368 relating to the power of the Parliament to amend the Constitution. Apart from omitting clauses (4) and (5) which had been inserted by the 42nd Amendment Act, the Bill provided for referendum. It provided that any amendment of the Constitution which would have the effect of:

a) Impairing the secular or democratic character of Constitution; or

b) Abridging or taking away the rights of citizens under Part III; or

c) Prejudicing or impeding free and fair elections to the Lok Sabha and Legislative Assemblies of the States on the basis of adult suffrage; or

d) Comprising the independence of the judiciary, would require to be approved by the people of India at a referendum. The Rajya Sabha did not agree to this and omitted it from the proposed Amendment Bill.

Article 47 of the Forty-fourth Amendment Bill providing for the inclusion of education and forests in the state legislative list was also dropped and both of these subjects continued to remain in the Concurrent list.

The Bill was considered by the Lok Sabha on 7, 8, 9, 10, 11, 12, 21, 22, and 23 August and, as amended, passed on 23 August 1978. The Bill, as passed by the Lok Sabha, was considered by the Rajya Sabha on 28, 29, 30, and 31 August and passed with amendments on 31 August 1978. The Bill, as amended by the Rajya Sabha, was considered by the Lok Sabha on 6 and 7 December 1978. Amendments made by the Rajya Sabha were agreed to by the Lok Sabha on 7 December 1978. The Bill, as amended by the amendments agreed to, was passed by the Lok Sabha on 7 December 1978. Clauses 1, 15 and 26 of the Bill were adopted by the Lok Sabha on 22 August 1978 with formal amendments replacing the word “Forty-fifth” by the word “Forty-fourth”. These clauses, as amended, were adopted by the Rajya Sabha on 31 August 1978. Clauses 2 to 14, 16 to 20, 23 to 25, 27 to 40 and 42 to 49 were adopted by the House in the original form.

The remaining clauses, which underwent certain changes, are detailed below in the context of the relevant articles of the Constitution which were sought to be amended. The
Bill, after ratification by the States, received assent from then President Neelam Sanjiva Reddy on 30 April 1979, and was notified in The Gazette of India on the same date. Sections 2, 4 to 16, 22, 23, 25 to 29, 31 to 42, 44 and 45 came into force on 30 April 1977. Sections 17 to 21 and 30 came into force on 1 August 1979, and Sections 24 and 43 came into force on 6 September 1979.\footnote{Constitution Amendment in India, Lok Sabha Secretariat. pp. 183–196. Retrieved 27 May 2015.}

6.12. An Overview of the Act

In the statement of Objects and reasons for the above Act, Law Minster Shanti Bhushan said that recent experience had shown that Fundamental Rights, including those of life and liberty, granted to citizens by the Constitution “ are capable of being taken away by a transient majority. It is therefore, necessary to provide adequate safeguards against recurrence of such a contingency in future and to ensure to the people themselves an effective voice in determining the form of government under which they are to live.”\footnote{Quoted in Paras Diwan, Amending Powers and Constitutional Amendments, Deep and Deep Publications, New Delhi, 1997, p.350}

1. The Act provided that the right to property would cease to be a Fundamental Right and would only be a legal right. Sub-clause (f) of clause (1) of article 19 guaranteeing to citizens the right to acquire, hold and dispose of property and article 31 relating to compulsory acquisition of property have been omitted. This meant that the law involving the right to own property in any form became easier to amend whereas fundamental rights were difficult to amend.\footnote{D.C.Gupta, Indian Government and Politics, Vikas Publishing House, 2009, p.448}

Article 30 has been amended so as to provide for a safeguard relating to acquisition of property of an educational institution established and administered by a minority to the effect that the State shall ensure that the amount fixed by or determined under a law providing for the compulsory acquisition of such property is such as would not affect the right of minorities to establish and administer educational institutions of their choice. New article 300A provided that no person shall be deprived of his property save by authority of law.\footnote{Section 2, 4, 6 and 34}

2. A new Directive Principle has been inserted in article 38, relating to the directive to the State to secure a social order for the promotion of the welfare of the people to the effect that the State shall strive to minimize inequalities in income and endeavour to
eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.  

3. Provisions as to preventive detention in article 22 have also been amended:
   (a) for restricting the maximum period for which a person may be detained without obtaining the opinion of Advisory Board from three months to two months;
   (b) for providing that an Advisory Board will consist of a Chairman and not less than two other members, that the Constitution of an Advisory Board will be in accordance with the recommendations of the Chief Justice of the appropriate High Court (that is, the High Court for Delhi in the case of detention orders made by the Central Government or officers subordinate to the Central Government; the High Court for a State in the case of detention orders made by a State Government; and such High Court as may be specified by or under law made by Parliament in the case of detention orders made by the Administrator of a Union territory or officers subordinate to him), and that the Chairman of an Advisory Board will be a serving Judge of the appropriate High Court and the other members of an Advisory Board will be serving or retired Judges of any High Court; and
   (c) for doing away with the power of Parliament to provide for preventive detention without reference to an Advisory Board for a period longer than the maximum period laid down in this regard.

4. The new article substituted for article 71 restored the jurisdiction of the Supreme Court to enquire into doubts and disputes in respect of the election of a President or Vice-President. The Constitution (Thirty ninth ) Amendment Act, 1975 had substituted that Article by a new Article leaving it to Parliament to determine the authority or body which may inquire into such doubts and disputes. Clause 10 of the 44th Amendment Act however restored the position as it obtained before the Constitution (Thirty –ninth Amendment) Act, 1975 came into force.

5. Article 74(1), which provides that the President will act in accordance with the advice of the Council of Ministers, has been amended to provide that the President may

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465 Section 9
466 Section 3
467 Section 10
468 D.C. Gupta, op.cit., p.449

~ 327 ~
require the Council of Ministers to reconsider any such advice but that the President will have to act in accordance with the advice tendered after such reconsideration. Thus sending advice was a new power added to the list of the powers enjoyed by the President though this could be done by him only once. Nevertheless if a Bill had been sent for reconsideration that will itself have an impact on the activity of the Government. The President vide his position can act as a guardian of the Indian political system and he can exercise his right to advise, to encourage, get information, send messages and Bills for reconsideration. A dynamic President like A.P.J. Kalam created an instance when he returned the Office of Profit Bill to the Union Parliament for reconsideration in 2006/7.

6. Clause (4) of article 77 and clause (4) of article 166, relating respectively to the Government of India and the State Governments, have been omitted, thus restoring the power of Courts to compel production of rules relating to the transaction of business of the Union and the State Governments.

7. Articles 83 and 172, relating respectively to the House of the People and the State Legislative Assemblies, have been amended to restore the terms of the House of the People and the State Legislative Assemblies to five years.

8. Articles 103 and 192, relating respectively to decisions on questions as to disqualification of members of Parliament and of State Legislatures, have been substituted to provide that the decision on the question as to disqualification, by the President in the case of a member of Parliament and by the Governor in the case of a member of a State Legislature, shall be in accordance with the opinion of the Election Commission.

9. Articles 105 and 194, relating respectively to the privileges of Houses of Parliament and of State Legislatures, have been amended to omit the reference to the British House of Commons in these articles and to provide instead that the powers, privileges and immunities of the House and of the members and committees thereof will be those immediately before the coming into force of the amending provisions of the present Act.

469 Section 11  
470 Section 12 and 23  
471 Section 13 and 24  
472 Section 14 and 25  
473 Section 15 and 26
10. The newly inserted article 134A has provided that the High Court should consider the question of granting of a certificate for appeal to the Supreme Court under articles 132(1), 133(1) or 134(1) immediately on the delivery of the judgment, decree, final order or sentence concerned, on the basis of an oral application by or on behalf of the party aggrieved or, if the High Court deems it fit so to do, on its own motion.474

11. The provisions in article 132 have been amended to provide that on the certificate of the High Court under article 134(A), an appeal shall lie to the Supreme Court.475

12. Article 139A has been substituted. It provides that where the cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts, and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself. The article, as amended, also provides that the Supreme Court may after determining the questions of law return any case withdrawn, to the High Court for disposal thereof, in conformity with the Supreme Court’s judgment.476

13. Sub-clause (c) of clause (2) of article 217, making distinguished jurists eligible for appointment as Judges of High Courts, has been omitted.477

14. Article 226, relating to the writ jurisdiction of the High Courts, has been amended to restore to the High Courts their power to issue writs for any other purposes besides the enforcement of Fundamental Rights. Further, under the amended article 226, any party against whom an interim order is made ex parte, or in proceeding relating to, a writ petition may make an application for the vacation of such order, and if the application is not disposed of within two weeks from the date of its receipt by the High Court or from the date on which the copy of such application is so furnished, the interim order will stand vacated.478

15. Article 227 has been amended to restore to a High Court its power of superintendence over all courts and tribunals within its territorial jurisdiction.479
16. Article 257A, relating to assistance by the Central Government to States by deployment of armed forces or other forces of the Union, has been omitted.\(^{480}\)

17. Article 329A, relating to special provisions as to calling in question elections to Parliament in the case of Prime Minister and Speaker, has been omitted.\(^{481}\)

18. A Proclamation of Emergency under article 352 had virtually the effect of amending the Constitution by converting it, for the duration, into that of a Unitary State and also give it the power to suspend the rights of the citizen to move the Courts for the enforcement of Fundamental Rights—including the right to life and liberty. Adequate safeguards were, therefore, necessary to ensure that this power is properly exercised and not abused. It was, therefore, proposed that a Proclamation of Emergency can be issued only when the security of India or any part of its territory is threatened by war or external aggression or by armed rebellion.\(^ {482}\) Internal disturbance not amounting to armed rebellion would not be a ground for the issue of a Proclamation.

Article 352, relating to Proclamation of Emergency, has been amended in several respects.

a. In the first place, the ground of “internal disturbance” had been substituted by the ground of “armed rebellion”.

b. In the second place, it has been provided that the President will not issue a Proclamation of Emergency unless the decision of the Union Cabinet that such a Proclamation may be issued has been communicated to him in writing.

c. In the third place, it has been provided that a Proclamation of Emergency will have to be approved within a period of one month (instead of two months) by resolution of both Houses of Parliament and that such resolution will have to be passed by a majority of the total membership of each House and by a majority of not less than two-thirds of the members present and voting in each House (instead of a simple majority).

d. In the fourth place, it has been provided that for the continuance of the Proclamation of Emergency, approval by resolutions of both Houses will be required every six months.

e. Finally in the fifth place, it has been provided that the President shall revoke a Proclamation issued under clause (1) of article 352 if the House of the People passes a

\(^{480}\) Section 33

\(^{481}\) Section 36

\(^{482}\) Constitution Amendment In India, The Constitution (Forty-Fourth Amendment) Act, 1978, Objects And Reasons Of The Bill, Lok Sabha Secretariat, p.183
resolution for its disapproval or for disapproving its continuance. It has also been provided that one-tenth of the total membership of the House of the People may give notice (to the Speaker, if the House is in session, or, to the President, if the House is not in session) of their intention to move a resolution for disapproving or for disapproving the continuance in force of such Proclamation, for a special sitting of the House for the purpose of considering such resolution.

The provisions in regard to revocation of a Proclamation of Emergency pursuant to a resolution by the House of the People to that effect and holding of a special sitting of the House for considering the question of continuance of a Proclamation of Emergency will apply in relation to a Proclamation or varying such Proclamation as well. Clause (5) of article 352, making the satisfaction of the President as to existence of a grave emergency necessitating the issue of a Proclamation of Emergency final, has been omitted.\textsuperscript{483}

19. Article 356, relating to the President’s power to issue a Proclamation in case of failure of constitutional machinery in a State, has been amended. Under the article as amended, such a Proclamation will, upon its being approved first by resolution by both Houses of Parliament, continue for six months from the date of issue of Proclamation (instead of one year from the date of the second of the resolutions approving the Proclamation) and upon its being approved likewise on a subsequent occasion, it will continue for a further period of six months (instead of one year). However, a resolution with respect to the continuance in force of a Proclamation under the article for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless a Proclamation of Emergency is in operation in the whole of India or in the whole or any part of the State at the time of the passing of such resolution and the Election Commission certifies that the continuance in force of the Proclamation during the period specified in such resolution is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned.\textsuperscript{484}

20. Article 358, relating to the suspension of the provisions of article 19 (regarding citizens’ freedoms of speech, assembly, movement, residence and settlement, association and occupation) during Emergencies, has been amended.\textsuperscript{485} Under the

\textsuperscript{483} Section 37  
\textsuperscript{484} Section 38  
\textsuperscript{485} Gokulesh Sharma, Human Rights and Legal Remedies, Deep and Deep Publications, 2000
article as amended, the provisions of article 19 will become suspended only in the
case of a Proclamation of Emergency issued on the ground of war or external
aggression and not in the case of a Proclamation of Emergency issued on the ground
of armed rebellion. Further, the suspension of article 19 under article 358 will not
apply in relation to any law which does not contain a recital to the effect that such law
is being made in relation to the Proclamation of Emergency or to an executive action
taken otherwise than under a law containing such a recital. During Janata rule
Parliament also repealed the Defence of India Rules and the Maintenance of Internal
Security Act.

21. Article 359, relating to suspension of the enforcement of the rights conferred by Part
III of the Constitution during Emergencies, has been amended in two respects. The
first amendment is for providing that the enforcement of rights under article 20
(relating to protection in respect of conviction for offences) and article 21 (relating to
protection of life and personal liberty) cannot be suspended. The second amendment
is for providing that the suspension of enforcement of any right under the article will
not apply in relation to any law which does not contain a recital to the effect that such
law is being made in relation to the Proclamation of Emergency in operation or to any
executive action taken otherwise than under a law containing such a recital.

22. Article 360, relating to Financial Emergency, has been amended to provide that the
Proclamation may be revoked or varied by subsequent Proclamation. The
Proclamation shall be laid before each House of Parliament, and shall cease to operate
at the expiration of two months unless approved by a resolution of both the Houses of
Parliament before that. Clause (5) of article 360 which makes the satisfaction of the
President final and conclusive as to the arising of a situation whereby the financial
stability or credit of the country or any part thereof is threatened, has been omitted.

23. New article 361A has been inserted providing for constitutional protection from civil
or criminal proceedings in any Court in respect of publication of a substantially true
report of the proceedings of Parliament and of State Legislatures. The protection will
not be available in respect of proceedings of secret sittings.

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486 Section 39
488 Section 40
489 Section 41
490 Section 42
24. Ninth Schedule, specifying Acts and Regulations which will be deemed not be void on the ground of any inconsistency with the provisions of Part III of the Constitution relating to Fundamental Rights, has been amended for omitting Entries 87 [The Representation of the People Act, 1951, the Representation of the People (Amendment) Act, 1974 and the Election Laws (Amendment) Act, 1975], 92 (The Maintenance of Internal Security Act, 1971) and 130 (The Prevention of Publication of Objectionable Matter Act, 1976).\(^{491}\)

6.13. Repercussions of 44\(^{th}\) Amendment Act

This is a comprehensive amendment. This is so important in so far as it provides anti-dote to the venomous Emergency era amendments. When both Emergency and Indira Gandhi became dysfunctional in 1977, 44th amendment of the Constitution came to be enacted by the Janata Government mainly to relax the fetters put by the 42nd Amendment Act, 1976. 44th amendment is important in a way that it ensured that the 1975 emergency would remain only as an aberration and not become a tradition in this country which otherwise exhibits strong democratic credentials.

The havoc done by the provisions of emergency deteriorated the notion of Indian democratic framework to a great extent. In this regard the 44th constitutional is an eminent step to restore the basic values of our constitution. The constitutional amendment deals with in an adept manner to make Indian polity more democratic. It made wide scale changes to the Indian Constitution to make the Indian polity more democratic. Excepting the changes made in Article 31C, Article 368 and the State List and Concurrent List, all the aberrations in those amendments were set aside to restore the status quo ante.


\(^{491}\) Section44
The major changes brought by the Act include inter alia:

a) Deletion of the right to property from the chapter of Fundamental Rights;
b) Constitutional immunity of the Indian Press against legal action for publication of proceedings of Parliament and State Legislatures restored;
c) Modification of the preventive detention provisions of Article 22;
d) Restoration of the terms of Parliament and the State Assemblies to five years;\(^\text{493}\)
e) Provision for the President to act in accordance with the advice of the Council Of Ministers once he has asked for reconsideration of such advice;
f) Omission of reference to the British House of Commons in the provisions for parliamentary privileges in Articles 105 and 194;
g) Power of the President and the Governor to promulgate Ordinance during the recess of the legislature;
h) Several safeguards against proclamation of emergency in future;
i) Emergency can be declared by the President on the advice of the whole cabinet in writing and has to be later adopted by the Parliament with 2/3 majority within one month of the proclamation;\(^\text{494}\) This equates the approval to an amendment of the Constitution and provides for a fool proof safeguard against improvident use of the provision. Once approved, it remains for six months, unless revoked earlier by the President. Thus after every six months Parliament can review the Proclamation. Previously the executive could prolong the declaration up to three years.\(^\text{495}\)
j) Appointments and conditions of office of High Court judges;
k) Renovation of provisions for deployment of armed forces by the Center for assistance to States;\(^\text{496}\)

6.13.1. Restoration of original sanctity of constitution

The 42\textsuperscript{nd} Amendment Act immensely disfigured the Constitution. But all its distortions were corrected by its successor amendment which restored the term of Lok sabha and state assembly to 5 years, the President and the Governor were empowered to decide on the question of disqualification of MP and MLA, and the Supreme Court was re-empowered

\(^{493}\) N. Jayapalan, Indian Administration, Atlantic Publishers, 2001, p.84
\(^{494}\) Ibid.,
\(^{495}\) S.G. Deogankar, Parliamentary System in India, Concept Publishing Company, 1997, p.27
\(^{496}\) The Statesman, June 20, 1979
to decide on election of President and Vice President. All these moves together restored the tarnished sanctity of the Constitution.

6.13.2. Repeal of 257A

The Government headed by Shri Morarji Desai could have easily left the article 257A untouched and could have retained the powers conferred by the previous regime. But as constitutional propriety dawned on them they shed the extra power vested in them by repealing Article 257A through clause 33 of the 44th Amendment Act, 1978. By this noble action they not only restored the dignity of the Constitution but also the self-respect and dignity of all the Chief Ministers. This was also a great move towards establishing faith in cooperative federalism.

If the Morarji Desai Government had not put the clock back to the pre-Emergency position, none of the Chief Ministers today would have been secure or free from the proverbial sword hanging above their heads. The repeal was a much–awaited move because in case if it would have been allowed to continue, then in that case the federal structure of the country would have been sabotaged perennially.

6.13.3. Dignity of the Office of the President restored

Through the 44th Constitutional Amendment Act 1978, Clause11, the Morarji Desai Government inserted the following proviso to Article 74 ‘provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such consideration.’ The president was now allowed the privilege of requesting the Council of Ministers to review a particular advice it has rendered to the president.497

Through this advice not only the dignity of the office of the President was restored to its previous glory but it also gave an opportunity to the President to assert himself by differing with the Council of Ministers and the Prime Minister. Through this newfound strength given to the President, he could also put a mild amendment on any Executive rashness. Of the British King it is said that he has the power to advise, warn and encourage. The President can also now exercise this prerogative.

After the 44th Amendment Act, the Council of Ministers headed by the Prime Minister, was made to think twice before forwarding any subject of a controversial nature for the assent of the President. This led to a very healthy result because whenever the President returns the advice given to him by the cabinet, for reconsideration, naturally the whole country will come to know that the President is not happy with such advice tendered to him.

For instance it was because of the 44the Amendment Act that Shri K.R. Narayan courageously returned the advice tendered to him by the Union Cabinet for dismissing the UP Government in 1998 and the Bihar Government in 1999 under Article 356. on both these occasions, the President received encomiums from both the press and the electronic media for asserting himself. This way a great distortion in Article 74 was checked from running rampant.

6.13.4. Individual Freedom triumphs

Many far-reaching changes have been made in the Emergency provisions (articles 352, 356, 358, 359 and 360) to provide for substantive and procedural safeguards against their misuse. In fact, the ‘express’ deletion of clause (5) of article 352 as introduced by the Thirty-eighth amendment, may even imply that the exercise of Emergency power under this article is not barred from judicial scrutiny. It was expressly provided by amendments to Articles 358 and 359 that Article 21 could not be suspended during an emergency, and Article 19 could not be suspended during an internal emergency. These amendments have effectively ensured that democracy will never be taken hostage for political opportunism. Further the provision of article 22 was modified to provide for greater and tangible safeguards in the operation of preventive detention laws.

6.13.5. Mutilated Courts relaxed

The Janata Government was committed to reducing arrears in the various High Courts in particular and in the legal system as a whole. The act gave the Emergency battered Courts a new lease of life. The new proposals sought to give the Supreme Court and the High Court powers to invalidate both state and central statutes even though there was a suggestion that the size of the constitutional benches when deciding certain matters may be laid down. The

498 Because of the 44th Amendment, Indian Express
new Tribunal system was to be disbanded even though the idea of retaining a tribunal for service matters was supported. Similarly while the Supreme Court supervisory powers over tribunals and such bodies were to be restored, their writ powers would still be subject to the alternative remedy rule.

6.13.6. Right to Property deleted as a Fundamental Right but continues to be a Human Right

Apart from acting as a corrective to the 42nd Amendment Act, the 44th amendment is registered in the annals of the Indian constitutional history for deleting the Fundamental right to Property. Today right to property is to be found in Article 300A as a legal or statutory right499 which ensures that a person cannot be deprived of his property by an executive fiat. In other words, while no one can arbitrarily take away the plot of land you thought you owned when you paid a lot of money to buy your new house, or the land you were handed by your parents, you do not have an inalienable right to it, and your title deed or khata document, is subject to certain conditions. The right in property can be curtailed, abridged or modified by the State only by exercising Legislative power. Further person cannot be deprived of or dispossessed of his property by the use of force or with help of police. The State can resume the land only in accordance with law and legal steps. Under this Article Right to property is now a human right as well a constitutional right. Hence it cannot be taken away except in accordance with law.500 Thus even though Right to property ceases to be Fundamental right, it still continues to be a human right.501

The Supreme Court has interpreted right to property in different perspectives. In P.T. Munichikkanna Reddy v. Revamma,502 the Supreme Court of India has held that the right to property is not just a statutory right but is also a human right. The Indian Supreme Court borrows this stance from the decision of the European Court of Human Rights (ECHR) in J.A. Pye (Oxford Ltd) v. United Kingdom503 where the ECHR took the concept of adverse possession very unkindly. Declaration of the Rights of Man and of the Citizen, 1789, enunciates right to property under Article 17504 Moreover, Universal Declaration of Human Rights, 1948 under Section 17(i) and 17(ii) also recognizes right to property.505

501 State of Kerala v. People’s Union for Civil Liberties, (2009) 8SCC 46
503 2005 ECHR 921.
504 Article 17: “Since the right to property is inviolable and sacred, no-one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid.” 111 17(i)
Right to Property while ceasing to be a Fundamental Right however be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law. Deprivation of property may take various forms such as destruction or confiscation or revocation of a proprietary right granted by a private proprietor seizure of goods or immovable property from the possession of an individual or assumption of control of business in exercise of the police power of the State.

Article 300A reduced the legal remedies available to citizens in case their properties were to be taken over. They could now approach only the High Court under Article 226, and not the Supreme Court under Article 32 - which was faster and more effective, being a remedy for transgression of a “fundamental right.”

Recently the Supreme Court held that under Article 300A, no person can be deprived of his property save by authority of law. Acquisition of land is an act falling in the purview of eminent domain of the State and it essentially relates to the concept of compulsory acquisition as opposed to voluntary sale. The provision of land Acquisition Act provides a complete machination for the deprivation of property, in accordance with law, under the Act. Justifiability and fairness of such compensation is subject to Judicial Review the within confines of the four corners of the Act.

The Court also held that right to property is a very important right since without right to some property, the other rights becomes illusory.

It needs to be noted here that while Article 300A not being a fundamental right, does not enable a party to challenge the validity of a law under Article 32 on the ground of contravention of Article 300A, nevertheless the court should so interpret a statute if possible that it may not have the effect of depriving a person of his property without authority of law.

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Everyone has the right to own property alone as well as in association with others. (ii) No-one shall be arbitrarily deprived of his property.”

505. 2008 SC 1797; (2008) 5 SCC 176

506. Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd and Ors., AIR 2007 SC 2458

507. Chiranjit Lal v. Union of India, (1950) SCR 869 (925)


511. Land Bill is placebo; real cure is restoring Right to Property available at http://www.firstpost.com/business/economy/land-bill-is-placebo-real-cure-is-restoring-right-to-property-1081261.html


514. Misra and Co. v. Hindustan Aeronautics, AIR 1986 (para.7) (DB)
Thus even though a statute does not provide for restitution of property to a person who has been deprived of his property by an order purported to have been made under a statute which is a nullity, the Court may order restitution in the exercise of a power ancillary to its power to declare the impugned order as ultra vires the statute and a nullity.\textsuperscript{515}

The amendment expanded the power of the state to appropriate property for social welfare purposes. In other words, the amendment bestowed upon the Indian socialist state a license to indulge in what Fredric Bastiat termed legal plunder. In Basanthi Bai\textsuperscript{516} and other cases\textsuperscript{517} Court interpreted Art.300-A and observed that, it is the true and sensible interpretation of values and social philosophy with a zeal to bring a balance between individual interest and social interest. The spirit reflected in these judicial pronouncements makes it clear that interpretation of Art.300-A will always be based on the Notion that “\textit{Salus Populi Est Suprema Lex}” (the welfare of the people is the paramount law) and “\textit{Public Necessita Est Major Quam}” (Public necessity is greater than private necessity)

Section 5A (right to make objection) of the Land Acquisition Act, 1894 confers a valuable right in favour of the person whose lands are sought to be acquired and having regard to the provision contained in Article 300A, is held to be akin to a Fundamental Right.\textsuperscript{518}

It is held that the right to acquire property under Land Acquisition Act is coupled with a duty to pay compensation and it is also an implied duty that the compensation be paid as expeditiously as possible. Any delay in payment will also mean a violation of Article 300A.\textsuperscript{519}

The proceedings for acquisition must also be completed without any unreasonable delay. Taking possession of land without any acquisition will amount to violation of this Article and such action on the part of the Government will amount to “high-handed activity.”\textsuperscript{520} Further it is the duty of the police of the State to give necessary protection for protecting the property from interference by lawless elements and unauthorized persons and hence High Court is competent to issue mandatory directions to the State police for providing necessary and adequate police protection.\textsuperscript{521}

\textsuperscript{515} Ibid.,
\textsuperscript{516} State of Maharashtra v. Basanthi Bai AIR 1986 SC 1466
\textsuperscript{518} Hindustan Petroleum Corpn. Ltd., v. Darius Shapur Chand AIR 2005 SC 3520 : (205) 7 SCC 627
\textsuperscript{519} Billa Linga Reddy v. R.D.O, AIR 1996 AP 31
\textsuperscript{520} SriNath Educational Society, Sisra v. State of U.P., AIR 1996 Act 187
\textsuperscript{521} Howrah Mills Co. Ltd., v. Mohd. Shami, (2006) 5 SCC 539
Though Article 300A prohibits deprivation of property without authority of law, the Court cannot direct that the person deprived must be rehabilitated. Neither this Article nor Land Acquisition Act speaks of the same. But if the Government comes forward with a proposal for rehabilitation, the Court can issue necessary directions. 522

The net effects which in some way can also be called as regressive effects of the 44th amendment can be enunciated as follows:

a) The Right to property has ceased to be a Fundamental Right, Article 19(1) (f) having being repealed and nobody can move the Supreme Court under Article 32 on the ground of his violation of his right to property.

b) Only cl.(1) of original Article 31 has been incorporated in Article 300A. This means that if an individual’s property is taken away by executive action, appropriate remedy from the ordinary courts and the High Court under Article 226, but not by an application to the Supreme Court under Article 32 for the provision in Article 300A to being placed outside Part III, does not confer any Fundamental Right.

c) If the appropriate Legislature makes a law depriving a person of his property, he can no longer challenge the constitutionality of such law as constituting an unreasonable restriction under Article 19(1)(f) because Article 19 (1) (f) has been repealed.

According to learned author and eminent jurist H.M. Seervai, the 44th Amendment has been made without realizing:

1) Close relation of property to other fundamental rights;
2) the effect of this change on the Legislative power to acquire and requisition of property;
3) the correlation of Fundamental rights and Directive Principles. 523

According to another learned author M.P. Jain, “It might have been better for the constitutional growth of the country if early in the day the right to property had been abolished in a direct and straightforward manner by repealing Article 31(2) which has been the main source of the trouble. But instead of that, constitutional amendments were passed adding exceptions upon exceptions on Fundamental Right to Property, and even some novel techniques of Constitutional Amendment like Article 31B and 31C have been adopted causing a number of distortions in the Constitution. In the process not only the Right to


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Property, but several other rights like Article 14 and 19 have been adversely affected. All this happened under the socialist doctrine.\textsuperscript{524}

There is no gainsaying the fact that for the growth of wealth and capital in the society, some protection to private property is absolutely essential. A strategy which the Supreme court can adopt for this purpose may be to link Article 300A with Article 14 and to interpret the word law in Article 300A in the same sense as law in Article 21. A view taken by a single judge of the Andhra Pradesh Court \textsuperscript{525} is as follows:

a) The effect of deletion of the Right to Property from the Part on Fundamental Rights to keep it only as a legal right subordinate to the Fundamental Right guaranteed to the Constitution

b) The 44\textsuperscript{th} Amendment Act together with the 42\textsuperscript{nd} has the effect of replacing the common law concept of ownership by the socialist concept of property.

c) The Court as the limb of the State is bound to apply Article 38 and the Preamble to hold that the legal right to property should be so exercised as not to unjustifiably destroy an individual’s right to happiness and justice in a Socialistic Democratic Republic.

This amendment clearly suggests the amendment tried to conform to the values included in the preamble. However, the most important change made by the 44th Amendment Act was the deletion of the Right to Property from the list of fundamental right. Making it a legal right under the Constitution serves two purposes: Firstly, it gives emphasis to the value of socialism included in the preamble and secondly, in doing so, it conformed to the doctrine of basic structure of the Constitution.

Today, the times have changed radically. India is no more seen through the eyes of only political leaders with a socialist bias. It is India Shining seen through the corporate lenses of financial giants like the Tatas, Ambanis and Mahindras, with an unfathomable zeal for capitalism, money and markets. There is another angle. There is a scramble by industrialists and developers for land all over the country for establishment of Special Economic Zones. Violent protests by poor agriculturists have taken place to defend their meager land-holdings against compulsory acquisition by the State. In particular, the riots and killings in Singur, Nandigram etc. in a State (of West Bengal) ruled by communists has

\textsuperscript{524} M.P.Jain, Indian Constitutional Law, 6\textsuperscript{th} Edn., Vol. II, p.1875

\textsuperscript{525} In the matter of B.H.P.V., AIR 1985 AP 207 (paras. 18, 19, 23, 24 )
turned the wheel full circle. Socialism has become a bad word and the Right to Property has become a necessity to assure and assuage the feelings of the poor more than those of the rich.

“The removal of the right to property as a fundamental right might have even helped in bringing forth greater parity in land ownership. But, in today’s neo-liberal environment, this has only contributed towards greater inequities.” 526

Soon after the abolition of the Fundamental Right to property, in Bhim Singh v. UOI527 the Supreme Court realized the worth of the Right to Property as a Fundamental Right. In the absence of this Fundamental Right to property, it took recourse to the other Fundamental Right of Equality which is absolutely the concept of Reasonableness under Article 14 for invalidating certain aspects of the urban land ceiling legislation. Today, the need is felt to restore the right to property as a Fundamental Right for protecting at least the elementary and basic proprietary rights of the poor Indian citizens against compulsory land acquisition. Very recently, the Supreme Court, while disapproving the age-old Doctrine of Adverse Possession, as against the rights of the real owner, observed that The right to property is now considered to be not only a constitutional right or statutory right but also a human right.528

Thus despite their regressive effect P.K. Tripathi has argued in favour of the Amendment. He firmly held that the effect of this Amendment is to make the right to property stronger than ever before.529 44th Amendment has in fact made right to property of both, citizen as well as non-citizen, more firmly and comprehensively secured under the Constitution than before. It is secured more firmly than before because any significant amendment in the existing position will now require not only the procedure laid down in the main part of Ar.368, but also the consent of the States as prescribed in the proviso to that Article. Besides, State will not now be able to acquire private property without showing public purpose and without paying compensation on market value of the property.

Thus one can safely conclude from the foregoing passages that whenever the Constitution came under duress, Amendments have always came to its rescue. While the

526 Unconstitutional exercise of power, The Hindu
527 (1981) 1 SCC 166
528 The Times of India, 24th September, 2008
529 P.K. K. Tripathi, Right to Property after Forty Fourth Amendment- Better Protected than Ever Before, AIR 1980 (J) 49.
Forty –second Amendment Act damaged the democratic fabric of the nation, the 44th Amendment Act undid all the distortions and aberrations. In its brief stint of power Janata government made a notable contribution to Indian democracy. This, in the words of Granville Austin, was its ‘remarkable success in repairing the Constitution from the Emergency’s depredations, in reviving open parliamentary practice through its consultative style when repairing the Constitution, and in restoring the judiciary’s independence’.

In the next section Seventy -Third Amendment Act --another momentous Amendment which made democracy truly inclusive and egalitarian shall be discussed, assessed and analysed at length.


Within the Indian federal architecture, Panchayat is closest to the notion of direct democracy and distinct from the representative democracy of the Union and States due to its proximity to the community it serves. Conceptually Panchayati Raj is a multidimensional organized social entity with organic linkages. In political terms, it is concerned with governance of rural area, constituting a political subdivision of a nation or state. Then as body corporate with a juristic personality, it represents a legal concept. The economic facet of the Panchayati Raj implies that it delivers not only civil services but economic ones also. Moreover it is an administrative concept as its members are involved in the making, unmaking and remaking of administrative decisions. Panchayati Raj or Panchayat Raj ‘may be paraphrased as rural local self-government in India.’

While local self-government in the modern sense is essentially a British creation, yet as an Indian component it relates to institutional legacies and historical ideologies of decentralisation and communitarian democracy.

Recent studies on Panchayati Raj Institutions (PRIs) start, logically enough, with the 73rd constitutional amendment. This has been a landmark event in the history of devolution. However, in order get an enhanced understanding of the amendment it is necessary to place it within a historical perspective. Without this it would appear that this amendment descended like manna from heaven. Thus this segment studies the evolution of Panchayats which is the very pivot around which the 73rd amendment gyrates.

532 Panchayati Raj Institutions hereafter shall be referred to as PRIs
Historical roots of the local self-government in India can be traced from the ancient past through various phases. From the analytical point of view the history of Panchayati Raj can be divided into the following periods;

1. Vedic Era
2. Epic Era
3. Ancient Period
4. Medieval Period
5. British Period
6. Post-Independence Period

Panchayats or the village councils are as old as India’s history and have been a part of her tradition. Historically every village in the country had a panchayat which was responsible for finding solutions to the local problems within the village itself. To Hugh Tinker the word panchayat suggests form not purpose, “A technique of seeking agreement through consultation, hallowed, according to tradition by divine sanction; ‘Panch Parmeshwar’. This technique was mainly in social or economic organisations. But it was also extensively and usually accepted sense, although it was sometimes employed to apportion the village, land revenue assessment and many have had a role in regulating the duties of a village servant.” Nevertheless this view about Panchayats is limited as it has several more functions. The Panchayats were vested with vast powers both executive and judicial and its members were treated with great reverence and were held in high awe.

6.14.1. Vedic Age

The Vedic age was characterized by self-governing village communities based on agrarian economies. They find mention in the Rig-Veda that dates back to approximately 1200 B.C. The village was the basic unit of administration in the Vedic period. Gradually terms like ‘Sabha ‘, ‘Samiti’ and ‘Vidath’ came into view which were identified as democratic bodies at the local level. The two bodies would be consulted by the King with regard to certain functions and decisions The Panchayats subsequently, became a group of any five selected persons of the village to decide village disputes.

The following summing up by U.N.Ghoshal is worth quoting in full here:

“The most remarkable feature of the early Vedic Polity consisted in the institution of popular assemblies, of which two, namely the Sabha and the Samiti, deserve special mention……The Samiti was the Vedic folk assembly par excellence, which at least in some cases enjoyed the right of electing the king, while the Sabha exercised, probably from the first, some judicial functions. Both the samiti and sabha enjoyed the right to debate ---a privilege unknown to the popular assemblies of other ancient peoples period. In the late Vedic period (that of the Yajus Samhitas and the Brahmanas ), the Samiti disappeared as a popular assembly, while the Sabha sank into a narrow body corresponding to the king’s privy council and court, by a process analogous to that which gave rise to the wittenagemot in place of the folkmoot in the Anglo-Saxon constitution.”

Another Veda, the Atharvaveda also describes the Sabha and Samiti as twin daughters of Prajapati who had sent them to earth to nurture human civilisation. They were both a social club as well as village councils.

6.14.2. Epic Era

In the epic era, the studies of the Ramayana signify that administration was divided into two parts---‘Pur’ and ‘Janapad’ or city and village. Villages were the ‘Janapad ‘and its residents were called the ‘Janapada.’ Mention of ‘Gram’, ‘Mahagram’ and ‘Ghosh’ can be found in the Ramayana. ‘Pattan’ were the towns near the villages and served as ’Mandi’ or markets for the villagers. Local bodies called ‘Shreni’ and ‘Nigam’ were also present but no description of their constitution is available in the Ramayana. In Ramacharitamanas of Tulsidas, there existed a Caste Panchayat and one person elected by the caste Panchayat was the member of the King’s Council of Ministers. Thus the King used to take the advice of all the caste representatives who were also the representatives.

Self-government of villages also finds ample expression in ‘Shanti Parva’ of Mahabharata and in Kautilya’s Arthashastra. The earliest references to Pancha and probably ‘the institution of the five’ or Panch Panchasvanusthitah is to be found in the Shanti Parva of Mahabharata. Both ‘Pancha’ and Panch Panchasvanusthitah are semantically close to ‘Panchayat ‘. As per the Mahabharata, over and above the village there were 10, 20, 100 and

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536 H.D.Malviya, Village Panchayats in India, All India Congress Committee, New Delhi, 1956.p.52
1000 village groups. ‘Gramik’ was the chief official of the village. While ‘Dashap’ headed ‘ten villages’, the ‘Vinshya Adhipati’, ‘Shat Gram Adhyaksha’ and ‘Sahasra Gram Pati’ were the chief of 20, 100 and 1000 villages respectively.  

As against the usual expression of Panchayats, Radha Kumud Mookherji’s well known work, Local Government in Ancient India, lists terms like: kula gana, jati, puga, vrata, sreni, sangh, naigama, samuhva, sambhuya-samutthana, parishat, caranafor popular local bodies thereby expanding the definition of self-governing units.

6.14.3. Ancient Period

A well-known work of the ancient era, the Arthashastra gives a comprehensive account of the system of village administration prevailing at that time. During this period, the village administration was carried under the supervision and control of Adyaksha or headman who was responsible for ensuring the collection of state dues and controlling the activities of the offenders. Kautilya advised the King to constitute units of villages having 1 to 500 families. There would be centres of 10 villages, 200 villages, 400 villages and 800 villages. These centres would be respectively known as ‘Sangraham’, ‘Karvatik’ ‘Drona Mukh’ and ‘Sthaneeya’. Local bodies were to be free from any interference from the kin’s side. Villages used to organize works for public utility and recreation, settle the disputes between their residents and act as ‘Trustees’ for the property of minors. But the Arthashastra refers to village elders as acting trustees and not to any village council.

During the reign of Chandragupta Maurya, policy of decentralisation of powers was adopted conscientiously. The village being the smallest unit of governance was headed by the ‘Gramik’. According to Strabo the city commissioners (of Patliputra) were divided into five groups, each group comprising five commissioners.

The ‘Gramik’ continued as the village head even during the Gupta Period and the village remained the smallest unit of administration. The records of the Gupta Period mention Gram Sabha, Gram Sansad and Panch Mandli. Altekar observed that “the village councils appear to have evolved into regular bodies in the Gupta period at least in some parts of India.” He then states more confidently that the village councils were known as

537 Supra note 5 at p.22
539 Supra note 5 at p.23
540 Kautilya, Arthashastra, Translated by R.Shama Shastry, Book III, Chapter 12
Panchmandalis in Central India and Grama-janapadas in Bihar.\textsuperscript{543} Panchmandalis, a council or board of five was apparently the village panchayat of those times.

Neeti Shastra of Shukracharya also mentions village governance during this period. The village panchayat in ancient India was vested with both executive and judicial powers. Land was distributed by the panchayat and taxes were collected by it and paid to the central government for the village as a whole.

In South India, the Satvaahan Kingdom too had local bodies for governance in the cities as well as in the villages. The Cholas (900-1300 A.D.) also developed self-governance in the villages.\textsuperscript{544} The Uttaramerur inscriptions of 819 A.D. and 921\textsuperscript{545} of the Chola ruler Parantaka –I laid down the regulations for the election of the persons, for the several committees that administered the village. Basically there were two types of villages: ordinary villages and the Agraharas which were villages assigned to Brahmans for their sustenance. They represented the patterns of local- self-government. The institution of village assemblies known as Ur in case of ordinary villages and Sabha or Mahasabha in the case of Agraharas had acquired a reputation for ‘integrity and efficiency’.\textsuperscript{546} The Mahasabha performed a number of fiscal, judicial and ministrant functions. It collected the land revenue assessed in cooperation with the royal officials, exercised powers of taxation for purposes connected with the village, settled disputes about land and irrigation rights, maintained roads and minor irrigation works and supervised endowments.

6.14.4. Medieval Period

The Medieval period was characterized by the Mughals who introduced a more elaborate administrative machinery particularly in the field of revenue ‘with a highly bureaucratized hierarchy of officials called mansabdars’\textsuperscript{547} This system of administration, dominated by an urban-oriented military- cum -landed elite, must have meant a tighter control over village administration but the traditional village institutions were left untouched. The Mughals, preferred to develop urban administration\textsuperscript{548} as compared to the villages. In general, the attitude of Muslim rulers towards rural institutions ranged from indifference and tolerance to positive respect. For them the village was a unit for revenue and police. Altekar

\textsuperscript{543} Ibid., p.229  
\textsuperscript{544} R.C. Mazumdar and A.D. Pusalkar(Eds.), The Struggle for Empire, Bhartiya Vidya Bhavan, Bombay, 1957, pp.253-254  
\textsuperscript{545} A.S. Altekar, op.cit., p.229  
\textsuperscript{546} K.A.Nilkantha Sastri, A History of South India, 3\textsuperscript{rd} Edn. Oxford, Madras, 1958, pp.204-205  
cites a case where Ibrahim Adil Shah of Bijapur refused to interfere with the decision of the lower panchayat bodies even though the aggrieved party was a Muslim.\textsuperscript{549}

S.R. Maheshwari made a conclusive study of the panchayats during the years 1526 and 1707. He writes, “The Mughals had not resident functionary of their own in the villages. The Muqaddam was probably the Sarpanch known by his name for his revenue functions. He had been distributing the demand slips and collecting land revenue from the cultivators…..The Patwari was the accountant maintained by the villages at their own cost to keep account of the cropped area, the crops grown and the revenue due, demanded from and paid by every cultivator.”\textsuperscript{550} Thus the village panchayats took cognizance of all cases of communal and matrimonial disputes, land disputes, disputes arising from irrigational facilities and all kinds conflicts arising due to socio-economic life of the people.

Marathas also created self-constituted institutions in rural and urban areas. They were prevalent during the rule of the Peshwas in the Maharashtra areas. According to Kenneth Ballhatchet, the British found the panchayat in the Marathi speaking areas of Western India as ‘ad-hoc tribunals summoned to decide judicial cases, not permanent self-governing communities as has sometimes been supposed.’\textsuperscript{551} H.G. Frank however observes on the basis of historical evidence relating to these areas that besides the ‘panchayat in the sense of judicial tribunal, there was another form of panchayat, the hereditary council of representatives which attended to certain other matters in village.’\textsuperscript{552} Thus the village panchayats of the ancient and medieval period formed the keystone of the village arch and acted as the custodian of rural welfare.

\textbf{6.14.5. British Period}

However with the dawn of the British era, Panchayats lost their former glory and magnificence. The Panchayats had never been the priority of the British rulers.\textsuperscript{553} The British rulers were primarily interested in the expansion, consolidation and strengthening of their political power and the economic advantages flowing from it. The following passage from the Report of the Congress Village Panchayat Committee (1954) made it more explicit in these words “ The inordinate greed of the east India Company caused slow but steady...
disintegration of these village Panchayats. The deliberate introduction of landlordism and the Ryotwari system as against the Mauzawari or village tenure system, dealt a death blow to the corporate life of the village communities. The British rulers did the greatest disservice to the country by destroying the ancient traditions of Village Panchayats and trying to replace them by their officers whose sole interest was to please the alien rulers by exploiting the people of India to the maximum.”

Meanwhile the dramatic developments of 1857 caused a dramatic shift in the political arena and in the Imperial attitudes. India under the Crown began to realise the inadequacy of a highly centralized system of government and the need to channelize the energies of the more articulate sections of the society. The most pressing problems were the relief of the imperial finances and the growing industrial and commercial needs, which were in a bad shape on account of the great rebellion. Citing the acute conditions, Samuel Laing declared in 1867 that “India has two great wants ---irrigation and communications.” A robust system of local self-government was the only answer to the existing difficulties and projected needs. Occasioned by the acute needs, the resolution of Lord Lawrence (1864) was couched to address the situation and particular emphasis was laid on village communities, “The people of this country are perfectly capable of administering their own local affairs. The municipal feeling is deeply rooted in them. The village communities are the most abiding of Indian institutions…. Every view of duty and policy should induce us to leave as much as possible of the business of the country to be done by the people.”

Thus the years that ensued, saw many municipalities being established in different parts of the country. Rural areas came into limelight with the setting up of the ‘district funds’ and these officially controlled bodies were empowered to levy a cess on land revenue and education and road cesses. Principle of representation was introduced in rural areas through the Bombay Local Fund Act of 1869. District and Taluk Local Fund Committees, as advisory bodies, were also constituted. District Magistrate was the chairman of District Committees which administered the cesses on land revenue, largely utilized for road construction.
According to S.R. Maheshwari, the beginning of local government can be presumed from 1687, when the Madras City Corporation was established. The subsequent history can be detailed phase wise as follows:

1. 1687-1881: Local Government was established to share the burden of resources of the central and provincial governments.
2. 1882-1919: Local government was seen as local self-government.
3. 1920-1937: Local government was established in the provinces and people’s representatives were controlling the provincial administration also.
4. 1938-1947: Local Government was in the state of rejuvenation and reconstruction

### 6.14.6. Madras City Corporation Established (1687)

The first municipal body in India was created in Madras (now Chennai) through a Royal Charter issued on December 30, 1687 by King James II on the advice of the Governor of the East India Company, Josiah Child. It was to mobilize resources through local taxes and to control the powers of then Governor of Madras, Elihu Yale. The Madras City Corporation was made responsible for the public services and civic. Besides collection of taxes, civil and criminal matters were also dealt with by it. Later in 1726, Bombay and Calcutta Municipal bodies were also established as part of local self-governance campaign.

### 6.14.7. Mayo Resolution (1870)

Strengthening of the Municipal bodies again gained momentum in 1870. The year 1870 was a landmark when Lord Mayo passed a resolution suggesting decentralisation of powers and the necessity of associating Indians in administration. Its primary object was to ‘enlarge the powers and responsibilities of governments of the Presidencies and Provinces in respect of the public expenditure in some of the Civil Departments’. It spoke of the ‘greater and wider object in view ‘: affording opportunities for the development of self-governments to harness local interest, supervision and care for the management of funds devoted to education, sanitation, medical charity and local public works.

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558 Ibid., p.3  
559 Ibid., p.97  
560 Ibid., p. 103
At about the same time, a significant first step towards reviving the traditional village panchayat system in Bengal was taken through the Bengal Chowkidari Act, 1870\(^{561}\), which empowered District Magistrates to set up Panchayats of nominated members in the villages.


Lord Ripon’s epoch making Resolution of 1882 furthered the intentions of Lord Mayo’s government. The Local Self Government Resolution of 1882 was the most important contribution of his tenure and is regarded as the “Magna Carta” of local governance. Tinker draws our attention to an interesting feature of this resolution which elucidates it as “the most remarkable innovation proposed by Lord Ripon in 1882 was the establishment of a network of rural local bodies –six years before there were any rural council in England.”\(^{562}\)

Since political education of the people starts at the local level, Ripon wanted to develop municipal bodies. It affirmed that the government was only to guide them rather than control them. Local Boards were established in rural areas and functions and sources of revenue were allotted to such local bodies. Paragraph 18 of the Ripon resolution provided for local bodies consisting of large majority of elected non-official members and presided over by a non-official chairperson\(^{563}\). In his resolution on Local Self–Government of May 18, 1882 he advocated decentralisation because it would promote the goals of administrative efficiency, political education and human development. Paragraphs 5 and 6 of the Resolution actually state these goals unambiguously in these words, “It is chiefly designed as an instrument of political and popular education’ and ‘as education advances there is rapidly growing up all over the country an intelligent class of public spirited men who it is not only bad policy but sheer waste of power to fail to utilize.”\(^{564}\) Subsequently during 1883-85, spates of local self–government acts were passed in many provinces.

A notable development in 1884 was the constitution of ‘Union Panchayats’ in Madras and Bengal with their jurisdiction over a group of villages. However the British bureaucracy did not think of Indians as mature and experienced enough for local self-government and ‘the

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\(^{563}\) Ibid., pp. 44-48

Viceroy was almost alone in his liberalism. This spirit of decentralisation was silenced by Lord Curzon who introduced increased government control over local bodies. Local Boards could now be superseded in case of abuse of powers. Thus rural decentralisation remained a neglected area of administrative reform.

6.14.9. Royal Commission on Decentralisation (1909)

Another superficial attempt made towards decentralisation was the Royal Commission on Decentralisation of 1909. Once again, development of local self-government was viewed as a sub-set of administrative devolution. In 1907, the Government constituted a six-member Royal Commission on Decentralisation which was presided over by Sir Henry William Primrose with five other members who were senior I.C.S. officers. Shri R.C. Dutt was the only Indian member. Subsequently, C.E.H. Hobhouse, Under-Secretary of State for India became the Chairman after the resignation of Sir Henry. The Commission, dismissed, the popular demand and affirmed ‘we do not think it possible, even if it were expedient, to restore the ancient village system’ but “an attempt should be made to constitute and develop village panchayats for the administration of local village affairs”\textsuperscript{566}. The Commission added “The system must, however, be gradually and cautiously worked.”\textsuperscript{567} Proposals to place rural boards on a sounder financial footing, establish sub-district boards and to endow the district boards with coordinating and financial powers, were among the other more important recommendations.

The same year 1909 Gokhale and Tilak at the 24th Congress Session in Lahore adopted a resolution urging the government to take early steps ‘to make all bodies from Village Panchayats upwards elected with elected non-official Chairman’ and support them with adequate financial aid.\textsuperscript{568}


On the heels of this resolution came another Report named Montague Chelmsford Report of 1918. It brought local self-government as a provincial transferred subject, under the domain of Indian ministers in the provinces. Envisaging ‘the gradual development of self-

\textsuperscript{566} Royal Commission Report of the Royal Commission upon Decentralization in India, London (Vol. I) 1909,p.239
\textsuperscript{567} M. Venkataramangaiya and M.Pattabhiram, op. cit., p. 159
\textsuperscript{568} H.D.Malaviya, op. cit., pp.215-216
governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British empire. It suggested that the local bodies be made more representative and the State intervention should be reduced to minimum. As a result the municipalities were vested with more powers to impose taxes. By 1925 eight provinces had passed village Panchayat Acts and Panchayat became legal bodies. With the establishment of village panchayats in a number of provinces, they were no longer mere ad hoc judicial tribunals, but representative institutions symbolizing the corporate character of the village and having as a wide jurisdiction in respect of civic matters.

The Government of India Resolution of 1918 spoke disapprovingly of the ‘artificial agglomeration such as the Madras local fund union, the Chaukidari union in Bengal and the Sanitary committee to be found in the United Provinces, Bombay and Central Provinces,’ and favoured the development ‘of the corporate life of the individual villages and to give the villages an interest in and some control over local affairs.’

Under the Montague–Chelmsford dispensation, things moved more swiftly. There had been a stream of legislations relating to village panchayats practically all over the country, both in the British Indian Provinces and the ‘native states’. The most significant development was the establishment of the Village Panchayats in a number of provinces which were no longer ad hoc judicial tribunals. In the former category come the relevant acts in Bengal (1919), Bombay (1920), CP and Berar (1920), Madras (1920), U.P. (1920) repealed and supplemented by the Madras Local Boards Act, 1930, Punjab (1921), Bihar and Orissa (1921) and Assam (1926).

In keeping with the general trend, an act was passed in 1920 among other ‘native states’ which introduced such a measure were: Cochin (1919); Indore (1920); Travancore (1925); Mysore (1926); Hyderabad (1940); Kohlapur, Bikaner, Karauli, Mewar, Jadsan, Bhavnagar, Porbandar, Bharatpur, Marwar, Wadia, Dhrangadhara and Morvi (1926-46).

6.14.11. Local Bodies revisited (1920-1937)

Notwithstanding the optimism marshalled by the Montague Chelmsford Scheme, PRIs did not become truly democratic and vibrant institutions of local self-government at the level of the villages due to organizational and fiscal constraints. Inadequacies in performance were traceable to the following factors: “the inability to realise the importance of having a

569 M. Venkatarangaiya and M. Pattabhiram, op. cit., p. 171
570 Ibid., p. 183
571 L.P. Shukla, History of Village Panchayats in India, Chandrika Shukla, Nasik, 1970, p. 56
competent and well paid official analogous to the town Clerk to the County Council; the failure to realise the need for control by the provincial governments over local self-government authorities; the large size of an average district in India; abuse of power; inadequacy of financial resources; and lack of public spirit among many voters.”

Consequently in 1930, evaluation of the implementation of the self-government was done by the Simon Commission. It informed that except Uttar Pradesh, Bengal and Madras, they did not find any progress in rural areas. Hence it was recommended by the Simon Commission to increase the control of the state over these rural bodies. During the period between 1920 and 1937, the local bodies were elected bodies, Chairmen were non-official persons and more administrative and financial powers were given to the local bodies.

Another important piece of legislation during this period was the Government of India Act 1935, which gave powers to the provincial governments. Popular elected government in the provinces got provincial autonomy and they were duty bound to enact legislation for further democratization of the local self-government institutions including the Village Panchayats. Popular governments could arrange more finances. Separations between provincial local taxes were ended. In almost all the provinces, local bodies were given more functions. Powers to impose taxes was reduced. Thus the British Period saw many local bodies being framed and organized through resolutions and acts.


As India was nearing Independence, its yearning for grassroot democracy became more and more manifest. Prospects of panchayats became brighter when the Congress resumed office in 1946, after a break of nearly seven years. As a result many new panchayat legislations came into being. The following is the list in a chronological sequence of states which enacted new panchayat legislations or amended the older ones:

States which were categorized by the Constitution later as Part ‘A’ states:

- The C.P. & Berar Panchayat Acts, 1946
- The U.P. Panchayat Raj Act, 1947
- The Bihar Panchayat Raj Act, 1947
- The Assam Rural Panchayats Act, 1948
- The Madras Village Panchayats Act, 1948

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572 M. Venkataramaiya and M.Pattabhiram, op. cit., pp.199-207
vi. The Orissa Village Panchayats Act, 1948  

vii. The Bombay Village Panchayat Act, 1933 amended 1950  

viii. The Punjab Gram Panchayat Act, 1952  

It may be noted that except for West Bengal all states had introduced Panchayat legislations by 1952.

Similarly Part ‘B’ states:

i. The Saurashtra Gram Panchayat Act, 1949  

ii. The Madhya Bharat Panchayat Act, 1949  

iii. The Travanacore-Cochin Panchayats Act, 1950  

iv. The Hyderabad Village Panchayats Act, 1951  


vi. The PEPSU Panchayat Raj Act, 1961  

vii. The Mysore Village Panchayats and District Boards Act, 1952

The only state left was Rajasthan for which a unified legislation was enacted in 1954.

At the commencement of the Constitution, there were ten Part ‘C’ states: Ajmer, Bilaspur, Bhopal, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh. Of these Himachal Pradesh and Bhopal enacted new legislation in 1952 and 1953 respectively; Coorg amended its 1926 Act; older legislation of Bombay was in force in Kutch; of U.P. in Ajmer, of Punjab in Bilaspur and Delhi; in Vindhya Pradesh, the Gram Panchayats ordinance was issued in 1948 and there was no provision for panchayats in Manipur and Tripura.


The Panchayat being a swadeshi institution was grist to the national mill. It was Gandhiji who articulated the strategic implications of the institution in 1925 in these words, “Village organisation seemed a simple word but it meant the organisation of the whole of India, inasmuch as India was predominantly rural.”

Nonetheless it is a sad commentary on India’s commitment to democratic decentralisation that despite the nationalist movement’s commitment to Panchayats and Mahatma Gandhi’s propagation of the ideal, the first draft of India’s constitution did not include a provision for the Panchayats.

574 H.D.Malaviya op.cit., p.233
In the succeeding paragraphs the disposition and the tempers of the members of the Constituent assembly have been taken into account with regard to Panchayats. There were two points in contestation, that of Gandhiji presented by his followers, and that of Ambedkar. At the heart of this contest were two different views on, (i) the nature of politics, (ii) the basic unit of politics and the edifice that was to be built with it, (iii) the constitutional status of Panchayati raj, and (iv) the intrinsic character of the village. These four issues remained the crux of the Constituent Assembly debates throughout.

6.15. Disposition of the Constituent Assembly towards Panchayats

The task of Constitution making gathered momentum with the drafting of the questionnaire, memoranda’s etc. from March 1947 onwards. Shri B.N. Rau, the erudite Constitutional Advisor, went on studying constitution after constitution of countries in Europe, in the America and the USSR. Many details of the Constitution were patterned on the relevant provisions of the Government of India Act 1935 and of the Western Constitutions mentioned. A few days after independence, a draft was finally placed before the Assembly in August 1947. At the same time, on 29 August 1947, the Minister of Parliamentary Affairs, moved that a Committee be appointed to scrutinize and to suggest necessary amendments to the draft Constitution of India. After some modification, the motion was adopted the same day. The members of this Committee were:

1. Shri Alladi Krishnaswamy Ayyar,
2. Shri N. Gopalaswami Ayyangar,
3. The Honourable Dr B.R. Ambedkar (Chairman),
4. Shri K.M. Munshi,
5. Saiyed Mohd. Saadulla,
6. Sir B.L. Mitter,
7. Shri D.P. Khaitan,

The revised draft, as structured by the Scrutiny Committee, was re-introduced in the Constituent Assembly on 4 November, 1948. During the intervening 15 months since the draft was entrusted to the Scrutiny Committee, the revised draft was published and circulated

576 Dharampal, Panchayat Raj And India’s Polity, Volume IV, Other India Press, Goa, 2000, p.24
and had aroused much controversy and debate. One of the major issues at the anvil of constitution making, and subsequently in the Constituent Assembly, that aroused extensive heat and anger, was the place of the villages in the polity which was envisaged.

Panchayats were given a low key treatment owing to a suspicion that reactionary approach and unhealthy atmosphere of village may obstruct social transformation mission of the Constitution. As a result, the word ‘Panchayat’ did not even appear in the draft Constitution of the India which was published on 26th February 1948.

Gandhiji discovered on December 21, 1947 that there was no mention or direction about village panchayats and decentralisation in the foreshadowed Constitution. Commenting on the disregard shown to the villages he said, “It is certainly an omission calling for immediate attention if our independence is to reflect people’s voice. The greater the power of the Panchayats, the better for the people.” The same omission was highlighted in the words of Pandit Thakur Dass Bhargava also “The real soul of India is not represented by this Constitution and autonomy of the villages is not fully delineated here and this camera (the Draft Constitution) cannot give a true picture of what many people would like India to be. The Drafting Committee had not the mind of Gandhiji, had not the mind of those who think that India’s teeming millions should be reflected through this camera.” To put it otherwise, “a Gandhian Constitution seems not to have been given a moment’s thought” and Gandhian alternative was something that was kept deliberately outside the realm of practical politics.

It was feared that the local influential or wealthy class might exploit the less-cultured and less-educated poorer classes and that throwing the PRIs into a whirlpool of party politics would destroy their usefulness as agencies of administration. This line of argument was in a way escaping from the challenge of reforming the villages and avoiding them to become potential instruments of reforms by purging their defects.

Till the Draft Constitution was placed before the Constituent Assembly in October 1948, the placid situation regarding Panchayats continued except for a reference of the President of the Assembly, Dr. Rajendra Prasad, to the Constitutional Advisor in May 1948. Suggesting the advisor Mr B.N.Rau, the President, a Gandhian at heart said, “I strongly

577 Granville Austin, The Indian Constitution: Cornerstone of a Nation, Oxford, Bombay, 1972, p.34
578 Dharampal (Ed.), op.cit., p.1
579 Supra note 1 at p.35
580 Supra note at 2, pp.10-12
581 M. Das in CAD, 8-11-1948, Vol. VII at p.308
advocate the ideas of utilizing the adult franchise only for the village Panchayat and making the electoral college for electing representatives to the provinces and the Center.”

B.N.Rau was quick enough to perceive the reference in the idiom proposed by the President. He pointed out that the relevant articles of the Draft Constitution providing for direct elections, embodied the decisions of the Constituent assembly and if the system of indirect elections was to be introduced, technically those decisions had to be reversed which was neither viable nor realistic. Apart from the impracticability of reversing the decision already arrived at by the Constituent Assembly, there were some other considerations that weakened the case for the Panchayat plan: firstly the world was inching toward direct elections; secondly, the stipulation in the ‘Panchayat plan’ regarding some of the qualifications of the legislators like social service and character do not lend themselves to precise definition. And thirdly, the proposition that ‘our Constitution should start from the village and work upward to the Provinces and to the Centre’ was at variance with the basic features of a modern constitution...

He then posed a series of questions; ‘Is it suggested that the Indian constitution should deal not merely with the structure of the Centre and of the units but should go down to the village? In other words, is the Indian constitution not merely to deal with the executive, legislative and judicial organs of the Center and of the Provinces, but also to create and deal with similar organs for the district, the subdivision, the thana, the chowkidari, union and the village?’ This brief but authoritative exposition highlighted the intricacies of the inherited administrative structure. B.N.Rau further said, “I fear that if we do this, not merely for the district but down to the village, the Constitution will be of inordinate length and will be even more rigid than it is at present. It seems to me that while it may be possible to create Panchayats and similar bodies to function as electoral colleges for the provincial and central legislatures, it would be impracticable to endow them or other bodies at the same level, with specific administrative or legislative judicial functions by provisions inserted in the Constitution itself.”

In effect B.N. Rau’s elucidation was a plea for continuation of the existing system where Panchayats and higher tiers of local self-government were a matter of auxiliary legislation. The debates in the Constituent assembly by and large reflected the same trend.

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582 Ibid., at p.35
583 B.N.Rau, India’s Constitution in the making, B.Shiva Rao(ed.), Orient Longmans, New Delhi, 1960, p.362
584 Ibid., p.333
While going through the debates and deliberations on the drafting of India’s constitution, one comes across sharp and discrepant views on Panchayats. The most incisive of these comments came from B.R. Ambedkar who outrightly negatived the very idea of democracy by ignoring the local authorities and villages. The prejudices of village communities inflicting remorseless inequity and injustice and Ambedkar’s experience of the suffering of his Mahar community gave him particular insights into this problem which were brought out by him in the following words, “What is the village but a sink of localism, den of ignorance, narrow mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as the unit.”

Trenchant criticisms of the village by Ambedkar were quite similar to those expressed by Pandit Nehru. In his reply to Gandhiji’s letter in 1945, he condescendingly wrote, “A village, normally speaking, is backward intellectually and culturally and no progress can be made from a backward environment.” Just like Nehru, Ambedkar too did not find any special virtues in villages. He joined issue with those who supported Metcalfe’s account. He said, “They (villages) have survived through all the vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely, on a low, selfish level. I hold that these village republics have been the ruination of India. “I am glad” he declared with an air of finality, “ the Draft Constitution has discarded the village and adopted the individual as its unit”. Thus from this view the new Constitution incorporating western theories was preferable to an alternative constitution ‘raised and built upon village Panchayats.”

Despite such vilification, there were still many members who believed in Gandhiji and in his ideology and therefore argued in favour of villages and their empowerment. It was argued that even if individual was the soul of the Constitution, the village should be made the basis of the machinery of the administration and due care should be taken to weave the village republics into the fabric of governance by devolving more power and muscle to them. Renuka Ray held that villages had to be freed from the shackles of ignorance and superstition before they became the backbone of the Constitution. In tandem with this view

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585 Institute of Social Sciences, Status of Panchayati Raj...1994, 1995
586 CAD, 4-11-1948, Vol. VII at p.39; Also see H. D Malaviya, Village Panchayats in India, Economic and Political Research Department, All India Congress Committee, New Delhi 1956, p.97
589 AC Guha, CAD 6-11-1948, Vol. VII at p.256
another member S.L. Saxena said that “solution did not lie in rejecting local democracy but in making it powerful instrument free from defects.”

At the other end of the spectrum, there was an array of members who took exception to what Ambedkar said. Prominent among them was H.V. Kamath who criticized the attitude of Ambedkar as typical of the ‘urban highbrow’. He paid glowing tributes to Gandhiji for instilling among his countrymen the love for villages. Not pleading for any major revision that would entrench Panchayati raj in the Draft Constitution, he recommended the scheme of janapadas launched in his State of C.P. and Berar, a product of auxiliary legislation. He hoped that it would come to fruition and be an example to the rest of the country. T. Prakasam spoke in a similar vein and stated frankly, “I do not advocate for one moment today that village panchayat should be such as described by Metcalfe under those circumstances. Village Panchayat should be one which is up-to-date which gives real power to rule and to get money and expend it in the hands of the villagers. He was thus beseeching for village panchayats as effective and efficient units of self-government and not for a different constitutional order.

This view was reinforced by another member named Shri Arun Chandra Guha from West Bengal who espoused before the Constituent assembly that, “Resuscitating of the villages, I think, should be the first task of the future free India. I have told you, that we have been taught according to the Gandhian outlook and the Congress outlook that the future Constitution of India would be a pyramidal structure based on the village panchayats. I admit we require a strong Centre; but that does not mean that its limbs should be weak. We cannot have a strong Centre without strong limbs. If we can build the whole structure on the village panchayats, on the willing cooperation of the people, then I feel the Centre would automatically become strong. I yet request the House that it may incorporate some clauses so that village panchayats may be allowed to play.”

Speaking on the non-inclusion of Panchayats, Alladi Krishnaswamy Ayyar made an astringent remark about the Constitution “…the constitution does not give sufficient importance to village communities which are an essential feature of India’s social and political life. With the large powers vested in the provincial or state legislatures in regard to local self-government and other matters, there is nothing to prevent the provincial legislatures

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592 Ibid., p.250
593 Ibid., p.251
594 Supra note 1 at pp.31-32
from constituting the villages as administrative units for the discharge of various functions 
vested in the State Governments."\textsuperscript{595}

A similar remonstrance was articulated by Shri Gokulbhai Daulatram Bhatt of 
Bombay States who said, “to forget or spurn the system of village panchayats, which has 
lifted us up and which has sustained us so far and to declare boldly that it has been 
deliberately spurned—well in all humility I lodge my protest against it.”\textsuperscript{596}

N.G.Ranga too felt uncomfortable over the uncomplimentary observations of 
Ambedkar apropos village Panchayats and reminded his party men that ‘we Congressmen are 
committed to decentralisation’\textsuperscript{597}.

Another noted member Mahavir Tyagi vehemently protested against Ambedkar’s 
remarks about the villages and pleaded for a due share for the villager in the governance of 
the country. Nearly 20 other members participated in this discussion.\textsuperscript{598} Most of them took 
exception to Ambedkar’s wholesale criticism of the villages while very few showed a clear 
apprreciation of the implications of the Gandhian Constitution. Shibban Lal Saxena made a 
novel suggestion that the Upper House should comprise of members elected by the village 
panchayats instead of by the provincial legislatures as proposed in the Draft.\textsuperscript{599}

One could perceive in the constitutional debates, an advocacy of a new kind of polity 
with village Panchayats forming the basic units of governance. It was the view of M. 
Ananthasayanam which finally prevailed. He asked an interesting question “But where are 
these republics ?” to which he himself replied smugly “They have to be created. ” This advice 
became suggestive that a provision should be included in the Directive Principles ‘which 
would insist upon the various governments that may come into existence in future to establish 
village Panchayats, gives them political autonomy and also economic independence in their 
own way to manage their own affairs.\textsuperscript{600}

Eventually, the following amendment by K.Santhanam on November 22, 1948 was 
accepted by the Assembly which read that “the State shall take steps to organize village 
Panchayats and endow them with such powers and authority as may be necessary to enable

\textsuperscript{595}Supra note 12 at pp.251-252
\textsuperscript{596} Supra note 15 at p. 40
\textsuperscript{597} Supra note 12 at p.252
\textsuperscript{598} Dharampal (Ed.), Panchayat Raj as the Basis of Indian polity, New Delhi : association of Voluntary Agencies 
for Rural Development, 1962, pp.3-12
\textsuperscript{599} Ibid., p.8
\textsuperscript{600} Supra note 13 at p.252
them to function as units if self-government.” 601 It was hailed as a key principle which provided Indians with something they can call their country’s Constitution. 602 Buoyed by the inclusion of Panchayats in the Constitution, V. Subramaniam said, “If there was any living cell in the Constitution, it will be this Panchayat amendment.” 603 But Santhanam also struck a cautious note about the powers of the Panchayats about which he said, what powers should be given to a village Panchayat, what area should be and what its function should be will vary from province to province and from state to state, and it is not desirable that any hard and fast direction should be given in the Constitution.

After Ambedkar consented to the amendment, speaker after speaker expressed warm support for the amendment. Seth Govind Das hoped that “a time will come when we shall be able to witness the ancient glory of our villages.” V.I. Muniswami visualized a similar possibility and V.Subramaniam described the amendment as very essential. L. Krishnaswami Bharathi extensively quoted Gandhiji and wanted that it should be made more explicit so that Gandhiji’s soul will be very much pleased. The amendment was finally accepted and it became article 40 of the Constitution.

Nevertheless the optimism was short-lived as the amendment did not make any difference to the structure of the Draft Constitution. Granville Austin has observed “even so it appears that assembly leaders intended to omit all mention of Panchayats from the Constitution and only under strong pressure did the leadership grudgingly agree that an article concerning panchayats should appear in the Directive Principles.” 604 Thus there was no categorical commitment through express constitutional provision in this regard. Instead of becoming a foundation stone of the constitution, it became a concessionary playground for accommodating the Gandhians as put by Rajeev Dhavan in “Design faults and Failures of design.” 605 To be more precise, nothing but a compromise was arrived at, as panchayats were included in the non-justiciable part of the Constitution, under Directive Principles of State Policy, as Article 40, which reads, “The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

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601 Supra note 23 at p. 12
602 S.M. Ghosh CAD 22-11-1948 Vol. VII at p. 525
603 V. Subramaniam, CAD, 22-11-1948, Vol. VII at p.525
604 Granville Austin, op.cit., p.38
605 Extracted from Reading materials of ATI
It was these constitutional discourses and debates which unleashed a new generation of constitutional reforms and revitalized the quiescent PRIs into dynamic constitutional bodies of governance.

6.16. Earlier Experiments in Rural Development in India

Before the formal inauguration of the 73rd amendment, India was engaged with many models of rural development. The choice and adaptation of a particular model would depend upon the political and economic conditions of a country, its cultural milieu and combination of circumstances at a given moment. As far as Panchayati Raj is concerned, it can be better understood in the light of the experiments in integrated rural development that took place in India.

6.16.1. Baroda Model

Available literature shows that Baroda was the first state to think along these lines as far as the last quarter of the nineteenth century.\textsuperscript{606} By the first decade of the twentieth century, considerable progress—remarkable by contemporary standards in India—was made in the field of agriculture, education, village Panchayats, cooperation and social legislations. Its enlightened ruler, Maharajaji Sayaji Rao Gaekwad had the vision to realise the importance of ‘all sided development of the individual and the village, and the drive to implement a well-conceived programme.

6.16.2. Sriniketan Model

In this sequence, the next important development was the evolution of poet Tagore’s Sural or Sriniketan experiment which was conceptually a very different proposition. The poet's experiments with rural reconstruction were carried out in three phases: Shilaidaha, Patisar and later at Sriniketan. It was at Sriniketan that his programme of rural reconstruction got its full application.\textsuperscript{607} From 1904, when he publicly affirmed his faith in rural welfare, to 1922 when Sriniketan was established, the poet has been charting his path in ‘the domain of quiet integral action’.\textsuperscript{608} He said, “The object of Sriniketan is to bring back life all its completeness, making the villagers self-reliant and self-respectful, acquainted with the

\textsuperscript{606} J.C.Kavoori and B.N. Singh, History of Rural Development in Modern India, Vol.I, new Delhi, Impex India, 1967, p.44
\textsuperscript{607} Rabindranath Tagore, ‘Presidential Address’, Bengal Provincial Conference, Pabna, 1908, Towards Universal Man, New York, 1962, pp. 118-119
\textsuperscript{608} Sujata Dasgupta, A poet and a Plan, Thacker Spink, Calcutta, 1962, p.9

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cultural tradition of the country and competent to make an efficient use of modern resources for the fullest development of their physical, social, economic and intellectual conditions.609 Leonard Elmhirst, a close associate of Tagore held that irrespective of the results which were notable, Sriniketan was a experiment of great human significance and a source of inspiration and ideas to those interested in rural development in India. In the natural order of his vision, villages would be in tune with their inner story and ‘informed by a living touch of creative faith. Knowledge and efficiency were important, but unless they are vitalized by such an integral vision, we get ‘dry statistics ‘that deal with fragments of dissected life.’610

6.16.3. Martandam Model

Another pioneer, Dr. Spencer Hatch was known for his Rural Development Center at Marthandam in South Travancore. It was based on pillars of policy which focused on: Building on what the village and the people have; ensuring that the programme is the people’s own; helping the people to help themselves upwards on all sides of life; inclusion of all the people; reaching the poorest; maintaining a comprehensive programme; refusing to be rolling stones or emergency kits; the spiritual basis; simplicity; honorary unpaid service; cooperation and coordination; and training of workers.”611

6.16.4. Gurgaon Experiment

The Gurgaon experiment of F.L. Brayne, a member of the I.C.S., spanned nearly a decade (1925-1935). Brayne was deeply moved by the poverty, backwardness and apathy of the villagers. He declared, “Uplift is a mass movement …and no area, no part of life and no method of attack can be neglected.”612 As Commissioner of Rural Reconstruction (1993), he sought to evolve comprehensive rural reconstruction machinery at the State and district levels, visualizing cooperation between different government departments inter se, and voluntary agencies, Badruddin Tyabji an Indian member of the ICS, recalled,

“In his zeal for arousing interest and enthusiasm among the apathetic, undernourished peasantry, to stir them into making a sustained effort to breakthrough their economic

609 Ibid., p.9
610 L.K. Elmhirst, Rabindranath Tagore and Sriniketan, Evolution of Community Development Programme in India, New Delhi, Government of India, 1963, p.6
611 Spencer Hatch, Early Times at the Marthandam Project, pp. 19-23
612 S.R. Verma, Gurgaon Experiment. Evolution of Community Development In India, New Delhi, government of India, 1963, p.28
and social shackles, he also utilized, apart from his own inexhaustible powers of speech making and writing, the media of films and plays even in those days. “613

6.16.5. Firka Development Scheme

Another important experiment done with an integrated approach was the Firka development Scheme, introduced by the Government of Madras in 1946. It held “the villages themselves had a share in framing the proposals for their own improvement. Development committees consisting of officials and non-officials were constituted in each firka and Center to implement the schemes drawn up for the improvement of the villages. There was also a State Rural Welfare Board comprising Heads of Departments and influential constructive workers, which formulated schemes of Firka Development.”614

6.16.6. Etawah and Nilokheri Projects

In the post-independence period, the Etawah and Nilokheri projects provided the immediate backdrop to the community development programme. In the initial stages the moving spirit behind the project was Albert Mayer. It sought to draw upon the experience of rural development in India and abroad, notably in countries like Kuomintang China, Greece and the United States. The approach of the project was informed by a sociological perspective involving respect for people’s traditions and culture. “The success of the project paved the way for the US technical Cooperation Agreement of 1952 for expansion of community development program.”615

The Nilokheri Project was somewhat different in scope and nature. Nilokheri was much smaller in area – an urban-cum-rural township springing from swamps. It lacked the scientific aura of the Etawah project But S.K.Dey’s efforts infused hope and spirit of self – help among the people and in organizing cooperative effort on an impressive scale. Nehru’s tribute to the experiment explains its significance and appeal, “ I have seen one Nilokheri from its birth to its present development. I am deeply struck by the effort made by the people

613 Badruddin Tyabji, Community Development : Retrospection and Introspection, Community Development and Panchayat Raj Digest, October 1970, p.89
614 G. Venkatachalpathy, Firka Development Scheme in Madras State “, Evolution of Community Development Programme in India, p.47
to revive themselves and build their future, I want 9999 Nilokheris to implement the message of Nilokheri.”

The contribution of Etawah and Nilokheri projects, as also of previous experiments, is evident from the following account of Dey. Referring to his meeting with the American Ambassador Chester Bowles He said, “He is convinced that if a rural programme was to be initiated, it would be a composite concept based on the joint exercise of Etawah and Nilokheri. …..I could draw from the experiences not merely of Nilokheri and Etawah but also of Wardha and Sriniketan, Martandam, Baroda and Gurgaon.”

All these experiments in rural development and the insights of the modern social sciences contributed in the making of what came to be known as the Community Development Programme.

6.17. Community Development Ushered (1952)

In the early 1950s, Gandhi’s village swaraj was kept on the back burner in the overall development plan, which was deeply committed to industrialization, economic growth, and income redistribution. The thrust on local governance started with community development which occupied the central place in rural administration in the Fifties. Some even considered panchayats to be the offspring of the Community Development Programme.

Community Development (CD) Programme was inaugurated in 1952 and was modelled after the earlier experiments at Sriniketan, Baroda (Vadodara), Etawah Project under Albert Mayer and Nilokheri. Exactly one year after the community development programme, on the recommendations of Grow More Food Enquiry Committee headed by V.T. Krishnamachari National extension Service (NES) was also introduced in October 2, 1953 which was also an intensive development program like its predecessor but intended to cover the entire country in a relatively shorter period.

The most significant aspect of the Community Development Programme was as Douglas Ensminger said, “the first step in a programme of intensive development which is

616 S.K.Dey, Nilokheri, Asia, Bombay, 1962, p.118
617 Ibid., p.83
expected over a period of years to cover the entire country. However, the dynamic driving force behind the CD movement, Minister S.K. Dey, was of the consistent view that CD projects could not achieve their full potential in the absence of effective institutions for people’s participation. The programs were excessively politicized and bureaucratized. SDO cum BDO fulfilled the local demands like road, drinking water wells, panchayat ghar, school building. All schemes were treated as government schemes rather than people’s government. Complaints of wastage of funds, corruption, malpractices and favouritism began to mar the public image of development. When the Community development Programmes failed to evoke people’s participation, a study team under the Chairmanship of Balwant Rai Mehta was appointed in 1956 to critically review the CDP and NES and to suggest measures for improving economy and efficiency in the implementation of the schemes.


The earliest team to have studied decentralisation in post Independent India was the Balwant Rai Mehta Committee Report appointed in 1957. It offered solutions along two broad axes: i) Administrative decentralization, for effective implantation of the development programme and ii) Control by elected bodies of this decentralized administrative system. The Team felt that here should be a single representative and vigorous democratic institution to take charge of all aspects of development work in the rural areas. It also recommended, “Public participation in community works should be organized through statutory representative bodies.” It was of the view that without an agency at the village level that could represent the entire community, assume responsibility and provide the necessary leadership for implementing development programmes, real progress in rural development could not come about at all. In the ultimate analysis, it must be an instrument of expression of the local people’s will in regard to local development and community development and national extension service programs must be merged.

The main recommendations of the Report were:

1. Suitable administration for the implementations of development programs.
2. Place decentralized administrative system under the effective control of elected representatives of people

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620 Douglas Ensminger, Rural India in Transition, All India Panchayat Parishad, New Delhi, 1972, p.105
3. Development block covering about 100 villages and having a population of hundred thousand should coincide with Taluka /Tehsil/ sub district level
4. There should be three tiers ---Zilla Parishad at the district level to replace the District Board, Panchayat Samiti, which would include their representatives
5. Resources will be largely devolved upon the Panchayat Samiti—the intermediate tier which will also play an important part in rural development process
6. Looking at the diversity of socio-economic conditions, some states may change the proposed system and may prefer devolution of powers to the district level body
7. Composition of the Panchayati Raj bodies should be representative of all sections of people, by and large
8. Effective training of people’s representative at the three tiers of the local bodies was also stressed.
9. People’s representatives would plan the community development and allied programmes as well as direct and supervise their implementation by the bureaucracy. Seminars, workshops and conferences and training courses to that effect should be arranged adequately.

The National Development Council agreed to most of the recommendations but looking at the varying conditions, states were given the freedom to decide about the exact application of the concept of democratic decentralisation and its institutional set-up. It was during this period that the term Panchayati Raj gained currency as a process of governance organically linking the will of the people from the Gram Sabha to the Lok Sabha. In a handsome tribute to the Mehta Report, Professor Maddick described the Report as “an outstanding document and model of the way in which an enquiry should be conducted.. For community development this report was a most valuable study and for the growth of democratic institutions in the country one of vital importance.”

However despite the encomiums showered on the report, the recommendations of the study team were also criticized on the following grounds:

1. Political and bureaucratic resistance at the state level to a sharing of power and resources with local level institutions
2. The takeover of these institutions by the rural elite who cornered a major share of the various welfare schemes

3. The lack of capability at the local level
4. And finally the absence of political will of grassroots leaders⁶²⁴


Rajasthan was the first state where Panchayati Raj was established in October 2, 1959. Pandit Nehru kindled the lamp at Nagaur to inaugurate Panchayati Raj. On this occasion, Nehru said, “To uplift lakh of villages is not an ordinary task …… The reason for slow progress is our dependence on official machinery. An officer is probably necessary because he is an expert. But this work can be done only if the people take up the responsibility in their own hands…. The people are not merely to be consulted. Effective power has to be entrusted to them….. Real change comes, of course, from within the village, from the very people living in the village, and is not imposed from outside.” ⁶²⁵

Later Andhra Pradesh and Tamil Nadu followed suit in 1959 and Assam, Karnataka, Orissa, Punjab and Uttar Pradesh implemented it in 1960-61. By March 1962, 204,000 village Panchayats had been established, and these served about 95 per cent of the rural population. By the year 1963, Panchayati Raj legislation had been enacted in 12 States and Panchayat Samitis and Zilla Parishads had been established in 10 States.

Zilla Parishads assumed utmost importance for rural development during these years. It was mainly responsible for advising, guiding and supervising the Panchayat Samiti and also to consolidate the plan proposal at the district level. It would also be a watch dog of the state in the district and would advise the state government on general and financial matters relating to Panchayat Raj in action.

In Maharashtra powers were devolved on the Zilla Parishad for planning and implementation of rural development programmes as per the Naik’s Committee’s reports. In some states like Andhra Pradesh, Gujarat, Uttar Pradesh and West Bengal, Zilla Parishad was also vested to undertake directly some specialized development functions along with guidance, monitoring and general provision.

6.20. Rise and Fall of Panchayat Raj (1965-78)

The period between (1965-1978) beheld different states following different patterns of Panchayat Raj. During this period Panchayati Raj gained momentum. It became a process of governance; linking people from the Gram Sabha to the Lok Sabha. S.K. Dey had rightly opined that a Panchayat was local body limited to a geographical area whereas Panchayati Raj was distinct from Panchayat. Panchayat Raj had thus become a philosophy envisaging linking of the Gram Sabha with the Lok Sabha. While Jammu and Kashmir followed a 1-tier prototype, Haryana chose 2-tier and Rajasthan and Andhra Pradesh adopted a 3-tier system. Panchayat Samiti was more powerful in Rajasthan and Andhra Pradesh whereas Zilla Parishad was more powerful in southern states.


Many state-specific committees were also appointed to recommend on organizational pattern, resources for PRI, administrative powers and personnel system and other problems. The following committees are mentioned below:

**Table 6.2: Committees for PRI**

<table>
<thead>
<tr>
<th>State</th>
<th>Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>1. Purshottam Pai Committee (1964)</td>
</tr>
<tr>
<td></td>
<td>2. Ramchandra Reddy Committee (1965)</td>
</tr>
<tr>
<td></td>
<td>3. Narsimhan Committee (1972)</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>1. Mathur Committee (1963)</td>
</tr>
<tr>
<td></td>
<td>2. Sadiq Ali Committee (1963)</td>
</tr>
<tr>
<td></td>
<td>3. Girdhari Lal Vyas Committee (1973)</td>
</tr>
<tr>
<td></td>
<td>4. Kharra Committee (1990)</td>
</tr>
<tr>
<td>Karnataka</td>
<td>1. Bassappa Committee (1963)</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>1. Govind Sahai Committee (1959)</td>
</tr>
<tr>
<td></td>
<td>2. Murti Committee (1965)</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>1. Naik Committee (1961)</td>
</tr>
<tr>
<td></td>
<td>2. Bongiwar Committee (1963)</td>
</tr>
</tbody>
</table>

Source: R.P. Joshi, and G.S. Narwani, Panchayati Raj in India—Emerging Trends Across the States, Rawat Publications, New Delhi, 2005

However by the early seventies, the Panchayats had gone from a phase of early ascendancy to one of decline and stagnation. In order to amend the situation, the Janata Government appointed the Ashok Mehta Committee in 1978 to study the role and powers of the PRIs in rural development and give suitable suggestions. It suggested a two tier system of Panchayati Raj as opposed to the three tier arrangement suggested by the Balwant Rai Mehta Committee. This Committee classified the three phases of PRIs into:

A) Period of Ascendancy (1959-1964)
B) Period of Stagnation (1965-1969)
C) Period of Decline (1969-1977)

The Ashok Mehta report was more explicit than the Balvantra Mehta report in treating PRIs as units of governance and dynamic agents of development. The Report stated Panchayati Raj is both a living continuum and also a unit of democratic self-management at the rural local level. The dual status is natural as well as desirable, once it is recognized that Panchayati Raj is a sub-system in relation to the democratic polity in the country and will also develop the potential of becoming a political system at the rural local level for the complex of transferred activities. 626

Its main thrust was on the strengthening of the PRIs as institutions of democratic decentralisation. The focal recommendations of the Committee are discussed below:

a. “Creation of a two-tier system of Panchayati Raj, with Zilla Parishad at the district level and, below it, the Mandal Panchayat consisting of a number of villages and having a population of 15,000 to 20,000

b. Nyaya Panchayat presided over by a qualified judge, to be kept as a separate body;

c. Open participation of political parties in PRIs through elections contested on a party basis;

d. PRI elections to be organized by the Chief Electoral Officer of the state in consultation with the Chief Election Commissioner of the country;

e. Zilla Parishad to be made responsible for planning at the district level;

f. Reducing the dependence of PRIs on the state funds and, instead, endowing them with powers of taxation;

g. Development functions to be transferred to Zilla Parishads;

626 Ashok Mehta Committee Report, 1978
h. State Government not to supersede the PRIs on partisan grounds; and
i. Appointing in the Council of Ministers of the State Government of a Minister for Panchayati Raj, to look after the affairs of the PRIs.  

States like Andhra Pradesh, West Bengal, Madhya Pradesh and Karnataka implemented these suggestions along the lines of the Ashok Mehta Committee Report. Jammu and Kashmir also revised the existing Panchayat Acts and passed new Acts.

The West Bengal Panchayat Act, 1973 (West Bengal Act XLI of 1973) for instance, brought some fresh air in the Panchayat system. Direct elections in all three tiers (through universal adult franchise) had to be held at regular intervals. They were made mandatory, without any discretionary power of any authority to postpone such elections indefinitely. Powers to collect tax and non-tax revenue were clearly defined. Functional domain of the Panchayats was more clearly delineated as compared to the earlier Panchayats. The new legislation empowered the Panchayats in various fields of activities encompassing rural life. Though the recommendations of the Ashok Mehta Committee were not accepted by the Union Government due to a change in the ruling party, it did exercise some influence upon the working of Panchayati Raj in few states and paved the way for many more committees to recommend ways and means for resuscitation of the PRIs.


In order to mobilize people politically at the grassroot levels another team was constituted in 1982. The Planning Commission wanted effective people’s participation through the PRIs in rural development so that plans become more responsive to people’s needs and aspirations and there is coordinated as well as accelerated progress. The Planning Commission experts were deputed under C.H. Hanumanth Rao to study as to how to prepare plans at the distinct levels. Thus he suggested that decentralisation of planning and people should be associated right from the plan formulation stage.


This committee was appointed to revisit the obstacles in the way of effective PRIs. It advised for regular elections to the PRIs and formulation of plans at the district levels. The Committee recommended the revival of Panchayati Raj Institutions such that greater

responsibility of planning, implementation, and monitoring of rural development programmes could be assigned to them\textsuperscript{628} and that the block development office should be the spinal cord of rural development.


More thinking on PRIs was initiated by the Committee for the Concept Paper on Panchayati Raj Institutions (CCPPRI), also known as the L.M. Singhvi Report of 1986. This Committee was formed by the Government of India to suggest steps for revival of Panchayati Raj. It advocated that Panchayati Raj should be viewed as the local self-government system and should be strengthened accordingly. ‘It recommended . . . that local self –government should be constitutionally recognized, protected and preserved by the inclusion of a new chapter in the Constitution’.\textsuperscript{629} Although it was opposed by the Sarkaria Commission yet it became the basis for the 64\textsuperscript{th} Amendment Bill. The Committee also proposed for the appointment of Finance Commission and that all the rural development programmes are entrusted to the Panchayati Raj Institutions by amending schedule VII of the Constitution.\textsuperscript{630}

It was also affianced with the issue of the role of political parties in Panchayat elections, stating that a non-involvement should be consensual rather than through legislative fiat. The role of political parties in Panchayats has since then divided the advocates of PRI into two camps. On the one side are those such as Jayaprakash Narayan, writing within the Gandhian tradition of partyless democracy, who saw self-government through faction-fighting will not be self-government but self-ruination’, and on the other are those such as Asoka Mehta who support the involvement of political parties since it enables candidates, from weak economic backgrounds, to effectively compete with the backing of a strong organization.\textsuperscript{631}

As a result of the recommendations of various such committees and the tempo generated, the Central Government decided to give a constitutional status to the PRIs and

\textsuperscript{629} S.S. Singh Legislative Status of Panchayati Raj in India, Indian Institute of Public Administration, New Delhi, 1997, p.19
\textsuperscript{630} Report of the Committee on Revitalisation of Panchayati Raj Institutions, L.M.Singhvi, Chairman, Government of India, Delhi, 1986
\textsuperscript{631} M. Wadhwani and S.N.Mishra (eds.) Dreams and Realities: Expectations from Panchayat Raj, IIPA, New Delhi, 1996, p.2
passed the 73rd Constitution Amendment Act in 1993 to provide uniformity to the Panchayati Raj system throughout India.

The foregoing is an account of the protracted engagement with the issue of decentralized democracy in India. The preceding passages have captured not only the historical backdrop and the institutional initiatives of the preceding decades that were instrumental in forging Panchayati raj but the ideas, mind-sets and the intellectual frames have also been systematically premeditated. The next segment will commence with a searching analysis of the making of the act and the immediate causes that catalysed the initiation of the amendment, the major premises on which it has been built and an appraisal of the impact of the 73rd Amendment Act.

6.25. Legislative Origins of the 73rd Constitutional Amendment Act

Before discussing the amendment, it is necessary to examine the background and the events leading up to this. To begin with major transformative changes were taking place. By this time the credibility of the state as an institution had taken a nosedive and the New Economic Policy was bringing in relaxation of controls and opening up the economy internally as well as externally. It is arguable that a gamut of factors at the global level exercised influence over India which may be briefly summarized as follows:632

1. Collapse of the Soviet Union which weakened the rationale of interventionist regimes
2. Emergence of the New Political Economy with its insistence on market friendliness and a dilution of the state’s role
3. Disenchantment with large governments to which the state as an institution contributed by virtue of its negative image
4. Increasing emphasis on transparency, accountability and participation in governance

Rajiv Gandhi who succeeded his mother Shrimati Indira Gandhi, as the Prime Minister in 1984 was also influenced by all these factors and was convinced that the centralized mode of governance had failed to deliver the goods. The other motive that prompted him to push the bill was as Bandyopadhyay analyses, initially Rajiv Gandhi was looking for some efficiency-enhancing administrative reforms that would address the problem of widespread

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inefficiency and callousness among administrators towards their developmental tasks at the
district level. But soon it became clear to him that if our district administration is not
sufficiently responsive, the basic reason is that it is not sufficiently representative.\textsuperscript{634}

He was thus driven by the vision to provide the people with a —representative
administration as he emphasized in his Address to the Nation in January 1985 and also
included in the Revised Twenty-Point Programme of 1986.

Consequently in 1989 to materialize his dream, Prime Minister Rajiv Gandhi proposed
to assign constitutional status to PRIs and introduced the 64th Constitutional Amendment Bill
in accordance with the recommendations of the L.M. Singhvi Committee. Moreover a sub-
committee of the Consultative Committee of the Parliament of the Ministry of Rural
Development constituted the same year under the chairmanship of P.K. Thungal too stressed
the need for giving constitutional support to the Panchayati Raj.\textsuperscript{635} While introducing the
Bill Rajiv Gandhi reinforced the sentiment that, “Our Bill will ensure that Panchayati Raj has
a democratic character similar to the Lok Sabha and the State Assemblies and constitutional
protection for their functioning as representative institutions of the people.” This bill
proposed to make it legally binding upon all states to establish a three-tier system of
Panchayats at the village, intermediate and district level, each of them to be appointed by
direct election and to enjoy a fixed tenure of no more than five years. The Constitution (64th
Amendment) Bill was followed in July 1989 with the Constitution (65th Amendment) Bill
that sought to endow urban local bodies – from town Panchayats and Municipalities to
Metropolitan Councils – with powers similar to those that were sought to be devolved to the
rural Panchayats.

The original Panchayati Raj Bill (1989) was an initiative not only to decentralize
power, but to politically enfranchise the poorer sections of society, such as Scheduled Castes,
Scheduled Tribes and women, who form a large part of the landless laborer and artisan
populations.\textsuperscript{636} Even though the Bill was passed by the Lok Sabha, there was an acerbic
debate on whether it was constitutionally permissible for the Union to legislate on Panchayats
which figure in List 2 of the Constitution and is the domain of the states. Hardly any party
was sympathetic to the amendment except of course the Congress. Eventually it failed to

\textsuperscript{634}Rajiv Gandhi’s remarks at a workshop on ‘Responsive Administration., as quoted in Bandyopadhyay, 1999,
p.71
\textsuperscript{635}Ranbir Singh, Genesis and Development of the Concept of Panchayati Raj in Surat Singh (ed.) Decentralized
Governance in India-Myth and Reality, Deep and Deep Publications, New Delhi,p.68
\textsuperscript{636}Y.K. Alagh Panchayati Raj And Planning In India: Participatory Institutions and Rural Roads, Asian Institute
of Transport Development, New Delhi,p.6
secure a two-thirds majority in the Rajya Sabha and lost by two votes in October 1989. This bill was opposed, because it was viewed as an instrument for the union (central) government to deal directly with PRIs and bypass the state governments.

It was again introduced as the 74th amendment Bill – as a combined Bill on Panchayats and Municipalities - by the National Front but this time too it fell short because of the dissolution of the Ninth Lok Sabha. Finally, the Congress government under Prime Minister P.V. Narasimha Rao introduced the 72nd (Panchayats) and 73rd (Nagarpalikas) Constitution Amendment Bills based substantially on the Bills moved in the Eighth Lok Sabha by Shri Rajiv Gandhi but also incorporating some of the changes wrought by the National Front government. These two Bills were referred to a Joint Select Committee of the Parliament which effected some further changes but conforming considerably to the earlier 1989 Bill. The Lok Sabha and the Rajya Sabha passed both Bills on the 22 and 23 December 1992 respectively. By the time the Parliament passed the two Bills, their sequence changed to 73rd and 74th respectively. Following their ratification by more than half the State Assemblies, as required under the Constitution, the President of India gave his assent; the Acts came into force as the Constitution (Seventy-third Amendment) Act, 1992 on 24th April 1993 and the Constitution (Seventy-fourth Amendment) Act, 1992 on 1st June 1993. This added two new parts to the Constitution, namely, Part IX titled — The Panchayats and Part IXA titled — The Municipalities. It was meant to provide constitutional sanction to establish ‘democracy at the grassroots level as it is at the state level or national level.’ Rajiv Gandhi’s vision — To the people of India, let us ensure maximum democracy and maximum devolution…. Let us give power to the people has crystallized into reality today.

In order to understand the letter and spirit of the Act, the next section takes a broad overview of the provisions of the piece of legislation.

### 6.26. Features of 73rd Constitutional Amendment Act

The 73rd amendment of the Constitution is an epoch making event in the history of democratic decentralization in India. While introducing the constitutional amendment bill in Parliament on December 1, 1992, the then Cabinet Minister of Rural Development observed:

"This casts a duty on the centre as well as the states to establish and nourish the village panchayats so as to make them effective self-governing institutions and by introducing this Act, the Government was fulfilling Mahatma Gandhi’s dream of Gram Swaraj."

The momentous 73rd Constitution Amendment Act, 1992 added a new Part IX consisting of 16 articles (Article 243, 243A-243O) and the Eleventh schedule to the Constitution. It was passed because there was an imperative need to enshrine in the Constitution certain basic and essential features of the PRIs and to impart certainty, continuity and strength to them. The 73rd Constitutional Amendment Act envisages Gram Sabha as the foundation of the PRI system to perform the functions of and powers entrusted to it by the State legislatures. In view of this fact it may be said that the success of the PRIs as a unit of democracy and thereby ushering an all round development of rural areas will much depend on the intention and support of the State Governments. The amendment provides for a three tier PRI system at the village, intermediate and district levels.

The following are the basic features of the PRI system introduced through the 73rd Amendment Act:


The 73rd Amendment included the Gram Sabha or village assembly as a deliberative body to decentralized governance along with a three-tier structure of Panchayats from village to the district. The GS is the fulcrum of the entire Panchayati Raj System as it enables each and every voter of village to participate in decision-making at local level. The idea of involvement and participation of villagers in their development through the institution of Gram Sabha was incorporated in the Village Panchayat Acts passed by some of the provincial legislatures in British India. For instance, Section 36(4) of the Bombay Village Panchayats Act 1933 says: “A Panchayat shall convene, in a manner and at a time prescribed, a meeting of all adult residents of the village and the statement of accounts together with a report on the administration for the preceding year and the programmes of the work proposed for the year following shall be read out and explained at such meeting”.

Gram sabha is an institutional mechanism of democracy. It provides an opportunity to all the people to participate in the development process. The Ashok Mehta Committee, highlighting the role of Gram Sabha, stated that it has an important role in activating the

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641 R.P.Joshi and G.S.Narwani op.cit., p.50
642 M. Pal, Gram Sabha Meetings in India: Processes, Outcomes and Perspectives, Case Study JOAAG, Vol. 4. No. 2, 2009, p.84
democratic process at the grass root level, in inculcating community spirit, in increasing political awareness, in strengthening development orientation, in educating rural people in administrative and political process, and in enabling weaker sections to progressively assert their point of view. Article 243A provides that a Gramsabha may exercise such powers and perform such functions at the village level as the Legislature of the State may, by law, provide. Gram Sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of the Panchayat at the village level. Thus the 73rd Amendment makes Gram Sabha as the foundation of PRI system.

PESA is another landmark legislation which is extended to Fifth Scheduled States namely Andhra Pradesh, Chattisgarh, Gujarat, Jharkhand, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, and has not only given control of water, forests land in the hands of tribals but also ensured centrality to this body in the implementation of various programmes and schemes at the local level. However, the State Legislatures have not been harmonized with PESA so far. In the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 (PESA) provides special place and the following roles for Gram Sabha in Scheduled Areas:

a) Establishment of a Gram Sabha for every village comprising of persons whose names figure in the electoral rolls.

b) Empowering the Gram Sabha to safeguard and preserve the traditions, customs and cultural identity of the people, community resources and to settle local disputes by customary methods.

c) Approval of plans, programmers and projects for social and economic development of the village Panchayat by the Gram Sabha.

d) The Gram Sabha should identify and select beneficiaries for poverty alleviation and other programmers.

e) Every village Panchayat must obtain a certificate of utilization of funds from the Gram Sabha for the projects and programmes of social and economic development under the state poverty alleviation and other programmes.

f) The acquisition of land for development projects and rehabilitation or resettlement of persons affected by such projects in the Scheduled Area has to be done in consultation

645 Report Of The Expert Group, Planning At The Grassroots Level An Action Programme For The Eleventh Five Year Plan, March 2006,New Delhi,p.84
with either the Gram Sabha or the Panchayat at the appropriate level. Planning and implementation of the projects will be coordinated at the state.

The table below deftly illustrates the provisions of the PESA act and the consequential powers and roles that are assigned to the different tiers of the PRIs.

**Table 6.3:** Provisions of PESA and consequential powers given to different tiers of the PRIs

<table>
<thead>
<tr>
<th>Provisions of the Act</th>
<th>Given to which tier of PRIs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Section 4(c) and (e) Approve plans, programmes, and projects selection of beneficiaries under poverty alleviation programmes, issued of utilization of funds of Grama Sabha.</td>
<td>Grama Sabha</td>
</tr>
<tr>
<td>2. Section 4(i) - No acquisition of land for development of projects and for settling or rehabilitation persons affected by such projects without prior consultation of the Parishad.</td>
<td>Zilla Parishad</td>
</tr>
<tr>
<td>3. Section 4(i) Management of the Minor Water Bodies.</td>
<td>Zilla Parishad</td>
</tr>
<tr>
<td>4. Section 4(k)(l)- Recommendation prior to issue of prospecting license or mining lease for minor minerals</td>
<td>Zilla Parishad</td>
</tr>
<tr>
<td>5. (1) Section 4(m) Enforcement of prohibition of or restriction of the sale and consumption of any intoxicant, ownership of Minor Forest Produce, prevention of alienation of land and restoration of any unlawfully alienated land of a Scheduled Tribe, control over money lending to the Scheduled Tribe, management of village market.</td>
<td>Grama Sabha</td>
</tr>
<tr>
<td>2) (a) The Bihar and Orissa Excise Act has been amended giving power to Grama Sabha of executive control over intoxicants. (b) 68 items of MFP have been transferred to Grama Panchayats. The Orissa Grama Panchayat (Minor Forest Produce Administration Rules, 2002 has come into force w.e.f 15.11.2002.</td>
<td></td>
</tr>
<tr>
<td>6. Exercise control and supervision over institutions and functionaries of various sectors in relation to programmes and measures of Government, prepare the local plans including tribal sub-plans for the areas and to exercise control over the resources for such plans</td>
<td>Panchayat Samiti</td>
</tr>
</tbody>
</table>

**Source:** Annual Report-2003-04, Panchayati Raj Department, Government of Orissa, at http://orissagov.nic.in/panchayat


Article 243B visualizes a three–tiered system. A new Schedule IX containing 29 powers was also added. It provides that in every state, Panchayats shall be constituted at the village intermediate and district levels. As a result of the 73rd amendment, the numbers of panchayats stands at 246,411 of which 239,649 are village panchayats, 6,113 are intermediate panchayats, and 649 are district panchayats. Small states with population below 20 lakhs have been given the option to not to constitute the intermediate level. Article 243 C further

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646 Alok Ranjan op. cit., p.17
provides that subject to the provisions of this part, legislatures of state government may by law, make provisions with respect to the composition of the Panchayats. However the ratio between the population of territorial area of a Panchayat at any level and the number of seats in such Panchayats to be filled by election, shall, so far as practical be same throughout the state.  

All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area. For this purpose each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the numbers of seats allotted to it should be the same throughout the Panchayat area.

The legislatures of the states may by law provide for representation of following persons in Panchayats:

a) The Chairperson of the Panchayat at the village level, in the Panchayats at the intermediate level or the case of a state not having intermediate Panchayats, in the Panchayats at district level.
b) The Chairpersons of the Panchayat at the intermediate level in the district Panchayat.
c) The members of the Lok sabha and the MLAs representing the territorial part of the Panchayat
d) The members of Rajya sabha and Legislative Council of the state where they are registered as electors.

The Chairperson of a Panchayat and other members of Panchayat, whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayat.

6.26.3. Reservation Of Seats (Article 243D)

Article 243D provides for a clear mandate for the State Legislatures to reserve seats for SCs and STs in every Panchayat and the number of seats so reserved shall bear the same proportion to the total number of seats to be filled by direct election in that Panchayat area bears to the total population of the area under consideration. Today, about 2.8 million

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647Constitution of India, 73rd Amendment Act, 1992 accessed at www.indiacode.nic.in/coliweb/amend/amend73
648 Ibid
649 Ibid
representatives stand elected to the three levels of panchayats. About 37 per cent are women, and 30 per cent belong to SCs and STs.\textsuperscript{651} It further provides:

a) In every Panchayat seats will be reserved for the SC/ST population in accordance with their population in the village or Panchayat concerned.

b) More over 1/3 of the seats in each category shall be reserved for women.

c) The office of the Chairperson in the Panchayats at the three levels shall also be reserved for SC, ST and women in such a manner as the legislatures of each state, may, by law provide. But the number of offices of Chairpersons reserved for the SCs and STs shall be in the same proportion to the total number of such offices in the Panchayats at each level in proportion the total population of SC and ST in the state.

d) However not less than 1/3 of the total number of the offices of Chairperson in the Panchayat at each level shall be reserved for women. The number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.\textsuperscript{652}

Article 243D (6) further states that nothing in this part shall prevent a State Legislature from making any provision for reservation of seats in any Panchayat or offices of chairpersons in the Panchayats at any level in favour of backward class of citizens.\textsuperscript{653}

On August 27, 2009 the Indian Cabinet approved a proposal for enhancing the reservation of directly elected seats for women from one -third to fifty percent in all the tiers through an amendment of article 243D(3) of the Constitution\textsuperscript{654}. Article 243D(3) enumerates that ‘Not less than one third )including the number of seats reserved for women belonging to the Scheduled Cases and Scheduled Tribes ) of the total number of seats to be filled by direct election in every panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.’

6.26.4. Duration Of Panchayats (Article 243E)

Previously the Panchayat elections were held at the will of the State Governments. But with the commencement of the Act, every Panchayat\textsuperscript{655}, unless sooner dissolved under any

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\textsuperscript{651} Alok Ranjan op. cit., p.17

\textsuperscript{652} Available at http://indiacode.nic.in/coiweb/amend/amend73.htm

\textsuperscript{653} Union of India v Rakesh Kumar (2010)4 SCC 50 (para 35); AIR 2010 SC 3244

\textsuperscript{654} Atonu Chatterjee, Women in Panchayats: A Review, Yojana, Ministry of Information and Broadcasting, Vol. 55 February 2011, p. 25

\textsuperscript{655} M.V.Pylee, Constitutional Amendments in India, Universal Law Publishing Co.Pvt.Ltd., New Delhi, 2010, pp. 517-518
law for the time-being in force, shall continue for five years from the date appointed for its first meeting under Article 243A.

It further states that if a Panchayat is dissolved before the expiration of its duration, election shall be completed before the expiration of a period of six months from the date of such dissolution. There is rather and anomalous provision under which when a Panchayat which is dissolved before the expiration of the full term is reconstituted, its tenure will be only for the duration of the unexpired duration of its predecessor Panchayat. 656

But where the remainder of the period for which the dissolved Panchayat would have continued in less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period. In such a case, regular elections will be held for the Panchayat.

6.26.5. Disqualification for Membership (Article 243F)

Generally in all States, the disqualifications mentioned in the Representation of the People Act, which are applicable to the members of legislatures, are equally made applicable to the Panchayat members. Under Article 243F a person shall be disqualified for being a member of panchayat:

i) If he or she is so disqualified by or under any law for the time being in force for the purposes of elections to the legislature of the state concerned

ii) If he or she is so disqualified under any law of state legislature

However, since Article 243F gives the state the leeway to prescribe additional grounds for disqualification beyond what is applicable to the members of the legislature, some States have brought additional qualifications that apply only to persons who are, or who aspire to become members of PRIs. Accordingly, the States of Andhra Pradesh, Maharashtra, Orissa and Rajasthan at present have laws that disqualify persons having more than 2 – 3 children from becoming the members of Panchayats. 657 Karnataka introduced disqualification of candidates not having sanitary facilities from contesting elections.

656 Paras Diwan and Peeyushi Diwan ,Amending Powers and Constitutional Amendments, Deep and Deep Publications , New Delhi, pp.189-190

Article 243G of the Act elaborates about the powers and functions of Panchayats. Generally, the village panchayats carry out major functions, including core functions, whereas intermediate and district panchayats in most states are “allotted supervisory functions or act mainly as executing agents for the state government”\(^{658}\)

Subject to the provisions of this Constitution, the Legislature of a State may, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to:

1. The preparation of plans for economic development and social justice;
2. The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule\(^{659}\)

It inserts a new schedule to the Constitution under Article 243G called Eleventh Schedule which contains a list of subjects which fall upon the purview of the Panchayats. The 29 matters listed in the Eleventh Schedule have been classified by the 11th National Finance Commission\(^{660}\) in the following manner:

**Core functions**

Drinking water, Roads, culverts, bridges, ferries, waterways, and other means of communication, Rural electrification including distribution of electricity, Health and Sanitation, including hospitals, Primary health centres, and dispensaries, maintenance of Community Assets.

**Welfare functions**

Rural housing, Non-conventional energy sources, Poverty alleviation program, Education, including primary and secondary schools, Technical training and vocational education, Adult and informal education, Libraries, Cultural activities, Family welfare, Woman and child development

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\(^{659}\) http://indiacode.nic.in/coiweb/amend/amend73.htm

Social welfare including welfare of the handicapped and mentally retarded, welfare of the weaker sections, and in particular, of the Scheduled Castes and Scheduled tribes, Public distribution system

**Agriculture and allied functions**

Land improvement, implementation of land reforms, land consolidation, and soil conservation, Minor irrigation, water management, and watershed development, Animal husbandry, dairying, and poultry, Fisheries, Social forestry and Farm forestry, Minor forest produce, Fuel and fodder, Markets and fairs.

**Industries**

Small-scale industries, including food processing industries, Khadi, village and cottage industries

Then there are subjects in the Concurrent List also which have been indicated as subjects that may be dealt with by the Panchayats as per Eleventh Schedule. They include social forestry and farm forestry, minor forest produce, rural electrification, including distribution of electricity, education, including primary and secondary schools, technical training and vocational education, and adult and non-formal education. Within the Constitutional framework, ‘local government’ is a State subject. States vary in the extent of transfer of subjects enshrined in the Eleventh Schedule to Panchayats.661

### 6.26.7. Power to Impose Taxes and Funds of The Panchayat(Article 243 H)

Article 243 H empowers the legislature of a State to authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits and assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits662. Moreover the article provides for making grants-in-aid to the Panchayats from the Consolidated Fund of the State. The PRIs are entitled for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such money from the funds663.

Panchayat gets its funds through sectoral schemes implemented by the Central as well as State Governments, Central and State Finance Commissions, levy of taxes, etc. The

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661Rajya Sabha Unstarred Question No. 2066 On Subjects transferred to PRIs answered
662www.fincomindia.nic.in/speech/siva%20pres
663www.internationalbudget.org/cdrom/papers/decentralisation/Decentralisationfromabov
Ministry of Panchayati Raj is implementing Backward Regions Grant Fund (BRGF) and Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA) under which funds are provided to the States for strengthening of Panchayati Raj Institutions and bridging the critical gaps in local infrastructure and meeting other local developmental requirements.\textsuperscript{664}

\section*{6.26.8. Establishment of Finance Commission (Article 243 I)}

Article 243I provides for the establishment of a Finance Commission for reviewing financial position of Panchayats. The Governor of a state shall within one year from the commencement of the Act, constitute a Finance Commission. It is to be constituted once in every 5 years. It shall be the duty of the finance Commission to lay down the principles, which should govern-

i) The measures needed to improve the financial position of the Panchayats;

ii) The distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds\textsuperscript{665};

iii) The determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayat;

iv) The grants-in-aid to the Panchayats from the Consolidated Fund of the State\textsuperscript{666};

v) And any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.\textsuperscript{667}

The Twelfth Finance Commission (TFC) has recommended Rs. 20,000 crore as grants during the period 2005-10 to augment the consolidated fund of the States to supplement the financial resources of the PRIs. A Central Review Committee of officers from Ministries concerned review the release and utilization of grants. Monitoring at State level is done by a committee headed by the Chief Secretary to ensure proper utilization\textsuperscript{668}

Besides Articles 280(bb) and 280(c) of the constitution place additional responsibility on Central Finance Commission (CFC) to look into the resources of the local bodies. The former Article relates to PRIs and the latter refers to ULBs. As per Article 280(bb), CFC has

\textsuperscript{664}Minister Of State For Panchayati Raj, Rural Development And Drinking Water And Sanitation Shri Upendra Kushwaha’s answer to Rajya Sabha Unstarred Question No. 2066, Part (B) on Subjects Transferred To PRIs
\textsuperscript{665}Available at www.commonlil.org/in/legis/const/2004/12.html
\textsuperscript{666}Available at www.indiacode.nic.in/coiweb/amend/amend73.htm
\textsuperscript{667}Ibid
\textsuperscript{668}Lok Sabha Starred Question No. on Strengthening Of Panchayati Raj Institutions
to recommend measures needed to augment the Consolidated Fund of the State to supplement the resources of the panchayats in the State.

6.26.9. **Audit of Accounts of Panchayats (Article 243J)**

Under Article 243J of the Act, the legislature of the state may make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

6.26.10. **Elections to The Panchayats (Article 243 K)**

Introduction of periodical and regular elections has injected a new life to the system of local democracy. Under article 243K the superintendence, direction and control of the preparation of electoral rolls and conduct of all elections to the Panchayats shall be vested in a State Election Commission headed by a State Election Commissioner who would be appointed by the Governor.

Each of the States have constituted State Election Commission for the smooth functioning of the elections. State legislation contain elaborate provisions to hold Panchayat elections in free, air and fearless manner. States like Himachal Pradesh, Madhya Pradesh and Andhra Pradesh have disqualified candidates who got third child after the commencement of the Panchayat act from contesting an election. Such a measure has been upheld by the judiciary as consistent with Fundamental Rights. 669

6.26.11. **Part not to apply to certain Areas (Article 243 M)** 670

Art. 243M of the Act provides that nothing in this Part shall apply:

1. To the Schedule areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.
2. The State of Nagaland, Meghalaya, Mizoram
3. The hill areas in the state of Manipur for which District Councils exists under any law for the time being in force
4. To Panchayats at the district level of the hill areas of the District Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force

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5. Shall be constituted to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

Thus it exempts certain states and tribal areas and other territories from the application of Part IX or empowers the President or the Governor to modify them in their application to Union Territories and Schedule Areas respectively.


The Article 243N states that “anything this part and any provision of any law relating to panchayats in force in a state immediately before the commencement of the constitution 73rd Amendment Act which is inconsistent with the provisions of this part shall continue in force until amended or repealed by a competent legislature.”

Similarly all the panchayats existing immediately before such commencement shall continue until the expiration of their duration, unless sooner dissolve by a resolution passed to that effect by the legislative assembly of a state. Concomitantly all the state governments were supposed to amend the existing laws latest within one year i.e. by 24th April 1994.


Under Article 243O, validity of any law regarding the delimitation of constituencies or the allotment of seats to such constituencies shall not be challenged in any Court. Similarly no election to any panchayat shall be called into question except by an election petition.

This was a brief interpretation of the act and its provisions but its significance can only be adjudged when its impact is studied and how far the changes envisaged have accomplished the objectives and ideals listed in the Amendment. Thus in the next segment an endeavor is made to analyze the recent developments which have taken place post 73rd amendment.

6.27. Assessing the Impact of the Constitution (Seventy-Third Amendment) Act, 1992

Decentralisation and democratization are the vital processes in political systems that bring greater transparency, accountability, responsiveness, equity, and opportunity for mass
participation in local decision making for establishing a just social order. Decentralisation is not an end in itself. Protection of human rights, goals of eradication of poverty, ensuring of right to work, providing of civic amenities, extension of health and educational facilities, optimum use of community resources, protection of environment through cleanliness practices in group life are some of the factors and goals linked to the working of decentralized institutions.

The studies and assessments by Alsop et al. (2000), Corbridge and Harriss (2001), Crook and Manor (1998), Ghatak and Ghatak (2002) clearly demonstrate that the 73rd Amendment has led to some real improvements in democratic participation, accountability and governance vis-à-vis rural development and social justice.

Since these historic amendments, country has witnessed an unprecedented growth in the number of grassroots democratic institutions. There are now 2, 33, 606 Gram Panchayats, 6, 094 intermediate Panchayats, and 543 District Panchayats. There are close to 26, 78, 000 elected representatives at the village level, 1, 58, 000 at intermediate level and 15, 600 at district level. A little under 37% of the elected representatives are women and a little over 30% belong to the socio- historically disadvantaged sections of society. A number of measures have been taken by the Union and State governments since 1992 to enable Panchayats to function as empowered institutions fully involving the common citizens in governance process and in turn, in equitably delivering the results of economic growth.

Looked from this perspective, the Constitution 73rd Amendment Act, 1992 has centre staged the community based approach with imaginative ideas and plans for social transformation by mandating uninterrupted functioning of local democracy. It reflects the

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674 S.Corbridge, and J. Harriss, Reinventing India: Liberalization, Hindu Nationalism and Popular Democracy., Oxford University Press. Delhi, 2001
677 Report submitted by the Society of Tribal Women for Development (STWFD) on the Impact of Bottom up Planning under PRLs and Women participation therein in the States of Madhya Pradesh, Orissa, Chhattisgarh, Gujarat, Jharkhand and Maharashtra, Commissioned By Planning Commission Government of India, New Delhi, p.19
consensus model which relies on people’s cooperation and adopts an integrated approach towards welfare. The policy of accommodating the marginalized social groups in effective political participation not only empowers them but also makes the democratic institution a meaningful one. Because of the basic constitutional orientation towards social justice, welfare and development, the rural grass root democratic institutions viz., PRI play significant role in the social transformation process.

The sociological perception of the 73rd amendment envisages strengthening the roots of democracy for bringing social change in rural sector by constitutionalising PRIs. The amendment has created a new set of people who would act as agents of change for different kinds of activities and functions required to transform a traditionalist society into a modern one. It has initiated developmental process among the masses motivating to think beyond regional needs and merge with national planning aspirations.678

Even Lal Bahadur Shastri opined, “…only the Panchayats know the needs of the villages and development of villages should be done only by the Panchayats…the Panchayats are the foundations of democracy and if the foundation is based on correct leadership and social justice mm there can be no danger to democracy in this country. Efforts should be made that the institutions establishes for community development and Panchayat Raj, after independence used for establishment of real democracy and improving the economic and social conditions of the people.679

It is heartening to note that the PRIs have been proactively used not only in the implementation of governmental projects and schemes for welfare but also in effectuating laws like the National Rural Employment Guarantee Act, 2005 and Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forests rights) Act, 2006. In the upcoming segment it is these and many other areas where the far-reaching effects of the 73rd amendment have been assessed.

6.27.1. Capacity Building Measures to Strengthen Panchayats

The view that local governments could play a more positive role in development is predominant today. Firstly they are closest to the people and thus have a detailed knowledge of their needs and secondly they are also in a strong position to communicate and incorporate

678 S.P.Jain, Sociology of Panchayati raj(Local Government) in Rural India : Current Status and Prospects, Indian Journal of Comparative Sociology, ” at pp.41-51
679 Prime Minister’s Speech on 3-7-1993
local views and ideas. Keeping this rationale into mind the Ministry of Panchayati Raj (MoPR), established in 2004 ensured implementation of the provisions of Part IX of the Constitution, provisions regarding the District Planning Committee as per Article 243ZD and PESA by the States/UTs. The Ministry has successfully attained decentralized and participatory local self-government through PRIs and is taking strides in the empowerment, enablement and accountability of PRIs to ensure inclusive development and efficient delivery of services. As the state is increasingly forced to reduce its funding for rural public and semi-public goods, success in rural development will require an increasingly good match between local organisations and institutions and the incentives for the creation and maintenance of these goods. 680

Therefore to address these issues MoPR has implemented the following flagship schemes:

6.27.1.1. Backward Regions Grant Fund (BRGF)

It is a 100% Centrally Sponsored Scheme which is being implemented in 272 identified backward districts of all the States (except Goa). The BRGF was launched at Barpeta district of Assam on 19th February, 2007 for 250 districts. 22 districts were added in June 2012 and now it is being implemented in 272 identified backward districts. In its Development Grant Component, an annual allocation is fixed, with a minimum allocation of Rs. 10 crores per district on the basis of the total funds available is applied. On the other hand, the Capacity Building Component has an allocation fixed to the tune of Rs. one Crore per annum per district for the capacity building of EWRs and Panchayat functionaries and creation of training infrastructure.

There are three features of BRGF that make it truly unique among initiatives to combat backwardness. First, the approach of putting the Panchayats at the centre stage of tackling chronic regional backwardness is one that has never been tried at this vast scale, barring the implementation of NREGA. Second, no central funding stream is as ‘untied’ as the BRGF — the funds can be applied to a preference of the Panchayat, so long as it fills a development gap and the identification of the work is decided with peoples’ participation. Third, no other programme spends as much funds, nearly, 11 percent of the total allocation, for capacity building and staff provisioning.

It has provided substantial untied funds for Panchayats for local development. During the 11th Five Year Plan, 99.98 percent of the total funds were released to the state

governments. It has also strengthened the functioning of the District Planning Committees. When the programme was launched in 2007, only 13 states had constituted the DPCs but now all the BRGF states have functional DPCs.\(^{681}\)

It has been primarily designed to:

a) Decentralize the planning processes through emphasis on participative planning at the grassroot level. The Annual Action Plans proposing the works/projects to be taken up under the Programme are prepared at the grass roots level by the Elected Representatives of Gram Panchayats and Urban Local Bodies in consultation with the Gram Sabha. The Annual Action Plans prepared by the Panchayati Raj Institutions in a District are consolidated and approved by the District Planning Committee (DPC) which are then forwarded to the Ministry of Panchayati Raj through the respective State Governments.

b) Redress the regional imbalances in development by providing financial assistance for supplementing and converging existing developmental inflows;\(^{682}\)

c) Strengthen Panchayat and Municipal Level Governance by appropriate capacity building programmes

d) As the Grant is untied, it can be used for any work preferred by the Panchayat/Municipality as long as it fills a development gap and the work is identified with people’s participation. It encourages convergence of plans through integrated district plan preparation.

BRGF also has special provisions for the districts and areas in the States of J&K, Assam, Manipur, Meghalaya, Nagaland and Tripura which do not have Panchayats as envisaged in the Constitution.

e) The Twelfth Plan Outlay for BRGF is Rs. 29, 306 crores. A sum of 37020.19 crores during 2012-13, Rs. 2800.00 crores during 2013-14 and Rs. 2771.01 crores during 2014-2015 has been released under BRGF programme.

**6.27.1.2. Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSC)**

Another important intervention for strengthening the Panchayati Raj system in the country was the Centrally Sponsored Scheme of Rajiv Gandhi Panchayat Sashaktikaran...
Abhiyan (RGPSA) approved by the Government on 07.03.2013 during the Twelfth Plan period. It enhances the capacities and effectiveness of Panchayats and the Gram Sabhas. RGPSTA supports need based activities of the States including administrative and technical expertise at Gram Panchayats, capacity building & training, e-enablement of Panchayats, Gram Panchayat buildings, Panchayat processes etc. The Twelfth Plan Outlay for RGPSA is Rs. 11270 crores. A sum of Rs. 42.92 crores during 2012-13 and Rs. 629.58 crores during 2013-2014 was released to the states. In 2014-15 plans of 26 states were approved and Rs. 396.17 crores has been released under RGPSA to the state governments.  

The funding of RGPSA for State plans is on a 75:25 sharing basis by the Central and State Governments respectively while for NE States, this ratio is 90:10. States are required to fulfil some essential conditions for accessing any RGPSA funds which include:  

1. Regular elections to Panchayats or local bodies in non-Part-IX areas under the superintendence and control of the State Election Commission (SEC).  
2. At least one third reservation for women in Panchayats or other local bodies.  
3. Constitution of SFC every five years, and placement of Action Taken Report on the recommendations of the SFC in the State legislature.  
4. Constitution of District Planning Committees (DPCs) in all districts, and issuing of guidelines/rules to make these functional. Thus States fulfilling these conditions are released funds on the basis of approval of their Annual Plans as per the guidelines.  

Table 6.4: Construction of New and Repairs of Exiting Gram Panchayat Bhavans under RGPSA

<table>
<thead>
<tr>
<th>Activity</th>
<th>2013-14</th>
<th>2014-15</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Panchayat Bhavan sanctioned</td>
<td>3128</td>
<td>1251</td>
<td>4379</td>
</tr>
<tr>
<td>Repairs of existing PBs sanctioned</td>
<td>7727</td>
<td>6521</td>
<td>14248</td>
</tr>
<tr>
<td>Computer Infrastructure to Panchayats</td>
<td>22506</td>
<td>133310</td>
<td>35816</td>
</tr>
</tbody>
</table>

Source: http://panchayat.gov.in  

6.27.1.3. Panchayat Empowerment and Accountability Incentive Scheme (PEAIS)  

Yet another empowering scheme was implemented by the Ministry of Panchayati Raj (MoPR) from 2005-06 to 2012-13. Since 2013-14, the scheme has been subsumed in the

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683 Ministry of Panchayati Raj, Government of India, Panchayati Raj Institutions Gateway to Sushasan(Good Governance), January 2015 http://panchayat.gov.in

684 Lok Sabha Starred Question No. 364 on Rajiv Gandhi Panchayat Sashaktikaran Abhiyan answered on 18.12.2014
Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA). In 2013, eighteen top ranking Gram Panchayats were awarded the “Rashtriya Gaurav Gram Sabha Puraskar and as many as 193 Panchayats received PEAIS awards for best performance.  

It is important to note that the Parliamentary Standing Committee on Rural development, in its 21st Report on Demand for Grants 2006-07 of the Ministry of Panchayati Raj, has noted as follows:

“The Ministry has launched a new scheme viz. Panchayat Empowerment Incentives Scheme meant to reward the State Governments which are serious on the issue of implementation of various provisions of Part IX of the Constitution. Seven reform areas based on which the incentives will be provided to State Governments have been identified”.

The triple objectives of PEAIS are to:

a) incentivize States for devolving funds, functions and functionaries (3Fs) to Panchayats
b) incentivize Panchayats to put in place accountability systems to make their functioning transparent and efficient
c) to provide fiscal incentives to state governments that can encourage them to strengthen local governance, in pursuance of the national strategy.

Under this scheme, token awards have been given to the States which rank high on the Devolution Index (DI) prepared by an independent agency, which measures the extent to which States have devolved functions, funds and functionaries (3Fs) to Panchayats. The evaluation of States is based on a two-stage assessment. The first stage, called the Framework criteria, is based on the following fundamental Constitutional requirements:

(i) Establishment of State Election Commissions
(ii) Holding of elections to the PRIs
(iii) Setting up State Finance Commissions
(iv) Constitution of the District Planning Committees (DPCs)
(v) Reservation of seats for SCs/STs and Women (effective from 2013-14)  

States that fulfil each of these fundamental requirements, qualify for evaluation in terms of various indicators of the PDI. The top three States overall, and State with highest score among NE States, are awarded. The table below shows the States that secured high

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686 Lok Sabha Unstarred Question No. 4159 on Awards To States Under RGPSA answered on 2014
ranking on PDI for the year 2013-14. It can be seen Maharashtra is at the apex on both cumulative and incremental PDI scores followed closely by Kerala.

Table 6.5: The States ranking high on Panchayat Devolution Index (PDI) assessed during 2013-14

<table>
<thead>
<tr>
<th>Cumulative PDI Awards State</th>
<th>Rank</th>
<th>Amount (Rs. in crores)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Prize</td>
<td>Maharashtra</td>
<td>1</td>
</tr>
<tr>
<td>Second Prize</td>
<td>Kerala</td>
<td>2</td>
</tr>
<tr>
<td>Third Prize</td>
<td>Karnataka</td>
<td>3</td>
</tr>
<tr>
<td>First prize for North Eastern States</td>
<td>Tripura</td>
<td>1 in NE States and overall 12</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Incremental PDI Awards State</th>
<th>Rank</th>
<th>Amount (Rs. in crores)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Prize</td>
<td>Maharashtra</td>
<td>1</td>
</tr>
<tr>
<td>Second Prize</td>
<td>Kerala</td>
<td>2</td>
</tr>
<tr>
<td>Third Prize</td>
<td>Chhattisgarh</td>
<td>3</td>
</tr>
<tr>
<td>Fourth Prize</td>
<td>Andhra Pradesh</td>
<td>4</td>
</tr>
<tr>
<td>Fifth Prize</td>
<td>Arunachal Pradesh</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: http://panchayat.gov.in

6.27.1.4. Rural Business Hubs (RBHS)

Another scheme put into operation by the Ministry of Panchayati Raj was the Scheme of Rural Business Hubs (RBHs) under the 11th Five Year Plan (2007-2012) to promote Rural Non-Farming Enterprises (RNFE) which utilize local skills and/or resources and promote rural employment. Functioning on a 4P (Public-Private-Panchayat-Partnership) model it was applicable in all the BRGF districts and all the districts in the North Eastern Region. The entire process was mediated and facilitated by the empowered Panchayati Raj Institutions. Setting up of RBHs was primarily done through convergence of resources from various ongoing schemes. To promote objectives of the RBH Scheme, this Ministry collated the schemes of a host of Central Ministries including Food Processing Industries/ Commerce &
Industries / Textiles / Non-Conventional Energy Sources / Power / Petroleum and Natural Gas which could be converged for setting up RBHs. The Khadi and Village Industries Commission and the Export Promotion Councils were approached to converge their programmes with the RBHs. Institutions such as NABARD and SIDBI were also mobilized to promote institutional convergence. 687

The salient features of RBH scheme inter-alia are:

1. Panchayats, the grass-roots democratic institutions, may prepare plans based on local resource endowments, felt needs of people and relative absorptive capacity and implement them

2. Ideally suited for agriculture / horticulture / handloom / handicrafts related activities, where production is decentralized.

Despite the fact that the Scheme has been discontinued during the 12th Five Year Plan it did benefit many sections in the rural areas. The table below shows overall number of beneficiaries of various RBH projects the State-wise.

Table 6.6: Number of beneficiaries of various RBH projects

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>State</th>
<th>Number of Beneficiaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Andhra Pradesh</td>
<td>500</td>
</tr>
<tr>
<td>2</td>
<td>Arunachal Pradesh</td>
<td>300</td>
</tr>
<tr>
<td>3</td>
<td>Assam</td>
<td>2220</td>
</tr>
<tr>
<td>4</td>
<td>Bihar</td>
<td>54</td>
</tr>
<tr>
<td>5</td>
<td>Chhattisgarh</td>
<td>4046</td>
</tr>
<tr>
<td>6</td>
<td>Haryana</td>
<td>100</td>
</tr>
<tr>
<td>7</td>
<td>Himachal Pradesh</td>
<td>500</td>
</tr>
<tr>
<td>8</td>
<td>Jharkhand</td>
<td>1030</td>
</tr>
<tr>
<td>9</td>
<td>Karnataka</td>
<td>200</td>
</tr>
<tr>
<td>10</td>
<td>Kerala</td>
<td>340</td>
</tr>
<tr>
<td>11</td>
<td>Madhya Pradesh</td>
<td>N.A.</td>
</tr>
<tr>
<td>12</td>
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<td>5487</td>
</tr>
<tr>
<td>13</td>
<td>Manipur</td>
<td>1065</td>
</tr>
<tr>
<td>14</td>
<td>Meghalaya</td>
<td>300</td>
</tr>
<tr>
<td>15</td>
<td>Orissa</td>
<td>120</td>
</tr>
<tr>
<td>16</td>
<td>Rajasthan</td>
<td>4050</td>
</tr>
<tr>
<td>17</td>
<td>Tamil Nadu</td>
<td>1140</td>
</tr>
<tr>
<td>18</td>
<td>Tripura</td>
<td>554</td>
</tr>
<tr>
<td>19</td>
<td>Uttar Pradesh</td>
<td>1116</td>
</tr>
<tr>
<td>20</td>
<td>Uttarakhand</td>
<td>2500</td>
</tr>
<tr>
<td>21</td>
<td>West Bengal</td>
<td>5860</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>31482</strong></td>
</tr>
</tbody>
</table>

Source: Ministry of Panchayati Raj, GoI, 2013 www. panchayat.gov.in

687 Answer to Lok Sabha Starred Question No. 176 on Rural Business Hubs Scheme

~ 395 ~
In addition to these, two smaller schemes are also being implemented:

6.27.1.5. Media and Publicity Scheme

This scheme which aims at effective communication through electronic, print and other available media for advocacy and publicity regarding Panchayats as well as measures to build the capacities of Panchayats.

6.27.1.6. The Action Research And Research Studies (AR&RS) Scheme

This scheme provides financial support to academic institutions, NGOs, research organisations to undertake research to provide in-depth analysis of long-term issues, impacts and experiences in Panchayats across the country.

6.27.2. 73rd Amendment Mobilises Gender Equity

The concept of gender justice implies a comprehensive goal and scheme of protecting the class of subordinated gender from the exploitations and denials inflicted by the dominant gender. This very component of gender justice has been etched into the Human Development index with a beguiling statement that ‘human development, if not engendered, is fatally endangered.’

Iris Marion Young conceptualizes gender justice as an aspect of social justice, which essentially means “elimination of institutionalized domination and oppression”. She goes beyond the distributive models of power, rights, opportunity and self-respect, and focuses on issues of decision making, division of labour and culture for a social condition that enables women’s equal participation in these spheres.

Since the Indian Constitution has explicit measures for attaining gender justice in the form of 73rd amendment, the flourish of constitutionalism has necessarily contributed towards women’s empowerment. There has been a noticeable shift in the government’s approach from welfarism of 1950s-60s and developmentalism of 1970-80s to finally empowerment centred approach in the 1990s. The 73rd Amendment envisaged a significant structural change by decentralizing power and redressing the gender imbalance in the institutions of self-governance This has brought about an attitudinal and all round shift to offset the trials and tribulations of women. cording to Yogendra Singh, ” It (empowerment ) implies processes by

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689 Iris Marion Young, Justice and the Politics of Difference (1990) extracted in MDA Freeman (Ed.), Lloyd’s Introduction to Jurisprudence, p.15
which women’s power of self-organisation is promotes and reinforced, they develop the capacity for self-reliance outcrossing the relationship of subordination on account of gender, social and economic status and the role in the family and society. It encompasses their ability to make choices, control resources and enjoy participatory relationship within family and community.”

It is well known that parliamentary democracy is the rule of majority and by ignoring nearly fifty per cent of women’s population, no country can march towards attaining the goals of justice, liberty and equality under the socialist, egalitarian and democratic framework of India’s Constitution. Participation of women in political arena is integral to the advancement of women. Their political participation means not only using the right to vote, but also power-sharing, co-decision-making, and co-policy-making at all levels of governance of the State. Women’s equal status in every sphere is inextricably linked to country’s progress and development.

Mentioning the aim behind 73rd institutional amendment the Usha Narayan, states that the main position of 73rd constitutional amendment involves the participation of women as voter, women as members of political parties, women as candidates, women elected members of PRI’s taking part in decision making, planning implementation and evaluation.

It goes without saying that post-73rd Amendment Act, across the country today there is a marked presence of women in the Panchayats. There are estimated more than 10 million women in all three tiers of Panchayat Raj Institutions (PRI). The analysis of emerging patterns of women leadership at Panchayats has dispelled the myth that rural power is the lone monopoly of men. With every succeeding Panchayat election, women have been able to enlarge the representation beyond the minimum 33 per cent prescribed by the Constitution. Of the total 28 lakh elected Panchayat representatives, more than 10 lakh are estimated to be women. This takes the overall presence of women in Panchayats to approximately 36.7 per cent (as on 01.12.2006), thus changing the profile of rural leadership.

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690 Yogendra Singh, Culture and Change in India, Rawat Publications, Jaipur, 2000, p.124.
The ambitious 73rd amendment has also smashed many simplistic sweeping statements about women like their passivity, non-participation in local political institutions, proxyism by their male counterparts and dis-interest in politics, women’s universal political connectivity to well off sections if entering panchayats etc. Initially there was a preponderance of women representatives from well to do dominant caste groups but now women from backward classes are effectively mobilized to participate. Nirmala Buch states that earlier studies of women representatives in panchayat before the 73rd amendment noted the major presence of women form the dominant sections e.g. from Marathas and families owing more than twenty acres of land in Maharashtra and Lingyats and Vokkalings in Karnataka. But the profile of the new women in post 73rd amendment panchayats showed that majorities were illiterate and large percentages were from families in the lower socioeconomic strata. They were comparatively younger than the earlier entrants and were predominantly first generation entrants to the public political life. Reservation of Seats has enabled not only the deprived and marginalized women but also the women from conservative minority sections. It has given these women an opportunity to demonstrate their deep political consciousness and interest in obtaining power. Previous research has shown that mandated representation of women leads to a dramatic increase in women’s access to political decision making.

Experience over the last decade has shown that women who have gained access to the Panchayats and Municipalities have performed well. Some of them have already established excellent records of service and even won distinguished awards for their performance. Being mostly illiterate, a large number of them have placed a high priority on acquiring literacy to be able to perform better at their jobs.

An example that bears testimony to this fact is a small village panchayat in Puttur district of Karnataka which has set an example of women power to the rest of the world. Bajattoor village in Puttur taluk is governed by women who occupy most of the administrative positions- panchayat president, vice-president, development officer, secretary,

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695 Nirmala Buch, Panchayats and Women, Status of Panchayati Raj in the States and Union Territories of India, Institute of social science, 2000.
697 Report on Gender And Local Governance, A New Discourse in Development, SANEI (South Asia Network of Economic Research Institutes), November 2002
staff, librarian, taluk panchayat member and the school principal are all women…. All prominent positions are occupied by women who are ably discharging their duties.698

The 73rd amendment was able to democratize the PRIs only when it adopted an integrated approach towards women. Through its gender inclusive interventions like reservation, capacity building and sensitization measures for Elected Women Representatives, special quorum for women in PRI meetings and Women’s Component Plan, it has prolifically infused new vitality into the PRIs. The aforesaid mechanisms have been detailed below:

6.27.2.1. Political Emancipation through Reservation gives more teeth to women

The first official declaration for women to enter active politics at the grassroots was proffered by the Balwant Rai Mehta Committee which held that besides 20 members of the Panchayat Samiti, there should be two women as co-opted members. Subsequent to this, the Maharashtra Zilla Parishad and Panchayat Act of 1961, provided for nomination of one or two women to each of the three bodies, in case no women were elected. As a result in 1978, out of a total of 320 women representatives of Panchayat Samities and Zilla Parishads in Maharashtra only 6 were elected members. The next attempt to mainstream women was the 64th Constitutional Amendment Bill (1989) which provided for 30% reservation for women. But this Bill was defeated by a narrow margin in the Upper House.

It was only in 1993 that an amendment in the constitution made the proposed reservation at the Panchayat (village level governing councils) a reality699. The most important feature of the Act from the women’s perspective is the reservation of at least one-third of total seats for women both at the functionaries and membership level.700 In the year 2009 the government of India has also approved the amendment of Article 243 (d) of the Constitution to reserve 50 per cent of the total number of seats in panchayats to be filled by direct election for women.

Devaki Jain in her assessment of the 73rd constitutional amendment writes that the main intention of the policy makers behind this reservation is two-fold; one is the democratic justice and second is resource utilization (human). She further states that as the half of the

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698 Women power rules in Bajattoor gram panchayat Panchayati Raj Update, April 4 2013
population are women. The country development cannot achieve without the proper participation of woman.  

The formal change brought by the interventions of reservations has not only expanded their presence numerically but have affirmatively addressed women’s marginality. As Buch puts it, We see rural women’s new leadership emerging in these grass roots institutions. Data on their perceptions, recognition, respect, enhanced status, confidence levels, increased political aspirations and community’s perceptions and evaluation are markers of an empowering process. Transformative potential of their new role is seen in assertion, recognition, new identity, respect, status, questioning, mobility and attitudinal shifts.

The positive impact of entering politics and working as a Panchayat Raj functionary is evident from the fact that a sizeable proportion perceived an enhancement in their self-esteem (79%), confidence (81%) and decision-making abilities (74%). Becoming a Pradhan or Ward Member augments respect within the family (67%) as well as in the community at large (82%). This change is more perceptible with elected women representatives who also perceive an increased voice for themselves in decisions related to important issues including economic ones, in their family (66-71%).

Neema Kudva in her study reveals that the reservation for women in Panchayati Raj institutions in Karnataka has made women more visible, decreased levels of corruption in Panchayati Raj institutions, and increased self-efficiency of women representatives. According to her, “gender quota is a crucial aspect of strategies that seek to empower women through increased participation in the political system”.

Bandyopadhyay et al. in their critique have also analysed the institutional changes brought about by the 73rd amendments. They have pointed out that due to 73rd Amendment over a million women have come out of their homes for the first time to hold public office for themselves.

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702 Nirmala Buch, Women’s Experience In New Panchayats: The Emerging Leadership Of Rural Women Occasional Paper No.35., Centre for Women’s Development Studies, New Delhi, 2000, p.23
703 Study on Elected Women Representatives in Panchayati Raj Institutions (EWRs) based on a Nationwide Survey by AC Nielson ORGMARG, Ministry of Panchayati Raj, Government of India, New Delhi, (2008)
and to participate in public activities. This has been the most effective formal step towards political empowerment of women.

The States which have provided for 50% reservation for women in Panchayats are Andhra Pradesh, Bihar, Chhattisgarh, Himachal Pradesh, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tripura and Uttarakhand. In Bihar, while 50 per cent of the Panchayat seats and leadership positions are reserved for women, roughly 55 per cent of elected seats at the Gram Panchayat level are occupied by women. In Maharashtra, the representation of women in Panchayats is nearly 34 per cent and in Karnataka, it is around 43 per cent.\(^706\) States which have so far enacted legislation for 50% reservation of women in seats and offices of Chairpersons\(^707\) as indicated in the table below

**Table 6.7:** State wise details of 50% Reservation for Women in Panchayats

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of State/ UT</th>
<th>No. of Panchayats</th>
<th>Whether 50% reservation in seats and offices of Chairpersons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Andhra Pradesh</td>
<td>22945</td>
<td>✓</td>
</tr>
<tr>
<td>2</td>
<td>Arunachal Pradesh</td>
<td>1789</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Assam</td>
<td>2431</td>
<td>✓</td>
</tr>
<tr>
<td>4</td>
<td>Bihar</td>
<td>9040</td>
<td>✓</td>
</tr>
<tr>
<td>5</td>
<td>Chhattisgarh</td>
<td>9982</td>
<td>✓</td>
</tr>
<tr>
<td>6</td>
<td>Goa</td>
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<td></td>
</tr>
<tr>
<td>7</td>
<td>Gujarat</td>
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<td>Haryana</td>
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<td></td>
</tr>
<tr>
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<td>Himachal Pradesh</td>
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<td>Jharkhand</td>
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<td>Karnataka</td>
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<td>Tripura</td>
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<tr>
<td>24</td>
<td>West Bengal</td>
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</tr>
</tbody>
</table>


\(^707\) Part (A) & (B) Of The Lok Sabha Starred Question No. 379 Regarding Reservation For Women In Panchayats
### Development becomes more sustainable with Women on on-board

Women’s dynamic political participation is not just a demand for mainstreaming gender sensitivity in the development processes, but also a necessary precondition for establishing sustainable democracy and social justice. It is only with their systematic integration into this political process that the goals of women empowerment quality and efficiency in local governance can really be materialized.

A study by The Accountability Initiative stated that in Panchayats with female presidents, the participation of women in the larger council rose close to 3% in one year. The reason for the increase in women’s participation is correlated to two possible factors: first, women representatives exemplified new possibilities for change; and second, women leaders took up issues that would have a positive impact on the community as a whole.

Further micro-studies conducted in various parts of the country reveal that given a chance the elected women representatives try to engender the developmental activities. For example, it was pointed out that elected women representatives gave more priority to such programmes, which were ‘need based’ and ‘sustainable’. Women laid emphasis on development works to be planned and executed - a phenomenon not appreciated by many who had been in the past siphoning off the development funds by showing most of the works on paper.

Devaki Jain in her work ‘Panchayat Raj: Women Changing Governance’ cites the case study of Karnataka where she argues that reservations in Panchayats have changed governance system in India. The percentage of women at various levels of political activity has shifted dramatically as a result of this constitutional change, from 4-5 percent before 73rd

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708 [http://www.accountabilityindia.org/pdf/PanchayatBrief1](http://www.accountabilityindia.org/pdf/PanchayatBrief1)
709 R. Chattopadhyay and Esther Duflo. Impact of Reservation in Panchayati Raj: Evidence from a Nationwide Randomized Experiment, Economic and Political Weekly, 2004
710 The Deccan Herald, January 1, 1997
amendment to 25-40 percent after PRI. But the difference is also qualitative, because these women are bringing their experience in governance of civic society into governance of the State. In this way, they are making the State sensitive to the issues of poverty, inequality and gender injustice.

It is witnessed that female Sarpanches and Naib Sarpanches have given up their fear and shyness to speak on issues related to the villages. They visit offices along with the male members and their relatives to appraise the officials about their problems like agriculture, revenue, banking and other allied community problems. Their enhanced participation in demonstration against sale of liquor, displacement and congregating for forest preservation indicates that these women are self-empowered as well as have motivated others to participate in community issues.

In yet another instance, Thirali panchayat was able to recover about 50 acres of village land that had been encroached upon for several years due to the untiring efforts of 52-year-old woman panchayat president Chandra Pitchai. Pitchai, who was recently awarded the best woman panchayat president in Madurai district.

It was assessed that women in politics affected development in a profound manner. A global assessment of women in politics arrived at three conclusions. “Firstly women choose issues of importance to themselves using a variety of meanings in different cultural contexts. Secondly, no issues are tied solely to one political context and a condition and thirdly the political problems, facing women cluster into four topics: personal safety, security and autonomy, reproductive rights and maternal and child health problems, equalizing access to public, communal and market resources for problem solving and empowerment, and remaking the political and legal rules of the game.”

Madhya Pradesh has made use of the panchayat system in an innovative way to meet social sector demands. Women have regained their sense of self-worth and are no longer willing to take a backseat. It has given lot of importance to social sector; particularly women empowerment and its achievements have been recognized at national level. Janani Suraksha Yojana, fifty percent reservation to women in local bodies, Goan Ki Beti Yojana, free cycles

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714 Woman president empowers her panchayat, Panchayati Raj Update, MAY 2013, p.5
715 B.D. Sharma, Defy 50 Years of Anti-Panchayat Raj, Sahyog Pustak Kuteer, New Delhi, 1998.
to girl students, Kanyadan scheme, Ladli Laxmi Yojana and gender budgeting have gone a long way in empowering women in the state.\textsuperscript{716} It was extremely encouraging to see that in Mahila Panchayat women were quite enthusiastic to change things for the better.

The Citizens Report on Governance and Development by Social Watch India has also detailed some positive implications of the 73rd Amendment. It has cited many examples across the nation of meaningful leadership provided by the female Sarpanches like Mithi Beri Gram Panchayat in Uttaranchal, Jamunia in Madhya Pradesh and many others have women leadership on unreserved seats who are striving to bring equitable justice to the marginalized groups, specifically the women, in their Panchayats.

For decades, the Panchayats in Metikheda village in Yavatmal district of Maharashtra had done no work at all, till in 1998 the women took over and brought about a total transformation in the village. The women’s Panchayat implemented many water supply schemes, additional school rooms, provided fuel and sanitation facilities which reduced the burden of rural women drastically. All women Panchayat in Kultikri in West Bengal took up several income augmenting schemes such as waste land development, leasing of small ponds for aqua culture, organization of loan repayment, fairs, distribution of pattas, construction of roads & tube wells as utilized under the Employment Guarantee scheme. The most important achievement of the Panchayat has been the fulfilment of 100% literacy in its area. Forty teams of women in Sonabhadra (Uttar Pradesh) area carried out systematic campaigns covering ten villages each, to explain the salient features of the 73\textsuperscript{rd} Amendment & the place given in to women.

6.27.2.3. \textit{PMEYSA creates “Critical Mass” of Elected Women Representatives in the PRIS}

As per the information available in the State of Panchayats Report (SoPR) – 2008-09 brought out in 2010 by the Ministry of Panchayati Raj (MoPR) through the Institute of Rural Management, Anand there has been a progressive overall increase in the percentage of participation of Elected Women Representatives (EWRs) in Panchayati Raj Institutions (PRIs)\textsuperscript{717}. It has also indicated positive representation and empowerment of EWRs including enhancement in their self-esteem, confidence and decision-making abilities, their increased

\textsuperscript{716}Report submitted by the Society of Tribal Women for Development (STWFD) on the Impact of Bottom up Planning under PRIs and Women participation therein in the States of Madhya Pradesh, Orissa, Chhattisgarh, Gujarat, Jharkhand and Maharashtra, Commissioned By Planning Commission Government of India, New Delhi p.75

\textsuperscript{717}Lok Sabha Starred question no. 518 Women on representation in Panchayats answered
interaction with Line Departments and parallel bodies, decrease in gender based discrimination against them, recognition from their peers and community for work done by them, freedom experienced by them to raise issues during Gram Sabha meetings.

Another extensive Study on Elected Women Representatives (EWRs) in Gram Panchayats was commissioned by the Ministry of Panchayati Raj in 2007-08. The Study was guided by an Academic Advisory Committee and was based on a nationwide survey carried out by AC Neilson ORG-MARG, New Delhi. The survey covered 23 States, 114 Districts, and 228 Blocks and 1368 Gram Panchayats of which 907 were women headed Gram Panchayats. The Study Report was released on 24th April, 2008 at the National Convention of Presidents of Zila Parishads and Intermediate Panchayats.

The major findings of the Study Report about their functioning in the Gram Panchayats are as under: 718

(i) Overall, Elected Women Representatives are functioning within an enabling environment at the level of the village community and the household. Quality of participation assessed across various dimensions turned out to be reasonably good. A significantly large proportion of female Pradhans reported executing the important role of being a local Panchayati Raj functionary.

(ii) Due to the support of the elected representatives, the turnout of women in Gram Sabhas has increased and the frequency of their raising issues also went up.

(iii) The attention drawn by women towards issues of ‘women & children’ and ‘sanitation’ increased. 76% elected representatives mentioned an increase in the number of functional safe drinking water sources and claimed that the number of households with sanitary latrines had too risen. 72% EWRs reported that they were being involved in issues for providing civic amenities like street lights, drinking water etc. during their current term.

(iv) Around four-fifths of the elected representatives who have served multiple terms said that there was an increase in the proportion of girls getting enrolled in primary schools. Almost 78% female Pradhans reported making special efforts to encourage girls to go to schools.

(v) Among the social issues, the discouragement of child marriage emerged as one which attracted the highest (70%) rate of intervention by EWRs. The problems of gambling

718 Lok Sabha Unstarred question no. 950 on women partnership in Panchayati raj system answered
and alcoholism were reportedly addressed by representatives in 40% and 26% cases respectively

(vi) The awareness of people regarding the various development and poverty-reduction schemes was an indication of the efforts taken by the elected representatives in disseminating information

(vii) About 64% of the women Pradhans agree that more attention is paid to them when they take up local issues by the concerned officials. Two-third of the elected representatives reported that their interaction with line Departments and parallel bodies had increased and improved over time.

(viii) 60% women representatives mentioned that they did not experience gender-based discrimination in the Panchayats and they did not feel ignored on account of being women.

(ix) Female representatives reported getting recognition from their peers and community for the work done by them

(x) 95% EWRs felt that they could freely raise issues during Gram Sabha meetings.

In order to strengthen the EWRs, scheme of PMEYSA (Panchayat Mahila Evam Yuva Shakti Abhiyan) was under implementation from the year 2007-08 till 2012-13 with the broad objective of empowerment of Elected Women & Youth Representatives of Panchayats. The scheme is now subsumed under the scheme of Rajiv Gandhi Panchayati Sashaktikaran Abhiyan (RGPSA).

Panchayat Mahila Shakti Abhiyan (PMSA) facilitated the women to use their collective strength more effectively. The activities planned in this scheme are designed to reduce the gaps in accessing opportunities between male & women elected representatives. It supported the efforts of the atomized women representatives in the country to strengthen their unity and provide a forum for continued training.

Singh (2010) also recorded women Sarpanches are becoming more confident now as a result of their capacity building under Mahila Sashaktikaran Abhiyan of Rajiv Gandhi State Institute of Community Development & Panchayati Raj, Nilokheri and Rashtriya Gram Swaraj Yojna by Haryana Institute of Rural Development, Nilokheri in 2009.

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719 Lok Sabha Unstarred Question No. 304 Regarding PMEYSA answered by Minister Of Panchayati Raj, Shri V. Kishore Chandra Deo
It further addressed the deficiency of technical knowledge, communication and administrative skills to fulfil their leadership role. Since the inception of the Ministry of Panchayati Raj, as per available data from States, about 89570 women representatives of PRIs have been trained in the year 2004-05; 96800 women in 2005-06; 146505 women in 2006-07; 73673 women in 2007-08 and 161000 women in 2008-09.

Activities under the PMEYSA include holding of State Level Sammelans and Divisional/ District Level Sammelans of Elected Representatives (EWRs), formation of Associations, sensitization programmes for Elected Women Representatives (EWRs) and Elected Youth Representatives (EYRs). As per information received from States/ UTs approximately (i) 135 Divisional/ District Level Sammelans and 24 State Level Sammelans were held (ii) EWRs / EYRs underwent training in 12 States, and (iii) State Level Associations were formed in 10 States. Panchayat Mahila Shakti Abhiyan (PMSA) has not been launched so far in the States of Jharkhand, Orissa & Uttar Pradesh and the UTs of Daman & Diu, Dadra & Nagar Haveli, Lakshadweep and Puducherry.721

6.27.2.4. Visibility of Women increases with the Special Quorum in meetings

Reservation of seats for women alone cannot ensure their active participation in Panchayati Raj Institutions. There are still many hurdles to be faced by them like domestic chores, patriarchal system, inexperience, illiteracy etc. This makes their visibility and representation minimalist. To overcome this jeopardy many Gram Sabhas have embraced the concept of minimum quorum of women in the meetings.

According to various micro-studies including our own observations from the field722, about 80-90 per cent women attend the panchayat meetings regularly. Given their sheer numbers, one might conclude that democracy has become more participatory than before at least at the grassroots level.

While reviewing the status of Panchayati Raj institutions, George Mathew writes that ‘Since the new phase of decentralisation, there is evidence that some of the worst forms of exclusion that plagued the rural society in India are no longer practiced in a number of states. Elected members sit together and discuss issues in formal and informal meetings. A symbolic participation of all in the village, including Scheduled Castes and Scheduled Tribes and

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721 Ibid
722 Bidyut Mohanty, The Daughters of the 73rd Amendment, Institute of Social Sciences, New Delhi
women does take place at least as a constitutional requirement. This is due to the slow but sure changes in the larger political landscape in India.”

The Ministry of Panchayati Raj (MoPR) has initiated steps to make Panchayats Gender responsive. Special Gram Sabha Meetings are held during August in which matters like Anganwadi Centres, Health, Sanitation, Horticulture, Dairy etc. are discussed so that people can access to Government sponsored programs.

Mahila Gram Sabha Meetings have also been recommended to be constituted all over the country to facilitate frank discussions on sensitive issues faced by women like sex determination, female foeticide and child sex ratio.

A handful of states have made special provisions in the quorum requirements to ensure the presence of women in the meetings of the Gram Sabha. In Chhattisgarh, the quorum for Gram Sabha meetings is 1/10th of the total membership of the Gram Sabha, of whom 1/3rd must be women. Jharkhand, Orissa and Sikkim also have similar provisions for a quorum of one-third women. An interesting innovation has recently been developed by Himachal Pradesh, which prescribes a quorum of 15 per cent of the total families for Up-Gram Sabha meetings, with a separate one-third quorum for women. The Himachal government institutionalized the practice of organising Mahila Sabha meetings in advance of the Gram Sabha, and the first such Mahila Gram Sabha was convened as recently as in September, 2007. A variation is the practice followed in Maharashtra of convening a meeting of the women members of the Gram Sabha before the main Gram Sabha meeting.

Post-independence a few all women Panchayats are known to have existed in Karnataka, Maharashtra, West Bengal and Haryana. In Maharashtra, it was only during the 1989 elections that 8 women’s Panchayats simultaneously came to power. on The three other women’s Panchayats that came to power in 1989 were in Nimbgaon Bhogi in Pune District, Ralegaon Siddhi in Ahmednagar district and Bilangaon in Sohlapur district at the initiative of local political leaders and women activists. In 1992 two more women’s Panchayats came to

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723 G Mathew, Panchayati Raj institutions and Human Rights in India. Economic and Political Weekly, January 11, 2003, p.161
724 India 2013, Publications Division, Ministry of Information and Broadcasting, Government of India, New Delhi, p.816
725 Manoj Rai and Malini Nambia, The State of Panchayats –A Participatory Perspective, PRIA available at www.pria.org
power and are still functioning. One of these at Bhende Khurd in Ahmadnagar and the other elected in Brahmanagar in Pune District is really run by women. \(^{726}\)

6.27.2.5. Empowerment through Gender Budgeting or Women’s Component Plan (WCP)

Another conspicuous impact of 73rd Amendment Act is the inclusion of the Women’s Component Plan, a precursor to gender budgeting adopted in the Ninth Plan. It earmarked a clear unconditional minimum quantum of funds/benefits for women in the schemes run by all Ministries/Departments that were perceived to be “women related” and recognized that prioritizing financial resources for programmes/schemes for women is critical for women’s empowerment. \(^{727}\)

Longwe \(^ {728}\) has given the following five levels of empowerment of women:

1. Welfare- concerns meeting the basic needs without attempting to solve the underlying structural causes.
2. Access- access to the resources such as education, opportunities, land and credit
3. Conscientization- recognition of structural and institutional discrimination as the cause for low socio-economic status and of women’s own role in reinforcing the restrictive system.
4. Participation-through mobilizing collective action, women gain increased empowerment to make decisions alongside man.
5. Control- being able to make decision on all affairs concerning themselves, their families, at the political level from the Panchayat Raj to the Parliament level, to play an active role in the development process of the nation and be recognised and appreciated for their contribution.

In this context of empowerment, one such enabling measure is the women’s component plan or Gender budgeting. \(^ {729}\) ‘Women’s budgets’ or ‘gender-sensitive budgets’ are not separate budgets for women, or for men. They are attempts to break down, or disaggregate; the government’s mainstream budget according to its impact on women and

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\(^{726}\) Bishaka Datta, ‘And who will make the Chapatis’: A study of All Women Panchayat in Maharashtra, 1998
\(^{727}\) Subrat Das and Yamini Mishra, Women’s Component Plan and Gender Budgeting in India:Still a Long Way to Go! Yojana Ministry of Information and Broadcasting, Government of India, Vol. 50, October 2006
\(^ {728}\) Sara H. Longwe, From Welfare to Empowerment: The Situation of Women in Development in Africa, A Post UN Women's Decade Update and Future Directions, 1990, pp. 25

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men, and different groups of women and men, with cognizance being given to the society’s underpinning gender relations.”

It is believed that Gender-Budgeting, the most important ‘tool’ for empowering women would assume it’s real fruitful meaning only when Panchayats, with the impassable presence of women members, formulators, implements and monitors the income and expenditure of the Panchayat where proper share is given to the areas which are truly women-friendly, which enable women in improving their status and thus brings sustainable development to women in particular and the entire society in general.

As a result, for the first time in the history of the local self-government, these bodies were asked to set apart 10% of the grant-in-aid for projects that directly benefited women. There was no sectoral allocation under WCP and panchayat could prepare any project whose benefits would accrue to women. Evidence suggests that the Gender Responsive budget has assumed importance in the local bodies /PRIs because the economic gains that it brings leads to increased output and better development of people’s capacities Women are no longer treated as mere beneficiaries but partners in the development process Under WCP, participation of women has been ensured in all the spheres of activities – be it in expressing opinion, taking part in discussion, formulating project proposals, monitoring or implementation. Unlike the previous programmes which were forced from above, in WCP, the local bodies formulated projects based on the felt needs of the people that were put forth in the Gram Sabha. In the case of West Bengal, there is a provision for standing committees for women and children in all the three tiers which prepare their own budget”.

In Kerala, there is a provision of setting apart at least 10% of the development fund devolved by the State Government as per the recommendations of State Finance Commission, for schemes benefiting women. This statutory requirement of setting apart funds for WCP helped the women to occupy space to intervene in the development process. Mararikkulam Grama Panchayat is one among those LSGIs that took up the gender budgeting


730Report by The Indian Society for Integrated Women & Child Development “Gender Budgeting In Pri” A Study in States of Haryana & Uttar Pradesh sponsored by The Ministry Of Women And Child Development Govt. of India “New Delhi, pp.18

initiative as a joint action research programme by KILA and the Mararikkulam GP during the planning year of 2010-11 and successfully completed the first phase of it. 732

With WCP, there was a quantum increase in the benefits given to women especially the disadvantaged like widows, separated women, families with unmarried girls were given credence when the beneficiaries for various projects were being selected. Another positive outcome of this was the increased women participation in panchayat which have promoted self-help groups. This is best demonstrated in the Grama Panchayats of Kunnathukal, Vithura, Pazhakunnunme, Aboori, Thiruvalam, Kodumon etc of selected districts. 733

6.27.3. Deepening Democracy through Inclusive Governance

Important affirmative fallout of 73rd amendment is the entry of new political leaders into the system i.e. an increased participation of disadvantaged groups is observed. The number of new entrants amount to two and a half million 734, a number that has revolutionary consequences for the polity of India. These legitimate authority wielders include women, Dalits and Adivasis. In addition to their potential for mobilizing citizens and of making local government more accountable, thereby resulting in better utilization of resources, 735 these new agents in politics exert pressure on state level leaders to improve service delivery. Reservation of elected positions in PRIs has been supported on the grounds that it will equalize power differentials between historically privileged and under-privileged castes, as well as between men and women. 736 Marc Galanter too upholds this schema of affirmative action and articulates, “Compensatory discrimination schemes involve enlargement of the basis of selection to include other criteria along with productivity, presumably measured by ‘merit’ –such as, representation, integration, stimulation, and so forth. This enlargement is justified on the ground that without it society would be deprived of the various benefits thought to flow from the enhanced participation of specified groups in key sectors of social life.” 737

733 P.M. Pareethu Bava Khan, Dr. Leela Kumari. P. and Dr. Oommen John Study of Women Component Plan in Kerala. abridged version of the Report, 2004 available at http://www.sird.kerala.gov.in/womencomp.htm
736 Ruth J. Alsop, Anirudh Krishna And Disa Sjoblom Inclusion And Local Elected Governments: The Panchayat Raj System In India edited by Samantha Forusz South Asia - Social Development Unit P.31
737 Marc Galanter, Competing Equalities, Oxford, 1984., p.556
The elected Scheduled Caste leadership is far more confident today as compared to earlier years. Equality and equity between Scheduled Castes and non-Scheduled Castes are slowly emerging and caste feelings are not as openly expressed as before.

The Indian state is committed to an egalitarian regime where Equality is “visualized as identical opportunities to compete for existing values among those differently endowed, regardless of structural determinants of the chances of success or of the consequences for the distribution of values.” Substantive democratization works when all people are empowered to participate in governance, ask questions, take decisions, raise resources, prioritize the social and economic agenda for local development and ensure social and political accountability. Such a vision of democracy requires democratization from below and a true devolution of power to the people. Today more than 2.8 million representatives stand elected to the three levels of Panchayats. Of these more than 37 percent are women, 19 percent belong to SCs and 11 percent to the STs. At the Village Panchayat level, each Panch’s constituency comprises of about 340 people, (70 families) making India the largest and most intensely democratic country worldwide. The following table exhibits the positive status of SC/STs who were elected to the PRIs in 2008.

<table>
<thead>
<tr>
<th>Panchayat level</th>
<th>Number</th>
<th>Elected representatives</th>
<th>Women</th>
<th>Scheduled Castes</th>
<th>Scheduled Tribes</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Panchayats</td>
<td>542</td>
<td>15613</td>
<td>5810</td>
<td>2729</td>
<td>1723</td>
</tr>
<tr>
<td>Intermediate Panchayats</td>
<td>609-4</td>
<td>156794</td>
<td>58191</td>
<td>32968</td>
<td>11406</td>
</tr>
<tr>
<td>Village Panchayats</td>
<td>232855</td>
<td>2645883</td>
<td>975057</td>
<td>485825</td>
<td>304350</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>239491</strong></td>
<td><strong>2818290</strong></td>
<td><strong>1039058</strong></td>
<td><strong>521522</strong></td>
<td><strong>317479</strong></td>
</tr>
</tbody>
</table>

**Table 6.8:** Elected representatives to the three tiers of Panchayats

**Source:** Mani Shankar Aiyar, “Key role of Panchayati Raj in building a resurgent rural India”, 2008

The Dalits when viewed through the lens of Ambedkar are doubly disadvantaged. Not only do they have to bear the brunt of landlessness but they are also forced to carry the additional burden of social and cultural stigmatization. Thus mainstreaming of these marginalized groups becomes all the more important as they are not homogenous groups,

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Ibid., p.379

Mani Shankar Aiyar, “Key role of Panchayati Raj in building a Resurgent Rural India”, 2008
some being socially and economically more vulnerable e.g. bonded labourers, scavengers, sweepers and leather workers among the SCs and the primitive tribes among the STs. The problems of these communities are peculiar to their occupation, and are not comparable to other groups of SCs and STs in the PRIs from among these groups, there is a likelihood that the emerging leadership from among the SCs and STs may not be able to bestow proper attention to the problems of these groups. As a result, these groups may be further marginalized.\(^\text{740}\)

However the submissiveness of an earlier era has changed now and a new assertiveness has emerged as a result of the 73rd amendment. In the new constitutional dispensation set up by the 73\(^{rd}\) Amendment Act, seat reservations for women and scheduled castes and tribes provide opportunities for formal representation that more closely approximates the population shares. These seat reservations have provided underprivileged groups with increased visibility and an opportunity to influence local affairs.\(^\text{741}\) The journalist P. Sainath has reported that at a recent workshop on Dalits and the State \(^\text{742}\) that the ‘single biggest battle for human dignity is taking place in India today.’ As a result of this system which institutionalized open political competition, lower castes have mobilized and challenged the post-independence upper-caste monopoly on political power in recent decades, creating what Jaffrelot terms a “silent revolution. Jaffrelot rightly interprets this revolution to be a substantive deepening of Indian democracy, made possible by the existence of formal democratic norms.\(^\text{743}\)

The reservation policy for Dalits and Adivasis has taken empowerment of excluded groups to a qualitatively new plane. Andre Beteille holds the view that, “the idea of empowerment may be invoked in virtually any context :In speaking about human rights, basic needs, economic necessity, capacity building, skill information or the conditions of dignified social existence. ”\(^\text{744}\) By strengthening the marginalized and unorganized, and by building up social and economic capabilities among individuals and communities and by moving the


\(^\text{742}\) Workshop on Dalits and the State , organized by Vikas Adhyan Kendra, Old Goa Feb. 2-4, 2000


\(^\text{744}\) Andre Beteille, Antinomies of Society, Oxford University Press, New Delhi, 2000 at p.268
society from hierarchy to equality, the 73rd amendment has radically redistributed power and contributed to social transformation.

Even in the case of weak, incompetent, or manipulated SC Sarpanches, reservation has two automatic consequences: it increases contact between villagers and at least one member of the village’s main Dalit caste and it provides members of that Dalit caste with a degree of linkage with local authorities. Even though they are vulnerable groups, susceptible to becoming proxies, the fact of reservation at the very least forces the dominant groups to negotiate power with them. This education will overtime breed resistance to continued domination and exploitation. The experience of wielding authority, of being able to bargain political power, of being well versed with the centrally sponsored and state level schemes, of becoming acquainted with the niceties and nuances of self-governance has brought drastic changes in the attitudes of these vulnerable groups.

The most important observation that can be made about the new PRIs is that they constitute a new ‘opportunity space’ for citizens and groups to compete for social resources. This is a political advancement as over the past five decades, there has been growth in the number of citizens who have entered the political system. By creating a third tier of governance, the 73rd amendment has created new ‘political spaces’ for Dalits, Adivasis and women with the potential to impact the system and in which citizens can make demands. These opportunities have been used by Dalits and Adivasis to improve their lot and not just to derive some benefits from the State.

The Nattaramanagalam panchayat Cuddalore District has attracted the attention of views, news and prizes from every corner of the nation. Nattarmanagalam Sustainable Panchayat Paradigm (NSP) seeks assistance from the people, public and private. It has created merit by unanimously electing a Dalit educated woman as president despite the village presidency being a general constituency and all nine ward members elected unopposed are women. It has established the new paradigm for sustainable rural

745 Simon Chauchard Panchayati raj and untouchability June 5, 2012 http://www.thehindubusinessline.com/opinion/
746 Supra note at 2
747 George Mathew and Ramesh Nayak; ‘Panchayats at Work; What it means for the Oppressed?’;; Economic and Political Weekly, 1996
748 S.Palanivelraja and K.I.Manirathinem NATTARMANGALAM- A NEW SUSTAINABLE PANCHAYAT PARADIGM (NSP), International Journal of Rural Studies (IJRS) vol. 20 no. 1 April 2013
development. “Sustainable or liveable communities” are associated with building a healthy society with a high quality of life.749

The Dalit President has been instrumental in initiating innovative campaigns to create a socio-economically sustainable Panchayat through Total Economical campaign, a livelihood generating programme which has sub-plans like Modernization of Agriculture and Natural farming Initiation (MANI), Youth Opportunity Unions to make the school drop-outs self-reliant. Under the aegis of another manoeuvre named Total social campaign, Sustainable Permanent Reinforced Roof (SPR) house construction was undertaken in order to make the panchayat a hut-free village panchayat, 361 huts will be replaced by the name of Rajiv Gandhi Awas Yojana (RAY). 750

The 73rd amendment and consequent state acts have guaranteed reservation so as to lead to the empowerment of Dalits through entry in grassroots leadership. By enabling these groups to use democratic space, it aims to transform the existing oppressive social structures, policies and programmes. The reasons for providing representation are based on several assumptions which are as follows:751:

1. Shared perception of injustice, deprivation and oppression
2. Shared experience of marginalization vis-à-vis power structure
3. Collective empowerment through representation and democratic process will give them voice, feeling of solidarity and democratic politics
4. With regular elections and constitutionally mandated panchayats, the power concentration will change and issue –oriented groupings and interest groups will emerge
5. Affirmation action will build a critical mass of local leadership from such groups who will be active participants in the strategic decision making process.

Evidence from West Bengal and Kerala indicates that rates of participation in local bodies have increased for women and scheduled castes and tribes. In Kerala, the process of popular mobilization through the People’s Planning Campaign has ensured the active involvement of scheduled castes and women in decision making in Panchayats with a

750 Supra note at 25
resultant flow of benefits to these groups.\footnote{752} In the case of West Bengal democratic decentralisation has amounted to significant benefits to the poor especially when combined with land reforms and popular mobilization. Popular oversight over anti-poverty programs through elected panchayats has resulted in more effective targeting of benefits to the poor\footnote{753}.

In yet another instance in parts of Gujarat\footnote{754} elected members from the Scheduled caste and tribes are typically assigned responsibility for minor functions in panchayats such as the Social Justice committees which are legally required to be headed by a Scheduled caste representative. There have been many instances when Scheduled caste leaders have effectively used these committees to block inappropriate decisions or challenge the authority of the dominant castes.

An innovative instrument to facilitate empowerment of Dalits was witnessed in Himachal Pradesh. Very few states have the alternative option of lottery, draw or alphabetic categories in allocating reservation policy and Himachal Pradesh is one of them. In this state, districts with SC/ST/ women are enlisted in an alphabetical order and the rotation takes place by 3 lots. It can be seen that first Dalits are empowered and then examples are provided by way of a trickledown effect as an enabler to build role models representing their interests, the sub-alters everywhere are empowered.

Going one step further in reinforcing the provisions of the 73rd Amendment Act, an attempt was made in Madhya Pradesh, where there is a provision that if the Chairperson does not belong to the Schedule Caste, Schedule Tribe or the Other Backward Castes, Deputy Chairperson shall be elected from amongst such persons. This in a way has institutionalized equality in the real sense of the term.

Optimism in the status of the marginalized sections became more pronounced in a study conducted by the Sulabh Institute of Development Studies, Bihar in accordance with the provision of Bihar Panchayati Raj Act of 1993. Panchayat elections in Bihar were held in April, 2001 where 20509 Scheduled caste persons were elected for a period of five years and among them, 9198 or 44.85% were scheduled caste women.\footnote{755} All the EWRs were elected

\footnotesize{\parindent=1em\paragraph{References}}


\footnote{753} Neil Webster Panchayati Raj in West Bengal : Participation for the People of the Party? Development and Change23, No.4:pp129-63

\footnote{754} Supra note 8 at p.23

\footnote{755} Empowerment Of Elected Sc Members Through Pris in Bihar, Research Studies At A Glance, Socio Economic Research Division, Planning Commission Year:2006-2007 Yojana Bhawan, New Delhi, 2010

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against the seats reserved for the scheduled Castes. They belonged to the Chamar, Musahar, Dusadh, Pasi, and Dhobi. Only three of them were from the Mehtar caste. Most of the EWRs were of the view that there was decrease in the extent of exploitation of the scheduled caste men and women post the findings of the report also illustrated that the scheduled caste people benefited from the programmes implemented in the Gram Panchayats and the Panchayat members have extended necessary co-operation. An enhanced level of participation of scheduled caste men and women in the political process in the Panchayat was also witnessed in the due course.

Thus the experiences gained so far in the functioning of Panchayats reveal that in spite of their social, educational and economic backwardness, these communities have now a say in rural local governance. They have also noticed improvement in their life. Results of a study conducted by the Participatory Research in Asia (PRIA) in six States indicate that even women belonging to ‘lower’ castes, despite harassment, are not getting unnerved. Some of them are even keen to fight the next Panchayat elections from unreserved constituencies.\textsuperscript{756}

The institutional mechanism of 73\textsuperscript{rd} amendment has undoubtedly helped the marginalized sections to transcend the conventional barriers of the caste system at the decentralized level. With their new found leadership roles, these communities have expedited the process of social engineering and have also become synonyms of inclusive and egalitarian governance.

\textbf{6.27.4. PRIS assume centrality in the Centrally Sponsored and Central Sector Schemes (CSS)}

MoPR advocates a strong role for Panchayats in the CSS that aim at the socio-economic development of the rural people so that the schemes can become more context specific and a greater measure of accountability and transparency can be introduced. Schemes such as MNREGA, the Sakshar Bharat Abhiyan, and National Rural Drinking Water Programme provide substantial role for Panchayats in several CSS. There is ample anecdotal evidence to show that wherever Panchayati Raj Institutions of their own volition, or with the authority conferred by the State Governments, have involved themselves in overseeing the functioning of Schools, Anganwadi Centres and Primary Health Centres, invariably, absenteeism of staff has come down because client satisfaction becomes an issue. This has led to an immediate improvement of the quality of services for the common man.

\textsuperscript{756}Mahi Pal, Decentralised Governance And Marginalised available at http://Pib.Nic.In/Feature/Feyr2000/
MoPR therefore constituted an Expert Committee under the Chairmanship of Mani Shankar Aiyar in 2012 to review the existing policies relevant to CSS and activity mapping for CSS dealing with social sector and anti-poverty programmes and to give specific recommendations on appropriate roles and responsibilities of Panchayats at different levels.

The Central Government undertakes large fiscal transfer to the states in the functional domain of the Panchayats, mainly through Centrally Sponsored Schemes (CSSs) and Additional Central Assistance (ACAs). In the recent years it has been urged that there are several shortcomings in the design and implementation of Centrally Sponsored Schemes (CSS) and Schemes for which Additional Central Assistance (ACA) is allocated. The most important of them are:

1. There are just too many of them ---around 230 according to one account
2. There is no consistent approach to institutional mechanisms for implementation even in schemes that are related and address the same broad objective.
3. Most are independently planned and implemented, and operate self-contained fund flow and monitoring systems, leaving little scope for convergence with other schemes at local levels.
4. The emphasis on financial performance edges out the importance of outcomes.

The total number of CSS shows an interesting pattern as will be evident from the following graph:

**Fig. 6.1:** Number of Centrally Sponsored Schemes

![CSS Graph](image)

**Source:** Report of the Committee on Restructuring of Centrally Sponsored Schemes (CSS), Planning Commission Government of India New Delhi, 2011

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As a result a High Powered Committee chaired by Arvind Verma, constituted by the Planning Commission was composed to look into the issue of rationalization of CSS and to ensure centrality of Panchayats in planning and implementation of Central Programmes. Subsequently the PRIs were bracketed together with the CSS on various fronts like:

i. Identification of beneficiaries  
ii. Enumeration of the target group using household registers of Village Panchayats  
iii. Verification of data collected from other sources against data available with PRIs  
iv. PRIs/Gram Sabhas as nodal agencies for building data bases and constant revision for maintaining updated database  
v. Determination of optimal sites for construction through PRIs  
vi. Distribution of publicity material to PRIs and use of PRIs functionaries for awareness campaigns  
vii. Selection of projects by PRIs where micro level solutions are required  
viii. Operations, future maintenance and management (post project) by PRIs  
ix. Monitoring and vigilance should be the responsibility of PRIs;  
x. Periodical reporting of implementation officer to PRIs  
xi. Recommendation of PRIs to be considered for training purposes

Specific Central schemes that impinge upon the core functions of Panchayats are Sarva Shiksha Abhiyan, Mid-day Meal Scheme, Drinking Water Mission, Total Sanitation Campaign, National Rural Health Mission, Integrated Child Development Services, and National Rural Employment Guarantee Programme. The Expert Group also suggested in its report\textsuperscript{758} that Panchayats could be given a clear and precise role in programmes under Bharat Nirman which include Swarnajayanti Grameen Swarozgar Yojana(SGSY), Indira Awas Yojana(IAY), Pradhan Mantri Gram Sadak Yojana'(PMGSY), Adult Education, Rajeev Gandhi Gramaeeen Vidyutikaran Yojana and a programme for non-conventional energy called Remote Village Electrification programme

\textbf{6.27.4.1. Panchayats and Central Poverty Alleviation Programmes}

Pervasive poverty that is widespread in India is in sharp contrast to the ideals of solidarity, social justice and equity that are embodied in the Indian Constitution.\textsuperscript{759} There are

\textsuperscript{758} An Action Programme for the Eleventh Five Year Plan, Report of the Expert Group, March 2006, New Delhi  
\textsuperscript{759} George Mathew, Decentralisation: Panchayati Raj Institutions And Human Rights In India, International Council on Human Rights Policy, Spring 2002, p.6
numerous anti-poverty schemes for the upliftment of the rural poor and they have registered success only when the programmes were decentralized at the Panchayat level. MNREGA is one such scheme which came into force in September 2005 and was launched by the then Prime Minister Mr. Manmohan Singh, on February 2nd 2006, in the village called Bandlapalli in Anantpur District of Andhra Pradesh. The UPA Government on 2nd October 2009 renamed the National Rural Employment Guarantee Act (NREGA) as Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA), on the occasion of Mahatma Gandhi’s 140th birth anniversary.

According to Mani Shankar Aiyar, MNREGS is one of the few centrally sponsored schemes in which panchayats have been given key role. As per the guidelines of this Scheme, the gram panchayat not only required to issue job cards, provide work to the employment seekers and pay wages to them but has also to prepare ‘Shelf of Works’ to be undertaken, Labour Budget and Annual Plan.

The Act offers an opportunity to strengthen our democratic processes by entrusting principle role to Panchayats at all levels in its implementation and promises transparency through involvement of community at planning and monitoring stages. It also mandates at least 50% of the works are to take place at the Gram Panchayats level panchayats with the help of Rozgar Sahayaks and Mates. Progress reports from States reveal that 72 percent of NREGA works are being taken up at the Village Panchayat level. It is also notable that District Programme Coordinators and Programme Officers are to assist District and Intermediate Panchayats respectively in discharge of their function.

The National Rural Employment Guarantee Act not only designates the Panchayats as the “principal authority” for the planning and implementation of the National Rural Employment Guarantee Programme (NREGP), the Act itself spells out the specific duties of the Panchayats at each level with respect to the Programme. While the Panchayat at the district level constitutes a Standing Committee of its members to supervise, monitor and oversee the implementation of the Scheme within the district, the Gram Panchayat on the

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761 Towards Holistic Panchayat Raj’, Yojana, Vol. 57, August 2013
762 Available at http://rural.nic.in/rajaswa.pdf
763 Mani Shankar Aiyar, Key role of Panchayati Raj in building a Resurgent rural India, Based on the foreword by the Prime Minister, Dr. Manmohan Singh, in Report to the People 2004 - 2008 , p.6
764 Roadmap for the Panchayati Raj (2011-16), An All India Perspective, Ministry of Panchayati Raj Version date: February, 2011, p.10
other hand is made responsible for identification of the projects as per the recommendations of the Gram Sabha and for executing and supervising such works. 765 Under section 13 of the Act, MGNREGA has given high visibility to the Panchayats and in the process, catalysed to some extent their enablement. 766 In Kerala and Tamil Nadu, Gram Panchayats play an important role in the planning and implementation process of MNREGA. 767

The success of MNREGA and Panchayat duet can be seen in Village panchayat Sakadehi in Betul, Madhya Pradesh which provided 17, 131 mandays worth of employment to 304 families. It was selected for the National Award for exceptional work under Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS as it constructed 14 Kapildhara wells under MGNREGS, made available irrigation facility in 17 hectares and provided 860 saplings for plantation under Nandan Phalodyan to eight beneficiaries during year 2011-12. Besides, drinking water facility was also provided to 25 families through Nirmal Neer drinking water well. 768

These features of MGNREGA offer a unique opportunity to strengthen and enable PRIs, particularly the GPs and GSs. The rejuvenated and enabled PRIs, in turn, can become powerful instruments in making MGNREGA a much better success.

On the self-employment side, Swarnajayanti Grameen Swarozgar Yojana (SGSY) is being implemented since April 1999 as a major anti-poverty scheme for the rural poor, which organizes them into Self Help Groups (SHGs), providing them with skill development training and helping them to get credit linkage with financial institutions and providing infrastructure and marketing support for the products produced by them. 769 This integrated scheme of self-employment covers all aspects of technical training, infrastructure, credit from time to time, marketing organizing groups and their capacity building. The programme was started with effect from 01.04.1999 after review and restructuring of the erstwhile IRDP and its allied programmes namely TRYSEM, DWCRA, SITRA and GKY, besides MWS. The earlier programmes are no longer in operation with the launching of the SGSY.

765 Economic Survey 2004-2005, p. 229 Available at website : http://indiabudget.nic.in
767 Reetika Khera, National Rural Employment Guarantee Act: Where do we stand?, Center for Legislative Research and Advocacy, Policy brief series: No. 11; November-December 2010, p. 3
768 Panchayati Raj Update, February 2013, p.5
769 Manual for Information Under Right to Information Act, 2005, Rural Development and Panchayat Raj Department, p. 10
In this development programme also the Government of India has invariably sought a meaningful involvement of the PRIs. In this a team comprising the BDO, bank manager and the representative of the Technical Training Center will identify 4-5 activities in a block on the basis of the local resources and traditional skills and develop on cluster basis and then a project report indicating estimated cost, duration etc. will be prepared. Selection of the activities has to be done with the approval of the Panchayat Samitis at the Block level and District Rural Development Agency/Zilla Parishad at the District level. These Key Activities should preferably be taken up in Activity Clusters so that the backward and forward linkages can be effectively established and economies of large scale production can be reaped.

Also the beneficiaries are to be selected out of the BPL list by the Gram Sabha, but if the BPL are less in number or there are over dues against them, non-BPL can also be included in a group, though subsidy will not be granted to the non-BPL.

Thus it is an example of convergence between the PRIs and poverty alleviation programmes and how PRIs play a proactive role in livelihood and wage employment programmes.

6.27.4.2. National Rural Drinking Water Programme (NRDWP) and Role of PRIS

The two key programmes of the Central Government relating to drinking water supply are the Accelerated Rural Water Supply Programme (ARWSP) and Swajaldhara. In 2009 the Accelerated Rural Water Supply Programme (ARWSP) was modified as the National Rural Drinking Water Programme with major emphasis on ensuring sustainability of water availability in terms of potability, affordability and equity on a sustainable basis, while also adopting decentralized approach involving PRIs and community organizations. With the approval of the “National Rural Drinking Water programme” by the Government of India there is a paradigm shift from ‘just providing a water supply system in the habitation’ to ‘ensuring water supply security at the house hold level’. ARWSP is now part of the Bharat Nirman approach, with a time bound strategy of tackling all habitations that are deficient in water supply.

The Twelfth Finance Commission has recommended that local body grants for Panchayats could be preferably used for village water supply and sanitation. Both ARWSP and Swajaldhara are to be primarily implemented at the Gram Panchayat level. In order to

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further decentralize powers, a Gram Panchayat/Village Water and Sanitation Committee (GPWSC/VWSC) is to be set up in each Gram Panchayat/Village/Ward for implementation of water supply schemes. This Committee may be merged with the Village Health Sanitation and Nutrition Committee set up under NRHM, so that water, sanitation, nutrition and health issues are clubbed together at the village/ward level. The membership of a GPWSC/VWSC may consist of about 6 to 12 persons, comprising members of Panchayat. SCs, STs and poorer sections of the village should be given due representation in the GPWSC/VWSC. At least 50% of GPWSC/VWSC members should be women. This Committee shall function as a Standing Committee/Sub Committee on Water and Sanitation of the Gram Panchayat and should be an integral part of the Village Panchayat/Block Panchayat for which, if necessary, appropriate amendments in the State Panchayati Raj Act/rules/Byelaws may be made.

6.27.4.3. Total Sanitation Campaign

The Total Sanitation Campaign has been now renamed as Nirmal Bharat Abhiyan (NBA) with the objective “to accelerate the sanitation coverage in the rural areas so as to comprehensively cover the rural community through renewed strategies and saturation approach.” It aims at providing subsidized individual and community latrines, so as to completely eliminate open-air defecation. TSC has been successful in changing the rural sanitation coverage from a mere 21% as per 2001 Census to 67% households in the current year with over 22,618 PRIs becoming open defecation free “Nirmal Grams.” Along with water supply, TSC is a programme that is clearly part of the core responsibility of every Panchayat, particularly the Gram Panchayat.

An activity mapping for sanitation is undertaken by the District Panchayat while the Intermediate Panchayat provides the technical support and engineers for the programme. The Gram Panchayat undertakes public awareness drives and mobilizes resources and funds for the campaign. Payment to beneficiaries on the completion of the works is also undertaken at this level.

The Nirmal Gram Puraskar, is an innovative way of motivating Panchayats to compete acceptable yardsticks. It is given to Panchayats that have achieved total elimination

773 Nitya Jacob, Greening NBA in Greening Rural Development in India, Vol.2 UNDP India 2012.
774 Agatha Sangma, Towards Sustainable Sanitation in North-Eastern Region, Yojana, February 2011, p. 15
of open-air defecation. Sikkim has made the commendable achievement of becoming the first” Open Defecation Free” Nirmal State of India. Its success can be attributed to the priority given by the political and administrative leadership of the state and decentralized mechanism of implementation by active involvement and convergence of local governance systems, local communities and self-help groups. Now in its next leg of sanitation measures, it is planning to take up Menstrual Hygiene and Solid and Liquid Waste Management(SLWM). Tripura is another state where Rajibnagar and Ratanmani, two Gram Panchayats of Satchand Block and West Jalefa and Bankul Mahamani GPs jointly under Satchand and Rupaicharri block achieved full coverage of sanitation.  

6.27.4.4. Accessing health benefits through National Rural Health Mission and PRIs

The (NRHM - 2005-2012) has been launched to improve availability of and access to quality health care and public health services, including women’s health, child health, water, sanitation & hygiene, immunization, and nutrition by rural people. The goals of the mission are to reduce Infant Mortality Rate (IMR) and Maternal Mortality Ratio (MMR) and prevent and control communicable and non-communicable diseases.

The implementation strategy of NRHM places Panchayats at the forefront. A study group constituted by the ICSSR-ICMR in early 80’s, examined the concept of community participation in health and observed, “This new approach to health cannot be implemented in a centralized political system where experts take all the decisions for the people and the bureaucrats implement them. It is therefore necessary to abandon the existing centralized and top-down approach to the organisation of health services and create a new system of building from below with community based health services. This will be possible in a democratic, decentralised and participatory system of government in which “the people in a community have the authority, resources and expertise to prepare and implement all plans for their welfare, including health.”

The programme proposes to train and enhance capacity of Panchayats to own, control and manage public health services and promote access to improved healthcare through the female health activist (ASHA). Under the programme, each State would sign a Memorandum

775 Ibid., p.17
of Understanding with Government of India to devolve funds, functionaries and programmes for health, to PRIs.

The District Health Mission led by the Zilla Parishad controls, guides and manages all public health institutions in the district. The ASHA workers are selected by and are answerable to the Gram Panchayats. They are to act as the interface between the community and the public health system. A health ‘plan’ for each village is prepared by the Village Health Committee of the Panchayat facilitated by the ASHA, Anganwadi worker, ANM, functionaries of other Departments, and Self Help Group members. Panchayats are also involved in Rogi Kalyan Samitis for good hospital management.

The Scheme also makes a provision of training to members of PRIs in health issues. The programme also envisages making available health related databases to all stakeholders, including Panchayats at all levels.  

6.27.4.5. The Indira Awas Yojana (IAY) and PRIS

The objective of the IAY is primarily to “help in construction/up gradation of dwelling units of rural BPL householders belonging to members of Scheduled Castes/Scheduled Tribes, freed bonded labourers, minorities and other non-SC/ ST by providing them a lump sum financial assistance.”  

The budgetary allocation in 2012-13 is laid down at INR 9, 966.  

Launched during 1985-96 as a sub-scheme of RLEGP and thereafter continued as a sub-scheme of Jawahar Rozgar Yojana (JRY) it has now been de-linked from JRY and has been made an independent scheme with effect from 1st January 1996. This programme gives a 100 percent subsidy, capped at Rs. 25, 000 per unit for providing houses to families below the poverty line.

The guidelines of IAY in its present form are both Panchayat-friendly and beneficiary friendly. Zilla Parishads on the basis of allocations made and targets fixed shall decide the number of houses to be constructed Panchayat wise under IAY during a particular financial year. The same shall be intimated to the Gram Panchayat. Beneficiaries are selected from the Below-the-Poverty-Line (BPL) list approved by the Grama Sabha. No approval of the

778 Indira AwasYojana (IAY) Guidelines, MoRD (GoI), New Delhi, July 2012, p.3
779 Greening Rural Development in India, Vol.1, UNDP India 2012,p.4
Panchayat Samiti is required. The Panchayat Samiti should however, be sent a list of selected beneficiaries for their information. The progress of IAY in Orissa is represented in the table below:

**Table 6.9: Progress of IAY in Orissa**

<table>
<thead>
<tr>
<th>Programme Name</th>
<th>Month Code</th>
<th>Segment</th>
<th>Total Target</th>
<th>Total Achievement</th>
<th>Ach. as % of Target</th>
<th>Share of Weak Section in Total Achievement (% to Total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>IAY</td>
<td>5</td>
<td>Dwelling Units (Nos)</td>
<td>111431</td>
<td>3192</td>
<td>2.86</td>
<td>1204 (37.72%)</td>
</tr>
</tbody>
</table>

**Source:** Data provided by Ministry of Rural Development, Software developed by NIC

### 6.27.4.6. Linking PRIS with Pradhan Mantri Gram Sadak Yojana

Pradhan Mantri Gram Sadak Yojana (PMGSY), a 100% Centrally Sponsored Scheme was launched on 25th December, 2000. It primarily aims to provide all weather access to unconnected habitations of up to 500 population (with relaxations for hill, desert and tribal areas) by 2007. In respect of the Hill States (North-East, Sikkim, Himachal Pradesh, Jammu & Kashmir, Uttaranchal) and the Desert Areas (as identified in the Desert Development Programme) as well as the Tribal (Schedule V) areas, the objective would be to connect Habitations with a population of 250 persons and above.

This programme too assures an indispensable and strategic position to the PRIs in its scheme. It mandates the development of master plans and a core network at the block and district level, approved by the Intermediate and District Panchayat respectively. The District Panchayat is also to prepare the annual proposals in consultation with Intermediate Panchayats and Gram Panchayats, in accordance with the district’s fund allocation under the Scheme. Road alignments are to be undertaken in consultation with the Gram Panchayat. Executing Agencies are to be designated to implement the programme. It is open for States to designate the District Panchayat as the implementing agency. Executing Agencies are to create Project Implementation Units (PIUs) for each district or group of districts to implement the programme. A mid-term evaluation from the Planning Commission suggested

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781 [http://www.rural.nic.in/PMGSY.htm](http://www.rural.nic.in/PMGSY.htm)
that the creation of rural roads under the schemes resulted in positive outcomes in school enrolment, incomes, health, and maternal care.\footnote{Jay Chaudhuri, Yamini Aiyar and Jessica Wallack, Outcomes Rule: Getting Development from Development Expenditure, Overview Paper for Centre for Development Finance and the Accountability Initiative. August, 2009, p.14}

6.27.4.7. Women and Child Welfare (ICDS) through PRIS

This scheme aims to alleviate the nutritional and health status of pre-school children, pregnant women and nursing mothers. The suite of services offered by this scheme include supplementary nutrition, immunization, timely diagnosis, preschool-education, nutrition & health education, with particular focus on the vulnerable and poor. In addition, the scheme also envisages effective convergence of inter-sectoral services in the anganwadi centres. From coverage of 33 blocks in 1975-76, the programme has been expanded to cover 4200 Operational ICDS Projects in the Country.\footnote{Supra note 15 at p.72} Devolution of ICDS to the Panchayats is done through activity mapping where each level of Panchayat is assigned clearly demarcated roles and responsibilities. Close coordination between the three levels of Panchayats is achieved through the Health Standing Committees specially constituted at all levels of Panchayats.

While the District Panchayat plans, coordinates and monitors general outcomes, the Intermediate level on the other hand manages the cadre and procures and supplies consumables. The Village Panchayat undertakes the day-to-day management of the Anganwadi and monitor individual outcomes.\footnote{Ibid} It promotes the involvement of the community for improving their child related indicators and can drive several initiatives in a campaign mode. West Bengal has a well-functioning system in this regard. The Standing Committee of the Gram Panchayat and the Ward Sabha actually monitor weight charts of babies.

There has been considerable success in giving Panchayats a clear and pivotal role in planning and implementation of key central interventions in the direction of alleviating poverty and improving service delivery in rural areas. Clearly, any steadfast and upfront involvement on the part of the PRIs in the planning, execution and oversight of CSSs, does impact the outcomes in a positive manner. Thus according centrality to the Panchayats in the guidelines of the CSSs is completely justified and the need of the hour without which rural development will always remain an unfulfilled dream.

\footnote{Supra note 15 at p.72}
\footnote{Ibid}
6.27.5. **Panchayats tread the Digital Path --- E-Panchayats**

Rural India is experiencing rapid socio-economic and cultural transformation with improved IT-enabled communication services, surface connectivity and community-centric infrastructure. In their book, How Cool Brands Stay Hot : Branding to Generation Y, writers Joeri Van den Bergh and Mattias Behrer explain, “Just like the Industrial Revolution changed lifestyle and culture by the end of the 19th century, the omnipresent connectivity and digital advancement has reshaped the social DNA fabric of our current and future generations.”

In a bid to reach the last mile man, PRI institutions have started to play an enlarged role in planning, identification and implementation. Under the National Optical Fibre Network (NOFN) scheme of the Department of Telecommunications (DoT), approved on 25.10.2011, all the Panchayats are proposed to be connected through Optical Fibre Cable (OFC) with an estimated cost of Rs. 20, 000 crores.

Ministry of Panchayati Ra is also promoting e-Governance in Panchayats under the National e-Governance Plan (NeGP) through implementation of e-Panchayat Mission Mode Project (MMP) wherein 11 Software Applications are envisaged addressing all aspects of Panchayats’ functioning. The vision of the NeGP is to “Make all Government services accessible to the common man in his locality, through common service delivery outlets and ensure efficiency, transparency and reliability of such services at affordable costs to realise the basic needs of the common man.”

It has enabled the Panchayati Raj Institutions to effectively use Information Technology in automating their internal workflow processes for better functioning and delivery of citizen services leading to increased transparency and accountability. These Applications address all aspects of Panchayats’ functioning viz. from internal core functions such as Planning, Monitoring, Implementation, Budgeting, Accounting, Social Audit, etc., to citizen service delivery like issue of certificates, licenses, etc. As a result all states have been building their requirements for e-enablement in their annual RGPSA plans and e-Panchayat puruskar are also being conferred on the best performing states /UTs to incentive e-enablement at Panchayat Level.

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786 Minister of State For Panchayati Raj, Rural Development And Drinking Water And Sanitation, Shri Upendra Kushwaha answers Lok Sabha Unstarred Question No. 1209 n 17-07-2014.
The Software applications being employed under the E-Panchayat Mission Mode Project (MMP) have been discussed below:

1. **PRIASoft**: Captures receipt & expenditure details through voucher entries and automatically generates cash book, registers, utilization certificates, etc. It has been a major success with 1.2 lakh Panchayats on board and about 65,000 Panchayats are making online voucher entries during 2011-2012. Over 60 lakhs vouchers have been entered till March, 2012 for the year 2011-12 and reports can be accessed at http://Accountingonline.gov.in. \(^{787}\) This application is being used by 74% of Panchayats in the country for maintaining and managing accounts.

2. **PlanPlus**: Helps Panchayats, Urban Local Bodies and line departments in preparing Perspective and Annual Action Plans. Over 75,000 Annual Draft Plans & Action Plans of different plan units (ULBs/RLBs/Line Deptts.) are available online on PlanPlus. Over 43,000 Plan Units have uploaded their Annual Action Plans online in 2011-12. This includes 82 Zilla Panchayats, 1300 Block Panchayats & 41,500 Gram Panchayats who have adopted PlanPlus during 2011-12. These can be accessed at http://planningonline.gov.in \(^{788}\)

3. **National Panchayat Portal (NPP)**: A National Panchayat Portal has been developed by NIC which has a versatile front-end in terms of dynamic website for Panchayat, with information, content and services needed by people, links citizens with Panchayats, links Panchayats with each other and allows access to information & services provided by Ministry of Panchayati Raj, State Panchayati Raj Departments, etc.

   Dynamic Web site for each Panchayat to share information in public domain. Over 2,36,500 dynamic websites have been created for Panchayats (95% adoption) and 30,000 of these websites are seeing an active content upload. It can be accessed at http://panchayat.gov.in \(^{789}\) the Ministry of Panchayati Raj submitted in a written reply as under:

   “National Panchayat Portal (NPP) has been adopted by the States of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Karanataka, Kerala, West Bengal, Uttar Pradesh, Maharashtra and Orissa. Out of these, Maharashtra, Orissa, West Bengal and Andhra Pradesh have also created content. In

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\(^{787}\) Lok Sabha Unstarred Question No. 3882 on E-Governance In Panchayats
\(^{788}\) Ibid
\(^{789}\) Ibid
all, there are about 4 lakh content items which have been published in the NPP site by these States. Ministry of Panchayati Raj also publishes around 1000 contents on the portal page of Ministry using NPP.

4. **Local Government Directory (LGD):** For the first time a Central repository of all the PRIs in India is available through the LGD application. Captures all details of local governments and assigns unique code. Also maps Panchayats with Assembly and Parliamentary Constituencies.

5. **Action Soft:** Facilitates monitoring of physical & financial outcomes/outputs under various programmes.

6. **National Asset Directory (NAD):** Captures details of assets created/maintained; helps avoid duplication of works and provides for maintenance. As on December 3, 2014, NAD contained the details of 1, 18 crore assets of the Panchayats worth more than INR 23,000 crores.

7. **Area Profiler:** Captures geographic, demographic, infrastructural, socio-economic and natural resources profile of a village/panchayat. Universal database for planning of all sectoral programmes and also provides details of Elected Representatives.

8. **ServicePlus:** A dynamic metadata-based service delivery portal to help in providing electronic delivery of all services in all States. More than 60,000 Panchayats have put their approved annual action plans online in 2013-14. States are being enabled to deliver various Government to citizen (G2C) services through ServicePlus Application at the Gram Panchayat level. Maharashtra is now providing 19 services electronically to citizens (e.g. Birth Certificate, Death Certificate, Domicile Certificate etc.) and Chhattisgarh is providing 5 services using ServicePlus.

9. **Social Audit and Meeting Management (SAMM):** Captures details of statutory meetings held at ZP/BP/GP levels and generates reports for social audit.

10. **Trainings Management:** Portal to address training needs of stakeholders including citizens, their feedback, training materials, etc.

11. **Geographic Information System (GIS):** It is a spatial layer to view all data generated by all Applications on a GIS map. Boundaries of 80% Gram Panchayats are available on the GIS platform.

The project is regularly reviewed by the Apex Committee of National e-Governance Plan headed by the Cabinet Secretary, Government of India. In addition, Ministry of Panchayati Raj regularly conducts review meetings with States/UTs at the level of Secretary/Additional Secretary/Joint Secretary.

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In so far as providing computers and other basic infrastructure facilities are concerned, in the 11th Five Year Plan period, no funds were provided to States/UTs. However, they were advised to utilize available funds from different sources such as 13th Central Finance Commission Grants, Backward Regions Grant Fund (BRGF), Rashtriya Gram Swaraj Yojana (RGSY), to procure computers and other basic infrastructure facilities. In the 12th Five Year Plan period, after the dovetailing of e-Panchayat MMP with the Rajiv Gandhi Panchayat Sashastikaran Abhiyan (RGPSA), all States/UTs have been advised to build their specific requirements for computers, UPS, printer etc. in their respective Annual Plans @ Rs. 40,000 per GP. In 2011-12, Rs. 38.5 Crores were released to States/UTs for setting up Programme Management Units (PMUs) at State and District levels and Rs. 1.61 Crores were released to four States/UTs in 2012-13.

The State/UT-wise adoption status of Software Applications developed under e-Panchayat MMP has been represented in the table below:

### Table 6.10: States showing Software Applications under E-Panchayat MMP.

<table>
<thead>
<tr>
<th>Name of Application</th>
<th>In Use by States/UTs</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIASoft</td>
<td>Andhra Pradesh, Assam, Bihar, Chhattisgarh, Haryana, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttarakhand, Uttar Pradesh, West Bengal.</td>
</tr>
<tr>
<td>Local Government Directory</td>
<td>All States/UTs except Nagaland, Mizoram and Delhi.</td>
</tr>
<tr>
<td>National Asset Directory</td>
<td>Andhra Pradesh, Bihar, Chhattisgarh, Dadar and Nagar Haveli, Maharashtra, Manipur, Sikkim, Uttar Pradesh, West Bengal.</td>
</tr>
<tr>
<td>AreaProfiler</td>
<td>Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadar and Nagar Haveli, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttarakhand, Uttar Pradesh, West Bengal.</td>
</tr>
<tr>
<td>ServicePlus</td>
<td>Chhattisgarh, Maharashtra.</td>
</tr>
</tbody>
</table>

**Source:** Part (a) to (d) of the Lok Sabha Unstarred Question No. 1209 at www.panchayat.gov.in
In Maharashtra, 33 Zilla Panchayats and 5, 223 Gram Panchayats are already using this ServicePlus Application to provide services electronically. Similarly, in Chhattisgarh, 2960 Gram Panchayats are using this Application to provide services electronically.

In West Bengal, during the last three years, birth and death certificates, trade registration certificates, provisional residential, caste and income certificates have been delivered electronically through Gram Panchayats using the Gram Panchayat Management System (GPMS) software.

In Punjab, 119 Block Panchayats have PAWAN connectivity and remaining are using broadband connections for data transfer. Besides it is the only state in the country where most of the software are available in vernacular that is in Punjabi. Further basic computer training for the project is provided to all department officials and selected elected representatives by MoPR, GoI through DOEACC.

Further, a Helpdesk has been introduced for two Software Applications, namely PRIASoft and PlanPlus, which is providing support in English, Hindi, Marathi and Tamil languages. The Helpdesk was launched in July, 2014 and operates on all seven days of the week from 8 a.m. to 8 p.m. A toll free number (1800117200) is available to Panchayat level users to address operational queries related to the usage of PRIASoft and PlanPlus Applications. The Helpdesk logs, tracks and addresses queries/issues related to PRIASoft and PlanPlus Applications to facilitate continuous usage of these Applications by Panchayats. The Helpdesk is basically meant for Panchayat level users. Since its launch, 1186 queries were received for PRIASoft of which 891 have been resolved. Similarly, 96 queries were received for PlanPlus of which 74 have been resolved.

As appropriate software applications and induction of ICT at the Panchayat level on such a large scale have been deployed so as to enable Panchayats to meet the service needs of various stakeholders such as citizens, States/UTs and the Central Government, it has eventually resulted in building an ICT culture at the level of the masses and enable rural public linkage to access the external world of knowledge and markets. The table that follows shows the extent to which digitalization has been achieved at the three tiers of the PRIs post 73rd Amendment Act.

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790 Part (b) Of Lok Sabha Unstarred Question No. 855 Regarding E-PRI Project Answered
791 Part (C) Of Lok Sabha Unstarred Question No. 855 Regarding E-PRI Project Answered By Minister Of State For Panchayati Raj Shri Nihal Chand
792 Presentation on E-Panchayat Project by Punjab e-Panchayat Society , Deptt. of Rural Development & Panchayats, Punjab, by Jatinder Singh Brar, Project Director e-Panchayat, Punjab
793 Lok Sabha Unstarred Question No. 4361 Answered On 18.12.2014 Launching Of Central Helpdesk
Table 6.11: States showing Computerization of Panchayats’ at the three tiers of PRIs

<table>
<thead>
<tr>
<th>S.No</th>
<th>State Name</th>
<th>Zilla Panchayat (ZP)</th>
<th>Block Panchayat (BP)</th>
<th>Gram Panchayat (GP)</th>
<th>Panchayat</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Offices</td>
<td>No. of ZP having computers</td>
<td>No. of Offices</td>
<td>No. of BP having computers</td>
<td>No. of Offices</td>
</tr>
<tr>
<td>1</td>
<td>A &amp; N Islands</td>
<td>2</td>
<td>2</td>
<td>7</td>
<td>7</td>
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<tr>
<td>2</td>
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<td>22</td>
<td>Punjab</td>
<td>20</td>
<td>20</td>
<td>142</td>
<td>142</td>
</tr>
<tr>
<td>23</td>
<td>Rajasthan</td>
<td>33</td>
<td>32</td>
<td>249</td>
<td>237</td>
</tr>
</tbody>
</table>

Source: Lok Sabha Unstarred Question No. 951 on Computerization Of Panchayats

The success of the project can be gauged by the fact that the e-Panchayat project has won the silver award in Best Government Website Category in National Awards for e-governance as well as the Web Ratna Gold Icon Award by the Department of Administrative Reforms and Public Grievances for Comprehensive Web Presence.

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794 Lok Sabha Unstarred Question No. 951 To Be Answered On 15-11-2010 Computerization Of Panchayats
6.27.6. Fiscal Decentralisation gets a fillip

The hallmark of any self-government is the degree of financial autonomy it enjoys in formulating and executing public policies in regard to those functional responsibilities assigned to it. According to a noted authority on fiscal federalism, “Transfer of funds to lower levels of government can be justified on the basis that such transfers can help equalize income distribution throughout the country by reducing intra-regional service and income differences.”795 It is averred that Fiscal Decentralization is the Fiscal Empowerment of lower tiers of government which involves the devolution of taxing and spending powers along with the arrangements for rectifying mismatches in resources and Responsibilities.796

Till 1992, the Panchayati Raj Institutions could not enjoy any legitimate powers because of the centralized character of Indian Federalism. According to Rao797, formally Indian Federalism was evolved as a two-tier structure until 1992. The terrain below the states was left unprovided for, except only for a Directive principle for setting up self-governing village Panchayats. However things changed with the enactment of the 73rd Amendment Act.

In keeping with the rationale behind fiscal decentralisation, the Indian Constitution through the 73rd Amendment Act has extensively purveyed a set of legitimate powers to the Panchayati Raj Institutions. They have emerged as the third stratum of government and have laid down a new paradigm of self-governance. Furthermore it has expanded the autonomous space of PRIs through fiscal devolution.

The 73rd Amendment Act which constituted a uniform three-tier system of rural governments at the district, block and village level provides for the devolution of funds, functions and functionaries from the state government to these rural bodies. The implicit intention of the amendment is that the rural local institutions should have a functional domain of their own and such a domain has to be constructed by transferring some functions of the State government— which were given in the Eleventh and Schedule the rural local institutions and the latter should have full autonomy to discharge those functions. To attain the purpose the Act necessitates the preparation and implementation of plans for economic development and social justice relating to an indicative list of 29 subjects given in Eleventh Schedule of the Constitution

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797 MG Rao, Fiscal Decentralisation in Indian Federalism, Institute For Social and Economic Change, Bangalore, 2000

~ 434 ~
Under Article 243-G of the Act, the Constitution has given authority to state governments to endow panchayats with necessary powers to carry out their functions. States are empowered under Article 243-H to authorize panchayats to levy, collect and appropriate taxes, duties, tolls and fees apart from giving them grants-in-aid from the Consolidated Fund of the State. Another Article 243-I, provides for the formation of a State Finance Commission (SFC) every five years to examine the fiscal scenario of Local Governments and to recommend ways of implementing the provisions of Article 243-H.

The snowballing effect of all these provisions is that it has created a fiscally robust and vibrant atmosphere for the Panchayati Raj Institutions. The Ministry of Panchayat Raj has thus observed that, “Over all, the mandatory provisions specified in the Constitution have been implemented in the last decade and a half…. State Finance Commissions (SFCs) have been constituted and in many States, their recommendations have been acted upon. All the States (excluding Uttarakhand and Jharkhand) have constituted District Planning Committees and most have initiated decentralised planning processes.”

Approving the view of the MoPR, the Planning Commission in its approach paper to the Twelfth Five Year Plan submitted a congruent statement to that effect which read as follows: “The 73rd Constitution Amendment Act has, therefore, given adequate discretionary powers to State Legislatures to make suitable provisions in its Acts on the subjects…. States have taken up activity mapping based of the principle of subsidiarity, but the pattern of assignment of subjects and the coverage of subjects differs widely among the States. Barring those development programmes/schemes, which expressly require the involvement of Panchayats, most others are implemented by the functionaries of the line departments concerned. However, there has been an increase in the allocation of funds to Panchayats due to the Union Finance Commission Awards and State Finance Commission Awards.”

To assess the progress of decentralization at the PRI level, the Ministry of Panchayati Raj commissioned a study for its computation. The aim of the study was to log the performance of various states using six sub-indices or dimensional indices and then to create a Panchayat Devolution Index. The composite Panchayati Devolution Index that emerged for the year 2013-2014 revealed that the state of Maharashtra ranked first for the year 2013-14 with an index value of 70.21 followed by Kerala (68.00), Karnataka (65.75), Tamil Nadu (58.98) and Chhattisgarh (55.16). Further, Rajasthan is ranked sixth with a score above 50.

State of Haryana, Gujarat, Andhra Pradesh, Assam, Odisha, along with the North Eastern states of Tripura and Sikkim emerged as the medium scorers with values above the national average i.e. 39.92. A graphical representation of the composite devolution index has been shown below:

**Fig. 6.2:** Panchayat Devolution Index and Sub-Indices 2013-14

![Graph of Panchayat Devolution Index and Sub-Indices 2013-14](image)

**Source:** Measuring Devolution to Panchayats in India: A Comparison across States, Empirical Assessment – 2013-14, IIPA

In the next section the three major factors that have been instrumental in revitalizing Fiscal Decentralisation have been discussed. They are:

1. Devolution of functions and Functionaries
2. Devolution of finances
3. Institutionalization of State Finance Commissions

### 6.27.6.1. Devolution of Powers and Functions

Devolution of powers including fiscal powers to PRIs is the most significant aspect that is reflected through the 73rd constitution Amendment Act. The act created the 11th schedule which listed subjects to be devolved to Local Bodies, creating a sense of ‘constitutionalised devolution.’ It was suggested that the 29 subjects under 11th schedule of Indian Constitution will be devolved to the PRIs for ensuring effectiveness in its functional aspects.

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800 G. K. Reddy Citizen Participation in Local Governance in South India: An Experience from South Asia, Logo link project report, IDS, University of Sussex submitted to PRIA, New Delhi, 2000
That the devolution of powers to the PRIs is a progressive phenomenon and has a spill over effect on overall governance gets reflected at the different levels of the Panchayat. While the village panchayats carry out core functions, intermediate and district panchayats on the other hand are allotted supervisory functions or act mainly as executing agents for the state government. In general, while the GPs carry out major functions (including some obligatory) such as public facilities, health, minor construction, minor irrigation, village roads etc., the intermediate tier Panchayat Samitis at the block-level and Zilla Parishads at the district-level in most states oversee the activities and act mainly as executing agents for the state government.

It is a widely held notion that since panchayat is the derivative of the state, it is the state which has to devolve its power and authority, functions and functionaries, rights and duties, and the funds to the structure below, and thus bring the government to the doorstep of the people.

In most states, the functions devolved to Panchayats are subjects rather than activities or sub activities. Only some states like Andhra Pradesh, Kerala, Gujarat, Karnataka, Madhya Pradesh have broken the 29 subjects into activities and sub activities. In Kerala, complementary legislation has even been issued to change the roles of key line agencies. \(^{801}\)

A detailed study of devolution index computed by the Indian Institute of Public Administration shows that in the dimension of Functions, Maharashtra tops the list with an index value of 63.26. Karnataka and Kerala closely follow with 63.14 and 61.61 respectively. West Bengal, Tamil Nadu, Rajasthan, Odisha and Madhya Pradesh are other states in that order with scores over 50. It can be noticed that 16 states including three North Eastern states are placed above the national average of 35.34, while all the UTs have scored less. \(^{802}\)

The graph below illustrates the state wise devolution of functions for the year 2013-2014.

On the Incremental Devolution Index (based on 3 dimensions, i.e. the extent to which the initiatives led to: (i) institutional strengthening, (ii) process improvement; and (iii) improved delivery of services \(^{803}\)) Rajasthan was adjudged the best performer. Kerala, Maharashtra, Karnataka and Haryana were ranked after Rajasthan. Along with funds and functionaries, the state of Rajasthan has successful devolved the functions of primary health, education, agriculture, social justice and empowerment and women and child development.

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Various states have carried out activity mapping and then consequently carried out devolution of funds, functions and functionaries. Activity mapping/functional assignment is a key requisite for decentralisation reforms at the state level, as this forms the basis of clarity on the distribution of functions and, therefore, determining the transfer of funds and technical staff to PRIs. It involves systematic unbundling of the broad subjects listed in Eleventh Schedule and devolving activities across government tiers using mainly the principle of subsidiarity which holds that any activity which can be performed at a lower level should be undertaken only at that level and at no higher level. Union and the State governments have embarked on detailed ‘Activity Mapping’, which is the foundation of sound Panchayati raj. Along with the transfer of functions and funds comes the issue of administering them. However in many States, functionaries remain state officials on deputation to the local bodies, with Panchayats exercising little administrative control over them.

Fig. 6.3: Sub Index of Panchayat Devolution Index- Functions 2013-2014


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805 Roadmap for the Panchayati Raj: An All India Perspective, Ministry Of Panchayati Raj, 2011, p.20  
806 R N Ghosh, Accountability Of Local Governments CAG’s Initiatives and the Challenges Ahead, International Centre for Information Systems and Audit, p.9
The state of Madhya Pradesh has done activity mapping with respect to 25 matters pertaining to 22 departments and has transferred 18 Departments to the PRIs with administrative control over class III and IV employees deputed to the Panchayats.\textsuperscript{807} It has created a State Panchayat Service empowering Panchayats to recruit their own staff as well as grassroots workers such as primary school teachers, Aanganwadi Workers (AWWs), Accredited Social Health Activists (ASHAs) etc. It allows the GPs to collect property tax, mela tax and generate non-tax income from temporary leasing of land and rights for fisheries in ponds.

Maharashtra tops the chart in the composite Panchayat Devolution Index, as well as in the key sub-indices of Functions, Accountability and Functionaries.\textsuperscript{808} The state devolves a good number of functions to panchayats at the same time panchayats have been assigned sufficient roles in the vertical schemes designed by the upper levels of governments. Panchayats in the state enjoy maximum power to levy taxes and non-taxes. It has designated the PRIs as implementation agencies in respect to 18 subjects, transferred grants for 11 departments, placed all class III and IV employees under the ZPs and empowered the ZPs to appraise the performance of class I and II officers in line departments.

Kerala occupies first place in Finances, second position in Accountability and Functionaries and ranked third in the dimensions of Framework and Functions in the Panchayat Devolution index of 2013-2014.\textsuperscript{809} In a study by Timothy Besley et al. it was found that fiscal decentralisation has advanced the most in Kerala, with 40 per cent of state expenditure allocated by panchayats.\textsuperscript{810} Functioning of panchayats in the state is considered highly transparent as the state devolves maximum numbers of functions to panchayats and at the same time has a unbiased system of transferring money under Panchayats window. Unlike all other states in India, Kerala has made huge human and material investments in devolution since 1996. It has resorted to detailed activity mapping of all 29 functions and devolved activities to the PRIs. The scope of the functions assigned to the three tiers of panchayats, viz. Gram Panchayat, Block Panchayat and District panchayat is no longer confined to civic functions but has also expanded itself to social welfare, developmental projects and local

\textsuperscript{807} Planning Commission, Decentralization & Panchayati Raj Institutions(PRIs), p.262 available at http://planningcommission.gov.in/plans/mta/mta-9702/mta-ch10
\textsuperscript{808} Measuring Devolution to Panchayats in India: A Comparison across States Empirical Assessment – 2013-14, IIPA, sponsored by Ministry of Panchayati, p.14
\textsuperscript{809} Ibid., p.15
\textsuperscript{810} Timothy Besley, Rohini Pande And Vijayendra Rao, Political Economy of Panchayats in South India, Economic and Political Weekly February 24, 2007, p. 661
resource mobilization. The Government of Kerala has transferred Agriculture, Health, Veterinary and Primary Education Departments to the Panchayats. About 40, 590 staff, moveable and immovable property has also been transferred to the Panchayats. More importantly, the State has given the Panchayats full managerial and part disciplinary control over functionaries who are supposed to implement the functions, devolved to them.

The Government of Rajasthan has transferred nine schemes which were earlier being implemented by DRDAs to the Zilla Parishad with effect from 1.4.1999. Further, innovative projects like Lok Jumbish, Shiksha Karmi and District Primary Education Programme (DPEP) have also been brought under the umbrella of the Panchayati Raj Department. It has also set up a Village Level Standing Committee for each village under the Chairmanship of Sarpanch of the Gram Panchayat to act as "watch dog". It will keep watch on the absenteeism of grassroot functionaries of the Departments, namely Patwari, Teachers, ANMS, MPW, VLW, Anganwadi workers and Compounder posted in rural areas. Primary and Upper Primary Education, Literacy and Continuing Education, Rajiv Gandhi Scheme for Restoration of Traditional Drinking Water Sources, Rajiv Gandhi Swarn Jayanti Pathshalas will all be implemented by the PRIs.

In Orissa 21 subjects of 11 Departments have been transferred to Panchayati Raj Institutions. Officers at the District Level, Block Level and Village Level functionaries of the said 11 departments will remain accountable to Zilla Parishad, Panchayat Samiti and Grama Panchayat respectively for implementation of subject/ schemes transferred to PRIs but they will continue as the employees of their respective Departments. Further four more subjects have been transferred to PRIs without bringing the functionaries under the fold of PRIs. They are:

i) Social Forestry and Farm forestry of Forest & Environment Department.
ii) Khadi and village & Cottage Industries of Industries Department.
iii) Fuel and fodder of Forest & Environment Department.
iv) Libraries of Culture Department.

As far as functionaries are concerned every Grama Panchayat has got one Secretary appointed by Grama Panchayat. Government has also provided one Executive Officer to each Grama Panchayat by way of deployment of Village Level Workers and Village Agriculture

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812 Supra note 13 at p.263 http://planningcommission.gov.in/
Workers. The Panchayat Samiti is manned by BDO, Extension Officers, VLWs, ministerial staff and other staff and the Zilla Parishad has been provided with District Level Officers of the line department who have been declared ex-officio Additional Executive Officers.

West Bengal has done activity mapping in respect of 28 functions and simultaneously devolved all 29 functions to the three tiers of the Panchayats. All three tiers of the PRIs can charge fees, tolls and realise charges against different services. In addition to the cadre of officials and technocrats specializing in devolved functions in the Panchayats, seven line departments have also transferred officials to the Panchayats. The state also provides funds to the PRIs for meeting establishment cost including salary and pension of their employees and honorarium and travelling allowance to elected representatives. The state releases the TFC grants in 60:20:20 ratio to the GPs, BPs and ZPs respectively.

Karnataka is ahead of many states in terms of the powers and functions that have been delegated to PRIs. Karnataka delegated all 29 subjects to the PRIs by issuing activity-mapping notification on 12th August 2003. The 29 functions listed in the Eleventh Schedule of the Constitution that were devolved to panchayats were delineated in three separate schedules, each of which was applicable to the gram panchayat (GP), taluk panchayat (TP) and zilla panchayat (ZP) respectively. More powers and functions were devolved in 2004-05 and in order to remove ambiguity, a detailed activity map was prepared for each of the three panchayat tiers.

According to the mapping, while the GPs are known as local service providers, the ZPs and Taluka (Block) Panchayats are supposed to be planners, facilitators and owners of common executive machinery. All government employees deputed to the Panchayats function under dual control of line departments and the PRIs. The state has authorized the PRIs to collect seven types of taxes and makes an untied grant of not less than Rs 500,000 to each GP. While funds have been devolved for 19 functions at ZP level, at Taluka and GP level, the devolution has taken place in 14 and 10 functions respectively.

Goa is another state where a significant number of subjects have been devolved to the GPs and the ZPs. It allows the GPs to employ their own staff such as clerks and peons and has placed services of Executive, Assistant and Junior Engineers at the disposal of the ZPs. The Panchayats levy 11 types of taxes in the state besides having non-tax sources of revenue.

Likewise Gujarat and Chhattisgarh have taken important steps to promote self-rule in local bodies. In Chhattisgarh, activity mapping has been undertaken in respect of 27 matters.

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814 Institutional Reforms for Human Development: Panchayat Raj, p.257
and Panchayats recruit staff for 9 departments. The GPs in the state are authorized to collect house tax, business tax and livestock registration tax. Gujarat on the other hand has devolved 15 functions completely and empowered Panchayats to appoint, transfer and promote all class III and class IV employees. In Gujarat, the PRIs can collect up to 8 major taxes.

A late starter, Punjab is rapidly forging ahead on Panchayati raj by taking several steps, particularly in respect of devolving responsibilities in health care and education to panchayats. In a recent far reaching decision, rural health sub centres have been transferred to the Zilla Parishads by the Department of Health. The state government aims to give block grants in aid to Zilla Parishads to run these dispensaries. Zilla Parishads are permitted to engage doctors as service providers on a service contract for a period of three years. More than 3000 centres have so far been transferred on this account.  

Out of 29 subjects, the government of Andhra Pradesh transferred 11 subjects— they are: agriculture, fisheries, animal husbandry, education, medical and family welfare, rural water supply, rural development, backward classes welfare, social welfare and women child welfare—mentioned in the 11th schedule of the Constitution to PRIs.  

To get a better understanding of the functions and funds that are devolved to the different states a state wise break up has been given in the table below:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>States/UTs</th>
<th>Functions devolved</th>
<th>Functions for which funds are devolved</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>17</td>
<td>5</td>
</tr>
<tr>
<td>2.</td>
<td>Arunachal Pradesh</td>
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<td>0</td>
</tr>
<tr>
<td>3.</td>
<td>Assam</td>
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<td>0</td>
</tr>
<tr>
<td>4.</td>
<td>Bihar</td>
<td>25</td>
<td>8</td>
</tr>
<tr>
<td>5.</td>
<td>Jharkhand</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>6.</td>
<td>Goa</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>7.</td>
<td>Gujarat</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>8.</td>
<td>Haryana</td>
<td>16</td>
<td>0</td>
</tr>
<tr>
<td>9.</td>
<td>Himachal Pradesh</td>
<td>26</td>
<td>2</td>
</tr>
<tr>
<td>10.</td>
<td>Karnataka</td>
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<td>29</td>
</tr>
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<td>11.</td>
<td>Kerala</td>
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<td>26</td>
</tr>
<tr>
<td>12.</td>
<td>Madhya Pradesh</td>
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<tr>
<td>15.</td>
<td>Manipur</td>
<td>22</td>
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</table>

815 Nupur Tiwari, Panchayati Raj in India Are They Really Successful in Participatory Decision-Making?, Policy Issues in Federalism: International Perspectives, p.214

~ 442 ~
6.27.6.2. Devolution of Funds and Finances

A major impediment in the effective functioning of the PRIs is the lack of adequate funds for the implementation of need-based programmes. A large number of functions have been vested in decentralized bodies without sufficient finances and this has resulted in the near failure to fulfil their responsibilities leading to discontinuation of the system in many states. Besides, funds that are available are mostly tied in nature, leaving little flexibility to the panchayats. Thus for PRIs to perform the functions assigned to them effectively, they must be fiscally capable and autonomous. In practice, financial autonomy means release of funds without any technical clearance or caveats attached. For example, panchayats in Kerala and Punjab can spend up to Rs 1 lakh and in Madhya Pradesh up to Rs. 3 lakh to take up work without any outside clearance. While moving the Constitution (73rd Amendment) Bill in Parliament the Union Minister of State for Rural Development, G Venkat Swamy expressed the inevitability of fiscal decentralisation in these words, “Constitution (Seventy-third) Amendment cast a duty on the centre as well as the states to establish and nourish the village panchayats so as to make them effective self-governing institutions….We feel that unless the panchayats are provided with adequate financial strength, it will be impossible for them to grow in stature”.


819 Tehelka, Devolution of funds, functions and functionaries to Panchayat Raj Institutions – a perspective, (based on a working paper by the Union government for the national convention of panchayat presidents, organised by the Ministry of Rural Development New Delhi, April 5-6, 2002,
Finances are the most important dimension and carry the maximum weight in the Panchayat Devolution index. In this dimension it is Kerala which leads with an index value of 68.37 followed by Karnataka, Maharashtra and Tamil Nadu with values of 61.32, 59.03 and 56.88 respectively. The national average for the sub-index of finances is 32.05. However, 13 states including two North Eastern states i.e., Sikkim and Tripura are above the national average in this sub-index.

Effective fiscal decentralization demands that finances should follow functional assignments. The Fiscal portfolio of local self-governing institutions is believed to be based upon income from “own revenues” and “assigned & devolved revenues” by government and semi-government organizations. Oommen thereby makes a classification of Panchayat finances into four categories: (a) own resources; (b) assigned revenues; (c) grants; and (d) loans.

**Own Source Revenues**

As regards its own resources, a variety of taxes have been devolved to different levels of panchayats. The relative importance of these taxes varies from state to state. Oommen has claimed that political autonomy is directly dependent on the ability to raise and spend public resources. He strongly asserts that PRIs can play a genuine role in local development and self-rule only if they enjoy some degree of fiscal autonomy. This attribute is clearly more than relying on untied funds and rests on innovative resource mobilization, including project-tied loans, public contribution and the like. Tax assignment with clear taxing powers, and tax sharing assume significance in this context.

The intermediate and district panchayats are endowed with powers to collect very few taxes, whereas village panchayats are given substantial taxing powers. In most states, the property tax contributes the maximum revenue. It is seen that this gives a sizeable income to the village Panchayats in Maharashtra, Kerala and Karnataka. Tax on buildings and lands is a major source of income all over the world. Kerala goes to the extent of charging property tax on all buildings and land appurtenant thereto as a percentage of the net annual value of the building. Moreover for buildings given on rent, twenty five percentages is added to the tax rate. Property tax, tax on professions, surcharge on additional stamp duty, cess on land

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821 Ibid., p.164
822 Supra note 11 at p.34
revenue, tolls, tax on advertisements, non-motor vehicle tax, octroi, user charges, and the like contribute the maximum to the small kitty of own-source revenue, which contributes only 6 to 7 per cent of the total expenditure of panchayats.  

Auction of Panchayat land and ponds forms an important part of nontax revenue for many Gram Panchayats in northern states. For example, Shamalat lands in Haryana are auctioned for cultivation. In certain other areas like Panchayats of Haryana and Punjab, annual auction of other resources like fishery ponds is done which gives the Panchayats some non-tax income.

**Assigned Revenues**

Another resource which contributes to the augmentation of Panchayat finances are the assigned revenues or shared taxes. Panchayats rely more on fiscal transfers from the state government in the form of shared taxes and grants. Revenue is shared from the divisible pool of the State following the recommendations of the respective SFC. A few SFCs form the divisible pool by including the share of Union taxes in the State tax and non-tax revenues, e.g. SFCs of Andhra Pradesh, Assam and Goa. Such revenues are levied and collected by the state government and are passed on to panchayats for their use. Some states deduct collection charges. Once the revenue sharing arrangement is designed, the SFC is required to recommend the allocation of the sharable revenue among different local bodies.

Typical examples of assigned revenue are the surcharge on stamp duty, cess or additional tax on land revenue, tax on professions, and entertainment tax. In many states, these taxes form part of the own-source revenue of panchayats. Land revenue on agricultural land is an important tax on private property in rural areas which are shared with panchayats. Royalties on minor minerals and quarried materials like (granite and sand) and forest revenue are also shared with PRIs in the same manner. The duty on transfer of property is another important component of state government revenues, and panchayats typically share a surcharge imposed by the state on this duty. States like Gujarat and Rajasthan allow panchayats to levy these surcharges, with a state-imposed cap on the rate.

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824 Supra note 28 at p.34
825 I. Rajaraman, A Fiscal Domain for Panchayats, Oxford University Press, New Delhi, 2003
826 O.P Bohra, Financial Resources of Panchayats in India, in: State Local Fiscal Relations in India, NIRD, Manohar Publications, New Delhi, 1998
Many SFCs have recommended that state government share their revenue collections with the local bodies. For instance Assam SFC recommends 2% of the state taxes and transfer of 10% of motor vehicle tax to local bodies; as per Punjab SFC recommendations 20% net proceed of stamp duty, motor vehicle tax, electricity duty, and entertainment tax shall be shared; Rajasthan SFC recommended 2.18% of the net proceed of the taxes raised by the state to be allocated to the local bodies; UP SFC suggested 3% of revenue receipts of state government; West Bengal SFC recommended 16% of net process of all the taxes collected by the state; MP SFC recommended 4.24% of state revenue to PRIs; Haryana SFC recommended sharing of land conversion charges, stamp duty and royalty on minor minerals with PRIs.828

**Grants**

Grants are significant for rural government’s finances as they improve the fiscal health of the local bodies judiciously. They comprise an important element of inter-governmental transfers. Because of the limited taxable capacity, local bodies are provided with grants-in-aid which enables them to manage their functions. Furthermore, grants are given to them to undertake functions which are funded by the state government. They are bestowed on the local bodies so as to increase their income.

For instance in Kerala in addition to statutory tax-sharing transfers, there were 26 types of non-statutory grants.829 A large grant category was that of developmental activities, which included communication, irrigation, and some facilities construction. Various case studies from Himachal Pradesh, Karnataka and Maharashtra on state grants to rural local governments also revealed830 the substantial role played by grants. Many of these were specific grants, for drainage, water supply, irrigation, road maintenance, and street lighting.

**Loans**

Borrowings or a loan of late has become potentially important for local governments. Oomen831 notes that Uttar Pradesh and Bihar now have Panchayat Finance Corporations which make investment loans to panchayats. Their capital is contributed by rural governments, the state government, and public finance institutions. The Tamil Nadu Panchayati Raj Act allows gram panchayats to raise loans from any financial institution as

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828 Nesar Ahmad, Decentralisation of Finance A Study of Panchayat Finances in India, Centre for Budget and Governance Accountability, New Delhi, p.11
830 M.A. Oomen, Panchayats and their Finances, Institute of Social Sciences Paper, New Delhi, 1995
831 Ibid at p.6
long as it deals with the infrastructure development and improvement; for carrying out relief work during calamities; and for carrying out other statutory functions. While the Act empowers panchayats to access loans for the above mentioned purposes, no gram panchayat in the state has borrowed from external financial institutions.

6.41.2.1. Institutionalization of State Finance Commissions (SFCS)

If local governments and private organizations are to carry out decentralized functions effectively, they must have adequate revenues transferred from the central government as well as the authority to make expenditure decisions. It is also argued that sound fiscal decentralisation reforms require sound decentralised finances as well as sound decentralised governance and administration. To address this fiscal call, a State Finance Commission (SFC) for every state under Article 243 I is constituted at a regular interval of five years.

One could find enough reasons to cheer as all the states have constituted State Finance Commission and some states have constituted even their fourth generation SFC. Except for Sikkim and Goa, SFCs have submitted their reports to respective State Governments. Recommendations of the SFCs have been accepted in toto by ten States, viz; Karnataka, Kerala, Madhya Pradesh, Manipur, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal. In case of Andhra Pradesh, Himachal Pradesh, Haryana and Maharashtra, the State Governments are still considering the reports. In Gujarat, the report is yet to be placed before the State Legislature. The Government of Assam has accepted SFC's recommendations in part while the Orissa Government has accepted the report with some modifications.

States like Punjab had constituted the First State Finance Commission as early as in April 1994, and the Second State Finance Commission in September 2000. Important recommendations of the First State Finance Commission included: Transfer of 20 per cent of the net proceeds of five taxes such as stamp duty, Punjab motor vehicles tax, electricity duty, entertainment tax and entertainment tax (cinematograph shows) to be transferred to the PRIs and ULBs. In addition, a share in liquor taxes and grants and transfers of the 10th Finance


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Commission's award was recommended to be devolved on local bodies and panchayats in a specified ratio.\footnote{JP Gupta and B.K. Pattanaik, Key Paper On Rural Local Self- Government in Punjab: Its Evolution, Functioning and Functional Deficiencies, Centre for Research in Rural and Industrial Development, Chandigarh, 2006, p.17}

In Uttar Pradesh, First State Finance Commission was constituted in 1994, the current State Finance Commission (SFC), i.e. fourth generation SFC was constituted in Dec 2011. Currently, out of the total divisible pool in total net tax receipts of the State, 60% is being given to municipalities/ULBs and 40% to Panchayati Raj Institutions (PRIs).\footnote{Department of Panchayati Raj – Policies & Practices, Panchayati Raj Department, Uttar Pradesh- A Commitment to PRIs, p.2 available at https://www.panchayatiraj.up.nic.in} Funds devolved under the recommendation of SFC -to the Panchayats are utilized on the maintenance of assets owned by Panchayats.

So far three SFCs have been constituted in West Bengal and recommendations of the 3rd SFC is under implementation from the year 2008-09 till the year 2012-13. The Commission recommended allocating an ‘untied’ fund to the tune of Rs.800 crore, constituting around 5% of the State’s own net tax revenue, for the year 2008-09 and to progressively increase the same at the minimum rate of 12% p.a. on a cumulative basis for the subsequent four financial years.

As far as the critical function of the SFCs is concerned, it is primarily to determine the fiscal transfer from the state to local governments in the form of revenue sharing and grants-in-aid. Since the 80th Constitutional amendment, following the recommendation of the 10th Finance Commission (1995–2000), a certain percentage of all union taxes has been devolved to the states. Many SFCs have also adopted this system for the following reasons: \footnote{V.N.Alok, Role of Panchayat Bodies in Rural Development since 1959, Theme Paper for the Fifty-Fifth Members’ Annual Conference, Indian Institute of Public Administration, New Delhi, 2011, p.32} First, the system has a self-policy feature; the local body automatically shares in the buoyancy of state taxes and levies. Second, the system has built-in transparency, objectivity, and certainty; local bodies can anticipate their share in the divisible pool at the beginning of each fiscal year. Third, the system aids the local bodies to make their own annual budgets. In other words, it induces local bodies to generate their own revenue generation and to mobilize additional resources. Fourth, the state government can be neutral in pursuing tax reforms without considering whether a particular tax is sharable with local bodies.

In addition to this the SFC is charged with the responsibility of reviewing the financial position of the Panchayats, and of recommending measures to augment the financial
resources available to local bodies.\textsuperscript{837} This effort of State Finance Commissions is furthermore supplemented with grants from the Central government, based on the recommendations of the Central Finance Commission, which, inter-alia, are to make recommendation on the “measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State”.\textsuperscript{838} It is worth noting that the 12th Finance Commission earmarked a hefty Rs. 20, 000 crore as block grants to Panchayats for 2005-10, which represented a quantum jump over the Rs. 8, 000 crore recommended by the Eleventh Finance Commission.\textsuperscript{839}

State Finance Commissions have contributed to fiscal decentralisation by devolving revenues which are mostly in the nature of fixed grants and remain static for a period of five years.\textsuperscript{840} The devolved revenues are allocated as direct grants from the state government to panchayats based on the recommendations of the state finance commission (SFC), which has a five-year term. For instance the third SFC of Tamil Nadu (2006-11) recommended that a minimum of Rs. 3 lakh per annum be devolved to each panchayat and any remaining amount be distributed to panchayats in proportion to their population. The SFC devolution is paid to gram panchayats in monthly instalments.\textsuperscript{841}

As per the SFC recommendations, specific percentage of share in some of the State taxes which have no relation to the powers and functions to be devolved upon Panchayats and those which are less buoyant can be given by the State governments to PRIs. Such taxes can be land revenue and cess on it, additional stamp duty, and entertainment tax, royalties on minerals and mines, forest revenue and market fees. However SFCs persistently put great emphasis on internal revenue mobilization and on generating one’s own revenue.

\textbf{6.27.7. Conclusion}

In the preceding paragraphs one can thus deduce that 73\textsuperscript{rd} amendment has successfully reinforced fiscal decentralisation by employing the Tiebout - Musgrave layer cake model of the public sector which maintains that stabilization and distribution functions of the public sector should be discharged by the Central Government and that state and local

\textsuperscript{838}Report of the Working Group on Democratic Decentralisation & PRIs, a Joint effort of the Planning Commission and Ministry of Panchayati Raj, 2006, p.47
\textsuperscript{839}Ibid., 50
\textsuperscript{840}Supra note 11 at p.29
\textsuperscript{841}Anand Sahasranaman, Panchayat Finances and the Need for Devolutions from the State Government, Economic & Political Weekly, Vol. XLVII No. 4, January 28, 2012, p. 74
governments should engage in allocation activities. To summarize, the 73rd amendment to the Indian Constitution has aptly provided Fiscal empowerment to the Local Self-Governing Institutions thereby making them more efficient and accountable.

In the next segment a faceoff with the reality shall be undertaken and thereby the loopholes and the grey areas of the 73rd Amendment Act shall be discussed.

6.28. Ground Reality

Albert Einstein has once said, “Not everything that can be counted counts and not everything that counts can be counted.” It is in this backdrop, that one can say that no doubt Panchayati Raj Institutions under 73rd Amendment Act has answered many issues but there are still many fronts which are major causes of concern. This segment thus recounts these grey areas in the following manner:

6.28.1. Caste based atrocities increase

Even after celebrating almost six decades of independence, India is marred by an exclusionary and discriminatory double vision. This has demeaned the image of India as a Rechtsstaat and has made the lives of the marginalized sections of the society precarious. Atrocities and human rights violations against the lower castes have increased incessantly. Even after duly getting elected, the lower castes are not getting the power and status they deserve and same is the case of scheduled tribes. Misri Devi, Mina tribal woman Sarpanch of Gram Panchayat Thikariya in Dausa district was prevented from unfurling the national flag on Republic Day in 1998. She was not only harassed and beaten up but stripped of her clothes. In another case, a tribal woman Sarpanch in Madhya Pradesh was stripped naked in a gram sabha meeting because she was not agreeing to follow the wishes of a leader of the dominant caste.

There are a number of instances indicating the presence of powerful caste elites that continue to thwart attempts for a constitutional resolution of social justice issues at the village level. A study by B. Devi Prasad and S. Haranath reveals the difficulties faced by them

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842 M Devendra Babu, Fiscal Empowerment Of Panchayats In India: Real Or Rhetoric?, Centre for Decentralisation and Development, Institute for Social and Economic Change, Bangalore, 2009, p.3
at the time of entering of politics. The prime obstacles are threats from dominant castes and caste inhibitions which are followed by apprehensions regarding ability to perform, apprehension regarding social support, fear of being deceived, lack of education and lack of outside exposure and physical mobility. The tragedy continues even after they are elected. During the course of their functioning they are subjected to obstructions by dominant castes, biased attitude of the officials and are denied roles in decision making.

It has been reported that in the recent panchayat elections in Bihar, over 96 people including a magistrate and several candidates were killed during the polling and more than 40 candidates were murdered in different districts between notification of polling and filing of nominations. Studies have shown that most of these killings were the result of ‘caste war’. P. Sainath, a noted journalist and social worker sheds light on the ways by which Schedule caste office bearers in the Panchayat are maltreated. He mentions in his survey that in several Panchayats in Tikamgarh of Bundelkhand region of Madhya Pradesh the Scheduled Caste Sarpanches are continuously ousted by a variety of methods like rigged suspension, manipulated vote of confidence and two-child norm. They are even made to sit outside the panchayat offices, on the floor while the traditional village headmen occupy the chairs.

It needs be mentioned here that there is no redress mechanism available to the lower castes even when upper caste groups are committing atrocities against them. The biggest travesty of justice is witnessed when the people belonging to the lower castes are being subjected to unabated atrocities particularly through the connivance and collusion of the state administration and the local police. Besides cases are not registered against the perpetrators (who are mainly the upper castes) by the police mainly because majority of them belong to the upper castes. It may also be mentioned that the police (law and order machinery) is not under the authority of panchayats.

The classic case of human right violation is that of a village in Madurai district of Tamil Nadu, a southern state in India. In Melavalavu, the dominant castes of the area murdered the panchayat president and the vice-president who both belonged to a lower caste, merely because they dared to fight the panchayat elections. When Melavalavu was declared a panchayat reserved for the lower castes in the October 1996 local body elections, the dominant castes resented this and the polls could not be held. The second attempt to hold

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850 Human Rights Watch, Broken People-Caste Violence Against India’s “Untouchables”, 1999
elections was also foiled by violence and booth capturing. Finally, when the elections were held on December 30, 1996, the upper castes boycotted it. Members of the lower caste were elected as president and vice-president amongst others despite stiff resistance from the upper castes, but they were never permitted by the dominant caste to enter the new panchayat office. Finally on June 30, 1997, the president and vice-president along with three others were murdered in broad daylight; their only crime was that they had been elected through the democratic process.\textsuperscript{851}

\subsection*{6.28.2. Corruption tarnishes PRIS}

Another malaise that has tarnished the image of Panchayati Raj Institutions are the incidents of corruption and graft cases. It has become well known that the benefits of the programs and development measures do not reach the poor as the rich and the powerful corner most of it. As a result a number of such instances have come to light in which Chairpersons of panchayats have misappropriated development funds in Andhra Pradesh, officials show huge expenditure under different development schemes in agricultural sector but the targeted beneficiaries never receive the funds in Assam, Presidents are suspended for financial irregularities like spending huge amounts on purchases without proper procedures in Haryana and massive graft in civic bodies by awarding contract of construction works in Karnataka. These cases have been reported in 2001.\textsuperscript{852} Further field studies in one of the advanced states-Maharashtra – has shown that huge sums of money allocated for poverty eradication and rural development are pocketed by the officials and the politically powerful.\textsuperscript{853} Instances of quid pro quo have also been brought to light on many occasions exposing the ugly nexus between politicians and criminals.

\subsection*{6.28.3. Women still at the receiving end}

Despite the fact that women have joined politics but they still act as proxy candidates and continue to be manipulated by powerful patriarchal elites. It is a cause of concern that relatives of elected women representatives interfere in the official activities of women EWRs.\textsuperscript{854} The majority of the “proxies” have no independent support network or previous experience of social and political activity. Therefore they have a very low opinion as to the

\textsuperscript{852} Panchayati Raj Update, January-December, 2001.
\textsuperscript{853} George Mathew, Maharashtra’s Gram Sevak Raj, The Hindu, 13 August 2001
\textsuperscript{854} Third Report Committee On Empowerment Of Women (2009-2010), Lok Sabha Secretariat, New Delhi, 2010 p.18
effectiveness of their participation in public life. The proxies do not challenge the power relations between the sexes and tend to reinforce the status quo by entrusting all political matters to their husbands as their mediators. They display a defeatist mentality by taking refuge to their domestic life immediately after their term ends. One frequently hears of the following kind of statements:

1. ‘It’s only their husbands who are politically active.’
2. ‘Most women are illiterate (anguthachap) and therefore cannot be politically active.’
3. ‘They cannot even speak up due to the ghunghat.’
4. ‘The presence of women has reduced the Panchayati Raj Institutions to dust.’
5. ‘Is a Chamar (Dalit) woman capable of becoming a Panch.’

Kumtakar’s study makes it evident that it is the husband who made the decisions for the Panchayat and the wives put their signature or thumb impressions on the official documents. Moreover a majority of women leaders admitted that their husbands discouraged them from attending the meetings or hindered their activities. Palanithuri in a case study ‘New Panchayati Raj System at Work: An Evaluation of Tamil Nadu’ reported that the husbands of the members used to accompany them (women) when they come to attend the meetings.

Another report on eight short state studies in early 1995 stated that many women were proxy candidates and that they were not able to make their presence felt at meetings, were ill informed about procedures and functions of panchayats and with odds stacked against them it was noted as not surprising. According to the field notes in Meerut District ‘Pradhanis in New Panchayats’, Pai has revealed that many of the Pradhanis were illiterate and only able to put their signatures on official papers. As they belonged to better off families in the villages, they did not work outside the confines of their homes. They agreed to stand for elections only because of family pressure and not because they were keen to do so.

It has also been accounted that women functioning as “proxies” were forced into politics against their own wishes and also pressured into corrupt practices. They find

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855 Quoted in Karin Kapadia, op. cit., p.412
858 Institute of Social Studies Trust: 1995 UMA report - Strengthening the participation of women in local government Bangalore.
860 Medha Nanivadekar, Partners in Politics, Competing in Crime, Manushi, Issue No. 136p.12
themselves under great pressure by the families in this respect. One husband in Jaipur district publicly beat his wife, Manuphula Devi, when she refused to embezzle money. In another incident Anita, the Dalit Pradhan of Panchayat Samiti Chaksu, was slapped by her husband in her office who accused her, “black ka nahn khati” implying that she should take commission in panchayat funds.861

The adverse brunt of male chauvinism can be gauged by the incident when Ratanprabha Chive, Sarpanch of the Ghera Purandar Panchayat was beaten up as soon as she assumed office by her rival who could not accept the fact that a female had outwitted him.862 Similarly Krishna, a member of a Janpad Panchayat in Chhatarpur, an illiterate, met the same fate when she contested a post reserved for an SC woman. She wanted to do something for her area but faced stiff opposition bordering on contempt by the local bureaucracy who told her, “Bethak mein aao, nashta karo, Khao piyo aur chaley jaoo.” (Come to the meeting, have refreshments and leave).863

For many women the story is one of political exit. For example Mausami Devi, the Dalit Pradhan of Khandar, Sawi Madhopur district was removed by the local BJP faction despite the fact that she had joined their party.864 Further rotation of seats works to the detriment of women and their opportunity to craft a political career as even if they have performed effectively in their first term they are unable to reap the benefits of these achievements in the next election, when they are generally side-lined by men who are eager to come back to power.865 Other barriers include gender division of labour, women’s low levels of mobility, seclusion, lack of information and negotiation skills, internalized low self-image, stereotypes and lack of confidence continue in some degree.

Women still face an uphill battle in politics. This may explain why they rarely win elections even though they appear to be at least as effective leaders along observable dimensions, and are less corrupt. This may also help explain why women are not re-elected once their seats are no longer reserved. In Udaipur district in Rajasthan, Chattopadhyay and Duflo found that none of the women who had been elected on a reserved seat in 1995 were re-elected in 2000.

Deviramma President of Yelitur Gram Panchayat complains about the treatment meted out to them by men. She stated, “If we are outspoken, they—the men—call us brazen

861 Karin Kapadia, op.cit., p.413
862 Sharita Rai, Idayan Nambodiri, and Vimila. Deshmukh, Grassroots women, The Indian Express, March 5. 1995
863 Nirmala Buch, From Oppression to Assertion : Women and Panchayats in India, Routledge, 2013, p.117
864 Karin Kapadia, op. cit., p.411
and dub as shameless…. The day we have our Gram Panchayat Meeting, the men and the people at home mock us...” Similarly a 50 year old Sibamma who is a Schedule Caste member of the Brahamasandra Gram Panchayat says, “The men have always ridiculed us, and perceived us as incapable of the management of public affairs.”

In the State of Bihar the Panchayat elections were held for the first time in the year 2001 after a gap of 22 years. It also was the first Panchayat election in the State after the 73rd Amendment where reservation in local governments to women, scheduled castes and scheduled tribes were denied in an open violation of Article 243(D) of the Constitution. However despite the overall climate of resistance and large-scale violence in the State, about 1, 25, 000 women contested for about 40, 000 seats reserved for them.

“… The reality is that women’s participation in decision making at all levels from the national to the local is dismally low. The challenge that faces government and society in setting right this inequality in sharing of power, in a diverse and complex country like India, is how to overcome the attitudinal, institutional, cultural and social restrictions that have grown over the centuries.”

6.28.4. Equitable access to economic resources still a distant reality

Women are concentrated in the informal economy, the subsistence sector, where many are engaged in low wage or unpaid, low skilled or unskilled labour. Much of their work remains invisible, unrecognized and devalued and is therefore unprotected by laws and legislations. The incomes they earn, however meagre are still seen by them and their families as an income to be spent on the family.

This is compounded by the fact that 34 per cent of households are female-headed, places the burden of providing for the family primarily lies on women. Therefore, the expense required for political participation such as election campaign expenditure or resources required to attend meetings, visit and interact with government officials, become an additional burden that women can ill afford, thus impeding their full participation.

Women get entangled in the web of oppression right from childhood. It is the girl child who is the first to be drawn out of the school (as education of the girl child is not the

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866 The Indian Express, March 5, 1995
867 Ibid.,
868 Baseline Report, Women and Political Participation in India, National Institute of Advanced Studies-Gender Studies Unit (NIAS)Women’s Voice National Alliance of Women (NAWO) and Initiatives-Women in Development (IWID) coordinated by IWRAW Asia Pacific p, 23
869 Padma Ramchandran Women in Decision Making, In What is Personal is Political, Coordination Unit, New Delhi, 1995.
priority) to contribute to wage earning or to assist in sharing women’s domestic chores in the household or to be surrogate mother to her siblings. Thus depriving an opportunity for acquiring knowledge and skills, this would enable her to be economically independence.

Unequal access to economic resources such as income, land, house, and credit facilities impairs women’s effective participation in electoral processes viz., contesting elections, campaigning, building and sustaining their constituencies and fulfilling their role as elected representatives.

In a study in Karnataka, out of 218 ZP members who were interviewed, most of them were economically dependent on the men in their families. Majority of elected women had no independent source of income. As such, they did not have their own resources to enter or participate in the political process. Thus it can be deduced that education and household income of women leaders have significant positive relationship with their political status, modernization and role performance.

In another study conducted by Chattopadhyay and Duflo, it is revealed that women elected to reserved seats are much poorer than their male counterparts. Moreover they are less educated, less experience and less likely to be literate. Voters often use these characteristics in forming their opinion regarding their leaders. Finally, it could said that due to these factors villagers generally perceive women to be less effective leaders and take them for granted.

6.28.5. Logistical problems hamper participation

Women face additional logistical problems in accessing decision-making spheres, which are rarely taken into account by other members of the Gram Panchayats. These logistics include distance and meeting timings. Timings have to be taken into account by women as they do not feel safe after dark. This very cause has depleted the interest of women in political affairs and Gram Panchayat meetings. In Himachal Pradesh, some women GP officials did not attend meetings as they found that the meeting timings were not convenient. They also wanted the meetings to end early as they had long distances to cover to get home. This results into a reduced turn out of women in meetings and access to decision-making thus becomes difficult for women when Gram Panchayat meetings are held.

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872 J. Nagar, Himachal Women and Gram Panchayats, SUTRA Research Team, 1997
Lack of access to transport, threat to physical security, restrictions on movement, adversely affects the participation of women in political processes as voters, contestants and elected representatives’ official. One pilot study on GP Members in Kerala, found that women political leaders were still not clear about the exact roles they were expected to play in this new system or why a reservation bill had been set for women representatives.

6.28.6. The travesty of decentralisation of powers

In keeping with the provisions of the 73rd Constitution Amendment Act (CAA), state governments have to transfer the 3Fs (funds, functions and functionaries) with respect to 29 subjects. But, no state has transferred the 3Fs in all the 29 identified subjects. Though, in some cases, transfer of functions has happened, such developments remain on paper and are not realized at the ground. Among the 3Fs, functions are transferred more liberally and functionaries are transferred the least.874 While States like Kerala, West Bengal, Karnataka & Madhya Pradesh have devolved desired powers to the PRIs, at the same time, States like Odisha, Jharkhand have lagged behind in the process. Study conducted across Andhra Pradesh, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Tamil Nadu, Odisha, Punjab, Haryana, Assam and Goa also discovered that most states granted a plethora of functional responsibilities but no executive follow-up of granting adequate powers, staff and additional financial resources was done.875

At a two-day All India Panchayat Chairpersons Conference in Delhi, held in October 1995, in which about 8000 people participated, the most sonorous comment articulated by the people was that transfer of power to panchayats was only "on paper". This was in fact symbolic of a malady. The Chairperson from the Kurukshetra panchayat in Haryana articulated it thus: "either take immediate steps to decentralize power and funds to panchayats, or be prepared -to face a "jan jagran' : (people's awakening) from the very voters who have elected panchayats because they were feeling betrayed."876

873 S. Radha, Panchayati Raj and Women Representatives (Kerala), Institute of Management in Government, Tiruvananthapuram, 1994
874 Citizens’ report on Governance and Development, National Social Watch, Danish Books, New Delhi, 2013, p.31
875 Aureliano Fernandez, Aggrandizer Government and local governance, Economic and political weekly, July2003, pp. 2873-2879
876 Evaluating the Constitution in Action, The Lawyers Collectiv, Vol.12, No.8-9, AUGUST.SEPTEMBER, Mumbai, 1997, p.31
6.28.7. Dismal performance of States on Devolution Indices

The Panchayat Empowerment And Accountability Incentive Scheme (PEAIS) was launched by the Ministry of Panchayati Raj, in 2005–06, to incentivize the States for devolving the 3Fs to Panchayats and to incentivize the Panchayats to put in place accountability systems to make their functioning transparent and efficient. Under this scheme, states are ranked under two categories of devolution indices (DIs), viz. cumulative devolution index (CDI) and incremental devolution index (IDI). But, a cursory look at the index values reveals a depressing situation. Even after 20 years of the 73rd and 74th amendments and eight years of PEAIS, the national average of CDI is only 38.52 percent. Only two states scored more than 60 percent and another three states scored between 50 percent and 60 percent. The situation with respect to IDI is more alarming. Only 10 states have initiatives worth considering in the IDI preparation. Within these 10 states, there are marked variations. The index value varies from 3.33 to 50.83. Only Karnataka has more than 50 index value. Lower index values, even after eight years, suggest that PEAIS is not successful. Even the award amount that is disbursed is too little an incentive for a state government.

6.28.8. Financial woes and Poor budgetary allocation

The Tenth Five Year Plan points out that effective decentralisation has not taken place in most states and that efforts need to be made to strengthen and accelerate the process of local decentralised planning. A study conducted by UNDP in 2001 on ‘Decentralisation in India –Challenges and Opportunities’ and a recent UN system Study reviewing Rural Decentralisation in India adds force to this conclusion.

It has been reported that the 73rd Amendment Act passed more than a decade ago suffers from limited devolution and inadequate capacity of local governments. This has undermined the effectiveness of Panchayati Raj Institutions and the process of decentralisation. The National Human Development report (NHDR) by Planning commission in 2002 has indicated that the financial condition of local bodies is precarious as in many cases neither is there adequate devolution of resources nor adequate revenue raising powers. Moreover local governments have relatively few resources and little discretion with which to make significant impact.

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877 Citizens’ report on Governance and Development 2013, op.cit, p.40
879 Ibid., p.12
The funds that panchayats receive are inadequate, ad hoc, unspecified and uncertain. Studies have shown that fiscal autonomy is very low among PRIs in most states. The extent of Fiscal Devolution depends on the expenditure responsibilities and revenue assignments devolved to the lower tiers. However experiences from different States show that, the fiscal allocations to PRIs declined sharply which has restricted their development agendas. The total expenditure of local governments (PRIs & Urban local bodies), as a proportion of the combined expenditure of union, state & local governments works out to about 6.4% in 1998-1999 to 5.1% in 2002-03 One of the major constraints to fiscal decentralisation is the limited expenditure discretion given to the local governments. Often PRIs act as merely as channels or at most as a supervisory body for State and Central Government schemes. All this has led to Fiscal Dependency which in turn has crippled the fiscal machinery of the Local Self-government institutions.

Besides there are several other causes which handicap the Panchayats like uncertainty about fiscal transfers from higher tiers, lack of knowledge about tax base and elasticity, lack of expertise in revenue administration, dependence on executive district administration for enforcement of tax responsibilities and so on. Studies unveil that in 2002-03, PRIs of at least 4 states, namely Assam, Bihar, Orissa and Rajasthan did not collect any tax. In 2007-08, the tax revenue of the PRIs of these states remains zero. Per capita tax collected by the PRIs of Uttar Pradesh and Madhya Pradesh remains Re 1 Re 3 respectively in 2007-08. In contrast to these states, PRIs of Maharashtra collect Rs 80 per capita as tax. In 2007-08, per capita total own source revenue (OSR) of PRIs varied between Rs 3 and Rs 7 in the states of Assam, Bihar, Orissa, and Rajasthan and UP. Per capita of OSR collected by Maharashtra’s panchayats stood at Rs 114 in 2007-08. These data give enough indications of the utter lack of fiscal devolution in the panchayats of most states.

For instance in Karnataka the assignment of expenditure responsibilities is not clear. Despite the fact that Karnataka has assigned all 29 subjects to panchayats but because of the state politicians and bureaucrats who were unwilling to relinquish power, Karnataka has retained the responsibility for a large number of key decisions regarding these services and left local governments with limited discretion. As a result, there is ambiguity with regard to

the assignment of expenditures between the three tiers, coordination problems and some uncertainty on the part of the local population as to where accountability lies.\textsuperscript{882}

Further there is a poor level of own source revenue (OSR) and also its declining trend. OSR of PRIs constituted only 0.4\% of the total public sector OSR in 2002-03. It further declined to 0.3\% in 2007-08. This only shows increasing dependency of PRIs on funding from the higher level governments, which is indicative of their ‘fragile autonomous space’.\textsuperscript{883} For instance revenue effort by Gram Panchayats is weak in the States of Kerala and Karnataka. Kerala and Karnataka have given the gram panchayats independent revenue raising power, but in neither state has it been effectively used. Thus overall, in both states, own source revenues are negligible-less than one percent of Gross State Domestic Product from their own sources.\textsuperscript{884} This can be attributed to a number of reasons like unwillingness of the local officials to enforce the tax laws, the limited capacity of local government officials to effectively administer revenue and Weak administration procedures

Thus the above stated views reflect the ground reality of Panchayati Raj institutions. The passages have disclosed the many issues of concern which are hampering the process of decentralisation in India. With these reflections on 73\textsuperscript{rd} Amendment Act we come to the end of the segment and make a headway to discuss yet another landmark amendment called the 86\textsuperscript{th} Amendment Act.

\textbf{6.29. Progressive Polity -- 86\textsuperscript{th} Amendment}

It has been duly realized that Constitutions are potent tools for the enforcement of rights in favour of children. In order to build a progressive and sustainable polity, almost every nation is giving due recognition to children and their rights in their national charters and Indian Constitution is no exception. The status of Constitutions as frameworks for legitimizing laws and policies in favour of children, presents them with the opportunity to reinforce the status of children as subjects of rights as opposed to being objects of charity.\textsuperscript{885} Using the lens of rights –based approach, Mosikatsana\textsuperscript{886} draws out how Constitutions can positively influence holistic implementation of child rights in the following manner:

\textsuperscript{882}India- Fiscal Decentralization to Rural Governments, Vol. I. Report No. 26654-IN, World Bank, 2004 P.6
\textsuperscript{883}Buddhadeb Ghosh, Debraj Bhattacharya and Madhulika Mitra, op.cit., p.79
\textsuperscript{884} Ibid., p.8
\textsuperscript{885}Constitutional Reforms in Favour of Children, UNICEF, November 2008 available at www.unicef.org
1. Constitutional provisions specific to children provide a trigger and springboard for legislative reform.

2. As a minimum, constitutionalisation legitimizes political discourse on children’s rights and provides political justification for government expenditure on social programmes of children.

3. With the location of the rights of the child in the supreme law of the land, children can be legally and properly viewed as subjects of rights.

4. It enables the rights claimants, who are children, to make substantial claims against the State, using the law as a sword.

5. It enables children to use the law as a shield to protect themselves from erosion of social benefits by the State.

6. It can create justiciable rights that children may enforce against the State.

7. It offers the governmental political justification for providing social welfare benefits to children as they compete for scarce resources.

   The Indian Constitution is known to be a document committed to social justice and literacy forms the cornerstone for making the provision of equality of opportunity a reality.\(^887\) Free and Compulsory Education remained a distant reality in India for many years because it was a mere time bound provision, a bare rhetoric under the Directive Principles of State Policy. Only when it was constitutionally embedded through the 86\(^{th}\) Amendment Act as a Fundamental Right, did it make its impact on the holistic development of children. Therefore it is reasonable to state that it is education and education alone that can translate constitutional ideals into practice.

   Today education is seen as a sine qua non for human wellbeing and for the development of conscious, responsible and capable individuals and societies Its increasing clout was even felt in the Aicha-Nagoya Declaration, a Global Action Plan on “Education in Sustainable Development” (ESD) a programme of UNESCO and India is one of the signatories. The ESD Plan says that the countries shall commit themselves to” building and maintaining the momentum of the launching of the GAP, in its five priority action areas for ESD, namely policy support, whole institution approaches, educators, youth and local

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Commenting on the capability expansion aspect of education Amartya Sen articulated, “Educational expansion has a variety of roles that have to be carefully distinguished. First more education can help productivity. Secondly, wide sharing of educational advancement can contribute to a better distribution of the aggregate national income among different people. Thirdly being better educated can help in the conversion of incomes and resources into various functioning and ways of living.

Last (and by no means the least), education also helps in the intelligent choice between different types of lives that a person can lead. All these distinct influences can have important bearings on the development of valuable capabilities and thus on the process of human development.”

The indispensability of the right to education can be gauged by the fact that the Right to Education is among the listed human rights whose status affects the realization of all other rights. K.Tomasevski, UN Special Rapporteur on the Right to Education passionately states “the right to education defies classification either as a civil and political right or an economic, social and cultural one. It forms part of other Covenants and indeed all core human right treaties. I emphasized that the right to education represented an interface between civil and political rights and economic, social and cultural rights.”

Apropos this she has also set forth the norms of the right to education in her 4-A scheme which are the desired parameters for the implementation of the right to education. They are Availability, Accessibility, Acceptability and Adaptability.

1. **Availability** is the first component of the right to Education in Tomasevski framework. It refers to the existence of educational institutions within reasonable distance for pupil’s attendance. It also relates to education without discrimination and prejudice.

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888 UNESCO releases global action programme on ‘education in sustainable development’, Times of India Jan 29, 2015
890 K. Tomasevski, UN Special Rapporteur on Right to Education cited by Shantanu Gupta, What are the different strategies and approach to realize Right to Education (RTE) in India, Institute of Development Studies, Sussex, 2009, p.9
Another related subject to availability is the insurance of free and compulsory education to all. The free aspect of education, in economic terms, freedom from direct costs and indirect and opportunity cost and other “invisible costs” which deny education to people. It also assures education that is free from indoctrination and ideological overtones.

2. **Accessibility** means that educational institutions and education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination. The educational institution has to be within safe physical reach, by attendance at some reasonably convenient geographic location. Education has to be affordable for all. The right to education should be realised progressively, ensuring all –encompassing, free and compulsory education is available as soon as possible, and facilitating access to post-compulsory education as circumstances permit.

3. **Acceptability** involves curricula setting, and respect for parents views on the education of their children, the medium of instruction and the culture of education. The emerging perception of children as subjects with the right to education and with right in education has further extended the boundaries of acceptability to include the contents of educational curricula and textbooks, which are increasingly considered from the perspective of human rights. 893

4. Last but not the least is **Adaptability** which requires that schools respond to the needs of the child in keeping with the Convention of the Rights of the Child. In other words it” means making education responsive. “It is the integration of the environment into the individual and not the other way around. Unlike the conventional approach which demanded abiding by the rules of the school, adaptability in education will put the best interests and needs of the student first and then the norms of the schools shall be followed.

It is within these parameters that right to education has been structured globally now. The substance of the right has been carved out in broad terms by the international legislations but its real meaning is to be found in the national legislation that incorporate it. It is identifiable that the 86th Amendment Act is quite aligned to the international norms of availability, accessibility, acceptability and adaptability.

893 Supra note 4 at p.13
An analysis of the salient features of the Right to Education Act or the 86th Amendment Act has been done using 4A Framework recommended by Tomasevski in the following manner:

A. Availability:
   i. Right of child to free and compulsory education (Sections 3(1), 3(2))
   ii. Standards of recognition of schools (Sections 18(1), 19(2))
   iii. Establishment of additional schools (Sections 6, 7(1), 7(2))
   iv. Appointment of qualified Teachers (Sections 23(1), 23(2))

B. Accessibility:
   i. Disallowing capitation fees and screening procedure (Sections 13(1), 2(o))
   ii. Provision for teacher training (Section 4)
   iii. Admission to students belonging to weaker and disadvantaged groups (Sections 12(c), 12(2))
   iv. Balanced Representation on the School management committee (Section 21(1))

C. Acceptability:
   i. Development of National Curriculum (Section 7(6a), 29(2))
   ii. Prohibition of holding back and expulsion of physical punishment and mental harassment
   iii. Duties of Teachers (Section 24)

D. Adaptability
   i. Admission of students belonging to socially disadvantaged groups
   ii. Right of transfer to a school (Section 5(1))

This segment is thus an attempt to visit education and its various facets ab initio. The subsequent segments shall explore how through an enabling legislation called the 86th Amendment Act Education metaphors from a nebulous directive to a non-negotiable and justiciable right.

6.29.1. Significance of Education

Literacy has never been more necessary for development as it is today; it is the key to communication and learning of all kinds and a fundamental condition of access to today’s

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894 Right to Education: role of the private sector, Appendix, Ernst and Young, 2012, p.57
knowledge societies. With socio-economic disparities increasing and global crises over food, water and energy, literacy is a survival tool in a fiercely competitive world.

Speaking for the U.S. Supreme Court, Earl Warren C.J. in the case of Brown v. Board of Education\(^895\), emphasized the right to education in the following words:

“Today, education is perhaps the most important function of States and local governments... It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is principal instrument in awakening the child to cultural value, in preparing him for later professional training and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he or she is denied the opportunity of education.”

Primary education has two main purposes: to produce a literate and numerate population that can deal with problems encountered at home and at work and to serve as a foundation on which further education is built. The future of development of the world and of individual nations hinges more than ever on the capacity of the individuals and countries to acquire, adapt, and advance knowledge. This capacity depends in turn on the extent to which the population has attained literacy, numeracy and cognitive competencies.

### 6.29.2. Contribution of Education to Development

United Nations Secretary-General Ban Ki-moon has called education the “single best investment” that countries can make to build “prosperous, healthy, and equitable societies.”\(^896\) Those countries with an educated population and higher levels of educational attainment have more paid employment, higher individual earnings, greater agricultural productivity, lower fertility, better health and nutritional status and more progressive attitudes than their counterparts.

Throughout the developing world, countries are preoccupied with the task of making primary education accessible to children in order to make them productive contributors to the economy and community life. Countries such as Kenya, Pakistan, Philippines, Sierra Leone and Trinidad and Tobago undertook sweeping reviews of their educational policies and

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\(^895\) 347 US 483 (1954)

programmes. In 1967 President Julius Nyerere of Tanzania delivered his famous speech on “Education for Self- Reliance” in which he advocated establishing a system whose cost and impact on farm production and attitudes towards farming were appropriate to the country’s needs and therefore more effective.

In 1973 Tunisia undertook Initiation aux Travaux Manuels or Initiation to Manual Work, a primary school program that sought to teach manual skills and eradicate the unfavourable attitudes that primary school graduates held towards manual labour. Countries like Malaysia established large curriculum development centres that involved new curricula, new teaching methodologies and training programs for the teachers. Projects financed by the United Nations Development Programme in Bununbu (Sierra Leone) and Kakata (Liberia) adopted an ad-hoc arrangement based on primary teacher training institutions.

Several countries undertook bold experiments and resorted to alternative delivery strategies in order to continue the campaign for education. For example, the government of Cote d’Ivoire launched a large scale educational television program in 1971 to extend primary education throughout the country. Malaysia launched a similar program in 1973 as did El Salvador. Radio was used in Nicaragua to teach mathematics and in Ethiopia, Jamaica and Kenya to reach students and teacher. As of today, some of the world’s poorest countries, such as Burkina Faso, Madagascar, and Nicaragua, are increasing their primary enrolment rates higher than they ever did in the West. Countries such as Indonesia, the Philippines, South Africa, Botswana, Peru, and Jamaica are still on the cusp of reaching universal primary education.

Fig. 6.4 : Status of Education in poor countries

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897 Marlaine E. Lockheed and Adriaan M. Verspoor, Improving Primary Education in Developing Education, Oxford University Press, p. 26
900 Ibid
Some countries even experimented with formal primary schooling: for instance youth clubs in Benin, Rural Education centres in Burkina Faso\textsuperscript{902} and Koranic schools in Mauritania\textsuperscript{903} are few examples of such experiments. However they could not survive for long because of inadequate financing, deficient capacity for implementation and because of the rejection by the communities concerned.

In the recent times, the Angolan government launched a countrywide Back to School\textsuperscript{904} program in 2004, setting aside $40 million to train 29,000 teachers and increase enrolments in grades 1–4 to 90%. A similar government programme on education in Mexico called Oportunidades\textsuperscript{905}, provided economic support to poor households on the condition that children attend school regularly. It produced a 20% increase in secondary school enrolment for girls and a 10% increase for boys.

\textsuperscript{902}M.E. Sinclair and Kevin Lillis, School and Community in the Third World cited in Marlaine E. Lockheed and Adriaan M. Verspoor, Improving Primary Education in Developing Education, p.28


\textsuperscript{905}Ibid.,
6.29.3. **Education and Earnings**

Education has noteworthy impacts on earnings as well. Psacharopoulos\(^{906}\) found very high social rates of return and estimated that the returns to completed Primary education are 27 percent and the returns to secondary education are 15-17 percent. In post-war Korea in the 1950s, when the average annual income was only $890, Korean families and the government, with help from the U.S., tripled spending on education.\(^{907}\) Investments in teachers and basic schools contributed to a more productive labour force, which became one of the country’s engines of growth. Today Korea boasts almost 100% primary school enrolment and an average income of $17,000 a year. Today it is not just the governments that are spending on education, many philanthropists have also stepped in. Aliko Dangote, Africa’s wealthiest individual, has donated close to $200 million to educational causes in the last two years. Other homegrown philanthropists, such as Strive Masiyiwa and Nicky Oppenheimer, \(^{908}\) have also made significant contributions. These benefactors, together with private enterprises and the public sector, will be essential to ensuring that all young Africans — not just those from wealthy families — gain access to quality education.

6.29.4. **Education and Economic Development**

Research and experience demonstrates that an educated labour force is a necessary, albeit not sufficient, condition for economic development.\(^{909}\) Across countries, the correlation between national investment in education and economic growth is striking. One can see that investment in education is considered to be an indispensable asset for the economic augmentation of a country and that is why many nations allocated a massive share for basic education as it promised higher returns. Peasely \(^{910}\) examined the relationship between growth in primary schools enrolment and gross national product (GNP) per capita over a period of 110 year period (1850-1960) for 34 of the richest countries. He found that none had achieved significant economic growth before attaining universal primary education.

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For instance over the period 1950-7, Costa Rica doubled the share of public spending allocated to basic education. Cuba increased the share of GDP allocated to education by 3 percent over the decade up to the mid-1970s.\textsuperscript{911} Zimbabwe achieved the same increase over the period 1980-88. Until South Korea achieved universal primary education, it allocated over 60 percent of public spending to primary education\textsuperscript{912}, allowing the private sector to play a more significant role in secondary education, and recovering a large share of expenditure on higher education from charges on students. For the period 1945-80 Lau, Jamison and Louat\textsuperscript{913} found economic growth powerfully affected by primary education in twenty-two East Asian and Latin American countries and by secondary education in fifty four East Asian, Latin American, African and Middle Eastern Countries.

In many poor countries, with each additional year of schooling, people earn 10% higher wages. These earnings, in turn, contribute to national economic growth. No country has ever achieved continuous and rapid growth without reaching an adult literacy rate of at least 40%.

\textbf{6.29.5. Enhancement in Productivity}

Earnings are an indirect measure of productivity but the physical productivity is the best measure of educations economic impact. Workers and farmers with more education are physically more productive than those with less. Lockheed, Jamison and Lau\textsuperscript{914} concluded that four years of primary education increased the productivity of farmers by 8.7 percent and 10 percent in countries' ability of farmers to undergoing modernization. Education increased the ability of farmers to allocate resources efficiently and enabled them to improve their choice of inputs and to estimate more accurately the effect of those inputs on their overall productivity.

\textsuperscript{912} Ibid
\textsuperscript{914} Lockheed, Marlaine E., Dean T. Jamison and Lawrence Lau1 "Farmer Production and Farm Efficiency: A Survey, Economic Development and Cultural Exchange Vol. 29(1), 1980, pp.37-76
6.29.6. Checks Fertility

Reducing fertility rates must be an important part of any development program and reduced fertility depends heavily on educating women.915 Fertility levels are primarily determined most immediately by age of marriage, length of breast feeding and use of contraceptives which are influenced in turn by the socio-economic circumstances of the individual. One of these circumstances is the socio-economic circumstances of the mother.916 Educating women ultimately reduces fertility even though fertility in Africa and in Asia apparently increases with a few years of education, it declines hereafter with more schooling917.

6.29.7. Improved Child Health and Nutrition

The education of women is closely related to child health which is measured by nutritional status or by infant and child mortality. Children of educated mothers live healthier, longer lives. One year of maternal education translates into 9 percent decrease in child mortality. apparently the more education a mother attains, the more likely she is likely to seek professional health care which diminishes child mortality. In Africa a difference of one percentage point in the literacy rate is associated with a two year gain in life expectancy.918 A woman with six or more years of education is more likely to seek prenatal care, assisted childbirth, and postnatal care, reducing the risk of maternal and child mortality and illness. Educated mothers are 50% more likely to immunize their children than mothers with no schooling.

The inevitability and omnipresence of education has been experienced in every zone and across ever country. Without organized literacy action, illiteracy will continue to stagnate indefinitely along with the associated ills of poverty and underdevelopment. It is because of the forceful impact of education on that countries have become preoccupied with the task of building a robust primary educational system. In the next section a countries with their commitment to right to education have been investigated comparatively.

918 Supra note at 9
6.30. Comparative analysis of Right to Education across the world

Several national legal systems across the world have attempted to give effect to the right of primary education through constitutional arrangements as well as through legislative enactments. The period for providing free primary education varies from 9 years to a maximum of 13 years. The age cohorts of children who can avail of this free education usually are 6-14 or 7-16 and on very odd occasions extend up to 18 years.

Before India joined the league of 135 countries it was internationally committed to many global instruments. India is a party to core international human rights treaties that place binding legal obligations on the Indian central and state governments. Those with particular relevance to universalization of elementary education are the Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 919 International Covenant on Civil and Political Rights (ICCPR), 920 Articles 10 and 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 921 and Articles 28 and 29 of the Convention on the Rights of the Child (CRC). 922 During the World Conference on Education For All (EFA) held in Jomtien in Thailand in 1990, 155 countries including India made a joint declaration to provide primary education to everybody by the year 2000 923. In the Dakar Conference, held in Senegal in 2000 a framework of Action popularly known as the Dakar Framework of Action recognized the right to education as a fundamental human right that every child, youth and adult should get education within 2015.

These international instruments proved to be a springboard of hope for India through which it could attain the constitutional vision of Education for All. According to UNESCO’s “Education for All Global Monitoring Report 2010” 924 about 135 nations have constitutional provisions for free, non-discriminatory and universal education for all and India 925 too joined the bandwagon with the implementation of the RTE act.

922 Convention on the Rights of the Child, , entered into force September 2, 1990, ratified by India on December 11, 1992
923 Campaign for the Right to Education, Advocacy Update, NCAS, July-September 2002, p.2
924 Education for All Global Monitoring Report, UNESCO, 2010
925 “India joins list of 135 countries in Making Education a Right “ The Hindu, April 2, 2010
Chile takes the lead in the list of countries in providing free education for a period of 15 years to a child. It gives education to children in the age-cohort of 6 to 21 years.

Following the trail are the Latin American countries, where elementary education witnessed worse two decades of elementary education but with the implementation of a special education programme in 1990 a significant enhancement in primary and upper primary schooling was observed.

Region-wise amongst the Gulf countries there are a host of countries like Saudi Arabia, UAE, Iraq and eight other countries which stipulates free education for a maximum period of 5 years. However there are 50 countries including the US, South Africa, Malaysia and a majority of Sub-Saharan and African countries that are devoid of constitutional specifications that guarantee free education.

With the rolling out of a new-fangled education act, India has joined some 20 other countries including Afghanistan, China and Switzerland which have laws assuring free and compulsory elementary education for a period of 8 years.

But there are a few nations in the Indian sub-continent like Sri Lanka and Pakistan that have still not adapted this move as they have no laws that provide free education. Bangladesh and Myanmar boast of a four year period while Nepal has a schema that provides five years of mandatory schooling.

In order to get an enhanced understanding of the best practices of countries in enforcing this right, an article-specific study has been undertaken below:

**Argentina:** Article 10 of Act No.24.195 extends compulsory education to 10 years which shall begin at the age of 5 years and article 39 guarantees that education shall be free. The act elaborates “The national state, the provinces and the municipality of the city of Buenos Aires shall, by allocating funds to the respective education budgets, guarantee the principle of free education in State Funded educational services at all levels and in all regimes.

**Brazil:** The Constitution of Brazil is noteworthy in this respect as it offers free compulsory education to all those who did not have access to it at the proper age. Article 308 of the Constitution of Brazil obliges the State to ensure free, compulsory elementary education,

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927 Constitution of the Federative Republic of Brazil, 1988
including the assurance that it will be offered gratuitously for all who did not have access to it at the proper age. In addition to this stress was also given on the universalization of gratuitous secondary school education.

**Bangladesh:** The Article 17 of the Constitution of Bangladesh, enjoins the state “to adopt effective measures for a) establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law; b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs and c) removing illiteracy within such time as may be determined by the law”. The Constitution further makes it clear that access to education is not a privilege but a right of every citizen of Bangladesh.

**China:** China has received great achievement in compulsory education and adult literacy. In the Constitution of the People’s Republic of China, Education Law and Program for Educational Reform and Development in China 1993, items on literacy education as a human right.

The Law on Compulsory Education (2006) states 928

Chapter 1, Article 2: The state adopts the system of 9-year compulsory education. No tuition or miscellaneous fee may be charged in the implementation of compulsory education. The state shall establish a compulsory education operating funds guarantee mechanism to ensure the implementation of the compulsory education system.

Chapter 2, Article 11: Any child who has attained to the age of 6, his (her) parents or other statutory guardians shall have him (her) enrolled in school to finish the compulsory education. For the children in those areas where it is not possible, the initial time of schooling may be postponed to 7 years old. If, on account of illness or other special circumstances, where a school-age child or adolescent needs to postpone his (her) enrolment or suspend his (her) schooling, his (her) parents or other statutory guardians shall file an application with the education administrative department of the local people’s government of the township, town or county for approval.

Chapter 3, Article 19: The local people’s governments at the county level or above shall, where necessary, set up special education schools (classes) so as to provide compulsory education to the school-age children and adolescents who have eyesight, hearing and

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intellectual problems. The special education schools (classes) shall have places and facilities which suit their study, recovery and living features of the disabled children.

Chapter 3, Article 21: The juvenile delinquents who fail to finish compulsory education and the minors who are subject to mandatory education measures shall be given compulsory education.

**Denmark:** According to the Danish Constitution, all the children are entitled to the right to free education in the Folkeskole (Municipal basic school). Folkeskole is centrally regulated by the Act on the Folkeskole of 2005 which is instrumental in defining the framework of the Danish primary and lower secondary school system which extends from the 0th to the 10th level. The Act embodies the following structure and organisation of primary schooling:

"The Folkeskole shall comprise a one-year pre-school class, a nine-year basic (primary and lower secondary) school and a one-year 10th form"

**Dominican Republic:** Article 16 of the Constitution of Dominin Republic is dedicated to the freedom of education where elementary education shall be obligatory. The states shall be bound to furnish basic education to all the citizens and shall take requisite steps to eliminate illiteracy. The Act pledges that elementary and secondary education as well as that offered in vocational, agricultural, art, commercial, manual arts and home economics school shall be free.

**Finland:** Finland has the most comprehensive system of education that protects and safeguards the educational rights of the child. It focuses much more on the quality and standards of education. Section 16 of the Constitution of Finland provides for the Fundamental Right to education. Education guarantees are extended to everyone and not just the Finnish citizens. Basic education act provides a nine-year general education for the pupils falling in the age cohort of 7-16 years which is free and gives everyone the right to pursue further education on the completion of the said period. Pupils who have completed basic education are eligible for voluntary additional education (grade 10) that lasts one year.

**Honduras:** Article 153 of the Constitution of Honduras provides that it is incumbent upon the State to promote the basic education of the people, creating for that purpose the necessary administrative and technical institutions which shall be directly dependent on the secretariat

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929 The Constitutional Act, 1953 at http://www.thedanishparliament.dk/Publications
930 Ministry of Education Consolidation Act No. 55 of 17 January 1995, Act on the Folkeskole The Danish Primary and Lower Secondary School
of State in the Office of Public Education. Article 171 further states that public education shall be free, compulsory and completely at the expense of the State. The State is mandated to establish compulsory mechanisms accordingly to make these provisions effective.

**Ireland:** Colossal attempts can be seen in the model legislation called the Education Welfare Act of Ireland. Under the aegis of the National Educational Welfare Board the Education Welfare Act (2000)\(^{932}\) envisages various provisions:

“for the entitlement of every child in the State to a certain minimum education, and, for that purpose, to provide for the registration of children receiving education in places other than recognized schools, the compulsory attendance of certain children at recognized schools, the establishment of a body to be known as the National Educational Welfare Board, . . . the identification of the causes of non-attendance and the adoption of measures for its prevention. . .”

**Kenya:** In accordance with the article 7 of the Children Act 2001\(^{933}\) every child is entitled to free and compulsory education, the provision of which shall be the duty of the Parents and the Government. An added responsibility of providing elementary education to every child to both the Government and parents becomes significant at a time when the parents of marginalized communities are not in favor of sending their children to school as it would lead to the loss of a helping hand at home.

**Liberia:** Section 2.3 of the Education Law in the guarantees primary education which is a fundamental right which must be available, free and compulsory for all the children. Further Section 2.4 defines basic education as “all education which provides the foundation for continuous and lifelong learning.” “All citizens of Liberia must have the right to basic education as a human right, and it should entail all education up to the 9th grade as well as adult education to include literacy; numeracy and skill acquisition amongst other aspects, taking into account both formal and non-formal education.”\(^{934}\)

**Nigeria**\(^{935}\): Article 15 (1)) of the Act on Compulsory Free and Universal basic education of the Republic of Nigeria provides for both basic education and universal Basic education. The Act distinguishes the two by spelling out Basic education as “early childhood care and

\(^{932}\) Education (Welfare) Act, 2000

\(^{933}\) Kenya: Children’s Act 8 of 2001

\(^{934}\) Education Law of A.D.2001

education and nine years of formal schooling” and universal Basic education is much more comprehensive when compared to the former. It embraces “early childhood care and education, nine years of formal schooling, literacy and non-formal education, skills acquisition programmes and the education of special groups such as nomadic and migrants, girl-child and women, almajiri, street children and disabled groups”

**Philippines:** Education in Philippines is a state function mandated by the Constitution (1987), which states that “the State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all. Filipinos shall finish 6 years of quality basic education which puts stress on the inclusion of skills that equip human beings to become productive and self-reliant.

**Turkmenistan:** According to Article 35 of the Constitution (1992) every citizen has the right to education. Basic secondary education is compulsory and every person is entitled to receive it gratis in State educational institutions. The State assures access to professional, secondary special and higher education to all persons according to their potential.

**Venezuela:** The Venezuelan Constitution makes education obligatory at all its levels, from the maternal level up to the intermediate diversified level. Education imparted in the institutions of State is free of cost up to the university pre-grade. Art.103 of the Constitution of Venezuela provides that every person has a right to integral, quality, permanent education with equal conditions and opportunities, with no other limitations than those derived from his aptitude, vocation and aspiration.

**Thailand:** As stated in the Constitution of The Kingdom of Thailand, Section 43 a person shall enjoy an equal right to receive the fundamental education for the education for the duration of not less than twelve years which shall be provided by the state thoroughly, up to the quality, and without charge.

Table 1 illustrates the countries which guarantee the right to education and the nature of guarantee which could be complete, partial, exclusive for residents or negligible in the constitution. It is visible that in 37 countries right to education is formally restricted to legal citizens. The exclusion of children without citizenship from education may amount to a denial of their right to education, or it may be that they are subjected to different conditions. It also shows that there are 43 countries where there is no explicit constitutional guarantee of

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936 Constitution of Turkmenistan
937 Constitution of the Bolivarian Republic of Venezuela
the right to education, while such a guarantee does exist in 144 countries; that the vast majority of states constitutionally guarantee the right to education reflects the thrust of international human rights law.

**Table 6.13: Countries Which Guarantee Right To Education In Their Constitution**

<table>
<thead>
<tr>
<th>Free and compulsory education for all constitutionally guaranteed:</th>
<th>Guarantees restricted to citizens or residents:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania, Algeria, Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Denmark, Democratic People's Republic of Korea, Ecuador, Egypt, Estonia, Finland, France, Gambia, Georgia, Germany, Ghana, Haiti, Honduras, Iceland, India, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Macedonia, Madagascar, Malta, Mauritius, Mexico, Moldova, Netherlands, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Romania, Russia, Rwanda, Saudi Arabia, Senegal, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Venezuela, Yugoslavia</td>
<td>Armenia, Bahrain, Cambodia, Chad, Cyprus, Czech Republic, Dominican Republic, El Salvador, Equatorial Guinea, Greece, Grenada, Guatemala, Guyana, Hungary, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Libya, Luxembourg, Malawi, Mali, Morocco, New Zealand, Nicaragua, Philippines, Qatar, Republic of Korea, Sao Tome, Seychelles, Slovakia, Slovenia, Syria, Turkey, Turkmenistan, Viet Nam, Yemen</td>
</tr>
</tbody>
</table>

**Progressive realization or partial guarantees:**
Bangladesh, Belarus, Benin, Bhutan, Burma, Cameroon, Comoros, Equatorial Guinea, Guinea-Bissau, Iran, Iraq, Israel, Maldives, Micronesia, Monaco, Mongolia, Namibia, Nepal, Nigeria, Pakistan, St Kitts and Nevis, Sierra Leone, Sudan, Tanzania, Togo, Uganda, Uzbekistan, Zimbabwe

**No constitutional guarantee:**
Angola, Antigua and Barbuda, Bahamas, Botswana, Brunei, Burkina Faso, Burundi, Central African Rep., Cote d'Ivoire, Djibouti, Dominica, Eritrea, Ethiopia, Fiji, Gabon, Indonesia, Jamaica, Kenya, Kiribati, Laos, Lebanon, Lesotho, Liberia, Malaysia, Marshall Islands, Mauritania, Mozambique, Nauru, Niger, Oman, Papua New Guinea, St Lucia, St Vincent, Samoa, San Marino, Singapore, Solomon Islands, Swaziland, Tonga, Tuvalu, USA, Vanuatu, Zambia


In the next table a global overview of the length of compulsory education is highlighted. While countries like Bahrain, Germany, Belgium, and Barbados make education compulsory for 12 years, on the other end of the spectrum we find Zambia that ensures a diminutive part of a child's life to education that is just 3 years of mandatory schooling. Rest of the countries give an assurance of education between 3 to 12 years where India mandates 8 years of compulsory elementary education. It reflects the varying willingness and ability of governments to ensure that all children and young people complete a determined length of schooling.938

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Table 6.14: Number of Years Of Compulsory Education

<table>
<thead>
<tr>
<th>Years</th>
<th>Country</th>
</tr>
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<tbody>
<tr>
<td>13</td>
<td>Netherlands</td>
</tr>
<tr>
<td>12</td>
<td>Belgium, Brunei Darussalam, Germany, St Kitts and Nevis</td>
</tr>
<tr>
<td>11</td>
<td>Antigua and Barbuda, Armenia, Azerbaijan, Barbados, British Virgin Islands, Dominica, Grenada, Israel, Kazakhstan, Malta, Moldova, United Kingdom</td>
</tr>
<tr>
<td>10</td>
<td>Argentina, Australia, Belize, Canada, Congo, Costa Rica, Dominican Republic, Democratic People’s Republic of Korea, Ecuador, France, Gabon, Hungary, Iceland, Kyrgyzstan, Liberia, Monaco, Namibia, New Zealand, Norway, Seychelles, Spain, St Lucia, St Vincent and the Grenadines, Venezuela, USA</td>
</tr>
<tr>
<td>9</td>
<td>Algeria, Austria, Bahamas, Bahrain, Belarus, Cambodia, China, Comoros, Cook Islands, Cuba, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, Georgia, Greece, Hong Kong, Indonesia, Ireland, Japan, Jordan, Kiribati, Lebanon, Libya, Lithuania, Luxembourg, Mali, Netherland Antilles, Portugal, Republic of Korea, Russia, Sierra Leone, Slovakia, South Africa, Sri Lanka, Sweden, Switzerland, Tajikistan, Tunisia, Ukraine, Yemen</td>
</tr>
<tr>
<td>8</td>
<td>Albania, Angola, Bolivia, Brazil, Bulgaria, Chile, Croatia, Egypt, Fiji, FYROM, Ghana, Guyana, India, Italy, Kenya, Kuwait, Latvia, Malawi, Mongolia, Niger, Poland, Romania, Samoa, San Marino, Slovenia, Somalia, Sudan, Tonga, Turkey, Yugoslavia, Zimbabwe</td>
</tr>
<tr>
<td>7</td>
<td>Burkina Faso, Eritrea, Lesotho, Mauritius, Mozambique, Swaziland, Tanzania, Trinidad and Tobago, Tuvalu, Zambia</td>
</tr>
<tr>
<td>6</td>
<td>Afghanistan, Benin, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Cote d’Ivoire, Djibouti, Ethiopia, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Iraq, Jamaica, Madagascar, Mauritania, Mexico, Morocco, Nicaragua, Nigeria, Panama, Paraguay, Peru, Philippines, Rwanda, Senegal, Suriname, Syria, Thailand, Togo, United Arab Emirates, Uruguay, Vanuatu</td>
</tr>
<tr>
<td>5</td>
<td>Bangladesh, Colombia, Equatorial Guinea, Iran, Laos, Macao, Myanmar, Nepal, Viet Nam</td>
</tr>
<tr>
<td>4</td>
<td>Sao Tome and Principe</td>
</tr>
</tbody>
</table>


This cross-sectional analysis of national legislations on elementary education has given a new boost to our foundational knowledge about the constitutionality of education as a right. In the next segment of the chapter the pace of education has been chronicled which takes us en route to a journey of Fundamental Right to Education in India.

6.31. A Genealogical Study of Right to Education in India

The Indian society from the earliest times has always placed a premium on teaching and learning. The highly developed state of civilisation among the people of Indus Valley also presupposed an existence of system of education. F.W. Thomas fittingly wrote “There is no country where the love of learning had so early an origin or has exercised so lasting and powerful an influence as in India. From the simple poets of the Vedic age to the Bengali philosopher of the present day there has been an uninterrupted succession of teachers and scholars.”

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940 F.W. Thomas, History and Prospects of British Education in India, London, 1891
Unlike the Indus Valley civilisation, education was essentially an integral part of the religion of the Aryans and as today it had no independent identity. Every Aryan, i.e. every Brahmin, Kshtriya and Vaishya, thus received elementary literacy and religious Education. The human life was divided into four stages known as Ashramas—‘Brahmacharya’ (student life), ‘Grahastha’ (married life), ‘Vanaprastha’ (retired life), ‘Sannyasa’ (life of renunciation). The first of four Ashramas is enroute Brahmacharya Ashrama. In this Ashram the student or ‘Brahmachari’ spent twenty-five years with his teacher studying the Vedas and leading a life of self control. In fact the child was initiated into the formal educational system quite early in life soon after the upnanayana (acceptance as a pupil by the teacher) ceremony at the age of eight.. The education and control of ‘Brahmacharya’ prepares a person for future life. Evidence tells us that Shvetaketu Arunyeya went first time to school at the age of 12 whereas Tattriya Brahman reports that Bhardwaj devoted his three lives in school.

It is reported that in the ancient time there was no concept of school in India. The school was either in a neighbourhood, or in the teacher’s home or under the tree. In the Rig Veda one finds the origin of a school system called Gurukul or a Brahmmana school, where the Brahmin teacher had the exclusive right to teach only the Brahmin pupil. The legendary tale of Ekalavya from the India Epic of Mahabharata showcases such social exclusion. “A gurukula” according to DP Singhal “was generally located within a town or village, but sometimes it was a little removed, situated in quiet and beautiful surroundings. No fee was charged and no school was closed for want of money. The pupil had to go for Bhiksha to maintain himself and the teacher. The outcome of such bhiksha was that whatever was taught was taught well and it was in no way inferior to other ancient nations.
However this arrangement was exclusionary as access to formal education was in reality determined by birth.\textsuperscript{950} The shudras of the chatur varna system and the Antyajas, the untouchables or the lower castes were deprived of formal education. Here it is appropriate to note Naik’s description of the situation.

“The Indian society was then highly stratified, hierarchical and inegalitarian ….. The Scheduled castes who were treated as untouchables and the Scheduled Tribes who were not integrated into the mainstream society formed the lowliest, the poorest and the most exploited group. The educational picture broadly reflected this socio-economic background of inequality. The access to the formal system of education was through mode of ascription, mostly based on birth, and restricted to the literary and priestly castes or classes, well –to do landlords, moneylenders bad traders.\textsuperscript{951}

Gender discrimination was absent as can be seen from Yajurveda which stated that a daughter, who completed her Brahmacharya should be married to one who is learned like her.\textsuperscript{952} However in the later Vedic period, girls used to have non-formal education from their elder brothers, parents, and learned guests and the tradition of imparting learning to women remained restricted to high-up Brahmin families only. For example King Drupad had appointed a learned Brahmin, Brihaspati Arthashastra to teach his daughter (Draupadi) at home.\textsuperscript{953}

The Muslim rulers of the Indian Sub-continent also did not consider education as a function of the State. It was largely perceived as a branch of religion and was entrusted to theologians called Ulemas.\textsuperscript{954} The Islamic system of education had their own schema of education consisting of ‘Maktab’, ‘Madarsas’, ‘Mosques’ and ‘Khanqahs’. The ‘Maktab’ provided for a lower level of education comparable to school education, while ‘Madarsas’ were meant for higher education.\textsuperscript{955} While Maktabs’ covered the Primary and Elementary Education imperative for that era, the ‘Madarsas’ on the other hand imparted much higher level of instructions for social adjustment and development as a form of vocational training. Like the Vedic system, a child was admitted in the ‘Maktabs’ only after the first ceremony.

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\textsuperscript{950} V.P. Niranjanaradhya, Universalisation of School Education; The Road Ahead, Books for Change, Bangalore, 2004 at p.2
\textsuperscript{951} J.P. Naik, Equality, Quality and Quantity, the Elusive Triangle in Indian education, Allied Publishers, New Delhi, 1975
\textsuperscript{953} N.L. Gupta, Women Education through the Ages, Concept Publishing Company, New Delhi, 2000, p. 120
\textsuperscript{954} S M Edwardes and H L O Garett, Mughal Rule in India New Delhi: Asia Publication Services, 1979 at 221.
\textsuperscript{955} R.P. Pathak, Education in the Emerging India, Atlantic Publishers and Distributors, New Delhi, 2007, p. 41.
called the ‘Bismillah Ceremony’. He was required to repeat some verses of the ‘Quran’. If he could not do this, he was just asked to pronounce ‘Bismillah’ and this started his education. The ‘Bismillah Ceremony’ heralded his educational career.

In British India, the school system was no doubt developed but it was modelled to suit the British Government and the Britishers. For the consolidation of their power, they had to turn to other more intangible aspects of the country’s life and education, so important an institution could not be left out of their vigilant attention. Consequently the Britishers made a thorough study of the prevailing indigenous educational systems before introducing its own. From a series of surveys carried out in elementary education by the officials of the East India Company between 1822 and 1838 one can assume that elementary education was quite popular in British India. In the Bengal Presidency the survey was conducted by a missionary William Adam appointed by Governor General, Lord William Bentinck. Adam’s study of the Thana of the Nattore in the Rajashahy District of Bengal counted every school, scholar and teacher. He submitted that at the beginning of the 19th century there were 1, 00, 000 schools in Bengal and Bihar or roughly two schools for every three villages. He concluded that there was one elementary school for every 32 boys and no schools for the girls could be found. The Reports also show that besides the system of public education, there was also widespread private coaching. According to Adam, in the Nattore Thana, while only 659 pupils were taught in any kind of public schools, 2, 382 were taught at home. Adam estimated that there was 11% literacy in the Thana of Nattore during 1830s. “A century later the British considered this an accomplishment in many parts of India, ” says Joseph DiBona, the author of One Teacher, One School.

From other sources also we learn the existence of a school in every village. William Ward of a Baptist Missionary based at Serampore observed “ almost villages possessed schools for teaching, reading, writing and elementary arithmetic.”.

These Village schools in colonial India greatly inspired the Madras Chaplain, Dr. A. Bell who introduced it in England as a cheap and efficient method of educating the poor and

956 Gauri Vishwanathan, Mask of Conquest: Literacy study and British rule in India, 1989, Sabyasachi Bhattacharya (Ed.) Education and Disprivileged: Nineteenth and Twentieth Century in India, 2002
957 Supra note 2 at p. 7
959 Ibid
later it came to be known as the Monitorial or Madras System in England.\textsuperscript{961} There was no regular period of education and the hours of instruction and the days of working were adjusted to local requirements. The curriculum in schools of those days include reading, writing and arithmetic, both oral and written. A letter was learnt by referring to a word beginning with that letter, then by a verse which was also a moral maxim, in order to impress it better in the memory. For example the letter ‘k’ stood for kubr’a (hump-backed), and it was accompanied by the verse: kakk’\textit{a} kar kart’\textit{a} k+i p”uj’\textit{a}, wahi nirañjan aur na d”uj’\textit{a} (worship the Creator; He is pure and He has no second). Again, the alphabet ‘d’ was accompanied by this verse; do\textit{sh} na dije k"ah"u; do\textit{sh} karam apne k"a (do not attribute your failure to others; attribute it to your own destiny).\textsuperscript{962} The number of pupils could vary from 1 to 20 and at times senior students were appointed to teach the junior ones. The teachers were paid either in cash or kind according to the economic capacity of the parents of the pupils.

### 6.31.1. First Legislative Recognition of Right To Education: Charles Grant Plan (1813)

However the real edification of education system in colonial India began with the momentous Charles Grant Plan of 1813 or the Charter Act of 1813. The Act one of the first British initiatives’ became the first legislative recognition of the Right to Education. With this Act many schools were established in the missionary mode. The 36 schools opened by London Missionary Society\textsuperscript{963} between 1814 and 1818 and attended by nearly 3,000 children in and around Chinsurah “functioned well” as a Government Missionary enterprise in the field of vernacular education in Bengal.”

Clause (43) of the Act dealt with the dissemination of knowledge to Indians. It empowered the Governor General to” A sum of not less than one lakh of rupees in each year shall be set apart and applied to the revival and enforcement of literature and the encouragement of the learned natives of India and for the introduction and promotion of a knowledge of the science among the inhabitants of the British territories in India.”\textsuperscript{964}

This became all the more important because in those days education was not a State responsibility even in England and except in Scotland, no public money was spent on elementary education, which was left mostly to the charity schools. Perhaps this deluge of

\textsuperscript{961} Supra note 2 at p.8

\textsuperscript{962} Ram Swarup, Indian Educational System during Pre-British Days, Dialogue April-June 2008, Volume 9 No. 4

\textsuperscript{963} S.C.Ghosh, op. cit., 24

\textsuperscript{964} Shiv Kumar Saini, Development of Education in India: Socio Economic and Political Perspective, Cosmo Publications, Delhi, 1980, p. 37.

~ 482 ~
missionary enterprise gave rise to a sense of motivation to the Indians to establish and organize educational institutions and organist ions in the country.

6.31.2. Wood’s Despatch becomes The ‘Magna Carta of Education’ (1854)

Wood’s Despatch – an important document on education was the result of the Select Committee of the House of Commons appointed by the East India Company to thoroughly enquire into the educational developments in India. It is said to have laid the foundation of present education system of India. Richter has described it the Wood’s Despatch as the “Magna Carta of Indian education” in History of Missions in India.

Before Wood’s Despatch, the Government’s only aim was to provide higher education to a few people. For the first time education became available to the masses in both Vernacular as well English language. It employed the system of grant-in aid as was found in England. Although the Despatch did not refer to the ideal of universal literacy and compulsory education for all children up to a certain age but proposed an outline for all these things in future. It negated the downward “filtration theory” and appraised “ Oriental learning.” It covered the entire field of education and emphasized the establishment of graded schools as University, Colleges, High Schools, Middle Schools It was also decided to carry out more fully Auckland’s scheme (1840) of connecting the Zillah schools with the Central Colleges by a system of scholarship and Thomason’s Plan (1848) which suggested “to set up a model school in every tehsil or revenue district in addition to the ordinary village school.

6.31.3. Phased Development of Right to Education

It was only in the last years of the nineteenth century and the early years of the twentieth that compulsory primary education began to be viewed as something desirable for all, partly because of the work done by reformers like Raja Ram Mohun Roy, Swami Vivekananda, Dadabhai Naoroji, Jyotiba Phule and others, and partly as it became a demand of the free-dom struggle.

These two endeavours by the British Government unleashed an era of Committees and Commissions to which began focusing on the issue of elementary education in India and

965 M.K. Jain, Committees and Commissions: Elementary Education Select Documents, Shipra Publications, New Delhi, 2007, p. 3
967 Kuldeep Kaur, Education in India (1781-1985): Policies, Planning and Implementation, Centre for Research in Rural and Industrial Development, Chandigarh, 1985, p. 27.
968 S.C.Ghosh op.cit., p. 93
for the first time Indians too became vocal about the demand for free and compulsory education.


The first Indian Education Commission popularly called the Hunter Commission of 1882 with William Hunter as its Chairman, was appointed by the then Viceroy Lord Ripon. The enquiry of the Commission led to a great educational awakening in India. It made a strong plea for mass education by extending the benefits of primary education to the backward classes including the aboriginal classes including aboriginal tribes through an exemption of fees. It was the first platform for education which represented the Indians and their demand for free and compulsory education A number of educated Indians appeared before the Indian Education Commission in 1882 and asked for laws to be make education compulsory and to wean children away from labour in factories and other kinds of unsuitable work.969 Among its 20 members Indians were represented by Anand Mohan Bose, Bhudev Mukherjee, Syed Mahmud and K.T.Telung. Dadabhai Naoroji and Jyothiba Phule970 demanded State-sponsored free education for all children for at least four years. This demand was indirectly acknowledged in the Commission’s recommendations on primary education.971 Thereafter, the first law on compulsory education was introduced by the State of Baroda in 1906. This law provided for compulsory education to boys and girls in the age groups of seven to twelve years and seven to ten years respectively.972

6.31.5. Gopal Krishna Gokhale’s Bill (1906)

Gopal Krishna Gokhale rendered a remarkable service for Primary Education in India Inspired by the example of England which introduced a new age in education in 1902 and by the act of the Baroda State which made Primary education mandatory in 1906, Gopal Krishna Gokhale moved a Bill for compulsory education in the Imperial Legislative Assembly in 1911, albeit unsuccessfully, and in the midst of stiff resistance973. In his rendition to the

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969 D.M Desai, Universal, Compulsory and Free Primary Education in India, Bombay: Indian Institute of Education1953
970 Consultation Paper On 'Literacy In The Context Of The Constitution Of India’ National Commission To Review The Working Of The Constitution September 26, 2001, New Delhi
973 Ibid at 18.
Imperial legislative Assembly he said “I think that this question of compulsory and free
Primary Education is now in this country the question of questions. The well-being of
millions upon millions of children who are waiting to be brought under the humanizing
influence of education depends upon it.”

It stated that free and compulsory education for boys between the age of 6 and 10
especially in those areas where 33 percent of male population was already at school be
introduced. The expenditure was to be borne in a ratio of 1:2 by the local bodies and the
government. ”

When nothing tangible was done, Gokhale introduced another Private Bill on 16
March 1911” compulsory Primary Education could be started by seeking prior consent of the
local covets of their area where a definite number of children from six to ten years of age
were receiving education. Despite the eloquent pleading of Gokhale, the bill was rejected
by 38 votes to 13 on the grounds that it was too premature a step to be followed and there was
no popular demand for compulsory primary education.

6.31.6. Developments in Primary Education during 1921

The year 1921 became a a path breaking chapter in the history of education in India.
The period witnessed the passing of many Provincial Acts of primary education which in turn
led to a spurt in the number of schools, pupils and literacy. It became symptomatic of nation
building.

These acts empowered the Local authorities to introduce compulsory system of
Primary education in their areas. Though the acts considerably varied from State to state but
the objects were the same that is of eradication of illiteracy through universal education. All
the Acts were applicable to both the sexes except in the Central Provinces where the Act was
essentially for the boys and the age of compulsion was fixed at six to ten and six to eleven in
some states. The act also made provisions for penalizing parents who failed to send their
children to school. A tabular representation of the Acts shows the expanse of primary
education in 1921 and how the provinces became a partner in the education drive to eliminate
illiteracy.

974 M.K. Jain, Committees and Commissions: Elementary Education Select Documents, Shipra Publications,
New Delhi, 2007, p.6
975 S.C. Ghosh op.cit., p.138
976 N. Jayapalan, Problems of Indian Education, Atlantic Publishers and Distributors, New Delhi, 2001, Reprint,
2005, p.47
977 Shiv Kumar Saini, Development of Education in India: Socio Economic and Political Perspective, Cosmo
Publications, Delhi, 1980, p. 58.
Table 6.15: Provincial Acts on Compulsory Primary Education

<table>
<thead>
<tr>
<th>Year</th>
<th>Province</th>
<th>Name of the Act</th>
<th>Compulsion Whether for Boys and Girls</th>
<th>Whether Applicable for Rural Areas or Urban Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919</td>
<td>Punjab</td>
<td>Primary Education Act</td>
<td>Boys</td>
<td>Both</td>
</tr>
<tr>
<td>1919</td>
<td>United Provinces</td>
<td>Primary Education Act</td>
<td>Both</td>
<td>Municipal</td>
</tr>
<tr>
<td>1919</td>
<td>Bengal</td>
<td>Primary Education Act</td>
<td>Boys (Extended to Girls by an Amendment in 1932)</td>
<td>Municipal</td>
</tr>
<tr>
<td>1919</td>
<td>Bihar and Orissa</td>
<td>Primary Education Act</td>
<td>Boys</td>
<td>Both</td>
</tr>
<tr>
<td>1920</td>
<td>Bombay</td>
<td>City of Bombay Primary Education Act</td>
<td>Both</td>
<td>(Applicable to the City of Bombay only)</td>
</tr>
<tr>
<td>1920</td>
<td>Central Provinces</td>
<td>Primary Education Act</td>
<td>Both</td>
<td>Both</td>
</tr>
<tr>
<td>1920</td>
<td>Madras</td>
<td>Elementary Education Act</td>
<td>Both</td>
<td>Both</td>
</tr>
<tr>
<td>1923</td>
<td>Bombay</td>
<td>Primary Education Act</td>
<td>Both</td>
<td>Applicable to the whole of the Province Except Bombay City</td>
</tr>
<tr>
<td>1926</td>
<td>Assam</td>
<td>Primary Education Act</td>
<td>Both</td>
<td>Both</td>
</tr>
<tr>
<td>1926</td>
<td>United Provinces</td>
<td>District Board Primary Education Act</td>
<td>Both</td>
<td>The Rural Areas only</td>
</tr>
<tr>
<td>1930</td>
<td>Bengal</td>
<td>Primary Education Act</td>
<td>Both</td>
<td>The Rural Areas only</td>
</tr>
</tbody>
</table>


6.31.7. Hartog Committee (1929): Phase of Consolidation of Primary Education

An Auxiliary committee on education under the Chairmanship of John Simon with Philip Hartog as its President was constituted to enquire into the status of education soon after the implementation of the Provincial Acts of primary education. It was warmly welcomed as it laid down a well-directed policy determined to eliminate all sorts of wastages and stagnation. The comprehensive report submitted in 1929 stated:
“So far as we can judge, the vast increase in numbers in Primary schools produces no commensurate increase in literacy, for only a small proportion of those who are at the primary stage reach class IV, in which the attainment of literacy may be expected. The wastage in the case of girls is even more serious than in case of boys.”

Consolidation of primary education was to be achieved through:
1. Liberalization of school curricula and Rural reconstruction work in the Village Primary Schools
2. Adjustment of school hours and holidays to seasonal and local needs
3. The minimum duration of the primary education was to be extended for four years
4. Special attention to the lowest class to save from wastage and stagnation
5. Provision of suitable training refresher courses and conferences and salaries of teachers
6. And finally introduction of compulsion after a careful preparation of the ground by the Government which should not feel complacent by handing over the charge of Primary Education to local bodies but keep an active interest in its expansion.

As a result primary education rose very slowly. By 1937 the number of schools rose to 1,92,244, that of pupils to 1,02,24288 and the direct expenditure involved came to 8,13,38,015 only.


Following the recommendations of the Hartog Committee, the Central Advisory Board of Education (CABE) appointed S.H. Wood and A. Abbot to advise CABE on the reconstruction of education in India. This led to a report termed as Wood Abbot Report (1936-1937). The first part on general education was scripted by Wood and the second that dealt with vocational education was written by Abbot. It was the first part by Wood that emphasized on the provision of trained teachers in primary schools. It recommended that curriculum of elementary education should be in keeping with the rural needs and climate. The mother tongue should be as far as possible be the medium of instruction and teaching of

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979 S.C.Ghosh op. cit., p.155
980 Ibid at p.160
English should be avoided as far as possible and to improve the quality of teaching a three year pre-service education course of teachers of primary and middle school. 981

6.31.9. Zakir Husain Committee Report: Demand of Compulsory Education Reiterated

Gandhi mooted the idea of self-supporting ‘basic education’ or ‘Nai Taleem’ for a period of seven years through vocational and manual training, at the All India National Conference on Education held at Wardha on 22 and 23 October 1937. 982 While detailing on the scheme Gandhi said:

“the Primary education should equip boys and girls to earn their bread by the state guaranteeing employment in the vocations learnt or by buying their manufacture at prices fixed by the State.” 983

Pursuant to the resolutions adopted at the All India National Educational Conference in Wardha, a Committee under Dr. Zakir Husain was constituted. It worked out detailed syllabuses for a number of crafts and made an important suggestions on teachers, supervision and examination and administration. This report was accepted at the Haripura session of Indian national Congress in February 1938 and was implemented in the seven congress ruled provinces.

6.31.10. Kher Committee Report (1938)

As an extension of the educational reconstruction programme the CABE appointed a committee in 1938 under B.G.Kher, then the Premier of Bombay. Its chief recommendation was to make basic education compulsory for 8 years from the age of 6 to 14 years. This period should be split into junior stage covering five years and the senior stage including 3 years of schooling. Further it emphasized that it was only after Class v or attaining the age of 11 that they should be allowed to leave basic schools for other kinds of schools with a school leaving certificate.984 The medium of instruction should be the mother tongue.

981 Udai Veer, Modern Basic Education, Anmol publications, New Delhi, pp.54-55
982 B G Kher et al., Wardha Education Scheme, First Committee’s Report, available at http://www.education.nic.in/cd50years/g /52/4U/524U0101.htm See also, Mahatma Gandhi’s Inaugural Address, All India National Education Conference at Wardha, available at http://ca.geocities.com/jill.sandwell @rogers.com/ shoreditch/pages/gandhi.pdf
983 K.G.Sailyadin, Problems of Educational Reconstruction, Bombay, Asia Publishing House, 1962, pp.52-53
984 S.C. Ghosh op. cit., p. 168
6.31.11. The Post War Educational Development in India (1944)

In yet another attempt towards securing compulsory education for Indians, Sir John Sargent, the Educational Advisor with the Government of India was asked to prepare a memorandum for the development of Education. The landmark Sargent Plan or The Post War Educational Development in India (1944) report was aimed at attaining the educational standard of contemporary England in India.\(^985\) It proposed a reasonable provision of primary education for children between 3 and 6, a provision of universal free and compulsory education for all children between the ages of 6 and 14, divided into two stages of Junior Basic (6-11) and Senior Basic (11-14) with a pupil teacher ratio (PTR) of 1:30 for Pre –Basic and 1:25 for senior Basic Schools in India. Special institutions for the physically and mentally handicapped children were also suggested. But one major drawback of the plan was that it fixed a period of forty years for implementation. K.G.Saiyidain who was associated with the working of the Sargent Plan has thus commended the Plan for being widely comprehensive and

“It is inspired by the desire to provide equality of opportunity at different stages of education. At the Primary stage it envisages not merely the provisions of free schooling but also other facilities without which the poor children cannot fully avail themselves of the educational opportunities –midday meal, books, and scholarships, medical inspection and treatment.\(^986\)

The nationalist opinion rejected this long period, and a committee under the chairmanship of B.G. Kher proposed that this goal could and should be achieved in a period of 16 years (1944-1960)\(^987\). It was this recommendation that was eventually incorporated in the Constitution as a Directive Principle of State Policy.

6.31.12. A Great Promise Betrayed: Right to Education in the Draft Constitution

However, while the demand for compulsory primary education was articulated during the freedom movement, it was not actually translated, as one might have expected, into a fundamental right when the Constitution was drafted.\(^988\) The Constituent Assembly Debates

\(^985\) S.C.Ghosh op.cit., p.170
\(^987\) Supra note 33
reveal that an amendment was moved to alter the draft Article relating to FCE. By this amendment, the term ‘entitled’ was removed from the draft Article to ensure that education remained a non-justiciable policy directive in the Constitution.\textsuperscript{989} Instead, the right to education which before was a justiciable right was transformed into a non-justiciable right under the directive principles.

In January 1947, an Advisory Committee was constituted to finalize the Fundamental Rights to be placed before the Constituent Assembly. A Sub-Committee which was setup by this Advisory Committee for which K. M. Munshi submitted a Note and Draft Articles on 17th March, 1947.\textsuperscript{990} It read as follows: “Article VIII was providing for Right to Education in the following terms: “Every citizen is entitled to have free primary education and it shall be legally incumbent upon every unit of the Union to introduce free and compulsory primary education up to age of 14 and in case of adults up to the standard of literacy. The duration, limits; and method of primary education shall be fixed by law.”

Subsequently on 27th March, 1947, among other proposals, the Sub-Committee discussed whether right to primary education could be a justiciable fundamental right or not? Although this committee had distinguished and self-proclaimed liberals and Gandhians like Mr. M. R. Masani, it was Mr K. T Shah who said that if a right to education becomes non-justiciable, it "would remain as no more than so many pious wishes". He added that if it does not become "imperative obligations of the state towards the citizen, we would be perpetuating a needless fraud". Furthermore, he wrote in the dissenting note, "once an unambiguous declaration of such a right is made (justiciable), those responsible for it would have to find ways and means to give effect to it. If they had no such responsibility placed upon them, they might be inclined to avail themselves of every excuse to justify their own inactivity in the matter, indifference, or worse\textsuperscript{991}

The majority decision arrived at declared it as a justiciable right and submitted its final report on 16th April, 1947.

Thus right to education was placed under Clause 23 which provided:

“Every citizen is entitled as of right to free primary education and it shall be the duty of the State to provide within a period of ten years from the commencement of this

\textsuperscript{989} Supra note 31 at p.4

\textsuperscript{990} Mubashir Ahmad Malik & M.Afzal Wani, A Critique of Right to Education in India, Asian Journal of Education and e-learning, Volume 2, August 2014, p.265

Constitution for free and compulsory primary education for all children until they complete the age of 14 years.”

However, on 21st April, 1947, in an expert meeting of Govind Ballabh Pant, Alladi Krishnaswami Ayyar, M. Ruthnaswami chaired by Sardar Vallabhbhai Patel, it was decided in a dramatic manner to transfer the Right to Education to the chapter on Directive Principles of the State Policy. said, "Is this a justiciable right? Suppose the government has no money?"Pandit Govind Ballabh Pant quipped, "It cannot be justiciable. No court can possibly adjudicate". So "this clause be transferred to Part I (Directive Principles)".  

Thus, while the Subcommittee of the Constituent Assembly on Fundamental rights decided to place free and compulsory education in the list of fundamental rights under Clause 23, the same was reversed by its Advisory committee which sent it to the non-justiciable section.

After shifting free and compulsory education from the Fundamental rights segment to the non-justifiable rights chapter, draft Article 36 was taken up for discussion in the Constituent Assembly on 23rd November 1948, In the course of debating Article 36 relating to FCE there were two amendments proposed:

One of the members Pandit Lakshmi Kanta Maitra of West Bengal proposed that the reference to free primary education be deleted so that it does not contradict the reference of completion of fourteen years of age. She made a plea Dr. B.R. Ambedkar:” Mr.Vice-President, Sir, I beg to move: “That in article 36, the words ‘Every citizen is entitled to free primary education and’ be deleted.”

Another member Naziruddin Ahmad had also contended that in view of the expected resource crunch, the reference to the fourteen years be reduced to the age of ten years and the commitment of the State is limited to only primary education.

B.R. Ambedkar responding to the proposed amendments opined that” I accept the amendment proposed by my friend, Mr. Maitra which suggested the deletion of the words’ every citizen entitled to free primary education.” But I am not prepared to accept the amendment of my friend, Mr. Naziruuddin Ahmad. He seems to think that the objective of

- \textsuperscript{992} Dr. R.M.Pal,. Denial of Right to Education: A human Right’s violation, Social action, Vol. 51 April-June 2001, pp.153-154
- \textsuperscript{993} Amendment moved by Pandit Lakshmi Kanta Maitra during the Constituent Assembly Debates, Volume 7, November 23, 1948, available at http://parliamentofindia.nic.in/ls/debates/vol7p11.htm
- \textsuperscript{994} The amendment moved by Mr Naziruddin Ahmad during the Constituent Assembly Debates. Constituent Assembly Debates, Volume 7, November 23, 1948, available at http://parliamentofindia.nic.in/ls/debates/vol7p11.htm
rest of the clause in Article 36 is restricted to free primary education. But, that is not so. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of fourteen years. If my honourable friend, Mr. Naziruddin Ahmad had referred to article 18, which forms part of the fundamental rights, he would have noticed that a provision is made in Article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be occupied in some educational institution. This is the object of Article 36 and that is why I say the word primary is quite inappropriate in the particular clause. “995 Finally, article 36 as amended, was to be part of the Constitution of India as article 45.

On another occasion, Prof. Shibban Lal Saksena argued for increasing the age mentioned from fourteen to sixteen years citing that in other countries the age for employment is higher and therefore in our country also the age should have increased to sixteen years.996

It is interesting to note that at present, one of the most prominent demands of child rights groups in India is to increase the age of child from the current 14 years to 18 years in order to fall in line with the international instruments and in particular the United Nations convention on the Rights of the Child.

It is evident from the analysis that there were various perspectives in the Constituent Assembly debates on the issue of children and their rights, the length and scope of FCE, increasing the age of the child. However the major drawback of all the proceedings in the Constituent assembly was that it failed to secure a due share to the children of India and had denied them the right to education as a fundamental right which was a grave injustice to the children.

6.31.13. Policy Shift in Right to Education Gains Momentum in Independent India

Between 1951 and 1955, public expenditure on education remained less than 1 per cent of the total GDP, and stagnated between 1 and 2 per cent until 1979.997 When it came to

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995 Constitutional assembly Debates, volume VII, Book 2, Lok Sabha Secretariat, New Delhi, 1999, pp 538-540
996 Ibid at pp 814-815
997 Soli J Sorabjee, “Our Constitutional Commitment to Education: Regenerating Values in Our Youth,” in Rajni Kumar, Anil Sethi and Shalini Sikka (Eds.), School, Society, Nation, , Orient Longman Private Limited, New Del,” in Rajni Kumar, Anil Sethi and Shalini Sikka (Eds.), School, Society, Nation, , Orient Longman Private Limited, New Delhi 2005
hi 2005
allocation of funds, free and compulsory education for the masses was never considered to be of higher priority than some other expenditures for which money was found.\textsuperscript{998} The decade post-independence was still dismal for education. Jain\textsuperscript{999} in a study of budget speeches from 1951-1961 found that “There is not to be found even a passing reference to education let alone to Article 45 in the Budget Speeches.”

S.C. Ghosh\textsuperscript{1000} commented on the neglect of policies towards education in the post-independence period by the two Commissions Mudaliar in 1949 and Radhakrishnan in 1953 which had become too exclusive and elite-oriented. In both these Commissions an “inversion of priorities “was visible where emphasis was laid on higher education to the neglect of Primary Education just like its many predecessor Commissions : “The Mudaliar Commission as well as the Radhakrishnan Commission which came before it dwelt exclusively with two areas of education in which the ruling elite groups were interested. ...... In elementary education, the evils of wastage and stagnation continued unabated as no structural changes like multiple entry or part time education were introduced.”

In order to offset the disregard paid to elementary education of the former Commissions, an Education Commission (Kothari Commission)\textsuperscript{1964} under the Chairmanship of D.S. Kothari was instituted. It recommended five years of good education for all children by 1975-76 and seven years of such education by 1985-86 and placed the highest priority for free and compulsory education up to the age of fourteen.\textsuperscript{1001} The recommendations were duly reviewed by Naik:

“the recommendation of the commission regarding the common school system is the integral part of the programme to promote the education of the poor, reduce its dual character in which haves receive one type of education and have nots another, and to create a socially cohesive and egalitarian society.”\textsuperscript{1002}

This landmark Commission shaped two historic National policies on Education one in 1968 called the National Policy on Education announced by Prime Minister Indira Gandhi and another National Policy on Education of 1986 under the Premiership of Rajiv Gandhi. The former NPE\textsuperscript{1003} of 196 focused on national integration and restructuring by fulfilling

\begin{footnotes}
\item[998] J.P. Naik, The Education Commission and After, Allied Publication, New Delhi, 1982
\item[1000] S.C. Ghosh A History of Education in Modern India (1757-1886), Orient Longman Ltd., New Delhi p.181
\item[1002] Naik, J.P. the education Commission and after, A.P.H. Publishing Corporation, , New Delhi 1997 at p.94
\end{footnotes}
education for all children up to the age of fourteen as stipulated by the Constitution of India. The revised version of NPE 1968 called NPE 1986\textsuperscript{1004} was known or its ‘child centred approach’. It stressed on Early Childhood Care and Education and on Integrated Child Development services. Its major thrust was on three major areas\textsuperscript{1005}:

1. Universal Access and Enrolment
2. Universal retention of children up to fourteen years of age
3. A substantial improvement in the quality of education to enable all children to achieve essential level of learning.

Nevertheless it was not until 1993, that the matter really took centre-stage, when the Supreme Court ruled in the now famous case of J P Unnikrishnan v. the State of Andhra Pradesh\textsuperscript{1006} that education was a Fundamental Right flowing from Article 21 that guaranteed the right to life and personal property. The Court held that “though right to education is not stated expressly as a fundamental right, it is implicit in, and flows from, the right to life guaranteed under Article 21… (and) must be construed in the light of the Directive Principles of the Constitution.”

### 6.31.14. Catalytic Effect of Judicial Activism on RTE

India has a well-developed judicial system and a recent history of constitutional rights litigation revealed that the Judiciary showed keen interest and played an active role in providing free and compulsory education to all the children below the age of fourteen years. Through the development of its ‘Public Interest Litigation’ (PIL) jurisdiction, the Supreme Court of India came to act as a ‘combination of constitutional ombudsman and inquisitorial examining magistrate, vested with responsibility to do justice to the poor litigant before it by aggressively searching out the facts and the law, and by taking responsibility for fully implement its decisions … PIL provides a model for courts struggling to balance the transformative aspect of law against the law’s natural tendency to favour those rich enough to invoke it.”\textsuperscript{1007}

Since Maneka Gandhi v. Union of India\textsuperscript{1008}, the ambit and scope of Article 21 has expanded beyond imagination. Article 21 has become a springboard of a whole lot of human

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\textsuperscript{1004} Ministry of Human Resource Development, National Policy on Education (NPE), 1986, Department of Education, MHRD, GOI, New Delhi, 1998 pp.7-12

\textsuperscript{1005} Ibid at p.13


\textsuperscript{1007} Burt Neuborne, ‘The Supreme Court of India’, International Journal of Constitutional Law, 2003, p.503

\textsuperscript{1008} AIR 1978 SC 597: (1978) 1 SCC 248

~ 494 ~
rights viz., right to legal aid and speedy trial (Hussainara Khatoon to A.R.Antulay), the right to means of livelihood(Olga Tellis), right to dignity and privacy (Kharak Singh ), right to health(Vincent Panikurlangara v.Union of India), right to pollution free environment(M.C. Mehta v. Union of India ) and so on.  

In 1992 and 1993, the Supreme Court of India decided two PIL cases in which the plaintiffs claimed a judicially enforceable right to education. Although both cases concerned the impact of certain state laws on private educational institutions of higher learning, the Court took the opportunity to develop a precedent that also governed the public provision of elementary education.

The judicial decision from which the right to education emanated as a fundamental right was from the one rendered by the Supreme Court in Mohini Jain vs. State of Karnataka. The Supreme Court observed in case of Mohini Jain v. State of Karnataka, that the Directive principles which are fundamental in the governance of the country cannot be isolated from the Fundamental rights guaranteed under Part III of the Constitution. While deciding on the constitutionality of the practice of charging capitation fee In this case the Supreme Court through a division bench comprising of justices Kuldip Singh and R.M Sahai, held that:

‘the right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.’ The Apex Court further held: “Right to life is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue

This rationality of the judgment was adjudged by a Constitution Bench of the Supreme Court in Unni Krishnan J. P. v. State of A.P. The enforceability and the extent of the right to education was further clarified in the following words:

“The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development.”

The immediate effect of the Unni Krishnan decision as observed by Sripati and Thiruvengadam was that any child below the age of fourteen who was denied facilities for

1009 Aparna Bhat, Supreme Court on Children Human rights Law network New Delhi 2005
1011 1992 SCR (3) 658
1012 Ms Mohini Jain v State of Karnataka and others, AIR 1992, SC, 1858.
1013 AIR 1993 SC 217:1993 SCC(1)645
primary education could approach a court for an order directing the authorities to initiate appropriate measures.\textsuperscript{1014} The Apex Court, however, limited the State obligation to provide education facilities as follows:
i) Every citizen of this country has a right to free education until he completes the age of fourteen years; ii) Beyond that stage, his right to education is subject to the limits of the economic capacity of the State.

Unni Krishnan was followed in N.Kunhichekku Haji (dead) by LRS.\textsc{v.}, State of Kerala and others\textsuperscript{1015} when the Court in a case pertaining to question of providing up gradation of school held that children have a fundamental right to education and therefore larger interest of young children should be taken into consideration in meeting the procedural cobweb and the technicalities should not subsume the substance. This was again acknowledged again in the State of Orissa \textsc{v.} Dipti Paul\textsuperscript{1016} when the Court while deciding on the case of salaries of teachers appreciated the importance of universalization of primary education.

In Rohit Singhal and others \textsc{v.} Principal, Jawaharlal N. Vidyalaya and others\textsuperscript{1017} the court held then:

“The worlds shall be a better or worse place to live according to how we treat the children today. Education is an investment made by the nation in it children for harvesting a future crop of responsible adults, productive of a well-functioning society.”

Another exemplary case was Bandhua Mukti Morcha \textsc{v.} Union of India\textsuperscript{1018} where Justice K. Ramaswamy and Justice Sagir Ahmad, observed that illiteracy has many adverse effects in a democracy governed by rule of law. It was only the educated citizens who could meaningfully exercise their political rights, discharge social responsibilities satisfactorily and develop spirit of tolerance and reform.

In yet another prominent case, the Supreme Court observed in M.C. Mehta \textsc{v.} State of Tamil Nadu\textsuperscript{1019} that to develop the full potential of the children they should be prohibited to do hazardous work and education should be made available to them. In this regard the Court held that, the government should formulate programme offering job oriented education so

\textsuperscript{1014} Supra note 8 at 153
\textsuperscript{1015} 1995 Supp(2) SCC 382
\textsuperscript{1016} 2000 (10) SCC 413
\textsuperscript{1017} 2003(1) SCC 687
\textsuperscript{1018} AIR 1992 SC 38, 1991 SCR (3) 524
\textsuperscript{1019} (1996) RD-SC 1576 (10 December 1996)
that they may get education and the timings be so adjusted so that their employment is not affected.

The Supreme Court again vocalized the indispensability of the right in Avinash Mehrotra v. Union of India.\textsuperscript{1}\textsuperscript{020} It advocated that the right to education attaches to the individual as an inalienable human right. It also held that the right to education is more than human or fundamental right. The Article 21A and 51 A(c) balances the relative burdens on parents and on the State for compulsory education of children, free from fetters of cost, parental obstruction or State inaction.\textsuperscript{1}\textsuperscript{021}

In the same case The Apex Court also commented, Right to education requires a child to study in a quality school and a quality school should pose no threat to the child’s safety. It is the fundamental right to each and every child to receive education free from fear a huge impact in terms of mobilizing civil society, legitimating demands for a right to education, and it was the Supreme Court that unleashed a wave of extensive pressures on the government to formally amend the Constitution. As one observer put it, the proposed amendment ‘is an initiative which could have far-reaching consequences … It has the potential to be a major catalyst in achieving the elusive goal of universal elementary education.’\textsuperscript{1}\textsuperscript{022}

After skimming through the series of judicial approaches to education above, one can conclude that the legitimate demand of education as a Fundamental right was rendered possible through the activist intervention of the Supreme Court. In the next segment the making and passage of the 86\textsuperscript{th} Constitutional Amendment Act shall be dealt with in detail and later the social impact assessment of the said Act and how it unfolded in reality shall be considered.

6.31.15. The Making of the 86th Constitutional Amendment Act

Even prior to the RTE, the Government of India’s efforts were towards universalization of elementary education in the country. Numerous efforts were intensified in the 1980s and 1990s through several interventions such as Operation Blackboard (OBB), the Shiksha Karmi Project (SKP), Project the Andhra Pradesh Primary Education (APPEP), the Bihar Education Project (BEP), the UP Basic Education Project (UPBEP), Mahila Samakhya (MS), the Lok Jumbish Project (LJP), and Teacher Education, which put in place a

\textsuperscript{1020} Avinash Mehrotra v. Union of India (2009) 6 SCC 398
\textsuperscript{1021} Ibid
decentralised system of teacher support through District Institutes of Education and Training (DIETs) and the District Primary Education Programme (DPEP). The latest is the SSA, a centrally-sponsored scheme implemented in partnership with state governments for the UEE across the country. Due to these initiatives, over the years there has been significant spatial and numerical expansion of elementary schools in the country.

Things gained momentum in the 1990s when the Ramamurti Committee on 7 May 1990 during V.P. Singh’s regime was instituted to Review the National Policy on Education of 1986. In its Report titled ‘Towards an enlightened and Humane Society NPE, 1986-- A Review ’ where it admonished the Government for showing slackness towards education. It reads : “ Now time has come to recognize the ‘Right to Education’ as one of the fundamental rights of the Indian citizens for which necessary amendments to the constitution may have to be made. “

Pursuant to the decision arrived in 1993 in Unnikrishnan case and as a follow –up to the Ramamurti Commission , Saikia Committee was constituted under the leadership of Mr. M. R. Saikia, Minister of State for HRD (Education) in 1996, with State Education Ministers as its members, to consider the financial, administrative, and legal implications of amending the Constitution to make elementary education a fundamental right. The Saikia Committee recommended that the central and state governments should allocate 50% of budgetary allocations for education to elementary education and to see that they are not diverted to any other sector.

Throwing light on the need for an amendment for universal education, the report maintained:
“The Constitution of India should be amended to make the right to free elementary education upto the 14 years of age, a fundamental right. Simultaneously an explicit provision should be made in the Constitution to make it fundamental duty of every parent of every citizen who is a parent to provide opportunities for elementary education to all children up to 14 years.”

However, the committee did not suggest central legislation making elementary education compulsory; on the other hand, states could either amend existing laws or enact fresh legislation in this regard.

1023 India Infrastructure Report, p.33
1024 Nalini Juneja, Constitutional Amendment to Make Education a Fundamental right --- Issues for a Follow –up Legislation, National Institute of Education Planning and Administration, March 2003
1025 Amit Kaushik, Right to Education Bill and its Implications for Elementary Education, VIKALPA, Volume 34, April - June, 2009 p.65
1026 J.G.B. Tilak, A Fundamental Right, Seminar, 01 April 1998
As a result the Constitution 83rd Amendment Bill was tabled in 1997 tabled in the Lok Sabha which was later introduced in the Department Related Parliamentary Standing Committee on Human Resource Development which submitted it to the two houses recommending:

1. Retention of Article 45 to cater to the 0-6 age group
2. Clause(3) of the proposal Article 21-A relating to private institutions may be deleted.
3. “The Center should prepare one simple legislation with some skeletal framework which may also indicate the Central share in the financial burden. The details can be formulated by the respective states according to their requirements. The Central Government may therefore consider working out the necessary legislation.”

The 83rd Bill was amended and reintroduced as Constitution 93rd Amendment Bill by the NDA Government in 2001. It was passed by unanimous vote in the Lok Sabha on 27th November 2001 and by the Rajya Sabha on 14 May 2002. Since then it was scuttled many a time only to be enforced in 2010 as Constitution (Eighty-sixth) Amendment Act, 2002.

Thus the entire exercise from 1950 to 2002 and thereafter, the education policies and schemes have made remarkable changes in the field of universalizing elementary education. In view of this state of affairs the High Courts 1027 and the Supreme Court of India 1028 in their dynamism have brought in a fundamental right to education reading the fundamental right to life in Article 21.

6.31.16. Passage of the Act

Immediately after 2002, with the introduction of the Article 21A in the Constitution of India, Parliament set the ball rolling to implement its provision by law. The first draft of the enabling Right to Education Bill was circulated in 2003 The Free and Compulsory Education For Children Bill, 2003 was prepared and posted on the website to elicit public opinion at large. After incorporating necessary changes, a revised draft of the Bill, 2004 was once again posted online. The following year in 2005, The Central Advisory Board of Education finally drafted the Right to education Bill, 2005 and submitted it to the Ministry of Human Resource Development which in turn tendered it to the National Advisory Council for its consideration. It met opposition from many quarters due to its mandatory provision of 25% reservation to disadvantaged children in private schools. Indian Law Commission too

1027 Murli Krishna Public School v. State of A.P., AIR 1968 AP 204
1028 Univ. of Delhi v. Ram Nath, AIR 1963 SC 1873
had initially proposed 50% reservation for the disadvantaged and marginalized students in the private schools. 1029

On the contrary, the Sub-Committee of the Central advisory Board of Education which prepared the draft Bill held this provision as a significant prerequisite for building a democratic and egalitarian society. However on July 14 2006, the Finance Committee and Planning Commission rejected the Bill in view of financial crunches. The States also expressed their inability to share the burden. It was only in August27, 2009 that the Parliament mustered an overwhelming undisputed support of its members and enacted the much-awaited Right of Children to Free and Compulsory Education Act.

The Bill received Cabinet approval on July 2, 20091030 followed by the Rajya Sabha which passed the bill on July 20, 2009 1031 and eventually the final consent came from Lok Sabha on August 4, 20091032. Notified as law on 26 August 2009 1033 as the Children’s Right to Free and Compulsory Education act the Act applied to the whole of India and it became operative from April1, 2010 except in the State of Jammu and Kashmir. This act garnered immense attention also because it was the for the first time in the history of India that a law was proclaimed by a speech of the then Prime Minister Manmohan Singh. In his speech the Prime Minister of India affirmed that,

” We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India.”1034 Moreover the Fundamental Right to education is unique in many respects as this is the only Fundamental Right which was added to the chapter on Fundamental Rights since 1950. It is the only Fundamental Right which is dependent upon the enactment of a subordinate legislation for its implementation.

Coming to the Statement of Objects and Reasons, it States the Right of Children to Free and Compulsory Education Bill, 2008 includes strengthening of the social fabric of democracy, to give effect to the Directives in the then Article 45, to fulfill the goal of

1029 Seethalakshmi, S. "Centre buries Right to Education Bill – India, The Times of India 14 July, 2006
1034 “Prime Minister's Address to the Nation on The Fundamental Right of Children to Elementary education”. available at http://pib.nic.in/, April 1, 2010
Universal elementary education and also to comply with article 21A which requires a law to be enacted.

The matter does not come to a halt here as the Constitution (Eighty-Sixth Amendment) Act 2002 further imposed a corresponding fundamental duty sheathed in Article 51A(K) on the guardian or parent to provide opportunities for education to his child between the age of 6 to 14 years.

In order to execute the Act, the Ministry of HRD had set up a panel of 14 members as the National Advisory Council(NAC). It comprised of the following members:

- Annie Namala, an activist and head of Centre for Social Equity and Inclusion
- Kiran Karnik, former president of NASSCOM
- Yogendra Yadav – social scientist. India
- Krishna Kumar, former director of the NCERT
- Mrinal Miri, former vice-chancellor of North-East Hill University
- Sajit Krishnan Kutty Secretary of The Educators Assisting Children's Hopes (TEACH)India.
- Aboobacker Ahmad, vice-president of Muslim Education Society, Kerala

Soon after the implementation of the act, The Ministry of Human Resource Development released the Anniversary Report on the status of the implementation of the Act in 2010. HRD Minister Kapil Sibbal announced that “The government has taken a number of steps to implement the provisions of the Act. It has committed Rs.231, 233 crore to be shared between the Central and state governments over a five-year period for implementation of the Act. It has revised the existing norms and introduced new norms for its flagship programme, the Sarva Shiksha Abhiyan, to ensure all children access and complete elementary education. The level of commitment in the states is good. This is just the first year, things will be better next year.”

With all the paraphernalia set accurately and satisfied with the shape of the Act, the Minister of Human Resource Development, Mr. Kapil Sibbal christened this legislation ‘a historic piece of legislation ‘ ‘which will have huge impact not just on the quality of

1035 HRD panel to oversee RTE rollout – India – The Times of India”. The Times of India, 26 June 2010
1036 RTE Act: First anniversary status report”. Educationworldonline. 7 May 2010
1037 Rajya Sabha Debates, 286 July 20, 2009 & Rajya Sabha Debates, 237, April 24, 2012
education imparted to children but it will also change the way we looked at education and it is revolutionary Bill’.

In the next segment a succinct study of the provisions of the RTE act shall be journeyed through in order to get a better understanding of the larger picture.

6.32. Broad Overview of the RTE Act

The RTE act is the first Central act in the domain of education and has many game-changing features, which are bound to yield significant results. It entails removal of any financial barrier that may prevent any child from availing eight years of schooling in a neighbourhood school and lays down various norms and standards. The various features of the Act and their intended application in making education a meaningful right have been analyzed below:

6.32.1. Beneficiary of the Law

The Right of Free and Compulsory Education under the act, mandates that every child in the age group of 6 to 14 years shall be provided 8 years of education in the vicinity of his/her neighbourhood. Another outstanding yet critical change was witnessed in 2011 where a decision was arrived at to extend the right to education till Class X (age 16) and in to the preschool range.

A child has been defined under subsections (c), (d) and (e) of section 2. Firstly, it means a male or female child who must be of the age of six to fourteen years. The child is further divided into three categories: the first belongs to the disadvantaged group which includes the Schedule Castes, Schedule Tribes, the socially and educationally backward class.

In the second, comes the child belonging to weaker section of such parents or guardians whose income is below the limit specified by the appropriate government by notification.

The third category introduced by the Amendment Act talks about a child with disability. The Right to Education of persons with disabilities up to 18 years of age is laid

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1038 Section 2(f) of the RTE act : “Elementary education” means the education from first class to eighth class.
1039 Section 6 of the Act
down under a separate legislation- the Persons with Disabilities Act. It may be pointed out that in the Rajya Sabha Debates it was pointed out to use the expression ‘differently abled’ in place of ‘disability ‘which ‘brings inferiority complex.\textsuperscript{1042}

\textbf{6.32.2. Nature of the Act}

Section 3(2) of the Act mentions that the “free education” means that a child shall not be liable to pay any kind of fee or charge or expenses which prevents him from pursuing and completion of the completion of the elementary education All the expenses and costs are to be borne by the State Authorities. There is no direct (school fees) or indirect cost (uniforms, textbooks, mid-day meals, transportation) to be borne by the child or the parents to obtain elementary education. The government will provide schooling free-of-cost until a child’s elementary education is completed.\textsuperscript{1043} The free educational facilities shall be extended from class 1 till class 8 This right is accessible to all children only in case of schools that are established, owned or controlled by the appropriate government or a local authority or by a government aided school. However in case of public unaided schools section 12(1)(b) allows such right only to the extent of twenty-five percent of students of the strength of the class \textsuperscript{1044} and that belonging to the weaker section and disadvantaged group in the neighbourhood. It may be mentioned here that according to the Amendment Act of 2012 will not be applicable to Madarsas, Vedic Pathshalas and educational institutions which are engaged in imparting religious instructions

Another significant facet of the Act is that it The Act makes the primary education ‘compulsory’ or ‘obligatory’. The explanation to section 8(a) defines ‘compulsory’ means that it is an obligation of the appropriate government to provide free education and ensure mandatory admission, attendance and completion of education till the child reaches the age of 14. The World Bank Education specialist for India, Sam Carlson, has observed:

The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government. It is the parents’ responsibility to send the children to schools in the US and other countries. This negative right also imposes a ban on private coaching with fee, capitation fee\textsuperscript{1045} or donation in any

\textsuperscript{1042} Sri Tiruchi Siva, Rajya Sabha Debates, 257, April 21, 2012,  
\textsuperscript{1043} Chapter 2 of the Act  
\textsuperscript{1044} Sections 13(1) and 30(1) of the Act  
\textsuperscript{1045} Section 13 of the Act
form. It is a justified measure to ban commercialization of elementary education. Collection of capitation fees shall invite a fine of up to 10 times the amount collected.

Further it prohibits (a) physical punishment and mental harassment\textsuperscript{1046}; (b) screening procedures while admission of children or parent; and (c) running of schools without recognition. In order to restrain the problem of dropouts and maximize retention of students, the Act bans the screening procedure at the ingress itself. Screening will attract a penalty of Rs.25, 000 for the first offence and double the amount for every subsequent violation.

Section 4 of the Act clarifies if a child was not admitted to the primary school at an appropriate time, he has a right to be admitted in a class appropriate to his or her age. But this comes across as a partial arrangement as one sided obligation is placed on the State while the parents and children are absolved of this responsibility.

Section 14(2) of the Act pledges that no child shall be denied admission in a school for lack of age proof. For the purposes of admission to elementary education, the age of the child is determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1856 or on the basis of such other document as may be prescribed. Though birth registration is compulsory but there are still large number of children, like the children of migrants or orphans or children belonging to the disadvantaged class, in whose case it is difficult to procure the age certificate. Thus the act remedies the situation by insisting that no child shall be denied admission for want of documents, no child shall be turned away if the admission phase gets over and no child shall be obliged to take an admission test. On the completion of elementary education the child shall be awarded a certificate.

In case the child was admitted in a school devoid of facilities then section 5(1 a) equips the child a right to seek transfer to any other school except the public school or an unaided school and section 5(3) gives a right to a child to immediately the transfer certificate.

6.32.3. Norms on Pedagogic Quality

School infrastructure norms to include libraries, including a one-time grant for books worth `3, 000 for primary schools and `10, 000 for upper primary schools;\textsuperscript{1047}

\textsuperscript{1046} Section 17(1) and (2) of the Act
\textsuperscript{1047} Supra note 2 at p.34
The act makes tremendous efforts to secure quality and excellence in education. To that effect it lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, library school-working days, teacher-working hours and school curriculum.

On the subject of PTR it demand for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school. There should be a fixed student-teacher ratio which will be applicable to all the States of India except Jammu and Kashmir and has to be ensured by appropriate government and concerned local authority within six months of commencement of the Act. The act provides minimum 2 teachers for 60 students; five teachers in case of 150 students ;and in case the strength of the class goes beyond 250 students then the ratio shall exceed 40. But it is reported that many schools have one teacher for all classes.

In order to enhance the tradition of dedicated and quality teaching, it ensures for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief. Section 28 mandates that no teacher shall engage in private teaching. It has also recommended pay-parity between teachers in government and government aided schools.

It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications. Upgrading the quality of the education is a necessity and for that teachers will need to get professional degree and if they fail to secure the same within five years they shall risk their jobs. Training norms to include training of resource persons, master trainers, and Block Resource Centre (BRC) and Cluster Resource Centre (CRC) coordinators for up to 10 days each year at `100 per person per day.

As the aim of education should be the holistic development of the child the RTE act guarantees a curriculum that shall be in consonance with the values enshrined in the Constitution, building on the child’s knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child- centred learning. The Supreme Court of India has also a intervened to demand the implementation of the act in the North-East.

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1048 Section 25(1) of the Act
1049 All India School Education Survey (NCERT), 2000
1050 Section 27 of the Act
1051 SC opens door for equal pay to teachers in pvt, govt schools”, Tribune, August 12, 2010.
1052 India Infrastructure Report op.cit., p.35
In order to check the mushrooming of unrecognised schools and to maintain the standard of education, it makes provision through section 19 of the Act that all the schools that are established or functional will have to apply for a certificate of recognition, failing which they will be penalized to the tune of Rs. One lakh and if they still flout the norms they will be slapped with a fine of 10,000 per day. Schools which have been established before 2009 but do not comply with the RTE norms are given a window period of three years to join the common stream.

6.32.4. Monitoring Mechanisms

At the institution level, schools shall constitute School Management Committees (SMCs) comprising local authority officials, parents, guardians and teachers. The SMCs shall form School Development Plans and monitor the utilization of government grants and the whole school environment. As Soares says, "to change the despairing scenario of basic education in any country would require the participation of all sectors involved. The solution will not come only as a result of governmental policies imposed on schools, as some people believe. It will be slow transformation based on small victories. However, just as access was obtained, quality and equity can also be reached with time."1054

The private unaided schools have been exempted from constituting SMCs. RTE also mandates the inclusion of 50 per cent women and parents of children from disadvantaged groups in SMCs. Such community participation will be crucial to ensuring a child friendly “whole school” environment through separate toilet facilities for girls and boys and adequate attention to health, water, sanitation and hygiene issues.1055 The community and civil society will have an important role to play in collaboration with the SMCs to ensure school quality with equity. The state will provide the policy framework and create an enabling environment to ensure RTE becomes a reality for every child.

On the national plank, The National Commission for the Protection of Child Rights1056 shall review the safeguards for rights provided under this Act1057 investigate complaints1058 and have the powers of a civil court in trying cases.

1053 Section 19(3)
1055 See Section 21 and 22 of the RTE Act
1056 The NCPCR was set up by the Government of India on 5th March 2007 under the Commission for Protection of Child Rights Act, 2005.
1057 Section 31(1(a))
1058 Section 31(1(b))
While at the state level, States are required to establish State Commissions for Protection of Child Rights (SCPCRs) or the Right to Education Protection Authority (REPA), which under s.31 of the RTE Act is mandated to monitor implementation of the Act in the states, and address all complaints of violation. So far, 11 states have constituted SCPCRs, according to the Union government- promoted National Commission for Protection of Child Rights (NCPCR, estb. 2007), which is the apex monitoring body for implementation of the Act.

Last but not the least, the Section 33 of the Act constitutes a National Advisory Council. It shall counsel the Central Government to implement the provisions of the Act and the same will issue appropriate directions to the States to implement them.\textsuperscript{1059}

\textbf{6.32.5. Affirmative Provisions}

Financial provisions for children with special needs increased from `1, 200 to `3, 000 per child per year, provided that at least `1, 000 per child will be used for the engagement of resource teachers\textsuperscript{1060}

For children of socio-economically weaker backgrounds to feel at home in private schools, it is necessary that they form a substantial proportion or critical mass in the class they join. It is for this reason that the RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in private schools. As per Census 2001, SCs constitute 16.2%, and STs constitute 8.2% (total 24.4%) of the population. Further, the Tendulkar Committee, set up by the Planning Commission to measure poverty, has estimated the below poverty line (BPL) population to be 37.2%. It is a fact that much of the population that suffers economic deprivation also suffers from social disadvantage. Thus, taken together, the figure of 25% for admission of children from disadvantaged groups and weaker sections is considered reasonable. Any lower proportion would jeopardize the long-term goal of the policy which is to strengthen social cohesion and bring out the best human resource potential inherent in our society as a whole. This implies that these children cannot be pooled together in a separate section or afternoon shift. Any arrangement which segregates, or treats these children in a differentiated manner vis-a-vis the fee-paying children will be counterproductive.


\textsuperscript{1060} Supra Note 2 at p.35
Delhi is one of the few states in the country where private schools are implementing s.12(1)(c) of the RTE Act which requires private schools to reserve 25 percent of capacity in pre-school and class I for children of poor households in their neighbourhood.

There is also a provision for special training of such school drop outs to bring them at par with the other students of the same age in such away and within such time limits as d may be prescribed. Children who have never been to school or had been forced by circumstances to quit school will get elementary education even after 14 years. The RTE Act requires that surveys and mapping of schools in the neighbourhood should be undertaken and all the neighbourhoods should be monitored and children requiring education must be identified and corresponding facilities should be positioned timely.

The Act further takes care of the drop-outs by giving the child the right not to be held back in the same class. This will be an encouraging incentive for the students and shall be a positive move towards retention of the students. Further he shall neither be expelled nor required to pass any board examination nor subjected to physical punishment or mental harassment during the course of his schooling. Sections 16 and 17 provides disciplinary action against those who treats the child otherwise.

6.32.6. Concurrent Funding by Centre and the States

The subject of Education in the Indian Constitution is a concurrent issue and both the Union and the States have coequal powers to legislate on the issue. Central and state governments shall share the financial responsibility for RTE in the ratio which may be determined from time to time.

Section 7 enunciates that the Central and the State Governments will have concurrent responsibility for endowing funds for the implementation of the Act. While the Central Government may request the Finance Commission to consider providing additional resources to a State in order to carry out the provision of RTE, the remaining funds shall be borne out by the State government. Finally the residual funding gap shall be supported by the members of the civil society, development agencies, corporate organisations and citizens of the country.

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1061 Proviso to Section 4 of the Act
1062 Ibid
1063 Section 14(2) of the RTE act
An outlay of ₹2, 312.3 billion has been sanctioned for implementation of the combined SSA programme under the RTE for the period 2010–11 to 2014–15. Out of this total amount, ₹1, 836.4 billion (79 per cent) is recurring and ₹475.9 billion is non-recurring (21 per cent). The 13th Finance Commission award of ₹240.6 billion for elementary education has been made available to the states to implement the combined RTE-SSA programme. The balance requirement of ₹2, 071.6 billion would be shared between the centre and the states in the ratio of 65:35 for all states/union territories for the period from 2010–11 to 2014–15. A ratio of 90:10 was decided for the north-eastern States. However in mid-2010 The Center boosted its share to 68%. The Finance Commission granted Rs.25, 000 crore to the States for the implementation of the Act in 2010-2011 and the Centre approved an outlay of Rs. 15, 000 crore for 2010-2011.

6.33. The Grey Areas in the RTE Act

The RTE act introduces remarkable changes in the educational system and many of its provisions are immensely revolutionary in its intentions but there are a few areas which suffer from certain flaws and incongruencies which if not judiciously addressed shall diminish the entire initiative of streamlining primary education. Below are mentioned a string of shortcomings that throw light on the void left by the RTE act in certain areas and corresponding remedies are also suggested to overcome to meet these anomalies.

1. The Act raises ambiguity as far as the understanding for the term ‘child’ is concerned. The RTE act covers only children between 6 and 14 and leaves out children aged between 4-6 and 14 to 18 who too are minors. Though the section 11 of the Act expresses interest in taking necessary steps in providing free pre-school education for children above 3 years of age but leaving out such a critical segment from the definition would tantamount to defeating the real purpose of universal education for all. This is also in contradiction to India’s own commitment at the Jomitien Conference (1990) which supports the expansion of Early childhood care as an integral part of the Education For All (EFA) commitment. Globally it has been recognized that the early years are the most critical and life defining years. This fact has been evidenced by the brain research domain that “……neurological and

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1064 Right of Children to Free and CompulsoryEducation Act and its Implementation, India Infrastructure Report, p.35
1066 World Conference on Education for All in Jomitien, Thailand held between March 5 to March 9 1990
biological pathways that affect health, learning and behaviour are set in the early years.1067 and any neglect during the early years can often result in an irreparable atrophy in the development of the brain. The United Nations Convention on Rights of the Child (UNCRC), 1989 defines any individual below the age of 18 years as a child, The Indian Juvenile Justice Act 2000 too accepts persons below the age of 14 years to be a child

Focusing only on 6-14 cohorts and dismissing the age groups of 14-18 that comprise more than 50 million children have led to a hike in school dropout rates and child labour. This glitch in the Act needs to be rectified and 86th amendment needs to be reworded in order to become truly universal.

2. Another major lacuna in the Act is that the Constitution only ensures that the state shall provide primary education up to the age of 14 years to all the children and the secondary and the higher education are contingent upon the economic capacity of the State. The right to education shall be meaningful only if all the levels of education reach out to every section of our society without leaving anybody in a lurch. Thus accordingly provisions should be made to make education available at all tiers.

3. Furthermore the Act does not cover the area of child malnutrition. India cannot deprive its infant population of a right to nutrition a, health and early childhood education as enshrined in the Conventions of the Rights of the Act, to which it is a party.

4. The successful implementation of the Act is only possible when every child attends school and is not engaged in works in home, or agriculture or industrial labor. It is imperative that child labour of any kind or creed should be abolished and violators should be heavily penalized. Labour laws should be strengthened so that the countless children employed in dangerous surroundings like mines and factories are saved. This Act thus has shown no concern and has not made any efforts to rehabilitate such children.

5. The RTE Act has another lacuna that deepens socio-economic disparity in the educational field. It denies the concept of Common School system which includes all the government, private/unaided schools. The concept of ‘neighborhood’ used in the Act is entirely different from the universally accepted meaning of the term which requires that all families residing in the neighbourhood send their children to the same

school, irrespective of their socio-economic backgrounds. The United States concept of Common school system ensures that all those who are on a government payroll like MPs, MLAs, Judges, Government officials and teachers of academic institutions get their children admitted in neighbourhood government schools.

In India the inequitable system of education within the Government like the Kendriya Vidyalayas, under the XI Plan’s 6000 Model schools or the State Governments’ Pratibha Vidyalayas in New Delhi, Utkrishta Vidyalayas in Madhya Pradesh or residential schools in Andhra Pradesh needs to be scrutinised and vetted to develop a common minimum standard of education which is a prerequisite of Common school system.

6. Another major drawback of the RTE act is that it fortifies a discriminatory multi-layered and unequal education structure as opposed to common\textsuperscript{1068} school system. It is evident from the definition of ‘school’ under the Act, which provides for four categories of schools of varying categories This has led to commercialization of education and excludes the poor who have a low socio-economic and purchasing power. Even the burden of providing free and compulsory education for each category of school is dissimilar and asymmetrical. While the government schools would cover the costs associated with all its wards, in case of special category schools like the Kendriya Vidyalays, Navodaya Vidyalaya and Sainik schools and unaided schools which are required to admit 25% children from the weaker sections of the society, the reimbursement towards them is to be borne by the Government. This kind of segregation of schools arbitrarily creates a class society.

7. One can also not evade that the very method of determining the ‘disadvantaged’ and ‘weaker’ students who are supposed to be the primary beneficiaries of the RTE act, is questionable. As result different states have adopted different methods, due to which there is no uniformity across the country. The lack of objectivity and transparency can easily translate into misuse of discretion and that would affect the poor directly.\textsuperscript{1069}

8. Another case in point is that Section 5 of the Act restricts the right of the child to seek transfer to any of the elite schools, this destroys the very basis of Fundamental right to education.

\textsuperscript{1069} Alok Ray, Rough Edges in RTE law, the Hindu Business Line, May4, 2012 accessed at http://www.hindubusinessline.com/opinion/
There is a lot of confusion on how 25% reservation in private schools shall be answered. Whether the multiple classrooms will create an enabling democratic environment and enhance teacher-ward relationships or will it put the weaker and disadvantaged lot of students in a tight spot and will they be able to cope and adjust with the education system and culture of elite schools is difficult to answer. Another complexity is that how will reservation in private schools be monitored and what will be the mechanism of selection process of 25% children from weaker of security and safety. The children cannot be compelled to receive education from an unsound and unsafe building. State must ensure that children suffer no harm in exercising their fundamental right and civic duty.\textsuperscript{1070}

The Supreme Court again in Election Commission of India v. St. Mary’s School\textsuperscript{1071} observed that Article 45 is the only provision in our Constitution, which fixes a time limit during which the state is to provide for free and compulsory education for children until they complete the age of 14 years. It observed that a true democracy is one where education is universal, where people understand what is good for them and for the nation and the right to education has to be determined.

9. Research has shown that when they are aware of the social inequality prevailing in the environment, children from weaker sections tend to perform 20 percent worse than their peers.\textsuperscript{1072} Thus RTE is silent on all such fronts.

10. Recently the Lok Sabha on May 9, 2012 cleared an amendment to the RTE act, which will widen the beneficiary net for disabled children and provide those with severe disability the choice of being home schooled for free. Initially there were no recommendations for education for children with disabilities like cerebral palsy,, dyslexia, autism and other mental disorders. But fortunately the Human Resource Department ministry admitted within one month of passing of the act that section 2(d) of the RTE Act pertaining to ‘disadvantaged groups’ will have to be changed and expand the children cover to disabled children as well. However the provision of home based schooling for such children narrows the world of the child and deprives him of all the benefits that come along with real-time classroom learning.

\textsuperscript{1070} (2009 ) 6 SCC 398
\textsuperscript{1071} Election Commission of India v. St. Mary’s School (2008) AIR (SC) 655 also Election Commission of India v. State Bank of India Staff Association, Local Head Office Unit, Patna and others (1995) supp.2 SCC
11. The Act introduces the state sponsored privatization cum voucher system in order to
demolish and destroy the government school systems under the pretext of providing
free education to the weaker sections on 25% of the seats in private schools. On
several grounds it is clear that this misconceived provision would not give benefit
whatsoever to the deprived children even in the short term. As a result the Act
promotes unregulated privatization and commercialization of school education on the
one side and substandard government school to provide abysmally low quality
education to the vast majority in the society.

12. Abolition of unrecognized schools in pursuance of the RTE obligations is another
shortcoming of the Act. Any attempt to close them would be sabotaging the spread of
literacy in the country.

13. Section 18(1) of the Act mentions that subsequent the commencement of the Act, no
school can function without obtaining a certificate of recognition. Further Section
19(1) makes it clear that no school may be established or granted recognition without
fulfilling the criteria laid out in the schedule which include, inter alia, specifications
for teacher-student ratio, presence of a playground and a library etc.

But when one encounters the reality one finds that out of the 12 lakh schools functioning
in our country today, nearly one-fifth are unrecognized provide education to a
significant population. Its popularity can be gauged from the fact that in the last 5
years, 10 lakh students in Nagpur alone, have shifted from government run schools to
private ones. As far as quality of education is concerned, unrecognized schools are
again ahead as compared to government schools simply because they function in a
market driven environment. Their revenues and sustenance are based on the quality of
their output, as opposed to government schools where there is no accountability and
remuneration is never tied to performance. Lack of adequate funding is another
major issue that needs to be addressed in order to make it a success. The RTE act has
several provisions that require financial assistance from the respective State
Governments and many like Uttar Pradesh have expressed their inability to meet the
resource crunch. Unless State Governments cooperate and make an effort to execute

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1074 Abhishek Chaudhari, In 5 years, 10 lakh students moved out of govt. schools, The Times of India, August
13, 2012
1075 National Institute of Educational Planning and Administrations, Elementary Education in Unrecognized
schools in India —A study of Punjab based on DISE statistics (2005), available at http://www.dise.in/
1076 Sections 6, Section 8, Section 12(2) of the Right of Children to Free and Compulsory Education Act, 2009
the procedures laid out in the RTE, the spread of education may come to an abrupt halt.\textsuperscript{1077}

14. The essence of the Act is to provide ‘Free and Compulsory Education’ to all children in the country with “no discrimination” whatsoever.\textsuperscript{1078} However, parents pointed out that they spend an average of `300 per month per child to sustain their children’s needs in school. This would influence the girl child to a large extent as history as shown that if there is any expense incurred in educating their child, the parents from lower income family would prefer sending only their male child to school.

15. The SDMCs are supposed to create a School Development Plan (SDP) which is to be funded by the State or Local Government. Despite being an entitlement, funds are seldom received. No doubt, the Panchayat receives an annual grant of `6 lakhs, but a sum of `3 lakhs is directly deducted as charges for electricity and `2.7 lacs for water. The remaining `30,000 is hardly sufficient to meet the rest of the needs including implementation of the RTE Act.\textsuperscript{1079}

Mandating compulsory education is one thing and setting the stage right for its implementation is another thing. If the RTE act is to really yield results, then a liberal approach towards the issues at hand should be assumed and the grey areas within the act should be immediately addressed. A self-congratulatory temper at the moment can prove to be hazardous because there is a lot that needs to be achieved. Successful implementation of the act can be made possible only by plugging the leaks that exist within the RTE act not by any stop-gap arrangement.

6.34. Strengths of RTE Act

Given the vast and diverse landscape of the Indian elementary education system, significant progress has been made towards the achievement of the goals laid out in the Constitution. These include – significantly higher levels of funding, access, enrolment and infrastructure. The recently legislated Right to Education (RTE) Act called the 86\textsuperscript{th} Amendment Act constitutionally is a milestone in the journey towards achieving the goal of universal, equitable and quality education. The Act has travelled a long and arduous path to

\textsuperscript{1077}UP’s Warped Priorities, The Times of India, April 7, 2010
\textsuperscript{1078}Under Section 3 of the RTE Act, it is stated, “No child shall be liable to any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education
\textsuperscript{1079}Supra 14 at p.10
the point of legislative sanction and is the most substantive declaration of the government's responsibility towards education. The RTE Act deserves due recognition for articulating in unambiguous terms the State’s commitment to education. This chapter assesses and makes an appraisal of the impact of Right to education and how far it has been successful in building a progressive and inclusive polity.

Some of the key strengths of the RTE are:

**Assignation of State Responsibility:** The Act clearly makes the state responsible for ensuring that every child, in the age group of 6-14, receives schooling for eight years, instead of merely shifting the onus for this to the parents, a majority of who are illiterate and mired in poverty.

**Specific Duties:** The Act reiterates the role of the state, along with private and aided schools, to satisfy certain basic norms in terms of infrastructure, learning facilities and the academic calendar. This is important since the quality of inputs has bearing on education outcomes.

**Pupil Teacher Ratio:** The Act mandates a minimum Pupil-Teacher Ratio and explicitly requires the same to be maintained in each school, rather than as an average over a block or a district.

**Teacher Qualifications:** The Act prescribes the minimum qualifications of teachers and their academic responsibilities along with the minimum quality of the content and process. This can positively impact the actual quality of education provided within our schools.

The clauses of the Act have far reaching implications on the way the schools are being established and their operations run in the country, for Primary Education. While the provisions of the Act are altruistic in their aim in creating an inclusive elementary education system, its implementation at the ground is equally heartening. Despite the fact that the Act does not address the critical foundation years of children below the age of six years, it has been still welcomed as a critical first step towards the universalization of education.

India is home to 19% of the world’s children. About one-third of its population (around 48 crore, according to the 2001 census) is below the age of 18, and around 74% of this population lives in rural areas. The population of people in the age-group 0-25 years is 56 crores, which in turn is 54% of the country’s total population. Indeed, India has the world’s largest number of youngsters.\(^{1080}\) India’s education system over the past few decades has

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\(^{1080}\) Ramakant Rai, Challenges in the implementation of RTE Act. available at www.udayindia.in visited on July 2012.
made significant progress. According to India’s Education For All Mid-Decade Assessment, in just five years between 2000 and 2005, India increased primary school enrolment overall by 13.7 per cent and by 19.8 per cent for girls, reaching close to universal enrolment in Grade 1. Even with these commendable efforts, one in four children left school before reaching Grade 5 and almost half before reaching Grade 8 in 2005. Learning assessments show the children who do remain in school are not learning the basics of literacy and numeracy or the additional skills necessary for their overall development. ¹⁰⁸¹

A clear picture of the current status of implementation of the Right To Education Act as well as the timeframe for implementation of the various provisions of the RTE Act was evident in the answer which was given in response to the question raised in the Rajya Sabha by the MP, H.K. Dua. ¹⁰⁸²

568 SHRI H.K. DUA: Will the Minister of HUMAN RESOURCE DEVELOPMENT be pleased to state:-

1. (a) the progress on the implementation of the Right to Education (RTE) Act providing for universal education up to 14 years of age, State-wise; (b) the States that have not notified the rules for implementation of the law; (c) the steps Government is going to take in this connection so that these States fall in line with the rest of the country; and (d) how long will it take for complete implementation of the Act?

2. ANSWER:

MINISTER OF STATE IN THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DR. D. PURANDESWARI)

(a) The Right of Children to Free and Compulsory Education (RTE) Act, 2009 has come into force with effect from April 1, 2010. The Sarva Shiksha Abhiyan (SSA) Framework of Implementation and norms for interventions have been revised to correspond with the provisions of the RTE Act. This includes interventions, inter alia for opening new primary and upper primary

¹⁰⁸¹ www.unicef.org
¹⁰⁸² Rajya sabha Question No. 568, Answered on November 25th, 2011
schools as per the neighbourhood norms notified by State Governments in the RTE Rules,

3. support for residential schools for children in areas which are sparsely populated, or hilly or densely forested with difficult terrain, and for urban deprived homeless and street children in difficult circumstances,

4. special training for admission of out-of-school children in age appropriate classes,

5. additional teachers as per norms specified in the RTE Act,

6. two sets of uniforms for all girls, and children belonging to SC/ST/BPL families,

7. strengthening of academic support through block and cluster resource centres, schools, etc.

Since RTE Act came into force, 50,672 new schools, 4.98 lakh additional classrooms, 6.31 lakh teachers, etc. have been sanctioned to States and UTs under SSA. The fund sharing pattern between the Central and State Governments has also been revised to a sharing ratio which is more favourable to States Governments.

(b) to (d) So far, 27 States have notified the State Rules under the RTE Act, including five Union Territories which have adopted the Central RTE Rules. These States are:

1. Andhra Pradesh
2. Arunachal Pradesh
3. Assam
4. Bihar
5. Chhattisgarh
6. Haryana
7. Himachal Pradesh
8. Jharkhand
9. Kerala
10. Orissa
11. Madhya Pradesh
12. Maharashtra
13. Manipur
14. Meghalaya
15. Mizoram
16. Nagaland
17. Punjab
18. Rajasthan
19. Sikkim
20. Tripura
21. Tamil Nadu
22. Uttar Pradesh
23. Daman and Diu
24. Chandigarh
25. Dadra and Nagar Haveli
26. Andaman and Nicobar Island, and
27. Lakshadweep.

The States of Karnataka, Gujarat, West Bengal, Goa, Delhi, Puducherry, Uttarakhand have not yet notified the RTE Rules, and these States have been reminded to expedite the
notification of the State RTE Rules.

**Table 6.16 : Timeframe for implementation of RTE:**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishment of neighbourhood schools</td>
<td>3 years (by 31st March, 2013)</td>
</tr>
<tr>
<td>Provision of school infrastructure</td>
<td></td>
</tr>
<tr>
<td>• All weather school buildings</td>
<td>3 years (by 31st March, 2013)</td>
</tr>
<tr>
<td>• One-classroom-one-teacher</td>
<td></td>
</tr>
<tr>
<td>• Head Teacher-cum-Office room</td>
<td></td>
</tr>
<tr>
<td>• Library</td>
<td></td>
</tr>
<tr>
<td>• Toilets, drinking water</td>
<td></td>
</tr>
<tr>
<td>• Barrier free access</td>
<td></td>
</tr>
<tr>
<td>• Playground, fencing, boundary walls</td>
<td></td>
</tr>
<tr>
<td>Provision of teachers as per prescribed Pupil Teacher Ratio</td>
<td>3 years (by 31st March, 2013)</td>
</tr>
<tr>
<td>Training of untrained teachers</td>
<td>5 years (by 31st March 2015)</td>
</tr>
<tr>
<td>Quality interventions and other provisions</td>
<td>With immediate effect</td>
</tr>
</tbody>
</table>

There are a whole host of issues that will crop up for the Government to address by March 31st, 2013.

- What will the State do if it has not been able to set up the necessary schools, and hire the necessary qualified teachers to provide an education to every single child in the country? In particular, in densely populated urban areas where there is very little land available for constructing new schools, how will the State construct new schools with playgrounds and buildings of the size specified in the RTE Act?

- What will the State do with all the private, unaided schools, that do not measure up to the standards set out in the RTE Act for buildings and playgrounds by March 2013? Will all such schools be de-recognised and forced to close down? How will the Government protect the interests of the parents who are currently sending their children to such private unaided schools?

- How will the State respond to those Government schools that are not able to measure up to the standards of the RTE Act by March 2013?

If things don't work out as envisaged, we will need a Plan B. We need to anticipate potential problems and begin thinking right now about possible ways of addressing them rather than starting to think about it 3 years from now when we may be mired in litigation, or stuck with lack of funding, structural issues in implementation and myriad other problems.
6.35. **Operationalisation of 86th Constitutional Amendment Act**

India’s journey towards achieving free and compulsory primary education had begun, a little more than sixty three years ago with the Constitution stating ‘The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for children until they complete the age of fourteen years’\(^{1083}\). The overall conditions were rather distressing and dismal then. The literacy rate was 18% and the female literacy was only 9%. The gross enrolment ratios at primary stages (class I – V covering the age group 6 – 11) was 43%, the corresponding figure for girls was only 25%. At upper primary stage (classes VI – VIII and age group 11 – 14) only 1 out of 8 children were enrolled in schools; among girls only 1 of 20\(^{1084}\).

If one were to retrospect on the last decade of the twentieth century 1990’s, one shall find that as per the 1991 census, children below the age of fourteen years constituted about 37% of the country's population. And according to Article 45 they ought to have been getting 'free and compulsory education.' Yet, in 1993-94, more than thirty years after the outer limit envisioned by the framers of our Constitution, the Indian expenditure on primary to higher education, research and development was only Rs 279 per capita per year or about 3.5% of the GNP (Gross National Product). The contemporaneous corresponding figure for USA was 10% of GNP. Small wonder then that the illiteracy rate in India in 1990 was 52% as against less than 5% in developed countries.\(^{1085}\).

The policy emphatically states that "it shall be ensured that our children who are to attain the age of 11 years by 1990 will have had five years of schooling or its equivalent through the non-formal stream, likewise by 1995, all children will be provided free and compulsory education till 14 years of age. Ironically India became the only major country in the world that approached the 21st century with the bulk of the country illiterate. Nineteen million out of 179 million children in the age group of 6-14 years do not go to schools (NSS September 1994). The dropout rate among the 116.2 million children enrolled in 1991 was 49% (report of the Department of Education, 1993-94). According to a survey of child labour in India, out of 102.3 million households 35.5 million (or 34.7%) were working children and every fourth child between the age of 5 to 15 years in these families was the bread earner. These are the dismal, stark facts. It is clear that while a lot has been said and done by

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\(^{1083}\) Previously guaranteed under Article 45 of the Indian Constitution. Now it finds place under Article 21A

\(^{1084}\) Indian Education Report, 2003, p.1

\(^{1085}\) Raju Z.Moray “An unconstitutional conspiracy” One India One people 1 may 1998
everybody, there is a lot more said than done. In their recent book India: Economic Development and Social Opportunity (1995), Jean Dreze and Amartya Sen exclaim, "The remarkable neglect of elementary education in India is all the more striking given the widespread recognition in the contemporary world, of the importance of basic education for economic development." However, over the years there has been tremendous growth in coverage.

Nevertheless this cumbersome journey found its destination in the garb of Right to education act which proves to be a beacon of hope for the multitude. Official statistics reflect affirmative results for RTE in its report which were issued in public interest by the Ministry of Human Resource Development in 2014 on the completion of four years of its implementation. The report states:

1. Literacy levels have increased from 64.85% in 2001 to 72.99% in 2011.
2. Gender Gap in literacy came down from 21.59% to 16.25% and rural urban literacy gap also is lower from 21.18% in 2001 16.34% in 2011.
3. The enrolment in elementary schools increased from 18.9 crore children in 2008-09 to 19.97 crore in 2012-2013 which is close to near universal enrolment. The table below bears testimony to the ascending enrolment over the years in elementary education. It will not be an overstatement to stay that both the subsets of elementary education viz., Primary and Upper Primary Education illustrate an upward swing in enrolment.

Table 6.17: Enrolment in Primary, Upper Primary and Elementary Education (2000-01 to 2013-2014)(In Millions)

<table>
<thead>
<tr>
<th>Year</th>
<th>Primary education (Classes I-V)</th>
<th>Upper Primary education (Classes VI-VIII)</th>
<th>Elementary education (Classes I-VIII)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boys</td>
<td>Girls</td>
<td>Total</td>
</tr>
<tr>
<td>2000-01</td>
<td>64.0</td>
<td>49.8</td>
<td>113.8</td>
</tr>
<tr>
<td>2001-02</td>
<td>63.6</td>
<td>50.3</td>
<td>113.9</td>
</tr>
<tr>
<td>2002-03</td>
<td>65.1</td>
<td>57.3</td>
<td>122.4</td>
</tr>
<tr>
<td>2003-04</td>
<td>68.4</td>
<td>59.9</td>
<td>128.3</td>
</tr>
<tr>
<td>2004-05</td>
<td>69.7</td>
<td>61.1</td>
<td>130.8</td>
</tr>
<tr>
<td>2005-06</td>
<td>70.5</td>
<td>61.6</td>
<td>132.1</td>
</tr>
<tr>
<td>2006-07</td>
<td>71.0</td>
<td>62.7</td>
<td>133.7</td>
</tr>
<tr>
<td>2007-08</td>
<td>71.1</td>
<td>64.4</td>
<td>135.5</td>
</tr>
<tr>
<td>2008-09</td>
<td>70.0</td>
<td>64.5</td>
<td>134.5</td>
</tr>
<tr>
<td>2009-10</td>
<td>70.8</td>
<td>64.8</td>
<td>135.6</td>
</tr>
<tr>
<td>2010-11</td>
<td>70.5</td>
<td>64.8</td>
<td>135.3</td>
</tr>
<tr>
<td>2011-12</td>
<td>70.8</td>
<td>66.3</td>
<td>137.1</td>
</tr>
<tr>
<td>2012-13</td>
<td>69.6</td>
<td>65.2</td>
<td>134.8</td>
</tr>
<tr>
<td>2013-14</td>
<td>68.6</td>
<td>63.8</td>
<td>132.4</td>
</tr>
</tbody>
</table>


1086 “March towards a Knowledge society –Our achievements” issued in public interest by the Ministry of Human Resource development, Department of School Education and Literacy in Sunday Times of India, January 26, 2014
4. The share of Muslim children, which is recognized as educationally backward, in total primary elementary enrolment increased from 10.49% in 2007-08 to 14.2 percent in 2012-13.

5. Average annual dropout rate at primary level has come down as low as 5.62 percent in 2011-2012.

6. As against 17.15 lakh children with special needs in formal schools in 2005-06, 27.64 lakh children were in formal schools in March 2013, an increase of over 61 percent during this period leading to inclusive class rooms.

7. Framework for Implementation of Sarva Siksha Abhiyan amended in December 2013 to focus on improvement in learning outcomes in elementary schools.

8. Under the scheme for teachers education 63 district institutes of Education and Training, 13 colleges of teacher education and 4 institutes of Advanced Studies in Education have been sanctioned. To provide pre-services teacher training to SC/ST and minority communities in different parts of the Country 97 Block institutions of Teacher education have been set up.

9. 500 E-class Rooms in 50 Kendriya Vidyalayas. 726 Kendriya Vidyalayas provided multimedia devices for technology based teaching.

10. 3,500 Model schools being set up in Educationally Backward Blocks, 2500 Model schools in PPP mode in non-EBB blocks.

11. National Centre for School Leadership set up in NUEPA for capacity building of school Principals and Head Teachers of Elementary and Secondary Schools. Leadership Programme currently under implementation in 10 states.

12. In order to ensure universal and accessible schooling new schools have been sanctioned under the flagship program of RTE that is SSA. There were 1, 73, 757 habitations unserved by primary schools in 2002 - when SSA was launched. Over the years 2, 07, 995 primary schools were sanctioned, of which 1135 were sanctioned in the 2013-14. At the upper primary stage there were 2, 30, 941 habitations unserved by upper primary schools in 2002. Over the years 1, 59, 499 upper primary schools have been sanctioned in a radius of 3 km, including 220 sanctioned in 2013-14.

13. An assessment of SSA statistics shows a shrink in figures in the number of out-of school children in various categories on account of SSA interventions. The number of out-of-school children has come down from 134.6 lakh in 2005 to 81.5 lakh in 2009 A total decrease of 39.4% is observed in all the categories which includes girls, Schedule castes, Schedule Tribes and Muslims which is an encouraging outcome. The category of SC and
ST witnessed a decline of 25.6% and 35.5% respectively and an analogous decrease percentage of out-of-school children was also to be found for the Muslims (16.4%) and for girls that it was (39.6%) in 2009. The table underneath discloses the Out-of-school children in the age group of 6-13 years in different population/social categories (2005&2009)

Table 6.18: Out-of-school children in the age group of 6-13 years in different population/social categories (2005&2009)

<table>
<thead>
<tr>
<th>Category</th>
<th>Out-of-school children (in million)</th>
<th>Decrease (absolute number) (in million)</th>
<th>Decrease (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>13.46 8.15</td>
<td>5.31</td>
<td>39.4</td>
</tr>
<tr>
<td>Total Girls</td>
<td>6.69 4.04</td>
<td>2.65</td>
<td>39.6</td>
</tr>
<tr>
<td>SC</td>
<td>3.10 2.31</td>
<td>0.79</td>
<td>25.6</td>
</tr>
<tr>
<td>ST</td>
<td>1.66 1.07</td>
<td>0.59</td>
<td>35.5</td>
</tr>
<tr>
<td>Muslim</td>
<td>2.25 1.88</td>
<td>0.37</td>
<td>16.4</td>
</tr>
</tbody>
</table>


Efforts have been made to follow an eight year elementary education cycle through out the country; however, few States continue to follow a seven-year elementary education cycle. SSA norms provide support to States to move towards an eight year elementary education cycle through provisioning for additional teachers and classroom for Class VIII at the upper primary stage and teaching learning equipment for Classes V and VIII, in order to facilitate States to adopt an eight-year elementary education cycle. Now all States/UTs have been provided support for moving to an eight year elementary education cycle by 2013-14.

Provisions of free uniforms and textbooks under RTE Act are mandated for all children in Government schools. To achieve this goal, SSA provides two sets of uniform to all girls, SC, ST children and Below Poverty Line (BPL) children, wherever (i) State Governments have incorporated provision of school uniforms as a child entitlement in their State RTE Rules, and (ii) State Governments are not already providing uniforms from the State budgets. In case any state government is partially subsidizing the cost of uniform being supplied to children in school, than the amount under SSA is restricted to the remaining children.

All children are provided free textbooks up to class VIII. In 2013-14 provision was made for providing text books to 8.85 crore children. Concomitantly workbooks and
worksheets are being provided by several States, to facilitate activity-based classroom processes and to supplement learning processes.

While retaining a focus on elementary education for children aged 6 – 14 years under the Right of Children to Free and Compulsory Education Act (RTE), the programme is now covering a wider gamut – starting from early childhood education through elementary up to Grade 10. Child friendly schools and systems are being promoted and capacities of teachers strengthened to ensure children’s right to learn. Convergence with other programmes to combat child labour and child marriage, and universal access to improved water, sanitation and hygiene facilities, is also ensured. The programme aims to:

1. Improve equitable access to quality early childhood education
2. Accelerate implementation of the Right to Education Act and child friendly schools
3. Enhance capacities of teachers and pre-school functionaries to deliver quality education
4. Mobilize communities to demand equitable access to quality education
5. Increase access to secondary education for adolescents with a focus on reducing gender and social disparities

India is on the brink of a demographic revolution with the proportion of working-age population between 15 and 59 years likely to increase from approximately 58 per cent in 2001 to more than 64 per cent by 2021, adding approximately 63.5 million new entrants to the working age group between 2011 and 2016, the bulk of whom will be in the relatively younger age group of 20-35 years. Given that it is one of the youngest large nations in the world, human development assumes great economic significance for it as the demographic dividend can be reaped only if this young population is healthy, educated, and skilled.

As per the latest available Human Development Report (HDR) 2011 published by the United Nations Development Programme (UNDP) (which estimates the human development index [HDI] in terms of three basic capabilities: to live a long and healthy life, to be educated and knowledgeable, and to enjoy a decent economic standard of living), the HDI for India was 0.547 in 2011 with an overall global ranking of 134 (out of 187 countries) compared to 119 (out of 169 countries) in HDR 2010. The growth rate in average annual HDI of India between 2000-11 is among the highest, a finding also corroborated by the India Human Development Report (IHDR) 2011 brought out by the Institute of Applied Manpower Research and the Planning Commission. According to the IHDR, HDI between 1999-2000

\[\text{World Human Development Report 2011.}\]
and 2007-8 has increased by 21 per cent, with an improvement of over 28 per cent in education being the main driver.

Expenditure on social services by the general government (centre and states combined) has also shown increase in recent years reflecting the higher priority given to this sector. Moreover, the budget documents\textsuperscript{1088} positively reveal that among social services, the share of expenditure on education has increased from 43.9 per cent in 2007-8 to 46.6 per cent in 2012-13 (BE), while expenditure on education as a proportion of GDP has increased from 2.59 per cent in 2007-8 to 3.31 per cent in 2012-13 (Budget Estimates).

As per an independent study conducted by the Social and Rural Research Institute (SRI)-International Marketing Research Bureau (IMRB)\textsuperscript{1089}, the achievements till September, 2012 include opening of 3,340 new primary and upper primary schools, construction of 2,840 school buildings, 16,428 additional classrooms, 2,178 drinking water facilities and 6,108 toilets, supply of free textbooks to 8.32 crore children, appointment of 12.46 lakh teachers, and imparting of in-service training to 18.64 lakh teachers.

In terms of Gross enrolment ratio, Madhya Pradesh has the highest gross enrolment ratio (GER) (6-13 years) in 2010-11 while Assam has the lowest. Pupil-teacher ratios in primary and middle/basic schools are the lowest in Himachal Pradesh and high in states like Uttar Pradesh and Bihar\textsuperscript{1090}.

6.35.1. The proportion of small schools is rising in India

The ASER (Annual Status of Education Report) Findings of 2010-2012\textsuperscript{1091}, published by NGO Pratham reveals some encouraging findings about better school infrastructure, improved mid-day meals and school level enrolment. In 2012, the survey reached 567 districts, 16,166 villages, 331,881 households and 5,96,846 children in the 5-16 age cohort. About 500 organizations and 25,000 volunteers participated in this effort. A total of 14,591 schools were visited during ASER 2012. Of these about 60% were government primary schools with classes up to Std. IV or V and the rest were upper primary schools which had primary sections.

\textsuperscript{1088} http://indiabudget.nic.in
\textsuperscript{1089} Economic survey 2012-2013
\textsuperscript{1090} Supra note at 9
\textsuperscript{1091} How far has India come in guaranteeing education? The Right to Education Act & ASER findings 2011-2012. The Annual Status of Education Report (ASER) is a sample based household survey, which has been conducted annually since 2005. ASER is conducted in every rural district in India and is carried out by a local organisation or institution in the district. The survey is conducted each year between the months of September and November. How far has India come in guaranteeing education? The Right to Education Act & ASER findings 2010-2012
A. **Enrolment in the 6-14 age group continues to be very high. But the proportion of out of school children has increased, especially among girls in the age group of 11 to 14.**

1. Overall, enrolment numbers remain very high. Over 96% of all children in the age group 6 to 14 years are enrolled in school. This is the fourth consecutive year that enrolment levels have been 96% or more.

2. Nationally, the proportion of children (age 6 to 14) who are not enrolled in school has gone up slightly, from 3.3% in 2011 to 3.5% in 2012. A slight increase is seen for all age groups and for both boys and girls.

3. The proportion of government primary schools with enrolment of 60 or fewer students has increased over time. In the last 3 years, this figure has increased from 26.1% in 2009 to 32.1% in 2012.

4. The proportion of children in primary grades who sit in multi grade classrooms is also expanding. For Std. II, this number has gone up from 55.8% in 2009 to 62.6% in 2012. For Std. IV, it has risen from 51% in 2010 to 56.6% in 2012.

5. At the All India level, there has been a consistent rise in the proportion of schools complying with RTE norms on pupil-teacher ratio. Based on RTE norms, the Pupil - Teacher ratio shows improvement In 2010, the proportion of schools meeting these norms was 38.9%. This number has risen to 42.8% in 2012. In 2012, Nagaland stands out with 93.0 per cent of schools in compliance ahead of Kerala (92.0 percent) which was the highest last year. In Jammu & Kashmir, Mizoram, Manipur and Tripura, more than 80 per cent schools are in compliance with these norms.

6. However, ASER findings have shown a decline in both teacher and student attendance. In 2012, in primary schools, the average percentage of students present was 71.3% and the percentage of teachers present stood at 85.2. %. Children's attendance[^1092] (for std I-V) shows a decline from 74.3 per cent in 2009 to 71.3 per cent in 2012 in rural primary schools. However, children's attendance in some states shows an increase over time. For example, in primary schools of Bihar, average attendance of children increased from 57.0 per cent in 2007 to 58.3 per cent in 2012, in Karnataka from 88.0 per cent in 2009 to 89.1 per cent in 2012, in Kerala it has increased from 91.9 percent in 2009 to 94.4 percent in 2012 and in Odisha from 74.1 per cent in 2009 to 77.5 per cent in 2012.

7. Girls in the age group of 11 to 14 years are often the hardest to bring to school and keep in school.

8. In 2006, in eight major states, more than 11% girls in this age group were not enrolled in school. By 2011, this figure had dropped to less than 6.5% in 3 of these states (Jharkhand, Gujarat and Odisha) and less than 5% in 3 others (Bihar, Chhattisgarh and West Bengal). The situation in these states remained more or less unchanged in 2012. However in Rajasthan and Uttar Pradesh, the proportion of out of school girls (age 11-14) has increased from 8.9% and 9.7% respectively in 2011 to more than 11% in 2012.

9. At the All India level private school enrolment has been rising steadily since 2006. The percentage of 6 to 14 year olds enrolled in private schools rose from 18.7% in 2006 to 25.6% in 2011. This year this number has further increased to 28.3%. The increase is almost equal in primary (Std. I-V) and upper primary (Std. VI-VIII) classes. Increase in private school enrolment is seen in almost all states, with the exception of Kerala, Nagaland, Manipur and Meghalaya(where private school enrolment was over 40% even last year)and Tripura. Since 2009, private school enrolment in rural areas has been rising at an annual rate of about 10%. If this trend continues, by 2018 India will have 50% children in rural areas enrolled in private schools.

**Table 6.19:** All India (rural)% Children not enrolled in school 2010-2012

<table>
<thead>
<tr>
<th>AGE GROUP</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGE:6-14 ALL</td>
<td>3.4</td>
<td>3.3</td>
<td>3.5</td>
</tr>
<tr>
<td>AGE:6-14 BOYS</td>
<td>3.2</td>
<td>3.1</td>
<td>3.1</td>
</tr>
<tr>
<td>AGE:6-14 GIRLS</td>
<td>3.8</td>
<td>3.6</td>
<td>3.9</td>
</tr>
<tr>
<td>AGE:7-16 ALL</td>
<td>5.6</td>
<td>5.3</td>
<td>5.9</td>
</tr>
<tr>
<td>AGE:7-10 ALL</td>
<td>2.2</td>
<td>1.9</td>
<td>2.2</td>
</tr>
<tr>
<td>AGE:7-10 BOYS</td>
<td>2.1</td>
<td>1.8</td>
<td>1.9</td>
</tr>
<tr>
<td>AGE:7-10 GIRLS</td>
<td>2.4</td>
<td>2.1</td>
<td>2.4</td>
</tr>
<tr>
<td>AGE:11-14 ALL</td>
<td>5.2</td>
<td>4.8</td>
<td>5.4</td>
</tr>
<tr>
<td>AGE:11-14 BOYS</td>
<td>4.8</td>
<td>4.4</td>
<td>4.8</td>
</tr>
<tr>
<td>AGE:11-14 GIRLS</td>
<td>5.7</td>
<td>5.2</td>
<td>6.0</td>
</tr>
</tbody>
</table>

Source: Right to Education Act & ASER Findings 2010-2012
B. School facilities show improvement over time.

1. School infrastructure provisions, is not a standalone activity. The design and quality of school infrastructure has a significant impact on enrolment, attendance and retention of children in schools. Thus ‘civil works' under SSA/RTE are undertaken to provide all weather schools as per provision of RTE Act. Neither designs nor unit costs are centrally prescribed. States are free to evolve building designs and develop cost estimates based on the State Schedule of Rates notified by the State Governments. States are supposed to adopt a Whole School Development approach for planning and construction, ensuring proper location of classrooms, drinking water and sanitation facilities and playgrounds within the school premises, simultaneously keeping in view the need for future expansion arising out of increased enrolments, incorporate child friendly elements in school buildings, i.e. designing indoor and outdoor spaces from the perspective of children. They can incorporate appropriate ‘safety features’ in school designs based on National Building Code of India, 2005 to ensure that children receive education in a safe and secure environment, incorporate all essential amenities in the school, including drinking water, sanitation, kitchen for mid day meal, playground, boundary wall/green fencing and making school buildings energy efficient through appropriately locating doors, windows, ventilators and sky lights, and using shading strategies to minimize or maximize heat gain.

The table below highlights the progress and escalation in the number of schools and its allied infrastructure as part of the civil work activities that have been pursued under the RTE/-SSA scheme till December 2013. RTE-SSA encourages participation by the local community in all civil work activities in order to instil a sense of ownership in them. Community driven construction of schools have proved to be of a better quality compared to construction through a contractors.

Table 6.20: Infrastructure: Progress in construction of school buildings till December, 2013

<table>
<thead>
<tr>
<th>Infrastructure</th>
<th>Works Completed</th>
<th>Work in Progress</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>School Buildings</td>
<td>2, 73689</td>
<td>19, 166</td>
<td>2, 92, 855</td>
</tr>
<tr>
<td>Additional Classrooms</td>
<td>15, 49, 597</td>
<td>198995</td>
<td>17, 48, 592</td>
</tr>
<tr>
<td>Drinking Water Facilities</td>
<td>2, 20176</td>
<td>4, 019</td>
<td>2, 24, 195</td>
</tr>
<tr>
<td>Toilets All</td>
<td>7, 35, 204</td>
<td>1.08, 628</td>
<td>8, 43, 832</td>
</tr>
</tbody>
</table>

2. 73% of all schools visited had drinking water available. However, just under 17% did not have drinking water facility at all. A water facility was available, though not usable in the remaining schools.

3. The proportion of schools without toilets has reduced from 12.2% in 2011 to 8.4% in 2012 and the proportion of schools with useable toilets has increased from 47.2% in 2010 to 56.5% in 2012. Approximately 80% of schools visited had separate provision for girls' toilets. Of schools which had this separate provision, close to half had useable girls' toilets, as compared to a third in 2010.

4. The mid-day meal was observed being served in 87.1% schools that were visited. About 61.1 per cent of visited schools had a playground in 2012 compared to 62.8 percent in 2011. However, there has been marginal increase of 0.8 percent in the proportion of all schools that have a boundary wall in 2012 from the last year.

5. Nationally, the proportion of schools with no provision for drinking water remained almost the same at 17 per cent in 2010, 16.7 per cent in 2011 and 16.6 percent in 2012. The proportion of schools with a useable drinking water facility has remained steady at about 73 per cent. The proportion of schools without libraries has declined from 28.7 per cent in 2011 to 23.9 percent in 2012. Children were seen using the library in more schools as well - up from 37.9 per cent in 2010 to 43.9 per cent in 2012.

Table 6.21: All India (rural): Schools meeting selected RTE norms 2010-2012

<table>
<thead>
<tr>
<th>%Schools meeting the Following RTE norms</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pupil-Teacher and Classroom teacher norms</td>
<td>Pupil -Teacher ratio</td>
<td>38.9</td>
<td>40.8</td>
</tr>
<tr>
<td></td>
<td>Classroom-teacher ratio</td>
<td>76.2</td>
<td>74.3</td>
</tr>
<tr>
<td>Building</td>
<td>Office/Store/office cum Store</td>
<td>74.1</td>
<td>74.1</td>
</tr>
<tr>
<td></td>
<td>Playground</td>
<td>62.0</td>
<td>62.8</td>
</tr>
<tr>
<td></td>
<td>Boundary wall/fencing</td>
<td>51.0</td>
<td>53.9</td>
</tr>
<tr>
<td>Drinking Water</td>
<td>No Facility for drinking water</td>
<td>17.0</td>
<td>16.7</td>
</tr>
<tr>
<td></td>
<td>Facility but no drinking water available</td>
<td>10.3</td>
<td>9.9</td>
</tr>
<tr>
<td></td>
<td>Drinking water available</td>
<td>72.7</td>
<td>73.5</td>
</tr>
<tr>
<td></td>
<td>No Toilet Facility</td>
<td>11.0</td>
<td>12.2</td>
</tr>
<tr>
<td>Toilet</td>
<td>Facility but no toilet useable</td>
<td>41.8</td>
<td>38.9</td>
</tr>
<tr>
<td></td>
<td>Toilet useable</td>
<td>47.2</td>
<td>49.0</td>
</tr>
</tbody>
</table>
C. **2012 was the year of mathematics. But it has been a bad year for basic arithmetic for children in India.**

1. In 2010, of all children enrolled in Std. V, 29.1% could not solve simple two-digit subtraction problems with borrowing. This proportion increased to 39% in 2011 and further to 46.5% in 2012. Barring Andhra Pradesh, Karnataka and Kerala, every major state shows signs of a substantial drop in arithmetic learning levels.

2. Comparing the cohort of children who were in government schools in Std. V in 2011 with the cohort in Std. V in 2012, there is evidence of a more than 10 percentage point drop in the ability to do basic subtraction in almost all states. Exceptions are Bihar, Assam and Tamil Nadu where the drop is less; and Andhra Pradesh, Karnataka and Kerala where there has been either improvement or no change from 2011.

3. The proportion of all children enrolled in Std. V who could not do division problems has increased from 63.8% in 2010 to 72.4% in 2011 to 75.2% in 2012. In rural India as a whole, two years ago about two thirds of all children in Std. V could not do simple division. In 2012 this number is close to three fourths.

4. Himachal Pradesh, Punjab, Haryana, Chhattisgarh, Madhya Pradesh, Gujarat and Maharashtra are all states where the cohort in Std. V in 2012 seems to be substantially weaker than the cohort in Std. V in 2011. In the southern states, the situation is
unchanged from 2011 except in Kerala where there is a significant improvement. In 2012, more than 40% of children (age 6-14 years) in Jammu & Kashmir, Punjab, Haryana, Rajasthan, Uttar Pradesh and Meghalaya are enrolled in private schools. This percentage is 60% or more in Kerala and Manipur.

D. **Reading levels continue to be a cause for serious concern. More than half of all children in Std. V are at least three grade levels behind where they should be.**

1. In 2010 nationally, 46.3% of all children in Std. V could not read a Std. II level text. This proportion increased to 51.8% in 2011 and further to 53.2% in 2012. For Std. V children enrolled in government schools, the percentage of children unable to read Std. II level text has increased from 49.3% (2010) to 56.2% (2011) to 58.3% (2012).

2. For all children in Std. V, the major decline in reading levels (of 5 percentage points or more) between 2011 and 2012 is seen in Haryana, Bihar, Madhya Pradesh, Maharashtra and Kerala. Even private schools in Maharashtra and Kerala, with a large proportion of aided schools, show a decline in reading ability for Std. V.

3. The percentage of all children enrolled in Std. III who cannot read a Std. I level text has increased steadily from 53.4% (2009) to 54.4% (2010) to 59.7% (2011) to 61.3% in 2012. For children enrolled in government schools, this figure has increased from 57.6% in 2010 to 64.8% in 2011 to 67.7% in 2012.

The satisfactory results of the right to education act are also well delineated by the DISE statistics of 2010-2011\(^{1093}\) which covers more than 1.36 million schools imparting Elementary education and about 34 thousand unrecognized schools in their survey. The findings show that with the enforcement of the RTE Act substantial increase in the physical infrastructure necessary for education that is the establishment of schools can be perceived in the country.

1. Uttar Pradesh houses the highest number of 195089 schools. It also has the credit of accommodating the highest number of Schools in rural Areas (176686 schools)

2. Barmer district of Rajasthan has the highest Number of Schools having Single-Teacher (2429 Schools). Further the Baitu block of Barmer district (State : Rajasthan) has the Highest Number of Schools having Single-Teacher (433Schools)

3. In the East, Dhemaji block of Dhemaji district (State : ASSAM) has the highest number of Schools in rural Areas (1013 Schools)

\(^{1093}\) District Information System on Education (DISE) 2010-2011
4. Paschim Medinipur district of West Bengal has the highest number of schools in rural Areas (8319 Schools)

5. Kolkata Municipality block of Kolkata district (State : West Bengal) has the highest number of Government and Aided Schools (2120 Schools)

Responding to the grim nutritional status of children, the Supreme Court of India ordered (dated November 28, 2001) a universal cooked mid-day meal programme. Following the Supreme Court’s directive, 23 of the 35 states and UTs switched over to cooked meals. According to the Annual Report of the MHRD, around 106 million children were covered under the scheme in 2003-04\(^{1094}\) and an estimated 58 million children (around 55 per cent of all children in the 6-11 age group) were receiving cooked meals spread over 29 states and UTs.

Under the MDM, cooked midday meals are provided to all children attending Classes I-VIII in government, local body, government aided, and National Child Labour Project (NCLP) schools. Education Guarantee Scheme (EGS)/ alternate and innovative education centres including madarsas /maqtabas supported under the SSA across the country are also covered under this programme. At present the cooked midday meal provides an energy content of 450 calories and protein content of 12 grams at primary stage and an energy count of 700 calories and protein content of 20 grams at upper primary stage. During 2011-12, the budget allocation for this programme was ` 10,380 crore against which the total expenditure incurred was ` 9901.91 crore. About 10.54 crore children (7.18 crore in primary and 3.36 crore in upper primary stages) benefited under the programme during 2011-12.

This nutritional support programme appended to Right to education is being religiously followed in various states. Not only this, in the post RTE period, many states and UTs have schools that have even registered highest record in providing mid-day meals to the wards. DISE records of 2010-2011 reveal the following:

1. Chauntra-2 block of Mandi district, State Himachal Pradesh has the highest percentage of schools providing mid-Day Meals (100%)

2. Dadra & Nagar Haveli has the highest percentage of schools providing Mid-Day Meal (99.0%)

3. Yanam district of Pondicherry has the highest percentage of schools providing Mid-Day Meal (100.0%)

As a concomitant to the rising number of schools, a synchronized increase in enrollment can also be witnessed around us which are an authentic and tangible proof of the success achieved by the Right to education Act:

1. West block of Mumbai (suburban) district (State: Maharashtra) has the maximum enrolment at primary level (345394) and the Thane district of the same State has the highest enrolment at Upper Primary Level (491367)

2. Uttar Pradesh has the highest enrolment at Primary Level (23933247)

For a long time, poor performance on the basic schooling front was attributed to a lack of schools and teachers on the supply side, and poverty, parental attitudes, social barriers and prevalent social customs on the demand side. As noted earlier, significant progress has been made on both fronts. To meet the shortage of teachers in elementary schools, 19.84 lakh additional teacher posts have been sanctioned under SSA up to 2013-14. Out of this, 14.80 lakh posts are reported to have been filled up. After RTE it is mandatory that only those people may be appointed as teachers who are able to clear TET. Apart from these 2.38 lakh part-time instructors have also been sanctioned under Sarva Shiksha Abhiyan (SSA). To upgrade skills of teachers, SSA provides for annual in-service training up to 20 days for all teachers. Support of Rs. 6000 per teacher per year is provided for two years to untrained teachers, already employed for the NCTE recognized training program. Apart from this induction training for 30 days is given to freshly trained recruits. In 2013-14, 32.37 lakh (at BRC Level) 27.63 lakh (at CRC Level) teachers have been approved by MHRD for in-service training, 2.00 lakh teachers for induction training. Also 4.11 lakh untrained teachers have been targeted to be trained under SSA.

All training programmes cover pedagogical issues, including content and methodology, aimed at improving teaching learning transactions in classrooms and learning process in schools. Some of the major focus areas include guiding principles of NCF 2005, CCE, how children learn, subject-specific content or learning difficulties, activity-oriented methods, use of TLMs or learning kits, etc. States are oriented towards improvement of training program through four regional workshops.

Optimistic efforts towards standardization of education can be seen in various parts of the country where qualified and trained teachers are being inducted in the schools to let up the schooling environment. Moreover many states across the country have shown substantial improvement in the intake of teachers. DISE 2010-2011 gives evidence that:

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1095 Annual Report 2013-2014 released by the Department of School Education & Literacy Department of Higher Education Ministry of Human Resource Development Government of India
1. Arunachal Pradesh Has the Highest Percentage Of Trained Teachers (76.4%). Anelih-Arzu Block of Dibang Valley District(100%) and Kurung Kurmey District Of Arunanchal Pradesh(91.8%) has the highest percentage of Trained Teachers (100.0%),

2. Chandigarh has the highest percentage of female teachers that is 83.3%

3. Chennai district of Tamil Nadu has the highest percentage of female teachers (91.6%)

4. District of Rajasthan has the highest number of teachers which is 41047 teachers

5. Uttar Pradesh has the highest number of Teachers (697890 Teachers) and also confirms the highest number of Contractual-Teachers (174320 )

6. Kolkata Municipality Block of Kolkata District (State : West Bengal) has the highest number of Contractual-Teachers (1287 Teachers)

7. Bihar has the Highest Pupil-Teacher Ratio at Upper Primary Level (61)

The Right of Children to Free and Compulsory Education (known as RTE) Act, 2010, charted a new roadmap for gender equality in education in India. With the implementation of the act the gender divide has also witnessed a sharp decline. Bridging gender and social category gaps in elementary education is one of the four goals of SSA. Consequently, SSA attempts to reach out to girls and children belonging to SC, ST and Muslim Minority communities. RTE-SSA provides a clear thrust and special focus on education for girls and children belonging to disadvantaged groups and weaker sections. The general interventions under SSA apply to all girls and children belonging to disadvantaged and weaker sections; these include ensuring availability of primary and upper primary schools within the habitation as prescribed under the RTE Rules, uniforms, textbooks, etc. Special Training interventions are also largely focused on girls and disadvantaged groups, because it is this category of children who are most deprived of opportunities to pursue their education.

In order to address the problem of girls who are unable to go to regular schools, to out of school girls in the 10+ age group who are unable to complete primary school and younger girls of migratory populations KGBVs reach out to them. KGBVs provide for a minimum reservation of 75% seats for girls from SC/ST/OBC and minorities communities and 25% to girls from families that live below the poverty line. As of now till 2013-14, 3609 KGBVs have been sanctioned in the country enrolling 347725 girls therein.

The enactment of RTE act, 2009 was to bring about monumental change in the educational status of the children particularly the girl child.

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1096 Kasturba Gandhi Balika Vidyalaya (KGBV) are residential upper primary schools for girls from SC, ST, OBC Muslim communities and BPL girls. KGBVs are set up in educational backward blocks where schools are at great distances and are a challenge to the security of girls.
1. Similarly Deoria, district of Uttar Pradesh has the highest girls enrolment at the primary level that is 53.6%.
2. Meghalaya has the highest girls enrolment at Primary Level (50.3%).
3. More Girls are enrolled than Boys at Elementary Level in Nagar Shaitra, Lucknow block of Lucknow district, State of Uttar Pradesh (4493)
4. Manipur boasts of a higher percentage (83.0%) of girl enrolment at elementary level as compared to boys.

A GOI-commissioned study by the Social and Research Institute (SRI) says the estimate of out-of-school children is highest among Muslims (9.97 per cent). The states and Union Territories that are worse than the national average are Bihar (28.34 per cent), Daman Diu (28 per cent), Uttar Pradesh (14.37 per cent), and West Bengal (11.33 per cent). The estimate of out-of-school Muslim children in rural areas (12.03 per cent) was the highest among all social groups.\textsuperscript{1097} The 2002 household survey by Jha and Jhingran illustrates that Muslim children are much worse off than even those from SC/ST categories. The comparison becomes yet more skewed and unfavourable in case of Muslim girls, particularly those from lower castes. Whereas the aggregate figure for enrolment of Muslim children is 50.7 per cent as compared to 67.3 per cent for SC and 59.8 per cent for ST, the enrolment for lower caste Muslim children falls to as low as 36 per cent. The lower caste Muslim children also record the highest percentage (32.6 per cent) in the “never enrolled category”.\textsuperscript{1098}

There have been significant improvements since then in the proportion of children from socially disadvantaged and marginalized groups in school. For this one can go on to acknowledge the great RTE exercise for accomplishing the constitutional vision of social inclusion and cohesion. Children from Muslim community joined elementary school in large numbers during 2007-08 to 2012-13 period. They accounted for 59% of the incremental enrolment in Elementary Schools during 2007-08 to 2012-13. The percentage of out-of-school Muslim children reduced from 10% to 7.7% in 2005-09 period. This reflects a positive trend of increased awareness among parents towards accessing education, despite economic and social constraints, as also validating the effort by the State to make schools available to SC, ST and Muslim minority children. Improvements for the marginalized social groups are felt in the following areas:

\textsuperscript{1097} SRI report on assessing the number of out of school children in the 6-13 years age group, submitted to MHRD, GOI, New Delhi 2005, page 26-27.
\textsuperscript{1098} Jyotsna Jha and Dhir Jhingran, Elementary Education for the Poorest and Other Deprived Groups: The Real Challenge of Universalization, Manohar Publications, New Delhi, 2005
1. In the East Gauripur block of Dhubri district (State : Assam) has the highest Muslim Enrolment at Elementary Level (81487)

2. The State of West Bengal has the Highest Muslim Enrolment at Elementary Level (4595743) Murshidabad district of West Bengal has the Highest Muslim Enrolment at Elementary Level (952843) and South Twenty Four Pargana district of West Bengal has the highest SC Enrolment at Elementary Level (419167)

3. Madhya Pradesh has the highest ST Enrolment at Elementary Level (3678457) of which Dhar district of Madhya Pradesh has the Highest ST Enrolment at Elementary Level (320858)

4. Uttar Pradesh has the highest SC Enrolment at Elementary Level (8564763)

5. Teachers Zalod block of Dohad district (State : Gujarat) has the Highest ST Enrolment at Elementary Level (76785)

Two pie diagrams underneath show the increased enrolment in Elementary Schools for the period 2007-08- to 2013 by social groups and religion:

**Fig.6.5:** Share in increased enrolment by social groups and religion

![Pie Chart](image)


Another achievement of RTE is that it has led to community participation and empowerment in the planning of school Development Plan formation and has made every parent an equal stakeholder in the educational system and can keep a vigilant check on the education being imparted in the schools.
Ms Annie Namala\textsuperscript{1099}, ex member National Advisory Committee, RTE started her address first SMC convention, Lucknow by a strong appeal that we must establish education as an issue of National concern. She expressed a hope that the collective strength will strike the process for betterment and social change. She pointed out that the analysis of challenge is equally important to move forward and expressed that our goal must be that every child belonging to any cast, class, religion especially marginalized children like beggars, orphans and street children will able to get quality education. Ms. Namala stated that the struggle for quality education should also include the issue of discrimination within the school structure on the basis of cast, class, gender and physical parameters. NGO’s role for promoting equality is very important she appealed to NGO’s to include elimination of all forms of discrimination within the school structure. Mr. Namala concluded by her suggestion ensuring the better utilization of available resources and every SMC member should have a copy of declaration.

Mr. Ramakant Rai, Convener National Coalition for education stated in his brief speech that many children are left from mainstream schooling and he requested to SMCs that they should make their efforts to bring them to school. He said that it is the first responsibility of SMCs to connect every marginalized and weaker section with the school and proper monitoring is equally important so that the enrolled students sustain with the school.

Another report that makes a genuine study of the status of Right to education in India is the India Country Report which is a part of the SAARC Development Goals. This report is in pursuance of the decision taken in the Fifth Meeting of SAARC Secretaries on Poverty Alleviation, held in Kathmandu on 4th April 2013. People across the South Asian Region today have higher expectations from their Governments for providing an enabling environment for better future. This is particularly true in the Indian scenario. SAARC Development Goals are regionalized form of Millennium Development Goals, with some additional targets and indicators, for the period of five years, 2007-12. The Third SAARC Ministerial Meeting on Poverty Alleviation, held in Kathmandu on 5th April 2013, has extended the terminal year of SDGs from 2012 to 2015 to coincide with the Millennium Development Goals.

\textsuperscript{1099}First State Level School Management Committee Convention organized by State collective for Right to Education (SCORE) on 20\textsuperscript{th} November in Lucknow
The report takes into a genuine comparative account of the net enrollment rate, Gross Enrolment Ratio, Gender Parity Index, Drop-out rate, Retention Rate, Percentage of trained teachers, Pupil –teacher ratios at the primary level.

**Education SDGs**

1. More than 90% of rural and urban households had a school with primary classes within 1 km in 2007-08. However, only 61.6% of rural households, compared to 82.5% of urban households, had a school within a km providing middle level classes.

2. The Net Enrolment Rate (NER) for primary grade, which is the proportion of students of official school age of 6-10 years enrolled in Grades I-V to the population of children of age group 6-10 years, is the indicator for primary enrolment. NER figures are available from District Information System on Education (DISE) The net enrolment rate at primary level was 84.53% in 2005-06 which increased to 99.89% in 2010-11.

3. The Gross Enrolment Ratio (GER) at the primary level was 83.8 in 1990-91 and it increased to 95.7 in 2000-01 and to 116.0 in 2010-11. For the middle/upper primary level, the GER was 66.7 in 1990-91 which declined to 58.6 in 2000-01 and then gradually increased to 85.5 in 2010-11.

4. In primary education, the GPI has gone up from 0.76 in 1990-91 to 1.01 in 2010-11 and in secondary education the increase is from 0.60 in 1990-91 to 0.87 in 2010-11. Gender Parity Index (GPI) in enrolment at primary and secondary levels is the ratio of the number of female students enrolled at primary and secondary levels in public and private schools to the number of male students. A GPI of 1 indicates parity between the sexes or no gender disparity. A GPI that varies between 0 and 1 typically means a disparity in favour of males whereas a GPI greater than 1 indicates a disparity in favour of females. In general, at the national level, the number of girls enrolled in primary and secondary education is less than their counterparts. However, the female-male ratio in education has been steadily improving over the years.

5. The RTE Act makes specific provision for Special Training for age-appropriate admission for out-of-school children. A majority of out-of-school children belong to disadvantaged communities – scheduled castes, scheduled tribes, Muslims, migrants, children with special needs, urban deprived children, working children, children in other difficult circumstances, for example, those living in difficult terrain, children

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from displaced families, and areas affected by civil strife, etc. The SSA Framework of Implementation provides that the duration of Special Training may be flexible, varying from 3 months to 2 years, depending on the child’s needs. Special Training may be in the form of residential or non-residential courses organised, preferably in the premises of the school, but if such facilities are not available in school, alternate facilities which are safe, secure and accessible may be identified and used. At the end of the duration of Special Training for a particular child, the suitability of placing the child in a class maybe reviewed. The drop-out rate for primary classes (I-V) was 27.0% during 2010-11. It was 40.6% for elementary classes (I-VIII) during the same year. One can assess the decadal dropout rates which have dipped over the years owing to the efforts on the education fronts.

**Figure 6.6**: Drop-out Rates at Elementary Stage (%)

<table>
<thead>
<tr>
<th>Year</th>
<th>Boys</th>
<th>Girls</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990-91</td>
<td>59.1</td>
<td>60.9</td>
<td>59.1</td>
</tr>
<tr>
<td>1995-96</td>
<td>56.6</td>
<td>58.8</td>
<td>57.7</td>
</tr>
<tr>
<td>2000-01</td>
<td>50.3</td>
<td>53.7</td>
<td>50.3</td>
</tr>
<tr>
<td>2005-06</td>
<td>48.7</td>
<td>48.8</td>
<td>49.0</td>
</tr>
<tr>
<td>2010-11</td>
<td>40.3</td>
<td>40.6</td>
<td>41.0</td>
</tr>
</tbody>
</table>

**Source**: SAARC Development Goals, India Country Report 2013

6. The retention rate at primary level has gradually improved from 71.01% in 2005-06 to 75.94% in 2011-12.

7. The percentage of trained teachers in primary schools was 86% in 2005-06 and it increased to 90% in 2010-11. It was 87% for upper primary schools in 2005-06 and 90% in 2010-11. The percentage of trained teachers in secondary schools was 89% in 2005-06 and it marginally increased to 90% in 2010-11. For senior secondary schools,
the percentage of trained teachers was 90% in 2005-06 and it rose by 1 percentage point to 91% in 2010-11.

8. The pupil (student) teacher ratio was 43 for primary schools, 37 for upper primary schools and 31 for secondary/senior secondary schools in 1990-91. This ratio stood at 46, 34 and 33 in 2005-6 and 43, 33 and 34 in 2010-11 for primary schools, upper primary schools and secondary/senior secondary schools respectively.

Table 6.22: Pupil-Teacher Ratio

<table>
<thead>
<tr>
<th>Year</th>
<th>Primary Schools</th>
<th>Upper primary Schools</th>
<th>Secondary/Senior secondary Schools</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990-91</td>
<td>43</td>
<td>37</td>
<td>31</td>
</tr>
<tr>
<td>2001-01</td>
<td>43</td>
<td>38</td>
<td>32</td>
</tr>
<tr>
<td>2005-06</td>
<td>46</td>
<td>34</td>
<td>33</td>
</tr>
<tr>
<td>2010-11</td>
<td>43</td>
<td>33</td>
<td>34</td>
</tr>
</tbody>
</table>

Source: Statistics of School Education 2010-2011

6.35.2. Conclusion

The foregoing segments on the highs and lows of the Right to Education Act and concurrently its impact and compliance favours a tilt towards the affirmative aspect of the act. The Act has without a doubt made an indelible mark on the educational landscape both nationally and internationally. Investment potential on human capital has now been recognized. Economists had long assumed that the main component of a country’s productive wealth is physical assets ("produced assets"). But according to World Bank’s assessment for 192 countries, physical capital on average accounts only for 16% of total wealth. More important is natural wealth, which accounts for 20%. And more important still is human capital, which accounts for 64%. Literacy is now part of the Human Development Index. Government of India has also accepted this position and that is why constitutional guarantee of education in the form of a Fundamental right became not only vital but indispensable.

The Act has not only universalized education on a mammoth scale but has laid the foundation of an egalitarian, gender inclusive and progressive polity. Better late than never but the Indian Constitution which took off as a “Constitution of Illiteracy” in the words of eminent scholar Upendra Baxi, has finally recognized the significance of education for social transformation. It can now be truly attributed as a document committed to social justice. Literacy forms the cornerstone for making the provision of equality of opportunity a reality.
which has been substantiated in Francis Coralie Mulin v. Administrator, Union Territory of Delhi (1981), where Justice Bhagwati observed:

“The fundamental right to life which is the most precious human right and which forms the arc of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. We think that the right to life includes right to live, with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about, mixing and co- mingling with fellow human beings.”

6.36. Ground Reality

It must be appreciated that the 86th Amendment Act has high expectations and vision for the improvement of elementary education and official statistics too reveal promising results. But this fact cannot be cornered that the ground reality is something different which cannot be adjudged on the surface level of normative results. According to Schwartzman “These healthy segments of Indian education do not contradict the fact that the system as a whole is under severe strain, financially and institutionally, and needs to change and adjust for more quality, efficiency and relevance.”1101 The constitutional vision and the statutory exercises cannot be the yardstick to measure the results. They have to be understood in the light of empirical facts and the official statistics should be cross examined with those that show unbiased reports. This wide chasm between theory and practice in RTE norms has been dealt with in the subsequent paragraphs.

6.36.1.1. States Fall on EDI Indicators

About six months after the three-year deadline for the schools to meet the RTE standards got over, the annual Education Development Index for 2012-20131102 developed by NUEPA has revealed that there is a civilizational difference between the North and the South as the Hindi heartland states continue to languish at the bottom of the heap. The Union Territory of Lakshadweep secured the highest EDI value of 0.716, followed by Puducherry 0.696 and Tamil Nadu 0.683, ranking first, second and third, respectively, in terms of their

1101 S. Schwartzman,. The Challenges of Education in Brazil. the Challenges of Education in Brazil s.1. Symposium Books, 2004, p.27
1102 Education Index shows growing north-south chasm, Times of India, December6, 2013
progress in achieving the goals of the RTE Act compared to others.1103 The states of Uttar Pradesh (34th), Bihar (30th), West Bengal (31st), Madhya Pradesh (28th) and Rajasthan (25th) continue being perpetual laggards and Madhya Pradesh being the worst performer. It is for the first time that the NUEPA, which periodically releases reports on the progress of school education, has come up with Educational Development Index (EDI) of primary schools of the country.

NGO Right To Education Forum, which conducts an annual survey of the progress of the RTE movement in the country, says: "Although the government has made efforts to meet RTE norms, significant shortcomings remain. There are concerns, specifically, with regard to access, infrastructure, quality and lack of effective community participation.1104 Harvard economist Lant Pritchett made a revelation that that an average Class 8 student in India would be learning what students learn in Class 1 or 2 in the United States.1105 Despite a slew of RTE norms that focus on quality and egalitarian education, the conditions are still bleak and unwelcoming.

6.36.1.2. Social Exclusion becomes the Norm

The Right to Education Act clearly lays out the responsibility of state and local authorities to ensure that poor children and those belonging to disadvantaged groups do not face discrimination or other arbitrary barriers to pursuing and completing their education.1106 It aims to give all children a fair chance of a good education. But rarely are these definitions of equity and access applied in schools. Not only do education authorities fail to create conditions conducive to including children from marginalized communities. Teachers are also frequently insensitive to issues of social inclusion and equity. Untouchability is also reported to be practiced against Dalit teachers both within schools.1107 Henri Tiphagne of Tamil Nadu-based NGO People’s Watch, said that teachers behave as part of the caste hierarchy and the children emulate them. He told Human Rights Watch, “Right now there’s nothing in the code of conduct for teachers on discrimination1108.

1103 Deccan Herald, December 15, 2013
1104 RTE: Lacking minimum area, private schools face closure Indian Express April 1, 2013
1105 India is wasting its demographic dividend, Hindustan Time November 25, 2013
1106 The Right of Children to Free and Compulsory Education Act, 2009, No. 35 of 2009, section 8 (c) and section 9(c).
1108 Human Rights Watch interview with Henri Tiphagne, People’s Watch, New Delhi, August 2013 available at http//: www.hrw.org
Incidents across the country reveal very disturbing trends of social exclusion and segregation by castes. In Bangalore a Dalit organisation Dalit Samrajya Stapanam Samiti\textsuperscript{1109} alleged that children have had locks cut out of their hair to mark out children who were admitted under the Right to Education quota.\textsuperscript{1110} The most predominant kind of discrimination, which is reported was not being given or allowed to sit on benches. The other overt form of exclusion is not allowing children from these categories to take up leadership roles like that of class monitor ship.

A 2012 qualitative study commissioned by the government’s flagship education program, Sarva Shiksha Abhiyan, in six states found exclusionary practices in schools. The study concluded: “In all six states, teachers preferred to focus on ‘bright’ children who sat in the front rows. This process resulted in a self-perpetuating mechanism leading to exclusion\textsuperscript{1111}

There have been repeated incidents of prejudice against the weaker and the marginalized. Dalit children are sometimes asked to sit separately, and dominant caste children are told by parents to refuse food cooked by a Dalit.\textsuperscript{1112} Villages inhabited by Dalits face the threat of social boycott and are ostracized on a range of issues, including over issues like the appointment of Dalit cooks and Anganwadi Workers.

In Rajasthan, water pitcher was not available to SC and ST students. Even in some schools in Andhra Pradesh, ST and SC students stayed away from hand pump and waited for others to pour water. The study found that in some schools in Madhya Pradesh, girls from general category and OBC were practicing untouchability, arguing that their parents have asked them to conform to the prevalent social norms\textsuperscript{1113}. Another case was established where upper caste parents belonging to the Kambalathu Naicker community in Kammapatti village

\textsuperscript{1109} http://www.ndtv.com/article/cities/bangalore-school-allegedly-gave-dalit-children-haircuts-to-separate-them-
\textsuperscript{1110} Economically weaker students are not untouchables, Deccan Herald, July 19, 2012 available at http://www.deccanherald.com/content/265681/economically-weaker-students-not-untouchables.html
\textsuperscript{1113} State of government schools: Lower caste students face acute discrimination DNA, 3 December 2013
refused to send children to school Srivilliputtur Panchayat Union Elementary because two Dalit women cooked the mid-day meal.\textsuperscript{1114}

Another episode of gross violation of the RTE norms was encountered in Nalasopara. About six parents, who wanted to admit their children in Stann Knowledge Centre's preschool\textsuperscript{1115}, were advised to admit their children in civic schools as they would not be able to afford English education. Matin Mujawar, president of Shikshan Hakka Manch,\textsuperscript{1116} an NGO that works both in Pune city as well as its rural parts said, "In city areas, students have faced a lot of discrimination from schools during admissions, but not so in talukas. In cities, schools checked applications for the parent's profession, their background and other such things which was not even mentioned in the act. There are instances when schools rejected applications for unknown reasons."

6.36.1.3. \textit{Infrastructure Blues}

Abysmal figures of infrastructure and school facilities have made a mockery of the celebrated RTE Act. There is still a burgeoning gap between the existing facilities and what needs to be done in the government schools. In Bhopal, 43 toilets for boys and 695 kitchen sheds still have to be constructed in 1191 schools in the district.\textsuperscript{1117}

Saurabh Sharma, founder-member of a Delhi education NGO, JOSH,\textsuperscript{1118} held that "The toilets are nowhere near the number you actually need. With so many kids using a single toilet, they are almost never clean,"

The Sarvodaya Kanya Vidyalaya at Pooth Kalan, northwest Delhi, has one toilet seat for every 1, 669 girls enrolled and Government Girls' Senior Secondary, Burari, has one for every 944. The Urdu-medium SKV at Jafrabad, Zeenat Mahal, has one boys' toilet (or urinal) for every 615 boys\textsuperscript{1119}

Findings by Voice of People, a civil society organisation has highlighted that :1. Only 68\% schools have separate classrooms for each teacher. 2. 4\% schools have single classroom. 2. 9\% upper primary schools have proper furniture. 3. 50\% schools do not have useable toilets. 9\% schools have no toilet facility. 4. No drinking water facility in 13\% schools. 5. 38\% schools have no boundary or fencing, 9\% schools have damaged boundary walls. 6. 42\%
schools have no playground, 64% lack staff rooms. 7. Merely 8% schools have separate room for library. 8. Only 40% have first aid kit. 9. Pupil-teacher ratio was 1:46 in primary schools and 1:59 in upper primary schools. The ideal ratio is 1:30 and 1:35 for primary and upper primary respectively. 10: There are only 68% and 89% permanent teachers in primary schools and upper primary schools respectively.\textsuperscript{1120}

A review of the legislation's implementation by the Right To Education Forum, a civil society collective comprising around 10,000 NGO's and three networks, has shown that while some progress has been made in implementing the act, it is far from adequate. The study report\textsuperscript{1121} reveals that 95.2% of schools are not complaint with the complete set of RTE infrastructure indicators, and in 2009-10 only 4.8% of government schools had all infrastructure facilities stipulated under the RTE Act.

School buildings have become a nightmare at some places. In Rangabayalu village, Vishaahkahapatnam the school building is just a pucca one among the thatched houses in the village and a place where the villagers store tendu leaves and other agricultural produce. It is also the building where she sleeps to beat the chill during the harsh winter nights\textsuperscript{1122}

It is reported that, in the name of school there is no table, chair, blackboards or seating arrangements for the students and teachers.\textsuperscript{1123} The students study in table, verandah, or under the trees.\textsuperscript{1124} Former Governor of Bihar and one of the members of the Rajya Sabha Mr. M. Ram Jois, points out that when the school in the Governor house complex was in a depleted condition what to talk of other schools.

In some areas the infrastructure of primary schools is so ailing that students are forced to sit on the ground as the roof of classrooms can fall anytime. A study conducted by Times of India in Kanpur\textsuperscript{1125} found to its surprise that the government primary school in Vijay Nagar has a single classroom. Classes from I to V are being conducted in it. At a primary school in Parade ground, TOI noticed that students have their own seating arrangements, which were in the form of mats.

The JRM 2013 of SSA also points out that many of indicators and the targets are not fully met or need further action. Interestingly, the JRM cities that enrolment overshot the

\textsuperscript{1120} Only 15% UP schools meet pupil-teacher ratio: Survey, Times of India April 3, 2013
\textsuperscript{1121} RTE Infrastructure Lacks In Almost 95% Of Schools available at http://www.careerindia.com/news/2012/04/10/rte-infrastructure-lack-in-almost-95-percent-of-schools
\textsuperscript{1122} Access to education still a distant dream for Didoyis, The Hindu July 24, 2012
\textsuperscript{1123} Ms. Najma Heptullah’s speech in Rajya Sabha Debates, 241, July 20, 2009
\textsuperscript{1124} Mr. Bharat Kumar’s speech in Rajya Sabha Debates, 279, July 20, 2009
\textsuperscript{1125} Primary schools lack basic facilities, Times of India, July 16, 2012
target, indicating the additional inputs needed in infrastructure as per the increased number of children in school.\textsuperscript{1126} Blackboard is an essential part of the school learning and it is critical TLM for a school. According to DISE statistics even after three years of implementation of the RTE Act 2009 around 7% of the schools still do not have functional blackboards. The problem is severe in Bihar and Uttar Pradesh\textsuperscript{1127}

6.36.1.4. Teacher Absenteeism puts RTE at the crossroads

Almost every aspect of RTE implementation is in shambles. An international study of teacher absence in seven low- and middle-income countries, indicated that 25% of all government primary school teachers in India were absent on a typical school day, exceeded only by Uganda (27%).\textsuperscript{1128}

A World Bank study in 2004 found that 25% of teachers were absent from school, and only about half were present during unannounced visits to government primary schools. In a shocking case of teacher absenteeism, a teacher named Sangeeta Kashyap in Madhya Pradesh was absent for 23 years of her 24 year career.\textsuperscript{1129}

In one instance, the head-teacher was on leave and three of the remaining five teachers who were present were standing in the playground and talking among themselves when the investigators reached the school.\textsuperscript{1130} A recent survey conducted by the Educational Consultants India Limited for the Human Resource Development (HRD) Ministry reveals that on an average, teachers of three big states - primary schools Andhra Pradesh, Uttar Pradesh and Madhya Pradesh, in primary and upper, are absent for 28 days during an academic year\textsuperscript{1131} According to the survey out of the 168 days in academic calendar in AP, the teachers were found absent from school for 68-69 days This is similar to the situation in Madhya Pradesh and Uttar Pradesh where the teachers were absent for 63-64 days out of 229 days and for 57-58 days out of 214 days, respectively.

\textsuperscript{1126} Seventeenth Joint Review Mission 14th -28th Jan 2013, Aide Memoire
\textsuperscript{1127} According to DISE 2011-12, nearly 67% schools got grant for TLM and nearly 95% of those who got TLM, used it.
\textsuperscript{1128} Tavleen Singh, Indian Express, 15/02/2004
\textsuperscript{1129} India school teacher ‘absent for 23 years’ available athttp://www.bbc.com/news/world-asia-india-28684751
\textsuperscript{1130} “PROBE survey” conducted in 1996-97 in Hindi-speaking States. A resurvey conducted 10 years later (in 2006)
\textsuperscript{1131} When teachers bunk school - EdCIL stud, March 27, 2010, available at http://www.indiaedunews.net/Today/When_teachers_bunk_school
6.36.1.5. "No" to Corporal Punishment still a distant reality

Corporal Punishment is supposed to be banned in the country but only on paper. In yet another brutal incident three students of Vagad Gurukul International School in Vasai, Mumbai were found dead. In May 2013, a Kolkata teacher dragged an eight-year-old boy and reportedly banged his head against the wall. The injured child was neither taken to hospital nor given any first-aid. He died the next day. Another 15-year-old student of Jalpaiguri committed suicide days after his teacher allegedly hit him with a duster after he broke a bench in July 2013.\textsuperscript{1132}

From sexual harassment by teachers, to bullying of dalit and adivasi students, gender-based violence takes many forms in Indian schools, says a recent report by UNESCO. The report, School Related Gender Based Violence (SRGBV) in the Asia-Pacific Region\textsuperscript{1133}, looks at gender-based violence on campus as a critical barrier to the right to education. Calling corporal punishment "near-universal" in India, the report quotes a 2009-2010 National Commission for Protection of Children's Rights of India study which states only nine of the 6,632 children never faced corporal punishment.

Jayant Jain, president of Forum for Fairness in Education, an NGO, said: “Physical punishment is more rampant in towns and villages while city schools mentally harass students in the name of discipline. Unfortunately, no platform exists in our country where parents can lodge complaints about corporal punishment.

6.36.1.6. Universal Enrolment Still A Farce

Another area of concern is the high dropout rates which need to be bridled. Drop outs account for 65\% in this category and mostly in the case it is to be found in the case of Schedule caste, Schedule tribes and Muslims.\textsuperscript{1134} More needs to be done and is evident from the fact that an estimated 6.04 million children in the age group 6-13 still remain out of school (as per the Review Report by HRD ministry, 2014)\textsuperscript{1135} Andhra Pradesh\textsuperscript{1136} reports one

\textsuperscript{1131} http://www.dnaindia.com/mumbai/report-education-takes-a-beating-2018024

\textsuperscript{1132} Gender Based violence undermines right to education : UNESCO, Times of India, August 16, 2014 http://timesofindia.indiatimes.com/city/bengaluru/Gender-based-violence-undermines-right-to-education--UNESCO

\textsuperscript{1133} Indian Human Development Report-2011 Towards social inclusion, Planning Commission, Government of India, p.193, 207

\textsuperscript{1134} Are we serious about educating our children? Financial Express, February 02, 2015

\textsuperscript{1135} Andhra tops in girl school dropouts: Activists Times of India October 11, 2013

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of the highest numbers of school dropouts among girls. If the net enrolment rate of girls in primary education is 96%, it gradually dips to 60% in secondary education.

Most states have defined a “dropout” in their rules, but the definition varies from state to state. In Andhra Pradesh, for instance, the government rules state that an elementary school student absent for more than one month is to be considered out of school. In Karnataka, to sooner identify a child at risk, the definition of “dropout” has changed from a child absent from school for 60 days to seven days without taking leave of absence. However, there are no clear guidelines on how the authorities should take remedial action to bring the children who have dropped out back in school. If a student’s name is removed from registers because of prolonged absence, there is no clarity about a re-admission.

RTE forum, A Collective of Education Networks and Civil Society Organizations in its stocktaking report on RTE showed that migrant children remain the nowhere kids: nearly 41% schools do not include them in the mapping process. The nomadic children’s plight is worse than that of migrant children. Just 3.7% schools include them in child mapping.

Right To education pledges to include the physically disabled in mainstream schooling. However here too it was unable to make the grade. A study was carried out by National RTE forum member Aarth-Astha in Delhi along with Sparc-India from Uttar Pradesh and Aaina from Odisha, on the inclusion of children with disabilities in the. It was found that in Delhi and Uttar Pradesh, though entitled, many children with disabilities were not given transport to access school. In Odisha, out of the 50 school going children studied, only 10 were provided an escort allowance which encouraged them to take the child to school. However, parents of children who were under the home-based education programme complained that teachers did not show up at their homes.

In order to check drop rate rates under the RTE Act, the school management committee (SMC) were to be but many schools have yet to even establish these committees.

1138 “They Say We’re Dirty “, Human Rights Watch, 2014 available at http:// www.hrw.org
1139 Status of Implementation of Right of Children to Free and Compulsory Education Act, 2009, Year Three (2012-2013), A draft Report by RTE Forum
1140 Report says enrolment of disabled children in govt. schools under 1% The Hindu, December 31, 2013
Data collected for 2011-2012 found that only 68 percent of schools nationwide had constituted such committees; in Uttar Pradesh, only 56 percent had done so.

6.36.1.7. Teaching becomes a casualty

The target of recruiting professionally trained teachers seems like a far-fetched reality. Implementation is still a struggle on ground. It is reported that in the state of Bihar out of 2,00,000 recruited school teachers even 5% of them were not be called as ‘real’ teachers. All the new appointments in primary schools are of a short-term contract nature; these grossly underpaid teachers are known by different names: Para-teachers, shikshamitras, contract teachers, and so on. Speaking on the relevance of para teachers Drèze and Sen believe that the contribution of these low-cost schemes so far is uncertain and that it is premature either to applaud or dismiss them. Moreover many of the teachers sub-contracted their jobs and that there are education mafia and rampant corruption in the school funding and system.

Under the Sarva Shiksha Abhiyan, the current total sanctioned teacher posts (till 2012-13) in the country were 19.82 lakh while the number recruited was estimated at 12.9 lakh, leaving a vacancy of a whopping 7 lakh against sanctioned posts. To add to the woes, the percentage of teachers without the minimum qualifications has been hovering at approximately 20% for the last four years with no signs of improvement. The training of teachers seems to be a low priority area as of now. According to Sarva Shiksha Abhiyan reports, from 2009 to 2012, only 2% of the Sarva Shiksha Abhiyan budgets have been spent on teacher training.

A study by RTE forum found that one out of ten ‘teachers’ are those who teach on behalf of government appointed teachers and have not come through the selection process nor have their qualifications been verified by the state education authorities.
Another metric on which the States were tested was the number of days a school functioned. According to the RTE norms, primary schools are supposed to function at least 200 days a year and all other kinds of schools a minimum of 220 days annually. The Study showed that 89 primary schools functioned less than 200 days a year and 228 upper primary schools worked less than 220 days. Thus 317 or nearly 15 % of the schools surveyed worked less than the stipulated norms.

6.36.1.8. Allocation of funds nothing but an eyewash

Poor allocation of funds has led to the bonsaification of education which has caused damage on many fronts. Educationist and CABE member Vinod Raina who was part of drafting the RTE says the cabinet approved 2010 figure had been a total of Rs 2.3 lakh crore for 5 years. On a 65:35 sharing between the centre and the state, this translates to Rs 34,000 crore each year for the Centre. Yet, right from 2011, the amount allocated has been less than this. Even in, 2011-12, the first year of its allocation, the allocation was the inadequate Rs 21,000 crore. “The figure has been consistently less than what the cabinet had approved,” Raina said adding the current allocation is “not enough for RTE.

The Economic Survey 2012-13, another strategy document of the Government, disclosed that there is hardly any significant improvement in the allocation for education in the 2013-14 Union Budget. For SSA the union budget 2013-14 it has allocated only Rs. 27258 crores for SSA, which is just a 6.6 % hike from last year. Total allocation for education to Gross Domestic Product (GDP) still revolves around 3.3 % against the target of 6% set by Kothari commission in the 1960s. In fact, the Ministry of Human Resource Development had requested an amount to the tune of Rs.1.84 lakh crore for SSA during the Twelfth Five Year Plan period. The present allocation indicate the inadequate fund allocation itself will weaken the entire process of RTE Act implementation very badly.

6.36.1.9. Enrolment does not mean attendance

Current attendance rates are a more reliable indicator of schooling participation than enrolment rates. Kingdon notes, while attendance rates themselves are not a guarantee of

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1147 Bonsai Effect in Basic Education, Sanjiv Kaura, Times of India, 08/01/2004
1148 17% increase for education sector is nothing but eyewash, DNA March 1, 2013
1150 K. Shiva Kumar, Jean Dreze et al.”Education For All” is the policy, but what is the reality?Frontline, Vol.26.March 14-27, 2009
grade completion or of achieving minimum levels of learning, these are nevertheless highly encouraging trends. Conversely things have changed now as enrolment does not mean attendance.

Almost everywhere, it was found that children’s attendance as noted in the school register was far below the enrolment. Some children are only nominally enrolled; others are enrolled in both government and private schools; and still others attend only irregularly. In a school in a tribal hamlet in Bhabua in Bihar, the school remained closed for three consecutive days as the head-teacher had not come. Bachpan Bachao Andolan, an NGO, conducted a study across 9 states last year to understand the impact of the Right to Education Act and discovered some disturbing trends. The names of a large number of students were enrolled but they were not in schools.

As a corollary to Enrolment does not mean attendance, another proposition arises that attendance does not mean learning. "Just spending time in school is not enough. There has to be a significant gain in skills that requires an improvement in the quality of education. This will help countries in the region to reap the full expected returns on their investments and generate gains in productivity and economic growth," said Philippe Le Houerou, World Bank Vice President for the South Asia Region. The report titled 'Student Learning in South Asia: Challenges, Opportunities, and Policy Priorities,' by World Bank says "The fact that one-quarter to one-third of those who graduate from primary school lack basic numeracy and literacy skills that would enable them to further their education, undermines the growth potential and social cohesiveness of the region.".

6.36.10. Elite Complex Prevents Schools From Giving RTE Mandated 25% Reservation To Economically Weaker Sections (EWS)

Instances have also surfaced where schools unwilling to comply with RTE norm of 25% reservation for weaker sections misguided the parents from seeking RTE quota. Several schools seem to be either ignorant of RTE clauses or are deliberately misguiding parents who are seeking admission for their children. When Chand Pasha, a cook in a hotel in Kottur (Bellary district), tried to admit his daughter in a private school under the 25 per cent quota

1152 Poor education quality biggest impediments to faster economic growth: World Bank, The Economic Times, Tuesday, July 1, 2014
1153 Student learning in South Asia, Times of India, Monday, July 7, 2014

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for underprivileged children\textsuperscript{1154} under the Right to Education (RTE) Act, where he was told by the office staff that he has to choose between a seat in a private school and benefits under the Bhagyalakshmi scheme.

During a seminar on “Human Rights and Constitution” Supreme Court Judge Justice V Gopala Gowda, “Despite taking the benefits and tax exemptions from the government the educational institutions are not willing to educate poor children under the Right to Education Act.”\textsuperscript{1155}

In yet another incident of disinclination coupled with power complex a school was found to be evading admissions to the economically weaker sections of the society. It was however brought to book by the Desh Seva Samiti NGO\textsuperscript{1156} which filed a complaint with the state education department against MTS Khalsa High School, Goregaon, for allegedly rejecting applications for the 25\% quota of economically weaker sections under the Right to Education (RTE) Act on the pretext of non-availability of seats.

In another blatant violation of RTE rules\textsuperscript{1157}, which state that a child admitted under quota cannot be charged fees, a school in Gauribidanur admitted a child under the RTE with the condition that the parent pay the fees until the school gets reimbursement from the government.

\textbf{6.36.1.11. Ineffective Grievance Redress}

The Right to Education Act (RTE) lacks a clear and effective grievance redress mechanism. SMCs and local authorities do not have the capacity to receive and address grievances, and state-level mechanisms, such as the state commissions for the protection of child rights, where they exist, are not immediately accessible at the village level. The National Advisory Council’s Working Committee on RTE stated in January 2013: “In most States there continues to be lack of an operational monitoring, accountability and grievance redress architecture and mechanisms with rules, norms and guidelines specifying how these

\textsuperscript{1154} “Schools misguide naive parents seeking RTE quota “The Hindu January 16, 2013
\textsuperscript{1155} Rights yet to reach people:SC Judge available at http://newindianexpress.com/states/karnataka/article1521501.ece
\textsuperscript{1157} Ibid
mechanisms will function\textsuperscript{1158} Some states—such as Rajasthan, Uttarakhand, and Haryana—have already laid down their own grievance redress guidelines\textsuperscript{1159}

6.37. Conclusion

This segment has put the RTE Act under scanner. From highlighting the unfair practices in the school to the laggard approach towards education on various fronts, it has been seen that much still needs to be achieved. The 86\textsuperscript{th} amendment cannot be realized completely until and unless the stark contextual realities are considered. The vision that India should become a knowledge power it has to follow the 4A Approach\textsuperscript{1160} diligently which comprises of Availability, Accessibility, Acceptability and Adaptability.

Speaking on the occasion of National Education Day, 2012 Union Minister of Human Resource Development Dr. M.M. Pallam Raju appositely said

“India, as we all know, is an emerging economy with a very favourable dependency ratio. If we wish to earn the demographic dividend, then we must provide education and skills to all our youth so that they can develop themselves into human resources, not only for the development of our nation but also for the world.”\textsuperscript{1161}


\textsuperscript{1161} Pallam Raju’s Speech on National Education Day 2012, Press Information Bureau also available at http://gpress.in/2012/11/pallam-rajus-speech-on-national-education-day-2012