This chapter which serves as the epilogue of this thesis deals with the summarizations and conclusions that have been derived from the entire work. In a way it gives us an abridged insight into all the chapters that have proceeded so far. The focus of the present study was to highlight the indispensability of the Amendment provision in the Indian Constitution and to critically analyse major amendments. For convenience, the present work has been structured into seven chapters, each organically linked to the other. The present work has been undertaken on the premise that the overall purpose of providing Constitutional amendments and amendment provision in the Constitution is a functional necessity. Out of the vast universe of hundred amendments, 4 amendments have been shortlisted and investigated analytically. These are the 42nd amendment and its better half the 44th amendment, 73rd amendment and the 86th amendment. Each amendment has been studied as like an exclusive case study. Historical and Descriptive methods have been used to examine the lineage of each amendment and doctrinal legal research method has been utilized to study the features of the same. Data for the purpose has been collected from Primary, Secondary and Tertiary sources and it has been interpreted analytically with the help of hermeneutical analysis. It was hypothesized that the rise in the number of amendments is completely justified and they have successfully helped to maintain the peaceful continuity of the Indian polity. This hypothesis is therefore positively established that amendments do have a progressive and constructive impact on the overall structure of the polity.

The Constitution of India is famous for being the longest among the written constitutions worldwide with a reasonably long Preamble, 395 articles augmented by more additions than deletions through amendments and 12 Schedules, some of them very long. In the family of Constitutions, the Constitution of India is said to belong to the Euro–American tradition. As regards its length, early commentators on the Constitution had predicted that its length would lead to legalism and rigidity. Fortunately this did not happen and as expected by the Constitution makers it has proved to be quite flexible and received some favourable comments from some foreign scholars. Wheare saw in it wise variety while Austin found the amending processes as ‘one of the most aptly conceived aspects of the Constitution’. The
number of times and the ease with which the Constitution has been amended amply proves the point.

The size of a country, its sizeable population, its phenomenal diversity and the enormity of problems associated with its political and social history, poverty, illiteracy, lack of adequate experience and expertise in constitutional governance, the disturbed regions and several other factors have contributed to doubts whether India could have and work with a modern Constitution. Miraculously India not only produced one of the most progressive constitutions after its liberation from British rule, but the Constitution has also and worked reasonably well since its inception despite several ups and down. One of the reason for its survival has been its adaptability to the changing times and situations.

The Constitution has gone through small and major amendments at an average rate of more than a year, but it has managed to retain its basic structure which needs to be extolled. The amendments were passed in order to (i) clarify the meaning of existing provisions; (ii) over-ride decisions of the Court concerning the right to property; (iii) dilute democratic checks and balances during the 1975 emergency, and to restore them after the Emergency lapsed; (iv) enhance democracy for example, ‘by devolving power on village and district governments (the third tier of federalism), and preventing unprincipled and opportunistic defections from political parties by legislators.’ Rajeev Bhargava points out that Indian Constitution was designed to break the shackles of traditional social hierarchies and to usher in a new era of freedom, equality and justice. He views Indian Constitution as a breakthrough in constitutional theory as the Indian Constitution derives its rationale for existence not only by disenabling people in power but also by empowering those who have been traditionally deprived of power.

Victor Rosewater too throws light on the importance of the amending clause, “it is for the purpose of assuring this orderly evolution, this gradual yet certain adaptation of the mechanism of government to constantly changing conditions, that in our Constitutions, and especially in our written federal and state Constitutions, provision has been made to render amendment and revision possible without uprooting the foundations upon which they were laid. The extent to which these amending provisions were workable, the measures in which

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they meet the real needs of the people and prove capable of withstanding the shocks of spasmodic agitation or of passing popular frenzy, must be the test of their sufficiency and usefulness. If unworkableness produces stagnation, it is sure to cause steadily deepening discontent and to invite recourse to extra–constitutional or semi-constitutional devices which border revolution.iii

Thus for a written Constitution like India, amendment is an absolute necessity and its importance within the body of a constitutional document is, as much, if not more, as the need for the document itself. The drafting of a Constitution is an onerous and byzantine job and its construction in a form acceptable to the people, especially to the future generations, is a task that is almost impossible. In this connection Sir Ivor Jennings very aptly says,” …it is impossible for the framers of the Constitution to foresee the conditions in which it would apply and the problems which will arise. They have not the gift of prophecy.”iv In other words, no amount of drafting skill can be expected to eliminate the necessity of amending and developing a Constitution to adapt to the unforeseen and unforeseeable. It is therefore necessary for such a purpose to provide for an amending clause in the framework of a constitutional document to meet the requirements of people.

We have already seen in the preceding pages how amendments have acted as buffers to retrogression and impending dangers that threaten the socio-political order. Amendments have allowed the future generations to adapt the Constitution to their changing requirements. Globally all the Constitutions are understood to grow and evolve over time as the conditions, needs, and values of our society changes. As discussed previously that with each amendment the Constitution grows as a living organism as change is one of the laws of life and for this the “living tree” metaphor has been used. It is not in the nature of a living organism to remain monotonously the same from year to year and from age to age. As with individuals, so with nations, change is one of the laws of the life. Further Ilya Prigogine’s discoveries in thermodynamics have also been resorted to, to explain the dynamic nature of Constitution.

It has also been brought to light in our study that it is essentially the specificity of the document, the inclusiveness of the constitution, and the constitution’s ability to adapt to changing conditions that are the significant predictors of prolonged existence of a constitution. Thus a Constitution whose amending provisions makes it impossible to make

iii Victor Rosewater, A Curious Chapter in Constitution Changing , Political Science Quarterly ,Issue 36, 1921,p.409
iv Ivor Jennings, Some Characteristics of the Indian Constitution, 1953
necessary modifications in its amending provision is like a constitutional cul-de-sac. The alternative to an unamendable Constitution is likely to be revolutionary upheaval caused by the accumulation of grievances and social and economic maladjustments. This alternative is avoidable and undesirable. Thus laws and institutions must go hand in hand with the progress of the society and should not be likened to an “ark of covenant –too scared to be touched.”

Moreover a constitution which is devoid of an amendment provision would be the most inadequate and “imperfect deed of partnership” between the drafters and the people at large. It would be doomed to collapse ignominiously and without hope of reconstruction. Further it is bound to break within the pressure of divisive national forces. In fact the biggest downside of an unamendable Constitution has been highlighted by Mulford in a very crisp manner. According to him, “An unamendable Constitution is the worst tyranny of time or rather the very tyranny of time. It makes an early providence of a convention which has adjourned without day. It places the sceptre over a free people in the hands of dead men, and the only office left to the people is to build thrones out of the stones of their sepulchres.” Thus the only panacea which can sustain it amidst the centrifugal forces would be taking resort to the provision of amendment.

Our work also gives generous attention to the causal designs of amending power which are followed by various countries. As is well known the amending procedures of some written constitutions, particularly American constitution is rigid and cumbersome giving very little scope for self-revision. On the other hand, the Constitution of Germany lends itself mild flexibility while retaining the fundamental rules of the political game. In Germany, the Landers constitutions provide for an alternative mechanism not found at the federal level. The amendment procedure at the federal level requires amendments to be approved by a 2/3 vote of both houses of the federal legislature. The Landers constitutions are also amended by a 2/3 vote of Land legislatures. But in some instances, Landers constitutions also permit the people to initiate amendments, although these must still be approved by the legislature. Article 15 of the Swedish constitution requires amendments to be approved by two successive parliaments separated by an election; ordinary laws require approval by only a single parliament. In Malaysia, the national constitution can be amended upon a 2/3 majority of the national legislature, and the same type of legislative extraordinary majority requirement is in place in

6 P.H. Lane, Annotated Constitution of the Australian Commonwealth, pp.989-90
most state constitutions. Meanwhile, in Brazil, amendments can be proposed in several ways, but they must be approved by a 3/5 vote of both houses of the national legislature, on two separate readings. The Brazilian state constitutions have the same general requirement for approving amendments. Finally, in Switzerland, both the national and cantonal constitutions are amended rather easily and through diverse mechanisms. At the federal level, constitutional changes can be proposed either by the legislature or by initiative petition, and they must be ratified by a majority of the people and by voters in a majority of cantons. Cantonal constitutions vary in their specific amendment procedures; but they all resemble the federal constitution in permitting amendments to be proposed by initiative petition and also in requiring ratification by popular referendum.

Further in Mexico, constitutional amendments require the approval of a special majority of two-thirds of those present and voting in each chamber of the National Congress and approval by more than half the State legislatures. The Nigerian constitution too provides for amendments which require the approval of two-thirds majorities in each House of the National Assembly, but must reach the higher standard of approval of two-thirds of the State Houses of Assembly. However in France there are two alternative procedures – either by simple majority decision in each chamber followed by a popular referendum (simple majority), or upon proposal by the president with a 3/5- majority requirement in parliament, but no referendum. There are however countries in which amendment is more difficult than average (including Bulgaria, Romania and Russia) and countries where it is relatively easier (including the Czech Republic, Estonia and Slovenia). In India, the different amendment procedures for different types of amendments become increasingly more complicated. There are three mechanisms of amendment which are followed in India .While some amendments are brought about by simple majority, some others require a special majority and the rest require a special majority and state ratification as well. On a deeper level, it can also be held that the very legitimacy of a given constitutional system rests on the premise amendment machinery.

Constitutional experts, scholars, politicians and even the lay men are therefore unanimous on the need of amending the Constitution. There has never been a utopian impeccable Constitution that does not require amendment. No Constitution has ever reached its final form and become a dead or a fixed thing incapable of further development. Just like the evolution of societies is a universal truth similarly the Constitution which is a mirror of the society is subject to constant changes and development. It may be clearly understood that
the grant of an amending power to the future generations which can only make inconsequential changes to the Constitution is not at all a satisfactory solution. What the future generations will require more is the amendment of the basic features of the Constitution because only that can meet their aspirations and requirements, if at all needed. The only time when the Constitution can be under strain is when there is no provision of amendment entrenched in it.

In view of these reasons it becomes essential that the amending provision should be present in every living Constitution. Furthermore it is the only way by which the aspirations and needs of the people at large can be accommodated. There are exceptions like the basic features ingrained in the Indian Constitution which are sanctimonious and cannot be amended but they do not render the Constitution impotent or does not bring about stagnation in the Constitution. Rather this particular feature ensures that the Constitution does not become a plaything in the hands of vested interests or some powerful people.

The adequate provision for amendment is therefore necessarily implicit in the very nature of a Constitution and practically every Constitution follows some or the other method Constitution. The basic ideas upon which a Constitution is based in one generation may be found to differ in the next generation. It thus becomes necessary to have some machinery, some process to address the changing perspectives and needs. Here one can take into account of what Harvey Walker has said. According to him, “Constitution must be developed out of the life and aspirations of the people. Not borrowed from the others. Their fundamental concepts, to be useful and lasting, must be in tune with the particular culture and tomes. This requires continuous adaptation.”

It is interesting to note that the early constitutions of eight constitutions belonging to the eighteenth century did not contain any provisions for amendment. This anomaly has been highlighted by James Wilford Garner who observes, “Whether this omission was due to oversight or failure to appreciate the obvious advantages of expressly pointing out in the Constitution itself the mode of procedure observed in altering its provisions whether it was due to the prevailing opinions, repeatedly asserted in the bills of rights, that the people have an inalienable right at all times to amend the Constitutions and hence a belief that necessity existed for limiting their right by self-imposed restrictions –there is a difference of opinion. Whatever may have been the reason, the desirability, not to say necessity, of providing in the

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8 Harvey Walker, Myth and Reality, Chapter I .p.10
Constitution a method of legal and orderly procedure for making alterations came to be recognized?“

As no Constitution is infallible and flawless, the amendments and alterations should be so made that they are agreeable to the general sense of the people the amending clause thus assumes so much importance that no Constitution can be conceived without it. It is only the amending clause in the Constitution which enables the future generations to exercise their sovereign power of having a constitution of their choice and of their changing needs. If the Constitution of any country cannot be regularly amended then in that case there are only two viable options left with the people…. They must either submit to its oppressive policies or bring about amendments by a civil war or revolution.

The real effectiveness of any Constitution, however depends on the way it is used, the way it is adapted to meet the unforeseen situations. The Constitution being the product of human labour can never be perfect. Our framers were well aware of their own human limitations as well as the limitations of the resources of the infant India. Hence they saw in the future Parliament the capacity of being a continual constituent assembly and therefore bestowed it with maximum powers under Article 368 of the Constitution. If we go through the major changes brought about by various amendments of the Constitution we will come to know that none of them was an innovation. They were all discussed and envisaged by the members of the Constituent Assembly and dropped on the ground that either they thought their inclusion in the Constitution to be too early for the resources of the State or they wanted to leave the wisdom of the provision to future Parliament. To understand the import of the aforesaid statement lets discuss the three amendments which have been employed for our study.

For instance the word ‘socialist’ which was later added to the Preamble by the forty second Amendment Act, was already proposed by B.R. Ambedkar but it was not accepted by other members of the society who thought that the constituent Assembly had no sufficient mandate to incorporate in the Constitution such an economic policy of the doctrinaire character.11

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9 J.W. Garner. Political Science and Government, p.536
10 CAD, Vol. XI, p.611
11 CAD, Vol. I, p.100
Likewise Right to education which was added to the Constitution by way of the 86th amendment was proposed much earlier. The demand for compulsory primary education was articulated during the freedom movement, it was however not actually translated, as one might have expected, into a fundamental right when the Constitution was drafted.\textsuperscript{12} It was almost like a great sanctimonious promise that was betrayed. The Constituent Assembly Debates 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. To support this, one can skim through the Constitutional Debates where it was decided in a dramatic manner to transfer the Right to Education to the chapter on Directive Principles of the State Policy on 21st April, 1947. In an expert meeting of Govind Ballabh Pant, Alladi Krishnaswami Ayyar, M. Ruthnaswami chaired by Sardar Vallabhbhai Patel radically 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)".\textsuperscript{13}

The same holds true for the 73\textsuperscript{rd} Amendment relating to Panchayati Raj and decentralisation. 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. It was feared that the local influential or wealthy class might exploit the less-educated and less-educated poorer classes and that throwing the PRIs into a whirlpool of party politics would destroy their usefulness as agencies of administration.\textsuperscript{14} As a result, the word ‘Panchayat’ did not even appear in the draft Constitution of the India\textsuperscript{15} which was published on 26\textsuperscript{th} February 1948.

However all the above defects in the Indian Constitution whether they were due to human limitations of the framers of the Constitution or due to the limitations of infant state were removed by the robust machinery of Amendments?

Take for instance right to property which has now been deleted by way of Forty-Fourth Amendment of the Constitution. In 1950 when our framers incorporated this rights in


\textsuperscript{13} Dr. R. M. Pal, Denial of Right to Education: A human Rights violation ,Social action, Vol. 51 April-June 2001, pp.153-154

\textsuperscript{14} M. Das in CAD, 8-11-1948, Vol. VII at p.308

\textsuperscript{15} Granville Austin, The Indian Constitution: Cornerstone of a Nation, Oxford, Bombay, 1972, p.34
Part III, there was a different set up, today the milieu is different and therefore it stands deleted as a Fundamental right. But suppose with the new provisions on the right to property, a proviso is added that “right to property can never be made a fundamental right again”, that will be notionally bad because that would bind the succeeding generations.

At the apex of all human rights is the right of self-preservation. Self-preservation implies adaptation to the changing environment. It is in the nature of man to adapt himself to the changing socio-political and economic environs. Without such adaptation, people will decay and there can be no progress. In this context Kant’s words seem relevant who said, “One age cannot enter into an alliance on oath to put the next age in a position when it could be impossible for it to extend and correct its knowledge; or to make any progress whatsoever in enlightenment. This would be a crime against human nature whose original destiny lies precisely in such progress. Later generations are thus perfectly entitled to dismiss these agreements as unauthorized and criminal.”\(^{16}\)

Had it not been for the amendments, the Constitution would have been nothing but a piece of lifeless anthology of some dead rules. Not only do these amendments help in the mainstreaming of interests of the backward and subaltern classes but they have been an elixir for many ills that thwart the progress of the country. Indian Constitution is now owned by many—property holders, Tamil speakers, Muslims, Brahmins and Dalits. It provides aspiration for many of those left behind as well as protection for those who already have secured their position. With the device of amendments, the Indian Constitution has accomplished shifts among different institutional structures. It has facilitated Federalism to accommodate linguistic diversity that might have otherwise broken up the state. Thus amendments have proved to be an constitutional alchemy by which groups with conflicting agendas have all acclimatized themselves to the changing times.

Our study also gives a brief exposition of various amendments in the second chapter. The wide spectrum of amendments beginning from Land reform legislation, Fundamental rights to reformations regarding reservation (popularly called the Policy of affirmative discrimination) to the Panchayati Raj system have all been examined succinctly. It has been further highlighted in our work that the Constitution of India has been amended on ninety-four occasions averaging at the rate of 1.5 amendments per year. This tally looks rather large

\(^{16}\) Kant’s Political Writings, Cambridge University Press, 1970.p.57
when compared to the United States of America whose Constitution has been amended barely twenty-seven times.

Thereafter, the next chapter discusses the various socio-political demands which were considered inevitable for sustaining the Constitution. Demands like economic demands, federal demands, judicial demands, egalitarian demands, multicultural demands, decentralisation demands, transparency demands and goal-specific demands have been elucidated at length. The highlight of this chapter is the most recent Constitution (Ninety-Ninth Amendment) Act which brings the collegium system, which was created in 1993 by the Supreme Court, to a grinding halt after 22 years. It has been dealt under transparency demands in detail. Without a doubt, it is as a transformative step in re-defining judicial transparency and independence as it relinquishes the “closed door” opaque system of appointments which fails to ensure impartiality and fairness of the system altogether.

In this regard one cannot disregard the significant role of the Indian Parliament which does the foundation work for introducing amendments. The abundance of its powers can be adjudged from the fact that it not only acts as a law making body but also exercises power of an amending body by virtue of its constituent power. It is also professed that in the hierarchy of the constituent organs; the Parliament holds the pre-eminent position and subject to the procedure laid down in Article 368 it can claim a sovereign status. It would be not be a hyperbole if we say Article 368 permits Parliament to apply not only the physician’s needle but also the surgeon’s saw. It may amputate any part of the Constitution if and when it becomes necessary so to do for the good health and survival of the other parts of the Constitution. The Constitution makers conferred very wide amending powers on Parliament solely for the reason that it believed Parliament was elected on adult franchise and it would be fully representative of every section of the Indian people whenever there was any need for an amendment or alteration.

Nehru proclaimed prophetically, “while we, who are assembled in this House undoubtedly represent the people of India, nevertheless I think it can be said, and truthfully that when a new House, by whatever name it goes, is elected in terms of this Constitution and every adult in India has the right to vote, the House that emerges then will certainly be fully representative of every section of the Indian people. It is right that House elected so …should

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have an easy opportunity to make such changes as it wants to." Thus they firmly held that the Parliament should have the right to have fresh look at the Constitution and to make such changes therein as the entire people whom it represents.

Next the episodes of judico-legislature confrontations have been discussed. Broadly speaking from 1951 up to 1967, judiciary conceded under the Constitution all the plenary amending powers to Parliament. A paradigmatic change was observed in 1967 when the Supreme Court located the amending powers under the residuary legislative powers of Parliament and held that since an amending “Act” is law under 13(3), Parliament could not abrogate Fundamental Rights. In Golak Nath, the court reached this conclusion by importing limited meaning to the word “amendment”. It is neither possible to restrict the legal meaning of amendment to “improvement” nor can it be denied that by an amendment any article may completely be removed or replaced.

To rectify these aberrations, the Twenty-fourth and Twenty-fifth Amendment Acts were passed by Parliament. Despite the fact that these Acts were held valid, the row between Judiciary and Parliament did not come to an end. In Kesavanand Bharti case in which these amendment acts were challenged in the Supreme Court projected a new doctrine—the doctrine of Basic Structure of the Constitution which was an ingenious addition to the Constitution. It was never alluded to or discussed by the Constituent Assembly in its meetings. As a result, though Parliament has an unlimited amending power under Article 368, it cannot alter the basic structure of the Constitution.

The legal issue in Kesavanand Bharati case was the amending powers of the Parliament with regard to fundamental rights especially the fundamental right to property. Khanna J. held fundamental rights including the right to property as not to be the part of basic structure and hence amendable by the Parliament. But he gave many other instances which formed the basic structure of the Constitution, and hence were beyond the amending powers of the Parliament.

Here one needs to note that even if the Judiciary is unable to bridle the powers of the Parliament, there are ample internal or procedural checks on the Parliament which arise out of the very nature of the amending power itself. In the Indian Constitution so long the procedure is laid down in Article 368, the Parliament can never claim absolute Parliamentary

\[18\text{ CAD Vol.VII, p.322}\]
sovereignty. The procedure itself imposes a restriction on the power of Parliament. It is thus the duty of the Judiciary to see that the procedure is fully complied with when Parliament acts under Article 368. Any irregularity with regard to the procedure prescribed in Article 368 is not only an irregularity of the proceedings but a non-compliance of the provisions of the Constitution and must be regarded as fatal to the exercise of the amending power. The procedure laid down in Article 368 is therefore a sufficient check on the amending power of the Parliament.

Besides it is not an easy task to gain a two-third majority of members present and voting and an absolute majority of the total membership of each House of Parliament. The proper check on Parliament is therefore to be found in the opposition parties. In case, a multiparty system develops, the special majority required for amending most of the articles of the Constitution would be hard to gain so much so that the Constitution which is felt to be very flexible at the moment, may prove to be almost as rigid as the Australian Constitution.

Moreover in case of the entrenched provision not only the special majority of Parliament, but ratification by at least half of the State legislatures is another dominant check on the Parliament. The Constitution has thus provided an adequate balancing wheel and a sufficient check on the amending power of the Parliament.

However the strongest check on the amending power of the Parliament lies in the public mandate and public opinion. The limitation of public opinion exists even under the most despotic monarchies. Louis the XIV at the height of his power found it difficult to establish the supremacy of Protestantism and the same reason prevented James II from establishing democracy of Roman Catholicism. In India the same public opinion proved to be the graveyard for Indira Gandhi hegemony. If Parliament today cannot abolish secularism, cannot install monarchy, cannot scrap Part III of the Constitution totally is not due to the limitation of the doctrine of basic structure but due to the strong public opinion that keeps it on tenterhooks.

As the theme goes, this thesis has made an attempt to study the impact of four chief amendments viz., forty-second amendment act and forty-fourth amendment act, seventy third amendment act and eighty-sixth amendment act. Each amendment has been a historic and decisive piece of legislation as they have significantly affected the dynamics of the Indian democracy.
Despite the fact that 42nd Amendment has been viewed by many as a draconian act that almost brought the Indian democracy to a standstill, our study on the contrary has revealed that many of its provisions which are retained till date exercise considerable impact. To begin with the inclusions of socialism and secularism have not only expanded the philosophy underlying the Preamble but they have also created an egalitarian society. Socialism echoes equal pay for equal work; eliminates economic inequalities in income, status and standard of life; ensures ownership, control and distribution of national productive wealth for the benefit and use of the community. In a way it has transformed the feudal exploitative society to a vibrant welfare society which embraces one and all irrespective of caste, creed, sex, colour and religion and ensures security from the cradle to grave.

Likewise secularism under the Constitution is fast assuming great significance in India in view of the current rise of religious fundamentalism and the corresponding rise of political parties based on religion or owing allegiance to fundamentalist organisations. It has strengthened the multicultural fabric of the country and bridged the social cleavages which could have been detrimental in the long run. Multiculturalism in India ensures that all citizens can keep their identities, can take pride in their ancestry, and have sense of belonging. Through multiculturalism, India recognizes the potential of all the citizens and encourages them to integrate into the society. Freedom of religion is guaranteed not so much by a concern for religion itself but as a part of a broad scheme of an individual liberty concerning a person’s conscience and dignity in the context of a welfare state seeking to rid its people of every kind of inequality – social, educational, cultural or economic.

Furthermore this amendment has made justice accessible and affordable to the teeming millions of the country who live below poverty line in tribal, backward and far flung areas and to the underprivileged segments of the society. With this amendment, it has joined the league of progressive countries in the world. Legal aid is now transcending the barriers of parochialism, regionalism, poverty and gender discrimination which is in itself a great achievement. In a country like India where justice has been the prerogative of the elites, the introduction of Article 39A injects a new life of hope and expectation in the lives of those helpless people who have been marred by ignorance, illiteracy and penury. To catalyse its impact and reach, legal literacy programmes are being run on a regular basis and to make justice accessible many Legal Aid Clinics are also being set up across the country.
The study has brought to light that until 2009, about 96.99 lakh people have benefited through legal aid, out of which 13.83 lakh persons belong to Scheduled castes and 4.64 lakh persons belong to the Scheduled tribes. Further it is also revealed in the study that more than 10.22 lakh people were women and about 2.35 lakh people in custody also benefitted from it. Besides this, legal aid has addressed more than 16.87 lakh Motor Accident Claim cases and more than Rs. 7593 crore rupees have been awarded as compensation.

The 42nd amendment also gave birth to two new Alternative Dispute Resolution mechanisms called Lok Adalats and Administrative tribunals to save the people from the cumbersome process of litigation. Lok Adalats not only minimize litigation expenditure but also saves valuable time of the parties and their witnesses and also facilitates inexpensive and prompt remedy appropriately to the satisfaction of both the parties. As is well known that due to the backlog of cases there is an explosion of litigation but with the commencement of Lok Adalats the overburdened Courts are now being decongested.

It was found during the course of our study that about 7.25 lakh Lok Adalats have been held throughout the country in which more than 2.68 million cases have been settled. The study has also highlighted that till November 2001, 3,71,448 cases were instituted in the Tribunals. Out of these, 3, 33, 598 cases have been disposed-off successfully. The findings further tells us that 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 real status of cases in the Administrative Tribunals has been apprised by Hon’ble Mr. Justice D.K. Jain, Judge, Supreme Court of India in the following manner, “I am happy to share with you the information that from November 1985 up to January 2011, a total of more than five lakhs cases have been transferred and disposed of by various benches of the Tribunal, thus, giving a disposal rate of 95.88%. I have been given to understand that, of all the orders appealed against, almost 91% of them have received the approval of the higher forum. Therefore, there is hardly any doubt that the Central Administrative Tribunal has come a long way in the past 25 years and is rightly being characterized by the uniqueness in its
jurisdiction and procedure.\textsuperscript{19} It can be safely said that both of the two dispute resolution mechanisms have very briskly and efficiently regulated the traffic of cases.

Another noteworthy addition by the above act has been article 48A which has given rise to environmental jurisprudence. It has also led to an enhanced judicial awakening and activism for the protection of the environment. Since then many constructive legislations for the conservation of environment in India have been piloted. Acts like the Environmental Protection Act, 1986 and Amendment Act, 1991, The Hazardous Wastes and Chemicals (Management and Handling) Rules, 1989, The Conservation of Forests and Natural Ecosystems Act of India, 1994 (which replaces the sixty-seven year old Indian Forest Act of 1927) and focuses on community management of forests and the all-encompassing The Biological Diversity Act of India, 2002 forms the cornerstone of environmental jurisprudence. Further with directives from the Supreme Court of India, environmental education has been made compulsory at all levels of education in India. University Grant Commission (UGC) of India under the directive of the Supreme Court along with latest decision in India (2003) has introduced compulsory environmental education at all levels of college and across every stream.

The study has unravelled unequivocally that the insertion Article 48 A has actually unleashed the floodgates of environment related litigations and post amendment the Courts have become the real guardians and protectors of environment. Their significant pronouncements with regard to the conservation of environment in cases like Animal and environment Legal Defence Fund v. Union of India\textsuperscript{20}, Sitaram Chhaparia v. State of Bihar, Research Foundation Case, Vellore Citizen’s Welfare Forum versus Union of India, Shri Sachidanand Pandey v. State of West Bengal, T. Damodhar Rao vs. S.O. Municipal Corporation, Hyderabad Ratlam Municipality v. Vardhichand and many others bear ample testimony to this fact.

But with all these achievements, this truth cannot be overshadowed that the 42\textsuperscript{nd} amendment virtually destroyed the Constitution. On critiquing the amendment, many provisions come to the fore which are either futile or have a negative impact on the Constitution. Beginning with the Preamble, the changes in the Preamble were 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

\textsuperscript{19} Address by Hon’ble Mr. Justice D.K. Jain, Judge, Supreme Court of India, delivered on November 19, 2011 at Chandigarh Judicial Academy on the eve of Silver Jubilee of the Chandigarh Bench of the Central Administrative Tribunal.

\textsuperscript{20} AIR 1997 Sc 1071: (1997) 3 SCC 549
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 rejected the suggestion of some members to put the word ‘Socialist in the Preamble.’\textsuperscript{21} 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.”

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.

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{22} 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{23} Thus our study has unravelled 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 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

\textsuperscript{21} N.A.Palkhivala, Reshaping the Constitution, The Illustrated Weekly of India, Vol. XCVII, No. 27, July 4, 1976, p. 10
\textsuperscript{22} The Indian Express, 10 November 1976
\textsuperscript{23} D.D. Basu, Constitutional Law of India, Prentice Hall of India, New Delhi, 1977, p. XLIV
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 fulfil 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.

Another path breaking amendment that has been employed for our study is the quintessential 73rd amendment act, which has changed the contours of the Constitutional landscape tremendously. The prime objective of the Indian Constitution was to foster the achievement of many goals, transcendent among them was that of social revolution. The concept of social justice is central to the notion of transformative constitutionalism and that is why the amendments that came into being bearing an identical imprint. The central motif of transformative constitutionalism is to rebuild society on the principles of egalitarianism, emancipation of the weaker lot and fairness. The indispensability of this is accentuated by Nehru who held, “If we cannot solve this problem soon, all our constitutions will become useless and purposeless.” That is why a transformative Constitution was brought forward by the constituent Assembly of India that had the potential to bring about reconciliation between individual liberty and public good. Some scholars like Gopal Guru and S.K. Chaube also accept the view of Constitution as a “transformative document”. Guru points out that the Indian Constitution contains several important provisions that could be seen as a definite step forward in creating the background conditions for the realization of social revolution. At the cultural and social level, the Indian Constitution has abolished all feudal titles, facilitating the cultural elevation of those whose worth was withered down to the roots.

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25 CAD, Vol. II at p.317
The key findings of the 73rd amendment thus reflect so many affirmative outcomes that one can say that without it the Indian Constitution would have been a perfunctory and superficial dossier. First by providing regular elections at five years it signalled that local self-government bodies have a representative character. This suggested the beginning of a new paradigm of governance with the gram Panchayats now serving as the crucial link between the community and the State. In many states across the country, 1995 was the turning point in the development of PRIs in that it marked the year in which elections to the panchayat bodies took place for the first time under a new generation of post 1993 Panchayati Raj Acts.

Secondly as models of decentralisation and democratization, PRIs have brought about greater transparency, accountability, responsiveness, equity, and opportunity for mass participation in local decision making. Its four capacity building measures viz., Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA), Panchayat Empowerment And Accountability Incentive Scheme (PEAIS), Media And Publicity Scheme and The Action Research And Research Studies (AR&RS) Scheme have incentivized the Panchayats to put in place accountability systems to make their functioning transparent and efficient.

It has been analysed in our study that BRGF combats regional backwardness and redresses the regional imbalances in development by providing financial assistance for supplementing and converging existing developmental inflows and till date it has been implemented in 272 identified backward districts of all the States (except Goa). 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. Further Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA) approved by the Government on 07.03.2013 during the Twelfth Plan period enhances the capacities and effectiveness of Panchayats and the Gram Sabhas. It 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.

Another empowering scheme which has been duly addressed in our study is Panchayat Empowerment Incentives Scheme which is meant to reward the State Governments which are serious on the issue of implementation of various provisions of Part
IX of the Constitution. Its prime objectives include (a) to incentivize States for devolving funds, functions and functionaries (3Fs) to Panchayats and (b) to provide fiscal incentives to state governments that can encourage them to strengthen local governance, in pursuance of the national strategy. It can be seen that Maharashtra is at the apex on both cumulative and incremental Panchayat Devolution Index followed closely by Kerala in 2013-14.

Besides Rural Business Hubs (RBHs) under the 11th Five Year Plan (2007-2012) to promote Rural Non-Farming Enterprises (RNFE) and rural employment have also been very encouraging. Around 31482 beneficiaries have been reported under RBH projects for the year 2013.

It goes without saying that post-73rd Amendment act, there is a marked presence of women in the Panchayats across the country. There are estimated more than 10 million women in all three tiers of Panchayat Raj Institutions (PRI). This has indisputably opened the floodgates for a silent revolution that has the potential to transform feudal and gendered roles, identities, structures and ideologies. The analysis of emerging patterns of women leadership in 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. The study makes it apparent that 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.

The study has further underscored that it goes to the credit of the 73rd amendment that political emancipation through reservation has given more teeth to women. In reserving seats of local self-governance for the hitherto marginalized sections like scheduled castes, scheduled tribes and women, the 73rd amendment has created a space for a more inclusive brand of politics to emerge. States like Andhra Pradesh, Bihar, Chhattisgarh, Himachal Pradesh, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tripura and Uttarakhand have provided 50% reservation in Panchayats.

There is now a considerable and visible critical mass of women leaders who are leading the Panchayats. As a result significantly large proportions of female Pradhans are executing the important role of being a local Panchayati Raj functionary. Female Sarpanches like Mithi Beri Gram Panchayat in Uttaranchal, Jamunia in Madhya Pradesh, Chandra Pitchai in Madurai district have become the new faces of Panchayats. It is also recorded that women
Sarpanches are becoming more confident now as a result of capacity building measures like Mahila Sashaktikaran Abhiyan of Rajiv Gandhi State Institute of Community Development & Panchayati Raj, Nilokheri, Rashtriya Gram Swaraj Yojna by Haryana institute of Rural Development, Nilokheri in 2009 and due to PMEYSA( Panchayat Mahila Evam Yuva Shakti Abhiyan). The study further tells us that 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 which shows the increased interest of women in local governance.

Furthermore it has become evident from our study that panchayat meetings have become more gender responsive and gender inclusive. This has led to an accentuated visibility of women. Many states like Jharkhand, Orissa, Sikkim and Chhattisgarh have made special provisions in the quorum requirement that is quorum of one-third to ensure the presence of women in the meetings of the gram sabha meetings. The Himachal Pradesh Government has gone even further by institutionalizing the practice of Mahila Gram Sabha in advance of the Gram Sabha.

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. Mararikkulam Grama Panchayat has become the leading Panchayat that has successfully implemented it. The Plan earmarks a clear unconditional minimum quantum of funds/benefits or women in the schemes run by all Ministries/Departments that were perceived to be “women related” and recognize that prioritizing financial resources for programmes/schemes for women is critical for women’s empowerment. For instance 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 benefitting women.

One more welcome move introduced by this amendment has been that it has deepened democracy. Although social inequality remains a profound reality however the institutional structures of the Constitution have provided more than mere aspiration for the lower strata –they have provided concrete benefits in the set asides and reserved seats.\(^\text{27}\) In the new constitutional dispensation set up by the 73rd 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.

\(^\text{27}\) Atul Kohli, The Success of India’s Democracy, Cambridge University Press, New York, 2001
In our empirical study it has been found that he Nattaramanagalam panchayat in Cuddalore District has elected a Dalit educated woman as president. She has been instrumental in initiating innovative campaigns to create a socio-economically sustainable Panchayat through Total Economical campaign, with sub-plans like Modernization of Agriculture and Natural farming Initiation (MANI) and Youth Opportunity Unions to make the school drop-outs self-reliant.

Similarly the findings also tell us that Panchayat elections in Bihar which were held in April, 2001 had as many as 20509 Scheduled caste persons elected for a period of five years and among them, 9198 or 44.85% were schedule caste women who were mostly Chamar, Musahar, Dusadh, Pasi, and Dhobi. Likewise many other states like Gujarat, Himachal Pradesh and Madhya Pradesh have also followed suit in empowering and emancipating the Schedule Castes and Schedule Tribes.

An important inference that can be drawn is that 73rd amendment has constituted 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. The institutional mechanism of 73rd 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.

Another feather that can be added to the cap of 73rd amendment is that by way of this amendment, PRIs have come to assume centrality in the Centrally Sponsored and Central Sector Schemes. 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. Their support is now also sought in programmes under Bharat Nirman which include Swarnajayanti Gram Swarozgar Yojana(SGSY), Indira Awas Yojana(IAY), Pradhan Mantri Gram Sadak Yojana”(PMGSY), Adult Education, Rajeev Gandhi Gramene Vidyutikaran Yojana and a programme for non-conventional energy called Remote Village Electrification programme.

The success of MNREGA and Panchayat duet can be seen in Village panchayat Sakadehi in Betul, Madhya Pradesh which provided 17,131 man days’ 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.

It has been revealed in our study that Total Sanitation Campaign 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.

Similarly the Village Panchayats have been instrumental in managing the Anganwadi programmes. West Bengal has a well-functioning system in this regard where the weight charts of babies is monitored by the Standing Committee of the Gram Panchayat and the Ward Sabha .

In a bid to reach the last mile man, PRI institutions have started to play an enlarged role in planning, identification and implementation post 73rd amendment. The study has documented that 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. Further with the help of latest softwares like PRIASoft, PlanPlus, Action Soft, Area Profiler and Service Plus many Panchayats have become digitally enabled and tech savvy. 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.

Another manifest result of E-governance that has been made explicit in our study is that 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. The research has also unveiled that PRIASoft 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. Similarly it is also evident in our study that 75,000 Annual Draft Plans & Action Plans of different plan units (ULBs/ RLBs/ Line Deptts.) are available online on PlanPlus. Besides this over 43,000 Plan Units have uploaded their Annual Action Plans online in 2011-12 which includes 82 Zilla Panchayats,
1300 Block Panchayats and 41500 Gram Panchayats who have adopted PlanPlus during 2011-12.

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. Since its launch, 1186 queries have been received for PRIASoft of which 891 have been resolved. Similarly, 96 queries were received for PlanPlus of which 74 have been resolved.

Another useful application under this is the National Asset Directory which on December 3, 2014, contained the details of 1, 18 crore assets of the Panchayats worth more than INR 23,000 crores. It has been documented that States are being enabled to deliver various Government to citizen (G2C) services through Service Plus Application at the Gram Panchayat level. The study unravels that more than 60,000 Panchayats have put their approved annual action plans online in 2013-14. Maharashtra for instance 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. Similarly, in Chhattisgarh, 2960 Gram Panchayats are using this Application to provide services electronically.

It has been reflected in our study that in West Bengal, during the last three years, birth and death certificates, trade registration certificates, provisional residential, caste and income certificates are being delivered electronically through Gram Panchayats using the Gram Panchayat Management System (GPMS) software. Correspondingly in Punjab too, 119 Block Panchayats have PAWAN connectivity and remaining are using broadband connections for data transfer.

Decentralisation of funds, functions and functionaries is another most important aspect of 73rd amendment. This has given huge fillip to local self-government in general and to fiscal federalism in particular. On analysing the Devolution index one finds 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. Maharashtra also tops the chart in the composite Panchayat Devolution Index, as well as in the key sub-indices of Functions, Accountability and Functionaries. Kerala occupies first place in Finances, second position in Accountability and Functionaries and ranked third in the dimensions of Framework and

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Functions in the Panchayat Devolution index of 2013-2014. Another parameter of Devolution index is Incremental Devolution Index in which Rajasthan was adjudged the best performer. Kerala, Maharashtra, Karnataka and Haryana were ranked after Rajasthan.

In terms of Activity Mapping the study discloses that West Bengal has done activity mapping with respect to 28 functions and simultaneously devolved all 29 functions to the three tiers of the Panchayats while Karnataka has delegated all 29 subjects to the PRIs listed in the Eleventh Schedule by issuing activity-mapping notification on 12th August 2003.

Nevertheless the Act is also replete with many shortcomings which bares its many inadequacies and distortions. First and foremost caste based atrocities and caste inhibitions have been a ubiquitous feature in many Panchayats. Even after getting duly elected, members of Schedule castes and Schedule Tribes have to deal with bias and contempt. Human rights violation of the highest order were witnessed when Misri Devi, a Mina tribal women 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.

Our study has unfolded that many of the Schedule caste office bearers in the Panchayat are maltreated. From being 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. Also there is no redress mechanism available to the lower castes.

Another blur is that of corruption where many cases of quid pro quo have been brought to light on many occasions exposing the ugly nexus between politicians and criminals. Cases of misappropriation of development funds, financial irregularities, massive graft in civic bodies by awarding contract of construction works have also been reported in our study.

The act has been appreciated for politically emancipating women but the real status of women is somewhat different from what has been projected. 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 has been examined in our study that it is the husband who makes the decisions for the Panchayat and the wives put their signature or thumb impressions on the official documents.

Besides women functioning as “proxies” were forced into politics against their own wishes and also pressured into corrupt practices. An incident of publicly beating of wife by
one husband in Jaipur, when she refused to embezzle money has been discussed in our study. Women have also been beaten up or ill-treated for outdoing their male counterparts. Ratanprabha Chive, Sarpanch of the Ghera Purandar Panchayat was beaten up as soon as she assumed office by her rival. Similarly Krishna, a member of a Janpad Panchayat in Chhatarpur, an illiterate, met stiff opposition by the local bureaucracy who told her, “Bethak mein aao, nashta karao, Khao piyo aur chaley jaoo.” Likewise 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 and dub as shameless…. The day we have our Gram Panchayat Meeting, the men and the people at home mock us…”

Another hard-hitting fact that stares at our face throughout the study is that equitable access to economic resources is still a distant reality for women. Women continue to be economically dependent on the men in their families and had least access to economic assets. Therefore, the expense required for political participation such as election campaign expenditure or resources required to attend meetings, visits and interactions with government officials, becomes an additional burden that women can ill afford, thus impeding their full participation. Women also face logistical problems because of which in Himachal Pradesh, some women GP officials did not attend meetings as they found that the meeting timings were not convenient.

Our study also reveals the travesty of decentralisation of powers which is mostly on paper. State governments should have efficiently transferred the 3Fs of funds, functions and functionaries with respect to the 29 subjects in the Eleventh Schedule but they have done this half-heartedly and lackadaisically. While States like Kerala, West Bengal, and Karnataka & Madhya Pradesh have devolved desired powers to the PRIs, at the same time, States like Odisha, Jharkhand have lagged behind in the process. Moreover in some cases only functional responsibilities have been devolved while funds and functionaries are yet to be decentralized.

We also come across the dismal performance of states on devolution indices in our study. Even after eight years of its existence, PEAIS, an incentive scheme to empower the Panchayats has not been successful. A cursory look at the index values reveals an alarming situation where national average of Cumulative Devolution Index stands at a dismal 38.52 percent while the incremental devolution index fluctuates between the two extremes of 3.33

29 The Indian Express, March 5, 1995
and 50.83. Even the award amount that is disbursed is too little an incentive for a state government.

Institutional success largely depends on robust financial machinery and a sound budgetary allocation mechanism. But in the case of PRIs, the financial condition of local bodies is precarious as in many cases neither is there adequate devolution of resources nor adequate revenue raising powers. The funds that panchayats receive are inadequate, ad hoc, unspecified and uncertain. Another handicap that cripples Panchayats is its incapability to generate revenue. It has been unveiled in our study 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. It has been cited that despite the fact that 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.

Finally the last in the series of amendments which has been investigated in the thesis is the 86th Amendment act which embeds Right to Education as a Fundamental right. 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. The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government. Besides ensuring compulsory and free education for children who fall in the age cohort of 6-14, this Act also ensures 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.

On evaluating various official statistics it has been brought to light that literacy levels have increased from 64.85% in 2001 to 72.99% in 2011; Gender gap in literacy has declined from 21.59% to a significant 16.25% ; annual dropout rate has plummeted to 5.62% in 2011-2012; the retention rate at primary level has gradually improved from 71.01% in 2005-06 to 75.94% in 2011-12; the percentage of trained teachers in primary schools has increased from 86% in 2005-06 to 90% in 2010-11 and finally it has led to community participation and empowerment in the planning of school Development Plan.

It has been further revealed in the findings that with the implementation of the Act, enrolment in the 6-14 age groups has witnessed a marked increase and school facilities are
also showing improvement. As many as 500 class rooms in 50 Kendriya Vidyalays are now digitally enabled. A study by SRI-IMRB which has been analysed for our study shows that almost 3,34,340 new primary and upper primary schools have been opened, 12.46 lakh teachers have been appointed, 8.32 crore children have been provided with books and 2,17,820 drinking water facilities and 6,18,089 toilets have been provided in schools till 2012. Besides this the proportion of schools without libraries has declined from 28.7 per cent in 2011 to 23.9 percent in 2012 which is a healthy trend.

Our research also exhibits satisfactory status of Right to Education across the states as well. States like Uttar Pradesh have the highest number of 195089 schools while in the east Dhemaji Block of Dhemaji district in Assam (1013 schools) and Paschim Medinipur district of West Bengal (8319 Schools) possess the highest number of schools. As a concomitant to the rising number of schools, a synchronized increase in enrolment can also be witnessed in States like Maharashtra with West block of Mumbai (suburban) district having the maximum enrolment at primary level (345394). To ensure quality in pedagogic teaching Arunachal Pradesh has the highest percentage of Trained Teachers (76.4%) while Kolkata Municipality Block of Kolkata District in West Bengal has the highest number of Contractual-Teachers that is 1287 Teachers. Apart from these 2.38 lakh part-time instructors have also been sanctioned under Sarva Shiksha Abhiyan (SSA).

This study also embodies the fact that Right of Children to Free and Compulsory Education Act has charted a new roadmap for gender equality in education in India. For instance it has been documented in our study that Deoria, district of Uttar Pradesh has the highest girls enrolment at the primary level that is 53.6% while in the east the lead is taken by Manipur which boasts of 83.0% and Meghalaya with 50.3% of girl enrolment.

Significant improvements have been witnessed in the proportion of enrolment of children from socio-economically weaker backgrounds in schools because of the mandated admission of 25% children from disadvantaged groups and weaker sections in private schools. Our study has registered that while Madhya Pradesh has the highest ST Enrolment at Elementary Level that is 3678457 students of which Dhar district of Madhya Pradesh has the Highest ST Enrolment at Elementary Level (320858) on the other hand Uttar Pradesh exhibits the highest SC Enrolment at Elementary Level (8564763).

Another encouraging trend that is evident from our study is that children from Muslim community joined elementary school in large numbers during 2007-08 to 2012-13 periods.
East Gauripur block of Dhubri district of Assam and Murshidabad district of West Bengal exhibit the highest Muslim enrolment at Elementary level. 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 has also declined from 10% to 7.7% in 2005-09 periods. The act also provides for the drop-outs by giving the child the right not to be held back in the same class. The Act has not onlyuniversalized education on a mammoth scale but has laid the foundation of an egalitarian, gender inclusive and progressive polity. It can now be said that 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.

Although the Act has been appreciated from all quarters but there are many areas which are flawed and show many gaps. The major grey area that surfaces is that 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. 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.

Another major shortcoming is that still there are many schools which fail to meet the RTE standards. The study has analysed that there is a civilizational difference between the North and the South as the Hindi heartland states like Uttar Pradesh(34th) , Bihar(30th) , West Bengal(31st), Madhya Pradesh(28th) and Rajasthan(25th) continue to languish on EDI index.

Concerns specifically, with regard to access, infrastructure, quality and lack of effective community participation have also been bared in our study. For instance the findings reveal that 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. As far as school buildings are concerned, in Rangabayalu village, Vishakhapatnam 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.

Our study also unveils the harsh truth about teacher absenteeism. It has been discussed in a shocking case of teacher absenteeism, how a teacher named Sangeeta Kashyap in Madhya Pradesh was absent for 23 years of her 24 year career. Similarly a school in a tribal hamlet in Bhabua in Bihar remained closed for three consecutive days as the head-teacher had not come. Likewise out of the 168 days in academic calendar in Andhra Pradesh,
the teachers were found absent from school for 68-69 days. Besides the appointment of Para-teachers, shiksha-mitras and contract teachers have taken a heavy toll on quality teaching. It has been 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. 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 study furthermore throws light on how Corporal Punishment which is banned under RTE resurfaces as a nightmare in many cases. Brutal incidents like when a 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 and how a Kolkata teacher dragged an eight-year-old boy and reportedly banged his head against the wall, makes a mockery of RTE norms.

Another area of concern highlighted in our study is the ambiguousness of the term dropout which makes Universal Enrolment a distant reality. 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 while in Karnataka the definition of “dropout” has changed from a child who is absent from school for 60 days to seven days without taking leave of absence. The case of migrant children is even worse, as nearly 41% schools do not include them in the mapping process. Moreover it was also found that in Delhi and Uttar Pradesh, though entitled, many children with disabilities were not given transport to access school.

The study has also bared many instances of social exclusion which mar the success of RTE act. It has been reported that teachers behave as part of the caste hierarchy and are insensitive to the issues of social inclusion and equity. Disturbing incidents have been uncovered where children have had locks cut out of their hair to mark out children who were admitted under the Right to Education quota. Exclusionary practices like Dalit children being made to sit separately, water pitcher being denied to SC and ST students, upper caste parents belonging to the Kambalathu Naicker community in Kammapatti village refusing to send children to school Srivilliputtur Panchayat Union Elementary because two Dalit women cooked the mid-day meal are all exposed in our study. 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. It has been discussed how MTS Khalsa High School, Goregaon, rejected applications for the 25% quota of economically weaker sections under the Right to Education (RTE) Act on the pretext of non-availability of seats.
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. It fortifies a discriminatory multi-layered and unequal education structure as opposed to common school system. 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. Abolition of unrecognized schools in pursuance of the RTE obligations is another shortcoming of the Act.

Nevertheless the most significant cause for the non-applicability of RTE is the poor allocation of funds. The Economic Survey 2012-13 utilized in our study has 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.

On assessing the Eighty-sixth Amendment which fortifies RTE Act on the whole, one can say that while there are more pros than cons weighing in favour of the Act, one cannot also deny the necessity of a timely and judicious approach to correct its anomalies which should be adopted as early as possible. As the Act is in an infant state, an early remedial mechanism to correct its distortions will be most beneficial.

After reviewing and evaluating the amendments in depth, it can be safely concluded now that the amending processes have worked like a safety valve. One should not look at them quantitatively because it is the demand of the circumstances that has led to a rise in the number of amendments. Besides for a country of continental dimensions, amendments are the only alternative which can integrate and consolidate its varying urgencies. Moreover the total repeal of the Constitution is neither desirable nor viable. In this context one is reminded of the words of Justice Benjamin Cardozo who aptly said, “Existing rules and principles can give us our present location, our bearings, our latitude and longitude. The inn that shelters for
the night is not the journey’s end. The law, like the traveller, must be ready for the morrow. It must have a principle of growth.”

It is in this wider context that we appraise the Constitution of India and support the need for change in consonance with changing configurations of a changing society. A Constitution changed too often will lose its sanctity; but one which does not change with the needs, standards and value systems of a changing society, becomes in its application dysfunctional. Amendment to the Constitution is therefore desiderated for its organic growth and also for developing a constitutional culture which in turn shall have positive impact on the Indian polity.

30 Justice Benjamin Cardozo quoted by Hon’ble Mr. Justice D.K. Jain, Judge, Supreme Court of India in his address speech, delivered on November 19, 2011 at Chandigarh Judicial Academy on the eve of Silver Jubilee of the Chandigarh Bench of the Central Administrative Tribunal, p.11