

# **YOJANA SUMMARY**

## **OUR CONSTITUTION AND LEGAL REFORMS**

**NOVEMBER 2024**

## **75 YEARS OF THE INDIAN CONSTITUTION: A JOURNEY TOWARDS ABSOLUTE GLORY**

*"Every sixth person on our planet is an Indian, heir to a composite cultural heritage of ancient vintage and modern constitutional mintage. It is the onus of every Indian to uphold the values inherited thereby."*

*-Justice VR Krishna Iyer*

- The Indian Constitution, adopted on 26 November 1949, reflects the principles of justice, liberty, equality, and fraternity, emerging from the legacy of colonial rule and the freedom struggle.
- Drafted under visionary leaders like Dr. B.R. Ambedkar, it embodies India's diverse cultural, linguistic, and religious heritage. Its Preamble encapsulates its democratic spirit and commitment to individual rights. It celebrates India's diversity, protecting cultural and linguistic rights, which enrich its social fabric.
- While the journey has faced challenges such as the Emergency of the 1970s and ongoing debates on federalism and secularism, the **Constitution has shown resilience**.
- In the 21st century, it continues to address issues like economic inequality, communal tensions, and technological regulation, fostering dialogue and participatory governance.

### **Landmark Events Along the Journey of Making the Indian Constitution**

- **Foundations of Constitutional Governance** - The journey began with the Government of India Act, 1935, which introduced a federal structure and influenced the framework for constitutional governance in India.
- **Formation of the Constituent Assembly** - Following World War II and the growing demand for independence, the British initiated the Cabinet Mission Plan in 1946, leading to the formation of the Constituent Assembly.
  - The Constituent Assembly first convened on 9 December 1946, representing India's diverse demographics.
- **Adoption of the Objective Resolution** - On 13 December 1946, the Objective Resolution was adopted, outlining the guiding principles of justice, liberty, equality, and fraternity for the Constitution.
- **Drafting Committee and Leadership** - In 1947, the Drafting Committee, chaired by Dr. B.R. Ambedkar, began crafting a comprehensive legal framework to embody the ideals of the Objective Resolution.
- **Adoption and Implementation of the Constitution** - The Constitution was adopted on 26 November 1949, celebrated annually as Constitution Day.
  - It came into effect on 26 January 1950, marking Republic Day.
- **Key pillars of the Constitution**
  - **Fundamental Rights:** Ensured individual liberties and protection against discrimination.
  - **Directive Principles:** Guided the state towards social and economic justice.
- **Amendments and Adaptability** - The First Amendment in 1951 clarified freedoms and minority rights. Subsequent amendments reflect India's evolving socio-political aspirations and challenges.

### **Evolution of the Constitutional Values**

- **Perspective of Different Scholars**
  - Legal scholar *Harvey Walker* emphasized that a constitution must align with the culture and aspirations of its people to remain relevant and enduring.
  - The Indian Constitution, as an organic document, accommodates evolving societal complexities.
  - Debaters in the assembly relied heavily on the words of AV Dicey, "**The immutability of the constitution is the ground for its violent subversion**".
- **Amendments and Adaptability**
  - The Indian Constitution, amended over 100 times, contrasts with the limited amendments in the **U.S. (27)** and **Australian (8)** constitutions, reflecting its flexibility.
  - Despite frequent amendments, its core values remain intact, showcasing its resilience.
- **Landmark Judgements and Evolution of Constitutional Values**
  - **Kesavananda Bharati v. State of Kerala (1973):** Introduced the 'Basic Structure' doctrine, ruling that while Parliament can amend the Constitution, it cannot alter its fundamental framework.

- The SC ruled those fundamental rights, and the principles of democracy, separation of powers, and federalism form part of this basic structure.
- **Minerva Mills Ltd. v. Union of India (1980):** reaffirmed the 'Basic Structure' doctrine, emphasising the balance between Fundamental Rights and Directive Principles.
- **Maneka Gandhi v. Union of India (1978):** The Supreme Court broadened the scope of Article 21, interpreting the right to life and personal liberty to include the right to live with dignity. This landmark judgement expanded fundamental rights to encompass:
  - Right to privacy, education, and health
  - Rights against torture, illegal detention, and handcuffing
  - Accused's rights to a speedy and fair trial
  - Right to an environment free from pollution
- **Golden Triangle of Articles 14, 19, and 21** - Together, these articles have served as a robust framework for protecting individual rights and addressing societal concerns.
  - In **Vishaka v. State of Rajasthan (1997)**, the SC laid down guidelines to prevent sexual harassment at the workplace, recognising that such harassment violates fundamental rights under Articles 14, 19, and 21.
- **Shayara Bano v. Union of India (2017):** The Supreme Court declared the practice of instant triple talaq (talaq-e-biddah) unconstitutional, asserting that it violated Muslim women's fundamental rights and gender justice.
- **Navtej Singh Johar v. Union of India (2018):** Consensual homosexual acts were decriminalised by reading down Section 377 of the IPC, affirming sexual orientation as an intrinsic part of human identity and upholding equality and non-discrimination.
- **Joseph Shine v. Union of India (2018):** The Court struck down the adultery law, citing its discriminatory nature and violation of women's rights to equality and dignity.
- **Justice K.S. Puttaswamy v. Union of India (2017):** Recognised the right to privacy as a fundamental right under Article 21, with far-reaching implications for data protection and individual freedoms in the digital era.
- **Abrogation of Article 370** - In August 2019, the abrogation of Article 370 marked a pivotal constitutional change.
- **Judiciary's Role in Constitutional Evolution**
  - Over 75 years, the judiciary has dynamically interpreted the Constitution, expanding its scope to address societal needs, ensuring its relevance as a living document aligned with contemporary values.

## Conclusion

- The 75th anniversary is both a celebration and a call to action for:
  - Raising education and awareness about constitutional rights to empower citizens.
  - Addressing emerging challenges like climate change, digital rights, and social equity through constitutional engagement and reform.
- While the Constitution's core principles remain sacrosanct, ultimate sovereignty lies with the people.
- In a democracy, if the collective will demands a new Constitution, it can be achieved without external authority, reaffirming the supremacy of the people's conscience.

## EVOLUTION OF THE INDIAN CONSTITUTION: CONSTITUTIONAL AMENDMENTS

Our Constitution, is not merely a legal document setting out the fundamental laws for governance of India, but also a living and dynamic document. This document was designed to address the diverse aspirations of the Indian people.

### Evolution of Our Constitution during British Rule

- The Indian Constitution evolved significantly during British rule, with key contributions from three major acts: **Councils Act of 1909; Government of India Act of 1919; GoI Act of 1935.**

- These acts introduced features such as a parliamentary form of government, the rule of law, federalism, and a strong central government in British India.
- Notably, **65% of the Indian Constitution was derived from the Government of India Act, 1935**, making it a foundational milestone in India's constitutional development.

### Constitutional Amendment of a Federal Constitution

#### • Rigidity vs. Flexibility

- Federal constitutions are generally harder to amend than unitary ones. For example:
  - **US Constitution:** Requires a two-thirds majority in Congress and ratification by three-fourths of the states, making it highly rigid.
  - **Indian Constitution:** Though federal, it is less rigid, with 106 amendments so far, significantly altering its original form.
- **Acharya Kripalani** had commented that after the 42nd Amendment, 1976, he could see only amendments and no original constitution!

#### • Need for Amendments

- Constitutions are living documents that must adapt to changing socio-economic aspirations to remain relevant and effective.

#### • Amendment Procedures in India: There are three methods:

- **By Simple Majority:** For example, admission of new states (Art. 2), creation of new states or altering their areas, boundaries or names (Art. 3), or changes made in the citizenship provisions (Art. 11).
- **By Special Procedure (Article 368):** Requires a **two-thirds majority** in both Houses of Parliament; the most commonly used method.
- **With State Ratification:** Requires a two-thirds majority in Parliament and ratification by at least half of the states for federal provisions. For example, GST had to be ratified by half of the states also.

### Does Parliament have Unbridled Powers to Amend Any Part of the Constitution?

#### • Notion of Parliamentary Sovereignty

- The notion of parliamentary sovereignty suggests that Parliament, has unlimited powers to amend any part of the constitution.
- This notion was changed through subsequent judicial rulings.

#### • Early Rulings

- In *Shankari Prasad (1951)* and *Sajjan Singh (1964)*, the SC upheld Parliament's unlimited power to amend any part of the Constitution, including fundamental rights.

#### • Golaknath Case (1967)

- The Supreme Court reversed this stance, ruling that fundamental rights are sacrosanct and beyond Parliament's amendment powers.

#### • 24th Amendment Act (1971)

- Parliament countered the Golaknath ruling by amending Articles 13 and 368, explicitly granting itself the power to amend fundamental rights, reaffirming parliamentary sovereignty in constitutional amendments.

#### • Kesavananda Bharati case, 1973, and the Doctrine of Basic Structure

- Though the term 'basic structure' does not find any mention in our Constitution, it was invented by the Supreme Court in the famous Kesavananda Bharati case, 1973.
  - When the 24th Amendment was challenged before the court, it came out with the basic feature doctrine.
- These core features, or basic features, as pointed out by the Court, are:
  - Supremacy of the Constitution; Republican and democratic form of government; Secularism; Separation of powers
  - Rule of law; Independence of the judiciary; Federal character of the polity.
- Although the Parliament has the authority to amend any part of the Constitution, it cannot make changes that compromise the Constitution's fundamental framework or essential features.

- **42<sup>nd</sup> Amendment Act**
  - Granted Parliament the power to amend any part of the Constitution, shielding amendments from judicial review.
- **Minerva Mills Case (1980)**
  - Supreme Court struck down the 42nd Amendment provisions, asserting they violated the **basic structure** of the Constitution.
    - This marked the first application of the **basic structure doctrine**.
- **IR Coelho Case (2007)**
  - Supreme Court ruled that laws placed in the **Ninth Schedule** are not immune to judicial review if they violate the basic structure.
- **99th Amendment and NJAC Case (2014)**
  - The National Judicial Appointment Commission (NJAC) for appointing judges was declared unconstitutional for violating the basic structure, reinstating the **collegium system** of judicial appointments.

### Landmark Constitutional Amendments since 1950

- **First Amendment Act (1951)**
  - Introduced **reasonable restrictions** on freedoms under **Article 19** (e.g., security, public order, morality).
  - Abolished the **zamindari system** and added the **Ninth Schedule**, providing immunity from judicial review for certain laws, particularly those on land reforms.
- **Seventh Amendment Act (1956)**
  - Facilitated the **reorganisation of states** on a linguistic basis, following the **Afzal Ali Committee** recommendations.
- **Forty-Second Amendment Act (1976)**
  - Known as the **Mini Constitution** for its sweeping changes during the **Emergency**.
  - Amended the **Preamble** and added several **Directive Principles** (e.g., free legal aid, worker participation in industries, environmental protection).
  - Introduced **Fundamental Duties** under **Part IV A**.
  - Strengthened the **executive's power** by amending **Article 74** and inserted provisions for tribunals (**Articles 323A & 323B**).
  - Gave **unfettered powers** to Parliament to amend any part of the Constitution through **Articles 368(4) and (5)**, curtailing civil liberties, judiciary powers, and diluting fundamental rights.
- **Forty-Fourth Amendment Act (1978)**
  - **Emergency Provisions:** Replaced "internal disturbance" with "armed rebellion" and made **Cabinet's written advice** mandatory for emergency proclamations.
  - Required **two-thirds majority** in Parliament for emergency continuation and allowed **Lok Sabha** to revoke it by a simple resolution.
  - Imposed safeguards against **preventive detention**, limiting its duration.
  - **Right to Property** was moved from **fundamental rights** to **legal rights**, making it easier for the state to acquire property.
- **Fifty-Second Amendment Act (1985)**
  - Introduced the **Tenth Schedule** (anti-defection law), specifying grounds for disqualifying legislators for defection.
  - Strengthened by the **91st Amendment**.
- **Sixty-First Amendment Act (1988)**
  - **Voting Age** was reduced from 21 to 18 years, expanding youth participation in elections.
- **Seventy-Third and Seventy-Fourth Amendment Acts (1992)**
  - **Panchayati Raj Institutions (PRIs)** and **Municipalities** were constitutionally recognized.

- **Part IX and Part IXA** were added, along with the **11th and 12th Schedules**, detailing local body functions.
- **Ninety-Ninth Amendment Act (2014)**
  - Established the **National Judicial Appointment Commission (NJAC)** to replace the collegium system for appointing judges.
  - The NJAC was later declared unconstitutional.
- **Hundred-First Amendment Act (2016)**
  - Introduced the **Goods and Services Tax (GST)**, creating a unified tax structure under the "**One Nation, One Tax**" principle.
- **Hundred-Sixth Amendment Act (2023)**
  - **33% reservation for women** in **Lok Sabha** and **State Assemblies** was approved, to be implemented after the next **delimitation exercise**.

#### **Article 124 - ESTABLISHMENT AND CONSTITUTION OF THE SUPREME COURT**

- There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than 7 other Judges
- Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal and shall hold office until he attains the age of sixty-five years.

#### **Article 155 - APPOINTMENT OF GOVERNOR**

- The Governor of a State shall be appointed by the President by warrant under his hand and seal.

#### **Article 21A – Right to Education**

- It declares that the state shall provide free and compulsory education to all children of the age of 6-14 years in such a manner as the state may decide.

#### **Do You Know?**

- The original constitution was handwritten by Prem Behari Raizada in a flowing italics style & each page was decorated by artists from Shantiniketan.

### **ROLE OF INDIAN CONSTITUTION IN PROMOTING SOCIAL JUSTICE**

#### **Indian Constitutionalism as a Social Revolution**

- **Insurgent and Transformative Constitutionalism**
  - Scholars, such as Granville Austin, describe the Indian Constitution as an instrument of social revolution, aiming to reshape society.
  - The framework of 'insurgent constitutionalism' and 'transformative constitutionalism' reflects how the Constitution seeks to challenge and redefine societal structures.
- **Distinct from Liberal Constitutionalism:**
  - Unlike **liberal constitutionalism**, which focuses on limiting the scope of government power, Indian constitutionalism is marked by a broader objective to transform society.
  - It goes beyond mere governance to reshape societal hierarchies and entrenched customs, including caste and religion.
- **Expanding and Celebrating Authority**
  - Uday Mehta contrasts Indian constitutionalism with American constitutionalism.
  - While American constitutionalism, rooted in the 18th century, was designed to limit authority and safeguard against an absolutist ruler, Indian constitutionalism embraces the expansion of state power to address historical social issues.
  - It promotes political transformation, rather than simply limiting political power.
- **Revolutionary Nature of Indian Constitutionalism - A Break from Historical Customs**
  - Mehta describes Indian constitutionalism as a "revolutionary movement of rupture," which redefines the relationship between politics and society.
  - It focuses on historical changes, particularly in addressing the social hierarchies of caste and religion.



- **Empowering the Marginalized**

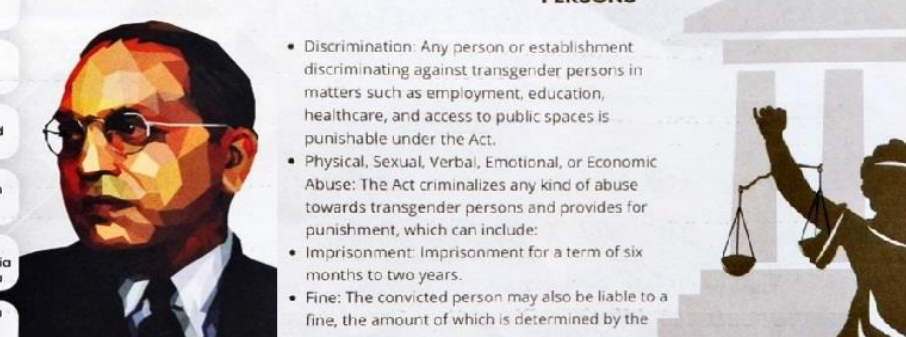
- Rajeev Bhargava emphasizes that the Indian Constitution was designed to dismantle traditional social hierarchies, offering liberty, equality, and justice.
- It seeks to empower marginalized groups historically denied power and challenges the societal status quo, marking a significant advancement in constitutional theory.
- The Indian Constitution is not just a document of governance but a transformative tool, aimed at reshaping society and challenging established social orders, promoting equality and justice for all citizens.

**DR. B.R. AMBEDKAR: ARCHITECT OF INDIAN DEMOCRACY, AND ADVOCATE FOR SOCIAL EQUALITY**

- Born on 14 April 1891 in Mhow, Madhya Pradesh
- Was an ardent patriot and the saviour of the oppressed, women and poor
- Set up the 'Bahishkrit Hitkarini Sabha (Outcastes Welfare Association)', for spreading education and culture amongst the downtrodden
- Attended all the three Round Table Conferences in London
- Was elected as Chairman of the Drafting Committee of the Constitution of Independent India and known as the architect of Constitution of India
- Became the first Law Minister of Independent India
- Advocated democracy in every field: Social, Economic and Political

**UNDER THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019, THE FOLLOWING PENALTIES ARE OUTLINED FOR VIOLATIONS OF THE RIGHTS OF TRANSGENDER PERSONS**

- Discrimination: Any person or establishment discriminating against transgender persons in matters such as employment, education, healthcare, and access to public spaces is punishable under the Act.
- Physical, Sexual, Verbal, Emotional, or Economic Abuse: The Act criminalizes any kind of abuse towards transgender persons and provides for punishment, which can include:
- Imprisonment: Imprisonment for a term of six months to two years.
- Fine: The convicted person may also be liable to a fine, the amount of which is determined by the court.



- **Social Change and Equality**

- According to Kumar (2014), the process of drafting a new constitution in the 1940s was seen as a pivotal moment to end patterns of exploitation based on gender, caste, and religion.
- It aimed to bring about significant changes to India's deeply unequal and hierarchical social structure, ensuring equal rights and dignity for all citizens.

- **The Instructional Function of the Constitution: Fostering Democratic Citizenship**

- Khosla (2020) emphasizes the Constitution's role in fostering democratic citizenship, beyond its traditional function of distributing authority.
- Drawing on Ambedkar's idea of constitutional morality, Khosla argues that the Constitution represents a departure from the Government of India Act, 1935, as it promotes democratization and the cultivation of democratic citizens.

- **Radical Intent of the Constitution's Founders: Rejection of Imperial Philosophy**

- Khosla contends that the Indian Constitution's founders were radical, rejecting imperial ideologies and aiming to create a centralized state that would liberate individuals from the constraints of caste and religion.
- The Constitution sought to empower individuals, transforming society through codification.

- **Transformative Constitutionalism vs. Gandhian Social Justice:**

- The notion of 'transformative constitutionalism' calls for state intervention to achieve social justice.
- This contrasts with Gandhi's view, which emphasized that social justice must emerge from individual moral transformation, rather than being imposed by the government.
- Gandhians like SN Agarwal advocated for minimal government intervention and greater individual responsibility for personal well-being.

- **Gandhian vs. Western Constitutional Models:**

- While Gandhians proposed a Gandhian Constitution with a small government and moral societal transformation, the Constituent Assembly favored a Constitution rooted in European and American traditions.
- This model facilitated a directly elected administration and gradually assumed greater responsibility for citizens' welfare over time.

- **Drafting of Constitution: A Transformative Moment**

- The drafting of the Indian Constitution was a transformative moment in India's history, aimed at addressing social inequalities.
- It balanced the need for state intervention to ensure social justice with the philosophical ideals of individual moral responsibility, offering a contrast between Gandhian and Western constitutional approaches.

### Achieving Social Revolution

- **Objective Resolution**

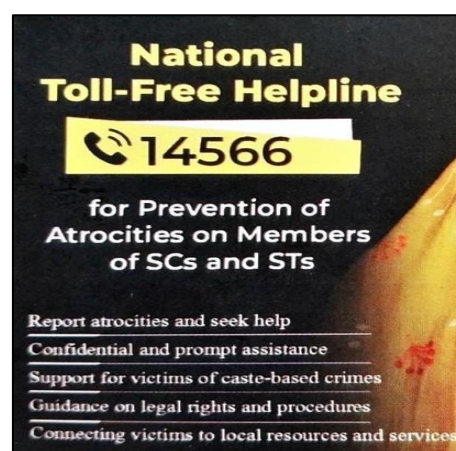
- The '**Objectives Resolution**' highlighted the aim of social revolution but did not specify the methods to achieve it.
- KM Pannikar emphasized that the Constitution represents a commitment to the people of India, with the legislature obligated to reform and reconstruct society based on new principles.

- **Empowerment through Adult Suffrage:**

- **Adult suffrage** granted millions of previously disenfranchised citizens the power to represent their own interests, removing dependence on the whims of others for political representation.

- **Protection through Fundamental Rights:**

- Fundamental Rights in the Constitution protect individuals and minority groups from arbitrary actions by the government, with certain provisions aimed at protecting individuals from the actions of private citizens:
- **Article 17:** Abolishes untouchability.
- **Article 15(2):** Prohibits discrimination in the use of public spaces (like shops, restaurants, wells, roads) based on religion, race, caste, sex, or place of birth.
- **Article 23:** Prohibits practices, particularly involving landowners and peasants, that were previously sanctioned by the state but caused exploitation.



- **Broadened Rights**

- The Indian constitution broadens the concept of rights beyond the state to encompass civil society.
- This is seen in the prohibition of behaviours related to untouchability (Article 17) and the banning of bonded labour and human trafficking (Article 23).

- **Empowerment of Scheduled Castes and Scheduled Tribes**

- The Indian constitution grants them legislative reservations and mandating quotas in education and state employment for these groups, as well as for socially and educationally disadvantaged classes.

### Important Provisions of the Constitution of India Prompting the Goal of Social Justice

- **'We the People':** This creates a new identity that equalises opportunities and status for those whose identities were previously shaped by caste, religious, and ethnic systems.
- **Universal Adult Franchise:** In a hierarchical society, the establishment of the Universal Adult Franchise, which was founded on the tenets of '**one person, one vote, one value**,' was revolutionary.
- **Abolition of Untouchability:** It aimed to break with the past by putting an end to the long-standing humiliation that some castes had to endure.
- **Right to Equality**
- **Directive Principles of State Policy:** the intention behind these concepts was to liberate the Indian masses-that is, to free them from social and natural constraint.

### Conclusion

- In **liberal constitutionalism**, the state is seen as an impartial arbitrator, ensuring citizens' rights through structural power differentiation, without influencing their lives.
- In contrast, **transformative constitutionalism** emphasizes the state's capacity to drive social transformation, adjusting the social order to align with the political order.



- Its primary goal is to rebuild society on new foundations, focusing on social justice and the state's active role in imposing fairness and regulation.
- Regarding Indian constitutionalism, two perspectives offer insights into its transformative impact.
  - From the liberal modernist viewpoint, the persistence of traditional identities like caste and religion suggests that the constitution's goal of social change has not been fully achieved.
  - However, the liberal communitarian perspective highlights that group rights have helped unite diverse populations under a democratic framework, enabling religion and caste to become more institutionalized and democratic.
- While liberal constitutionalism limits state authority, transformative constitutionalism empowers the state to intervene in society to ensure equality, especially for oppressed groups who need active state support to overcome historical disadvantages.

#### Reporting of Crime Becomes Easy

- **e-FIR** - Provision to submit complaint through electronic medium; victim should go to police station within three days and sign the complaint.
- **Zero FIR** - Provision to register complaint against crime in any police station
- **Electronic/digital evidence** is now as valid as other evidences

#### Safeguarding Rights & Strengthening Justice

- Police cannot detain without explanation for more than 24 hours
- An arrested person can be produced before any magistrate, regardless of jurisdiction
- **Section 170 of BNSS** provides that detention should not exceed 24 hours when police makes an arrest to prevent commission of a cognizable offense.

### THE FUTURE OF AI IN INDIA: NAVIGATING PROFILING CONCERNS AND CRIMINAL INVESTIGATIONS

- AI technologies in profiling and criminal investigations offer significant opportunities but also pose challenges.
- The key to navigating these complexities lies in robust legal frameworks that ensure a balance between privacy, security, and innovation.

#### AI and Profiling

- **AI and Profiling in Criminal Investigations**
  - At the core of most AI systems lies profiling, where data is collected to predict behavior. While this data-driven approach enhances user experiences, it raises concerns about privacy and the potential misuse of personal data.
- **The Digital Personal Data Protection Act (DPDP Act), 2023**
  - The DPDP Act addresses these concerns by recognizing behavioral data as personal data, ensuring that users' rights are protected.
  - This includes the right to correct or erase personal data, which forces AI systems to adapt. For example, if a user opts to erase their data, it disrupts the continuous flow of information that AI models rely on for personalized services.
- **Impact on AI and Privacy-First Models**
  - As data protection laws like the DPDP Act become stricter, businesses will need to adopt privacy-first AI models.
  - These models must respect user consent while still offering personalized services.
  - Balancing compliance with personalization is a new challenge for AI in India.
- **Global Precedents: GDPR and Privacy-Centric AI**
  - Globally, regulations like the **EU's General Data Protection Regulation (GDPR)** have influenced how companies handle data, especially in AI systems.
  - The GDPR requires explicit consent for collecting personal data, setting a global standard that India's DPDP Act is following.

## AI's Role in Predictive Policing and Criminal Investigations

### AI in Law Enforcement: Emerging Role and Potential

- AI's role in law enforcement is growing, with the Bharatiya Nyaya Sanhita (BNS) 2023 paving the way for using electronic evidence and AI in criminal investigations.
- The BNS enables AI to assist in predictive policing, where algorithms predict criminal activity based on data analysis.
- In the **UK**, AI has been used by the **National Crime Agency (NCA)** since 2019 to track online behavior, particularly safeguarding vulnerable children by analyzing patterns and identifying at-risk individuals and potential perpetrators.

### Opportunities and Risks in India

- In India, the BNS opens the door for AI's use in crime prediction, digital forensics, fraud detection, cybercrime investigations, and counterterrorism.
- While these developments offer immense potential, they raise significant concerns, especially regarding privacy and misuse of power.

### Concerns over Privacy and Algorithmic Bias

- The BNS 2023 grants law enforcement broad powers to seize digital devices and access personal data for investigations.
- While essential for fighting digital-age crime, these powers may lead to privacy violations without proper oversight, potentially enabling unlawful surveillance or wrongful targeting based on inaccurate AI predictions.
- Additionally, biases in AI algorithms could disproportionately affect marginalized communities.

### Need for Oversight

- To mitigate these risks, algorithmic transparency and judicial oversight are crucial in ensuring that AI systems in law enforcement are accurate, fair, and used responsibly.

## Power of AI

- AI's ability to analyze user behavior for targeted advertising could be repurposed for public safety by predicting where and when crimes might occur.
- This predictive power offers the potential for law enforcement to intervene before incidents happen.
- However, applying such AI models in policing requires significant changes in how law enforcement operates.
- Unlike e-commerce, where some margin of error is tolerable, a false prediction in policing could have serious consequences for individuals' freedoms.

## Challenges

- The DPDP Act 2023 provides a robust framework for protecting personal data but also raises challenges for businesses that need to innovate while respecting user privacy.
- Meanwhile, the BNS 2023 enables AI-based policing, but this also brings the responsibility of ensuring these technologies do not violate individual rights.
- A critical challenge is training law enforcement to use AI ethically and effectively, including regular audits of predictive tools to prevent bias.

## Global Examples and India's Path Forward

- Globally, the ethical implications of AI are increasingly discussed. As India evolves its legal framework with the DPDP Act and BNS, it can look to these global examples to create an AI ecosystem that respects privacy, fairness, and public safety.
- By setting up systems that are transparent and accountable, India can harness AI's potential for positive social impact while safeguarding individual freedoms.
- Achieving a balance between AI's benefits and privacy requires collaboration between legislators, technologists, and civil society.
- Together, they must ensure AI serves society's best interests without compromising fairness or privacy.

## **CRIMINAL JUSTICE SYSTEM REFORMS: EVALUATING THE IMPACT OF BNS**

- The criminal laws in India, shaped by British colonial rule, were designed primarily to suppress resistance and maintain control rather than to deliver justice.
- After 75 years of independence, India has taken a major step towards decolonising its legal framework by introducing three new laws (effective from 1 July 2024):
  - the Bharatiya Nyaya Sanhita, 2023 (replacing IPC, 1860),
  - the Bharatiya Nagarik Suraksha Sanhita, 2024 (replacing Cr.P.C. 1973), and
  - the Bharatiya Sakshya Adhiniyam, 2023 (replacing the Indian Evidence Act, 1872).
- While these reforms represent an attempt to establish a distinctly Indian legal system, they have faced criticism for lacking substantial changes and merely reorganising existing provisions.
- The reforms' necessity and their potential impact on the justice delivery system remain subjects of ongoing debate.

### **Journey from 'Dand' to 'Nyaya'**

- The Bharatiya Nyaya Sanhita (BNS) marks a philosophical shift from the Indian Penal Code (IPC) by focusing on Nyaya (justice) rather than Dand (punishment).
- Emphasising Bharatiya ideals, it prioritises protecting the nation and vulnerable groups, particularly women and children, from anti-national and anarchist forces, aligning with the Bharatiya Constitution's principle of sovereignty.
- Unlike the IPC, the BNS gives precedence to provisions safeguarding women and children (Sections 63 to 99) and introduces new offences addressing crimes previously unaddressed.
- It also incorporates new provisions related to national security, reflecting a broader responsibility to uphold sovereignty and protect the weak, aligning with contractarian theory on state duties.
  - According to contractarian theory, the state has a duty to protect those who are vulnerable due to their social or biological circumstances.
- This reorientation represents a significant departure from the IPC's structure and priorities.

### **New Key Additions: The Need of the Hour**

#### **A. New Offences against Women and Children**

- **Section 69: Sexual intercourse by employing deceitful means, etc.**
  - Section 69 of the **Bharatiya Nyaya Sanhita (BNS)** penalises deceitful sexual intercourse under the pretext of marriage.
  - If a person engages in sexual intercourse with a woman by **deceptive means** or a **false promise of marriage** without intending to fulfill it, and the act does not constitute rape, they can face **imprisonment of up to ten years** and a **fine**.
- **Section 95 of BNS**
  - Section 95 of the **Bharatiya Nyaya Sanhita (BNS)** penalises hiring or using a child to commit an offence.
  - Such acts result in **imprisonment of 3 to 10 years** and a **fine**.
  - If the offence is committed, the perpetrator faces the same punishment as if they committed the offence themselves.
  - The section explicitly includes **sexual exploitation** and **pornography** under its scope.

#### **B. New Offences Against Human Body**

- **Section 103(2)** – It deals with guidelines to prevent **mob lynching**.
  - In the **Tehseen Poonawalla case (2018)**, the Hon'ble Supreme Court of India provided comprehensive guidelines to prevent mob lynching.
  - Section 103(2) of the Bharatiya Nyaya Sanhita specifically addresses mob lynching.
- **Section 111** – It talks about **organised crime**.
  - This new provision addresses a critical gap by offering a broad, comprehensive definition of crimes such as **kidnapping, robbery, and cybercrimes**, ensuring their proper recognition and effective legal treatment.

- **Section 112 (1)** – It talks about **Petty Organised**.
  - It defines **petty organised crime** as criminal acts like theft, snatching, cheating, unauthorized ticket selling, illegal betting or gambling, selling public examination papers, or similar offenses committed by individuals as part of a group or gang.
  - Previously, there was no specific law to address petty offences.
- **Section 117** – It talks about **Voluntarily Causing Grievous Hurt**
  - The new provision ensures stricter penalties for crimes causing permanent disability or a vegetative state, addressing gaps highlighted by cases like Aruna Shanbaug, where the punishment for severe harm was insufficient.
    - In Aruna Shanbaug case, the victim remained in a vegetative state for 42 years, yet the accused received only minor punishment for assault and robbery.
- **Section 117(4)** – It deals with **hate crimes**.
  - This clause specifically addresses hate crimes, which were not previously recognised as an offence.
- C. Offences against Nation**
- **Section 113 talks about Terrorist Act**
  - For the first time, terrorism has been comprehensively defined in legal terms, expanding its scope to include various activities, enhancing efforts to safeguard the nation against anti-national acts.
- **Section 152 talks about Act endangering sovereignty, unity, and integrity of India**
  - The BNS replaces the IPC's '**sedition**' (**Section 124A**), which faced misuse allegations and was suspended by the Supreme Court, with '**Rashtra Droh**' (**Section 152**).
  - This new provision shifts the focus from the government to protecting India's sovereignty, unity, and integrity.
- **Section 195(2)** offers protection to public servants while carrying out their duties
  - The provision strengthens protections for public servants, addressing the gap in law that left offenders who assault police officers during duty inadequately penalized.
- **Sec. 197(1)(d) – To Prevent false or misleading information**
  - It introduces a provision that punishes the spreading of false or misleading information that threatens India's sovereignty, unity, integrity, or security.
  - This provision addresses the issue of fake propaganda, which was previously not adequately covered in the IPC, ensuring stronger legal action against such offenses.
    - Until now, there were no provisions in the IPC to address these challenges, allowing perpetrators to seek protection under the guise of Article 19(1)(a).
- **Section 48** talks about Abetment outside India for offences in India
  - The provision in the BNS holds abettors outside India accountable for inciting offenses within the country, enabling legal proceedings even if the abettor is absent.
  - This development eliminates the need for extradition, allowing trials to proceed without the abettor's presence.
- D. Offences against Property**
- **Section 304 (1)** talks about Snatching
  - It introduces a specific provision for the offence of snatching, addressing incidents like chain and mobile phone theft, particularly targeting women and the elderly in metropolitan areas.
  - This provision aims to tackle the serious mental and physical harm caused to victims, a gap that was previously not covered under the IPC.
- E. New Additions in Definition Clause**
- **Section 2(3)- Child-** means any person below the age of eighteen years.
- **Section 2(10)- Gender-** 'he' includes males, females, and transgenders.
  - In the case of *National Legal Services Authority v. Union of India (2014)*, SC recognised transgender individuals as the 'third gender'.

- The BNS now provides transgender people with the same protections previously available to males and females.

#### F. New Punishment

- **Section 4(f)** talks about Community Service: This provision is specifically aimed at first-time offenders who commit petty offences.

#### Redefining Treason Law

- **'Rajdroh' vs 'Deshdroh'** - IPC Section 124A punishes actions "against the Government," while BNS Section 152 targets activities that are "against India"
- **Freedom of Speech & Expression**
  - **IPC Section 124A** - Contempt toward the Government criminalized
  - **BNS Section 152** - Criticism of government's policies & actions not punishable

#### IMPACT OF THE BHARATIYA NYAYA SANHITA ON LABOUR DISPUTE RESOLUTION

- Industrialisation has created a gap between management and workers, leading to disputes and industrial friction.
- In India, labour statutes like the Industrial Disputes Act (IDA) of 1947 and the Industrial Relations Code (IRC) of 2020 have aimed to address these issues through mechanisms like conciliation, arbitration, and adjudication.
- The recent enactment of the Bharatiya Nyaya Sanhita (BNS) marks a shift from the colonial-era Indian Penal Code (IPC) and includes provisions that impact labour dispute resolution.

#### Dispute Resolution: Labour Issues In India

- Labour disputes in India have traditionally been governed by acts like the Industrial Disputes Act (IDA) of 1947, the Trade Unions Act of 1926, and the Industrial Employment (Standing Orders) Act of 1946.
- These laws were consolidated under the Industrial Relations Code (IRC) 2020 to simplify labour laws and promote industrial development.
- The IRC continues the focus on resolving disputes amicably through conciliation and voluntary arbitration, as outlined in **Sections 3 and 10A**, and establishes Labour Courts and Industrial Tribunals under Section 7.
- Two key reforms introduced by the IRC include **maintaining previous institutions while eliminating the need for prior government approval in most cases of labour dispute referrals, except for national tribunals**.
- Under the IRC and the IDA, labour dispute resolution is classified into three forms:
  - bi-partite forums, such as Grievance Redressal Committees and Works Committees, for resolving disputes between workers and employers;
  - conciliation, where a neutral third party mediates the conflict; and
  - court adjudication.
- The IRC sets time limits for conciliation, requiring it to conclude within 15 days unless otherwise agreed, with a 45-day deadline for general disputes and 14 days for disputes following a notice.
- This approach aligns with international standards, such as ILO Resolution No. 92, which advocates for voluntary conciliation and arbitration to resolve disputes.

#### Challenges with the IRC

- IRC primarily addresses dispute resolution in the formal sector, leaving out workers in the unorganised sector, such as domestic, agricultural, and gig workers.
- Additionally, the conciliation process is often manipulated by employers, who use it as a formality before adjudication.
- The IRC fails to streamline the conciliation process or incorporate provisions for online conciliation, despite the shortage of skilled conciliators in India.



### Labour Disputes: Dispute Resolution under the Bharatiya Nyaya Sanhita (BNS)

- BNS introduces penal provisions that affect both employers and employees in the formal sector, particularly concerning labour disputes.
- While the IRC provides immunity for trade union members involved in strikes and protests related to industrial disputes, the BNS takes a more adversarial approach.
- **Section 194 of the BNS** imposes penalties for violent behaviour during public protests, potentially criminalising certain forms of worker protests and discouraging collective action.
- This shift marks a move from the IRC's emphasis on conciliatory methods to the BNS's stricter stance on strike-related activities, reclassifying labour disputes as criminal offences rather than resolving them through amicable means.

### Practical Challenges & Future Outlook

- BNS provides a stronger framework for labour dispute resolution but also presents challenges in implementation.
- The criminalisation of labour offences could contribute to case backlogs in an already overburdened judicial system.
- The judiciary will play a crucial role in interpreting and enforcing the BNS, particularly in applying provisions like Section 194 to various labour cases.
- The practical impact of the BNS will depend on judicial interpretation, influencing the labour landscape in response to new challenges and legal cases.

### Labour Disputes & BNS: The Path Forward

- BNS introduces stricter legal provisions for labour rights and workplace safety, requiring greater compliance from employers but potentially suppressing legitimate worker protests and collective bargaining.
- This shift could heighten adversarial relations, challenging the historically amicable dispute-resolution mechanisms.
- The effectiveness of BNS will depend on its adaptability to the evolving labour landscape, balancing worker rights and employer interests.
- Its application in the informal sector, such as platform-based workers, is still being explored.
- The judiciary's interpretation of these provisions will be crucial in ensuring a balanced and equitable labour dispute resolution system in India.
  - In the case of *Ms X v. ICC, ANI Technologies Ltd*, the court ruled that drivers on the platform were employees of the company.
  - This decision opens up various avenues for dispute resolution for platform-based workers under the BNS and the IRC.

### SAMVIDHAAN HATYA DIWAS

- The Government of India has declared **25th June** as 'Samvidhaan Hatya Diwas' to commemorate the imposition of the Emergency by former Prime Minister Indira Gandhi in 1975.
- This day will honor the sacrifices of those who suffered during the Emergency, which ended in 1977 following public outcry.
- The observance aims to uphold individual freedom and democracy, ensuring that such authoritarian actions are not repeated in the future.

### REDEFINING LAW IN A CYBER AGE: INDIA'S LEGISLATIVE SHIFT AGAINST MODERN CRIME

- Modern crime has transcended territorial boundaries, with cybercriminals operating globally and exploiting vulnerabilities in digital infrastructure. The Government of India has introduced three new laws to tackle these evolving challenges:
  - Bharatiya Nyaya Sanhita (BNS)
  - Bharatiya Nagrik Suraksha Sanhita (BNSS)

- Bharatiya Sakshya Adhiniyam (BSA)
- These three laws provide - the foundation for tackling these new types of crimes; addressing the challenges of jurisdiction; evidence collection and prosecution in the digital realm.

### Addressing Cybercrimes

- Cybercriminals often operate in the digital realm, where evidence is scattered across servers, encrypted, and difficult to access.
- The introduction of these laws provides a comprehensive framework to address issues such as jurisdiction, evidence collection, and prosecution in cybercrimes.
- **Bharatiya Nagrik Suraksha Sanhita (BNSS) and Cybersecurity**
  - The BNSS focuses on improving the security of Indian citizens in the digital age. Key features include:
    - Empowering law enforcement agencies to effectively respond to digital threats.
    - **Section 176(3)** mandates forensic audits in cybercrime cases with punishments exceeding seven years, especially in cases involving financial fraud, data theft, or digital sabotage.
    - Equipping law enforcement with the tools and frameworks needed for effective forensic technology and digital investigation.
- **Bharatiya Sakshya Adhiniyam (BSA) and Cybercrimes**
  - The BSA modernizes evidence collection, storage, and presentation, particularly in cybercrime cases. Key provisions include:
    - Ensuring the integrity of digital evidence throughout the legal process.
    - Introducing stringent protocols to preserve evidence, preventing it from being altered or deleted.
    - Clear guidelines for collecting digital evidence in a way that makes it admissible in court, strengthening the prosecution's case in cases like online identity theft.
- These laws ensure that cybercrimes are addressed effectively by enhancing law enforcement capabilities and establishing a robust framework for digital evidence handling and prosecution.

### Prosecution of Cybercrimes: Online Identity Theft

- In cases of online identity theft, evidence such as IP logs, financial transaction histories, and intercepted communications play a critical role in prosecution.
- The **BSA** ensures that law enforcement follows a rigorous process to authenticate and present this digital evidence, strengthening the prosecution's case.

### Cybercrime Landscape in India

- India ranks among the top countries in terms of cyberattacks, with industries such as banking, healthcare, and government being the most vulnerable.
- Despite the growing threat, many police officers, especially in smaller towns and rural areas, lack the training and tools to handle complex cybercrime cases effectively.

### Strengthening Law Enforcement Capabilities

- The **BNS, BNSS, and BSA** aim to modernize the legal framework to equip law enforcement with the necessary tools and knowledge to tackle cybercrime.
- These laws provide a comprehensive approach to addressing digital crimes such as financial fraud, ransomware attacks, and identity theft.

### Importance of Digital Forensics

- Digital evidence is essential in cybercrimes, but its collection and analysis are more complex than physical evidence.
- The **BNS and BNSS** emphasize the use of digital forensics in investigating serious crimes. This requires specialized expertise and infrastructure, such as:
  - Digital forensic laboratories
  - Training and tools for police officers
  - Courts equipped to handle complex digital evidence

## Way forward

- **Building Infrastructure and Expertise**

- To ensure the effectiveness of these laws, a robust law enforcement infrastructure is essential.
- This includes: Investment in digital forensic labs; Ongoing training for officers; Updated protocols to handle the fast-evolving nature of digital crimes; Collaboration between cybercrime units and digital forensic experts.

- **Adapting to Emerging Technologies**

- As technologies like artificial intelligence, blockchain, and quantum computing evolve, new cybercrimes will emerge.
- The Indian legal system must remain agile, continuously updating its frameworks to address these threats.
- Future amendments to the **BNS, BNSS, and BSA** may be necessary to keep up with emerging technologies.

- **Future-Proofing India's Legal System**

- A key to future-proofing India's legal system is investing in digital infrastructure and human capital.
- Law enforcement will need a combination of legal, technological, and forensic skills to effectively combat cybercrime.
- With continuous training and updated frameworks, India can address the evolving challenges of cybercrime and uphold justice in both the physical and digital realms.