



# SUMMARY OF YOJANA NOVEMBER 2024

## OUR CONSTITUTION AND LEGAL REFORMS



### सत्यमेव जयते CONSTITUTION OF INDIA

#### Preamble

WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens

#### JUSTICE

social, economic and political:

#### SECURITY

with and worship

## TOPIC 1: 75 YEARS OF THE INDIAN CONSTITUTION: A JOURNEY TOWARDS ABSOLUTE GLORY

### Introduction

The Indian Constitution, the world's longest written constitution, came into effect on January 26, 1950, amidst complex socio-political conditions. Despite facing challenges, it has remained the cornerstone of the nation, upholding justice, liberty, and equality for all citizens. Through the years, the Constitution has evolved to meet changing societal needs, guided by the ideals of India's freedom struggle and the vision of its framers. Each amendment and judicial interpretation has helped adapt the Constitution to contemporary issues, ensuring it remains relevant and robust.

### Foundational Principles and Vision

#### Adoption and Core Values

- **Date of Adoption:** November 26, 1949 (celebrated as Constitution Day); formally implemented on January 26, 1950 (Republic Day).
- **Democratic Spirit:** The Constitution enshrines justice, liberty, equality, and fraternity, establishing a framework for governance that respects individual rights and embraces diversity.
- **Born from Struggle:** Emerging from the shadows of colonial rule and the freedom movement, it stands as a pledge for democratic governance and protection of individual freedoms.

#### Role of Civil Society

- **Guardians of Constitutional Values:** Civil society organizations have been vital in promoting human rights, environmental sustainability, and social justice.
- **Championing Marginalized Voices:** They play an essential role in representing those whose voices might otherwise go unheard, reinforcing a vibrant democratic spirit and ensuring collective action to fulfill constitutional promises.

### Key Milestones in Constitutional Development

1. **Government of India Act, 1935:**
  - Established the federal structure that influenced later constitutional discussions.
2. **Cabinet Mission Plan, 1946:**
  - Led to the formation of the Constituent Assembly, with representatives from various regions and backgrounds.
3. **Objective Resolution (13 December 1946):**
  - Outlined the Constitution's guiding principles of justice, liberty, equality, and fraternity, which became the foundation for drafting the document.
4. **Drafting Committee (1947):**
  - Chaired by Dr. B. R. Ambedkar, the committee meticulously crafted the Constitution, balancing the aspirations of a diverse population with the need to address the historical injustices of colonialism.
5. **Constitution's Adoption (26 November 1949):**
  - Marked a significant milestone in India's history, celebrated annually as Constitution Day.
6. **Enactment on Republic Day (26 January 1950):**
  - Signified India's transition to self-governance; the Constitution became a symbol of sovereignty, establishing a nation built on democratic values.
7. **Core Features:**
  - **Fundamental Rights:** Provided individual freedoms and protections against social discrimination.
  - **Directive Principles of State Policy:** Set social and economic objectives for the state, emphasizing not only political democracy but also social equity.

### Evolution of Constitutional Values and Amendments

#### Need for Constitutional Adaptability

- According to legal scholar Harvey Walker, a constitution must evolve from the aspirations of its people to remain relevant. The Indian Constitution reflects this adaptability, balancing foundational values with changing societal needs.

- Debates in the Constituent Assembly often referenced **A. V. Dicey**, who argued that inflexibility could lead to **violent upheaval**.

### Amendments as Reflection of Changing Needs

- **High Amendment Rate:** The Indian Constitution, amended over 100 times, demonstrates its adaptability, especially in contrast with the less frequently amended American and Australian constitutions.
- **Basic Structure Doctrine (Kesavananda Bharati Case, 1973):**
  - The **Kesavananda Bharati v. State of Kerala** ruling asserted that while Parliament could amend the Constitution, it could not alter its **fundamental framework**.
  - Core elements like **democracy, federalism, and separation of powers** were identified as integral to the **basic structure**.
- **Minerva Mills Case (1980):**
  - Reaffirmed the **balance between fundamental rights and directive principles**, ruling that amendments violating this balance were unconstitutional and emphasizing the role of **judicial review**.

### Landmark Cases Enhancing Fundamental Rights

- **Maneka Gandhi v. Union of India (1978):**
  - Expanded the scope of **Article 21**, interpreting the **right to life and personal liberty** to encompass dignity and broadened protections, including rights to **privacy, fair trial, legal aid, and environmental safeguards**.
- **Golden Triangle (Articles 14, 19, and 21):**
  - Often invoked by the judiciary to protect **fundamental rights** and ensure that justice prevails across various social dimensions.

### Landmark Judicial Rulings in the Constitutional Journey

1. **Visakha v. State of Rajasthan (1997):**
  - Established guidelines to prevent **sexual harassment at the workplace**, reinforcing women's fundamental rights under **Articles 14, 19, and 21**.
2. **Shaira Bano v. Union of India (2017):**
  - Declared **instant triple talaq** unconstitutional, upholding gender justice for Muslim women.

### 3. Navtej Singh Johar v. Union of India (2018):

- Decriminalized consensual homosexuality, ensuring equality and dignity for the LGBTQ+ community under **Article 14**.

### 4. Joseph Shine v. Union of India (2018):

- Struck down the **adultery law** as unconstitutional, advancing gender equality by recognizing women's **right to dignity**.

### 5. Justice K.S. Puttaswamy v. Union of India (2017):

- Recognized the **right to privacy** as a fundamental right under Article 21, with significant implications for **data protection and individual freedom** in the digital age.

### 6. Abrogation of Article 370 (2019):

- Removed **special status of Jammu and Kashmir**, marking a significant shift by integrating it fully into the Union of India. The Supreme Court ruled that Article 370 was a provisional measure and did not confer sovereignty.

### Judiciary's Role in Expanding Constitutional Protections

- The judiciary has played a pivotal role in **interpreting and expanding the Constitution's reach**, especially in matters related to **gender equality, environmental protection, and marginalized communities**.
- **A Living Document:** Through dynamic interpretation, the Constitution has evolved to meet modern-day needs, reaffirming its **core values** while addressing contemporary challenges.

### Conclusion

The **Indian Constitution**, after 75 years, continues to inspire and guide the nation, symbolizing the spirit of democracy and resilience. This milestone serves as a reminder of the work still needed to address **inequities** and promote **constitutional rights** for all citizens. Education and awareness about constitutional entitlements are essential for empowering individuals and fostering a society that respects **justice, equality, and liberty**.

## TOPIC 2: EVOLUTION OF THE INDIAN CONSTITUTION: CONSTITUTIONAL AMENDMENTS

### Introduction

The **Indian Constitution** emerged from a century-long British colonial rule, during which numerous legislative acts set administrative precedents. Designed to meet the dynamic aspirations of Indian society, the Indian Constitution incorporates a unique amendment process, less rigid than other federal systems, enabling 106 amendments so far. This adaptability ensures that the Constitution remains relevant across changing socio-political landscapes.

### Evolution of the Constitution During British Rule

#### 1. British Legislative Framework:

- The Indian Constitution draws significantly from British-enacted laws, specifically:
  - ◆ Councils Act of 1909
  - ◆ Government of India Act of 1919
  - ◆ Government of India Act of 1935

#### 2. Constitutional Features Derived:

- These acts introduced **parliamentary governance, federalism, and a centralized administration.**
- **Government of India Act 1935:** Formed the bedrock of India's Constitution, with approximately 65% of its provisions incorporated.

### Amendment Process in Federal Systems

#### 1. Comparative Rigidity:

- Federal constitutions typically mandate a **stringent amendment process**, requiring:
  - ◆ **Special majorities** in federal legislatures.
  - ◆ **State ratification** for certain provisions (e.g., the U.S. Constitution).

#### 2. Indian Flexibility:

- While less rigid, amendments have significantly altered the Constitution's original framework, prompting critics like **Acharya Kripalani** to observe that post-**42nd Amendment (1976)**, the original essence had faded.

### Importance of Constitutional Amendments

#### 1. Reflecting Evolving Aspirations:

- A constitution is a **living document** that must adapt to **socio-economic shifts** to avoid obsolescence.

#### 2. Article 368:

- The framers embedded **Article 368** to provide a formal amendment mechanism, recognizing the necessity of adaptation.

### Procedures for Amending the Constitution

The **Indian Constitution** outlines **three amendment methods**:

#### 1. By Simple Majority:

- Primarily for structural changes (e.g., **Article 2** for admission of new states, **Article 3** for state boundaries).

#### 2. Special Majority (Article 368):

- Used for most amendments, requiring a **two-thirds majority** in both Parliament houses.

#### 3. Special Majority + State Ratification:

- Required for amendments impacting federal provisions (e.g., **GST**), necessitating ratification from **at least half the states**.

### Scope of Parliamentary Powers for Amendments

#### 1. Initial Broad Powers:

- The Supreme Court initially held (Shankari Prasad, 1951; Sajjan Singh, 1964) that **Parliament could amend any part**, including **fundamental rights**.

#### 2. Limitations on Amending Fundamental Rights:

- **Golaknath Case (1967)** restricted Parliament's amendment power regarding fundamental rights, deeming them sacrosanct.

#### 3. 24th Amendment Act (1971):

- Overturned Golaknath by amending **Articles 13 and 368**, clarifying that Parliament could amend fundamental rights.

### Kesavananda Bharati Case and the Basic Structure Doctrine

#### 1. Doctrine Establishment:

- In **Kesavananda Bharati Case (1973)**, the

**Basic Structure Doctrine** was introduced, asserting that core constitutional features cannot be amended.

## 2. Core Elements Protected:

- Key elements protected under this doctrine include:
  - ◆ Supremacy of the Constitution
  - ◆ Republican and democratic values
  - ◆ Secularism
  - ◆ Federalism
  - ◆ Judicial Independence

## 3. Judicial Review Cases:

- Later cases (Minerva Mills, 1980; I.R. Coelho, 2007) reinforced this doctrine, preventing amendments from compromising these principles.
- **99th Amendment** (NJAC) was struck down for undermining judicial independence.

## Landmark Constitutional Amendments

### 1. First Amendment (1951):

- Introduced reasonable restrictions on **freedom of speech** and established the **Ninth Schedule** to shield land reforms from judicial review.

### 2. Seventh Amendment (1956):

- Enabled the **reorganization of states** based on linguistic lines, as suggested by the **Afzal Ali Committee**.

### 3. Forty-Second Amendment (1976):

- Known as the **Mini-Constitution** for its broad changes during the Emergency, including:
  - ◆ Addition of **Fundamental Duties**.
  - ◆ **Directive Principles** extended with provisions like **Free Legal Aid** and **Protection of the Environment**.
  - ◆ Limited judiciary's power and expanded **Parliament's amendment authority**.

### 4. Forty-Fourth Amendment (1978):

- Addressed the emergency-related changes by:
  - ◆ Replacing "internal disturbance" with **armed rebellion**.
  - ◆ Changing **Right to Property** from fundamental to legal status.

### 5. Fifty-Second Amendment (1985):

- Added the **10th Schedule**, addressing

**political defection** through the **Anti-Defection Law**, later reinforced by the 91st Amendment.

### 6. Sixty-First Amendment (1988):

- Lowered the **voting age** from 21 to 18, broadening youth participation in democracy.

### 7. 73rd and 74th Amendments (1992):

- Strengthened **local governance** by institutionalizing **Panchayati Raj Institutions (PRIs)**, with reserved representation for **women** and **SC/ST communities**.

### 8. 99th Amendment (2014):

- Attempted to replace the collegium system with the **National Judicial Appointments Commission (NJAC)**, ultimately deemed unconstitutional.

### 9. 101st Amendment (2016):

- Introduced **GST**, unifying tax regimes across states and advancing **cooperative federalism**.

### 10. 106th Amendment (2023):

- Reserved **33% of seats for women** in Parliament and state legislatures, empowering women's representation at the legislative level.

## Concluding Observations

Constitutional amendments have profoundly influenced **India's political, social, and economic environment**:

1. **Procedural Clarifications:** Many amendments served to detail or refine constitutional provisions.
2. **Regressive Amendments:** Certain amendments, notably the 42nd, restricted freedoms and diminished judicial independence.
3. **Progressive Amendments:** Most amendments have adapted to evolving societal needs, preserving democratic ideals while empowering marginalized groups.

## TOPIC 3: RULE OF INDIAN CONSTITUTION IN PROMOTING SOCIAL JUSTICE

### 1. Introduction

- The concept of **transformative constitutionalism** necessitates **state intervention** to achieve **social justice**.
- Throughout the **nationalist movement**, debates underscored the **importance of ideas in history**.
- **Fundamental rights** were established to promote **social revolution**, aiming for a society where **all citizens enjoy freedom** from compulsion or constraint imposed by the **state or society**.
- A key purpose of the **Indian Constitution** is to enable the **creation of a just society**, with **social justice** as a central goal.

#### 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



### 2. Role of the Constitution as a Social Revolution Instrument

#### a. Scholars' View on Indian Constitutionalism:

- Scholars like **Granville Austin** view the Indian Constitution as an **instrument of social revolution**.
- The **Constituent Assembly** recognized the **Constitution's power** to reshape society.

#### b. Distinction from Liberal Constitutionalism:

- **Indian Constitutionalism** (20th century) differs from **American Constitutionalism** (18th century), as highlighted by **Uday Mehta**.

- **American Constitutionalism** focused on **mistrust and restriction of political power**.
- **Indian Constitutionalism** represents a **revolutionary rupture** from historical norms, targeting **caste and religion** transformation through political power.

#### c. Rajiv Bhargava's Perspective:

- Bhargava notes the **Indian Constitution's intent** to free society from **social hierarchies**.
- It represents a **milestone in constitutional theory**, empowering historically marginalized groups.

### 3. Contrasting Approaches to Social Justice

#### a. Transformative Constitutionalism:

- Advocates **state intervention** in society to foster social justice.

#### b. Gandhian Approach:

- **Gandhi** believed in **moral transformation** starting from individuals, extending to society.
- Emphasis on **limited government intervention** and **personal responsibility**.
- **S.N. Agrawal** supported a **minimal state** with high **individual responsibility**.

#### c. European and American Influences:

- The **Constituent Assembly** debated over adopting a **traditional or non-traditional** approach for facilitating social change.
- **K.M. Pannikar** stressed the **Constitution's commitment** to reform society based on new principles.

#### 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.



### 4. Fundamental Rights as Tools of Social Revolution

#### a. Articles Promoting Social Justice:

- **Article 17:** Abolishes **untouchability**.
- **Article 15(2):** Ensures **non-discrimination** in public spaces (based on religion, race, caste, sex, place of birth).
- **Article 23:** Prohibits practices like **bonded labor** and **human trafficking**.

#### b. Scope of Rights:

- **Fundamental Rights** extend beyond state actions to **civil society**.
- **Baxi** highlights how the Constitution empowers the state to **intervene** against cruelty in civil society.

#### c. Empowerment of Marginalized Groups:

- The Constitution mandates **legislative reservations** and **quotas in education and employment** for **Scheduled Castes, Scheduled Tribes, and disadvantaged classes**.

### 5. Key Provisions of the Constitution Supporting Social Justice

#### a. We the People:

- **Preamble** highlights **collective identity, equality, and status** irrespective of caste, religion, or ethnicity.
- Symbolizes a **break from colonial control** and emphasizes **independence**.

#### b. Universal Adult Franchise:

- **One person, one vote** policy symbolizes **equality** in a hierarchical society.
- **Categorical Principle of Inclusion** grants **full citizenship** based solely on **adulthood**.

#### c. Abolition of Untouchability:

- **Article 17** **outlaws untouchability**, eliminating **historical caste-based discrimination**.

#### d. Right to Equality:

- Recognizes **substantive equality**, going beyond **formal equality**.
- Special **protective laws** for marginalized groups.

#### e. Directive Principles of State Policy:

- Aim to **free Indian masses** from social and natural constraints, promoting **social revolution**.

### New Criminal Laws

#### 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 BNS provides that detention should not exceed 24 hours when police makes an arrest to prevent commission of a cognizable offense

### 6. Conclusion

- Achievement of Transformation by Indian Constitutionalism:
  - **Liberal Modernist Model:** Argues that **traditional identities** persist, indicating limited success in achieving **social transformation**.
  - **Liberal Communitarian Model:** Sees **group rights** as fostering unity under a **democratic framework**; **caste and religion** have become more **institutionalized and democratic**.
  - **Transformative Constitutionalism vs. Liberal Constitutionalism:** The **Indian state** actively intervenes to **empower oppressed groups**, unlike **non-interventionist liberal models**, enabling **egalitarian social change**.

### TOPIC 4 : IMPACT OF THE BHARATIYA NAYA SAHITA ON LABOUR DISPUTE RESOLUTION

#### 1. Introduction:

- **Labour disputes** in India have traditionally been guided by central acts such as:
  - Industrial Disputes Act (IDA) of 1947
  - Trade Unions Act of 1926
  - Industrial Employment (Standing Orders) Act of 1946
- These acts were **integrated** under the **Industrial Relations Code (IRC) 2020** to streamline labour laws and support industrial development.
- The **Bharatiya Naya Sahita (BNS)** signifies

a shift from the colonial *Indian Penal Code (IPC)*, with **implications** across various legal domains, including **labour dispute resolution**.

- BNS aligns with **international standards** to foster development in India, aiming for a **middle-income status**.

## 2. Industrialization and Labour Disputes:

- Industrialization created a **gap between management and workers** due to unequal control of production means.
- This **inequality led to industrial disputes** that are common globally, requiring an **effective dispute resolution system**.
- In India, IDA and IRC have addressed this need by:
  - Fostering **conciliation, arbitration, and adjudication**
  - Promoting **social and economic stability**

## Dispute Resolution: Labour Issues in India

### a. Traditional Approach (IDA, IRC):

- Aimed at **amicable resolution** of disputes and **worker-employer harmony**.
- Key provisions:
  - **Section 3 and 10A of IDA: Conciliation and voluntary arbitration**
  - **Section 7: Creation of labour courts and industrial tribunals**
- IRC's notable reforms:
  - Retention of prior institutions, except **Conciliation Board, Court of Inquiry, and Labour Code**
  - **Elimination** of the need for **government approval** to refer disputes, except in national tribunals.

### b. IRC Dispute Resolution Forms:

- **Bi-partite forums:** Includes **Grievance Redressal Committee** and **Works Committee**.
- **Conciliation:** Mediated by a **neutral third party**
- **Court Adjudication**
- Timeframes:
  - **Section 12 of IRC:** Conciliation process should conclude within **15 days**

- **Section 53:** 45 days for **general industrial disputes**, 14 days for **notice-based disputes**

- Aligned with **International Labour Organization (ILO)** standards, fostering **development**.

### c. Challenges with IDA and IRC:

- Focuses on the **formal sector**, leaving out the **unorganized sector**:
  - *Domestic, agricultural workers, gig workers* lack access to dispute mechanisms.
- Conciliation often **favours employers**, used as a **formality** before adjudication.
- IRC lacks provisions for **online conciliation**
- amid **conciliator shortages**.

## 4. Labour Disputes: Dispute Resolution under the BNS

- **BNS** adopts a **penal approach** to labour dispute resolution, with stricter compliance requirements for employers.
- **Shift in Strikes and Protests:**
  - Historically, strikes served as collective bargaining tools.
  - **Sections 16 and 17 of IRC:** Immunity for union members in civil/criminal suits if actions benefit the union.
  - BNS Section 194: Punishes violent acts (affray) in public, targeting illegal strikes/protests.
  - Supreme Court (*All India Bank Employees Association v. IT*): Right to form unions does not equate to an absolute right to strike.
- **Potential Effects:**
  - While **detering illegal strikes**, BNS may **criminalize certain worker protests**.
  - Represents a shift from **conciliation** to **adversarial penalty**, with a **new classification of labour offenses**.

## 5. Practical Challenges and Future Outlook:

- **Criminalization** of labour offenses may worsen **judicial backlog**.
- **Smaller enterprises** may face challenges in navigating **BNS complexities**.
- The judiciary's role is crucial in **interpreting BNS provisions**, especially **Section 194** for

varied labour cases.

- **Evolving Impact:** The practical impact will depend on how the judiciary **applies** BNS in future cases, shaping **labour relations**.

## 6. Labour Disputes and BNS: The Path Forward

- **BNS Transformation:**
  - Shifts from **conciliatory methods** to a **penal framework**.
  - Enhances **worker protection** while imposing stricter **employer penalties**.
  - Reclassifies certain labour offenses as **criminal** to match **international standards**.
- **Implications:**
  - Alters **employer-employee dynamics**, balancing worker rights and business needs.
  - Could **intensify adversarial relations** within the labour environment.
  - Success depends on adapting to **labour landscape changes** and upholding **worker and employer rights**.

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## 7. Informal Sector and BNS:

- While BNS addresses **formal sector impacts**, its **application to the informal sector** remains uncertain.
- Recent ruling (*Ms X vs ICC, ANI Technologies Ltd*): Recognizes **drivers on platforms** as employees, allowing **dispute avenues** under BNS and IRC.
- **Future Potential:**
  - BNS could **reform labour dispute resolution** for a more **equitable system** in India.

- Judiciary's role is essential for a **balanced legal environment** that considers both **worker rights and employer interests**.

## 8. SAMAHAN Portal: An e-dispute portal SAMADHAN for filling Industrial disputes by workmen/ employer.

### Key Features of the Portal:

- Registration of **Industrial Disputes (IDs)** by the aggrieved party.
- Submission of relevant documents.
- Information about the current status of the IDs.

## 9. UMANG App : With the UMANG app your EPF Passbook is just One Click Away.

### Steps:

- (i) Search EPFO
- (ii) Click on View Passbook
- (iii) Enter UAN
- (iv) Submit OTP
- (v) Select Member ID and download e-Passbook.

**Information:** For Redressal of any type of grievance related to EPFO

- Visit [epfigms.gov.in](http://epfigms.gov.in)
- Login to UMANG App
- Toll Free Number - 14470

## TOPIC 5: CRIMINAL JUSTICE SYSTEM REFORMS: EVALUATING THE IMPACT OF BNS

### Introduction

- a. The **Bharatiya Nyaya Sanhita (BNS)**, effective from 1 July 2024, marks a transformative shift from the colonial-era laws that were designed more for control than justice. These laws have been replaced by a set of reforms that reflect India's aspirations for a more just, balanced, and inclusive legal framework.
- b. Alongside the **Bharatiya Nagarik Suraksha Sanhita (BNSS)** and the **Bharatiya Sakshya Adhiniyam (BSA)**, these laws are designed to ensure that justice is swift, clear, and aligned with the values of contemporary India.
- c. **BNS** reflects the broader effort to **decolonize**

the criminal justice system and make it more attuned to the needs and realities of modern Indian society.

## 2. Philosophical Shift: From 'Dand' to 'Nyaya'

### a. Core Distinction:

The main shift represented by BNS is from a punitive approach based on 'Dand' (Punishment) in the Indian Penal Code (IPC) to a more holistic and restorative concept of 'Nyaya' (Justice).

- **BNS** emphasizes the idea that *justice is not just about punishment but also restoration, rehabilitation, and protection of vulnerable groups.*

### b. Bharatiya Philosophy of Justice:

The concept of Nyaya in BNS is rooted in ancient Bharatiya philosophy. It is symbolized by the principle of Matsya Nyaya, where the smaller fish (representing the vulnerable) are protected from the larger ones (the powerful), which directly mirrors the state's duty to protect the weak.

- This principle aligns with **BNS's** emphasis on **safeguarding women, children,** and other marginalized communities.

### c. Focus on Women and Children:

Unlike the IPC, which was criticized for not offering enough protection for vulnerable groups, BNS provides specific provisions to safeguard women and children, with tougher penalties for crimes committed against them. The law also seeks to close loopholes in legal protections that were previously exploited.

### d. National Security:

BNS also expands its focus to national security, an essential addition to counter both internal and external threats to India's sovereignty. This includes clear definitions and provisions for handling terrorism and other security threats more effectively.

## 3. New Key Additions: Addressing Contemporary Needs

### A. New Offenses Against Women and Children

#### 1. Section 69: Sexual Intercourse by Deceitful Means

- "Punishment for deceitful sexual intercourse, including false promises of marriage, with penalties extending to 10

years imprisonment and a fine."

- **Explanation:** This provision directly addresses the growing concern about **exploitative relationships** where false promises of marriage are used to manipulate women. It offers **clear legal protection** against such exploitation.

#### 2. Section 95: Hiring Children for Crimes

- "Punishment for using children to commit crimes, including sexual exploitation and pornography, with sentences of 3-10 years imprisonment and a fine."

- **Explanation:** This provision seeks to close legal loopholes that have previously allowed criminals to exploit **minors** for **illegal activities**, including **child labor** and **sexual exploitation.**

### B. New Offenses Against Human Body

#### a. Section 103(2): Mob Lynching

- "Punishment for groups committing murder based on social grounds, including caste, race, or community. Death penalty or life imprisonment for offenders."

- **Explanation:** In response to rising instances of **mob lynching** across India, this provision criminalizes such acts, especially those motivated by **social bias** like caste, race, or religion. It enforces **severe penalties**, including **death** or **life imprisonment** for perpetrators.

#### b. Section 111: Organized Crime

- "Punishment for organized crime, including kidnapping, robbery, cybercrime, and human trafficking."

- **Explanation:** This section broadens the legal definition of **organized crime** to include not just physical crimes but also **cybercrimes** and **human trafficking**, acknowledging the modern and global nature of criminal activity.

#### c. Section 112(1): Petty Organized Crime

- "Addresses minor crimes such as theft, snatching, and unauthorized gambling, ensuring swift legal action for these offenses."

- **Explanation:** This provision tackles **minor organized crimes** that may not have been viewed as significant under previous legal frameworks but cause a large social and economic impact, particularly in urban areas.

#### d. Section 117: Grievous Hurt

- “Stricter penalties for causing permanent disability or leaving victims in a vegetative state. Minimum 10 years imprisonment or life imprisonment.”

◆ **Explanation:** This section ensures that individuals who inflict **irreversible harm** on others, including those causing **permanent disability** or **vegetative states**, are subjected to **severe penalties**.

### C. Offenses Against the Nation

#### a. Section 113: Terrorist Acts

- “Comprehensive definition of terrorism, including threats to national unity, integrity, and sovereignty.”
- **Explanation:** This section provides **clear legal definitions** of **terrorism**, encompassing threats to India’s **sovereignty** and **unity**, both from external and internal forces.

#### b. Section 152: Sedition and National Security

- “Abolishes sedition (Section 124A of IPC) and introduces ‘Rashtradroh’ to address offenses that threaten the sovereignty and integrity of India.”
- **Explanation:** This provision **abolishes the colonial-era sedition law** (Section 124A of the IPC) and replaces it with ‘**Rashtradroh**’. This new term focuses on actions that undermine national unity or call for armed rebellion, **promoting freedom of speech** while safeguarding national interests.

#### c. Section 195(2): Protection of Public Servants

- **Explanation:** This provision ensures that **public servants**—including law enforcement officers—are protected from **obstruction** or **threats** while performing their official duties, allowing them to work without fear of retaliation.

#### d. Section 197(1)(d): False Propaganda

- “Punishment for spreading false or misleading information that jeopardizes national security, especially on media platforms.”
- **Explanation:** With the rise of **misinformation** in the digital age, this provision ensures that those spreading false or dangerous information that threatens the **sovereignty** or **security** of India are held accountable.

#### e. Section 48: Abetment Outside India

- **Explanation:** This provision targets individuals who **abet crimes** in India from

abroad, enabling the legal system to take action even if the perpetrators are **outside the country**.

### D. Offenses Against Property

#### a. Section 304(1): Snatching

- “Specific provision for snatching, targeting crimes like mobile phone theft and chain snatching, which disproportionately affect women and the elderly.”
- **Explanation:** This section introduces **targeted legal action** against crimes like **mobile phone theft** and **chain snatching**, which are prevalent in urban areas, particularly affecting vulnerable groups like **elderly citizens** and **women**.

### E. New Additions in Definition Clause

#### 1. Section 2(3): Child

- “Defines a child as anyone below the age of 18.”
- **Explanation:** This **clear legal definition** aligns with international standards and ensures **better protection** for children under Indian law.

#### 2. Section 2(10): Gender

- “Includes transgender individuals, recognizing them as a third gender and ensuring equal protection under the law.”
- **Explanation:** This **groundbreaking provision** recognizes **transgender individuals** as a third gender, ensuring that they receive equal protection under Indian law.

### F. New Punishment: Community Service

#### 1. Section 4(f): Community Service

- “Introduces community service as a punishment for first-time offenders committing petty offenses.”
- **Explanation:** In line with the **Bharatiya Darshan** and the concept of **Prayaschit** (atonement), this provision allows **first-time petty offenders** to serve society through **community service**, offering an alternative to prison sentences.

## 4. Conclusion

- **BNS** represents a significant overhaul of India’s criminal justice system, addressing both contemporary **challenges** and **societal needs**.
- The **focus on justice**, protection of the

vulnerable, and strengthening national security marks a major shift away from colonial laws that were designed more to control than to protect.

- By incorporating provisions to address modern crimes like **cybercrime, organized crime, and terrorism**, BNS aims to make the legal system more responsive to the **changing dynamics** of Indian society.
- This reform also signifies the **decolonization** of India's legal framework, with BNS being a bold step towards creating a **just and secure Bharat**.

## TOPIC 6:-THE FUTURE OF AI IN INDIA: NAVIGATING PROFILING CONSTANTS AND CRIMINAL INVESTIGATION

### 1. Introduction

- The rapid advancements in **Artificial Intelligence (AI)** have introduced significant implications for various sectors, including **profiling and criminal investigations**.
- As AI evolves, it presents both tremendous **opportunities and challenges**.
- It becomes crucial to balance the **legal frameworks** with technological growth to ensure privacy, security, and innovation are maintained.

### 2. AI and Profiling: The Intersection of Data and Personalization

- **Core Concept of Profiling:**
  - At the heart of most **AI systems** lies **profiling**, where data is collected and analyzed to predict individual behavior.
  - AI systems use **user profiles** that are continuously updated based on actions, behaviors, and preferences.
  - Examples include personalized recommendations in **e-commerce platforms** or **streaming services**.
- **Challenges in Privacy and Data Misuse:**
  - The use of personal data raises significant **privacy concerns** and potential for **misuse**.

### ➤ Data Protection Legislation:

- ◆ The **Digital Personal Data Protection (DPDP) Act 2023** addresses these concerns by recognizing **behavioral data as personal data**.
- ◆ The law grants users the **right to correct or erase their data**, impacting how AI systems operate.
- ◆ If a user requests to erase their data, it disrupts the continuous flow of information AI relies on, challenging businesses built on **data aggregation**.
- **Business Adjustments and Privacy-First Models:**
  - AI-driven services, such as **personalized ads and recommendation engines**, depend on large datasets to function effectively.
  - As **privacy laws** tighten, businesses must pivot to **privacy-first AI models** that respect **user consent** and still deliver valuable services.
  - This balancing act represents the frontier of AI development in India.
- **Global Context: GDPR and Its Impact:**
  - Similar data protection regulations, like the **General Data Protection Regulation (GDPR)** in the EU, have influenced how companies manage personal data.
  - India's **DPDP Act** follows this global trend, ensuring that AI adapts to stricter **privacy standards**.

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

#### A. AI in Law Enforcement

- **AI and Predictive Policing:**
  - ◆ **Predictive policing** uses AI algorithms to forecast potential criminal activity by analyzing data patterns.
  - ◆ AI's predictive power, initially developed for commercial applications, can now be leveraged for **public safety** by predicting where and when crimes might occur.
- **Challenges in Predictive Policing:**
  - ◆ Predictive algorithms used in e-commerce can tolerate **errors** (e.g., irrelevant ads), but errors in policing can have **serious consequences** for

individuals' rights and freedoms.

- ◆ Law enforcement must evolve AI's application from **commercial** uses to **crime prevention** and ensure its predictions are **accurate and fair**.

## B. AI and Criminal Investigation: Insights from BNS 2023

- **BNS and AI in Criminal Investigations:**
  - ◆ The **Bharatiya Naya Sanhita (BNS 2023)** facilitates the use of **electronic evidence** in criminal cases, recognizing the role of AI in analyzing **digital data** to support investigations.
  - ◆ AI's capability to analyze vast datasets—such as **social media activity, location data, communication records, etc.**—can assist in identifying **criminal intent**.
- **Potential Uses of AI in Crime Detection:**
  - ◆ AI could greatly improve **fraud detection, cybercrime investigations, and monitoring activities like terrorist recruitment**.
- **Risks and Ethical Concerns:**
  - ◆ While AI presents exciting possibilities, **privacy violations** are a key concern.
  - ◆ The **BNS** grants law enforcement agencies broad powers to seize digital devices and access personal data for investigations.
  - ◆ Without proper safeguards, these powers could be **misused**, leading to unlawful surveillance or the wrongful targeting of innocent individuals based on **flawed AI predictions**.
- **Bias in AI Algorithms:**
  - ◆ AI systems are susceptible to **algorithmic bias** which can lead to **discriminatory outcomes**, particularly affecting marginalized communities.
  - ◆ **Bias in AI models trained on historically skewed data** can unfairly target individuals based on race, gender, or socioeconomic status.
- **Need for Oversight:**
  - ◆ Ensuring **algorithmic transparency and judicial oversight** is critical to prevent the misuse of AI in criminal investigations and protect civil rights.

## 4. AI in Action: A Case Study from the

## National Crime Agency (UK)

- **NCA's Use of AI for Child Protection:**
  - The **National Crime Agency (NCA)** in the UK serves as a successful model for using AI in law enforcement.
  - Since 2019, the NCA has employed AI to combat **child exploitation** by monitoring **online behaviors** to identify vulnerable children and prevent exploitation before it escalates.
- **Proactive Policing with AI:**
  - This model showcases **proactive policing**, where AI tracks **online interactions** and detects potential risks, rather than reacting after a crime has occurred.
  - Such **preventive measures** could be applied in India to address issues like **cyberbullying, online harassment, and terrorist recruitment** in cyberspace.
- **Ethical Considerations:**
  - The NCA's success also underscores the importance of **ethical frameworks** for AI usage in law enforcement.
  - **Transparency** in AI systems is necessary, and AI-driven decisions must be subject to **human review** to prevent wrongful targeting and ensure fairness.
  - **Public trust** is essential in building systems that are both effective and ethically sound.

## 5. Challenges and the Road Ahead for AI in India

- **Integration Challenges:**
  - The integration of AI into **law enforcement and personalized services** presents numerous challenges for India's legal and regulatory frameworks.
- **DPDP Act 2023 and Business Innovation:**
  - While the **DPDP Act 2023** establishes a solid foundation for **protecting personal data**, it also raises questions about how businesses can innovate while respecting **user privacy**.
- **BNS 2023 and Ethical Use of AI in Policing:**
  - The **BNS 2023** enables advanced AI-based policing but demands a balance between **crime prevention** and the protection of **individual rights**.
- **Training for Law Enforcement:**
  - Law enforcement agencies must be

trained to use AI **effectively** and **ethically**, ensuring that predictive tools do not perpetuate existing **biases**.

- **Data Privacy and User Consent:**
  - As businesses use AI for profiling, they must implement safeguards that allow **data corrections** and **erasure upon user request**.
- **Legal and Ethical Frameworks:**
  - The future of AI in India will be shaped not only by technological advancements but also by the **legal** and **ethical frameworks** that govern its use.
  - India must ensure **regulatory compliance**, maintain **algorithmic fairness**, and uphold **citizens' privacy rights**.

## 6. Conclusion

- The **future of AI in India** lies in finding a balance between **technological innovation** and **legal safeguards**.
- As AI systems become increasingly integrated into **criminal investigations** and **profiling**, it is vital to ensure that **privacy**, **security**, and **ethics** are prioritized.
- By learning from global examples, such as the NCA in the UK, and aligning with privacy-focused regulations like the DPDP Act 2023, India can harness AI's potential while safeguarding civil liberties and ensuring justice.

## TOPIC 7:- REDEFINING LAW IN A CYBER AGE: INDIA'S LEGISLATIVE SHIFT AGAINST MODERN CRIME

### 1. Introduction

#### a. Context and Introduction to Cybercrime:

- As cybercrime grows globally, India faces unique challenges due to its rapidly expanding digital landscape.
- Cybercriminals no longer operate within physical boundaries, making traditional law enforcement methods insufficient.
- India's criminal justice system must adapt to these evolving crimes, and the **Bharatiya Naya Sahita (BNS)**, **Bharatiya Nagarik Sarksha Sahita (BNSS)**, and **Bharatiya**

**Sakshya Adhiniyam (BSA)** offer a legislative response.

#### b. Need for Modernization:

- Modern crimes like cyber fraud, identity theft, and data breaches require sophisticated legal frameworks.
- The **traditional crime tackling model (e.g., dacoity)** can't address cybercrimes, which lack physical evidence and jurisdictional boundaries.

## 2. Evolution of Crime and the Need for Legislative Reform

#### a. Shifting from Physical to Digital Crimes:

- Traditional crimes involved **physical evidence**, **clear jurisdiction**, and **identifiable perpetrators**.
- In contrast, cybercrimes occur in the **virtual realm**, with **no clear evidence** or **location**, complicating investigation and prosecution.

#### b. New Age Cybercriminals:

- Cybercriminals operate from anywhere, exploiting vulnerabilities in digital systems for financial and data theft.
- Law enforcement must adapt to this **global, borderless nature of crime**.

## 3. The Role of the New Laws: BNS, BNSS, and BSA

#### a. Bharatiya Naya Sahita (BNS):

- Recognizes the need for a nuanced approach to cybercrime.
- Provides a framework for addressing crimes that transcend physical borders, focusing on **jurisdictional flexibility** and the **digital nature of evidence**.

#### b. Bharatiya Nagarik Suraksha Sahitha (BNSS):

- Focuses on the security of Indian citizens in the digital age.
- Empowers law enforcement with the authority to investigate across multiple jurisdictions and use digital forensic technology.
- Forensic audits (**Section 176(3)**) for cases involving **cybercrime** and **financial fraud**.

### c. Bharatiya Sakshya Adhiniyam (BSA):

- Ensures the **collection, preservation, and presentation** of digital evidence.
- Establishes guidelines for handling and authenticating digital evidence in court to strengthen prosecutions.

## 4. Key Provisions in the Laws

### a. Jurisdictional Flexibility:

- Traditional crimes had clear local jurisdiction, but cybercrimes are often spread across multiple regions and even countries.
- The new laws grant law enforcement agencies the authority to investigate and pursue cybercriminals across India's diverse jurisdictions.

### b. Digital Evidence Collection:

- In contrast to physical evidence like **fingerprints**, cybercrime requires specialized techniques to trace digital footprints, such as IP logs and server logs.
- The BNSS facilitates the use of forensic audits and advanced investigative tools to handle complex digital data.

### c. Prosecution and Digital Forensics:

- Cybercrime evidence can be **easily altered or deleted**, which calls for stringent protocols for preservation.
- The BSA mandates rigorous methods for collecting and presenting digital evidence in court, ensuring fair trials and accountability.

## 5. Challenges in Implementing Cybercrime Laws

### a. Lack of Skilled Law Enforcement Personnel:

- Many police officers lack the necessary training and tools to investigate complex cybercrimes, particularly in smaller towns and rural areas.
- These laws aim to modernize the infrastructure, equipping law enforcement with the tools and training needed to tackle cybercrime effectively.

### b. Growing Scale and Complexity of Cybercrimes:

- As cybercrimes increase in scale, the existing law enforcement units need to

expand and enhance their capabilities.

- Specialized cybercrime units, which are already present in some states, must be further developed and modernized.

### c. The Need for Investment in Digital Forensics:

- Digital forensics plays a crucial role in identifying and prosecuting cybercriminals. The new laws mandate its integration into investigations to ensure that cybercriminals cannot evade justice.

## 6. Global Perspective: Learning from International Models

### a. International Insights:

- India's approach can benefit from the international models like those in the **European Union** and the **US**, where **digital evidence handling**, jurisdictional flexibility, and cybersecurity frameworks are already established.
- Ensuring India's laws remain adaptable and dynamic, like their global counterparts, is crucial in tackling emerging cyber threats.

## 7. The Road Ahead: Implementing the New Laws

### 1. Infrastructure Development:

- Beyond just passing laws, India must invest in **digital forensic laboratories** and advanced investigative tools.
- Continuous training for law enforcement to stay updated on evolving cybercrime tactics is essential.

### 2. Collaboration with Digital Forensic Experts:

- Law enforcement must collaborate closely with digital forensic experts to enhance the capacity to track, analyze, and preserve digital evidence.
- **Investment in specialized units** and technology will improve the efficiency of cybercrime investigations.

### 3. Legal Adaptation to Emerging Technologies:

- Future-proofing the legal system against emerging technologies like AI, blockchain, and quantum computing is key.
- Amendments to the BNS, BNSS, and BSA may be required to address new forms of cybercrime as technology advances.

## 8. Conclusion

### 1. Commitment to Digital Security:

- The enactment of the **BNS, BNSS, and BSA** marks a crucial step forward in India's efforts to combat cybercrime.
- While these laws represent a shift toward modern crime-fighting, their success hinges on continued investment in law enforcement infrastructure and digital expertise.

### 2. Call for Agility and Investment:

- The future of cybercrime investigation in India relies not just on legal reforms but also on continuous adaptation and investment in technology and human capital.
- With proper execution, India can confront cybercrime head-on, ensuring justice in both the digital and physical realms.

