



# YOJANA

NOVEMBER 2024

A DEVELOPMENT MONTHLY

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## OUR CONSTITUTION AND LEGAL REFORMS

THE  
CONSTITUTION OF INDIA

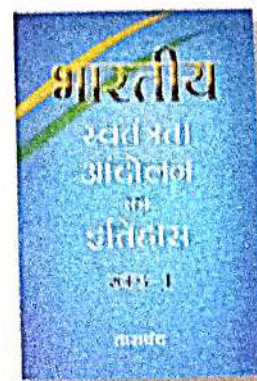
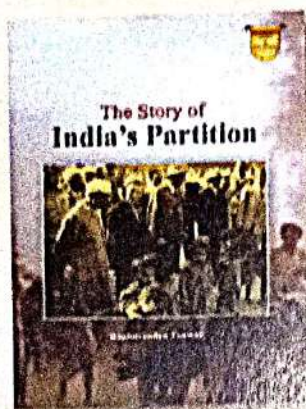
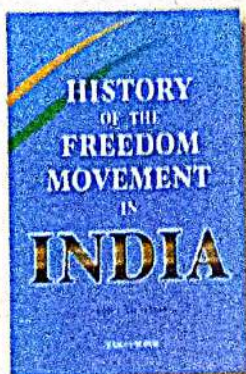






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### Suggestions for SBM

I congratulate Yojana on its outstanding work. Reviewing the 10-year progress of Swachh Bharat Mission, I suggest improvements. Despite constructing 90 million toilets and increasing rural household toilet coverage from 38 per cent to 98.5 per cent, some states face challenges: lack of awareness, inadequate infrastructure, and socio-cultural factors. To address these, I recommend awareness campaigns, integrating sanitation education into schools, collaborating with NGOs, and empowering women's participation. The MoHUA should ensure transparency in awarding best Swachh Cities, conducting physical verification of toilets and garbage disposal areas to ensure accurate rankings.

– **Manicklal Chakraborty**  
Sr Faculty MIHMCT, Chennai

### Invaluable Insights

I would like to express my heartfelt gratitude to the Publications Division for the monthly Yojana and Kurukshetra issues, which have been instrumental in adding value to my UPSC preparation. These publications provide innovative ideas, successful stories, and invaluable insights, aiding my journey. Thank you so much, Publications Division.

– **Hardik Parmar**  
Palitana, Bhavnagar, Gujarat

### Quality Content

We deeply appreciate Yojana's quality content, which offers comprehensive coverage of social, economic, technological, and defence issues. Your invaluable and insightful contributions greatly support our competitive exam preparation and informed citizenship, contributing to nation-building.

– **Shree Nath**  
Gopalganj, Bihar



## Reinforcing Foundations: India's Constitutional Journey

India's Constitution, a monumental testament to the vision and foresight of its founding fathers, has stood the test of time, guiding the nation through the complexities of governance, social change, and economic growth. Crafted with precision and passion, this foundational document has woven together the diverse threads of India's cultural, linguistic, and regional heritage, enshrining democratic values, social justice, and equality as its cornerstone. The Constitution's emphasis on individual rights, collective responsibility, and the rule of law has enabled India to navigate its unique trajectory, emerging as a vibrant democracy, resilient and dynamic, yet steadfast in its commitment to the principles of justice, liberty, and equality.

Over the past decade, India has witnessed significant strides in constitutional and legal reforms, fortifying the principles of justice, equality, and citizen empowerment.

The Right to Information Act has been strengthened, enabling citizens to access government information more easily. The Goods and Services Tax and Insolvency and Bankruptcy Code have streamlined taxation and facilitated ease of doing business.

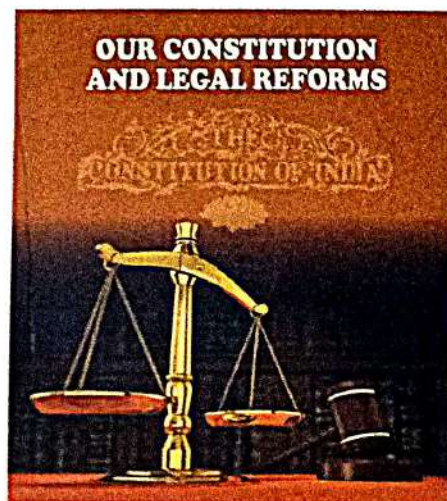
Recently, landmark reforms have been enacted, including the *Bharatiya Nyaya Sanhita* (BNS), *Bharatiya Nagarik Suraksha Sanhita* (BNSS), and the *Bharatiya Sakshya Adhinyam* (BSA), aimed at transforming the judicial landscape, enhancing citizen safety, and accessibility to justice. The National Education Policy (NEP) 2020 has introduced transformative changes in education, focusing on accessibility, equity, and quality.

The Digital Personal Data Protection Act, 2023, marks a significant milestone in India's data protection regime, establishing a comprehensive framework for protecting personal data. This law introduces key concepts like consent management, data minimisation, accountability, and regulated cross-border data transfer, empowering individuals with control over their personal data. However, concerns linger around implementation, highlighting the need for balance between individual rights and legitimate data processing, to fully achieve the goal.

Judiciary is facing challenges, including delays and backlogs that hinder access to justice for ordinary citizens. Targeted reforms and initiatives can bridge this gap, making social justice a tangible reality by addressing disparities in education, healthcare, and economic opportunities, ultimately benefiting the most vulnerable populations.

As we reflect on India's constitutional journey, we are reminded that the true test of democracy lies in its ability to adapt, evolve, and respond to the aspirations of its citizens. The current edition of Yojana features thought-provoking insights from subject matter experts, academicians, and scholars offering valuable perspectives on India's progress and potential. This effort aims to highlight the significance of constitutional reforms, governance, and citizen empowerment in building a more just, equitable, and resilient India for all, and to inspire constructive discourse on the nation's ongoing journey toward a *Viksit Bharat*.

□







# THE CONSTITUTION OF INDIA

## 75 Years of the Indian Constitution: A Journey Towards Absolute Glory

**DR ASHWINI SIWAL**

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The world's longest written Constitution came into force in 1950, despite facing innumerable twists, turns, and hindrances within the chaotic socio-political context. It had stood to be the cornerstone of our nation, defying all odds and striving to drive the motherland towards absolute glory. The years down the line had seen evolution in the constitutional principles and main institutions of constitutional governance to ensure justice, liberty, and equality for the countrymen. The study of our Constitution is comparable to the exuberating feats of divers who dive deep into violent oceans and come up with exhilarating pearls of wisdom that shine for decades and decades. These pearls usher the nation to achieve the goals enshrined by our forefathers in the text of the constitution. This article aims to bring to the readers a bird's-eye view of the miraculous journey of the Constitution of India from its origins to the present times. As India celebrates 75 years of its Constitution, this article aims to ignite the curiosity and inspire readers to learn more about the mysteries and depths of the Indian Constitution.



***"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***

**A**s India celebrates 75 years of its Constitution, it is essential to reflect on the remarkable journey of this foundational document and the nation it has shaped. Adopted on 26 November 1949, the Constitution of India stands as a testament to the aspirations of a diverse and vibrant society, embodying the principles of justice, liberty, equality, and fraternity. This journey has not just been about governance but also about the evolution of a democratic ethos, resilience in the face of challenges, and the relentless pursuit of inclusive growth.

The Indian Constitution emerged from the crucible of colonial rule and a tumultuous freedom struggle. Led by visionary leaders such as Dr BR Ambedkar, the Drafting Committee sought to create a document that reflected the diverse cultural, linguistic, and religious tapestry of India. The extensive debates, discussions, and deliberations that characterised the Constituent Assembly laid the groundwork for a robust legal framework designed to uphold democracy and safeguard individual rights. The Preamble to the Constitution eloquently encapsulates its spirit. It emphasises the commitment to justice, liberty, equality, and fraternity, serving as a guiding light for the nation. Over the years, these values have been put to the test, but the Constitution has proved resilient. It has adapted to changing socio-political contexts while remaining a steadfast guardian of fundamental rights.

Civil society organisations have been instrumental in safeguarding constitutional values. They have championed human rights, environmental sustainability, and social justice, acting as watchdogs and advocates for those whose voices might otherwise go unheard. The vibrant civil society landscape in India reflects a robust democratic spirit and underscores the importance of collective action in realising constitutional promises. India's strength lies in its diversity. The Constitution recognises and celebrates this pluralism, providing for cultural

and linguistic rights. Over the past 75 years, India has become a tapestry of languages, traditions, and beliefs, enriching the nation's social fabric. This diversity is not just tolerated but celebrated, with the Constitution serving as a protective umbrella.

The journey has not been without its challenges. From the Emergency period in the 1970s, when fundamental rights were curtailed, to ongoing debates about federalism and secularism, the Constitution has navigated turbulent waters. Yet, the resilience of Indian democracy has shone through. Citizens have consistently rallied to protect their rights and freedoms, often invoking the Constitution as a shield against injustice. The 21<sup>st</sup> century has ushered in new challenges, including economic disparities, communal tensions, and the need for technological regulation. However, the Constitution has provided a framework for dialogue and reform, encouraging a participatory approach to governance.

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

The making of the Indian Constitution was a transformative process that unfolded through a series of significant events, each contributing to the establishment of a robust democratic framework for the newly independent nation. The journey began with the Government of India Act 1935, which introduced a federal structure and laid the groundwork for constitutional governance in India, providing a blueprint that would influence subsequent discussions on the Constitution. Following World War II and the growing demand for independence, the British government initiated the Cabinet Mission Plan in 1946, leading to the formation of the Constituent Assembly. This assembly was tasked with drafting the Constitution and comprised representatives from various provinces and princely states, reflecting India's diverse demographics. The assembly's first meeting took place on 9 December 1946, and was marked by fervent debates about the future governance of the nation.





*Dr BR Ambedkar being sworn in as independent India's first Law Minister by President Dr Rajendra Prasad on 8 May 1950.*

*Source: [www.amritmahotsav.nic.in](http://www.amritmahotsav.nic.in)*

A pivotal moment came with the adoption of the Objective Resolution on 13 December 1946. This Resolution articulated the fundamental goals of the Constitution, emphasising justice, liberty, equality, and fraternity, which would serve as guiding principles throughout the drafting process. The Drafting Committee, chaired by Dr BR Ambedkar, was formed in 1947 to translate these ideals into a comprehensive legal framework. Over the next two years, the Committee and the Assembly engaged in extensive discussions on various aspects of governance, rights, and responsibilities. Issues such as the structure of government, the role of the judiciary, and the protection of minority rights were hotly debated, showcasing the assembly's commitment to democratic principles and inclusivity. The Assembly meticulously crafted the Constitution, balancing the aspirations of a diverse population while addressing the historical injustices stemming from colonial rule.

On 26 November 1949, the Constitution was adopted, marking a momentous occasion in India's history. This date is celebrated annually as 'Constitution Day', reflecting the significance of this event in establishing India as a sovereign

nation. The Constitution officially came into effect on 26 January 1950, a date now commemorated as Republic Day, symbolising the transition from colonial rule to self-governance.

Key features of the Constitution included Fundamental Rights, which guaranteed individual liberties and protections against discrimination, and Directive Principles of State Policy, aimed at guiding the state toward achieving social and economic justice. These elements underscored the Constitution's commitment to not only political democracy but also social equity. As the years progressed, the Constitution proved adaptable to changing socio-political dynamics.

The First Amendment, passed in 1951, was a response to the need for greater clarity regarding freedoms and the rights of minority communities, demonstrating the living nature of the document. Over the decades, the Constitution has undergone numerous amendments, reflecting India's evolving aspirations and challenges. Each amendment has reaffirmed the Constitution's relevance in addressing contemporary issues such as gender equality, economic disparities, and environmental concerns. The making of the Indian Constitution



stands as a testament to the vision and dedication of its framers, who sought to create a document that would uphold the values of justice, liberty, and equality while accommodating the diverse voices of the nation. Today, it continues to guide India on its path toward a more inclusive and equitable society, celebrating the ideals it was founded upon while adapting to the needs of future generations.

### Evolution of the Constitutional Values

Legal scholar Harvey Walker has maintained that "The Constitution must be developed out of the lives and aspirations of the people and not borrowed from others. The fundamental and values of the constitution shall be in tune with the particular culture and times in order to be useful and lasting." It is very important for the values and institutions that emanate from the Constitution to keep pace with the times. As the Constitution is considered to be an organic document, it shall make space for accommodating complex issues evolving with time. The Indian constitutional debates also vociferously discussed the matter of making the Constitution 'flexible'. Debaters in the assembly relied heavily on the words of AV Dicey, "The immutability of the constitution is the ground for its violent subversion".

The Amendments in the Constitution of India over the years have brought significant changes in the constitutional paradigms as were envisaged by its framers. The Amendments had bearing on, inter alia, the fundamental rights, the Directive Principles of state policy, Fundamental Duties, lists in the Seventh Schedule, emergency provisions, state reorganisation, and other important areas such as language, elections and the Preamble. The pertinent point to note here is that it is only about twenty-seven times in total that the American Constitution has been amended, eight times the Australian Constitution, whereas the Indian Constitution, despite being voluminous and very young, has been amended over a hundred times. What can we

make out of this? Is it because our Constitution is very flexible and organic, or does it exemplify distortion of the original Constitution? Be that as it may, it is pertinent to note that our Constitution, imbued with immense inner strength, withstood all amendments over these years without compromising on the fundamental values that were envisaged by our founding fathers. Having said that, the question is if we can change our Constitution entirely. This came up in the landmark judgement of *Kesavananda Bharati v. State of Kerala* (1973). This landmark case established the 'Basic Structure' doctrine, asserting that while Parliament can amend the constitution, it cannot alter its fundamental framework. The Supreme Court 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. The Supreme Court ruled that amendments that violate this balance are unconstitutional, further reinforcing judicial review. Though there are different views on the validity of judicial reviews of amendments to the constitution.

Another landmark Judgement that merits mention here is *Maneka Gandhi v. Union of India* (1978). In this case, the Supreme Court expanded

the interpretation of Article 21, which guarantees the right to life and personal liberty. The court held that the right to life is not just about existence but encompasses the right to live with dignity, leading to a broader understanding of fundamental rights that led to the inclusion of various rights that are now being read as an integral part of the right to life and liberty. Gradually, the ambit of the jurisprudence around the right to life and liberty widened more by including within it various rights, namely the right to privacy, the accused's right to a speedy trial, the right to a fair trial, free legal aid, rights against torture, handcuffing, illegal

**The making of the Indian Constitution stands as a testament to the vision and dedication of its framers, who sought to create a document that would uphold the values of justice, liberty, and equality while accommodating the diverse voices of the nation. Today, it continues to guide India on its path toward a more inclusive and equitable society, celebrating the ideals it was founded upon while adapting to the needs of future generations.**





*Dr Rajendra Prasad, India's first President, receives a calligraphic copy of the Indian Constitution in May 1950, accompanied by Shri SN Mukherji, Shri HVR Iyengar, and Shri Prem Bihari Narain Raizada.*

*Source: Prasar Bharati*

detention, the right to an environment free from pollution; right to education and health.

Articles 14, 19 and 21 often referred to as the golden triangle of the Constitution, have been a shield to provide relief to major and important sections of Indian society. In *Vishaka v. State of Rajasthan* (1997), the Supreme Court laid down guidelines to prevent sexual harassment at the workplace, recognising that such harassment violates fundamental rights under Articles 14, 19, and 21. This judgement became a cornerstone for women's rights and workplace safety in India. Another important judgement upholding the rights of the women in Indian society is *Shayara Bano v. Union of India* (2017), wherein the Supreme Court declared the practice of instant triple talaq (*talaq-e-biddah*) unconstitutional, affirming that it violates the fundamental rights of Muslim women and is against the principles of gender justice.

In order to embrace and respect diversity in our society and emphasise the importance of an inclusive and integral culture, the constitutional principles are regularly used as tools to uphold

the dignity of long marginalised individuals. In the rulings of *Navtej Singh Johar v. Union of India* (2018), the Supreme Court decriminalised consensual homosexual acts by reading down Section 377 of the Indian Penal Code. The judgement emphasised that sexual orientation is an intrinsic aspect of human identity, upholding the right to equality and non-discrimination. The judgement was well received by a major section of the society, radically changing the stereotypical notions of the masses relating to the rights of the LGBTQ+. In the same vein, in another ruling pertaining to the law related to adultery, the Supreme Court in *Joseph Shine v. Union of India* (2018) struck down the adultery law as unconstitutional, stating it discriminated against women and violated their rights to equality and dignity.

In the knowledge economy and today's era of information, the law relating to privacy that has evolved from the paraphernalia of the constitutional principles has become a cogent foundation on which relevant contemporary laws are superstructured. In *Justice K.S. Puttaswamy v. Union of India* (2017), the



Supreme Court recognised the right to privacy as a fundamental right under Article 21. This judgement has significant implications for data protection and individual freedoms in the digital age.

Further, the abrogation of Article 370 is another watershed moment having the propensity to alter the constitutional conscience. The Constitution Bench of the Supreme Court unanimously affirmed the authority of the President of India to revoke Article 370 of the Indian Constitution. The abrogation in August 2019 resulted in the division of the former state of Jammu & Kashmir into two Union Territories, J&K and Ladakh, and stripped the state of its special rights. The Supreme Court stated that Article 370 was merely a provisional measure to enable the admission of the former princely state to the Union of India during a period marked by internal turmoil and external threats. The Supreme Court stated that Jammu and Kashmir did not maintain any aspect of sovereignty upon its accession to India.

As noted above, the judiciary has played a pivotal role in interpreting the Constitution and expanding its scope in the last 75 years. Landmark judgements have upheld the rights of marginalised communities, reinforced gender equality, and ensured environmental protection over the years. The dynamic nature of constitutional interpretation has allowed it to evolve with societal needs, making it a living document that resonates with contemporary values. These judgements discussed above reflect the dynamic nature of the Indian constitution and its ability, inter alia, to adapt to contemporary issues such as the protection and expansion of fundamental rights in a diverse society.

## Conclusion

The Constitution of India has endured as a beacon of hope, guiding the nation through trials and triumphs alike. Its 75-year journey is a testament to the enduring spirit of democracy and the relentless pursuit of justice. The 75<sup>th</sup> anniversary is not merely a moment for celebration; it is a call to action. Citizens, lawmakers, and civil society must work collaboratively to uphold constitutional values and address the inequities that persist. Education and awareness about constitutional rights are essential to empower individuals and communities to claim their entitlements and participate meaningfully in democratic processes. As India stands at this significant juncture, it is imperative to reaffirm our

commitment to the principles enshrined in the constitution, ensuring that its legacy continues to inspire and uplift every citizen, regardless of their background. The journey is ongoing, and the ideals enshrined in the constitution must continue to inspire future generations. With emerging challenges such as climate change, digital rights, and social equity, there is an urgent need for constitutional engagement and reform to address these issues effectively. The journey toward absolute glory is a collective endeavour, one that requires dedication, resilience, and unwavering faith in the promise of a just and equitable society. It shall be ensured that the text of the constitution, which endures the philosophical basis and entails fundamental principles of the constitution, which are permanent, sacrosanct, and non-derogable, shall not be altered. It is also, however, categorically pertinent to note that it is the people in the final analysis, the ultimate sovereign, and if we, *the people*, decide to have an entirely new constitution, we would not need the authority of anyone, even the existing constitution for this purpose. The collective conscience prevails in democracy. □

(The co-author, Chinmay is a Research Scholar in the Faculty of Law at the University of Delhi.)

(Views are personal)

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# Amendment of the Constitution

3. The bill must be special

## Evolution of the Indian Constitution: Constitutional Amendments

SB SINGH

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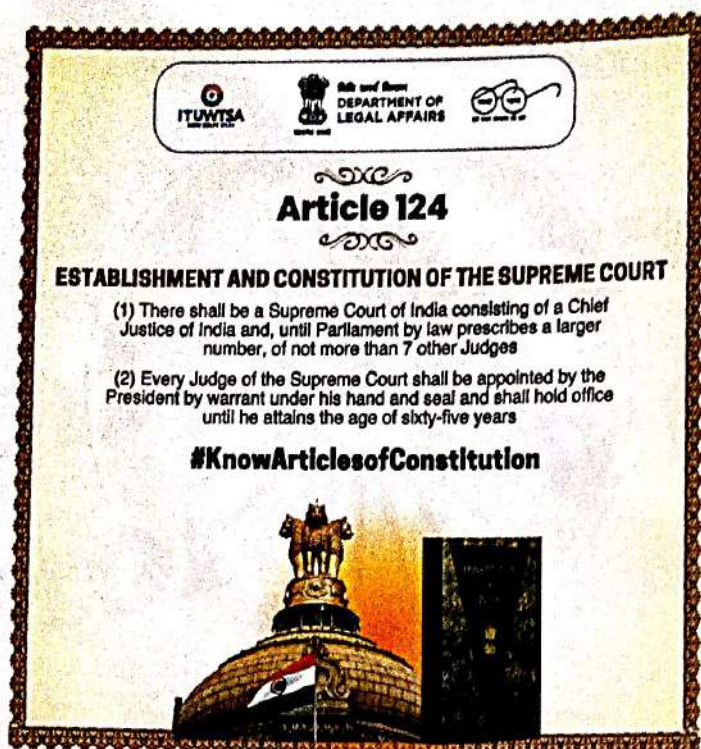
The present Constitution has evolved from a century-long British Rule during which the British Parliament enacted a number of acts that provided a framework of government and administration to India. Compared to unitary constitutions, federal constitutions are more difficult to amend. In the case of India, also a federal constitution, the process of constitutional amendment is less rigid. So far, as many as 106 amendments have been carried out in our Constitution.

**O**ur Constitution, drafted by a galaxy of legal experts and seasoned statesmen, has been the backbone of Indian democracy, guaranteeing not only an elaborate administrative machinery of governance but also a charter of a socio-economic revolution. It 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 present Constitution has evolved from a century-long British Rule during which the British Parliament enacted a number of acts that provided a framework of government and administration to India. Our present Constitution has evolved from these acts. Of these acts, the Councils Act of 1909, the





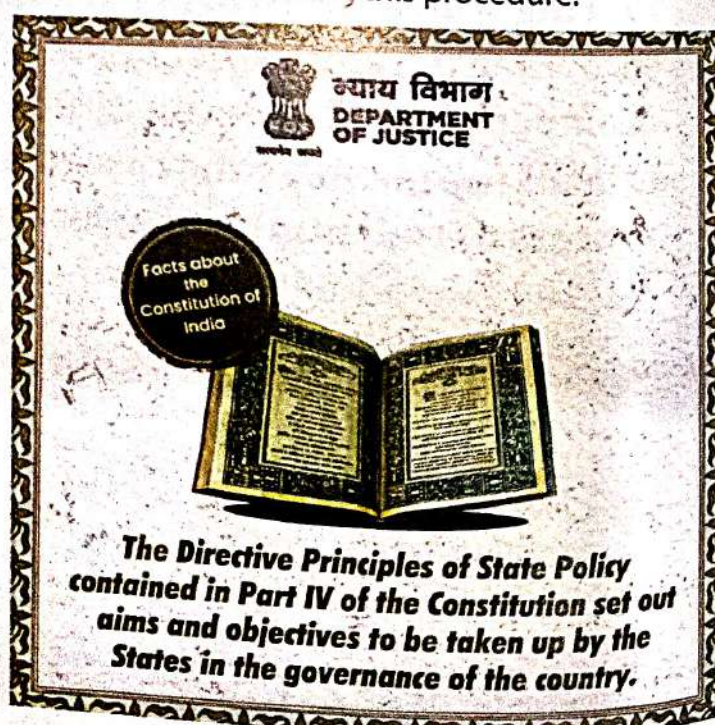
Government of India Act of 1919, and the Government of India Act of 1935 are three major milestones in India's constitutional development during the British rule. These acts provided a parliamentary form of government in British India. Rule of law, federalism, and a strong central government were the other salient features of these acts. In fact, the Government of India Act, 1935, served as the constitution of British India till our present constitution was adopted. Sixty-five per cent of our constitution has been taken from this act alone. The British imprint on our Constitution is, thus, too prominent.

**Constitutional amendment of a federal constitution:** Compared to unitary constitutions, federal constitutions are more difficult to amend. They are to be amended by a rigid procedure requiring a special majority in the federal parliament, and sometimes its ratification by the states is also required. For example, the US constitution is very rigid, and amending it requires not only a two-thirds majority of the US Congress, but also ratification by three-fourths of its 50 states. In the case of India, also a federal Constitution, the process of constitutional amendment is less rigid. So far, as many as 106 amendments have been carried out in our Constitution. After so many amendments, the Indian Constitution stands significantly altered from its original form. Acharya Kripalani had commented that after the 42<sup>nd</sup> Amendment, 1976, he could see only amendments and no original constitution!

**Need for Constitutional Amendments:** A Constitution is a living document that must reflect the changing socio-economic aspirations of the people whom it is meant to serve. With changing times and circumstances, the aspirations of the people also change, and these changes must be reflected in the constitution by amending it, or else it will cease to be a relevant document and become outdated. Though the framers of our Constitution succeeded in writing a comprehensive document, they were aware of the need to change its provisions in the future and therefore provided for an amendment procedure (Art. 368) in the constitution itself. Amendment means changing one or more parts of the Constitution, and it can be done by adding a new provision, deleting an existing provision, or revising or modifying a provision.

**Procedure for amending the Constitution:** There are three ways in which our Constitution can be amended:

- (1) By an ordinary law passed by Parliament by a 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).
- (2) By following a special procedure given in Art. 368 which requires an amendment bill to be passed by a two-thirds majority in both Houses of Parliament. Most of the amendments are carried out following this procedure.



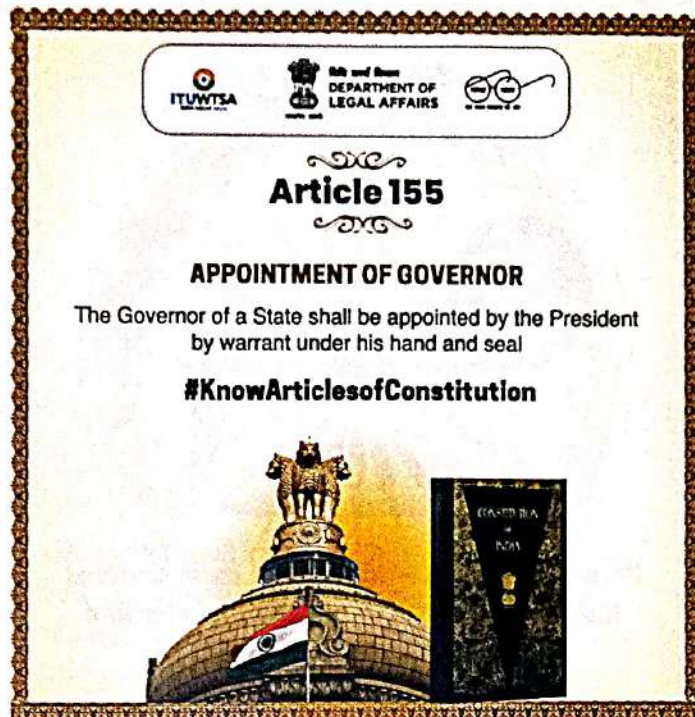
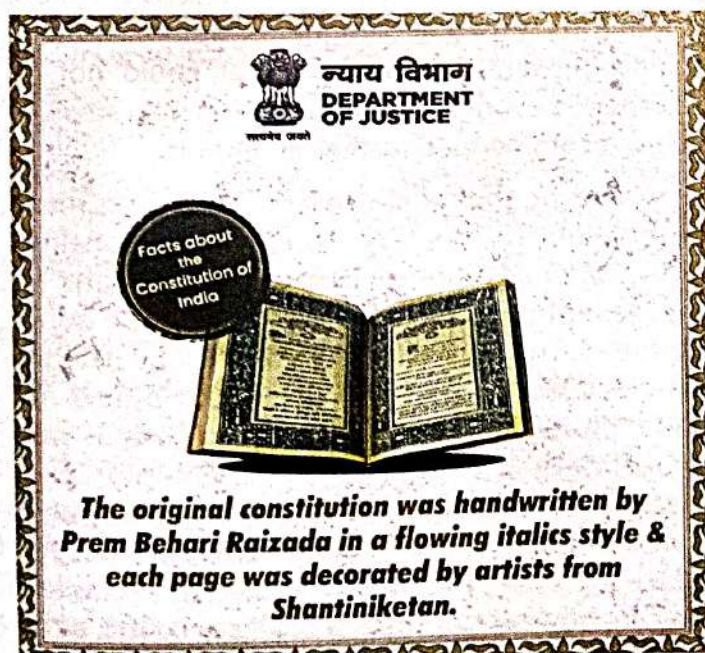


- (3) By passing an Amendment Bill by Parliament by a two-thirds majority as well as its ratification by at least half of the states if the bill seeks to make changes in provisions that affect the federal provisions. For example, GST had to be ratified by half of the states also.

### Does Parliament have unbridled powers to amend any part of the Constitution?

The notion of parliamentary sovereignty suggests that Parliament, in exercise of its constituent powers, has unlimited powers to amend any part of the constitution. In fact, this was the stand taken by the Supreme Court in two cases: the Shankari Prasad case, 1951, and the Sajjan Singh case, 1964, acknowledging Parliament's unfettered powers to amend any part of the Constitution that included even fundamental rights. However, in the Golaknath case, 1967, the court ruled that Parliament has no constituent powers to amend fundamental rights because they occupy a sacrosanct position under the constitution. In response, Parliament passed the 24<sup>th</sup> Amendment Act in 1971 that overcame the Golaknath ruling. By adding new clauses to Art. 13 and Art. 368, it was clarified that Parliament can amend even fundamental rights.

**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. It means the core features of the constitution as pointed out by the court. These core features, or basic features, as



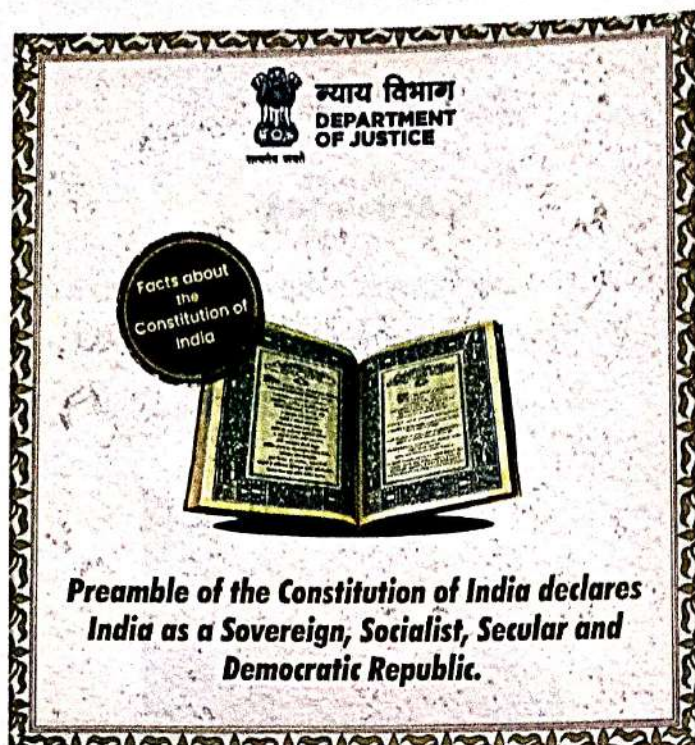
pointed out by the Court, are:

- 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

When the 24<sup>th</sup> Amendment was challenged before the court, it came out with the basic feature doctrine under which there are certain features of the Constitution that provide it a unique identity, and therefore, they cannot be destroyed by an amendment. 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.

This hurdle was sought to be overcome by the 42<sup>nd</sup> Amendment, 1976, which allowed Parliament to amend any part of the Constitution and protected it from being challenged in any court on any ground. Then came the *Minerva Mills* Judgement, 1980 in which the Supreme Court nullified this, holding that it destroys the basic feature of the Constitution. This was the first application of the basic feature doctrine, which was later also applied in the *IR Coelho* case, 2007 in which Supreme Court held that a law





placed in the Ninth Schedule of the Constitution is not immune from judicial review and is subject to scrutiny under the 'basic feature' doctrine. More recently, this doctrine was applied to the 99<sup>th</sup> Amendment Act, 2014 which created a National Judicial Appointment Commission (NJAC) for appointing judges of higher courts. Later, the NJAC was declared null and void and the collegium system of appointment was restored in its place.

**Landmark Constitutional Amendments since 1950:** Though as many as 106 amendments have been made to the Constitution so far, the following are considered major amendments that introduced significant changes in the Constitution.

**The First Amendment Act, 1951:** The main objects of this amendment were to place 'reasonable restrictions' on laws made on various grounds given in Art. 19 (security of the state, public order, morality, decency, etc.). It also abolished the *zamindari* system and inserted the 9<sup>th</sup> schedule to the Constitution which provides immunity from judicial review of certain laws, mostly dealing with land reforms.

**The Seventh Amendment Act, 1956:** Its main object was to implement the reorganisation of states on a linguistic basis, as recommended by the *Afzal Ali* Committee.

**The Forty Second Amendment Act, 1976:** This is also known as the *mini Constitution of India*, as it carried out wide ranging and drastic changes

in the Constitution during the emergency. It amended the Preamble and Directive Principles by adding Arts. 39A (free legal aid), 43A (participation of workers in management of industries), 48A (protection of environment and the wildlife), and insertion of Part IV A to the Constitution providing for fundamental duties. Art. 74 was amended to make the President 'bound by the advice of the council of ministers'. It also provided for tribunals by inserting Art. 323A and 323B in a new Part XIV A. Most importantly, it added clauses (4) and (5) to Art. 368 which gave unfettered powers to Parliament to amend any provision of the Constitution. Passed during emergency, this amendment curtailed civil freedoms, powers of the judiciary, and diluted the fundamental rights.

**The Forty Fourth Amendment Act, 1978:** This amendment was enacted by the *Janata Party* government in the background of the 42<sup>nd</sup> Amendment and the experience of emergency. First, it made changes in Art. 352 relating to proclamation of emergency. The word 'internal disturbance', which was a vague expression and was open to misuse, was replaced by 'armed rebellion'. Further, the written advice of the Cabinet to the President to proclaim an emergency was made mandatory. Also, it needed to be passed by a two-thirds majority of both houses of parliament within a month. For its further continuance, it required renewal by Parliament every six months by a two-thirds majority only. Also, Lok Sabha was empowered to revoke it by a simple resolution if ten per cent of its members requested a special meeting to revoke it. Safeguards were also made against preventive detention that could not be continued beyond three months unless an advisory board recommended further detention.

However, the most striking change was made in the Right to Property. So long as it remained a fundamental right, it became problematic for the government to acquire property for public purposes. This was solved once for all by deleting Art. 19(1)(f) and shifting Art. 300 to a new Art. 300A. Thus, today, the right to property is only a legal right and not a fundamental right which means the state can acquire property for a public purpose and one cannot seek remedy under Art. 32 by Supreme Court if one's property is acquired. He can, however, approach ordinary courts, as no



one can be deprived of his property except by authority of law.

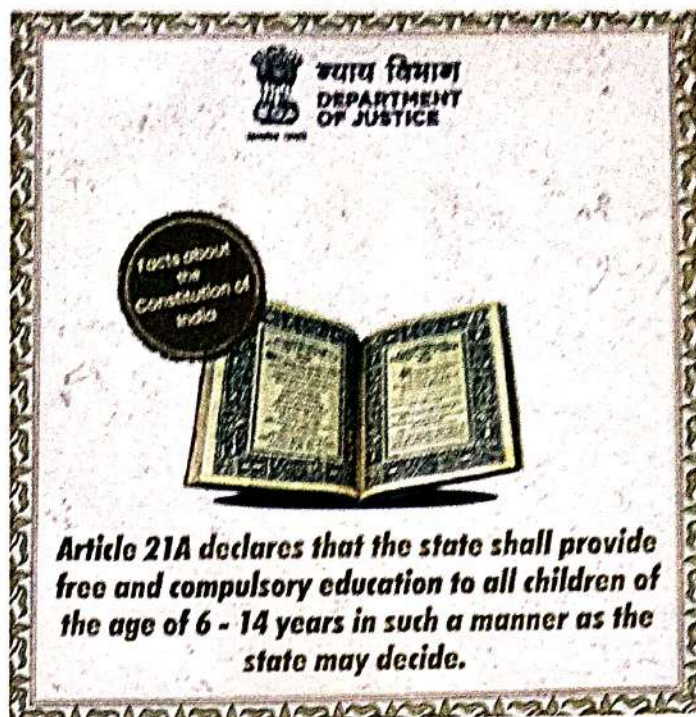
**The Fifty Second Amendment Act, 1985:** The objects and reasons of this amendment were given in the act in these words: "The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy." By this amendment, the Tenth Schedule was added to the constitution, which provides the grounds on which a member of a legislature shall be disqualified for an act of defection. This act has been further strengthened by the 91<sup>st</sup> Amendment, which has added more teeth to the 1985 anti-defection law.

**The Sixty First Amendment Act, 1988:** The purpose of this amendment was to lower the voting age from 21 years to 18 years to include India's youth in the electoral exercise. The object of this act stated: "The lowering of the voting age would provide to the unrepresented youth of the country an opportunity to give vent to their feelings and help them become a part of the political process."

**The Seventy Third and Seventy Fourth Amendment Acts, 1992:** These two amendments have constitutionalised the *Panchayati Raj* Institutions (PRIs) at both village and urban levels by adding Part IX (the *Panchayats*) and Part IXA (the Municipalities). Two new Schedules have been added, viz; the 11<sup>th</sup> and 12<sup>th</sup> Schedules, detailing the areas of work to be taken up by these local bodies. This has revolutionised the concept of decentralised democracy by ensuring timely elections, representation of women and SC/STs, devolution of powers and financial resources, and creating a separate election commission and finance commission for every state.

**The Ninety Ninth Amendment Act, 2014:** This act sought to replace the collegium system of appointment of Supreme Court and High Court judges by establishing a National Judicial Appointment Commission (NJAC).

**The Hundred First Amendment Act, 2016:** This act brought the GST regime in existence under the 'One Nation One Tax' slogan. It simplified the tax regime in one stroke and is hailed as a great step towards cooperative federalism. Both the union and the states pooled their sovereignty to agree to a common tax regime, i.e., GST.



**The Hundred Sixth Amendment Act, 2023:** This has finally paved the way for 33 per cent reservation for women in both Lok Sabha and state assemblies. This became possible after many hurdles faced in passing the bill for nearly two decades. This act, in a single stroke, has empowered Indian women and made our legislatures more representative in gender terms. However, it will come into force only after the next delimitation exercise so that the delimitation commission can decide which seats shall be reserved for women.

**Concluding observations:** Constitutional amendments have changed our economic, social and political landscapes and expanded the reach of the constitutional arm for people's welfare. As regards the nature of these amendments, the following must be noted:

- Many amendments have been only procedural in nature, and they have only elaborated on the existing provisions.
- Some amendments were regressive and politically motivated and gave rise to authoritarianism. The most striking example is the 42<sup>nd</sup> Amendment. Also, the 52<sup>nd</sup> Amendment, dealing with defections, has largely failed in its objectives.
- Most of the amendments have been forward looking and have served their objectives reasonably well. □

(Views are personal)





# Role of Indian Constitution in Promoting Social Justice

**PROF REKHA SAXENA**

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The impetus of 'transformative constitutionalism' necessitates state intervention in society to achieve social justice. The focus on the examination of Constituent Assembly debates and discussions throughout the nationalist movement is based on the belief that ideas are significant in history. The Fundamental Rights aimed to promote social revolution by establishing a society in which all citizens would have equal freedom from compulsion or constraint, whether imposed by the state or by society at large. The ability of the state to establish the prerequisites for a just society is one of the constitution's key purposes. The idea of transformative constitutionalism revolves around the ideal of social justice.

**T**he Indian Constitution has been characterised as a social revolution instrument by scholars like Granville Austin. To set Indian constitutionalism apart from the limited concerns of liberal constitutionalism, Kalpana Kannbiran (2012)

and Upendra Baxi (2008) have developed the frameworks of 'insurgent constitutionalism' and 'transformative constitutionalism.' The members of the Constituent Assembly have highlighted how the Constitution of India has the power to reshape society.



The literature on Indian constitutionalism places emphasis on how it differs from liberal constitutionalism's limited objectives. Uday Mehta (2010) makes a distinction between Indian constitutionalism (representing the twentieth century) and American constitutionalism (representing the eighteenth century). The foundation of American constitutionalism was a profound mistrust of authority, of which the absolutist prince was but one example. Thus, the justification for this constitutionalism was to restrict, distrust, and limit the scope of political power. Mehta contends that constitutionalism in most of the twentieth century—and in India especially—clearly does not adhere to such a chastened notion of power and politics. This constitutionalism expands and celebrates the scope of authority in addition to defining it. According to him, the Indian constitution alone represents a really revolutionary movement of rupture because it upends politics' relationship to time and history and subjects historical customs like caste and religion to political power's transformation. Rajeev Bhargava (2008) similarly notes that the Indian Constitution was intended to free society from the constraints of established social hierarchies and to usher in a new period of liberty, equality, and justice. In his opinion, the Indian Constitution represents a significant advancement in constitutional theory since it gives individuals who have historically been denied power a reason to exist in addition to disabling others.



### 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



### 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 ;

**LIBERTY** of thought, expression, belief, faith and worship ;

**EQUALITY** of status and of opportunity ;

and to promote among them all

**FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation ;

**IN OUR CONSTITUENT ASSEMBLY** this twenty - sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

According to Kumar (2014), the 1940s saw a lot of expectations and requirements placed on the process of writing a new constitution. It was thought that this would end the ongoing patterns of exploitation based on gender, caste, and religion and bring about the much-needed changes to the deeply unequal and hierarchical social structure that would allow every citizen to live in dignity and have equal rights under the law. Millions of people's lives changed when the Indian Constitution was ratified; in particular, those living in impoverished areas saw it as the first time they would likely be granted equal rights and treatment.

Khosla (2020) highlights the instructional function of the constitution in fostering the development of a democratic citizen, in addition to its traditional role in distributing authority and establishing rules and regulations. This argument is based on Ambedkar's claim that constitutional morality must be fostered in India. He further argues that the Constitution should not be



## 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.



regarded as a continuation of the Government of India Act, 1935, as, notwithstanding the numerous clauses included from the 1935 Act, democratisation represented a substantial departure from previous practices. The focus on the examination of Constituent Assembly debates and discussions throughout the nationalist movement is based on the belief that ideas are significant in history. Khosla contends that Indian Constitution founders were radicals, as they repudiated imperial philosophy and sought to cultivate democratic citizens through codification, a centralised state, and the liberation of individuals from the constraints of caste and religion.

The impetus of 'transformative constitutionalism' necessitates state intervention in society to achieve social justice. This contrasts with the Gandhian concept of social justice. Austin observes that Gandhi posited that the attainment of social justice must originate with the moral transformation of each individual, emanating from the heart and mind of every Indian and extending outward to society at large. Reform should not be imposed from above by the government; rather, a transformed society would require no governmental regulation or oversight. Gandhians in the Constituent Assembly, such as SN Agarwal, argued for a state that is as small as feasible. Agarwal proposed a Gandhian Constitution for Free India, advocating for little government intervention and heightened individual responsibility for personal well-

being. The Assembly's alternative to a Gandhian Constitution was one rooted in European and American traditions, facilitating a directly elected administration. Although these constitutions may have been *laissez-faire* at their inception, they have gradually assumed greater responsibility for citizen's welfare over time. Consequently, the Assembly members needed to determine whether conventional or non-traditional institutions would most effectively facilitate a social revolution capable of profoundly transforming the structure of Indian society.

The 'Objectives Resolution' underscored the objective of social revolution but did not delineate the means to attain this goal. KM Pannikar asserted that "the Constitution is a solemn commitment to the people of India that the legislature will endeavour to reform and reconstruct society based on new principles." (Austin 1972: 46) Austin asserts that adult suffrage empowered millions who once relied on the caprices of others for the representation of their interests. He notes that while Fundamental Rights safeguard people and minority groups from arbitrary and discriminatory official actions, three provisions under the Fundamental Rights part of the constitution are intended to protect individuals from the actions of other private citizens. Article 17 abolishes untouchability; Article 15(2) stipulates that no citizen shall experience any discrimination in the use of shops, restaurants, wells, roads, and other

MINISTRY OF  
SOCIAL JUSTICE &  
EMPOWERMENT  
GOVERNMENT OF INDIA

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for Prevention of  
Atrocities on Members  
of SCs and STs

Report atrocities and seek help  
Confidential and prompt assistance  
Support for victims of caste-based crimes  
Guidance on legal rights and procedures  
Connecting victims to local resources and services

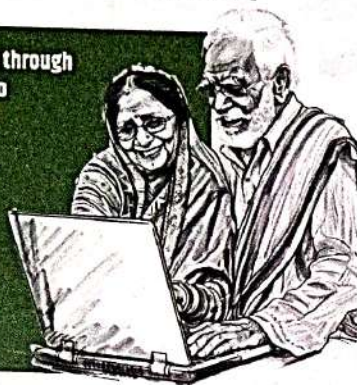


## Reporting of Crime Becomes Easy

**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



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More Details

The Bharatiya Nyaya Sanhita

The Bharatiya Nagarik Suraksha Sanhita

The Bharatiya Sakshya Adhiniyam

public spaces due to religion, race, caste, sex, or place of birth; Article 23 prohibits practices that, although previously endorsed by the state, predominantly involved conflicts between landowners and peasants. Consequently, the state, in addition to adhering to the constitution's prohibitions on infringing upon specific liberties of citizens, must also fulfil its affirmative duty to safeguard citizen's rights from societal encroachment.

The Fundamental Rights aimed to promote social revolution by establishing a society in which all citizens would have equal freedom from compulsion or constraint, whether imposed by the state or by society at large. Baxi asserts that 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). He asserts that the Indian constitution exemplifies a modern instance of enabling state intervention against manifestations of cruelty inside civil society. Furthermore, the Indian constitution serves as a mechanism for the empowerment of Scheduled Castes and Scheduled Tribes by granting them legislative reservations and mandating quotas in education and state employment for these groups, as well as for socially and educationally disadvantaged classes.

Some of the important provisions of the Constitution of India prompting the goal of social justice are as follows:

- a. **'We the People':** This line from the Indian Constitution's Preamble captures the transformative goal. 'We the People' creates a new identity that equalises opportunities and status for those whose identities were previously shaped by caste, religious, and ethnic systems. An 'individual' detached from the principles generated from the framework formed the basis of this identity. It has legal significance in addition to being a significant declaration of independence from colonial control. By decree of the Cabinet Mission Plan, the Constituent Assembly of India was established, responsible for drafting the Constitution for Independent India. 'We the People' is a significant departure from the 1947 Independence Act and the Cabinet Mission Plan's legal restrictions.
- b. **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. According to Rajeev Bhargava, full citizenship in India is awarded based solely on the requirement of being an adult member, a concept known as the categorical principle of inclusion.
- c. **Abolition of Untouchability:** Untouchability is outlawed in all forms under Article 17 of the Indian Constitution. It aimed to break with the past by putting an end to the long-standing humiliation that some castes had to endure.
- d. **Right to Equality:** According to academics like Martha Nussbaum, the Constitution of India explicitly recognises the idea of substantive equality by going beyond the idea of formal equality and stating that special protective laws that advance the interests of marginalised groups are not to be interpreted as unlawful discrimination.
- e. **Directive Principles of State Policy:** The Directive Principles of State Policy provide a more concise definition of social revolution. According to Austin (1972), the intention behind these concepts was to liberate the Indian masses—that is, to free them from social and natural constraint.





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



## Conclusion

In the dominant framework of liberal constitutionalism, it means structural power differentiation to safeguard citizen's rights. The state is viewed as an impartial arbitrator with no power to influence people's lives. The focus shifts from a neutral state and structural power differentiation to the state's capacity for transformation in transformative constitutionalism. In addition to systematising the political order, constitutions are also tasked with adjusting the social order to make it harmonious with the political order. Rebuilding society on new foundations is transformative constitutionalism's main theme. The ability of the state to establish the prerequisites for a just society is one of the constitution's key purposes. The idea of transformative constitutionalism revolves around the ideal of social justice. Transformative constitutionalism's urge demands that the government impose social fairness and social regulation on society.

To what degree was the aim of transformation achieved by Indian constitutionalism? There are two different perspectives from which we can try to answer this. From the standpoint of the liberal modernist model, people have, on the one hand, become more ingrained in the identities that were supposed to be abandoned in order to usher in a modern society during the course of the previous seven decades. Therefore, it would

seem that the constitution's goal of social change was not achieved. However, from the standpoint of the liberal communitarian model, group rights have aided in uniting disparate populations under a democratic framework. As a result, religion has become institutionalised, and caste has become more democratic.

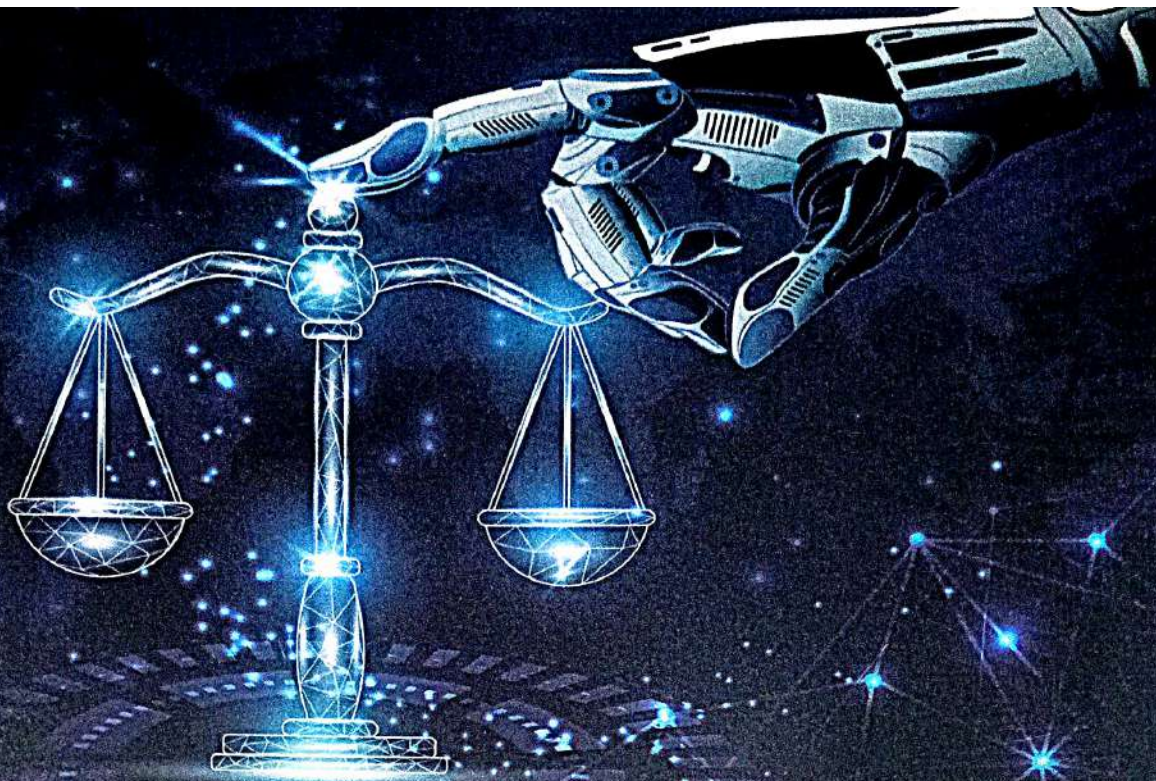
While the core of liberal constitutionalism is restricting the authority of the state, transformative constitutionalism emphasises giving the state the power to change society in an egalitarian manner. This is because oppressed people need the state to actively intervene in order to be released from the historical bonds that have kept them down, rather than relying solely on non-intervention. □

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# The Future of AI in India: Navigating Profiling Concerns and Criminal Investigations

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In the fast-paced world of technology, artificial intelligence (AI) is not just a tool for convenience; it's becoming a cornerstone of how businesses, governments, and societies operate. AI's ability to analyse vast amounts of data and predict outcomes has transformed everything from how we shop to how law enforcement approaches crime. With the recent introduction of India's Digital Personal Data Protection Act (DPDP Act) 2023 and the Bharatiya Nyaya Sanhita (BNS) 2023, there are critical shifts in how AI can and should interact with personal data and criminal justice.

**T**he world is witnessing a transformation where laws must now evolve alongside rapidly changing technology. As we dive deeper into the implications of AI in profiling and criminal investigations, it becomes evident that these technologies present both great opportunities and significant challenges. The legal frameworks governing AI usage are essential in ensuring the balance

between privacy, security, and innovation. This article delves into how the DPDP Act and BNS address these concerns and where the future might take us, using examples from across the globe to understand the broader implications.

## AI and Profiling

At the heart of most AI systems is the concept of profiling—the process of collecting data to



# Digital Personal Data Protection Act



Protects  
Citizens Rights

Facilitates Ease of  
Doing Business

Ensures  
Maximum  
Governance

predict behaviour. Whether it's e-commerce platforms suggesting products or streaming services recommending content, AI relies on user profiles that are constantly being updated based on behaviour. This data-driven approach not only enhances user experience but also brings forth concerns about privacy and the misuse of personal data.

The Digital Personal Data Protection Act (DPDP Act) 2023 directly addresses these concerns. By recognising behavioural data as personal data, the law ensures that users' rights are protected. This includes the right to correct or erase their data, forcing AI systems to rethink how they operate. For instance, if a user opts to erase their data, it disrupts the continuous stream of information that AI models rely on to provide personalised services.

This introduces a fundamental challenge for businesses that have built their platforms around data aggregation. AI-driven services like personalised ads, recommendation engines, and even financial risk assessments depend on large-scale data to function effectively. As data rights become more stringent under the DPDP Act, businesses will need to pivot towards privacy-first AI models that respect user consent while still delivering value. This delicate balance between compliance and personalisation is the new frontier for AI in India.

Globally, similar regulations are emerging. The General Data Protection Regulation (GDPR) in the European Union has had a profound impact on how companies handle data, particularly when it comes to profiling. AI systems, in particular, have had to adapt to stringent requirements for obtaining explicit consent before collecting personal data. This shift towards privacy-centric AI is setting a global precedent, and India's DPDP Act is following suit.

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

While AI's commercial applications are widely recognised, its role in law enforcement is gaining traction. The *Bharatiya Nyaya Sanhita* (BNS) 2023 paves the way for the use of electronic evidence in criminal cases, acknowledging the power

of AI in analysing digital data to aid investigations. AI can now play a central role in predictive policing, a method that uses algorithms to forecast potential criminal activity based on data analysis.

A prominent example is how AI is used to combat child exploitation. In the UK, the National Crime Agency (NCA) has been using AI since 2019 to track online behaviour in children, particularly to safeguard vulnerable individuals. This system does not merely monitor; it analyses patterns of online behaviour to identify children at risk and flag potential perpetrators. This predictive approach represents the future of AI-assisted law enforcement, where crimes are prevented before they happen. Such systems, however, come with significant ethical considerations.

In India, the BNS opens similar doors for using AI in crime prediction and digital forensics. AI systems can analyse vast datasets, including social media activity, location history, and communication records, to identify patterns that might suggest criminal intent. The potential for AI to assist in fraud detection, cybercrime investigations, and even terrorist activity monitoring is immense. However, as exciting as these developments are, they come with substantial risks.

The BNS 2023 grants law enforcement agencies broad powers to seize digital devices and access



personal data for investigations. While this is essential for fighting crime in the digital age, it also raises serious concerns about privacy violations. Without proper oversight, these powers could be misused, leading to unlawful surveillance or the wrongful targeting of innocent individuals based on inaccurate AI predictions.

Furthermore, AI systems are not infallible. Bias in algorithms can lead to discriminatory outcomes, disproportionately affecting marginalised communities. For example, AI models trained on biased data could wrongfully flag individuals based on their race, gender, or socio-economic status.

Ensuring algorithmic transparency and judicial oversight is critical to preventing such scenarios from unfolding.

### Power of AI

AI's predictive capabilities are not new. We've already seen how platforms use predictive algorithms to drive users toward impulse purchases. By analysing user behaviour—what products you search for, how long you spend on a webpage, your browsing patterns—AI can push targeted advertisements that align with your immediate needs or desires.

But imagine if this same predictive power could be harnessed for public safety. Predictive policing aims to do just that. By analysing human behaviour, AI could predict where and

when crimes are likely to occur, allowing law enforcement to intervene before incidents happen. This transition from commercial to law enforcement applications highlights AI's transformative potential. But it also requires a significant shift in how law enforcement agencies operate. Predictive models in e-commerce can tolerate some margin of error—sending you an irrelevant ad is not a big deal. But in policing, a false prediction could have serious consequences for individuals and their freedom.

Predictive AI must evolve from simply nudging us to make purchases to safeguarding society from harm. As AI technology becomes more advanced, law enforcement agencies will need to invest in training and tools to fully leverage this potential. They will also need to build systems that are fair, transparent, and accountable to avoid abuses of power.

### AI in Action at the National Crime Agency (UK):

The National Crime Agency (NCA) in the UK offers a powerful case study in how AI can be applied ethically and effectively in law enforcement. Since 2019, the NCA has employed AI to combat child exploitation by monitoring online behaviour and identifying vulnerable children. This is not a passive system; it actively tracks how children interact with the internet and uses this data to identify potential risks before they escalate into crimes.

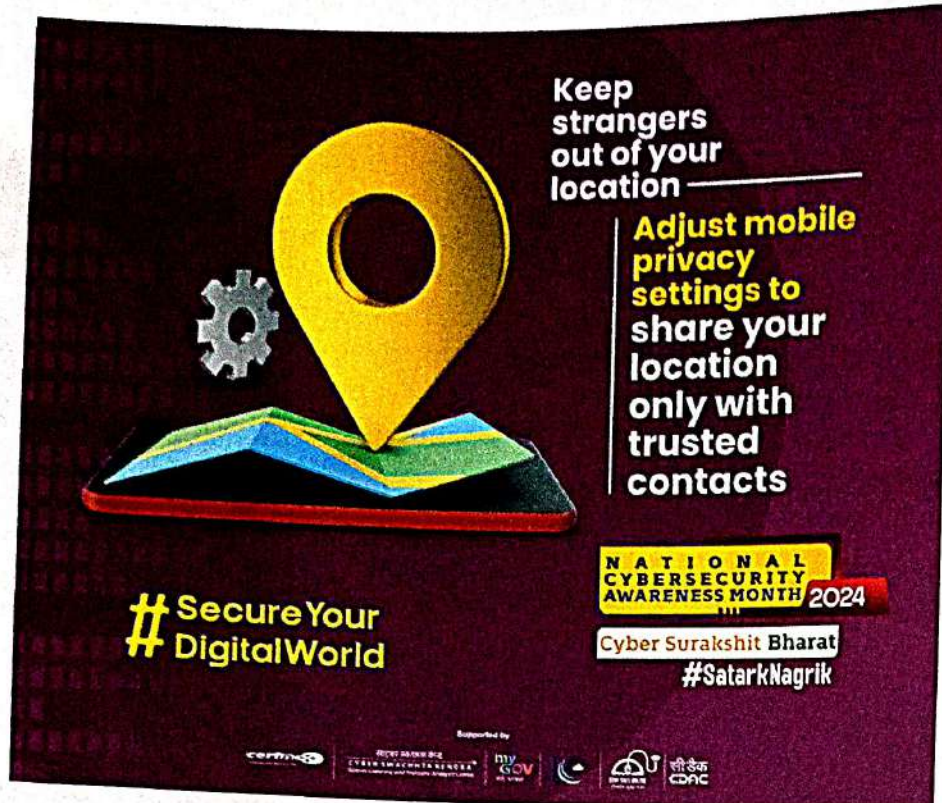
This application of AI demonstrates how the technology can be used for proactive policing—preventing crimes from occurring rather than simply reacting after the event. The NCA's model offers valuable insights for India, where similar approaches could be deployed to combat cyberbullying, online harassment, and even terrorist recruitment efforts in cyberspace.

However, the NCA's success also highlights the need for ethical frameworks when using AI in law enforcement. AI systems must be transparent in how they operate, and their decisions should be subject to human review to avoid wrongful targeting. Public trust in AI is crucial, and building systems that are both effective and ethically sound is the only way forward.

**Digital Personal Data Protection Act for #DigitalNagriks**

- ✓ Easy to Read
- ✓ Easy to Understand
- ✓ Modern and Future Ready
- ✓ Based on Principles
- ✓ Protects Digital Personal Data
- ✓ Creates a Safe and Trusted Internet





## Challenges and the Road Ahead

The integration of AI into law enforcement and personalised services brings forward a set of challenges that India must address as it moves into the future. The DPDP Act 2023 provides a solid framework for safeguarding personal data, but it also raises questions about how businesses can innovate while respecting user privacy. On the other hand, the BNS 2023 opens the door to more advanced AI-based policing, but with that comes the responsibility of ensuring that these technologies do not infringe on individual rights.

Training law enforcement to use AI effectively and ethically is critical. Predictive tools, for example, must be regularly audited to ensure they do not perpetuate biases. Similarly, businesses using AI for profiling must implement safeguards that allow for data corrections and erasure upon user request.

The future of AI in India will be shaped not just by its technological capabilities but by the legal and ethical frameworks that govern its use.

Globally, the conversation about AI and its ethical implications is gaining momentum. The European Union's GDPR and frameworks like the UK's NCA AI-based initiatives provide valuable lessons. As India's legal landscape evolves with the DPDP Act and BNS, these global examples

offer a roadmap for creating an AI ecosystem that respects privacy, ensures fairness, and leverages technology for the greater good.

As AI continues to weave itself into the fabric of daily life, the laws governing its use must keep pace. The DPDP Act 2023 and the BNS 2023 represent bold steps toward creating a legal framework that balances the incredible potential of AI with the rights and privacy of individuals. Whether through personalised services or law enforcement, AI has the power to transform how we live, work, and interact. But with that power comes great responsibility.

India's journey into the future of AI must continue to ensure that its legal framework evolves alongside technological advancements. Both businesses and law enforcement agencies must adapt to this new landscape, where data privacy and user rights coexist with AI's predictive power. By setting up systems that are both transparent and accountable, India can harness AI's potential to improve lives while safeguarding individual freedoms.

The future of AI in India, particularly in the areas of profiling and predictive policing, hinges on how well these technologies are regulated. As more data flows through AI systems, laws like the DPDP Act ensure that individuals retain control over their personal information, while the BNS 2023 opens up new possibilities for AI-driven law enforcement. In the coming years, we will witness a transformative shift where AI evolves beyond personalising services and detecting crimes to become an integral part of the social contract between technology and humanity.

This balanced future requires a collaborative effort—from legislators, technologists, and civil society—to ensure that AI serves society's best interests without compromising privacy or fairness. As India continues to navigate this evolving landscape, the world will be watching, learning, and adapting to the lessons learnt from this AI-driven transformation. □

*(Views are personal)*





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

**DR SEEMA SINGH**

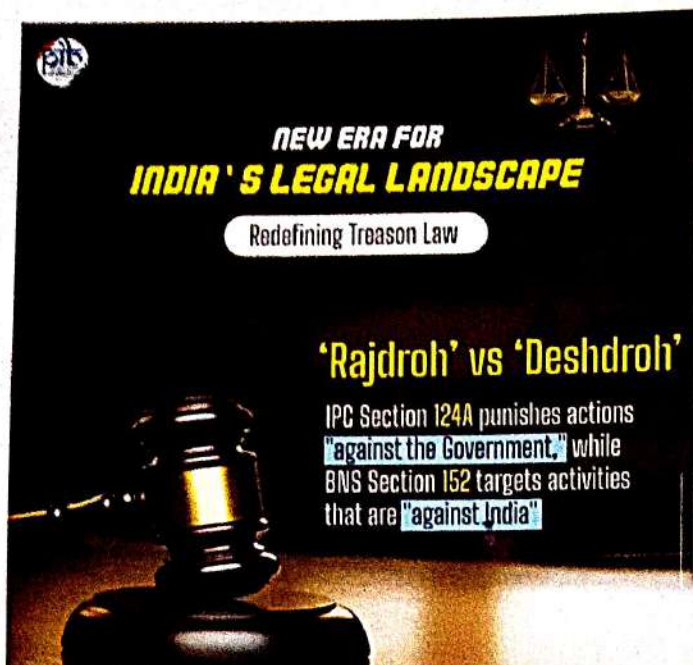
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The *Bharatiya Nyaya Sanhita* (BNS) emphasises justice, while the IPC primarily focuses on punishment. This shift becomes clearer when considered alongside the changes in the *Bharatiya Nagarik Suraksha Sanhita* (BNSS) and the *Bharatiya Sakshya Adhiniyam* (BSA). The primary aim of these amendments is to ensure swift and fair justice. The colonial-era laws enacted by the British Parliament to suppress Indian resistance have now been replaced. Effective 1 July 2024, these laws aim to address contemporary challenges, tackle modern offences, and decolonise India's criminal justice system, marking a significant step towards legal reform.

**T**he wording used in the titles of legislation often reveals the true intent behind their creation. British colonial rule shaped India's prevailing criminal laws, reflecting the mindset of that era. These laws were enacted by the British Parliament after 1857, not with the primary aim of delivering justice but to

suppress Indian resistance and penalise those who opposed British authority. The British Parliament designed these laws to control the Indian populace and curb any attempts to challenge colonial rule. The term 'Penal' itself speaks volumes in this context. Post-independent *Bharat* has taken 75 years to establish its own distinct legal framework.





The introduction of three new criminal laws marks a significant step by the government towards the decolonisation of criminal laws. This landmark effort by the Government of India is commendable and deserves appreciation for moving India away from its colonial legal legacy. These three new criminal laws, *Bharatiya Nyaya Sanhita*, 2023 (earlier IPC, 1860), *Bharatiya Nagarik Suraksha Sanhita*, 2024 (BNSS) (earlier Cr.P.C. 1973), and *Bharatiya Sakshya Adhiniyam*, 2023 (earlier Indian Evidence Act, 1872), have been implemented since 1 July 2024.

There has been sharp criticism for the amendment bill since its first introduction in Parliament. The main argument against it is that there are no substantial changes, only a reshuffling of sections. Critics claim that it is merely a case of changing the bottle, not the wine. This article aims to assess the necessity of these reforms and explore their potential impact on the justice delivery system. Thus, this article is fundamentally dealing with two things:

1. Difference between *Bharatiya Dand Sanhita*, 1860, and *Bharatiya Nyaya Sanhita*, 2023 (BNS)
2. Newly added provisions under the BNS and their relevance.

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

The core philosophical distinction between the Indian Penal Code (IPC) and the *Bharatiya Nyaya Sanhita* (BNS) is the difference between 'Dand' (punishment) and 'Nyaya' (justice). The BNS emphasises justice, while the IPC primarily focuses

on punishment. This shift becomes clearer when considered alongside the changes in the *Bharatiya Nagarik Suraksha Sanhita* (BNSS) and the *Bharatiya Sakshya Adhiniyam* (BSA). The primary aim of these amendments is to ensure swift and fair justice. Another notable change is the shift from the name 'India' to 'Bharat.' In *Bharat*, the concept of *Nyaya* differs significantly from the idea of justice in the West. The *Bharatiya* philosophy prioritises protecting the nation and the weak from anti-national and anarchist forces. *Matsya Nyaya* illustrates the importance of justice in protecting the small fish from the powerful, symbolising the protection of the vulnerable. Thus, the primary purpose of *Nyaya* is the defence of the weaker sections of society. According to contractarian theory, the state has a duty to protect those who are vulnerable due to their social or biological circumstances. The *Bharatiya Nyaya Sanhita* (BNS) effectively addresses this responsibility. In contrast to the IPC, which finds similar protections later (Section 326 and beyond), the BNS prioritises the protection of women and children, with these provisions taking precedence in Sections 63 to 99. The *Bharatiya Nyaya Sanhita* (BNS) introduces several new offences against women and children that were absent in the Indian Penal Code (IPC), addressing crimes that lacked specific legal provisions. Additionally, the penalties for offences against women and children have been significantly increased. The aim is to create a strong deterrent effect on potential offenders and ensure greater protection for these vulnerable groups.

In addition to this, the *Bharatiya Nyaya Sanhita* (BNS) includes several new offences related to national security that were not part of the IPC. These additions are crucial for addressing emerging internal and external threats to the country. The new provisions aimed at safeguarding national security align with the spirit of the *Bharatiya* Constitution, which begins with the principle of sovereignty. It is important to remember that only a safe and secure nation can effectively protect the rights of its citizens. The BNS meets this critical need by incorporating the necessary and timely provisions.

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

#### A. New offences against women and children

(i) **Section 69: Sexual intercourse by employing deceitful means, etc.**

'Marrying by suppressing identity' has



recently gained significant media attention, with numerous cases reported across the country. India has witnessed a surge in exploitative relationships and gruesome crimes. In BNS, under Section 69, it is mentioned that 'Whoever, by deceitful means or by making a promise to marry a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to a fine.'

The law now explicitly addresses deceptive means, including identity suppression. This provision is crucial as it clarifies legal ambiguities and resolves the inconsistencies found in different High Court rulings on the same issue. As a result, it provides significant relief to potential victims of such offences by offering clearer legal protection.

(ii) **Under Section 95 of BNS**, Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.

**Explanation**—Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this Section.

The immunity granted to minors from criminal liability has often been exploited by hardened criminals, who use them to commit offences, thus granting immunity to both parties. This new provision is crucial as it aims to protect children, who are particularly vulnerable to manipulation by such offenders, while addressing this loophole in the law.

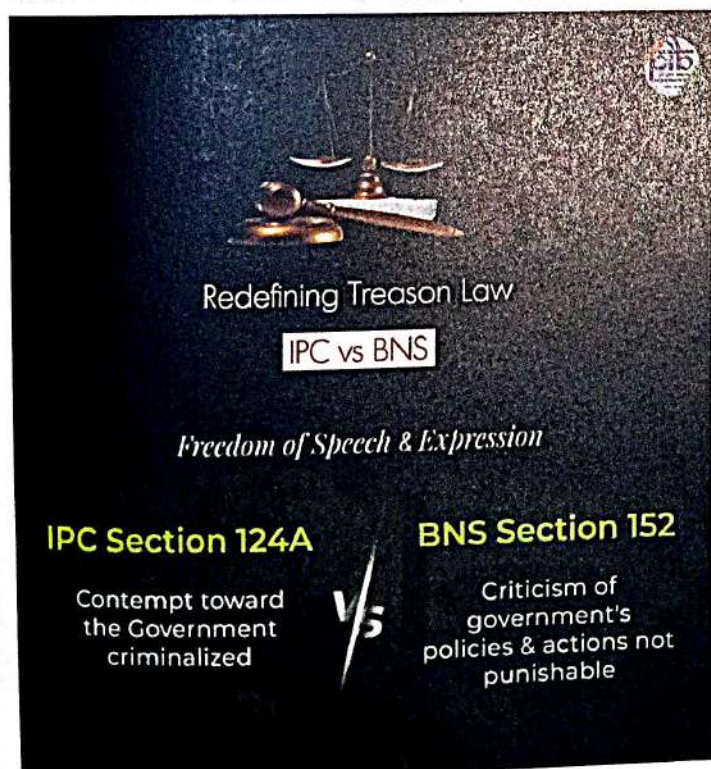
## B. New Offences Against Human Body

**(i) Section 103(2):** 'When a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief, or any other similar ground, each member of such group shall be punished with death or with imprisonment for life and shall also be liable to a fine.'

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. By incorporating this new offence, the Government has effectively implemented the Supreme Court's judgement, reinforcing legal measures to combat such acts of violence.

**(ii) Section 111** talks about organised crime, which states: 'Any continuing unlawful activity, including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cybercrimes, trafficking of persons, drugs, weapons, or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit, including a financial benefit, shall constitute organised crime.'

The severity of organised crimes is increasing. Previously, there were no specific provisions for offences like land grabbing, economic crimes, or vehicle theft, despite their increasing frequency. By providing a broad and comprehensive definition of such crimes, this new provision fills a much-needed





## Unmasking the Shadows BNS 2023 Takes On Organised Crime

- Dedicated section introduced in BNS 2023 to combat organised crime
- Section 111 of BNS 2023 targets offenses including kidnapping, robbery, cyber crimes, etc.
- Offenses that were either not clearly defined or non-existent have been introduced in Section 112 (petty organized crime)
- Activities committed using violence, threats, or coercion punishable



gap and ensures their proper recognition and legal treatment.

**(iii) Section 112 (1)** talks about Petty Organised Crime which states: *'Whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers, or any other similar criminal act, is said to commit petty organised crime.'*

Previously, there was no specific law to address petty offences, but with the introduction of this section, such cases will now be handled directly, and offenders will receive appropriate punishment based on the severity of the offence.

**(iv) Section 117** talks about Voluntarily Causing Grievous Hurt

In **Section 117(3)**: *'Whoever commits an offence under sub-section (1), i.e., grievous hurt, and in the course of such commission causes any hurt to a person which causes that person to be in permanent disability or in persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, which*

*shall mean imprisonment for the remainder of that person's natural life.'*

We must remember the tragic case of Aruna Shanbaug, where the victim remained in a vegetative state for 42 years, yet the accused received only minor punishment for assault and robbery. This new provision addresses the long-standing gap by imposing stricter penalties for offences that cause permanent disability or leave the victim in a permanent vegetative state, ensuring justice for such grave crimes.

**In Section 117(4)**: *'When a group of five or more persons acting in concert causes grievous hurt to a person on the ground of his race, caste or community, sex, place of birth, language, personal belief, or any other similar ground, each member of such group shall be guilty of the offence of causing grievous hurt and shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'*

This clause specifically addresses hate crimes, which were not previously recognised as an offence. The BNS now fulfils the need for a dedicated legal provision, as evidenced by the increasing number of hate crime incidents.



## (C) Offences against Nation

### (i) Section 113 talks about Terrorist Act:

Anyone who commits any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India, or with the intent to strike terror or likely to strike terror among the people or any section of the people in India or in any foreign country—commits a terrorist act.

Engaging in different activities has expanded its scope, thereby constituting a terrorist act. The historical record and current conditions in and around Bharat render it particularly vulnerable to terrorist activities. Until now, the term 'terrorism' had not been clearly defined in legal terms. This marks the first comprehensive and inclusive attempt to define terrorism, which will undoubtedly aid in protecting the nation against anti-national activities.

(ii) Section 152 talks about Act endangering sovereignty, unity, and integrity of India:

Anyone who intentionally or knowingly incites or attempts to incite secession, armed rebellion, or subversive activities, or fosters separatist sentiments or jeopardises the sovereignty, unity, and integrity of India, or engages in or commits any such act, faces a life sentence or a seven-year sentence, along with a fine.

In the IPC, 'Sedition' or 'Rajdroh' was defined as an offence under Section 124A. After numerous complaints of misuse challenged its constitutional validity in court, the Supreme Court suspended its

operation. The BNS abolished 'sedition' or 'Rajdroh' and introduced 'Rashtra Droh' as a new offence under this section. While Section 124A focused on the 'government,' now, Section 152 emphasises on the sovereignty, unity, and integrity of India.

(iii) Section 195(2): 'Whoever threatens to assault or attempts to obstruct any public servant or threatens or attempts to use criminal force to any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly or to suppress a riot or affray, shall be punished with imprisonment of either description for a term which may extend to one year, or with a fine, or with both.'

This provision offers additional protection to public servants while they are carrying out their duties. It is important to remember that on many occasions it has been observed, police officers have faced threats of assault, yet in absence of specific provisions, such offenders are not abundantly dealt with.

(iv) Sec. 197(1)(d): 'Whoever, by words either spoken or written or by signs or by visible representations or through electronic communication or otherwise, makes or publishes false or misleading information, jeopardising the sovereignty, unity and integrity or security of India, shall be punished with imprisonment which may extend to three years, or with fine, or with both.'

The dissemination of misleading information and the propagation of fake propaganda have become prevalent across various media platforms, from mainstream to social media. Such misinformation can pose serious threats to law and order, as well as to the sovereignty, unity, integrity, and security of India. 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). The inclusion of this provision in the BNS will provide a robust defence for state authorities in dealing with such rumour mongers.

(v) Section 48 talks about Abetment outside India for offences in India, which states:

'A person abets an offence within the meaning of this Sanhita who, without

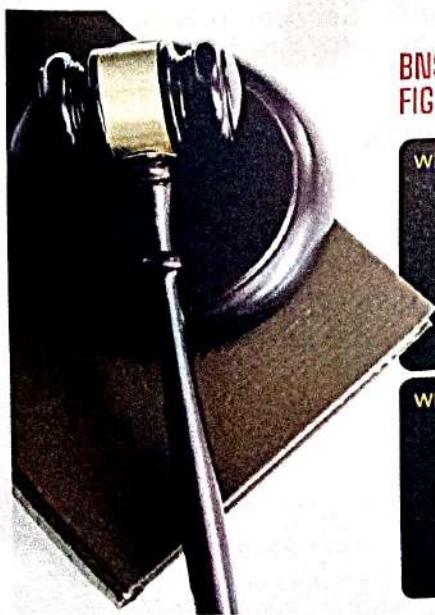
### BNS TRANSFORMING THE FIGHT AGAINST ORGANIZED CRIME

#### What Is Punishable As A Petty Crime?

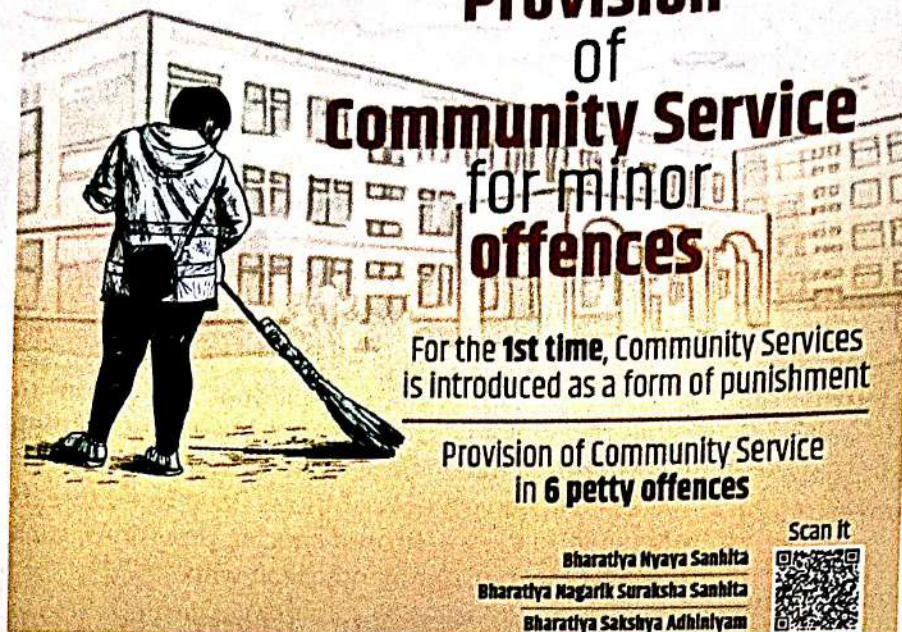
- Snatching
- Shoplifting
- Betting
- Gambling
- Selling examination papers

#### What Is Punishable As An Economic Offence?

- Criminal breach of trust
- Forgery
- Hawala transactions
- Mass-marketing fraud
- Schemes to defraud







and beyond India, abets the commission of any act in India which would constitute an offence if committed in India.'

India has historically been vulnerable to external influences and destabilising forces, originating from outside its borders. This provision imposes liability on even an abettor located outside India who incites someone to commit an offence within the country. Furthermore, under the *Bharatiya Sakshya Adhiniyam*, the trial can proceed even if the abettor is absent. This is a significant development because it eliminates the need to apprehend and extradite the individual to initiate legal proceedings, allowing a trial to proceed without their presence.

#### (D) Offences against Property

(i) **Section 304 (1)** talks about Snatching which states:

*'Theft is snatching if, in order to commit theft, the offender suddenly or, quickly, or forcibly seizes, or secures, grabs, or takes away from any person or from his possession any movable property.'*

As we know, snatching has become a prevalent offence in today's society. Incidents involving the theft of chains and mobile phones, particularly targeting women and the elderly in metropolitan areas, are quite common and can inflict serious

mental and physical harm on the victims. Previously, the IPC did not include a specific provision for snatching. However, the BNS now addresses this issue with a dedicated provision for the offence of snatching.

#### (E) New Additions In Definition Clause

(i) **Section 2(3)- Child-** means any person below the age of eighteen years.

(ii) **Section 2(10)- Gender-** 'he' includes males, females, and transgenders.

In the case of *National Legal Services Authority v. Union of India* (2014), the Hon'ble Supreme Court recognised transgender individuals as the '**third gender**'. The BNS now provides transgender people with the same protections previously

available to males and females. Given the social discrimination that transgender individuals have faced, this is a significant and positive step taken by the government to ensure their protection.

#### (F) New Punishment

**Section 4(f)** talks about Community Service: Community services punishment is added under Section 4 of the BNS.

In *Bhartiya Darshan*, '*Prayashchit*' is a key aspect of '*Vyavhar-Vidhi*'. In the BNS, the government has sought to incorporate this principle through the concept of '*Community Service*'. This provision is specifically aimed at first-time offenders who commit petty offences.

These represent the fundamental changes introduced in the BNS. Given the contemporary challenges, the BNS is highly relevant, as it addresses the offences and issues currently faced by the country and its citizens. In conclusion, we can assert that the government has made a significant effort by implementing this new code. It is poised to effectively address the new offences prevalent in society and tackle the challenges confronting the nation. □

(Views are personal)

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## Impact of the Bharatiya Nyaya Sanhita on Labour Dispute Resolution

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Labour disputes in India have traditionally been influenced by various central acts, such as the Industrial Disputes Act (IDA) of 1947, the Trade Unions Act of 1926 and the Industrial Employment (Standing Orders) Act of 1946, which were subsumed under the Industrial Relations Code ('IRC' or 'the Code') 2020 in an attempt to simplify the numerous labour law statutes and encourage industrial development. Against this backdrop, the recent enactment of the *Bharatiya Nyaya Sanhita* (BNS) marks a significant shift from the colonial-era Indian Penal Code (IPC) with provisions that have implications across various legal domains, including labour dispute resolution. This approach to resolving disputes cordially aligns with international standards, which have been considered necessary to foster an environment of development in a middle-income country such as India. The practical impact of the BNS will evolve through judicial interpretation, shaping the labour landscape in response to emerging challenges and cases.



**I**ndustrialisation has often created a gap between management and workers, stemming from the unequal ownership of means of production. This disparity has resulted in industrial friction and disputes, which are prevalent across developed and developing nations. This creates the need for an effective system of dispute resolution to maintain social and economic stability.<sup>1</sup> In India, this objective has been pursued through a series of labour statutes, including the Industrial Disputes Act (IDA) of 1947<sup>2</sup> and the Industrial Relations Code (IRC) of 2020,<sup>3</sup> which aimed to address disputes amicably through mechanisms such as conciliation, arbitration, and adjudication.

Against this backdrop, the recent enactment of the *Bharatiya Nyaya Sanhita* (BNS)<sup>4</sup> marks a significant shift from the colonial-era Indian Penal Code (IPC)<sup>5</sup> with provisions that have implications across various legal domains, including labour dispute resolution. This article puts attention to its emphasis on strict penal measures for labour conflicts, which represents a departure from the earlier conciliatory approach under the *quo-ante* and existing labour law statutes.

This piece analyses the provisions and approaches for labour dispute resolution under various statutes and codes in India. By looking at some key provisions under BNS, this article attempts to spotlight how such provisions impact employers and employees, particularly in the formal sector. What are the problems with the existing labour dispute resolution mechanisms? Does the BNS represent an effective shift towards modernising labour relations in India? What are

the key challenges in its implementation? By analysing key provisions, such as those regulating worker protests and employer liabilities, the article attempts to answer these questions.

### Dispute Resolution: Labour Issues In India

Labour disputes in India have traditionally been influenced by various central acts, such as the Industrial Disputes Act (IDA) of 1947, the Trade Unions Act of 1926<sup>6</sup> and the Industrial Employment (Standing Orders) Act of 1946,<sup>7</sup> which were subsumed under the Industrial Relations Code ('IRC' or 'the Code') 2020 in an attempt to simplify the numerous labour law statutes and encourage industrial development. Under these various acts, the *quo-ante* approach has been to resolve labour disputes amicably, promote security measures, and preserve amity between the employer and worker. This is reflected in Sections 3 and 10A of the Act, which provide conciliation and voluntary arbitrations as a mechanism to resolve industrial disputes.<sup>8</sup> In addition, the Act provides for the constitution of a Labour Court and Industrial Tribunal under Section 7 that attempts to resolve the dispute between employer and workers through settlement and arbitration.<sup>9</sup>

This has been continued under the IRC, which attempts to provide a platform for resolving disputes and minimising conflicts between employers and employees. In particular, IRC has implemented two significant reforms. Firstly, all previous institutions under the labour statutes have been kept intact, except for the Conciliation Board, Court of Inquiry, and Labour Court. Secondly, it has eliminated the requirement of prior government approval to refer or not refer certain labour disputes under Section 10(1) of the Act, except in cases involving national tribunals.<sup>10</sup>


Under IRC and IDA, labour dispute resolution can be categorised into three forms: (A) bi-partite forums (comprising Grievance Redressal Committee and Works Committee) to resolve workers' and employers' disputes; (B) conciliation, where a neutral third party mediates the conflict between the worker and employer; and (C) court adjudication.<sup>11</sup> Further, S. 12 of the IRA states that the conciliation process must end within 15 days unless parties agree differently. In addition, S. 53 of the IRA fixes the time frame for the conciliation officer to reach a solution to 45 days for general

## SAMADHAN PORTAL

### Frequently Asked Questions

**Question**

What if the party is aggrieved by the **decision of the award** under the industrial dispute Act?



**Answer**

The aggrieved party may seek **legal remedies** in the higher court.



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### Key Features of the Portal

- ❑ Registration of IDs by the aggrieved party
- ❑ Submission of relevant documents
- ❑ Information about the current status of the IDs.



industrial disputes and 14 days for disputes by notice.<sup>12</sup>

This approach to resolving disputes cordially aligns with international standards, which have been considered necessary to foster an environment of development in a middle-income country such as India. For instance, Resolution No. 92 of the International Labour Organization (ILO) provides voluntary conciliation and arbitration to resolve and prevent worker and employer disputes.<sup>13</sup> Consequently, it has been endorsed and promoted by the Indian judiciary as well.

### Challenges with the IDA

Though the IRC aims to promote a cordial approach to solving disputes, the mechanisms used to resolve labour conflicts under the Code have various implementation problems. The Code only provides for resolving disputes in the formal sector while excluding workers in the unorganised sector. This means that various domestic and agricultural workers, including those working on different online platforms (gig workers), are prevented from accessing dispute resolution mechanisms under the IRC. As highlighted by various scholars, more often than not, the conciliation process gets manipulated

in favour of the employer, who merely uses it as a formal step before adjudication.<sup>14</sup> The IRC neither attempted to streamline the conciliation process nor incorporated the provisions for online conciliation, despite a shortage of quality conciliators in India.<sup>15</sup>

On the other hand, the BNS marks a shift from this approach of solving labour disputes amicably and provides for rather stringent punishment mechanisms, as discussed subsequently in this paper.

### Labour Disputes: Dispute Resolution under the BNS

In contrast to the amicable settlement of labour disputes under the IRC and previous statutes, the BNS introduces a range of penal provisions that impact employers and employees in the formal sector in relation to labour dispute resolution. For employers, the BNS presents a more stringent legal framework that necessitates greater attention to compliance with labour laws while offering some protections against unlawful labour actions such as illegal strikes or protests.

One of the contentious issues in labour disputes relates to protests and strikes, which workers have used to assert their demands in cases of industrial disputes. Recognising their importance for workers, Justice Bhagwati in *Gujarat Steel Tubes v. Majdoor Sabha*<sup>16</sup> emphasised the utility of strikes as a tool of 'collective bargain' in a trade dispute. Therefore, Sections 16 and 17 of the Industrial Relations Code provide immunity to a trade union member from legal proceedings in certain civil and criminal suits if the acts done by members are in furtherance of an industrial dispute for the benefit of the union.<sup>17</sup>

In contrast, Section 194 of the BNS prescribes punishment for committing instances of violent behaviour in public places (affray).<sup>18</sup> As the Supreme Court held in *All-India Bank Employees Association v. I.T.*, "the right to strike or declare lockout may be controlled or restricted by legislation as there is only a fundamental right to form a union but not strike."<sup>19</sup> For employers, this provision offers protection against unlawful disruptions in business operations caused by strikes or protests, especially when these actions threaten public peace. While the law seeks to prevent violent or disruptive actions, the inclusion of this provision could potentially criminalise certain forms of worker protests. It may create a chilling effect on the collective actions of workers.



Though the judiciary is responsible for examining which forms of protests/strikes are legal and illegal, nevertheless, it is clear that there is a shift from an 'amicable approach' under IRC to an 'adversarial approach' through strict penalties under BNS vis-à-vis the strike and immunity provisions. The BNS's approach to labour disputes is a marked departure from the IPC and established labour laws, including the Code of 2020 and the Disputes Act of 1947. By reclassifying labour-related offences as criminal, the BNS departs from the Code's mechanisms to treat such disputes through conciliatory mechanisms. While this new classification provides a potent deterrent against violations and raises employer accountability, it also risks intensifying adversarial relations between labour and management.

### Practical Challenges & Future Outlook

While the BNS offers a stronger framework for labour dispute resolution, it also presents implementation challenges. The criminalisation of labour offences could exacerbate case backlogs in an already strained judicial system. Employers, particularly smaller enterprises, may struggle to navigate the new legal complexities.

The judiciary will be essential in interpreting and enforcing the BNS, as provisions like Section 194 are

applied in diverse labour cases. Thus, the practical impact of the BNS will evolve through judicial interpretation, shaping the labour landscape in response to emerging challenges and cases. The future efficacy of the BNS in labour disputes will depend on how the courts apply it and how both employers and workers adjust to the redefined legal framework.

### Labour Disputes & BNS: The Path Forward

The BNS represents a substantial transformation in India's approach to labour dispute resolution, marking a shift from traditional conciliatory methods to a more penal framework. By intensifying worker protections and imposing stricter penalties on employers, the BNS reclassifies certain labour-related offences as criminal, aiming to align India's labour laws with international standards. This reclassification alters the dynamics between employers and employees, introducing new complexities in balancing worker rights with employer operational constraints.

The implications of the BNS are significant as India continues to address labour rights and workplace safety. The stricter legal provisions necessitate greater compliance from employers and risk suppressing legitimate worker protests and collective bargaining efforts. This shift could intensify adversarial relations within the labour landscape, challenging the historically amicable dispute-resolution mechanisms established by earlier statutes. Its success will depend on its adaptability to the evolving labour landscape and whether it can effectively uphold worker rights and employer interests.

While this article has explored the impacts of BNS on both employers and workers in the formal sector, the application of those provisions in the informal sector is still to be seen. Recently, in *Ms X v. ICC, ANI Technologies Ltd*,<sup>20</sup> the court held the drivers on its platform to be the employees of the company in question, which opens multiple avenues of dispute resolution for these platform-based workers under BNS and IRC. Though BNS has the potential to pave the way for a more equitable and efficient labour dispute resolution system

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in India, whether it will fulfil this promise or require further refinement remains an open question. The judiciary's role in interpreting these new provisions would be crucial for fostering a legal environment that carefully balances these concerns. □

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(Views are personal)

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# My Tryst with Emergency: The Darkest Phase of Indian Democracy

**BANDARU DATTATRAYA**

The author is the Hon'ble Governor of the State of Haryana.

In Independent history of India, 25 June 1975 was the darkest day, which will haunt generations to come. The direct consequence of the Emergency was the suspension of various democratic rights. Many draconian laws were enacted during this time period, posing a serious threat to democratic values. It adversely impacted civil liberties. All the fundamental rights listed in Articles 36, 37, 38, 39, 40, and 42 of the Constitution were suspended. Fear was all pervasive. Uncertainty had gripped us. The entire country had become a de facto prison.

**J**ust a few minutes before the clock struck midnight, the State of Internal Emergency was declared on June 25, 1975 by then Prime Minister Indira Gandhi on the pretext that there were allegedly imminent internal and external threats to the Indian state. It was the darkest day in the history of Indian democracy. All top national leaders – Jayaprakash Narayan, Morarji Desai, Atal Bihari Vajpayee, LK Advani, Madhu Dandavate, George Fernandes, and many others – were arrested. Press was muzzled. The judiciary committed to the government. There were no democratic rights. The RSS was also banned. Police committed brutalities against those opposed to the Emergency. As a young RSS *pracharak*, I was actively participating under the banner of *Lok Sangharsh Samiti* led by Jayaprakash Narayan in mobilising the people against the Emergency. It was indeed India's second struggle for independence. In order to avoid arrest I was not only underground but had also changed my dress to shirt, trousers and tie with a different hairstyle. I had changed my name to Dharmendra and had adopted the nickname of Mamaji.

Lakhs of people had been arrested countrywide. The entire nation had become a virtual jail.

Everything was suspicious. I was finally arrested under the Maintenance of Internal Security Act (MISA) and was put in Chanchalguda Central Prison at Hyderabad, which was my home for over a year along with fellow colleagues of RSS, *Bharatiya Jan Sangh*, and members of Naxalite groups, *Jamaat-e-Islami* and Anand Marg. Life in the jail was different but quite disciplined thanks to our timetable. We used to get up at 6 am. It was also the time when the barracks were opened. For nearly one and a half hours, we used to do some exercise, Yoga and some *Asanas* like *Surya Namaskar*. 8:30 am was the breakfast time. At 9:30 am, we had classes along with other detainees.

After the class, we used to discuss news among ourselves which we were getting very secretly. It was followed by an hour-long lecture on different subjects like geography, sociology, history and political science. From 11 am to 1 pm, we used to focus on studying books available in the jail library. After lunch at 1 pm, we were sent back to our respective barrack.

In the evening, normally between 5 pm and 6 pm, we used to play some games, while one hour was reserved for the evening *Bhajan*. Since there were detainees from different shades of thoughts,

Source: Haryana Raj Bhavan website ([www.haryanarajbhavan.gov.in](http://www.haryanarajbhavan.gov.in))



there was an atmosphere of discussion among us. At around 7:30 pm, we were served dinner and then back to the barracks.

The time table was strictly followed by us. We had our own cook. So the food was well prepared. Except for freedom, we were able to utilise maximum time positively, though we were in agony over the state of affairs in the country. It was an unprecedented situation, which had been thrust upon the nation.

I still remember the agonising moments and recall tears in the eyes of mother Eshwaramma. People were suspicious of my arrest. They did not know why I had been arrested and for what crime. I was not allowed to speak to anyone as there were nearly 15-16 cops always surrounding me.

One day my mother came to see me in the jail. She had brought some fruits for me. She was happy to see that my health had not deteriorated in the jail. In fact, my maternal uncle, who was a close friend of a local Congress MLA and Mayor of Hyderabad, had sent her to talk to me if I could sign a confession letter with the promise that I would never indulge in 'acts' against the government in the future. It will fetch me freedom from jail.

My mother, a small onion vendor in the local market, was not educated but very rich in character, self-respect and self-confidence, told Mama that her son would not confess having committed any wrong. She asked Mama and his friends: "Has my son committed any theft or dacoity? Has my son eloped with any girl? My son is innocent. He is in jail for the sake of the country and society."

However, they pressured her to seek my view. Mother asked me if I was keen to sign the letter. I asked her – "What do you suggest?" She said that I should not as I was not guilty of committing anything wrong. Our conversation took place in the presence of a member of the Special Branch of the Police Department. I told my mother: "You have rightly said. I will not sign any letter."

This made my mother very happy. She was perhaps proud of what I did for the country. This also made me very happy and emotional as well. Her words and support gave me a lot of confidence to stand up against challenges and hardships. One should never compromise with self-respect whatever be the circumstances.

Later on, I was granted a month-long parole but with the condition that I will not move out anywhere from home. At 10 am, I used to visit the police station of Afzalgunj to sign the register every day. On the way to the police station, there was a library where I was allowed to study. My mother and books were the real source of strength for me during the traumatic days of Emergency imprisonment!

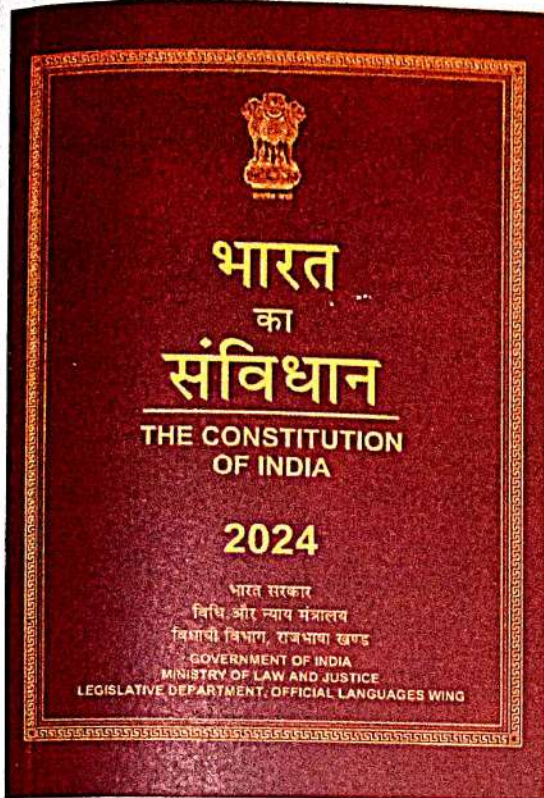
In jail, I met people of different ideologies and even Naxalites, who had been arrested under the MISA. Former Union Ministers Bangaru Laxman, A Narendra, N Narasimha Reddy, former Labour Minister of Telangana, Mohammad Abdul Aziz, Chief of Andhra Pradesh unit of *Jamaat-e-Islami Hind*, Cherabanda Raju and Varavara Rao were also in our jail. There were many others as well belonging to different ideologies and outfits including Anand Marg but all united in protesting against the Emergency. In the jail, I discuss issues of national importance and challenges arising out of the Emergency for democracy with different people. I also studied world history, world geography and political systems.

Meanwhile, a tragedy struck our family. My elder brother Manik Prabhu expired due to jaundice. I was allowed to take part in his funeral in the police escort. Later, I got one month parole as well. When I was in jail, every week my mother Late Eshwaramma used to come to meet me with fruits and eatables. She used to sell onions at Osmangunj market as a small vendor. Every time her visit used to give encouragement and confidence to fight for democratic values. One day my mother's brother – Maternal Uncle – came to her. He told her that elder brother is no more. The second one is in jail. How can you manage your family? My maternal uncle told my mother that if he gives undertaking of not doing such things in the future, he shall be able to get him pardoned with the help of Mayor of Hyderabad Lakshmi Narayana, and Secunderabad MLA L Narayan.

But my mother did not accept his condition that I should give any undertaking. She said: "My son has not done anything wrong? Has he committed any crime? Has he harassed any girl? He is fighting for a greater cause of the nation. Why should he need to give any undertaking?" My mother said this to me during one her visit to jail.



## SAMVIDHAAN HATYA DIWAS



The Government of India has decided to observe 25<sup>th</sup> June every year as 'Samvidhaan Hatya Diwas.' On this day in 1975, former Prime Minister Indira Gandhi imposed an Emergency in the country. This day will commemorate the massive contributions of all those who endured the inhuman pains of the 1975 Emergency.

On 26 June, the Lok Sabha adopted a resolution condemning the Emergency, with Speaker Om Birla calling it a black chapter in India's history. Birla praised the strength and determination of those who opposed the Emergency and protected India's democracy.

The Emergency of 1975 is remembered as a period of political turmoil and suppression of civil liberties in India. It involved the suspension of fundamental rights and strict censorship to quell political dissent. Thousands of opposition leaders, activists, and journalists were arrested without due process, creating a climate of fear and uncertainty. The media faced significant restrictions, and press freedom was curtailed.

The Emergency ended in 1977 after widespread public outcry and the ruling party's electoral defeat, demonstrating the resilience of democratic institutions in India.

The observance of 'Samvidhaan Hatya Diwas' will help keep the eternal flame of individual freedom and the defence of our democracy alive in every Indian, thus preventing any dictatorial force from repeating those horrors. □

Source: PIB & DD News

Even the police officer, who used to accompany her during the meeting, was surprised to hear the words of my mother. He just folded her hands in respect and offered 'Namaskar' to my mother. Though my mother had not studied at all, she was very much influenced by the dedication and work culture of the *Sangh* people.

I would like to share with readers some incidents and horrible experiences we underwent during the Emergency. We had called some people to gather at Ramalaya Temple at Rameshwarm Palli village in Nizamabad district for *Satyanarayana Vratha* for a secret meeting. It was also an occasion to celebrate the marriage of engineer Venkatshwar Reddy. Around 300 people came to the temple ground. I and ABVP worker Indrasen Reddy alias Jaan were getting ready for the meeting. But cops

in the devotees' clothes were looking for us. They inquired from the people what was going on. They were told that *Satyanarayana Vratha* had been organised. When we moved towards the meeting hall, they followed us. Left with no option, I and Reddy jumped off from the temple wall, which was not less than 20 feet in height. Though Reddy was alright, I sustained an ankle injury. It made walking difficult for me.

However, I and Indrasen Reddy ran away from the village and reached the bus stop by covering a distance of nearly 20 km. We took the bus and reached our secret place at Hyderabad from Medak district, now in Telangana. At the temple, police arrested some people and inquired about us. Police questioned them about Bandaru Dattatraya. Police forced them to disclose information about



me. The situation was very terrible. A large number of people had been arrested and harassed. Still, we were not demoralised. We continued with our agitation and mobilising the people against the Emergency.

Finally, we reached the Bellampally mining area. Warangal Vibhag Pramukh Shridhar Ji was with me. We were having a meal at a small hotel. Police took us into their custody. They took us to the police station and started questioning. Within a few hours, Shridhar disclosed his identity but I did not say anything. In fact, I did not even open my mouth. I was quite determined not to disclose my identity. Police kept me in another room. Shridhar was arrested under the Maintenance of Internal Security Act (MISA) and was sent to Warangal Jail.

However, the police were not ready to give up in my case. They continued questioning and torturing me, disclosing my identity and sharing information about others. Police wanted to know: How many more friends were in my group? Where were their hideouts? Where is your printing

press? What is the source of finances? What is your communication network? These were the questions the police were putting to me quite often. For three days, I did not share anything with them.

One day, Murali, a Head Constable from Adilabad, visited the police station. He wished me as he knew me. He hailed me: "How are you Dattatraya Garu?" Everybody in the police team was astonished. They were forcing me to accept that I am Bandaru Dattatraya. They tortured me, warned of severe action and even electric shocks, but I did not reveal anything to them. At last, they arrested me under the MISA and sent me to Chanchalguda Central Jail, Hyderabad.

I strongly feel that our youth should be aware of democratic values, rights and duty towards strengthening constitutional institutions so that democracy ever thrives and dictatorial tendencies are under check. □

(Views are personal)

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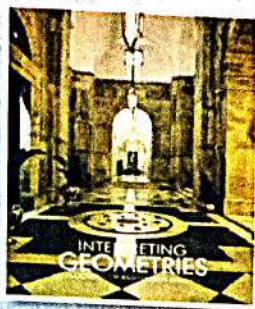
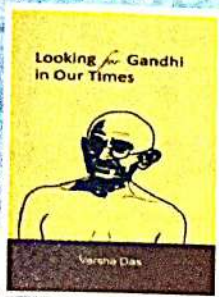
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# Redefining Law in a Cyber Age: India's Legislative Shift Against Modern Crime

**PAATHIK MUNI**

The author is a practicing Cyber Lawyer with over two decades of experience in cybersecurity and data protection.  
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The *Bharatiya Nyaya Sanhita* (BNS) represents a significant shift in India's criminal justice framework. It acknowledges that cybercrime requires a more nuanced approach than traditional crimes. The boundaries of crime have changed. Cybercriminals can operate from any corner of the globe, and law enforcement can no longer rely solely on physical jurisdiction. The BNS is designed to handle such complexity by streamlining investigative processes and ensuring that law enforcement has the authority to pursue criminals across multiple jurisdictions within India. The *Bharatiya Nagrik Suraksha Sanhita* (BNSS) focuses on improving the security of Indian citizens in the digital age by empowering law enforcement agencies to respond more effectively to digital threats.

**A**s the digital world integrates seamlessly with our daily lives, a new breed of crime has emerged, forcing India's criminal justice system to adapt. In the past, notorious criminals exploited weaknesses in the nation's law enforcement systems, but their operations were constrained by physical borders. Today, crime has evolved—there are no longer territorial boundaries to limit criminals. Instead, we find ourselves grappling with cybercriminals who operate invisibly,

manipulating global networks from any corner of the world.

These cybercriminals exploit vulnerabilities in our digital infrastructure, breaching security walls and accessing sensitive data with ease. In response to these modern challenges, the Government of India has introduced three new criminal laws—

- *Bharatiya Nyaya Sanhita* (BNS),
- The *Bharatiya Nagrik Suraksha Sanhita* (BNSS), and
- The *Bharatiya Sakshya Adhiniyam* (BSA).





The evidence is digital—scattered across servers and often hidden behind encrypted firewalls. This shift from physical to digital crime illustrates the need for a new legal framework.

The *Bharatiya Nyaya Sanhita* (BNS), *Bharatiya Nagrik Suraksha Sanhita* (BNSS), and *Bharatiya Sakshya Adhiniyam* (BSA) provide:

- The foundation for tackling these new types of crimes
- Addressing the challenges of jurisdiction
- Evidence collection and
- Prosecution in the digital realm.

The BNS represents a significant shift in India's criminal justice framework. It acknowledges that cybercrime requires a more nuanced approach than traditional crimes.

The boundaries of crime have changed. Cybercriminals can operate from any corner of the globe, and law enforcement can no longer rely solely on physical jurisdiction. In physical crimes like bank robberies, jurisdiction is clear—The local police handle the investigation. However, in cybercrimes, the victim might be in one state, the bank's servers in another country, and the criminal operating from another state of India. The BNS is designed to handle such complexity by streamlining investigative processes and ensuring that law enforcement has the authority to pursue criminals across multiple jurisdictions within India.

The *Bharatiya Nagrik Suraksha Sanhita* (BNSS) focuses on improving the security of Indian citizens in the digital age. With cybercrime increasing in scale and sophistication, the BNSS empowers law enforcement agencies to respond more effectively to digital threats.

Section 176(3) of the BNSS mandates that forensic audits be conducted in cases where the punishment exceeds seven years, particularly in cybercrimes that involve significant financial fraud, data theft, or digital sabotage.

In the digital world, gathering evidence is not as straightforward as it is in physical crime. A cybercrime investigation often involves analysing vast amounts of data, tracing encrypted communication, and tracking digital footprints across multiple platforms. The BNSS ensures that law enforcement agencies are equipped to handle

These laws aim to address the complexities of modern crime and close the gaps that digital criminals exploit, positioning India's criminal justice system firmly in the 21st century.

In the past, crimes like dacoity were common in India's cities and villages. A group of criminals would break into a home or business, steal goods, and flee. In such a case, the local police would arrive on the scene, gather physical evidence, and interrogate witnesses. The physical nature of the crime left clear evidence—fingerprints, footprints, and witnesses who could testify in court. The crime was confined to a specific location, and the police had a straightforward process to follow.

Now imagine that same dacoity taking place in the digital world. Instead of physically entering a building, cybercriminals breach a company's digital security system. They access confidential financial information or personal data and transfer it to their own accounts in seconds. In this scenario, there is:

- No physical crime scene,
- No witnesses, and
- No clear jurisdiction.



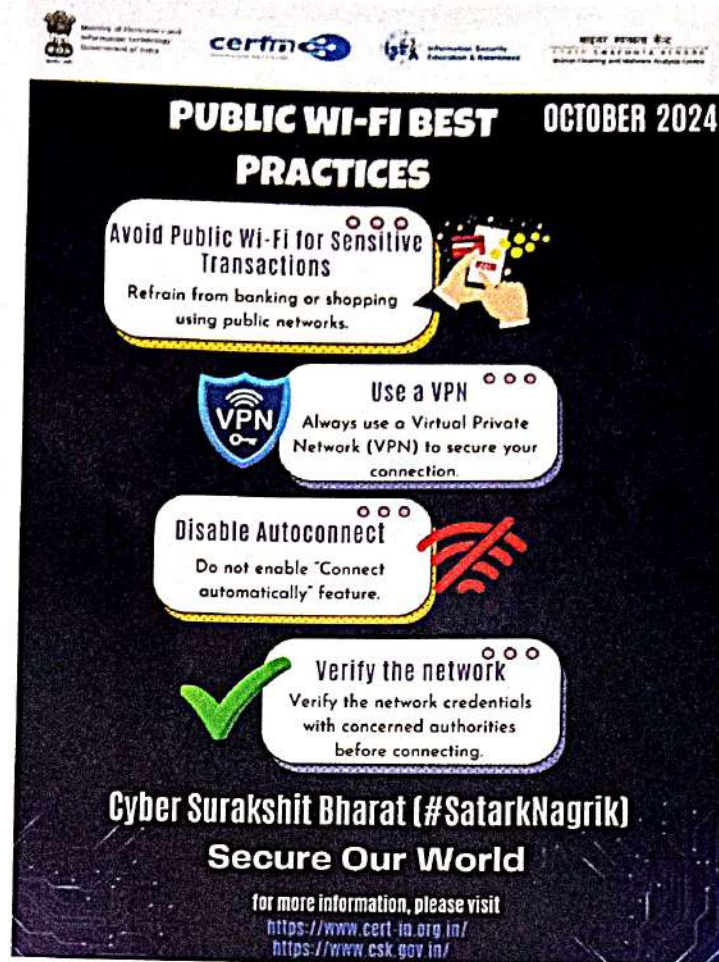
such challenges, providing a framework for forensic technology and digital investigation techniques.

For instance, in cases of cyber fraud, the forensic team might need to analyse the transactional data, review server logs, or track IP addresses across several countries to identify the perpetrators. The BNSS allows law enforcement to work seamlessly across regions within India, ensuring that digital criminals do not escape prosecution due to jurisdictional issues.

The BSA revolutionises how evidence is collected, stored, and presented in court, particularly in cases involving cybercrime. Digital evidence is intangible. That means it can be easily deleted, altered, or concealed.

The BSA introduces stringent protocols for preserving digital evidence, ensuring its integrity throughout the legal process. Digital forensics play a crucial role in cybercrime investigations. In cases involving hacking, identity theft, or online scams, the evidence might include email records, digital signatures, transaction histories, or social media activity. The BSA sets out clear guidelines for collecting this evidence in a manner that makes it admissible in court, ensuring that justice is not delayed or denied due to procedural issues.

One example is in the prosecution of online identity theft. In such cases, the evidence could



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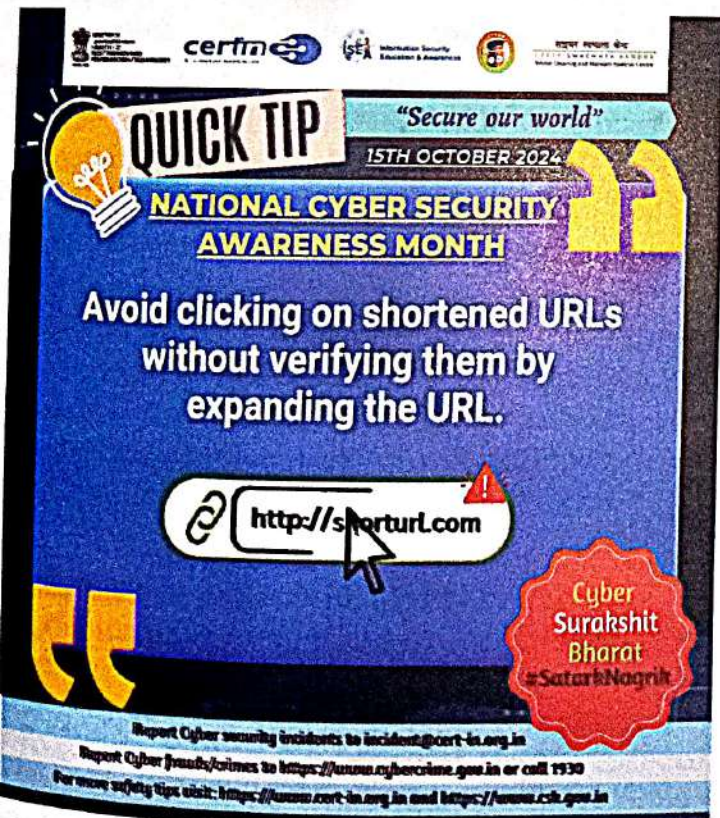
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include IP logs, financial transaction histories, or intercepted communications between the criminal and their victim. The BSA ensures that law enforcement follows a rigorous process to authenticate and present this digital evidence, giving the prosecution a stronger case.

India is no stranger to cybercrime. As one of the fastest-growing digital economies in the world, India has witnessed a dramatic rise in online fraud, data breaches, and cyber espionage.

According to reports, India ranks among the top countries in terms of cyber attacks, with industries such as (1) banking, (2) healthcare, and (3) government being the most vulnerable. The Government of India has recognised this growing threat and has prioritised cybersecurity in its policy agenda. However, the sheer volume of cybercrime cases poses a significant challenge for law enforcement. Many police officers, particularly in smaller towns and rural areas, are not trained to handle complex cybercrime cases. They lack the tools and expertise needed to investigate and prosecute digital crimes effectively.



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This is where the new criminal laws come into play. By modernising the legal framework, the BNS, BNSS, and BSA aim to equip law enforcement with the tools and knowledge they need to tackle cybercrime head-on. Whether it's financial fraud, ransomware attacks, or identity theft, these laws provide a comprehensive approach to addressing the challenges of the digital world.

Digital forensics has emerged as a cornerstone of modern criminal investigations. Just as physical evidence such as fingerprints, footprints, or DNA was crucial in traditional crimes, digital evidence is vital in cybercrimes. However, the collection and analysis of digital evidence is far more complex and requires specialised expertise.

In a physical dacoity, for instance, police officers might collect fingerprints, photograph the crime scene, and interview witnesses.

In contrast, a cybercrime investigation requires analysing encrypted data, tracking digital transactions, and tracking IP addresses.

Digital forensics experts are tasked with uncovering hidden data, retrieving deleted files, and piecing together a digital timeline of the crime.

The BNS and BNSS recognise the importance of digital forensics and include provisions that mandate its use in investigating serious crimes. By incorporating digital forensics into the legal process, these laws ensure that cybercriminals cannot simply delete their tracks and escape prosecution. The BSA also reinforces the role of digital evidence by setting strict guidelines for its preservation and presentation in court.

The BNS, BNSS, and BSA represent a bold step forward in securing India's digital future. By addressing the unique challenges posed by cybercrime, these laws create a framework that positions India to effectively counter the rising threats in the digital space. However, the passage of these laws is just the beginning. For these acts to be truly effective, they need to be supported by a robust law enforcement infrastructure.

This means:

- investing in digital forensic laboratories.
- providing police officers with the tools and training necessary to investigate cybercrimes and
- ensuring that courts are equipped to handle complex digital evidence.
- it also involves updating law enforcement protocols to reflect the realities of the digital world, where crimes happen quickly and evidence can be erased in moments.

India already has specialised cybercrime units in several states, tasked with investigating digital crimes. However, as cybercrime continues to grow in both scale and complexity, there is an urgent need to enhance the capabilities of these units. The introduction of the BNS, the BNSS, and the BSA recognises this need, providing a legislative framework that supports the expansion and modernisation of these units.

The new laws focus on empowering law enforcement to respond more effectively to cybercrime, which means increasing investment in cybercrime units to ensure they have access to the latest tools and methodologies. The collaboration between these units and digital



forensic experts will be critical to investigating complex cybercrimes, identifying perpetrators, and building strong cases that lead to successful prosecutions.

The new criminal laws represent a forward-thinking approach to digital security, but they must be seen as part of a larger strategy for adapting to the challenges of the digital age. As technologies like artificial intelligence, blockchain, and quantum computing emerge, new forms of cybercrime will also arise. The Indian legal system must remain agile, updating its frameworks to address these emerging threats.

One key aspect of future-proofing India's legal system is continuing to invest in digital infrastructure and human capital. The law enforcement officers of tomorrow will need a blend of

(1) legal, (2) technological, and (3) forensic skills to keep pace with criminals who are constantly evolving their methods. Moreover, future amendments to the BNS, BNSS, and BSA may be necessary to ensure that India's laws can address crimes related to emerging technologies.

The enactment of the BNS, the BNSS, and the BSA marks a turning point in India's approach to law enforcement.

These laws are a direct response to the growing threat of cybercrime and the need to modernise the country's legal framework to deal with crimes that take place in the digital realm. By focusing on strengthening existing cybercrime units, enhancing digital forensic capabilities, and equipping law enforcement with the tools they need to handle digital threats, India is laying the groundwork for a safer digital future.

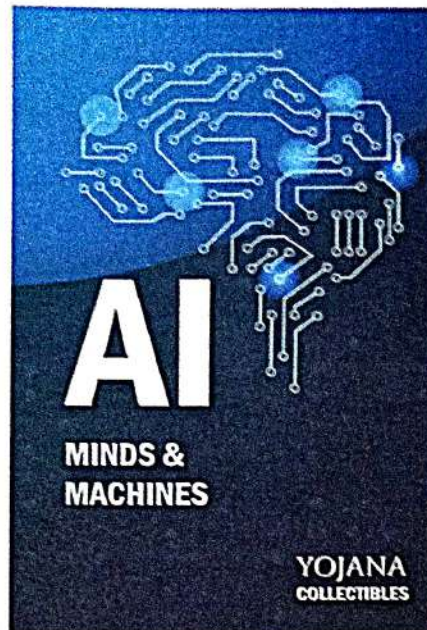
The implementation of these laws will be crucial in protecting India's digital infrastructure and ensuring that businesses, individuals, and institutions are safeguarded from the growing wave of cyber threats.

While the road ahead is challenging, the commitment to securing India's digital infrastructure through these laws represents a crucial step forward. With the right resources, continuous training, and updated legal frameworks, India can confront the challenges of cybercrime and ensure that justice prevails in both the physical and digital realms. □

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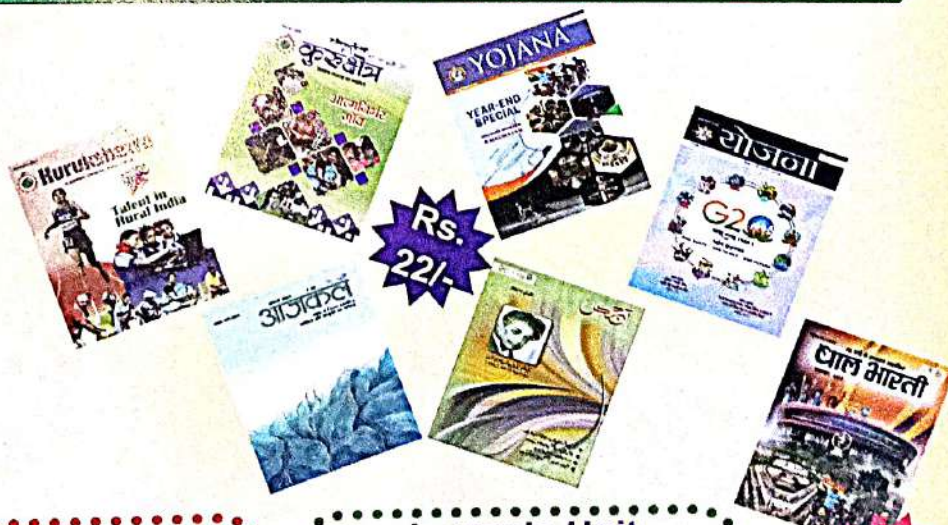
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