
NEW CRIMINAL LAWS: LEGAL RECOGNITION OF ADVANCED TECHNOLOGY IN THE INDIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Electronic evidence, digital investigations, and virtual hearings were not included in any of the three colonial-era laws that governed India's criminal justice system until July 1, 2024. With the passage of the Bharatiya Nyaya Sanhita, 2023 ("BNS"), the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), and the Bharatiya Sakshya Adhiniyam, 2023 ("BSA"), technology now has a clear and comprehensive legal basis for all stages of criminal procedure, including filing complaints, search and seizure, forensic investigations, recording statements, trials, and the presentation of evidence. The journey from Section 65B of the former Indian Evidence Act, 1872 through the Supreme Court's developing jurisprudence in *Anvar P.V. v. P.K. Basheer*, *Shafhi Mohammad v. State of Himachal Pradesh*, and *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* to the recalibrated certification regime under Section 63 of the BSA is examined in this article. It critically assesses the infrastructural, constitutional, and evidential dangers associated with this technological shift and places this regulatory architecture in addition to the executive-driven use of artificial intelligence capabilities in policing and adjudication. The article concludes that although the new codes' legal recognition of technology is a necessary and long overdue reform, its constitutional legitimacy depends on the concurrent development of institutional safeguards, forensic infrastructure, and judicial standards that can verify the accuracy of digital records.

Keywords: Bharatiya Nyaya Sanhita; Bharatiya Nagarik Suraksha Sanhita; Bharatiya Sakshya Adhiniyam; Electronic Evidence; Section 63 BSA; Videography; Forensic Investigation; Artificial Intelligence; Criminal Procedure; Digital Justice.

I. Introduction

The Indian Evidence Act of 1872, the Code of Criminal Procedure of 1973, and the Indian Penal Code of 1860 were written for a world without computers, cell phones, or the internet. Even the most important twentieth-century change, Section 65B of the Evidence Act, which was added by the Information Technology Act of 2000¹ and recognised electronic material, was a limited, retrofitted provision rather than a thoughtful design decision. The physical seizure memo, the handwritten case journal, and the in-person appearance of witnesses remained the focal points of the investigation, and trial judges continued to compare digital content to guidelines designed for paper.²

The enactment of the BNS, BNSS, and BSA, which replaced the IPC, the CrPC, and the Evidence Act, respectively, and obtained presidential assent on December 25, 2023, and went into effect on July 1, 2024, significantly altered this status.³ The new codes treat technology as a default mode of criminal administration, in contrast to previous amendments that treated it as an exception to be accommodated. For example, search and seizure must typically be videotaped⁴, forensic visits to crime scenes are required for serious offences,⁵ trials and enquiries may be conducted electronically,⁶ and electronic and digital records are explicitly recognised as both documents and primary evidence.⁷ This article provides a detailed map of that statutory architecture, places it within the body of prior electronic evidence case law, and critically assesses it in light of the constitutional safeguards found in Articles 14, 20, and 21.

This is how the conversation goes. The legislative history of the reform is traced in Part II. The legal recognition of technology at the investigative stage is examined in Part III. Its recognition during the trial and case-management stages is examined in Part IV. The law of electronic evidence under the BSA, particularly the judicial history that gave rise to Section 63, is the subject of a concentrated doctrinal analysis in Part V. Part VI places statutory technology in the context of the concurrent, executive-driven use of AI in Indian courts and law enforcement. A brief comparative comment is provided in Part VII. Before the article's conclusion in Part X,

¹ Information Technology Act 2000, s 92 and Second Schedule, inserting s 65B into the Indian Evidence Act 1872.

² Anvar P.V. v P.K. Basheer (2014) 10 SCC 473.

³ The Bharatiya NyayaSanhita 2023 (Act 45 of 2023); TheBharatiyaNagarikSurakshaSanhita 2023 (Act 46 of 2023); The Bharatiya Sakshya Adhiniyam 2023 (Act 47 of 2023).

⁴ Bharatiya Nagarik Suraksha Sanhita 2023, s 105.

⁵ Bharatiya Nagarik Suraksha Sanhita 2023, s 176(3).

⁶ Bharatiya Nagarik Suraksha Sanhita 2023, s 530.

⁷ Bharatiya Sakshya Adhiniyam 2023, ss 2(1)(d), 57 and 61.

Part VIII provides a critical analysis of the risks and weaknesses in the new framework, and Part IX makes recommendations.

II. From Colonial Codes to Techno-Legal Reform: Legislative Background

The Union Government stated that the three new codes, which were presented to the Lok Sabha in August 2023, were meant to change the "soul" of Indian criminal law from a punishing colonial architecture to a citizen-centric structure focused on justice.⁸ Beyond its declared constitutional goal, the reform was a direct legislative response to long-standing systemic flaws, such as the nation's chronic case backlog of more than five crore cases, low conviction rates, and evidentiary flaws brought on by slow, inadequately documented, and easily contested investigations.⁹ Stricter deadlines, victim-centric procedural rights, and the use of technology and forensic science in investigations are all clearly stated as key goals of the reform in the Statement of Objects and Reasons added to the BNSS.¹⁰

In addition to adding a harmonisation provision through Section 2(39) that imports definitions of technology and digital-media concepts from the Information Technology Act, 2000 and the BNSS, the BNS itself replaces 511 sections of the IPC with 358 sections spread across twenty chapters.¹¹ As a result, the BNSS grows to 531 sections spread across 39 chapters and, for the first time in Indian criminal procedure history, includes explicit provisions allowing complaints to be filed electronically, investigative acts to be recorded electronically, and proceedings to be conducted electronically.¹² The BSA closes a definitional gap that was only filled by judicial interpretation of Section 65B until 2024 by recasting the definitions of "document" and "evidence" to specifically include electronic and digital data, while maintaining the general framework of the 1872 Evidence Act.¹³

III. Legal Recognition of Technology at the Investigation Stage

A. Electronic Registration of Complaints

⁸ Ministry of Home Affairs, Government of India, Press Information Bureau, "Union Home Minister and Minister of Cooperation, Shri Amit Shah introduces the Bharatiya Nyaya Sanhita Bill 2023..." (11 August 2023).

⁹ Bureau of Police Research and Development, "New Criminal Laws" (bprd.nic.in, 2024).

¹⁰ Bharatiya Nagarik Suraksha Sanhita 2023, Statement of Objects and Reasons.

¹¹ Bharatiya Nyaya Sanhita 2023, s 2(39); see also FoxMandal, "Changes Brought Forth by the BharatiyaNyayaSanhita, 2023" (4 July 2024).

¹² LawCrust Legal Consulting, "Bharatiya NagarikS uraksha Sanhita, 2023 (BNSS) — Detailed Analysis" (2026).

¹³ Bharatiya Sakshya Adhiniyam 2023, s 2(1)(d).

A victim of a cognisable offence may disclose information electronically under Section 173 of the BNSS without having to visit a police station in person as long as the information is signed within three days.¹⁴ By permitting complaints to be filed regardless of territorial jurisdiction and subsequently transferred to the appropriate police station, this provision statutorily embeds the practice of the e-FIR and functions in tandem with the judicially mandated Zero FIR, which was initially upheld by the Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh*, which held that registration of a first information report is mandatory once information discloses a cognisable offence.¹⁵ From the initial interaction between a complainant and the criminal justice system, structured, time-stamped digital case data is produced.

B. Mandatory Audio-Video Recording of Search and Seizure

One of the most important parts of the new code that recognises technology is Section 105 of the BNSS. It mandates that the entire process of conducting a search of a location or taking possession of any property, article, or thing—including creating the search list and having witnesses sign it—be recorded using audio-video electronic means, preferably a mobile phone, and that the recording be sent right away to the jurisdictional magistrate.¹⁶ In particular, searches carried out by police officials under the proviso to Section 185(2) are subject to an analogous requirement.¹⁷ The Supreme Court's recommendation in *Shafhi Mohammad v. State of Himachal Pradesh*, where the Court approved a Ministry of Home Affairs action plan for videography in police investigations and set guidelines for its phased implementation, is codified in these rules.¹⁸ Section 105 aims to lessen disagreements about evidence tampering, coercion, and irregular search practices that had long eroded public trust in police investigations by making video documentation mandatory rather than optional.

C. Compulsory Forensic Investigation of Serious Offences

For the first time, the investigating officer is required by Section 176(3) of the BNSS to arrange for a forensic expert to visit the crime scene and gather forensic evidence, along with videography of that process, for any offence carrying a sentence of seven years or more in

¹⁴ BharatiyaNagarikSurakshaSanhita 2023, s 173.

¹⁵ *LalitaKumari v Government of Uttar Pradesh* (2014) 2 SCC 1.

¹⁶ BharatiyaNagarikSurakshaSanhita 2023, s 105.

¹⁷ BharatiyaNagarikSurakshaSanhita 2023, s 185(2) proviso.

¹⁸ *Shafhi Mohammad v State of Himachal Pradesh* (2018) SLP (Crl) Nos 2302 of 2017.

prison.¹⁹ The clause allows the State Government to announce the use of facilities in another State until its own infrastructure is created when forensic facilities are not available in that State.²⁰ Acknowledging the extent of the forensic capacity gap, Parliament postponed the obligation's full enforcement, allowing State Governments to notify the operative date within a maximum of five years.²¹ This clause changes India's approach to major criminal investigations from one that has traditionally relied on confessions and oral testimony to one that is based on scientific, forensic documentation. This change has a substantial impact on conviction rates as well as protections against forced confessions.

D. Recording of Statements and Identification

A safeguard previously associated with Section 161 of the CrPC is now placed on an express statutory footing with explicit provision for electronic recording. Section 180 of the BNSS permits audio-video recording of statements made during police investigation, including disclosure statements of an accused person and statements of other witnesses.²² Separately, Section 349 of the BNSS broadens the scope of biometric identification methods beyond what was previously possible under the Identification of Prisoners Act, 1920 by granting magistrates the authority to order the collection of measurements, including finger impressions and voice samples, even from an individual who is not formally under arrest.²³

E. Seizure and Production of Electronic Devices

Particularly in cybercrime investigations, Section 94 of the BNSS expands police authority to summon and confiscate electronic communications and devices that may contain digital evidence. This resolves a major procedural ambiguity.²⁴ Courts have emphasised the need for police officers to receive structured training in handling, hashing, and chain-of-custody documentation of seized devices in order to maintain the evidentiary reliability of digital material, given the sensitivity of such seizures for privacy and the integrity of personal data.²⁵

¹⁹ BharatiyaNagarikSurakshaSanhita 2023, s 176(3).

²⁰ Ibid, proviso.

²¹ Ibid; see also Bureau of Police Research and Development, Standard Operating Procedure for Audio-Video Recording under the BNSS (2024).

²² Bharatiya Nagarik Suraksha Sanhita 2023, s 180; see also s 183(6)(a) regarding recording of statements before a Magistrate.

²³ Bharatiya Nagarik Suraksha Sanhita 2023, s 349; cf Identification of Prisoners Act 1920.

²⁴ Bharatiya Nagarik Suraksha Sanhita 2023, s 94.

²⁵ William Stephen v State of Tamil Nadu, discussed in "Electronic evidence changes will modernise banking practices", Law. asia (26 February 2026).

IV. Legal Recognition of Technology at the Trial and Case-Management Stage

Without specific precedent in the CrPC, Section 530 of the BNSS is a general enabling provision that allows all trials, enquiries, and proceedings—including the recording of evidence—to be conducted electronically at the court's discretion, whether via electronic communication or audio-video electronic means.²⁶ Section 530 provides a common statutory foundation for e-trials nationwide, whereas the CrPC left virtual hearings to be created by judicial decisions and High Court rulings, most notably during the COVID-19 pandemic.²⁷

A number of particular provisions support this general one. In Section 230 of the BNSS, which deals with providing copies of police reports and other papers to the accused and the victim, there is a clause that acknowledges electronic delivery as legitimate compliance.²⁸ Section 532 extends the reach of the e-Courts framework directly into legislative procedure by requiring courts and police to adopt an electronic case-management system for the scheduling, tracking, and updating of case data.²⁹ Provisions pertaining to the issuance of warrants and summonses also allow for electronic transmission, which lessens the possibility of service evasion as well as the delay that is typically connected with physical delivery.³⁰ When taken as a whole, these provisions expand the digitisation that is currently taking place under the Supreme Court's e-Courts Mission Mode Project, which is currently in its third phase and has approximately 53.57 crore set aside specifically for blockchain integration and artificial intelligence, into binding statutory procedure rather than just administrative practice.³¹

V. Legal Recognition of Technology in the Law of Evidence

A. Expanded Definitions Under the BSA

In contrast to the 1872 Act, which primarily treated electronic material as an exception requiring separate proof, the BSA redefines "document" under Section 2(1)(d) to expressly include electronic and digital records. Additionally, Section 57 classifies electronic and digital records, including video recordings, as primary evidence.³² In addition, Section 61 addresses

²⁶ Bharatiya Nagarik Suraksha Sanhita 2023, s 530.

²⁷ See discussion in "Decoding the BNSS 2023: A Complete Guide to the New Law", Lawctopus (24 October 2025).

²⁸ Bharatiya Nagarik Suraksha Sanhita 2023, s 230, proviso.

²⁹ Bharatiya Nagarik Suraksha Sanhita 2023, s 532.

³⁰ See generally Bharatiya Nagarik Suraksha Sanhita 2023, Chapter VI.

³¹ Next IAS, "Integrating AI in India's Judiciary and Law Enforcement" (27 February 2025).

³² Bharatiya Sakshya Adhiniyam 2023, ss 2(1)(d), 57.

long-standing ambiguity in both criminal and commercial processes regarding the status of digitally executed or stored information by stating that an electronic or digital record should have the same legal effect, validity, and enforceability as any other document.³³

B. Section 63 and the Certification Regime

Section 63 of the BSA, which directly replaces Section 65B of the Indian Evidence Act and regulates the admission of "computer output"—that is, secondary evidence in the form of a printout, copy, or extract of an electronic record—is the focal point of the new evidentiary framework. As long as the requirements in sub-section (2) about the regular use, correct operation, and accuracy of the originating equipment are met, Section 63 considers such computer output to be a document and is therefore acceptable without the production of the original device.³⁴ The certificate requirement from Section 65B(4) is retained in Sub-section (4), but a significantly new dual-certification structure is introduced. The certificate must now be signed by both an expert and a person in a responsible position regarding the device, and both certificates must include the hash value of the relevant record.³⁵ Additionally, Section 63 explicitly expands the certification regime to "communication devices" for the first time, establishing the admissibility of computer output derived from mobile phones and other devices.³⁶

C. The Judicial Genealogy of the Certificate Requirement

Without its judicial past, Section 63 is incomprehensible. The Supreme Court displaced the general law of secondary evidence in *Anvar P.V. v. P.K. Basheer* by ruling that Section 65B constituted a comprehensive code for the proof of electronic records and that a certificate under Section 65B(4) was a necessary condition precedent to the admissibility of secondary electronic evidence.³⁷ In *Shafhi Mohammad v. State of Himachal Pradesh*, the Court attempted to relax the requirement because it was concerned about the practical hardship this strict position caused to parties unable to obtain a certificate from an uncooperative or unavailable device custodian. The Court held that the certificate could be dispensed with where a party was

³³ Bharatiya Sakshya Adhiniyam 2023, s 61.

³⁴ Bharatiya Sakshya Adhiniyam 2023, s 63(1)-(2).

³⁵ Bharatiya Sakshya Adhiniyam 2023, s 63(4); Schedule to the BSA prescribing certificate format.

³⁶ Bharatiya Sakshya Adhiniyam 2023, s 63(1); KS & K, "Section 63 BSA 2023: Admissibility of Electronic Evidence" (4 January 2025).

³⁷ *Anvar P.V. v P.K. Basheer* (2014) 10 SCC 473.

not in possession of the device from which the record originated In Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, a larger Bench overruled Shafhi Mohammad on this point, reaffirming Anvar P.V. and holding that the requirement of a certificate under Section 65B(4) is mandatory wherever secondary electronic evidence is sought to be proved, and that the practical difficulty of obtaining a certificate cannot justify non-compliance, subject only to a residual power in the party to apply to the relevant authority.³⁸

The Arjun Panditrao position is essentially codified in Section 63(4) of the BSA, and commentary generally agrees that the certificate requirement is still a prerequisite to admissibility rather than a matter of weight. The only acknowledged exception is that no certificate is needed when the original device is presented in court because such evidence is then primary rather than secondary.³⁹ Although observers point out that it increases the compliance burden on investigating agencies and litigants, especially in cases involving large volumes of digital forensic material, the requirement for dual signatures—by the device custodian and by an independent expert—is meant to strengthen the reliability of the resulting record.⁴⁰

D. Section 61: A Legislative Corrective

Another, less well-known innovation is Section 61 of the BSA, which states that a copy of an electronic record may be proved using any technique permitted by the Act for proving a document generally and that nothing in the Adhiniyam shall apply to deny the admissibility of an electronic or digital record in evidence on the grounds that it is such a record.⁴¹ By making it clear that the special certification procedure under Section 63 is one acceptable mode of proof rather than the exclusive gateway through which electronic material may enter evidence, commentary suggests that Section 61 functions as a legislative corrective to the strict, exclusive reading of Section 65B adopted in Arjun Panditrao, restoring a measure of the flexibility that Shafhi Mohammad had attempted to introduce judicially.⁴² In the early years of the BSA's existence, it is still unclear and intensively litigated whether trial courts would interpret Sections 61 and 63 in harmony or whether Section 63 will continue to be regarded as the only

³⁸ Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal (2020) 7 SCC 1.

³⁹ Bhatt & Joshi Associates, "Electronic Evidence Under BSA 2023: Section 63 Certificate Requirements & Supreme Court Interpretation" (27 April 2026).

⁴⁰ *ibid.*

⁴¹ Bharatiya Sakshya Adhiniyam 2023, s 61.

⁴² Saji Koduvath, "'Nothing in this Adhiniyam Shall Apply to Deny the Admissibility' — New Provision (S. 61, BSA)" (Indian Law Live, 2026).

and mandatory path for computer output particularly.

VI. Artificial Intelligence Operating Alongside the Statutory Framework

The independent, executive-led growth of artificial intelligence tools in Indian criminal justice administration has coincided with the statutory recognition of technology under the BNS, BNSS, and BSA. These tools are neither required nor directly regulated by the new codes, but their results are increasingly influencing the very procedures they oversee. The National Automated Facial Recognition System, created by the National Crime Records Bureau, compares photos taken on closed-circuit television to a national photograph database with more than several hundred million entries, while the Crime and Criminal Tracking Network and Systems (CCTNS) connects police stations across the country and interfaces with e-Prisons and e-Forensics databases.⁴³ Additionally, a few of state police departments employ predictive-policing analytics, which sift past crime data to find alleged high-risk areas and patterns of repeat offenders.⁴⁴ While SUVAS offers AI-assisted judgement translation and has translated over 31,000 judgements into regional languages, the Supreme Court's SUPACE portal, which helps judges with case research and precedent retrieval, is still limited to an experimental pilot before specific Benches of the Bombay and Delhi High Courts as of 2026.⁴⁵ The government has consistently emphasised that human judges still have the exclusive authority to make decisions, and that these technologies are only meant to be helpful rather than decisive.⁴⁶

It is best to think of the relationship between this AI ecosystem and the new statutory framework as symbiotic rather than coextensive. While the codes themselves do not impose any specific standards governing the accuracy, bias-testing, or evidentiary weight of the AI-generated outputs that are then fed back into investigation and trial, provisions like Section 105 (videography), Section 176(3) (forensic documentation), and Section 63 (certification of computer output) create the structured, verifiable digital record that downstream AI tools like facial recognition matching, deepfake detection, and predictive analytics.⁴⁷ Part VIII delves deeper into this asymmetry: a rich regulatory infrastructure for the digital record and a near-

⁴³ Oxford Institute of Technology and Justice, "India: Increasing Use of AI Across the Justice System" (University of Oxford, 2025).

⁴⁴ *ibid.*

⁴⁵ Dr Syama Prasad Mookerjee Research Foundation, "Artificial Intelligence in the Indian Judiciary: SUPACE, SUVAS, and the Limits of Assistive Automation" (12 February 2026).

⁴⁶ Press Information Bureau, Ministry of Law and Justice, "Use of Artificial Intelligence in Supreme Court" (2025).

⁴⁷ See discussion in Cyber Mithra, "Role of AI in India's Legal System: Opportunities and Dangers" (31 July 2025).

total statutory silence on the computational instruments that increasingly interpret that record.

VII. Compare with other Nations

India's paradigm, which combines executive-driven, non-binding use of AI tools with statutory recognition of the digital record, lies between two more advanced foreign methods. China's "smart courts" combine online filing with face recognition of litigants and automated adjudication of small disputes, sparking ongoing discussion about whether computerised adjudication is compatible with judicial independence.⁴⁸ By designating AI systems used in law enforcement and the administration of justice as "high-risk" and subjecting them to required conformity assessment, transparency, and human oversight duties, the European Union, on the other hand, has advanced toward binding regulation. The governance of algorithmic tools is currently left to internal institutional policy, such as the Supreme Court's Artificial Intelligence Committee, which was reconstituted in December 2025 under the chairmanship of a sitting judge, as India lacks a specific AI statute and legally binding risk-classification regulations.⁴⁹

VIII. Critical Analysis: Gaps, Risks and Constitutional Concerns

A. The Infrastructure Deficit and the Five-Year Deferral

The new technology-recognizing provisions' reliance on infrastructure that isn't yet consistent throughout India is by far their biggest drawback. This is acknowledged by Section 176(3), which gives States up to five years to notify the operative date of the mandatory forensic-visit requirement and permits States without forensic facilities to depend on those of another State in the interim.⁵⁰ Similar issues surround Section 105, which essentially permits reliance on personal mobile phones due to the provision's failure to specify the equipment to be used for videography. This raises unanswered concerns regarding the recording's authenticity, safe storage, and vulnerability to loss or manipulation.⁵¹ Courts have generally preferred adjudication on the merits over exclusion of evidence for procedural lapses absent grave constitutional violations or demonstrable prejudice. This approach preserves flexibility for an

⁴⁸ See discussion in Court Kutchehry, "AI in Indian Judiciary: Supreme Court Pilots SUPACE, LegRAA as Global Courts Race Ahead" (14 December 2025).

⁴⁹ Dr Syama Prasad Mookerjee Research Foundation (n 34).

⁵⁰ Bharatiya Nagarik Suraksha Sanhita 2023, s 176(3), proviso.

⁵¹ LexisNexis India, "Bharatiya Nagarik Suraksha Sanhita: Paradigm Shift from Procedural Code to Nagarik Suraksha" (2024).

under-resourced system but runs the risk of diluting the very safeguard the provision was intended to create. In cases where a mandatory videography requirement is not complied with, courts have been reluctant to treat the omission as fatal to the prosecution.⁵²

B. Due Process and the Right to a Fair Trial

No one may be deprived of life or personal liberty without following a fair, just, and reasonable procedure, according to Article 21 of the Constitution. This requirement also applies to the methods used to collect, certify, and test evidence during a trial.⁵³ There is a genuine risk that trial courts will apply the dual-certification regime under Section 63(4) of the BSA inconsistently until an authoritative body of precedent develops. The dual-certification regime strengthens the reliability of electronic evidence in theory, but its practical operation remains unsettled, especially with regard to disputes over the proper stage at which a certificate must be produced and whether the same individual may act as both device custodian and certifying expert.⁵⁴ Despite the legislative promise of increased transparency, the accused's ability to evaluate the integrity of the prosecution's evidential case is proportionally decreased when forensic or videographic safeguards required by Sections 105 and 176(3) are completely missing.

C. Privacy, Surveillance and the Proportionality Standard

A nine-judge Supreme Court bench ruled in Justice K.S. Puttaswamy (Retd.) v. Union of India that privacy is a basic right under Article 21 that can only be restricted by a regulation that is just, fair, reasonable, and proportionate to a legitimate State goal.⁵⁵ In the ongoing lack of a specific law governing biometric data retention, purpose limitation, or independent audit of law-enforcement AI systems, the expanded seizure powers over electronic devices under Section 94 of the BNSS, as well as the extensive facial recognition and predictive policing infrastructure working alongside CCTNS, conflict with this proportionality standard.⁵⁶ The Puttaswamy proportionality norm would seem to require correlative data-protection discipline, but the new regulations do not, on their own, impose it. Instead, they grant broad authority to

⁵² "Will Failure to Video-Record a Search Make Seizure Illegal? Expert Opinion on S. 105, 185 & 176(3) BNSS", Jurishour (28 February 2026).

⁵³ Article 21, Constitution of India; Maneka Gandhi v Union of India (1978) 1 SCC 248.

⁵⁴ Bhatt & Joshi Associates (n 22).

⁵⁵ Justice K.S. Puttaswamy (Retd.) v Union of India (2017) 10 SCC 1.

⁵⁶ Oxford Institute of Technology and Justice (n 31).

seize and process digital content.

D. Algorithmic Opacity and Accountability

The reliability of the final evidentiary product is only as strong as the uninterrogated algorithm that contributed to its generation when facial recognition matches, deepfake detection outputs, or predictive policing risk scores are fed into an investigation whose downstream record is then certified and admitted under Section 63 of the BSA. The defence has few practical ways to contest an AI-assisted identification other than contesting the traditional chain of custody of the resulting digital file because neither the BNSS nor the BSA specify a standard for the accuracy, bias-testing, or disclosure of the internal logic of such tools.⁵⁷ The question of whether a digital record may be admitted was resolved by the new regulations, but the question of how much evidentiary weight should be given to a document whose construction was significantly algorithmic remained largely unaddressed.

E. The Digital Divide

Finally, a framework based on electronic summonses, electronic trials, videographed searches, and e-FIRs requires a baseline of digital literacy, connectivity, and device access that is unevenly distributed among India's low-income and rural populations. The move toward digital-first criminal procedure runs the risk of turning tools intended to increase access to justice into new obstacles for the accused and litigants who are least able to overcome them if intentional investment in access infrastructure is not made.⁵⁸

IX. Recommendations

- Rather than leaving equipment selection unfettered, establish minimum technological criteria for devices used in videography under Sections 105, 176(3), and 185 by rules formulated under the BNSS, including secure, tamper-evident storage methods.
- In order to reduce uneven trial-court practice while established appellate precedent is being developed, binding judicial guidelines should be issued that define the time and

⁵⁷ Sanskriti IAS, "Role of AI in Judiciary and Law Enforcement: Importance, Challenges and Solutions" (10 September 2025).

⁵⁸ Sanskriti IAS (n 44).

implications of non-compliance with the Section 63(4) BSA certification requirement.

- Adopt a specific statute or subordinate rule that governs the use of AI technologies, such as facial recognition and predictive-policing analytics, in criminal investigations. This regulation should mandate the disclosure of AI-assisted identification to the defence and require independent accuracy and bias audits.
- Instead of allowing the full five-year delay by default, expedite the forensic infrastructure buildout required to enable early notification of the Section 176(3) obligation across all States through ring-fenced central funding.
- To ensure that litigants in low-connectivity areas are not disadvantaged by the BNSS's e-FIR, e-summons, and e-trial provisions, invest in connectivity and vernacular digital-access infrastructure.
- Harmonise Sections 61 and 63 of the BSA by legislative clarification or an authorised appellate opinion to address the current ambiguity regarding whether Section 63 is still the only way to prove computer output.

X. Conclusion

The Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam represent the first time that Indian criminal law has provided technology with comprehensive, textual recognition throughout the whole criminal process, from electronic complaint registration to electronic trial conduct and electronic proof of evidence. A thoughtful legislative response to decades of judicial improvisation around a legal framework that had simply not foreseen the digital record is represented by provisions like Sections 105, 176(3), and 530 of the BNSS and Section 63 of the BSA. However, the development of corresponding safeguards for the artificial intelligence tools that increasingly rely on this architecture has lagged behind the success of this reform in creating a rich, digitally verifiable evidentiary architecture. This has revealed a persistent infrastructural gap between statutory ambition and on-the-ground capacity. Only in the years after 2024 will India's technological modernisation of criminal justice fulfil its constitutional promise if it is accompanied by an equally thoughtful legal modernisation that maintains human judgement at the decision-making stage, exposes algorithmic tools to independent scrutiny, and guarantees that the digital record,

no matter how sophisticated, remains subservient to the constitutional guarantees of Articles 14, 20, and 21.

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