
TECHNOLOGICAL IMPLEMENTATION IN BHARTIYA NAGARIK SURAKSHA SANHITA, 2023

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ABSTRACT

The new code, Bhartiya Nagarik Suraksha Sanhita, 2023 is a transformative shift within India's criminal justice system and it has replaced the old criminal code, The Code of Criminal Procedure, 1973 by being enacted on the 1st of July, 2024. The new code has the goal of modernizing the process of the criminal judicial system especially in the areas of criminal trials. It also seeks to enhance the security of the citizens of and ensure that justice delivered in a fast yet effective matter.

The implementation of technology is one of the biggest changes that is being brought into the criminal judicial system and acts as the backbone because of the additions of Electronic Summons under **Section 63 & 70**, "E-FIR" Registration under **Section 173**, Videography of search and seizure operations under **Section 105**, Mandatory use of audio-video means for witness testimonies under **Section 254 & 265**, Examination of the accused under **Section 308**, Mandating digital record keeping of electronic communications under **Section 193 & 210**.

This research article dives deep into these dimensions and will try to analyse the potential and the challenges it may have to overcome while also taking a look at other legal systems for an equitable criminal justice framework.

RESEARCH QUESTIONS

1. Why does the implementation of technology within the new statute of BNSS seem so important?
2. What are the challenges that can be seen with this implementation like data privacy?

RESEARCH OBJECTIVES

1. To understand what type of changes and the impact it can have on the criminal legal system of India.
2. To analyse out the possible flaws while implementing a new era and understanding of technology in the field of law especially in criminal trials.

LEGAL FRAMEWORK

Relevant sections of BNSS, 2023

- **63 (ii):** Image of the seal of the Court or a digital signature can be in an electronic form or in an encrypted manner.
- **70 (3):** Every summon served through electronic communications shall be considered as served and as proof
- **193 (3)(ii):** The police officer is supposed to inform the progress of the investigation to the informant through any mean including electronic communication within a period of 90 days
- **210. (2):** Magistrate may take cognizance of any offence—

(b) upon a police report (submitted in any mode including electronic mode) of such facts;
- **254. (1)** On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution: Provided that evidence of a witness under this sub-section may be recorded by audio-video electronic means.

(2) The deposition of evidence of any public servant may be taken through audio-video electronic means.

- **265 Provision:** Provided further that the examination of a witness under this sub-section may be done by audio

JUDICIAL PRONOUNCEMENTS:

Mentioned are few cases from High Court and Supreme Courts where opinions and decisions have been laid down regarding the technological implementation in BNSS, 2023

Sarvesh Mathur V. The Registrar General High Court of Punjab and Haryana (Supreme Court Of India, 2023¹) This judgment emphasizes the necessity of technology in court proceedings and mandates the implementation of hybrid hearings across all tribunals and courts. The use of technology is seen as essential for ensuring access to justice, which aligns with the principles of the BNSS regarding the procedural aspects of law enforcement and judicial proceedings.

Arun R.K. V, State of Kerela (Kerala High Court, 2023²) This case discusses the validity of contracts formed through electronic means, which is relevant to the use of technology in legal processes. It establishes that electronic communications can form valid contracts, which can be pertinent in the context of the BNSS when considering the legal implications of technology in law enforcement and judicial procedures.

Mohanan.K. V. State of Kerela (Kerala High Court, 2023) ³Similar to the previous case, this judgment also addresses the implications of electronic means in legal proceedings, reinforcing the idea that technology can facilitate legal processes, which is relevant to the operational aspects of the BNSS.

Satender Kumar Antil V. Central Bureau of Investigation (2025) ⁴This case discusses the mode of serving notices under Section 41-A of the CrPC and Section 35 of BNSS, emphasizing that service through electronic means such as WhatsApp is not valid unless it complies with

¹Sarvesh Mathur v. High Court of Punjab & Haryana, 2023 SCC OnLine SC 1293

²Arun R.K. v. State of Kerala, 2023 SCC OnLine Ker 817

³Mohanan K. V. State of Kerela 2023 SCC OnLine Ker 4641

⁴Satender Kumar Antil v. CBI, (2024) 9 SCC 198

the prescribed methods under the law.

Sundar @ Sundarrajan V. State by Inspector of Police (2023)⁵ This case addresses the admissibility of electronic records as evidence, which is relevant to the use of technology in legal proceedings.

DEEP ANALYSIS

Let us first understand as to why exactly this change of implementing the concept of technology even a huge addition within the Bhartiya Nagarik Suraksha Sanhita, 2023 and what impact can it have on the future of the criminal judicial system.

From what we can understand so far, it is a crucial step forward for the criminal judicial system in India for implementing the role of technology. Tradition legal frameworks like the previous Code of Criminal Procedure, 1973, relied on heavy manual labour which led to more delays and mistakes while handling digital evidence. The BNSS address all of these issues and includes technology in every single aspect of the proceedings where there was heavy and intense manual labour for justice. This implementation of technology ensures a more fair, faster and transparent form of delivery of justice.

Let us dive into what these changes are, one of the most significant changes within the new code is that the inclusion of E-FIRs (though not mentioned explicitly) under Section 173, electronic summons which falls under Sections 63 & 70, and digital evidence management under Section 94 which removes and eliminates the bottlenecks in data which lead to errors in criminal proceedings. Other sections under the BNSS such as Section 105 which talks about the mandatory videography of a search and seizure operations that are conducted as it allows for better accountability and prevents evidence tampering by another person. Section 254 allows the audio and video conferencing to be recorded which is again done in order to ensure the fact that all evidence said is true especially for the witness testimonies and lastly Section 308 which ensure that trials proceed without any unnecessary adjournments as they cause time loss and expenditure, even if the parties to suit are geographically distant.

Technology to an extent give the public a type of trust and greater transparency since there are no hands of the humans in play, the evidence is “as it is”. Real time updates to the victims

⁵Sundar v. State, 2023 SCC OnLine SC 310

regarding any changes under Section 193 (3) (ii) and the digital access to all the case related documents under Sections 230 and 231 give trust to the citizens which makes the process more inclusive. One of the main questions was regarding the cybercrime's aspect of all these data that was being collected and the BNSS acknowledges this under Section 2 (1)(i) by setting few protocols for the digital evidence and fillings a crucial gap by the older laws. By including and using all the big data bases for data analytics and tools driven by Artificial Intelligence, the law enforcement can be *aided* by being more efficient but not relying on them as AI is still developing.

Let us understand one of the most crucial parts of the BNSS which is regarding the possible challenges:

The BNSS provides all types of promises regarding how technology will be beneficial to the criminal judicial proceedings but not everything is perfect and comes with challenges particularly in the aspect of data privacy and cybersecurity. This era of digitization of legal processes necessitates the collection, storage and usage of all the sensitive data which includes the personal data of all the victims and the parties to suits in a criminal trial. This to an extent creates a risk of unauthorized access, data breaches and misuse of data. Even though there is the Digital Personal Data Protection Act, 2023, it does not have enough and comprehensive data laws to protect the data and raises questions on how personal data information will be secured under the BNSS⁶

The other issue is the digital divide, urban areas might be able to adapt well with the new addition of the laws and swiftly adapt the new "e-court system" and digital filings but the rural regions where there is poor network availability and the concept of technology is not that prevalent due to the poor digital literacy could lead to the exclusion of this sector. This exclusion risks in creating a two faced justice system where technologically underserved regions suffer through more delays in filings and delay of justice. The reliance on technological evidence mentioned under Section 193 (3) (i) (h) does introduce a challenge in the maintenance of the chain of custody of digital data.

There are also issues regarding the surveillance and privacy rights which mainly refer to

⁶Understanding India's New Data Protection Law, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, <https://carnegieendowment.org/research/2023/10/understanding-indias-new-data-protection-law?lang=en> (last visited Apr 20, 2025).

advanced tools such as facial recognition and AI-driven policies, this can be useful for conducting investigation and other activities but also could lead to mass surveillance which may disproportionately target the marginalized communities. This is one of the areas where the BNSS remains silent on which leaves room for potential misuse. Lastly it is extremely important for judicial and police training regarding how to handle these type of advanced technologies as they may hinder the smooth adoption and lead to procedural errors.

COMPARISON BETWEEN CIVIL AND COMMON LAW:

Let us understand the difference between the technology use in CrPC & BNSS and then compare the technological implementations with other legal systems like the United States, United Kingdom and Singapore.

BNSS, 2023 is an important and a transformative code that helps in strengthen the Criminal Procedure Code, 1973 by the implementation of technology under criminal processes. Majority of the process under the CrPC were manual, summons was served physically, evidence was documented on paper and trials had required the parties in suit to be there in person which led to many trial delay and inefficiency in trials. The BNSS brings in all the important necessary changes in order to counter these shortcomings in the CrPC

If we take for example that while the CrPC had lacked provisions for evidence being produced digitally but the BNSS explicitly mentions and brings forward the recognition of electronic communications and mandates that protocols for handling any type of evidence in a digital format to ensure that no evidence is tampered with

These reforms collectively position the BNSS as a modern, efficient alternative to the CrPC, aligning India's criminal justice system with contemporary technological realities.

Let's look into how other legal systems have involved the role of technology:

a. United States: Federal Rules of Criminal Procedure

The United States criminal justice has a long history of embracing technology in their criminal judicial proceedings. The federal and state courts use a type of electronic filings system which is know as the PACER and use video conferences for hearing if the parties are unable to visit for the in person hearings which the BNSS also includes as we have discussed in the above

sections but unlike the BNSS, the United States lacks any type of provision which mandates the videography during police search and instead rely on state laws. Again it is allowed in the United States for police to record but it is not mandated which can cause issues in presenting evidence

One area where the United States prevails is in the Laws of the 4th Amendment and The Electronic Communications Privacy Act which provide robust safeguards against safeguards. India does provide the right to self-incriminate where the accused has the right to not give out any information which may hamper their case but it is not as strong as the one that is present in the United States of America.

b. United Kingdom: Police and Criminal Evidence Act (PACE), 1984

The United Kingdom's PACE (Police and Criminal Evidence Act) shares a lot of similarities with the BNSS in the use of technology such as, in the United Kingdom it is mandatory for all police to wear a body cam on them for videography purposes in order to produce evidence just as the same given in the BNSS regarding search and seizure which is under Section 105 but the major difference in this is that these recordings are oversighted by an independent body known as the Independent Office for Police Conduct which ensures that there is no misuse of any data collected which is absent in BNSS.

The United Kingdom also has specialized cybercrime legislations such as the Computer Misuse Act which ensures that all the data collected under any circumstance is under the government control and is ensured to not be misused which is also absent in the Indian Legal System (even though the IT and the DPDP Act are there, it is not as that effective).

c. Singapore: Criminal Procedure Code, 2010

Singapore's criminal justice system is a global leader in tech integration. Its courts employ AI for case management and blockchain for evidence authentication, surpassing the BNSS's current capabilities. Singapore's mandatory e-litigation portal has significantly reduced case backlogs, mirroring the BNSS's push for e-FIRs and digital filings.

Lastly, Singapore is the leader when it comes to the application of technology in their criminal judicial proceedings. The government has ensured to employ a highly trained AI model for case management and the tech of blockchain for evidence authentication which surpasses the BNSS

in almost every aspect. Singapore has a mandatory e-litigation portal that has reduced the number of backlogged cases which the BNSS has tried to implement with the push of “E-FIRs” and digital filings.

CONCLUSION AND SUGGESTIONS

Despite its progressive framework, the BNSS falls short in three key areas compared to global standards:

1. **Data Privacy and Security:** BNSS, 2023 lacks dedicated provisions which specifically target the citizen data that is collected through the process of “E-FIRs” or digital evidence which may lead to misuse and breach of privacy. A good reference would be the EU’s Global Data Protection Right
2. **Infrastructure and Accessibility:** BNSS has to incorporate the access of this to all levels of court and should prevent the digital divide between the urban and the rural population
3. **Judicial Capacity:** The BNSS has to incorporate the fact that these technological tools have to be used by trained professionals such as the police in order for proper functioning and smooth functioning

The main suggestion is to strengthen the Data Laws as that is one of the main concerns related to the implementation of technology. The leakage of these data can be highly catastrophic, the Digital Personal Data Protection Act has to be amended in order to support the new laws brought in the BNSS.

BNSS, 2023 is a revolutionary shift that has been brought upon and is a step in the right direction for the criminal judicial procedure. It promises an efficient, transparent and accessible legal system and it can be seen through the updated laws. There are critical challenges in the way but the code is in its developing process as it goes hand in hand with other codes like the DPDP and the IT Act. If these changes are implemented in a thoughtful manner, BNSS could serve as a global benchmark for the tech driven legal reform