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## NAVIGATING THE CONSTITUTIONAL CONTOURS OF SECTION 176(3) BNSS: THE FORENSIC MANDATE

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### ABSTRACT

The enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, signals a transformative shift in India's criminal justice system, most notably through the introduction of Section 176(3). This provision mandates forensic investigation for offences punishable by seven years or more, transitioning forensic science from a discretionary tool to a procedural obligation. While this 'forensic mandate' aims to enhance conviction rates and reduce investigative bias, it invites rigorous constitutional scrutiny.

This paper explores the tension between the state's interest in 'scientific justice' and the accused's fundamental rights. Central to the discussion is whether the compulsory extraction of biological samples and digital evidence aligns with the Right against Self-Incrimination guaranteed under Article 20(3) and the Right to Privacy interpreted as part of the right to life under Article 21, in the landmark *Selvi* and *Puttaswamy* judgments. Furthermore, the study examines the practical challenges posed by this mandate, including the current shortfall in forensic infrastructure and the risk of 'technological coercion' in the absence of stringent data protection protocols.

By analysing the intersection of statutory duty and constitutional privilege, this research assesses whether Section 176(3), BNSS, acts as a catalyst for precision justice or a precursor to procedural overreach. It concludes by proposing a harmonisation framework to ensure that the pursuit of scientific proof does not come at the expense of established constitutional safeguards.

**Keywords:** BNSS, Forensic mandate, Criminal Justice System, Right to Privacy

## **Introduction**

The transition from the Code of Criminal Procedure (CrPC) to the Bharatiya Nagarik Suraksha Sanhita (BNSS) represents more than a mere change in nomenclature; it marks a fundamental pivot in the philosophy of Indian criminal jurisprudence. For decades, the Indian trial system has been characterized by an 'oral-evidence-heavy' framework, where the backbone of a prosecution's case often rested on eyewitness accounts and police testimonies, elements notoriously susceptible to memory decay, coercion, and hostile retractions.

## **The Paradigm Shift: From Testimony to Technology**

Under the previous regime, forensic intervention was largely discretionary, often treated as a secondary corroborative tool rather than a primary investigative requirement. Section 176(3) of the BNSS disrupts this tradition by mandating that for any offence punishable by seven years or more, the collection of forensic evidence by experts is no longer an option, but a statutory obligation.

This move toward a 'forensic-first' approach aims to:

- Neutralize Witness Vulnerability- prioritizing objective, biological, and digital data over fickle human memory.
- Enhance Conviction Integrity-provides a higher degree of certainty in the courtroom by utilizing the silent testimony of science.
- Modernize Investigation- brings Indian procedural law in line with global standards, wherescene of the crime speaks louder than the participants.

## **Modern Necessity or Constitutional Trespass?**

The core of this research is to evaluate the legal friction generated by this mandate. On one hand, the state justifies this shift as a modern necessity, an essential evolution to counter sophisticated crime and reduce the judicial backlog caused by unreliable evidence.

On the other hand, the mandatory nature of Section 176(3) raises critical questions regarding constitutional trespass. The inquiry focuses on whether the state, in its pursuit of scientific precision, is inadvertently trampling upon the 'Right to Silence' and the sanctity of Personal

Liberty. If the law compels a citizen to provide biological or digital samples under the threat of a procedural penalty, does it bypass the protection against self-incrimination?

Through a constitutional lens, this paper examines whether Section 176(3) is a balanced tool for justice or an overreaching mechanism that sacrifices individual privacy at the altar of administrative efficiency.

Moving forward with the constitutional heart of the debate, let's explore how the mandatory nature of Section 176(3) BNSS interacts with the protection against self-incrimination.

### **Article 20(3) and the Forensic Mandate**

At the center of the constitutional debate over Section 176(3) BNSS is Article 20(3) of the Constitution, which mandates that "No person accused of any offence shall be compelled to be a witness against himself." The transition from a discretionary power to a statutory mandate creates a unique legal tension regarding the definition of 'compulsion'.

To understand if mandatory forensics is a 'trespass', we must look at the precedent set in *State of Bombay v. Kathi Kalu Oghad*<sup>1</sup>. The Supreme Court in this case established that:

Giving thumb impressions, blood samples, or DNA is generally not considered to be a witness because these are immutable physical traits that do not require the expressive mind of the accused. On the other hand, any information extracted that relies on the accused's knowledge or mental state is protected.

The challenge here is that while Section 176(3) focuses on forensic evidence, the modern definition of forensics often includes digital forensics (accessing encrypted phones). If a person is mandated to provide a passcode or biometric unlock, does this cross the line from a physical act into a testimonial disclosure of private knowledge? It is apt here to discuss Selvi's case on the 'Right to Silence.'

In the landmark case *Selvi v. State of Karnataka*<sup>2</sup> (2010), the Court expanded the scope of Article 20(3) to include 'mental privacy'. The Court ruled that any form of coercive extraction of information, even if it isn't a traditional confession, violates the right against self-

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<sup>1</sup> 1961 AIR 1808

<sup>2</sup> 2010 AIR SCW 3011

incrimination.

Under the BNSS, the mandatory tag implies that the accused has no choice. This raises a critical question: Does the absence of consent in a mandatory forensic regime constitute legal compulsion? If the law leaves no room for refusal, the distinction between a search of a crime scene and a search of a person's biological or digital identity becomes dangerously thin.

Under Section 176(3), the state is effectively saying that the collection of forensic data is a non-negotiable part of the procedure. This creates a risk of 'Constructive Compulsion', where the accused complies only because the law demands it, not because they have waived their rights.

If forensic evidence is collected without a warrant or specific judicial oversight, simply because the statute says so, it may bypass the reasonableness required under Article 21. To determine if a law lawfully infringes upon the Right to Privacy, it must pass the

"Triple Test" established by the Supreme Court in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017). Here is an analysis of how Section 176(3) BNSS measures up against these constitutional benchmarks.

The mandatory collection of forensic data, ranging from DNA and blood samples to digital footprints, represents a significant state intrusion into the private space of an individual. For Section 176(3) to be constitutionally valid under Article 21, it must satisfy three specific criteria:

### **1. The Principle of Legality**

The first prong is the easiest to satisfy. The BNSS provides a clear statutory basis for the forensic mandate. Unlike administrative orders, Section 176(3) is an act of Parliament, establishing a formal procedure established by law. However, legality also requires the law to be non-arbitrary. Critics argue that the blanket application of this mandate to all offences above seven years, regardless of whether forensics is actually relevant to that specific crime might border on legislative arbitrariness.

### **2. The Doctrine of Necessity**

The state's objective here is the modernization of justice. By mandating forensics, the state aims to:

- Reduce the rate of wrongful acquittals
- Minimize the influence of coerced or planted oral testimonies
- Ensure a higher standard of scientific proof in serious crimes.

These are widely accepted as legitimate state interests necessary for maintaining public order and a functioning criminal justice system.

### **3. The Test of Proportionality**

This is where Section 176(3) faces its steepest constitutional hurdle. Proportionality requires that the nature of the intrusion must be proportionate to the goal.

Scope of Forensics: The term is broad. Does a mandate for forensics include invasive biological procedures or the imaging of an entire smartphone? If the state collects a person's entire digital life to investigate a specific crime, it may violate the principle of data minimization. Currently, the BNSS does not provide robust guidelines on the following aspects

i) Data Retention: How long will the biological or digital samples be stored?

ii) Data Destruction: What happens to the forensic data if the person is acquitted?

iii) Access Control: Who has access to the forensic databases created under this mandate?

Privacy Gap: Without a dedicated Digital Personal Data Protection (DPDP) framework tailored for criminal investigations, the mandatory collection under Section 176(3) risks becoming a tool for 'state-sponsored profiling' rather than just a tool for investigation.

While the state has the legality and necessity covered, the proportionality of Section 176(3) remains vulnerable. For the provision to survive a constitutional challenge, it must be balanced with strict Standard Operating Procedures (SOPs) that limit the use of collected data strictly to the case at hand, ensuring that the 'Forensic Mandate' does not turn into 'Forensic Surveillance'.

While the legal framework for Section 176(3) BNSS is ambitious, its constitutional validity is inextricably linked to its implementation. A law that mandates a scientific process but fails to

provide the infrastructure to ensure accuracy may be deemed manifestly arbitrary under Article 14.

### **Institutional Challenges: The 'Ground Reality' Gap**

The mandate creates a massive surge in demand for forensic services. If the state compels an individual to provide samples but lacks the capacity to process them ethically and accurately, the forensic-first approach risks becoming a forensic failure.

#### **1. The Infrastructure Deficit**

Currently, India's forensic landscape faces a staggering mismatch between legislative intent and physical capacity.

- **Case Backlog:** Existing Forensic Science Laboratories (FSLs) are already burdened with years of pending cases.
- **Personnel Shortage:** There is a critical dearth of trained forensic experts, ballistics specialists, and digital analysts required to attend every crime scene involving a 7-year+ sentence.
- **The Result:** If mandated forensics leads to months of investigative delay, it directly infringes upon the Right to a Speedy Trial, a facet of Article 21.

#### **2. The Risk of "Junk Science" and Procedural Haste**

Under the pressure of statutory mandates, there is a significant risk of compromising the Chain of Custody.

- Without standardized collection kits and climate-controlled transport at every police station, biological samples (DNA/Blood) are prone to degradation.
- If an untrained police officer is forced to perform forensic collection because an expert isn't available, the resulting evidence may be scientifically flawed.

#### **3. Evidentiary Weight vs. Scientific Certainty**

The BNSS elevates the forensic expert's role. However, the law must distinguish between Class

Characteristics and Individual Characteristics. If courts begin to treat "mandatory" forensic reports as infallible proof rather than expert opinion (under Section 45 of the Evidence Act/BSA), the Presumption of Innocence is severely weakened.

## Conclusion

The transition to **Section 176(3) BNSS** represents a watershed moment in India's legal history, a move from the 'shadows of doubt' inherent in oral testimony to the 'clarity of science'. However, as this research has explored, the Forensic Mandate exists in a state of constitutional tension. While it is a modern necessity designed to insulate the investigative process from human fallibility, it must not be allowed to operate as a constitutional trespass against the individual. For Section 176(3) to remain a valid exercise of state power, it must be balanced by three critical pillars:

- **Judicial Oversight:** The mandatory collection of evidence should not equate to an administrative blank check. Courts must remain the gatekeepers, ensuring that forensic collection, especially digital and biological, is conducted with a specific nexus to the crime, preventing fishing expeditions.
- **Technological Integrity:** The state must bridge the 'Ground Reality' gap. A forensic mandate without a robust, accredited laboratory network is a recipe for procedural unfairness. Constitutional reasonableness under Article 21 requires that scientific evidence be gathered and analysed under gold-standard Standard Operating Procedures (SOPs).
- **Privacy Protections:** In the absence of a dedicated forensic data protection law, the judiciary must read 'Data Minimization' and 'Right to Erasure' into the BNSS. Forensic data of acquitted individuals should not be stored indefinitely, ensuring that scientific proof does not evolve into permanent surveillance.

Ultimately, the BNSS attempts to bridge the gap between 19th-century procedure and 21st-century technology. Section 176(3) is not inherently unconstitutional; rather, its validity depends on how it is implemented. If the state views forensics as a tool to *find the truth* rather than just a tool to *secure a conviction*, it can successfully harmonize the quest for precision justice with the enduring sanctity of fundamental rights.