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TWO YEARS OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: BRIDGING THE GAP BETWEEN LEGISLATIVE MANDATE AND GROUND REALITY

-ANCHAL MISHRA,

Student at School of Law, BBD University, Lucknow

ABSTRACT

On 1 July 2024, the Bharatiya Nagarik Suraksha Sanhita, 2023 replaced the Code of Criminal Procedure, 1973, promising a criminal process that is scientific, time-bound, and driven by technology and forensic rigour rather than confession. Two years since commencement, this article asks whether that promise has been realised in practice. It examines three areas where the statute's ambition has met administrative and judicial reality: the mandatory forensic-investigation regime under Section 176(3) and the infrastructure it presumes; the Supreme Court's early interpretation of new procedural safeguards, particularly the preliminary enquiry under Section 173(3) and further investigation under Section 193(9); and the practical difficulties surrounding the Sanhita's audio-video and chain-of-custody mandates. It concludes that the design of the BNSS is sound, and that its ultimate success will be decided by capacity-building on the ground rather than by further legislative amendment.

Keywords: *Bharatiya Nagarik Suraksha Sanhita; criminal procedure reform; forensic investigation; preliminary enquiry; Imran Pratapgadhi; criminal justice administration in India.*

INTRODUCTION

On 1 July 2024, three statutes replaced the criminal-law framework that colonial India had used for over a century and a half.¹ The Bharatiya Nyaya Sanhita, 2023 took the place of the Indian Penal Code, 1860; the Bharatiya Sakshya Adhinyam, 2023 replaced the Indian Evidence Act, 1872; and the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”) took over from the Code of

¹ Press Release, Ministry of Home Affairs, Govt. of India, New Criminal Laws (2024), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2039055®=48&lang=2>.

Criminal Procedure, 1973. Commentators at the time described the exercise less as a technical recodification than as a deliberate act of casting off colonial vestiges, with the government presenting it as the beginning of a criminal-justice system built around Indian priorities rather than an inherited framework.²

Beyond the symbolism, the BNSS carried substantive ambitions: a criminal process anchored in scientific evidence rather than confession, bound by firm timelines for investigation, charge and disposal, and integrated with technology at every stage from the first information report to the trial record. Two years after commencement is enough distance to move past the “teething trouble” defence that greets every major legal transition, and to ask a harder question: has day-to-day practice caught up with the text of the statute? This article examines three areas that, together, offer a reasonably representative answer — the forensic mandate under Section 176(3), the judiciary's early reading of new procedural safeguards, and the technology mandates surrounding search, seizure and evidence documentation.

THE FORENSIC MANDATE AND THE INFRASTRUCTURE QUESTION

The most structurally significant change the BNSS makes to the investigative process is contained in Section 176(3). For any offence punishable with imprisonment of seven years or more, a forensic expert must visit the crime scene, collect evidence there, and ensure that the entire process is captured on video.³ The provision is not merely aspirational: it is designed to shift Indian criminal investigation away from a witness- and confession-dependent model toward one where physical evidence, scientifically gathered and documented, anchors the prosecution's case from the outset.

The drafters were, however, candid about the distance between this ambition and existing capacity. Section 176(3) itself allows a State or Union Territory that lacks adequate forensic infrastructure up to five years from commencement to comply, during which it may draw on the facilities of another State.⁴ That transitional window has proved necessary rather than merely precautionary. Government data released around the second anniversary of the new codes indicates that chargesheet compliance within sixty days rose from roughly 51 per cent in 2024 to about 67 per cent in 2026, and compliance within ninety days rose from around 40 per cent to 60 per cent over the same period, alongside the deployment of more than 700 mobile forensic

² See Burying the Three Colonial-Era Criminal Laws: Challenging Journey Begins on 1st July 2024, KBS Sidhu's Substack (2024), <https://kbsidhu.substack.com/p/burying-the-three-colonial-era-criminal>.

³ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 176(3) (India).

⁴ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 176(3) (India).

vans nationally.⁵ These are meaningful gains, but they also confirm that a large share of cases were, for much of the transition period, simply not meeting the timelines the statute contemplates.

The gap is sharper at the level of infrastructure than at the level of headline numbers. At least one High Court is reported to have observed that the forensic mandate places considerable strain on existing central and state forensic laboratories, which were not built to absorb the volume Section 176(3) now generates.⁶ The Ministry of Home Affairs responded in April 2026 with a directive giving all States and Union Territories a three-month deadline to establish or operationalise forensic laboratories at the district level, clear examination backlogs, and ensure timely reporting — an unusually firm intervention that amounts to an acknowledgment that voluntary compliance had not kept pace with the statutory deadline.⁷ Early empirical work tracking compliance at the State level, including a study of Maharashtra's rollout, points to uneven staffing of forensic vans, inconsistent quality of chain-of-custody documentation, and capacity constraints that vary sharply by district — suggesting that national averages conceal considerable local disparity.⁸

A further, less visible difficulty concerns reliability rather than availability. Even where a forensic expert does visit the scene, the evidentiary weight of the resulting report depends on the underlying discipline being sound and consistently applied. Comparative forensic-science literature has long flagged that several pattern-matching techniques carry a real margin of examiner error, and Indian commentary on the BNSS has begun to note the absence of a single, binding national protocol for crime-scene work, with practice instead varying by department and State. A forensic mandate is only as strong as the standard the forensic report is held to in court, and that standard is still being worked out case by case rather than being fixed in advance. None of this means the forensic mandate was misconceived. It means that a provision built around a five-year infrastructure runway is, unsurprisingly, still mid-runway two years in, and that its ultimate success will be measured less by further statutory refinement than by whether

⁵ Two Years On: New Criminal Laws (BNS, BNSS, BSA), Legacy IAS (July 1, 2026), <https://www.legacyias.com/new-criminal-laws-bns-bnss-bsa/>.

⁶ MHA's Strict Directive on Forensic Reform: All States Get a Hard 3-Month Deadline, Budding Forensic Expert (Apr. 8, 2026), <https://www.buddingforensicexpert.in/2026/04/mha-strict-directive-forensic-system-india-2026.html>.

⁷ Id.

⁸ From Mandate to Metrics: Measuring Early BNSS Forensic Compliance in Maharashtra, Int'l J.L. & Legal Rsch. (Sept. 3, 2025), <https://www.ijlrl.com/post/from-mandate-to-metrics-measuring-early-bnss-forensic-compliance-in-maharashtra>.

district-level forensic capacity, and the reliability of the science it produces, actually catches up.

JUDICIAL COURSE-CORRECTION: READING THE NEW SAFEGUARDS

Where the forensic mandate is chiefly a question of capacity, two other provisions of the BNSS have tested the judiciary's willingness to give real effect to genuinely new procedural language, rather than reading it down to fit older habits.

A. Section 173(3) and the Preliminary Enquiry

Section 173(3) permits — and, depending on the circumstances, effectively requires — a police officer to conduct a fourteen-day preliminary enquiry before registering a first information report where the alleged offence is punishable with imprisonment of three to seven years, provided a superior officer's permission is obtained.⁹ This is a marked departure from the position under the old Code, where a Constitution Bench in *Lalita Kumari* had held that registration of an FIR was ordinarily mandatory once information disclosing a cognisable offence was received, with only a narrow category of cases permitting a preliminary check.¹⁰

The Supreme Court's first substantial encounter with Section 173(3) came in *Imran Pratapgadhi v. State of Gujarat*, decided in March 2025.¹¹ The case arose from an FIR registered against a sitting Member of Parliament over a poem he had posted online, on the allegation that it promoted enmity between communities. The Court quashed the FIR, holding that the material did not disclose an offence at all, but went further to hold that in cases involving speech, writing or artistic expression falling within the three-to-seven-year band, a police officer who bypasses the Section 173(3) enquiry and registers an FIR directly risks penalising the exercise of the fundamental right to free speech under Article 19(1)(a), even where no restriction under Article 19(2) is actually attracted. The Court tied this obligation to the police's own duty under Article 51-A(a) to uphold constitutional values, and treated the failure to conduct the enquiry as defeating the very purpose for which Section 173(3) was inserted into the new Sanhita.

The significance of *Imran Pratapgadhi* lies less in its facts than in its method. Rather than treating Section 173(3) as a discretionary formality carried over loosely from old practice, the Court read it as a rights-protective safeguard with independent constitutional weight,

⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(3).

¹⁰ *Lalita Kumari v. State of Uttar Pradesh*, (2014) 2 S.C.C. 1 (India).

¹¹ *Imran Pratapgadhi v. State of Gujarat*, 2025 INSC 410 (India).

particularly where speech offences are involved — an approach that gives the newly drafted provision real teeth rather than allowing it to become a dead letter through under-enforcement.

B. Section 193(9) and Further Investigation

A second flashpoint concerns Section 193(9) of the BNSS, the renumbered successor to Section 173(8) of the old Code, which addresses further investigation after a police report has already been filed. In *Pramod Kumar v. State of Uttar Pradesh*, decided in February 2026, the Supreme Court reaffirmed that once a Magistrate has accepted a final report — including a closure report — an investigating agency cannot resume investigation of its own motion; it must first seek the leave of the court.¹² The Court grounded this requirement in the long-standing principle of procedural propriety articulated in *Vinay Tyagi v. Irshad Ali*, extending that reasoning to the BNSS-era provision without treating the change in section number, or the recodification itself, as an occasion to revisit the underlying safeguard.¹³

Read together, *Imran Pratapgadhi* and *Pramod Kumar* suggest a judiciary treating the newness of the BNSS as a reason for closer interpretive scrutiny rather than as licence for looser enforcement — giving fresh safeguards real force in the first case, and preserving settled ones across the transition in the second.

TECHNOLOGY MANDATES: DOCUMENTATION AND CHAIN OF CUSTODY

A third strand of reform runs through the BNSS's insistence on documented, verifiable process. Sections 105 and 185 require audio-video recording of search and seizure, and Section 193 read with Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 builds a chain-of-custody and electronic-evidence framework around the material collected.¹⁴ These requirements are not confined to ordinary criminal investigations; commentary on their application in searches conducted under special economic statutes suggests that non-compliance with Section 105 could itself become a ground to challenge the legality of a search, and by extension the prosecution built upon it.¹⁵

The safeguard is a sound one in principle — a videographed, custody-documented search is far harder to manipulate or challenge disingenuously than an undocumented one. In practice, its

¹² *Pramod Kumar v. State of Uttar Pradesh*, 2026 INSC 120 (India).

¹³ *Vinay Tyagi v. Irshad Ali*, (2013) 5 S.C.C. 762 (India).

¹⁴ Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 105, 185, 193; Bharatiya Sakshya Adhiniyam, 2023, § 63.

¹⁵ Search, Seizure, and Surveillance: The Expanding Reach of Section 105 BNSS in Special Statutes, GST India Biz (Feb. 25, 2026), <https://gstindia.biz/articles/2/search-seizure-and-surveillance-the-expanding-reach-of-section-105-bnss-in-special-statutes>.

value depends entirely on equipment availability, storage infrastructure, and the training of investigating officers at the station level, none of which can be legislated into existence. The risk, still being tested as cases move through the system, is that inconsistently followed documentation requirements generate a new category of admissibility litigation rather than delivering the certainty the provision was meant to create.

ASSESSMENT

A single pattern runs through all three areas examined above. The BNSS's drafters built genuinely modernising, rights-protective features into the statute — scientific rigour in investigation, a real enquiry safeguard before criminal process attaches to speech, continued judicial oversight of reinvestigation, and documented searches. In each case, however, the safeguard's real-world value depends on capacity that is still being built two years after commencement: forensic laboratories that do not yet exist in every district, recording and storage equipment that is not uniformly available, and training that has not reached every investigating officer. Section 176(3)'s own five-year transitional clause was, in effect, an admission of this at the drafting stage.

What the record so far suggests is that the shortfall lies overwhelmingly on the implementation side rather than the drafting side. The judiciary's early decisions have not needed to rewrite the statute to make it workable; they have needed only to read it seriously, which is arguably the more encouraging sign for a two-year-old code.

This distinction matters for how the transition is taught and studied, and not only for how it is administered. A law student encountering the BNSS for the first time is often taught the statute as a finished, self-contained text — a set of section numbers to be memorised and mapped onto their CrPC equivalents. The two years of practice surveyed here suggest a more accurate framing: the BNSS is a text whose meaning is still being settled through infrastructure rollout on one side and judicial interpretation on the other, and a serious reading of it now has to track both. For practitioners, this means that arguments about non-compliance with Section 176(3) or Section 105 cannot be made in the abstract; they need to be anchored in what a particular State's forensic and recording infrastructure actually permitted at the relevant time, since the transitional provisions themselves make capacity a live legal fact rather than a background assumption.

RECOMMENDATIONS

A few practical steps would narrow the gap identified above without requiring further amendment to the BNSS itself. First, compliance with the Ministry of Home Affairs' 2026 forensic-infrastructure deadline should be tracked through transparent, State-wise public reporting rather than internal administrative channels alone, so that districts falling behind can be identified early. Second, a uniform national protocol for crime-scene documentation and chain of custody would reduce the local disparities already visible even in relatively well-resourced States, rather than leaving standards to individual departments. Third, training investment should extend beyond forensic examiners to prosecutors, investigating officers and defence counsel, since Section 176(3) evidence is only as valuable as the ability of all three to test it competently in court. Finally, sustained academic and judicial attention to how lower courts apply *Imran Pratapgadhi* beyond its specific facts would help prevent inconsistent enforcement of the Section 173(3) safeguard as it settles into everyday practice.

CONCLUSION

Two years is a reasonable point at which to stop treating the BNSS as simply new and to start holding it to the standard it set for itself. On that standard, the picture is mixed but not discouraging. Forensic compliance is trending upward from a genuinely difficult starting point, the Supreme Court has shown itself willing to give real substance to safeguards that exist nowhere in the old Code, and protections carried over from CrPC-era jurisprudence have survived the transition intact. What remains is the less visible, more difficult work of building capacity — laboratories, equipment, training and documentation discipline — without which even a carefully drafted procedure code cannot deliver the process it promises.

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