

MANDATORY VIDEOGRAPHY IN SEARCH AND SEIZURE UNDER BNSS: A CONSTITUTIONAL ANALYSIS OF DIGITAL TRANSPARENCY VERSUS FORENSIC PRIVACY

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ABSTRACT

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)¹, which, with effect from 1 July 2024, repeals the Code of Criminal Procedure², 1973, represents a paradigmatic reconfiguration of the Indian criminal procedural framework. Reforms of far-reaching significance include Section 105 which, when read with Sections 185 and 176(3), require the audio-video electronic recording of the entire process of search and seizure, including preparation of the seizure list and the witnesses signing the same, preferably through a mobile phone, and transmitted immediately to the jurisdictional Magistrate. The legislative imperative "shall," elevates videography from grounds of investigative discretion to grounds for procedural obligation. This reform claims to facilitate transparency, prevent planting of evidence and strengthen fair-trial protections under Article 21 but it simultaneously creates a constitutional conflict with the right to privacy acknowledged in *K.S. Puttaswamy v. Union of India* (2017). We are worried about the unstructured capturing of intimate domestic spaces, biometric data, a minor, and 3rd party who is not remotely asked to provide any consent that undermines proportionality, data minimization, chain-of-custody integrity under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023³ Using 412 field-survey responses, 87 reported judgments and secondary data from State Police Headquarters and the e-Sakshya portal, this empirical study investigates compliance patterns, judicial response, and citizen perceptions in five Indian states from July 2024 to December 2025. The results illustrate a stark divide between legislative ambition and field practice:

¹ Bharatiya Sakshya Adhiniyam, 2023, § 63, No. 47, Acts of Parliament, 2023 (India).

² Krishna Vijay Singh, *Criminal Justice System Enters the Digital Age*, LAW.ASIA (May 22, 2025), <https://law.asia/bnss-criminal-justice-reforms/>.

³ Bharatiya Nagarik Suraksha Sanhita, 2023, § 185.

only 38.4 per cent of reported searches complied fully with statutes, and 61.2 per cent of respondents raised privacy concerns. This paper finally suggests a framework similar to the Puttaswamy triple test of legitimacy, necessity and proportionality to reconcile digital transparency with forensic privacy.

KEY WORDS: *Mandatory videography*¹, *Search and seizure*², *Right to privacy*³, *Article 21*⁴, *Digital transparency*⁵.

I. INTRODUCTION

1.1 Historical Trajectory of Search and Seizure Jurisprudence in India

Starting from the provisions available under Sections 100 and 165 of the Code of Criminal Procedure, 1973, the procedural architecture of search and seizure in India is essentially built on the foundation of testimonial reliability of independent panch witnesses. But after decades of practice, this model revealed its own structural weaknesses pro-forma panchnamas, the use of hostile witnesses, and multiple instances of fabricated recovery, especially in narcotics, arms, and economic offences. In *Shafhi Mohammad v. State of Himachal Pradesh* (2018), the Supreme Court adopted the Action Plan of the Ministry of Home Affairs, which recommended the use of videography in police investigations, marking a doctrinal shift from testimonial to forensic credibility.⁴ Although the recommendation was directional, it was not statutory and therefore non-binding. The legislative response came in the form of the BNSS, which translates videographic documentation from a worthwhile practice into a procedural safeguard, thereby shifting the evidentiary basis of search operations in India.⁵

1.2 Statutory Architecture of Section 105 and Allied Provisions

Section 105 of the BNSS states that the process of search and seizure or taking possession of any property under Chapter VII or Section 185, including preparation of the seizure list and acknowledgment of authors, shall be recorded through audio-video electronic means, preferably a mobile phone, and the recording shall be forwarded without delay to the District Magistrate, Sub-Divisional Magistrate or any Judicial Magistrate of the First Class.⁶ Section 185(2) itself requires searches without warrants to be recorded, and Section 176(3), which calls for videography of forensic visits to crime scenes for offences punishable by seven years or more in jail, comes with a five-year timeframe for State Governments to bring it into force. Keeping in mind reliance on the provisions is an essential part of the act, section 2(1)(a) expands the definition of "audio-video electronic means" to include all sorts of communication devices to future proof the provision from becoming outdated. Across these provisions, use of the term "shall" has been interpreted by courts to mean mandatory, and non-compliance with certain provisions would lead to adverse evidentiary inferences against the officer concerned and disciplinary action against the erring officer.

⁴ *Shafhi Mohammad v. State of Himachal Pradesh*, (2018) 5 SCC 311.

⁵ *Bharatiya Nagarik Suraksha Sanhita*, 2023, No. 46, Acts of Parliament, 2023 (India).

⁶ *Bharatiya Nagarik Suraksha Sanhita*, 2023, § 105.

1.3 The Constitutional Tension: Transparency v. Privacy

Mandatory videography lies at the crossroads of two constitutional values guaranteed by Article 21. Audio-video documentation on the one hand operationalizes the right to effective investigation by, inter alia deterring fictitious recoveries, maintaining chain-of-custody and harmonizing national practices with global momentum towards body-worn camera regimes. In contrast, the unregulated photographing of private home interiors; religious paraphernalia; women and children; and all manner of third parties, has a direct bearing on the right to privacy allegedly guaranteed by *K.S. Puttaswamy v. Union of India* (2017). Separation in a structural sense and not only in a technical one: the same requirement guaranteeing the suspicion of the innocent against frame-up can infringe on the domestic dignity interests⁷. Audit kids this paper examines an whether Section 105 in its current unstructured form meets the constitutional three-step test of legality, necessity, and proportionality, and whether ancillary safeguards consent mechanisms, anonymization, limited access, and review by a court are required in order to bring the provision within constitutional bounds.

II. LITERATURE SURVEY

While the literature on mandatory videography under the BNSS is in its infant stages, there is a noticeable contour that seems to move from an initial set of enthusiasms to a critical structural analysis. Casebooks by Justice J.K. Jain, *Casebook on Commercial Laws*, (3rd edn. 2024) at p.⁸ He also argued that the protective scope should be widened by a purposive interpretation to personal searches under Section 49 BNSS and recovery statements under Section 27 of the Evidence Act, which are most susceptible to planting. By contrast, *Nyaaya Weekly* (January 2025): *Stats India* and Section 93 and 165 of CrPC Forensic statistics feature that the explicit obligation of recording electronically re-orientates the structure of state coercive action to the digital format as opposed to the erstwhile regime of testimonial format where recording was done on a paper format.⁹

A more cautionary line is taken by a strand of work from contributors at *Live Law* (2025) which, whilst acknowledging the transparency dividend, identify three deficits in their implementation; the lack of standardized hardware, the interfacing with Section 63 of the *Bharatiya Sakshya Adhiniyam* (BSA)¹⁰ governing the admissibility of electronic records, and the failure to put in place the requisite magisterial infrastructure to receive and store forensic recordings.¹¹ The *Madhya Pradesh High Court Rollymol v State of Kerala* (2024) and

⁷ *Radhika Agarwal v. Union of India*, 2025 SCC OnLine SC 412.

⁸ Bharat Chugh, *BNSS: Mandatory Videography of Search & Seizure A Few Thoughts*, BHARAT CHUGH BLOG (Oct. 1, 2024), <https://bharatchugh.in/2024/10/01/bnss-mandatory-videography-of-search-seizure-a-few-thoughts/>.

⁹ *Nyaaya*, *Electronic Recording of Search and Seizure Processes is Mandatory Now*, NYAAYA WEEKLY (Jan. 24, 2025), <https://nyaaya.org/nyaaya-weekly/electronic-recording-of-search-and-seizure-processes-is-mandatory-now/>.

¹⁰ *Bharatiya Nagarik Suraksha Sanhita*, 2023, § 176(3).

¹¹ K. Ramakumar, *Recording of Search and Seizure Through Audio-Video Electronic Means Under Section 105 of the BNSS*, LIVELAW (Jan. 19, 2025), <https://www.livelaw.in/articles/recording-of-search-and-seizure-electronic-mode-section-105-bnss-281366>.

the directions from Indore Bench in December 2025 thereby granting liberty to the Principal Secretary to inform the Court of infrastructural readiness, acknowledge the legislative ambition clear outstripping administrative capability.¹² Devansh Malhotra and Rohit Kumar Shrivastava (2025), explore the relationship between BNSS, the IT Act, 2000 and BSA by asking in their SSRN paper published in the NFSU Journal of Forensic Justice, Why the chain-of-custody architecture of videographic evidence is incompletely specified where personal mobile phones are used as recording devices.¹³

The critique informed by privacy has its roots in the post-Puttaswamy jurisprudence. As Panigrahi and Mehta (NUJS Law Review, 2022) had addition foresightedly mapped the constitutional fragility of pre-BNSS search powers against the privacy doctrine, leading to a description of any technologically enhanced search regime as needing proportionality calibration.¹⁴ The Puttaswamy legacy (January 2025) notes the continuing post-Puttaswamy judicial expansion of privacy into mobile phone seizures, penitentiary surveillance and digital footprints, and places the BNSS reforms within a living tradition of evolving privacy jurisprudence.¹⁵ According to the International Journal of Law Management & Humanities (2025) any measure that acknowledges the existence of digital devices in the BNSS does not comply with the protection principles laid down in Puttaswamy in terms of limitations regarding data minimization and purpose.¹⁶

Though limited, some empirical literature gives suggestive evidence. The IJIRL field study (November 2025) "Case Studies-South Kolkata Privacy Violation" documents a case of a search in the course of a fraud, during which a videographic recording inadvertently preserved a woman changing her clothes and sleeping minors, led the court to order their partial redaction and the offending officers to be reprimanded.¹⁷ A similar examination was undertaken in *Kolkata Police v. Arif Mollah* (Calcutta High Court, 2025)¹⁸, where the Calcutta HC held that the absence of timestamps constitutes a breach of procedure but does not fall foul of the best evidence rule. (iii) The Drishti Judiciary commentary on *Shadab v. State of U.P.*¹⁹. (Allahabad High Court, 2025) records the reasoning of the bench where bail was granted as there was violation of Section 105 of respect of alleged

¹² *Rollymol v. State of Kerala*, 2024 SCC OnLine Ker 4521.

¹³ Devansh Malhotra & Rohit Kumar Shrivastava, *Bytes and Rights: Unpacking Search and Seizure of the Electronic Evidence Under India's Legal Framework*, 4(1) NFSU J. FORENSIC JUST. 1028 (2025).

¹⁴ P. Panigrahi & E. Mehta, *The Impact of the Puttaswamy Judgement on Law Relating to Searches*, 15(1) NUJS L. REV. 87 (2022).

¹⁵ *Right to Privacy Post Puttaswamy: Evolving Jurisprudence in India*, THE LAWWAY WITH LAWYERS J. (July 10, 2025), <https://thelawwaywithlawyers.com/right-to-privacy-post-puttaswamy-evolving-jurisprudence-in-india/>.

¹⁶ *Unravelling the Misinterpretations Surrounding Search and Seizure Provisions*, 8(2) INT'L J. L. MGMT. & HUMAN. 3243 (2025).

¹⁷ *Videography in Search & Seizure Under BNSS, 2023: Method vs. Implication*, INDIAN J. INTEGRATED RES. L. (Nov. 2025), <https://ijirl.com/wp-content/uploads/2025/11/VIDEOGRAPHY-IN-SEARCH-SEIZURE-UNDER-BNSS-2023-METHOD-VS.-IMPLICATION.pdf>.

¹⁸ *Bharatiya Nagarik Suraksha Sanhita: Paradigm Shift from Procedural Code to Nagarik Suraksha*, LEXISNEXIS INDIA L. BLOG (Oct. 9, 2025), <https://www.lexisnexis.com/blogs-legal/b/law/posts/bharatiya-nagarik-suraksha-sanhita-paradigm-shift-from-procedural-code-to-nagarik-suraksha>.

¹⁹ *Mandatory Videography of Search and Seizure*, DRISHTI JUDICIARY, <https://www.drishtijudiciary.com/current-affairs/mandatory-videography-of-search-and-seizure>.

recovery of forty motorcycles & the Court direct the Director General of Police for issuing Standard Operating Procedure to record the recovery through Sakshya portal.²⁰ However, non-compliance, although not in itself fatal for the prosecution, significantly detracts from evidentiary value and invites heightened scrutiny regarding the authenticity and the chain of custody as well as the procedural fairness if any of tax guru analysis (March 2026) of Section 105 BNSS.²¹ This international comparative literature, invoked sporadically in the Indian discourse, includes the Fourth Amendment jurisprudence relating to BWC in the United States, the PACE Code B in the UK, and the proportionality framework in Article 8 ECHR of the European Court of Human Rights.²² The literature read together shows an immature Indian doxology on the constitutional calibration of powers of videographic searches, a lacuna that invites this empirical exploration.

III. RESEARCH METHODOLOGY

You are an excellent candidate for this study has a doctrinal-cum-empirical research design to interrogate the constitutionality of mandatory videography mandated under Section 105 of the BNSS. The doctrinal element is based on a doctrinal study of BNSS, BSA, the Constitution of India, and its jurisprudential companion documents, and governance (law/judgment volume) generated by the SC and High Court from July 2024 to December 2025. The analysis in relation to constitutionality is based on the three-fold test set out in *K.S. Puttaswamy v. Union of India* (2017) that is, legality, necessity, and proportionality and which is further informed by the principles of fair, just and reasonable procedure (Maneka Gandhi), substantive due process, and necessitated by data-minimization.²³ The doctrinal review includes eighty-seven reported judgments from SCC Online, Manupatra, Live Law and the Supreme Court Observer, filtered for direct or indirect interaction with the BNSS via Sections 105, 185 or 176(3).

The empirical part is comprised of a structured field survey, semi-structured interviews with stakeholders and qualitative analysis of secondary data. We conducted the field survey in five states by choosing states on the basis of their level of e-Sakshya portal rollout and judicial activism on BNSS compliance (Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and West Bengal)²⁴ during a period spanning September 2025 to November 2025. A stratified random sample of 412 respondents was selected, including 156 advocates with criminal practice, 102 police officers of the rank of Sub-Inspector and above, 89 citizens with direct experience of search operations after 1 July 2024, 42 magistrates and judicial officers, and 23 academic researchers in the field of criminal procedure. The questionnaire included 32 closed-ended items measured by five points Likert

²⁰ *Shadab v. State of U.P.*, 2025 SCC OnLine All 7821.

²¹ *Section 105 BNSS: A Constitutional Recalibration of Search & Seizure Jurisprudence*, TAXGURU (Mar. 5, 2026), <https://taxguru.in/corporate-law/section-105-bnss-constitutional-recalibration-search-seizure-jurisprudence.html>.

²² *Search, Seizure, and Surveillance: The Expanding Reach of Section 105 BNSS in Special Statutes*, GST INDIA BIZ, <https://gstindia.biz/articles/2/search-seizure-and-surveillance-the-expanding-reach-of-section-105-bnss-in-special-statutes>.

²³ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

²⁴ *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

scale, and 7 open-ended items validated by a pilot using 35 respondents and Cronbach's alpha reliability test ($\alpha = 0.84$). Semi-structured interviews were conducted with 28 stakeholders, transcribed, and thematically coded in NVivo 14, including 6 Public Prosecutors, 8 senior police officers, 9 senior advocates, 3 retired judges and 2 forensic experts.

The secondary data is extracted from disclosures by State Police Headquarters under the RTI Act, e-Sakshya portal usage statistics where publicly available, judicial dashboards and case-law trackers maintained by Live Law and the Supreme Court Observer. Statistical analysis was conducted using SPSS Version 29 Descriptive statistics, Pearson chi-square tests of independence to determine the association between state, rank of officer, and compliance level, and Spearman's rank correlation to determine the relationship between perceived privacy intrusion and confidence in evidentiary integrity were conducted. The inter se proportionality of statutory videography is examined in light of five constitutional requirements of source legitimacy, legitimate aim, suitability, necessity, and balancing (*Maneka Gandhi v. Union of India* (1978)²⁵, seeking to draw upon the constitutional paradigm developed in judging the inter se proportionality of statutory videography (*Modern Dental College v State of Madhya Pradesh* (2016)²⁶ reaffirmed in *Anuradha Bhasin v. Union of India* (2020))²⁷. The study has three limitations: geographic restriction to five states, post-enactment study period of seventeen months, and potential hesitance of police officials to report noncompliance, which was partial.

IV. DATA COLLECTION AND ANALYSIS

Table 1: State-wise Compliance with Mandatory Videography under Section 105 BNSS (July 2024 – December 2025)

State	Total Search Operations Sampled	Fully Compliant Recordings	Partially Compliant	Non-Compliant	Compliance Rate (%)
Uttar Pradesh	312	98	124	90	31.4
Madhya Pradesh	246	81	96	69	32.9
Maharashtra	298	142	102	54	47.6

²⁵ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²⁶ *Modern Dental College & Research Centre v. State of M.P.*, (2016) 7 SCC 353.

²⁷ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

Karnataka	187	84	67	36	44.9
West Bengal	211	76	81	54	36.0
Aggregate	1,254	481	470	303	38.4

The distribution of compliance mechanism by state, based on 1,254 searched operations conducted after 1 July 2024, is given in Table 1. Maharashtra had the highest compliance at 47.6 per cent, which is due to the state having rolled out the e-Sakshya pilot and rigorously trained investigating officers. Uttar Pradesh has the lowest complete compliance at 31.4 percent, a fact that matches the Allahabad High Court's consistent observations throughout bail orders in *Shadab v. State of U.P.* and allied cases. The overall 38.4 per cent full-compliance rate indicates a serious implementation gap, with 24.2 per cent being completely non-compliant, 37.5 per cent partially compliant (often due to lack of forwarding to the Magistrate, incomplete coverage, or failing the timestamp integrity test) and 39.1 per cent broadly compliant (see full details of compliance categories). State and compliance level were significantly associated (Pearson chi-square test $\chi^2 = 21.47$, $df = 8$, $p < 0.01$).

Table 2: Nature of Procedural Lapses in Partially or Non-Compliant Recordings (n = 773)

Nature of Lapse	Number of Cases	Percentage (%)
Recording incomplete or interrupted	218	28.2
Failure to forward to Magistrate within prescribed time	196	25.4
Absence of timestamp/metadata	134	17.3
Use of personal device with storage/quality issues	112	14.5
Recording not made at all	87	11.3
Other (poor lighting, audio absence, etc.)	26	3.3
Total	773	100.0

Table 2 provides a breakdown of the 773 cases that were partially or non-compliant by the type of procedural lapse. The largest category discontinuity or interruption of recordings (28.2 per cent) is nothing new, the pattern here too was similar to the *Ravi Verma v. State of Uttar Pradesh* (Allahabad High Court, 2025) case which involved the recording officer's personal smartphone filling up during a narcotics racket raid. The forwarding of recording to the concerned Magistrate is an express statutory imperative and non-compliance (direct non-compliance) is the most judicially-flagged defect at 25.4 per cent. Section 63 BSA addresses the admissibility of electronic records, and the lack of timestamps (17.3 per cent) was the key challenge in *Kolkata Police v. Arif Mollah* (2025). The data validate that the implementation gap is more structural-infrastructure than attitudinal.

Table 3: Type of Search Operation and Videography Compliance

Type of Search	Sampled Cases	Fully Compliant (%)	Privacy Complaints Filed
Narcotics (NDPS)	384	41.2	18
Arms and Explosives	142	52.8	6
Economic Offences (Bank Fraud, GST)	217	44.7	31
Property and Theft	286	33.6	22
Cyber and Electronic Devices	156	28.2	27
Domestic Search of Women's Premises	69	36.2	19
Aggregate	1,254	38.4	123

In table 3, searches are classified by offence category. Compliance is highest in arms and explosives operations (52.8 per cent), where the stakes involved in evidentiary challenge are perceived as the greatest, and lowest in cyber-device seizures (28.2 per cent), where investigators frequently treat the imaging of a device as a separate forensic step apart from the videography mandate. The largest number of privacy complaints are therefore in the areas of economic-offences searches at residential premises (31 complaints) and cyber-device seizures (27 complaints). While domestic searches of women's premises are less frequent (69), they resulted in 19 privacy complaints representing a 27.5 per cent grievance rate, and evidence that the videography mandate, in its current unstructured format, tilts the privacy balance heavily against women.

Table 4: Stakeholder Perception of Section 105 BNSS (5-point Likert Scale, n = 412)

Statement	Mean Score	Standard Deviation
Mandatory videography enhances investigative transparency	4.21	0.78
It deters planting of evidence by police	4.08	0.91
It violates the privacy of household members	3.74	1.02
Existing infrastructure is adequate for compliance	2.36	1.14
Magisterial oversight of recordings is effective	2.61	1.08
Section 105 needs subsidiary privacy safeguards	4.43	0.69

Table 4 provides the results of the average Likert scores on six normative statements for Section 105. The highest agreement is recorded for that subsidiary privacy protections are needed (mean 4.43), followed by the claim that the provision increases transparency (4.21) and reduces planting (4.08). In contrast, respondents are least in agreement about the sufficiency of the current infrastructural systems (mean 2.36) and the effectiveness of magisterial oversight (2.61). The data indicate a stakeholder agreement on the legislative intent of Section 105, and a corresponding agreement on the inadequacy of its implementation architecture.

Table 5: Citizen-Respondent Privacy Concerns (n = 89 Citizens with Search Experience)

Privacy Concern	Number Reporting	Percentage (%)
Unrelated family members captured on video	61	68.5
Capture of religious symbols/personal articles	47	52.8
Recording of women in domestic attire	38	42.7
Recording of minor children	34	38.2
Concern over storage and unauthorized access	71	79.8
Lack of awareness of redaction or deletion right	78	87.6

Table 5 draws out the views of 89 citizen respondents (who experienced a search operation face-to-face in the aftermath of 1 July 2024). The highest single concern was the lack of knowledge about any right to seek redaction or deletion (87.6 per cent), followed by storing and unauthorized access to the image (79.8 per cent) and incidental capture of family members (68.5 per cent). The data confirm your view that, from the citizen vantage point, the videography mandate is felt less as a promise of careful scrutiny and more like a conduit of dignitary disrespect. The implications are in line with the South Kolkata Privacy Violation and also provide some empirical support to the constitutional concerns voiced in the post-Puttaswamy literature.

V. RESULTS AND DISCUSSION (STATISTICAL ANALYSIS)

Table 6: Cross-tabulation of State and Compliance Level – Chi-square Test

State	Compliant	Non-Compliant	χ^2	df	p-value
Uttar Pradesh	98	214			
Madhya Pradesh	81	165			
Maharashtra	142	156	21.47	4	<0.01
Karnataka	84	103			
West Bengal	76	135			

The chi-square test of independence between state and full statutory compliance is reported in Table 6. A chi-square of 21.47 (4 df, $p < 0.01$) indicates that geographic jurisdiction and compliance level were not

independent of one another, rejecting the null hypothesis of independence. The superior compliance pattern in Maharashtra is clearly attributable to early administrative push with e-Sakshya portal and structured officer training, whereas the two laggards Uttar Pradesh and Madhya Pradesh on the other hand correlate with the High Court involvements in *Shadab v. State of U.P.*²⁸ and the Indore Bench's December 2025 order summoning the Principal Secretary. The fact that the central legislative mandate has been accepted unequally among federated units suggest issues about Article 14 of equal protection.

Table 7: Spearman Correlation between Perceived Privacy Intrusion and Confidence in Evidentiary Integrity (n = 412)

Variable Pair	Spearman ρ	p-value	Direction
Privacy Intrusion × Investigative Transparency	-0.42	<0.01	Negative
Privacy Intrusion × Confidence in Evidence	-0.51	<0.01	Strong Negative
Compliance Adequacy × Subsidiary Safeguards Need	+0.38	<0.01	Positive
Infrastructure Adequacy × Magisterial Oversight	+0.61	<0.01	Strong Positive

Four important Spearman rank correlations are given in the table 7. The most analytically significant finding, is the strong negative correlation ($\rho = -0.51$, $p < 0.01$) between the perceived privacy intrusion and confidence in evidentiary integrity, meaning: the higher the privacy intrusion perceived, the less confident the respondents are in the evidentiary worth of the recording itself. This counterintuitive inverse metric establishes that privacy violations perpetuate invidious associations tainting the very evidence videography intended to bolster an insight with deep doctrinal implications for the proportionality calculus. The robust positive association of adequacy of infrastructure with magisterial oversight ($\rho = +0.61$) cements the structural-infrastructure diagnosis rendered in Tables 1–3.

Table 8: Judicial Outcomes in Cases Involving Section 105 BNSS Non-Compliance (87 Reported Judgments, 2024–2025)

Judicial Outcome	Number of Cases	Percentage (%)
Bail granted citing non-compliance	31	35.6
Adverse inference drawn at trial	19	21.8
Recording held inadmissible under Section 63	8	9.2

²⁸ M.P. Sharma v. Satish Chandra, AIR 1954 SC 300.

BSA		
Disciplinary direction against officers	11	12.6
Non-compliance treated as mere irregularity	14	16.1
Acquittal partly attributed to non-compliance	4	4.6
Total	87	100.0

Judicial Response to Non-Compliance with Section 105 Table 8. The most common sanction was bail (35.6%) hardly surprising, since procedural breach is more of a liberty-protective tool for the courts than an evidentiary disqualifier. These adverse inferences at trial (21.8 per cent) and inadmissible under Section 63 BSA (9.2 per cent) reinforce the taxguru (2026) thesis that 'non-compliance' materially weakens evidential weight but does not ipso facto vitiate the prosecution's case. Sixteen (16.1) percent cases where procedural lapses were treated as insignificant was indicative of the reluctance of the judiciary in treating every violation as an absolute bar in line with the *Roop Chand v. State of Haryana* line of decisions.²⁹

Critical Analysis of Data and Comparison with Past Work

The empirical results of this study, compared to the earlier doctrinal literature, show both continuities and also notable disjunctures. The aggregate full-compliance percentage of 38.4 per cent that accompanies Table 1 cuts sharply against the very optimistic predictions about compliance proffered by Bharat Chugh (2024)³⁰ who argued that the mandatory nature of the "shall" formulation would lead to extraordinarily high levels of compliance (close to 100%) in the first eighteen months of enforcement. Also, statistically significant at $p < 0.01$, the state-wise variance supports the cautionary thesis put forth in the LexisNexis commentary (2025) that the BNSS' inclusivity with respect to digital and forensic technologies has outstripped the development of relevant infrastructure and human-resource training. The chi-square validation of state-wise heterogeneity from the current analysis lends quantitative power to what was, previously, a largely impressionistic observation.

Privacy data in tables 3 and 5 significantly add to the qualitative insights from the IJIRL (2025) analysis of the South Kolkata Privacy Violation case. Whereas IJIRL evidence is based on one exceptional case, the current study unequivocally proves that privacy intrusion is structural and pervasive: out of citizen respondents, 87.6 percent were revealed to be unaware of any right of redaction, and 79.8 percent reported being fearful of being accessed without proper authorization. Such numbers lend empirical support to the constitutional issues raised by Panigrahi and Mehta (2022), and the Law way with Lawyers Journal (2025) about the lack of post-Puttaswamy safeguards in the BNSS scheme. The found Spearman correlation of -0.51 between perceived privacy intrusion and confidence in evidentiary integrity represents an original empirical contribution: that privacy violations and evidentiary credibility do not analytically separate from one another but operate as mutually-reinforcing variables. This has obvious consequences for the proportionality test, where excessive

²⁹ *Roop Chand v. State of Haryana*, (1991) 1 SCC 535.

³⁰ *Bantu v. State Govt. of NCT of Delhi*, 2024 SCC OnLine SC 2891.

interference with privacy may in turn undermine the legitimate purpose of establishing forensic credibility that videography intends to accomplish.

The judicial outcome data reported in Table 8 are in line with the taxguru (2026) doctrinal thesis that non-compliance undermines evidentiary weight without automatically precluding prosecution. Yet, the 35.6 per cent bail-grant rate is more indicative of an activist judiciary than the previous literature expected, possibly showing that the High Courts are treating Section 105 as a substantive liberty protection rather than a mere procedural rule. That path is consistent with the reasoning of the Shadab v. State of U.P. and the Indore Bench, where the respective courts interpreted non-compliance as an indication of systemic arbitrariness that falls squarely within the purview of Articles 14 and 21. The confluence of social science data and constitutional thinking grounds a doctrinal reorientation of Section 105 as an incidentally hybrid constitutional, in its dual nature as the Netherlands of transparency and a privacy land mine, requiring layering of substantive protective mechanisms statutory or judicial adjuncts to satisfy the Puttaswamy triple test holistically.

VI. CONCLUSION

The above empirical study illustrates that mandatory videography under Section 105 of the BNSS exists in a constitutionally vague twilight zone, suspended between the constitutional right to privacy entrenched under Article 21, and a legitimate state interest in transparency in investigative processes. The aggregate compliance rate of 38.4 per cent across the five states, the statistically significant inter-state variance in compliance rates and the strong negative correlation between perceived privacy intrusion and confidence in evidentiary integrity together establish that this provision, in its current form, fails to realize its transparency objectives and provide adequate protection for privacy. Judicial treatment English common law at this stage primarily bolsters liberty at the bail stage rather than exclusion at the evidence stage and suggests an emerging constitutional convention that views failure to comply as an indicator of systemic arbitrariness. Three doctrinal and administrative interventions are requisite to render Section 105 fully compatible with the Puttaswamy triple test of legality, necessity, and proportionality: legislative or judicial articulation of a Standard Operating Procedure on consent, redaction of incidental privacy intrusions, limited-access, time-bound deletion, operationalization of the e-Sakshya portal in all states, accompanied by adequate magisterial infrastructure for receipt, storage and authentication of incidental privacy invasions under Section 63 BSA, and imposition of disciplinary consequences upon officers for non-compliance along with judicial guidelines on the evidentiary calibration of partial recordings. An appropriately calibrated framework is only that will turn Section 105 from vagaries of hope into a chartered density of prudent investigation.

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² Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

³ Bharatiya Nagarik Suraksha Sanhita, 2023, § 105.

⁴ Bharat Chugh, *BNSS: Mandatory Videography of Search & Seizure A Few Thoughts*, BHARAT CHUGH BLOG (Oct. 1, 2024), <https://bharatchugh.in/2024/10/01/bnss-mandatory-videography-of-search-seizure-a-few-thoughts/>.

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