

Search, Seizure, and Surveillance

The Expanding Reach of Section 105 BNSS in Special Statutes

Introduction

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973 (CrPC), effective from July 1, 2024, introduces significant procedural reforms aimed at enhancing transparency, accountability, and the use of technology in criminal investigations. It has introduced a simple but seismic change to search-and-seizure practice in India. Key among these are Sections 105, 185, and 176(3), which mandate audio-video (AV) recording during searches and seizures, and require the involvement of a forensic expert in serious offenses. These provisions align with the constitutional mandate under Article 21 of the Indian Constitution, emphasizing fair investigation and trial as intrinsic to the right to life and liberty.

This article examines critical aspects of these sections, including the mandatory nature of Audio video recording during searches, the submission of records to magistrates, the notification status of Section 176(3), the necessity of forensic experts in offences punishable by seven years or more, and the applicability of these provisions to special laws like the **Central Goods and Services Tax Act, 2017 (CGST)**, Prevention of Money Laundering Act, 2002 (PMLA), and Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Drawing on recent judgments, we explore the implications for law enforcement and judicial processes.

What Section 105 States: -

Section 105 makes two things clear:

1. The *search and seizure process* (including the inventory/list of seized items and witnesses signing it) **shall** be recorded by audio-video means (the statute even prefers a mobile phone); and
2. The recording must be forwarded to the District/Sub-Divisional/Judicial Magistrate First Class without delay.

BNSS Section 105 explicitly mandates audio-video recording of the entire search and seizure process, including the preparation of the panchnama (list of seized items) and its signing by witnesses. This applies to searches under Chapter VII of BNSS or Section 185.

Section 185, which deals with warrantless searches by police officers, reinforces this in its proviso to sub-section (2): *"Provided that the search conducted under this section shall be recorded through audio-video electronic means, preferably by mobile phone."*

The use of the word '**shall**' in both sections clearly indicates the legislative intent to make audio-video recording mandatory during the process of searching. Non-compliance could vitiate the proceedings, potentially leading to the exclusion of evidence or acquittal, as it undermines transparency and safeguards against manipulation. This introduces technology to bolster accountability, prevent fabricated recoveries, and align with modern democratic practices, echoing the fair trial mandate in **Article 21**.

Judicial precedents

The Supreme Court of India has repeatedly recognised the value of videography while cautioning that electronic recordings must meet authenticity and integrity thresholds. Judicial precedents support this mandatory view.

In *Shafhi Mohammad v. State of Himachal Pradesh (2018)*¹, the Supreme Court **highlighted the role of videography** in inspiring confidence in evidence collection. The Court emphasised that electronic evidence is admissible subject to safeguards and that procedural technicalities (like certificates under Section 65B Evidence Act) **must not obstruct justice** in cases where a party cannot produce such certificates. The Court endorsed the idea of a **National SOP** and a Committee of Experts to roll out videography in investigations. While this case predates BNSS, it underscores the transformative nature of such recordings, stating: *"It will be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved."*

¹ <https://gstindia.biz/case-law/130/importance-of-electronic-evidence>

*The recent Anil Kumar Hajelay judgment*²(2024) indirectly reinforces the mandate by addressing infrastructure needs post-BNSS enactment. The Delhi High Court directed the GNCTD to expedite hybrid court setups, noting: "Section 105 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 This highlights the urgency of audio-video integration for fair trials.

Rajesh Kumar Allahabad High Court (bail order, 29 Aug 2024), the bench granted bail partly because the prosecution record did not show compliance with Section 105 BNSS: there was no video capture of the seizure, and the recording was not forwarded to the magistrate. **The court treated statutory non-compliance as an important factor weighing in favour of bail in a case triable by the magistrate.**

In summary, audio-video recording is unequivocally mandatory under BNSS Sections 105 and 185. Failure to comply may render the search invalid, as it violates statutory safeguards.

Submit to the Concerned Magistrate Under Section 105

BNSS Section 105 requires the police officer to "without delay forward such recording to the District Magistrate, Sub-divisional Magistrate or Judicial Magistrate of the first class." This **reinforces the mandatory nature, preventing post-facto manipulation.** In practice, submission is crucial for judicial oversight. Under Section 185(5), copies of records (including panchnama and seizure memos) must be sent to the nearest Magistrate "forthwith, but not later than forty-eight hours." Non-submission could lead to procedural irregularities, as seen in cases where delays and inconsistencies in memos contributed to the acquittal. Courts have consistently held that such forwarding operationalizes fair investigation under Article 21.

While implementation varies across states, the law mandates prompt submission, and non-compliance may invite judicial scrutiny or evidence exclusion.

Procedure for Investigation Under BNSS Section 176

BNSS Section 176(3) mandates: ***"On receipt of every information relating to the commission of an offence which is made punishable for seven years or more, the officer in charge of a police station shall from such date, as may be notified within a***

² <https://gstindia.biz/case-law/131/urgency-of-integration-of-section-105-bnss>

period of Five years by the state government in this regard, cause the forensics expert to visit the crime scene to collect forensic evidence and also cause videography of the process on mobile phone or any other electronic device.” This applies to serious offences, promoting scientific investigation

The section provides a five-year window to notify full implementation: "from such date, as may be notified within a period of five years by the State Government." **However, the law is active from July 1, 2024, meaning partial or immediate compliance is expected where facilities exist. The proviso allows states without forensic facilities to utilize those of another state until developed.”**

Does Section 105 apply to searches conducted under special statutes such as the CGST Act, the PMLA, and the NDPS Act?

This issue assumes enormous significance because these three statutes frequently involve coercive searches, high-stakes recoveries, custodial interrogation, and stringent bail conditions. The answer lies in understanding the interplay between general procedural law and special penal statutes.

When Does BNSS Apply to Special Acts?

The established procedural doctrine in Indian criminal law is: Criminal procedure under the general code applies to all offences unless the special statute provides a contrary or inconsistent procedure. This principle has repeatedly been affirmed by judicial decisions. For example, **the Himachal High Court in Gagandeep Singh and Another vs. State of H.P. and Another, 2025**, stated, *“We would, therefore, agree with the contention that the GST Acts are not a complete code when it comes to the provisions of search and seizure, and arrest, for the provisions of the Code would equally apply when they are not expressly or impliedly excluded by provisions of the GST Acts. Therefore, the submission that the provisions of Cr.P.C. do not apply to the GST Act and the Act is silent regarding the procedure for investigation, inquiry, or trial is not correct”.*³ Therefore, the inquiry is not whether CGST, PMLA, or NDPS are “special laws.” They undoubtedly are. The real question is: Do these Acts exclude or contradict Section 105 BNSS? If not, **Section 105 applies.**

³ <https://gstindia.biz/case-law/133/applicability-of-crpc-to-gst>

Applicability of Section 105 BNSS to GST Searches

Section 67 of the CGST Act confers extensive powers upon the “proper officer” to conduct:

- Inspection of places of business
- Search of premises
- Seizure of goods, documents, books, and things
- Provisional attachment (read with Section 83)

Most importantly, **Section 67(10) CGST** provides:

“The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall, so far as may be, apply to search and seizure under this section.”⁴

Post 1 July 2024, references to CrPC must be read as references to BNSS.⁵

Thus, by legislative incorporation, **the procedural safeguards of BNSS — including Section 105 — automatically apply to GST searches**, unless expressly excluded.

There is no exclusion in the CGST Act prohibiting videography.

Therefore, Section 105 BNSS applies to GST searches by statutory command.

Section 67 of the CGST Act grants officers powers for inspection, search, and seizure based on "reasons to believe" tax irregularities, with sub-section (10) explicitly adopting general criminal procedures from the provisions of the CrPC, now by the BNSS. Section 105 BNSS requires audio-video recording of the entire process, including inventory preparation and witness signatures, preferably via mobile phone, with prompt submission to a magistrate. This binding integration ensures GST searches adhere to these transparency measures.

The evidentiary consequences in GST prosecutions are likely to be significant. Prosecutions under Section 132 of the CGST Act frequently rely upon documentary recoveries, digital devices, statements recorded under Section 70, and admissions allegedly made during search operations. Where the search forms the foundational fact

⁴ (10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

⁵ https://ncm.nic.in/home/pdf/notification/12.3.2024_Criminal_laws.pdf

leading to arrest or prosecution, non-compliance with Section 105 BNSS may invite challenge on grounds of procedural illegality. The issue will not merely be one of technical irregularity but of statutory breach. Courts may examine whether the absence of videographic recording undermines transparency, affects the voluntariness of statements, or creates doubt regarding the integrity of seizure.

In economic offences where liberty is curtailed and reputational damage is immediate, procedural safeguards assume constitutional importance. In GST investigations, which are often departmental rather than police-led, this requirement introduces an additional layer of neutrality. Failure to forward the recording may expose the proceedings to challenge, particularly where the prosecution relies heavily on the search event.

The procedural safeguards emphasized by **the Supreme Court in Radhika Agarwal v. Union of India, 2025⁶** acquire renewed significance when read in light of Section 105 of the BNSS, 2023. In *Radhika Agarwal*, the Court scrutinized the exercise of search, summons and arrest powers under Section 67 of the Central Goods and Services Tax Act, 2017 and underscored that coercive fiscal investigations must adhere strictly to statutory discipline and constitutional guarantees under Articles 14 and 21. The incorporation clause in Section 67(10), which makes criminal procedure applicable “so far as may be” to GST searches, now necessarily imports the mandatory videography requirement under Section 105 BNSS. Consequently, the transparency concerns addressed judicially in *Radhika Agarwal* find legislative reinforcement through Section 105, as audio-video recording of search and seizure operations serves as an objective safeguard against allegations of coercion, procedural impropriety, or post-facto reconstruction of events in GST enforcement proceedings.

Empirical compliance within GST enforcement appears robust, as evidenced by the Directorate of Revenue Intelligence (DRI) an arm of the Central Board of Indirect Taxes and Customs (CBIC) issuing a comprehensive Standard Operating Procedure (SOP) in 2024 explicitly mandating audio-video recording during searches under the new criminal laws, For Custom and NDPS act, which delineates protocols for initiating recordings at the search commencement.

⁶ <https://gstindia.biz/case-law/129/power-of-arrest>

In practice, implementation may presently vary across jurisdictions. However, variability does not diminish obligation. As courts begin to examine GST prosecutions arising after 1 July 2024, compliance with Section 105 is likely to become a focal point of litigation. Assesseees may contend that the absence of videography vitiates the search or weakens evidentiary credibility, while the Department may invoke doctrines of substantial compliance or absence of prejudice. The judicial response will evolve case by case, but the statutory mandate is unambiguous.

II. Applicability to the PMLA, 2002

The Prevention of Money Laundering Act, 2002 includes:

- Sections 17 and 18 for searches.
- Section 65, applying CrPC (now BNSS) unless inconsistent.
- Section 71 for overriding effect.

This is a standard supplementary clause. PMLA requires "reasons to believe," sealed submissions, and authorization safeguards, but neither bans videography nor offers an alternative. Thus, no inconsistency exists.

III. Applicability to the NDPS Act, 1985

Nature of the Statute

The Narcotic Drugs and Psychotropic Substances Act, 1985 features:

- Sections 42 and 43 for warrantless and public searches.
- Section 50 for personal search protections.
- Sections 52 and 52A for seizure protocols.

NDPS jurisprudence insists on stringent adherence.

It adds safeguards but does not bar general procedures like videography, which complements Sections 42 and 50 by enhancing transparency.

In recovery-dependent NDPS cases, missing videography could raise doubts, intensify evidence scrutiny, and influence bail. Procedural precision is paramount in this strict-liability regime.

Conclusion

Section 105 BNSS represents a **paradigm shift** in the Indian criminal process: from **paper-only seizure lists and testimony-dependent accounts** to **authenticated, time-stamped digital records** that enhance transparency, protect rights, and strengthen judicial scrutiny. Its mandatory nature underscores a legislative commitment to accountability in police investigations. The emerging legal landscape suggests that videography of searches is fast becoming not merely a statutory requirement but a constitutional expectation of fairness.

The criminal process in India is no longer insulated from technological accountability. Section 105 ensures that search powers, among the most intrusive powers of the State, are exercised under the gaze of digital transparency and judicial oversight.

As courts continue to enforce Section 105 and its implementing rules, law enforcement must adapt operationally to meet these norms. Proper implementation will not only bolster prosecution credibility but also protect citizens from false allegations and procedural abuses.

In CGST, PMLA, and NDPS prosecutions, adherence could shape recovery validity, case viability, bail outcomes, and conviction integrity. India's criminal process now demands technological oversight for intrusive state powers.

In this sense, Section 105 is more than a procedural provision; it is a foundational trust-building measure in India's evolving justice system.



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