

**SUMMONS TO PRODUCE DOCUMENTS AND ELECTRONIC
COMMUNICATION
A LEGAL OVERVIEW UNDER SECTION 94 OF THE BHARATIYA
NAGARIK SURAKSHA SANHITA, 2023**

by

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ABSTRACT

The production of documents and electronic records is an important part of criminal investigation and trial. Evidence may be contained not only in paper records but also in emails, text messages, call records, CCTV footage, computer files and mobile devices. Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) provides a legal mechanism by which a court or the officer in charge of a police station may require the production of documents, electronic communication and other things considered necessary or desirable for proceedings. This article explains the purpose, scope, procedure and safeguards associated with the provision.

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1. INTRODUCTION

Modern criminal cases frequently depend on information stored electronically. A financial fraud may involve bank statements and email trails; a cybercrime investigation may require chat records, server logs or a mobile phone; and a dispute involving threats may turn on messages exchanged between the parties. The law must therefore enable investigators and courts to obtain relevant material while protecting privacy, privilege and other legal rights. Section 94 BNSS is a statutory tool for securing such material without automatically requiring a search of premises in every case.

2. STATUTORY FRAMEWORK

Section 94(1) BNSS states, in substance, that where a court or an officer in charge of a police station considers production of a document, electronic communication—including communication devices likely to contain digital evidence—or another thing necessary or desirable for an investigation, inquiry, trial or other proceeding under the Sanhita, the court may issue a summons and the police officer may issue a written order. The person believed to possess or control the material may be required to attend and produce it, or simply to produce it, at the time and place specified. The police officer's written order may be in physical or electronic form. The provision came into force with the BNSS on 1 July 2024 and corresponds broadly to Section 91 of the Code of Criminal Procedure, 1973. A notable change is the express inclusion of electronic communication and communication devices likely to contain digital evidence. The provision therefore reflects the realities of investigations in a digital environment.

3. MEANING AND SCOPE

“Document” can include paper records, contracts, registers, account books and other records. Depending on the context and applicable evidence law, relevant electronic material may include emails, messages, digital photographs, audio or video files, transaction records, CCTV footage, call-detail records and data stored on computers or mobile phones. The express reference to communication devices makes clear that the provision is not confined to traditional paper documents. The material sought must have a genuine connection with the investigation, inquiry, trial or other proceeding. The words “necessary or desirable” confer a practical power, but they do not authorise arbitrary or unlimited demands. A request should identify the material with reasonable clarity and explain its relevance to the matter. A demand for an entire device or a

broad collection of private information should be assessed carefully for necessity, scope and proportionality.

4. WHO MAY ISSUE THE PROCESS?

Under Section 94, a court may issue a summons. An officer in charge of a police station may issue a written order. The provision does not mean that every individual investigating officer automatically has an independent power under this section; the statutory wording refers to the officer in charge of the police station. The process should specify the person required to produce the material and the time and place for production. Electronic form is expressly recognised for the police officer's written order, supporting efficient communication while retaining the need for a lawful and intelligible direction.

5. PERSONAL ATTENDANCE IS NOT ALWAYS NECESSARY

Section 94(2) provides that a person required merely to produce a document or other thing is deemed to have complied if they cause the material to be produced instead of attending personally. This is an important practical safeguard. For example, if a business is directed to provide a specified ledger or a service provider is directed to produce a defined record, the person may be able to arrange delivery of the material without appearing in person, unless attendance is separately required for a lawful purpose.

6. ELECTRONIC EVIDENCE: AUTHENTICITY AND PRESERVATION

Obtaining a file or device is only one part of proving an electronic record. Investigators should preserve the original data where possible, document how it was obtained, maintain a reliable chain of custody and avoid unnecessary alteration. Metadata, timestamps, device identifiers and audit logs may be important to establish context and integrity. Copies and exports should be made using appropriate methods, and access to sensitive data should be restricted to authorised persons. The Bharatiya Sakshya Adhiniyam, 2023 governs the admissibility and proof of electronic and digital records, including applicable requirements for certificates and the manner of proof. Compliance with Section 94 does not, by itself, make every produced electronic record admissible or conclusive. Questions of authenticity, relevance, integrity and admissibility remain for the competent court under the applicable evidence law.

7. EXCEPTIONS AND LEGAL SAFEGUARDS

Section 94(3) preserves specified protections. It states that the section does not affect Sections 129 and 130 of the Bharatiya Sakshya Adhiniyam, 2023 or the Bankers' Books Evidence Act, 1891. It also excludes letters, postcards and other documents, parcels or things in the custody of the postal authority from the ordinary process under this section; separate statutory procedures may apply. Privileged communications, confidentiality obligations, privacy interests and constitutional protections must be considered in accordance with the applicable law. A production order should not be treated as a general licence to collect unrelated personal information. The scope of the demand, the identity of the person from whom production is sought, the stage of the proceeding and any claim of privilege may affect what can lawfully be required. Where an order appears overbroad or legally objectionable, the recipient should promptly obtain legal advice and use the remedies available under law rather than simply ignore it.

8. JUDICIAL PRINCIPLES

The Supreme Court in *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568, considered the scope of Section 91 of the former Code of Criminal Procedure. The Court explained that the test of whether a document is "necessary or desirable" must be assessed in light of the stage of the proceeding and the purpose for which production is sought. The decision remains useful when understanding the predecessor provision, although the BNSS is now the governing procedural statute for matters to which it applies. In *Shyamlal Mohanlal Choksi v. State of Gujarat*, AIR 1965 SC 1251, the Supreme Court considered the predecessor provision and the issue of compelling an accused person to produce documents. Any application of that authority must be made carefully in light of the precise circumstances, later jurisprudence, constitutional protections and the current statutory framework. These cases illustrate that the power to obtain material is significant but operates within legal limits.

9. PRACTICAL ILLUSTRATION

Suppose investigators are examining an alleged online investment fraud. The officer in charge may consider whether specified bank records, transaction confirmations, emails or messages are necessary for the investigation. A written order under Section 94 can identify the particular records and set a time and place for production. If a mobile device is sought, the request should be connected to likely digital evidence and handled in a manner that protects integrity and limits

unnecessary exposure of unrelated data. The resulting records must still be evaluated under the law of evidence before they can be relied upon in court.

10. CONCLUSION

Section 94 BNSS is an important bridge between criminal procedure and the digital world. By expressly covering electronic communication and communication devices likely to contain digital evidence, it helps courts and investigators obtain relevant material in a lawful and structured manner. Its effective use depends on clear requests, genuine relevance, proper preservation of digital records and respect for privilege, privacy and evidentiary rules. The provision should be understood as a targeted legal mechanism—not an unlimited power to demand every document or search all digital information. Balanced application promotes both effective investigation and the fairness of criminal proceedings.

REFERENCES

1. The Bharatiya Nagarik Suraksha Sanhita, 2023, Section 94 (official text, Bureau of Police Research and Development / Government of India).
2. The Bharatiya Sakshya Adhiniyam, 2023, Sections 129 and 130, and provisions relating to electronic and digital records.
3. State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568.
4. Shyamlal Mohanlal Choksi v. State of Gujarat, AIR 1965 SC 1251.
5. Bankers' Books Evidence Act, 1891.

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