

SEARCH WARRANTS AND SAFEGUARDS: GOVERNING THE SEARCH OF PREMISES UNDER THE BNSS AND ITS CORRESPONDING PROVISIONS UNDER THE CrPC

by

K. Deepanapriya

Government Law College, Salem

ABSTRACT

Search and seizure are indispensable tools of criminal investigation, enabling law enforcement authorities to locate evidence and prevent its concealment or destruction. However, searching private premises can intrude upon privacy, dignity, property, and personal liberty. This article examines search warrants and safeguards governing the search of premises in India, focusing on the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and its corresponding provisions under the Code of Criminal Procedure, 1973 (CrPC). It compares the statutory framework for issuing search warrants, searching places suspected to contain specified articles, entry into closed premises, independent witnesses, seizure inventories, and recording of searches. Particular attention is given to section 105 BNSS, which expressly requires audio-video recording of searches and seizures, and to the related police-search power under section 185 BNSS, corresponding broadly to section 165 CrPC. The article situates these procedures within Article 21 of the Constitution and Supreme Court jurisprudence on privacy and unlawful searches. It argues that the BNSS retains important procedural safeguards while adding a significant digital-recording requirement. Effective implementation requires accurate documentation, respect for the scope of authority, secure preservation of recordings, and meaningful judicial scrutiny.

Keywords: Search warrant; search of premises; BNSS; CrPC; section 105; Article 21; privacy; search and seizure.

1. INTRODUCTION

The power to search premises is an important instrument of criminal investigation. Documents, stolen property, weapons, electronic devices, and other relevant articles may be located inside a residence, office, or other place. Yet a search is also an exercise of coercive state power that may affect privacy, dignity, and the security of the home. The law must therefore balance the legitimate needs of investigation with safeguards against arbitrary or excessive intrusion.

The Bharatiya Nagarik Suraksha Sanhita, 2023, has superseded the Code of Criminal Procedure, 1973, and will take effect on July 1st, 2024. With a specific requirement for audio-video recording of search and seizure procedures, the BNSS essentially maintains the previous framework of search warrants and property searches. It is possible to determine continuity, changes, and areas that require careful implementation by comparing it to the CrPC.

2. OBJECTIVES AND METHODOLOGY

The goals are to explain the law governing search warrants under the BNSS, compare relevant provisions to the CrPC, investigate safeguards for occupants and witnesses, analyze constitutional principles and case law, and make practical recommendations. The article takes a doctrinal approach, analyzing legislation and reported judicial decisions. Special statutes may grant additional search powers or procedures, and they should be considered separately where appropriate.

3. COMPARATIVE TABLE: BNSS AND CrPC PROVISIONS

The principal corresponding provisions are set out below. Section numbering has changed in several places; section 105 BNSS is a significant new express requirement and has no direct, identical counterpart in the CrPC.¹

BNSS, 2023	Corresponding CrPC, 1973	Subject
s 96	s 93	When a search warrant may be issued
s 97	s 94	Search of a place suspected to contain stolen property, forged documents, etc.
s 98	s 95	Forfeiture of certain publications and search warrants

¹ Bharatiya Nagarik Suraksha Sanhita 2023, ss 96–105 and 185–186.

s 99	s 96	Application to High Court to set aside declaration of forfeiture
s 100	s 97	Search for persons wrongfully confined
s 101	s 98	Power to compel restoration of abducted females
s 102	s 99	Direction and related rules concerning search warrants
s 103	s 100	Persons in charge of closed place to allow search; witnesses and seizure list
s 104	s 101	Disposal of things found in search beyond jurisdiction
s 105	No direct equivalent	Audio-video recording of search and seizure
s 185	s 165	Police officer's power to search without warrant during investigation
s 186	s 166	When an officer in charge of a police station may require another to issue search

4. SEARCH WARRANTS UNDER THE BNSS

4.1 Section 96 BNSS and section 93 CrPC: Issuance of a warrant

Section 96 BNSS, which corresponds to Section 93 CrPC, empowers a court to issue a search warrant in certain circumstances. These include a reason to believe that a person will refuse to produce a document or thing in response to a summons or requisition, where the court is unaware that the item is in the possession of anyone, or where a general search or inspection is deemed necessary for an inquiry, trial, or other proceeding.

The court may designate a specific location or area to be searched. Where the warrant is so limited, the executing officer must stay within its scope.

The warrant is a judicial check on investigatory power. It should be issued for a legal purpose, and its execution must be limited to the warrant's object and scope. A warrant should not be interpreted as unrestricted authority to search unrelated areas or seize items without a legal basis.

4.2 Sections 97–102 BNSS and sections 94–99 CrPC

Sections 97 to 102 BNSS address particular search situations and the general direction of warrants. Their corresponding CrPC provisions are sections 94 to 99. They include searches of places suspected to contain stolen property or forged documents, warrants connected with specified forfeited publications, searches for persons wrongfully confined, and rules governing

the direction and execution of warrants. These provisions demonstrate that the statutory basis and purpose of the search must be identified before the power is exercised.²

5. SAFEGUARDS WHEN SEARCHING PREMISES: SECTION 103 BNSS AND SECTION 100 CrPC

Section 103 BNSS corresponds principally to section 100 CrPC and contains central safeguards for searches under the relevant chapter. Where a place liable to search is closed, the person residing in or in charge of it must, upon demand and production of the warrant, allow entry and provide reasonable facilities. If entry is refused, the officer may follow the lawful procedure for gaining entry, subject to the governing statutory limits.

Before conducting the search, the officer must call upon two or more independent and respectable inhabitants of the locality to attend and witness it, subject to statutory alternatives where such persons are unavailable or unwilling. The search is to be conducted in their presence. A list of things seized and the places where they were found must be prepared and signed by the witnesses. The occupant, or someone acting on the occupant's behalf, must be permitted to attend, and a copy of the list must be delivered to that person as prescribed by law.

The provision also protects dignity during personal searches: where a woman is to be searched, the search must be conducted by another woman with strict regard to decency. These requirements are not merely formalities. Independent witnesses, an inventory and the occupant's opportunity to attend create a record against which the conduct of the search can later be examined.

6. SECTION 105 BNSS: AUDIO-VIDEO RECORDING AND THE CrPC POSITION

Section 105 BNSS requires that the process of conducting a search of a location or taking possession of property, articles, or things under the relevant chapter or section 185, including the preparation of a list of seized items and the witnesses' signatures, be recorded using audio-video electronic means, preferably a mobile phone. The police officer must promptly forward the recording to the District Magistrate, Sub-Divisional Magistrate, or Judicial Magistrate of the First Class.

The CrPC did not contain an identical, general statutory requirement for audio-video recording of every such search. Section 100 CrPC provided procedural safeguards, including witnesses and a

² Bharatiya Nagarik Suraksha Sanhita 2023, ss97

list of seized items, while Section 165 CrPC governed certain searches by police during investigation. Section 105 BNSS therefore marks a significant procedural development: it creates a contemporaneous electronic record that may assist the court in reviewing how the search was conducted and what was seized.

The safeguard is effective only if the recording is complete, authentic, securely stored, and promptly transmitted. Operational protocols should address continuity of recording, equipment failure, preservation of original files, access logs, protection against alteration, and procedures for documenting any interruption. The recording should not be treated as a substitute for the other statutory requirements; witnesses, inventory, lawful authority, and compliance with the warrant remain important.

7. POLICE SEARCH WITHOUT A WARRANT: SECTION 185 BNSS AND SECTION 165 CrPC

Search warrants must be distinguished from a police officer's statutory power to search during an investigation without first obtaining a warrant. Section 185 BNSS broadly corresponds to Section 165 CrPC. Such a power is subject to statutory conditions, including the officer's grounds for believing that an item necessary for an investigation may be found in a place and that it cannot otherwise be obtained without undue delay. The officer must record the grounds and, so far as practicable, specify the thing sought; the prescribed records and reports must be made to the competent magistrate

The existence of a warrantless search power does not make it unlimited. The officer must establish compliance with the applicable conditions, and the search must be directed to the investigation rather than used as a general exploratory intrusion. Section 105 BNSS expressly includes searches under section 185 within its audio-video recording requirement, reinforcing transparency in this context.

8. CONSTITUTIONAL PROTECTION AND JUDICIAL DECISIONS

8.1 Article 21 and privacy

Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court has interpreted this guarantee to require fair, just, and reasonable procedure. A search of premises must have legal

authority and be carried out consistently with the applicable statutory procedure and constitutional protections.³

8.2 Justice K.S. Puttaswamy (Retd.) v Union of India

The Supreme Court acknowledged privacy as a fundamental right in Justice K.S. Puttaswamy (Retd.) v. Union of India. When evaluating intrusive investigative measures, the judgment's emphasis on legality, legitimate state purpose, and proportionality is pertinent. It encourages close consideration of the warrant's scope, the significance of the material seized, and the preservation of irrelevant private information when it comes to searches.⁴

8.3 District Registrar and Collector v Canara Bank

District Registrar and Collector, Hyderabad v. Canara Bank considered state access to private documents and the protection of privacy. The decision supports the principle that statutory authority affecting confidential records must be exercised within legal limits and assessed against constitutional protections.⁵

8.4 Pooran Mal v Director of Inspection (Investigation)

In Pooran Mal v Director of Inspection (Investigation), the Supreme Court considered the admissibility of evidence obtained through an illegal search. The decision is commonly cited for the proposition that relevant evidence is not automatically excluded merely because the search was illegal, in the absence of a specific exclusionary rule. This makes prevention, documentation, and judicial scrutiny especially important. The effect of any irregularity must be assessed under the applicable law and the facts of the particular case.⁶

8.5 Kharak Singh v State of Uttar Pradesh

Kharak Singh v State of Uttar Pradesh concerned police surveillance and domiciliary visits. Although later privacy jurisprudence developed the constitutional position further, the case forms part of the background to judicial scrutiny of intrusive state action affecting the home and private life.⁷

³ Constitution of India, art 21.

⁴ (2017) 10 SCC 1.

⁵ (2005) 1 SCC 496.

⁶ (1974) 1 SCC 345.

⁷ AIR 1963 SC 1295

9. KEY SAFEGUARDS AND IMPLEMENTATION CHALLENGES

- Check the execution officers' identities, the exact scope of the search, and the warrant or other legal authority.
- Limit the search to the locations, spaces, and items specified by the warrant and the applicable legislation.
- When necessary, call impartial witnesses and accurately document their presence and signatures.
- Make a clear inventory that details the seized items and their locations, then give the occupant or representative the necessary copy.
- While adhering to any legitimate operational restrictions, permit the occupant or representative to attend as directed.
- Under section 105 BNSS, record the search and seizure and immediately transmit it to the designated magistrate.
- Maintain the integrity and chain of custody for physical and digital evidence, including the audio-video recording itself.
- Protect unrelated private information and treat occupants with respect, avoiding unnecessary damage, humiliation, and disclosure.
- Create effective channels for complaining about excess, missing property, intimidation, or failure to comply with statutory safeguards.

Implementation difficulties may arise where witnesses are not genuinely independent, seizure lists are incomplete, recordings are interrupted, or digital files cannot be authenticated. Digital devices may contain large quantities of sensitive material unrelated to the alleged offense. These risks call for secure evidence-management protocols, officer training, and judicial scrutiny of both the authority for the search and the manner of its execution.

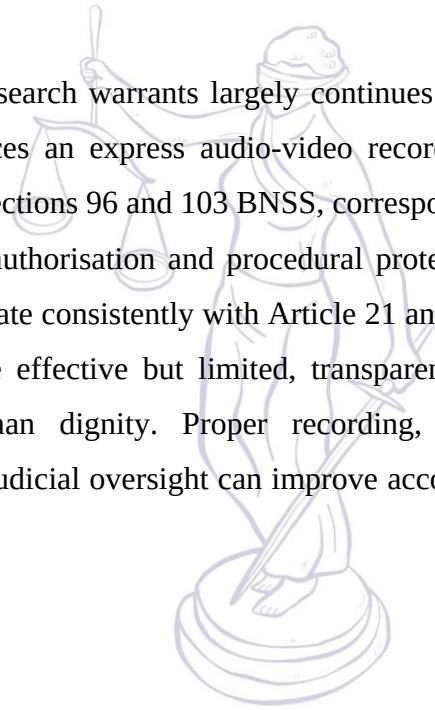
10. RECOMMENDATIONS

1. Issue clear standard operating procedures for warrant verification, search boundaries, seizure inventories, and audio-video recording.
2. Train investigating officers on sections 96, 103, 105, and 185 BNSS and their CrPC counterparts, with practical exercises on lawful searches.

3. Adopt secure recording systems with time stamps, access logs, integrity checks, and documented procedures for technical failure.
4. Develop proportionate protocols for digital searches to limit unnecessary exposure of unrelated personal and privileged material.
5. Ensure that seizure lists and copies are supplied as required and that complaints about procedural violations receive timely consideration.
6. Encourage courts to examine the legality, proportionality, and documentation of searches in accordance with the governing statute and binding precedent

11. CONCLUSION

The BNSS framework for search warrants largely continues the safeguards found in the CrPC, while section 105 introduces an express audio-video recording requirement for searches and seizures within its scope. Sections 96 and 103 BNSS, corresponding to sections 93 and 100 CrPC, remain central to judicial authorisation and procedural protection during searches of premises. These provisions must operate consistently with Article 21 and the constitutional right to privacy. A lawful search should be effective but limited, transparent but respectful, and investigative without disregarding human dignity. Proper recording, reliable inventories, independent witnesses and meaningful judicial oversight can improve accountability and public confidence in criminal justice.



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