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RECONCILING MANDATORY VIDEOGRAPHY UNDER SECTION 105 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 WITH THE ELECTRONIC EVIDENCE REGIME UNDER SECTION 63 OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023

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Abstract

India's twin criminal-law reforms of 2023 created a friction between two newly enacted codes. The Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") makes audio-video recording of every search and seizure compulsory, while the Bharatiya Sakshya Adhiniyam, 2023 ("BSA") simultaneously tightened the conditions for admitting electronic records, requiring a two-part certificate disclosing a cryptographic hash value and bearing an expert's signature. Neither statute expressly states whether the video that Section 105 BNSS compels investigators to create must itself clear the certification hurdle in Section 63 BSA before a trial court may rely on it. This paper undertakes a doctrinal reading of the two provisions, tests that reading against the Allahabad High Court's ruling in *Shadab v. State of U.P.* and the Supreme Court's clarification of Section 63(4) in *Pune Bar Association v. Union of India*, and situates the Bureau of Police Research and Development's 2024 Standard Operating Procedure as an administrative attempt to answer a question the legislature left open. Drawing a comparison with the self-authentication route available for machine-generated records under Rules 902(13)–(14) of the U.S. Federal Rules of Evidence, the paper argues that Indian law should recognise a differentiated, lighter compliance standard for law-enforcement-generated recordings, and recommends a specific administrative mechanism to achieve this.

Keywords: Bharatiya Sakshya Adhiniyam; Bharatiya Nagarik Suraksha Sanhita; Electronic Evidence; Chain of Custody; Search and Seizure; Criminal Procedure Reform.

I. Introduction

On 5 January 2026, the Allahabad High Court granted bail to an accused in a theft case after finding that the investigating police had not videographed the recovery of the allegedly stolen property, in apparent breach of Section 105 of the Bharatiya Nagarik Suraksha Sanhita, 2023.¹ Justice Arun Kumar Singh Deshwal went further than granting relief to the accused alone: he directed the Director General of Police, Uttar Pradesh, to frame a Standard Operating Procedure and to consider disciplinary consequences for officers who skip the recording, describing the requirement as compulsory rather than discretionary.² The order is one of the first serious judicial engagements with a provision that received comparatively little attention when Parliament replaced the Code of Criminal Procedure, 1973 with the BNSS: the mandate, absent from the earlier Code, that the entire process of a search and seizure be captured on audio-video electronic means and forwarded without delay to a Magistrate.³

The difficulty is that Parliament enacted this videography mandate as part of the same legislative package that replaced the Indian Evidence Act, 1872 with the Bharatiya Sakshya Adhiniyam, 2023 and the BSA simultaneously tightened, rather than relaxed, the conditions on which a video recording may be admitted into evidence. Section 63(4) of the BSA requires that a certificate accompany any electronic record tendered as evidence, comprising a “Part A” disclosure of the record’s hash value and a “Part B” declaration by a person with expertise in the relevant field.⁴ The Supreme Court upheld the constitutionality of this dual requirement only months after *Shadab* was decided, in *Pune Bar Association v. Union of India*, rejecting the argument that it was unduly burdensome on ordinary litigants.⁵

Read together, the two enactments pose a question that neither answers on its own: does a Section 105 recording made not by a litigant tendering evidence in support of a claim, but by a police officer executing an investigative duty, have to clear the same Part A/Part B certification hurdle designed for a party who wishes to rely on, say, a WhatsApp chat or a privately-obtained CCTV clip? If it does, an officer working in the field, often on a personal or department-issued mobile phone, must somehow also produce the technical particulars Section

¹*Shadab v. State of U.P.*, 2026 SCC OnLine All 5 (order dated Jan. 5, 2026).

²*Id.*

³Bharatiya Nagarik Suraksha Sanhita, 2023, § 105 (India).

⁴Bharatiya Sakshya Adhiniyam, 2023, § 63(4) & Schedule (India).

⁵*Pune Bar Association v. Union of India*, Writ Petition (Civil) No. 599 of 2026 (Supreme Court of India, order dated May 22, 2026).

63(4) demands at the very moment the recording is made, or risk the recording, and the recovery it documents, losing evidentiary value later. If it does not, on what statutory basis is the recording exempted?

This paper argues that the statutory text, read together with the explanations appended to Section 57 of the BSA and with the Supreme Court's own reasoning on when production of an "original" record obviates the need for certification, supports a narrower compliance obligation for Section 105 recordings than current police practice assumes but that neither the legislature nor the Supreme Court has said so in terms, leaving field officers and trial courts to work out an answer through improvised administrative practice.

II. Literature Review

Existing legal writing relevant to this question has developed along two largely separate tracks, which this paper draws together.

The first track addresses Section 63 of the BSA on its own terms, as successor to Section 65B of the former Evidence Act. In *Anvar P.V. v. P.K. Basheer*, the Court held that a certificate was a mandatory precondition to the admissibility of an electronic record tendered as secondary evidence, overturning an earlier, more permissive line of authority.⁶ A Constitution Bench in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* reaffirmed the mandatory character of the certificate, while carving out an important qualification: where the original document or device itself is produced before the court, a party need not additionally furnish a certificate, because the certificate exists only to authenticate a copy standing in for an original that cannot practically be produced.⁷ *Shafhi Mohammad v. State of Himachal Pradesh* had earlier suggested that the certificate requirement could be relaxed in the interest of justice for a party not in possession of the device in question, a relaxation the Constitution Bench in *Arjun Panditrao* later confined strictly to that narrow factual situation.⁸ None of this line of authority considers a recording made by the police in the course of investigation, as distinct from a document a private litigant tenders in support of a civil or criminal claim; the entire doctrinal apparatus was built around party-tendered evidence.

The Supreme Court revisited the certificate regime under the new Adhiniyam directly in *Pune*

⁶*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 (India).

⁷*Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1 (India).

⁸*Shafhi Mohammad v. State of Himachal Pradesh*, (2018) 2 SCC 801 (India).

Bar Association v. Union of India, upholding Section 63(4) against a challenge grounded in Article 14 of the Constitution, and clarifying that the “expert” competent to sign Part B of the Schedule need not be an Examiner of Electronic Evidence notified under Section 79A of the Information Technology Act, 2000, a wider reading than a Madras High Court decision had adopted.⁹ Commentary from J. Sagar Associates on the ruling frames it chiefly as a victory for evidentiary integrity in an era of artificial-intelligence manipulation, noting the Court’s own observation that challenges to the probative value of electronic records are further accentuated with the advent of deepfake technology.¹⁰ What this commentary does not examine - because the petition itself did not raise it - is whether the same Part A/Part B architecture, designed with a litigant tendering a private chat or email in mind, was ever intended to govern a recording that the police themselves are statutorily compelled to create.

The second track addresses Section 105 of the BNSS as a procedural safeguard against false recoveries, largely independent of the electronic-evidence question. The Allahabad High Court’s decision in *Shadab* is the leading judicial statement, and contemporaneous case commentary summarises its central holding succinctly: that a failure to videograph a recovery weakens the prosecution’s case and attracts disciplinary consequences for the investigating officer.¹¹ This literature treats the video chiefly as a safeguard against manufactured evidence and a check on police conduct rather than as itself a piece of electronic evidence that must independently satisfy Chapter V of the BSA before a court may act upon it.

The Bureau of Police Research and Development’s 2024 Standard Operating Procedure for audio-video recording under the BNSS bridges the two tracks in practice, if not in doctrine. It instructs officers to calculate the hash value of a recording, transfer the sealed recording device to an expert, and obtain the very Part A/Part B certification Section 63(4) contemplates, treating dual certification as best practice for chain-of-custody purposes.¹² The document is candid that this is a suggested best practice rather than a reading compelled by the statute itself.

⁹Pune Bar Association v. Union of India, *supra* note 5; see also *R. v. B & Anr.*, 2024 SCC OnLine Mad 6084 (discussed in the Supreme Court’s order).

¹⁰JSA Prism, *Dispute Resolution: Supreme Court Upholds Constitutional Validity of Section 63(4) of the Bharatiya Sakshya Adhiniyam*, 2023, J. Sagar Assocs. (June 2026).

¹¹SCC OnLine Blog, *All HC: Failure to Videograph Recovery Weakens Prosecution Case; Directs UP DGP to Issue SOP [Section 105, BNSS]* (Jan. 9, 2026).

¹²Bureau of Police Rsch. & Dev., Ministry of Home Affairs, *Standard Operating Procedure for Audio-Video Recording under the BNSS* (2024).

Taken together, this literature leaves a specific gap: no judicial ruling or firm-level commentary has tested whether Section 57's treatment of simultaneously-stored video as primary evidence, or the Arjun Panditrao "original document" qualification, changes the compliance burden a Section 105 recording actually carries. This paper addresses that gap directly.

III. Methodology

This paper adopts a doctrinal methodology, supplemented by a limited comparative analysis. The doctrinal component proceeds through a close textual reading of Sections 56, 57, 61, 62 and 63 of the BSA, read together with Section 105 of the BNSS, and tested against the Supreme Court's reasoning in *Anvar P.V.*, *Arjun Panditrao Khotkar*, and *Pune Bar Association*, and against the Allahabad High Court's application of Section 105 in *Shadab*. This approach is appropriate because the central question the paper poses is whether a Section 105 recording independently attracts Section 63(4) certification, which is a question of statutory interpretation that existing case law has approached only obliquely, through litigation that did not squarely present the point. A close reading of the definitions in Section 2(1)(d), the primary/secondary evidence architecture in Sections 56 to 59, and the explanations appended to Section 57 is therefore necessary to test whether the certification obligation Section 63(4) imposes on "computer output" was ever meant to capture a recording that is, on the statute's own terms, capable of qualifying as primary rather than secondary evidence.

The comparative component draws a limited contrast with Rules 901 and 902 of the U.S. Federal Rules of Evidence, which since 2017 have permitted certain machine-generated and forensically-acquired electronic records to be authenticated through a single certification from a qualified person, without the two-tier hash-and-expert architecture the BSA Schedule prescribes.¹³ This comparison is used narrowly, to test whether the Indian regime's compliance burden is calibrated for the kind of party-versus-party evidentiary dispute that generated it, or whether a lighter-touch certification model, already accepted elsewhere for government and machine-generated records, could serve the same evidentiary-integrity goals for law-enforcement-generated recordings specifically.

¹³Fed. R. Evid. 902(13)–(14).

IV. Analysis

A. Is a Section 105 Recording an “Electronic Record” at All?

There is no doubt that a Section 105 recording falls within the BSA’s capacious definition of a document, which expressly includes electronic and digital records and specifically instances material stored on digital devices among its illustrations.¹⁴ The recording is therefore evidence within the meaning of Section 2(1)(e)(ii) of the BSA, and its contents may be proved only in accordance with Section 62, which channels proof of the contents of electronic records to Section 63.¹⁵ On a plain reading, this would appear to settle the question in favour of mandatory certification: any electronic record’s content must be proved through Section 63, and a Section 105 recording is unquestionably an electronic record.

B. ...But Is It Primary or Secondary Evidence?

The analysis cannot stop there, because Section 63 does not operate in a vacuum; it sits within Chapter V of the BSA, which begins by dividing documentary evidence into primary and secondary evidence and directs that documents shall be proved by primary evidence except in the cases specifically identified thereafter.¹⁶ Section 63(1) is itself explicit that its certification mechanism exists to allow a “computer output” to be treated as evidence without further proof or production of the original, language that only makes sense if the certificate is doing the work of substituting for an original record that is not, or cannot practically be, produced.¹⁷ This textual structure matters because Section 57, in the sixth of the seven Explanations added specifically to address electronic records, provides that where a video recording is simultaneously stored in electronic form and transmitted, broadcast, or transferred to another location, each of the stored recordings is itself primary evidence.¹⁸

A Section 105 recording made on a device that simultaneously uploads to the National Informatics Centre’s e-Sakshya application - the Government’s own designated e-evidence repository for such recordings - arguably falls precisely within this Explanation.¹⁹ If so, both the copy retained on the recording device and the copy uploaded to the e-Sakshya server are, on the statute’s own terms, primary evidence, and not secondary “computer output” requiring the Section 63(4) substitute at all.

¹⁴Bharatiya Sakshya Adhiniyam, 2023, § 2(1)(d) (India).

¹⁵Bharatiya Sakshya Adhiniyam, 2023, §§ 2(1)(e), 62 (India).

¹⁶Bharatiya Sakshya Adhiniyam, 2023, §§ 56, 59 (India).

¹⁷Bharatiya Sakshya Adhiniyam, 2023, § 63(1) (India).

¹⁸Bharatiya Sakshya Adhiniyam, 2023, § 57, Explanation 6 (India).

¹⁹Bureau of Police Rsch. & Dev., *supra* note 12 (describing the National Informatics Centre’s e-Sakshya application as the designated repository for recordings made under Section 105).

C. The Arjun Panditrao “Original Device” Qualification

This reading finds indirect support in the Constitution Bench’s reasoning in Arjun Panditrao Khotkar. Although that case concerned Section 65B of the former Evidence Act, its logic on when certification becomes unnecessary survives the transition to Section 63 largely intact, since Section 63 mirrors the structure of Section 65B closely. The Court confirmed that a certificate is required only when a party seeks to prove an electronic record without producing the underlying device because it is that substitution, not the electronic character of the evidence as such, that the certification requirement was designed to police.²⁰ Where the original device is itself produced and exhibited, this reasoning implies that the safeguard has already been achieved through direct production, and the certificate becomes unnecessary.

Applying that logic to Section 105: if the investigating officer produces the recording device itself before the trial court, it is increasingly plausible given that Section 105 also directs that the recording be forwarded without delay to a Magistrate, creating an independent, judicially-supervised copy close in time to the search itself²¹. The resulting evidentiary position looks closer to the “original produced” scenario Arjun Panditrao exempted from certification than to the “copy tendered without the original” scenario the certificate exists to police.

D. What Pune Bar Association Left Unaddressed

It would be a mistake to read too much into this, because *Pune Bar Association v. Union of India* - the one occasion on which the Supreme Court has considered Section 63(4) directly - did not engage with either Section 57’s primary-evidence explanations or the Arjun Panditrao “original device” qualification at all. The petition before the Court was framed narrowly, challenging the constitutional validity of the Part A/Part B architecture as excessively burdensome for an ordinary litigant, and the Court’s answer addressed only that framing: it held that the dual-certificate requirement bears a clear and rational nexus with the object of the law and is not manifestly arbitrary, while separately clarifying that Part B need not be signed by a Section 79A-notified Examiner specifically.²² Both the petition and the Court’s disposal of it proceeded on the unstated assumption that Section 63(4) governs the electronic record in question, an assumption uncontroversial for the kind of party-tendered evidence typically at issue in ordinary civil or commercial litigation, but one the Court had no occasion to test against a law-enforcement-generated recording invoking Section 57’s Explanation 6. The question this

²⁰Arjun Panditrao Khotkar, supra note 7, ¶ 24.

²¹Bharatiya Nagarik Suraksha Sanhita, 2023, supra note 3.

²²Pune Bar Association v. Union of India, supra note 5.

paper raises therefore remains one the Court has, in substance, left open.²³

E. The Practical Reality: Shadab and the BPRD's Administrative Workaround

Whatever the doctrinal answer, *Shadab v. State of U.P.* shows what happens when the question is left unresolved: the absence of a Section 105 recording was treated as fatal to the credibility of a recovery, without any inquiry into whether, had a recording existed, it would additionally have required Section 63(4) certification before the court could rely on it.²⁴ The Bureau of Police Research and Development's Standard Operating Procedure fills this doctrinal silence with an administrative answer that assumes the more burdensome reading: it instructs officers to treat every Section 105 recording as requiring full Part A/Part B certification, directing that the recording device be sealed and handed to an expert to calculate the hash value before any court will accept it.²⁵ This is a defensible precaution from a chain-of-custody standpoint, and this paper does not suggest that field officers should be advised to dispense with certification on the strength of an argument no court has yet endorsed. But it is worth being candid about what has happened: an executive body, not Parliament or the Supreme Court, has resolved a genuine interpretive question by adopting the reading most protective of prosecutions, without any of the actors involved squarely confronting the textual argument traced through Sections 57, 61, 62 and 63 above.

F. A Comparative Light-Touch Model: Rules 902(13)–(14) of the Federal Rules of Evidence

The difficulty Indian law has created for itself is not inevitable; other systems calibrate authentication burdens to the source of the evidence rather than applying one uniform standard to every electronic record. Since 2017, Rules 902(13) and 902(14) of the U.S. Federal Rules of Evidence have permitted records generated by an electronic process or system that produces an accurate result, and data copied from an electronic device, to be self-authenticated through a single written certification from a qualified person, eliminating the need for live witness testimony altogether.²⁶ Critically, this is a single-certification model: the same person who can speak to the reliability of the acquisition process may complete the entire certification, rather than requiring one certificate from the person in charge of the device and a second, independent

²³*Pune Bar Association v. Union of India*, supra note 5 (leaving “the question of law open” on a related point concerning the interaction between Section 39 and Section 79A of the Information Technology Act, 2000).

²⁴*Shadab*, supra note 1.

²⁵Bureau of Police Rsch. & Dev., supra note 12.

²⁶Fed. R. Evid. 902(13)–(14), supra note 13.

certificate from an unconnected expert, as the BSA's Schedule requires.²⁷

The Federal Rules model was designed with exactly the kind of evidence a Section 105 recording represents in mind: material generated by a system operating in the ordinary course of an institutional function, where the chief evidentiary risk is not fabrication by a private party seeking litigation advantage, but simple technical unreliability. Adapting a similarly single-tier certification, completed by the recording officer or the department's own designated technical officer rather than an external Part B expert, for recordings promptly forwarded to a Magistrate under Section 105, would preserve the hash-value safeguard Pune Bar Association endorsed as rationally connected to evidentiary integrity, while removing the specific burden the Pune Bar Association petitioners identified: the practical difficulty of locating and engaging an independent expert, a difficulty considerably more acute for a police station in a small district than for a litigant in a metropolitan commercial dispute.

Read together, Sections 57, 61, 62 and 63 of the BSA support a textually available argument that a simultaneously-stored, promptly-forwarded Section 105 recording qualifies as primary evidence provable under Section 59 without a certificate; the Supreme Court's own reasoning in *Arjun Panditrao* points the same way; and comparative practice under the Federal Rules of Evidence shows that a lighter-touch certification model is workable even where evidentiary-integrity concerns are taken seriously. Yet no Indian court, and no piece of central legislation or executive guidance, has said so in terms. Until one does, field officers will continue to follow the Bureau of Police Research and Development's more burdensome default, and the access-to-justice difficulty the Pune Bar Association unsuccessfully raised will persist, this time for evidence the police, rather than the litigant, were required to create.

V. Discussion

The tension this paper has traced is not merely academic. Section 105 was enacted, on the Allahabad High Court's own characterisation, specifically to prevent false recoveries by investigating officers and to ensure fair investigation.²⁸ If police stations, faced with the Bureau of Police Research and Development's administratively demanding certification default, calculate that full compliance is impractical in ordinary theft or narcotics cases, as opposed to high-profile prosecutions where resources for expert certification are more readily mobilised, the safeguard risks becoming a formality observed unevenly across the criminal justice system

²⁷Bharatiya Sakshya Adhiniyam, 2023, § 63(4) & Schedule, *supra* note 4.

²⁸Shadab, *supra* note 1 (Allahabad High Court's characterisation of the legislative purpose of Section 105, BNSS).

protecting the well-resourced accused in a metropolitan trial more reliably than the ordinarily-situated accused before a district court.

There is a genuine policy tension here, one that deserves to be weighed rather than dismissed. The Supreme Court's justification for the dual-certificate regime in *Pune Bar Association* rested substantially on the risks that artificial intelligence and deepfake technology pose to the intrinsic evidentiary value of electronic records, as a reason to demand stronger, not weaker, guarantees of digital integrity.²⁹ Diluting the certification standard specifically for police-generated recordings could be criticised as creating exactly the kind of laxity around law-enforcement evidence that Section 105 was itself designed to guard against, given that the principal fear motivating mandatory videography was manufactured or falsified police recoveries, not third-party tampering by an outsider.

This paper's response is that the two concerns point toward different solutions rather than a single binary choice. The risk Section 105 was built to address is an officer fabricating a recovery which is best controlled by prompt, independent forwarding of the recording to a Magistrate, which the provision already requires and which supplies exactly the kind of contemporaneous, judicially-supervised custody that reduces the opportunity for post-hoc manipulation. The risk Section 63(4)'s certificate was built to address is an unreliable or tampered copy being passed off as an accurate record which is best controlled by a hash-value safeguard, which this paper's proposal preserves; what it would remove is only the additional requirement of an independent external expert's Part B signature, replacing it with certification by the department's own designated technical officer. This narrower reform targets the specific access-and-resource burden the *Pune Bar Association* petitioners raised, and lost on, without reopening the artificial-intelligence-era integrity concerns the Court was actually addressing in that case.

The most realistic route to this outcome is not further litigation modelled on *Pune Bar Association*, since the Supreme Court has now foreclosed a constitutional challenge to Section 63(4) in its current form. It lies instead in a Ministry of Home Affairs notification, exercising rule-making and interpretive powers under the twin 2023 codes, recognising departmentally-certified Section 105 recordings forwarded to a Magistrate within the statutory timeframe as

²⁹*Pune Bar Association v. Union of India*, supra note 5.

satisfying Section 63(4) without requiring an external Part B signatory.³⁰ A legislative amendment to the Schedule appended to Section 63(4) offers a more durable, if slower, alternative route to the same outcome.

VI. Conclusion

This paper set out to examine whether a video recording that Section 105 of the BNSS compels police officers to create must independently satisfy the Part A/Part B certification regime that Section 63(4) of the BSA imposes on electronic records generally. The doctrinal analysis in Part IV shows that this is a live, unresolved textual question rather than a settled one: Section 57's sixth Explanation, treating simultaneously-stored video recordings as primary evidence, together with the Supreme Court's qualification in *Arjun Panditrao Khotkar* that certification becomes unnecessary once an original device is produced, supports reading Section 105 recordings as subject to a lighter compliance burden than the Bureau of Police Research and Development's Standard Operating Procedure currently assumes. Neither the Allahabad High Court in *Shadab*, nor the Supreme Court in *Pune Bar Association v. Union of India*, has confronted this argument directly, because neither case presented it squarely on the facts before it.

This paper's principal contribution is to show that this gap has been filled, in practice, by executive administrative guidance rather than by considered legislative or judicial decision and that the guidance chosen happens to be the more burdensome of the textually available readings. This matters because Section 105 was designed as a safeguard against false recoveries and therefore protects accused persons in ordinary criminal cases, the great majority of which will not have ready access to the forensic resources that full Part A/Part B compliance assumes. This paper's recommendation is a differentiated, single-tier certification standard for Section 105 recordings specifically, completed by a department's own trained technical officer and dispensing with the external Part B expert Section 63(4) currently requires for these recordings alone, modelled on the self-authentication route already accepted for machine-generated government records under Rules 902(13)–(14) of the Federal Rules of Evidence. This reform preserves the hash-value integrity safeguard the Supreme Court found rationally connected to the object of the BSA in *Pune Bar Association*, while removing only the resource burden that provision's petitioners unsuccessfully challenged. Whether achieved through a Ministry

³⁰Bharatiya Nagarik Suraksha Sanhita, 2023, § 5 and Bharatiya Sakshya Adhiniyam, 2023, § 2(2) (India) (rule-making and interpretive powers under the twin 2023 codes).

notification or a future legislative amendment, the underlying point stands: a reform intended to protect the ordinarily-situated accused against false recoveries should not, through an unexamined interaction with a separate certification regime, end up depending on forensic resources that ordinarily-situated police stations do not reliably possess.

