

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

THE USE OF EXPERT REPORTS AND AFFIDAVITS IN CRIMINAL PROCEEDINGS UNDER THE BNSS, 2023

AUTHORED BY - D.BALAJI

Government Law College, Salem.

The Tamilnadu DR.Ambedkar Law university, Chennai.

ABSTRACT

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), replacing the Code of Criminal Procedure, 1973 (CrPC), marks a structural shift toward institutionalized forensic integration, digitized evidence, and expedited criminal trials in India. Central to this transition is the streamlined reception of opinion and formal proof: the admissibility of government scientific expert reports without the mandatory attendance of the author, the mandatory collection of forensic materials at crime scenes, and the expanded reliance on affidavit evidence.

This paper examines the statutory framework governing expert reports (Section 329 and Section 336 of BNSS) and evidence by affidavit (Sections 332, 333, and 335 of BNSS). It explores the interplay between BNSS and the BSA 2023, critically analyzes constitutional fair-trial safeguards under Article 21, scrutinizes exceptions to the oral testimony requirement, and evaluates the delicate balance between procedural expedition and the accused's inviolable right to cross-examination.

Interrogating established Supreme Court jurisprudence alongside the new provisions of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the article examines chain of custody, the advisory nature of expert conclusions, and the non-derogable right of cross-examination under Section 333(2) and Section 336(2). It concludes with structural recommendations to safeguard adversarial integrity in modern, forensics-driven criminal adjudications.

Keywords: Bharatiya Nagarik Suraksha Sanhita (BNSS), Bharatiya Sakshya Adhiniyam (BSA), Expert Reports, Affidavits, Section 336 BNSS, Cross-Examination, Forensic Investigation, Criminal Jurisprudence.

1. Introduction

The administration of criminal justice relies heavily on scientific deduction to bridge the gap between factual occurrence and judicial certainty. As traditional eyewitness testimony faces challenges of vulnerability, hostility, and cognitive degradation, contemporary criminal trials depend extensively on forensic biology, ballistic examination, chemical analysis, electronic forensics, and post-mortem inquiries.

Under the old procedural regime of the Code of Criminal Procedure, 1973 (CrPC), the personal examination of expert witnesses frequently created systemic delays, as forensic scientists and medical officers spent substantial trial hours awaiting cross-examination over formal or undisputed scientific findings.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) addresses these trial bottlenecks through procedural innovations:

1. It mandates crime scene forensic examination for serious offenses (Section 176(3)).
2. It expands and refines the statutory dispensation of expert personal attendance (Section 336, corresponding to old Section 293 CrPC).
3. It regulates the receipt of formal evidence through affidavits (Sections 332, 333, and 335, corresponding to old Sections 295, 296, and 297 CrPC).

While these provisions expedite trial dockets, they trigger substantive jurisprudential inquiries: To what extent does statutory reliance on written reports and affidavits displace oral cross-examination? How does the BNSS safeguard the constitutional guarantee of an adversarial fair trial under Article 21 of the Constitution of India?

2. Expert Evidence under BNSS and BSA

2.1 The Interplay between Substantive Relevance and Procedural Admission

The admissibility of expert reports operates at the intersection of the law of evidence and criminal procedure: Section 39 of the Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Section 45 of the Indian Evidence Act, 1872) establishes that opinions of persons specially skilled in foreign law, science, art, handwriting, finger impressions, or electronic evidence are relevant facts.

The general rule of procedural law requires oral evidence to be tested before the court under Section 310/311 of BNSS in the presence of the accused. However, **Section 336 BNSS** carves out a statutory exception, enabling specific government scientific experts' reports to be tendered as substantive documentary evidence without calling the expert to the witness stand.

2.2 Mandatory Forensic Investigation (Section 176(3) BNSS)

A major innovation of the BNSS is Section 176(3), which mandates that in offenses punishable with imprisonment of seven years or more, the investigating officer **must** cause a forensic expert to visit the crime scene, inspect physical traces, and collect evidence.

- The field visit and collection process must be videographed/digitally recorded.
- The resulting initial forensic report forms an integral part of the police report under Section 193 BNSS (old Section 173 CrPC).
- This institutional requirement elevates scientific inspection from an investigatory discretion to a statutory obligation, increasing the direct reliance on forensic reports at trial.

3. Section 336 BNSS: Reports of Government Scientific Experts

3.1 Scope and Categories of Experts

Section 336 of the BNSS largely corresponds to Section 293 of the CrPC, providing that any document purporting to be a report under the hand of specified Government scientific experts may be used as evidence in any inquiry, trial, or other proceeding under the Sanhita.

The statutory presumption applies strictly to the enumerated classes of experts:

- Chemical Examiner or Assistant Chemical Examiner to the Government;
- Chief Controller of Explosives;
- Director of the Finger Print Bureau;
- Director, Deputy Director, or Assistant Director of a Central or State Forensic Science Laboratory;
- Government Serologist; Any other government scientific expert specifically notified by the Central or State Government.

3.2 Evidentiary Presumption and Limits

Under Section 336(1), the report is admissible upon its mere production, provided it is signed by the authorized expert.

The court is entitled to presume the genuineness of the signature and the official designation under Section 82 of the BSA (old Section 79 IEA). While the report is admissible without formal proof of authorship, the expert's *opinion itself* is advisory. As established in *State of H.P. v. Jai Lal* ⁽¹⁾ and reaffirmed under the new penal codes, an expert is not a witness of fact; their finding must be supported by verifiable scientific data, methodology, and rational reasoning.

3.3 The Power and Duty to Summon (Section 336(2) and (3))

The statutory dispensation of personal attendance is not absolute:

1. **Court Discretion (Section 336(2)):** The court may, if it deems fit, summon and examine any such expert regarding the subject matter of the report.
2. **Accused's Right to Rebuttal:** Where the defense challenges the protocol, chain of custody, contamination risk, or calibration of equipment, denying an application to cross-examine the expert infringes upon the right to a fair trial.
3. **Deputation of Subordinates (Section 336(3)):** If an expert is summoned but unable to attend due to valid official duties, they may depute an officer who is conversant with the facts, testing protocols, and laboratory records to depose in court. This provision balances systemic resource constraints against the need for cross-examination on scientific methods.

4. Affidavits in Criminal Proceedings (Sections 332, 333, and 335 BNSS)

While criminal jurisprudence generally favors viva voce examination in open court, the BNSS retains and refines targeted exceptions where evidence may be received through sworn affidavits.

- Section 332: Affidavit in proof of conduct of public servants (official duty).
- Section 333: Evidence of formal character tendered by affidavit.
- Section 335: Authorities before whom criminal affidavits may be sworn.

4.1 Evidence of Formal Character (Section 333 BNSS)

Section 333 permits evidence of a purely "formal character" to be given by affidavit, subject to just exceptions:

In *State of Punjab v. Naib Din*⁽²⁾, the Supreme Court clarified that formal evidence covers ministerial acts—such as a police carrier delivering sealed parcels to the Forensic Science Laboratory, or an officer maintaining Malkhana registers—where no substantive disputed factual deduction is required.

Under Section 333(2), if the prosecution or the accused requests the attendance of the deponent for cross-examination, or if the court considers it necessary in the interest of justice, the court **must** summon the person. The right of cross-examination cannot be circumscribed if demanded.

4.2 Proof of Conduct of Public Servants (Section 332 BNSS)

When an application is made to a court concerning the conduct of a public servant, allegations or defenses can be placed on record via affidavit. The court maintains the discretion to order oral examination or issue interrogatories if disputed questions of fact arise.

4.3 The Accused's Right to Summon and Cross-Examine (Sec 336(2) and (3))

Under Section 336(2), the Court may, if it thinks fit, summon and examine the expert. Under Section 336(3), if the expert is summoned but unable to attend due to valid official duties, a conversant subordinate officer may be deputed to testify.

In *Dharmendra v. State of M.P.*⁽³⁾, the High Court observed that when the defense challenges the protocol, testing mechanism, or sample integrity, denying an application to cross-examine the scientific expert prejudices the accused and violates fair-trial guarantees.

In *Ramesh Chandra v. State of U.P.*⁽⁴⁾ the Supreme Court observed that if the defense does not object to the tendering of the report and makes no application to summon the expert under sub-section (2), the report holds full evidentiary value without further proof.

5. Comparative Evaluation: CrPC (1973) vs. BNSS (2023)

Analytical Parameter	Crpc, 1973	BNSS, 2023	Practical / Jurisprudential Impact
Forensic Scene Attendance	Discretionary; regulated by state police manuals / ad hoc orders.	Mandatory under Section 176(3) for offenses punishable with ≥ 7 years.	Institutionalizes scientific collection; mandates digital recording of evidence recovery.
Government Scientific Reports	Governed under Section 293 CrPC.	Governed under Section 336 BNSS.	Preserves admissibility while integrating with digital forensic guidelines under BSA.
Mode of Examination	Primarily in-person oral examination	Expanded audio-video electronic means	Permits virtual expert examination, minimizing

	(Section 275/276 CrPC).	(Sections 310, 311, 336, 346 BNSS).	institutional delays and trial pendency.
Digital Evidence Certification	Section 65B of Evidence Act (rigid conditions).	Sec 61–63 BSA read with BNSS search/seizure powers (Section 94).	Recognizes cyber forensics, cloud records, and electronic reports directly.

6. Judicial Scrutiny and Constitutional Fair-Trial Guarantees

6.1 The Adversarial Imperative vs. Documentary Expediency

Article 21 of the Constitution requires procedure established by law to be "just, fair, and reasonable" (*Maneka Gandhi v. Union of India*)⁽⁵⁾. A core facet of criminal fairness is the right to test adverse material:

- **The "Hearsay"** An expert report tendered solely on paper without an accompanying deposition resembles documentary hearsay unless validated by direct corroboration or statutory exception.

In modern forensic investigations—such as DNA profiling, STR analysis, toxicology, and electronic memory dumps—errors regularly occur due to contamination, broken chain of custody, software glitches, or analytical bias. An absolute bar on examining the expert would render Section 336 vulnerable to constitutional challenge.

6.2 Precedential Standards Applicable to BNSS

The Supreme Court of India's jurisprudence on Section 293 CrPC continues to inform the application of Section 336 BNSS: In *Murari Lal v. State of M.P.*⁽⁶⁾, the court observed that expert evidence must be approached with caution. An expert report does not acquire conclusive evidentiary sanctity merely because it is prepared by a notified laboratory. The defense raises a substantiated plea regarding contaminated samples or inconsistent conclusions, the trial court must liberally exercise its discretion under Section 336(2) to summon the expert (*Kewal Krishan v. State of Punjab*)⁽⁷⁾.

The affidavit of formal witnesses (under Section 333) must conclusively establish an unbroken chain of custody. If the Malkhana register or transit affidavit contains discrepancies, the failure to produce the custodian for cross-examination can undermine the prosecution's forensic narrative.

7. Infrastructural Deficits in Forensic Laboratories:

While Section 176(3) mandates forensic investigation across thousands of criminal jurisdictions, India's Central and State Forensic Science Laboratories face backlogs, staff shortages, and equipment deficits. Without sufficient certified experts, mandatory scene visits risk procedural non-compliance or perfunctory examinations.

Standardization of Scientific Reports:

Many forensic and post-mortem reports remain illegible or omit the testing parameters, margins of error, and specific software versions used. Standardized, machine-readable reporting formats must accompany the BNSS rollout.

Balancing Virtual Testimonies with Confrontation Rights:

While BNSS facilitates audio-video examination of experts under Section 336/346, trial courts must ensure that remote testimony preserves the defense's ability to confront the witness with physical exhibits, laboratory ledgers, and source materials without technical degradation.

8. Conclusion

The BNSS, 2023 modernizes criminal procedure by positioning scientific investigation at the center of serious criminal trials. The use of expert reports under Section 336 and affidavits under Section 333 reflects a pragmatic compromise: reducing procedural delays without dismantling the adversarial truth-finding framework. To preserve constitutional balance, trial courts must apply two operational principles: **1.** Section 336 BNSS must be treated as a rule of procedural convenience, not an evidentiary shield against judicial testing. Whenever substantive scientific conclusions are contested on technical grounds, the court should routinely grant leave to summon the expert. **2.** procedural expedition under Sections 332 and 333 must remain confined strictly to non-contentious, formal links in the evidentiary chain.

9. References:

1. *State of H.P. v. Jai Lal*, (1999) 7 SCC 280: 1999 SCC (Cri) 1184: AIR 1999 SC 3318.
2. *State of Punjab v. Naib Din*, (2001) 8 SCC 578: 2002 SCC (Cri) 33.
3. *Dharmendra v. State of Madhya Pradesh*, 2023 SCC OnLine MP 1245.
4. *Ramesh Chandra v. State of U.P.*, (2008) 2 SCC 409: (2008) 1 SCC (Cri) 438.
5. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248: AIR 1978 SC 597.
6. *Murari Lal v. State of Madhya Pradesh*, (1980) 1 SCC 704: 1980 SCC (Cri) 330: AIR 1980 SC 531.

7. ***Kewal Krishan v. State of Punjab***, 2004 Cri LJ 4180 (P&H).

STATUTES:

1. **Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023): sections cited:**
Section 94 ,176(3),193,310,311,327,329,332,333,335,336,346
2. **Bharatiya Sakshya Adhiniyam, 2023 (Act No. 47 of 2023): Sections cited**
39,45,61,62,63,82
3. **Constitution of India, 1950:**
Article 20(3), Article 21
4. **Code of Criminal Procedure, 1973 (Act No. 2 of 1974) [Repealed]:**
Sections 173, 275, 276, 293, 294, 295, 296, 297.
5. **Indian Evidence Act, 1872 (Act No. 1 of 1872) [Repealed]:**
Sections 45, 51, 65B, 79.

