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THE DIGITAL GAZE: A SOCIO-LEGAL CRITIQUE OF DE-LOCALIZED CRIMINAL TRIALS UNDER SECTION 530 OF THE BNSS, 2023

- Rudransh Sharma¹ & Ayushi Vashisht²

Abstract

The statutory introduction of Section 530 in the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023, marks a definitive departure from the traditional *lex loci* of the Indian criminal trial, institutionalizing a "de-localized" adjudicatory framework. While the legislative intent emphasizes efficiency and the reduction of judicial pendency, the mandate for electronic proceedings at all stages of trial invites a profound constitutional inquiry. This paper critiques the friction between technological convenience and the "right to physical confrontation" inherent in Article 21. By examining the transition from the legacy framework of Section 273 CrPC to the digital-default approach of Section 530 BNSS, the research argues that "electronic presence" is not a perfect substitute for physical proximity. The analysis highlights three critical vulnerabilities: the erosion of the "Demeanor Rule" under the *Bharatiya Sakshya Adhiniyam* (BSA), the heightened risk of witness coaching in unmonitored virtual environments, and the widening "Digital Divide" that threatens the principle of "Inequality of Arms." Using a comparative lens informed by international best practices, the paper moves beyond mere technological endorsement. It proposes a "Technological Due Process" framework, advocating for mandatory physical hearings during critical testimonial stages and the establishment of "Neutral Virtual Points" to preserve the sanctity of the trial. Ultimately, the research contends that for Section 530 to survive constitutional scrutiny, it must be interpreted not as an absolute mandate for digitalization, but as a flexible tool that remains subservient to the fundamental guarantees of a fair and transparent trial.

¹ Assistant Professor at Motherhood University, Roorkee

² Assistant Professor at Motherhood University, Roorkee

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1: INTRODUCTION

1.1. The Digital Metamorphosis of Adjudication

The Indian criminal justice system is currently headed for its most significant legislative transformation with the adoption of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replaces the fifty-three-year-old Code of Criminal Procedure, 1973. The traditional provisions have shifted from a physical-centric model to a "digital-default" framework. Traditionally, the presence of the accused during a trial was considered a sacred procedural safeguard, rooted in the principle that justice must not only be done but must be seen to be done in a public forum.³ While the previous provisions under the *Code of Criminal Procedure* (CrPC), 1973, later integrated video conferencing, it was largely viewed as an exceptional tool, a "necessary evil" used for high-risk convicts.⁴

However, Section 530 of the BNSS has completely changed this traditional approach by elevating the "electronic mode" to a primary statutory requirement for all trials, inquiries, and proceedings.⁵ This transition raises important constitutional questions regarding the extent to which virtual proceedings can satisfy the requirements of a fair trial and the accused's meaningful participation. By de-linking the judicial process from a specific physical location, the BNSS introduces a "virtual adjudicatory framework" model in which the sanctity of the courtroom is no longer defined by brick-and-mortar but by the integrity of the data stream.

1.2. The 2026 Context: Navigating the Pendency Crisis

As of May 2026, the systemic pressures on the Indian judiciary have reached a critical threshold. National Judicial Data Grid (NJDG) statistics indicate that criminal case pendency in district and subordinate courts has breached the 36 million mark, with over 10% of these cases lingering for more than a decade.⁶ This "colossal catalogue of unadjudicated cases" has necessitated a radical shift in policy. The Indian state has responded by operationalizing Phase III of the e-Courts Mission Mode Project, an ambitious multi-billion-rupee initiative

³*Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1.

⁴*State of Maharashtra v. Praful Desai*, (2003) 4 SCC 601.

⁵The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 530.

⁶ National Judicial Data Grid, *Case Pendency Statistics as of May 2026*, available at: <https://njdg.ecourts.gov.in> (last visited May 11, 2026).

designed to integrate Artificial Intelligence (AI) and Optical Character Recognition (OCR) into judges' daily workflow.⁷

In this 2026 milieu, Section 530 is marketed as the "Procedural Reform Measure", a tool to eliminate the logistical delays inherent in transporting undertrials from overcrowded prisons to congested courtrooms. Yet, the rapid pace of this "technological fix" has outstripped the development of a robust digital jurisprudence. The central tension of 2026 lies in whether the velocity provided by virtual courts compromises the Enhanced Procedural Safeguards required in criminal matters, where life and liberty are at stake.

1.3. Section 530: The De-localization of Justice and the "Digital Gaze"

The core of this legislative shift lies in the "de-localization" of the trial. Section 530 of the BNSS effectively severs the mandatory physical link between the judge, the accused, and the witness. This introduces the concept of the "Digital Gaze", a mediated form of judicial observation where the court's assessment of truth is filtered through a screen.

This raises critical questions regarding the "Right to Confrontation" and the "Demeanor Rule" traditionally protected under Article 21.⁸ In a physical courtroom, a judge relies on a holistic sensory experience to evaluate testimony. Under the *Bharatiya Sakshya Adhiniyam* (BSA), 2023, the recording of a witness's demeanor remains vital.⁹ However, if the judge's gaze is restricted to a two-dimensional, often pixelated interface, the nuanced physical cues, micro-expressions, subtle hesitations, or evasive eye contact that inform judicial discretion may be lost in transmission.¹⁰ Furthermore, the rise of "Shadow Coaching", where witnesses are prompted by off-screen individuals in unmonitored virtual environments, presents a pervasive challenge to the sanctity of the adversarial process that the drafters of the 1973 Code did not contemplate.

1.4. The Socio-Legal Paradox: Efficiency vs. The Digital Divide

The promise of Section 530 is arguably contingent on a level of digital infrastructure that remains uneven across the Indian subcontinent. While Tier-1 cities enjoy 5G-enabled

⁷Supreme Court of India, *Report on e-Courts Phase III: Re-engineering Judicial Processes* (2025).

⁸The Constitution of India, art. 21.

⁹The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s. 161.

¹⁰A. Danielsson et al., "Technology in Courts: Balancing Quick Resolution with Fairness", *APO Research Report* (2026).

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"Paperless Courts," rural jurisdictions often struggle with erratic power supplies and low bandwidth. As of early 2026, data suggests that approximately 35% of rural litigants lack the requisite hardware or digital literacy to navigate virtual proceedings without significant third-party intervention.¹¹

This creates a "Digital Divide" that threatens to bifurcate the quality of justice. On one hand, the wealthy litigant enjoys the convenience of remote "lawyering"; on the other, the marginalized accused may find themselves "virtually present" but substantively excluded from the nuances of their own trial. This "Inequality of Arms" is the central socio-legal paradox that this research seeks to address.

1.5. Problem Statement and Research Objectives

The primary inquiry of this research is to determine whether the "Digital Gaze" under Section 530 BNSS satisfies the constitutional requirements of a "Fair Trial." While the state prioritizes institutional efficiency, the transition risks diluting the "Open Court" principle into a Restricted Virtual Access. This paper aims to:

1. Critically analyze the legislative departure from Section 273 CrPC to Section 530 BNSS.
2. Evaluate the impact of virtual testimony on the judicial assessment of witness demeanor under the BSA.
3. Propose a "Technological Due Process" framework that mandates "Neutral Virtual Points" (NVPs) to ensure witness integrity.

1.6 Research Methodology

This study adopts a doctrinal and socio-legal methodology to examine the constitutional implications of Section 530 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The doctrinal component analyses the statutory framework governing electronic criminal proceedings, with particular emphasis on Section 530 BNSS and related provisions of the Bharatiya Sakshya Adhiniyam, 2023. The study further evaluates judicial precedents

¹¹*Digital Inclusion Survey 2025: Legal Literacy in Rural India*, Department of Justice (2025).

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concerning fair trial rights, witness examination, and video conferencing in criminal proceedings.

The socio-legal component examines the practical impact of virtual criminal trials on access to justice, the assessment of witness credibility, and procedural fairness. Comparative references to digital justice mechanisms adopted in other jurisdictions have been utilised to identify best practices and potential safeguards.

The study relies on primary sources, including statutes, judicial decisions, and government reports, as well as secondary sources, such as journal articles, commentaries, and academic literature. The objective is to assess whether the digitalisation of criminal proceedings under Section 530 BNSS adequately satisfies the constitutional requirements of fairness under Article 21 of the Constitution of India.

2: NAVIGATING THE LEGISLATIVE SHIFT FROM CrPC TO BNSS

2.1. The Statutory Transition: Deconstructing Section 530

The implementation of the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023, represents a structural pivot in criminal procedure. Historically, Section 273 of the *Code of Criminal Procedure* (CrPC), 1973, mandated that all evidence be taken in the "presence" of the accused.¹² This physical requirement was the bedrock of the adversarial system, ensuring that an accused could face their accuser, a principle deeply rooted in the common law tradition of *confrontation*.

Under Section 530 of the BNSS, this "Presence Doctrine" has been digitally redefined. The provision provides an expansive statutory umbrella for "electronic mode" across four critical judicial pillars: (i) service of summons/warrants, (ii) examination of complainants, (iii) recording of evidence in trials, and (iv) appellate proceedings.¹³ Unlike the old Section 273, which treated Video Conferencing (VC) as an exception requiring specific judicial reasoning for its use, Section 530 normalizes it as a default procedural standard.

Table 1: Comparative Statutory Mapping CrPC vs. BNSS

¹²The Code of Criminal Procedure, 1973, s. 273.

¹³The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 530.

Feature	CrPC, 1973 (Legacy)	BNSS, 2023 (Modern)
Foundation Section	Section 273	Section 530
Presence Definition	Strictly Physical (with rare judicial exceptions)	Constructive/Virtual (Statutory Default)
Service of Process	Manual delivery of paper summons	Electronic issuance (Email/WhatsApp/Portal)
Trial Mode	Physical Courtroom	De-localized "Electronic Mode"
Evidence Standards	Oral/Documentary (Secondary digital)	Integrated Electronic Primary Evidence

2.2. The 2026 Practical Reality: The Tiered Trial System

By May 2026, the transition has crystallized into what scholars call a "Tiered Procedural System." While Section 173(1) of the BNSS facilitates the rapid filing of e-FIRs, reducing friction for victims in entering the justice system, Section 173(3) introduces a significant departure from the **Preliminary Inquiry** for offenses punishable with a term of three to seven years.¹⁴

This creates a unique digital-procedural bottleneck. While technology (the e-FIR) speeds up crime reporting, the law (the Preliminary Inquiry) introduces a mandatory "waiting room" for *registration*. In the context of "Access to Justice," this is a double-edged sword: technology opens the door faster, but new procedural gatekeeping can delay the investigative machinery.

2.3. The Jurisprudence of "Presence": From Physical to Constructive

The expansion of this chapter requires an analysis of the judicial interpretation of "presence." In the 2026 legal climate, the High Courts are increasingly debating whether "Constructive Presence" (being visible on a screen) satisfies the "Accused's Right to be Heard."

¹⁴*Difference between FIR Registration Provisions U/S 154 CrPC & U/S 173 BNSS*, Drishti Judiciary (Sept. 2, 2025).

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In a physical courtroom, the accused sits in the dock, observing the entire ecosystem of the trial. In a virtual trial under Section 530, the accused is often a "thumbnail" on a screen, easily muted or overlooked. This "Reduced Participation of the Accused" is a critical policy concern. If the accused cannot lean over and whisper to their counsel during a witness's testimony because they are on a one-way video feed from a prison, the "Inequality of Arms" becomes a physical reality.

2.4. Virtual Testimony and Assessment of Witness Credibility

A central pillar of the *Bharatiya Sakshya Adhiniyam* (BSA), 2023, is the recording of a witness's demeanor (Section 161).¹⁵ The Supreme Court in *State of Maharashtra v. Praful Desai* (2003) famously argued that video conferencing allows a judge to see a witness "as clearly as if they were in the dock."¹⁶

Although the decision in *State of Maharashtra v. Praful Desai* recognised the legitimacy of video conferencing, evolving technological realities necessitate a re-examination of whether virtual observation affords an equivalent opportunity to assess a witness's credibility. Even with 5G connectivity, the "compression-decompression" (CODEC) algorithms used in video streaming can smooth out micro-expressions or create a "latency gap" between audio and video.¹⁷

- **The Problem:** Micro-hesitations, which often signal a witness is being untruthful, are frequently misinterpreted as "network lag."
- **The Risk:** A judge might credit a coached witness simply because the digital interface filtered out the physical signs of their deception.

2.5. Safeguarding Integrity: The "Neutral Virtual Point" (NVP) Policy

To mitigate the risk of "Shadow Coaching", where individuals off-camera prompt a witness, the 2026 High Court Rules have begun mandating **Neutral Virtual Points (NVPs)**.¹⁸ These are not just any digital access points, but specialized hubs located in:

¹⁵The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s. 161.

¹⁶*State of Maharashtra v. Praful Desai*, (2003) 4 SCC 601.

¹⁷*Digital Inclusion Survey 2025: Legal Literacy in Rural India*, Department of Justice (2025).

¹⁸*Electronic Evidence and Video Conferencing Rules*, King Stubb & Kasiva (Aug. 2, 2025) & Supreme Court of India, *Guidelines for Video Conferencing in Courts* (2025).

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1. **Taluka-level Common Service Centers (CSCs):** For rural witnesses.
2. **Prison Video Suites:** Ensuring the presence of a neutral officer to verify no coercion is taking place.
3. **Vulnerable Witness Centers:** Utilizing 360-degree cameras to prove the witness is alone in the room.

The policy challenge remains: while the BNSS permits a trial in any electronic mode, the interests of justice require it to be conducted in a *controlled* electronic mode. Without NVPs, Section 530 risks turning the solemnity of a criminal trial into the informality of a video call.

3: THE CONSTITUTIONAL CRUCIBLE ARTICLE 21 AND THE RIGHT TO CONFRONTATION

3.1. Re-evaluating the "Fair Trial" Doctrine in the Digital Age

The constitutional legitimacy of Section 530 of the BNSS hinges on its compliance with the "procedure established by law" under Article 21. Traditionally, the Indian judiciary has interpreted a "fair trial" as an adversarial process that includes the right of the accused to be physically present. This is not a mere formality but a substantive right; it allows the accused to assist their counsel in real-time, observing the nuances of the prosecution's case.¹⁹

In the 2026 legal landscape, we see a shift from **Physical Confrontation** to **Digital Mediation**. The "Fair Trial" doctrine is being stress-tested by what scholars term the "Inequality of Arms." While the State possesses the infrastructure for high-definition streaming and secure data lines, an indigent accused in a remote district may be forced to participate via a low-end smartphone with an unstable connection. This creates a "Procedural Gap" where the "Right to be Heard" is effectively silenced by a "mute" button or a "network timed out" notification.²⁰

3.2. The Demeanor Dilemma: Section 161 BSA and Judicial Scrutiny

A pivotal element of the adversarial system is the judge's ability to observe the witness's demeanor, the non-verbal cues that indicate truthfulness or deception. Section 161 of the

¹⁹Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158.

²⁰K. Singh, "The Constitutional Validity of Virtual Criminal Trials", *Journal of National Law University* (2026).

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Bharatiya Sakshya Adhiniyam (BSA), 2023, reinforces the court's duty to record such observations.²¹ However, virtual interfaces introduce a layer of "Technological Mediation" that filters human behavior through lossy algorithms.

- **The Loss of Non-Verbal Cues:** In a physical courtroom, a judge perceives a 360-degree environment. In a virtual trial, the "frame" is limited. A witness may appear calm on screen while being physically threatened or prompted by an individual sitting just outside the camera's view.²²
- **The Latency Effect:** In 2026, even with 5G, "network latency" remains a variable. A split-second hesitation, the classic "tell" of a dishonest witness, may be erroneously attributed to a poor internet connection. This "Challenges in Assessing Witness Credibility in Virtual Proceedings" erodes the judge's ability to discern the truth, potentially leading to a miscarriage of justice.²³

3.3. The "Open Court" Doctrine vs. The "Private Link" Culture

The principle of "Open Courts" ensures transparency and public scrutiny, acting as a safeguard against judicial arbitrariness. Section 530, by facilitating de-localized trials, risks transforming the courtroom into a series of private, password-protected virtual rooms.

While High Courts in 2026 have expanded live-streaming for matters of public importance, the daily "bread and butter" of criminal trials often takes place via restricted links known only to the parties. This creates a "Concerns Regarding Open Court Transparency." If a trial is conducted via a link that is not accessible to the press or the general public, the "watchdog" function of society is diminished. The transition from a "Public Gallery" to a "Join Link" must be managed to ensure that the "Open Court" doctrine does not become a relic of the pre-digital era.²⁴

3.4. Technical Barriers and the "Digital Divide" (2026 Projections)

²¹ The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s. 161.

²² *State of Maharashtra v. Praful Desai*, (2003) 4 SCC 601.

²³ Standard Operating Procedure for Video Conferencing in Courts, e-Committee, Supreme Court of India (2025).

²⁴ *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1.

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The expansion of Section 530 assumes a baseline of digital literacy and infrastructure that is not universally present. The "Digital Divide" acts as a new form of procedural barrier, potentially bifurcating the quality of justice based on one's technological access.²⁵

Chapter III concludes that while Section 530 is a potent tool for administrative efficiency, it cannot be allowed to bypass the "Human Element" of criminal justice. The "Digital Gaze" must be supplemented by a "Constitutional Filter", a set of judicial guidelines that mandate physical presence in cases involving complex cross-examinations or severe penalties. Technology should assist the judge, not replace the judicial intuition that only physical confrontation can provide.²⁶

3.5 Judicial Interpretation of Fair Trial under Article 21

The Supreme Court has consistently held that the expression "procedure established by law" under Article 21 must be fair, just and reasonable. In *Maneka Gandhi v. Union of India*, the Court expanded the scope of Article 21 by requiring procedural fairness in all state action affecting personal liberty.²⁷

Subsequently, in *Zahira Habibullah Sheikh v. State of Gujarat*, the Court emphasised that a fair trial is a fundamental component of the criminal justice system and constitutes an essential facet of Article 21. The Court observed that justice must be available not only to the accused but also to victims and society at large.²⁸

These principles assume greater significance in the context of Section 530 BNSS. While virtual proceedings may enhance efficiency and accessibility, they cannot undermine the accused's ability to participate effectively. Any interpretation of Section 530 must therefore balance technological convenience with constitutional guarantees of fairness, transparency and effective legal representation.

3.6 Comparative Approaches to Virtual Criminal Proceedings

The transition towards virtual criminal proceedings is not unique to India. Several jurisdictions have incorporated digital technologies into their criminal justice systems while

²⁵*Digital Inclusion Survey 2025: Legal Literacy in Rural India*, Department of Justice (2025).

²⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 530 .

²⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

²⁸ *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158 (SC) .

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simultaneously attempting to preserve the fundamental guarantees of procedural fairness. A comparative analysis demonstrates that although virtual hearings are increasingly accepted as a tool of judicial administration, courts across jurisdictions continue to recognise the importance of physical presence during critical stages of criminal adjudication.

3.6.1 United Kingdom

The United Kingdom has emerged as one of the leading jurisdictions in integrating technology within judicial proceedings. Legislative measures, such as the Courts Act 2003 and subsequent reforms, have facilitated the use of live video links in certain criminal proceedings. However, British courts have consistently maintained that technological convenience cannot override the interests of justice. The use of remote participation remains subject to judicial discretion and is assessed on a case-by-case basis.²⁹

Particular caution is exercised in proceedings involving vulnerable witnesses, contested testimony, and matters where credibility assessment plays a central role. The judiciary has recognised that although video technology may improve access and efficiency, the physical courtroom remains an important institutional space for ensuring transparency, solemnity, and effective participation by the accused.³⁰ Consequently, virtual hearings are viewed as complementary to, rather than substitutes for, conventional criminal trials.

3.6.2 United States

The United States adopts a more restrictive approach towards virtual criminal proceedings due to constitutional protections contained in the Sixth Amendment. The Confrontation Clause guarantees the accused the right “to be confronted with the witnesses against him.”³¹ This right has traditionally been interpreted as requiring face-to-face interaction between the accused and prosecution witnesses.

In *Maryland v. Craig*, the United States Supreme Court permitted limited departures from physical confrontation only where such departures were necessary to further an important

²⁹Ministry of Justice, *The Use of Live Link in Criminal Proceedings* (United Kingdom Government, London, 2023).

³⁰HM Courts & Tribunals Service, *Video Hearings and the Interests of Justice* (HMCTS Research Report, 2022).

³¹U.S. Const. amend. VI.

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public policy objective and where the reliability of testimony could otherwise be assured.³² Although courts increasingly utilised virtual proceedings during the COVID-19 pandemic, concerns regarding witness credibility, attorney-client communication, and procedural fairness continue to influence judicial attitudes towards remote criminal trials.³³

The American experience demonstrates that technological innovation in criminal justice must operate within constitutional boundaries. The preference for physical confrontation remains particularly strong during witness examination and cross-examination, reflecting the belief that direct observation enhances the accuracy and legitimacy of fact-finding.

3.6.3 Singapore

Singapore represents a comparatively successful model of judicial digitalisation. Through its extensive investment in e-litigation infrastructure and digital court management systems, the Singapore judiciary has incorporated technology into numerous aspects of criminal procedure.³⁴ The judiciary has actively promoted online case management, electronic filing, and remote hearings while maintaining procedural safeguards designed to protect fairness.

Unlike jurisdictions that view technology primarily as a response to crisis conditions, Singapore has pursued digital transformation as a long-term institutional strategy. Nevertheless, courts retain discretion over the mode of hearing and may require physical attendance where the interests of justice so demand.³⁵ This reflects an important principle: digitalisation is intended to enhance access to justice rather than diminish procedural protections.

The Singaporean model is particularly relevant to India because it demonstrates how technological innovation can coexist with judicial supervision and structured safeguards. Rather than treating virtual participation as an absolute norm, Singapore adopts a calibrated approach that balances efficiency with fairness.

3.6.4 Lessons for India under Section 530 BNSS

³²*Maryland v. Craig*, 497 U.S. 836 (1990).

³³Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press, Oxford, 2019) at 134–142.

³⁴Supreme Court of Singapore, *Annual Report 2024: Transforming Justice Through Technology* (Singapore Judiciary, 2024).

³⁵Supreme Court of Singapore, *Registrar's Circular on Remote Hearings and Electronic Litigation* (2024).

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The comparative analysis reveals a common theme across jurisdictions. While technology is increasingly integrated into criminal justice administration, no major jurisdiction treats virtual proceedings as an unconditional replacement for physical trials. Judicial discretion, procedural safeguards, and constitutional protections continue to shape the use of digital technologies in criminal adjudication.

For India, this suggests that Section 530 of the Bharatiya Nagarik Suraksha Sanhita, 2023, should not be interpreted as mandating virtual proceedings irrespective of the circumstances of a particular case. Instead, courts should adopt a contextual approach that considers the nature of the evidence, the complexity of witness testimony, the technological capabilities of the parties, and the potential impact upon the accused's right to a fair trial.

Comparative experience further supports the proposition that critical stages of criminal proceedings, particularly cross-examination and the examination of the accused, may require a greater degree of physical interaction than routine procedural hearings. Accordingly, the constitutional validity of Section 530 is likely to depend not merely upon the availability of technology but upon the adequacy of safeguards designed to preserve fairness, transparency, and meaningful participation in the criminal process.

4: POLICY PRESCRIPTIONS SAFEGUARDING JUSTICE IN THE VIRTUAL DOCK

4.1. The Necessity for a "Technological Due Process" Framework

As the judiciary navigates the full-scale implementation of Section 530 of the BNSS, the legal discourse in 2026 has matured beyond the binary of "pro-tech" or "anti-tech." The "Digital Gaze" cannot operate in a legal vacuum. To prevent the "de-localization" of trials from becoming a "de-valuation" of justice, this research proposes a **Technological Due Process** framework. This framework posits that for any virtual proceeding to be considered "fair" under Article 21, it must meet three specific criteria: **Visual Integrity, Spatial Neutrality, and Technical Parity.**³⁶

³⁶*Report on e-Courts Phase III: Re-engineering Judicial Processes*, Supreme Court of India (2025).

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In the 2026 milieu, the "Doctrine of Proportionality" must be applied to Section 530. The convenience afforded to the court and the prosecution by virtual trials must be balanced against the potential prejudice to the accused's right to a robust defense. Technological efficiency is a legitimate state interest, but it cannot override the "thick" procedural fairness required in criminal matters.³⁷

4.2. Establishing "Neutral Virtual Points" (NVPs) and the 360-Degree Protocol

The greatest threat to virtual testimony is "Shadow Coaching", the invisible prompting of a witness by an off-camera party. To combat this, A regulatory framework governing virtual testimony may be necessary to ensure procedural integrity and uniform standards.³⁸

Mandatory Hubs: Policy should mandate that witnesses testify only from "Neutral Virtual Points" (NVPs). These are designated high-security nodes such as District Court VC Rooms, Government Hospitals, or accredited Common Service Centers (CSCs) in rural blocks.³⁹

The 360-Degree Protocol: Every NVP must be equipped with a 360-degree panoramic camera system. Before testimony begins, the judge must be able to pan the room to ensure the witness is alone remotely. Any "off-screen" presence must be recorded as a potential ground for excluding the testimony.⁴⁰

The Digital Bailiff: A new cadre of judicial officers, the "Court-Appointed Technical Officer," must be stationed at NVPs to verify identities through biometric authentication (Aadhaar/e-KYC) and ensure that no electronic devices other than the court-provided interface are present.⁴¹

4.3. Defining "Critical Trial Stages" for Mandatory Physical Presence

³⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 530 & *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

³⁸ *Standard Operating Procedure for Video Conferencing in Courts*, e-Committee, Supreme Court of India (2025).

³⁹ *Digital Inclusion Survey 2025: Legal Literacy in Rural India*, Department of Justice (2025) & *Guidelines for Virtual Hearings*, Delhi High Court (2025).

⁴⁰ *Standard Operating Procedure for Video Conferencing in Courts*, e-Committee, Supreme Court of India (2025).

⁴¹ *Report on e-Courts Phase III: Re-engineering Judicial Processes*, Supreme Court of India (2025) & *Report on e-Courts Phase III: Re-engineering Judicial Processes*, Supreme Court of India (2025).

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Not all judicial proceedings require the same level of physical scrutiny. This paper proposes a **Hybrid-Mandatory model** that varies with the gravity of the procedural stage.⁴²

Table 2: Proposed 2026 Hybrid Model for Criminal Trials

Trial Stage	Recommended Mode	Rationale & Constitutional Safeguard
Remand/Bail Hearings	Electronic (BNSS 530)	Focus on the speed and safety of undertrials.
Framing of Charges	Hybrid	The accused must understand the charges directly from the Judge.
Prosecution Evidence (Chief)	Electronic	High efficiency for formal/official/expert witnesses.
Cross-Examination	Physical Mandatory	Essential for assessing "micro-expressions" and demeanor.
Accused Statement (Sec. 313)	Physical Mandatory	Direct engagement between the Judge and the Accused is non-negotiable.
Final Arguments	Hybrid/Electronic	Focuses on legal interpretation rather than witness observation.

4.4. Bridging the Digital Divide: The "Legal Tech" Subsidy

To prevent the "Inequality of Arms" identified in Chapter III, policy interventions must address the hardware and connectivity gap. In 2026, the Department of Justice must implement a **"Digital Access Subsidy" for indigent litigants and Legal Aid counsel.**⁴³

⁴²J. Scott, "Algorithmic Justice and the Right to a Human Judge", *International Journal of Law and Information Technology* (2026) & *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

⁴³*Digital Inclusion Survey 2025: Legal Literacy in Rural India*, Department of Justice (2025) & V. Sharma, "The Digital Divide and the Indian Judiciary", *National Law School Review* (2026).

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Pro Bono Tech Suites: Every Bar Association, especially in Tier-2 and Tier-3 cities, should be equipped with 5G-enabled "Law-Tech Suites" for the exclusive use of pro-bono defense lawyers.⁴⁴

The "Adjournment for Infrastructure" Clause: Section 530 must be read with an implied "safety valve." If a technical glitch occurs for more than 15 minutes, or if the audio-visual quality drops below a "substantive threshold," the proceeding must be automatically adjourned to a physical date. Justice cannot be a victim of "low bandwidth."

4.5. Training and Cybersecurity: The e-Courts Phase III Integration

The transition to Section 530 requires a "tech-literate" judiciary. The 2026 e-Committee guidelines must prioritize:

1. **Cyber-Forensic Training:** Judges must be trained to identify "Deepfake" interference or audio-manipulation during live feeds.⁴⁵
2. **Encrypted Streams:** All virtual trials under BNSS must utilize end-to-end encrypted platforms (e.g., **Nyaya Shruti 2.0**) to prevent unauthorized "virtual walk-ins" or data leaks that could compromise witness safety.⁴⁶

5: CONCLUSIONSYNTHESIZING EFFICIENCY WITH EQUITY

The enactment of Section 530 of the Bharatiya Nagarik Suraksha Sanhita, 2023, represents a significant development in the modernisation of India's criminal justice system. By expressly recognising the use of electronic modes in criminal proceedings, the legislature has sought to address longstanding concerns regarding judicial delay, administrative inefficiency, and accessibility. The provision reflects a broader institutional shift towards integrating technology into the justice delivery system and aligns with contemporary efforts to strengthen digital governance.

However, the findings of this study demonstrate that adopting virtual criminal proceedings raises important constitutional and procedural concerns. While technological tools may enhance efficiency, they cannot be viewed as a complete substitute for the safeguards

⁴⁴V. Sharma, "The Digital Divide and the Indian Judiciary", *National Law School Review* (2026).

⁴⁵J. Scott, "Algorithmic Justice and the Right to a Human Judge", *International Journal of Law and Information Technology* (2026).

⁴⁶*Guidelines for Virtual Hearings*, Delhi High Court (2025).

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traditionally associated with physical courtroom proceedings. Criminal trials involve the adjudication of personal liberty and therefore require a procedural framework that ensures fairness, transparency, and meaningful participation by all parties.

A critical examination of Section 530 reveals that the constitutional validity of virtual criminal proceedings must be assessed through the lens of Article 21 of the Constitution of India. The Supreme Court has consistently held that a fair, reasonable procedure constitutes the foundation of criminal adjudication. Consequently, the use of electronic modes cannot be justified solely on grounds of administrative convenience. Any procedural innovation must remain compatible with the broader requirements of natural justice and fair trial guarantees.

The study further highlights concerns relating to the assessment of witness credibility, effective communication between the accused and defence counsel, technological disparities among litigants, and the preservation of the open court principle. Although virtual platforms provide significant practical advantages, they may also create barriers that disproportionately affect economically and technologically disadvantaged participants. In this regard, the digital divide represents not merely a technological challenge but a constitutional concern with direct implications for equal access to justice.

A comparative examination of practices in the United Kingdom, the United States, and Singapore demonstrates that no major jurisdiction treats virtual criminal proceedings as an unconditional replacement for physical trials. Instead, courts generally adopt a contextual approach in which the mode of hearing depends upon the nature of the proceedings, the importance of witness testimony, and the interests of justice. This comparative experience provides valuable guidance for interpreting and implementing Section 530 in India.

The paper, therefore, argues that Section 530 should be understood as an enabling provision rather than a mandatory framework requiring virtual proceedings in all circumstances. Judicial discretion must remain central to determining the appropriate mode of hearing, particularly during stages involving witness examination, cross-examination, and the recording of statements that directly affect the determination of guilt or innocence. A flexible approach would enable courts to utilise technology where beneficial, while preserving physical hearings where fairness so requires.

To ensure that digitalisation strengthens rather than weakens the criminal justice process, the study recommends establishing structured safeguards, including regulated virtual hearing facilities, clear procedural standards for remote testimony, enhanced technological support for legally aided litigants, and continued judicial oversight of virtual proceedings. Such measures would help reconcile the objectives of efficiency and accessibility with the constitutional commitment to a fair trial.

Ultimately, the future of virtual criminal adjudication in India should not be viewed as a choice between technology and justice. Rather, the challenge lies in designing a system in which technological innovation supports constitutional values. Section 530 possesses the potential to improve access to justice and reduce systemic delays. Still, its long-term legitimacy will depend upon the extent to which courts ensure that digital procedures remain consistent with the principles of fairness, transparency, equality, and due process that form the foundation of the Indian criminal justice system.