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# Comparative analysis of cognizance of cases upon complaint by magistrate under criminal law

**Hitesh Beniwal**
Research Scholar, Department of Law, M.D. University, Rohtak, Haryana, India

**Abstract**
The law on the method and procedure of taking cognizance of any case upon complaint, by magistrate has been a settled one in Bharat since a good deal of time. However, the repealing of Code of Criminal Procedure, 1973 (hereinafter called CrPC) by the Parliament of Bharat and its replacement by Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter called BNSS) has brought in some significant transformations in the said procedure, which are worthy subjects of scrutiny and thus detailed study. This article deals exactly with this issue and herein the author delves into the relevant minute details, the probable intent of legislature behind their introduction, practical impact on the Court procedure- both positive and allegedly negative; and available judicial interpretations on the same. It has been tried that reader leaves with complete knowledge of the concept without any want of further research.

**Keywords:** Cognizance, judicial notice, mini-trial, pre- cognizance hearing of accused

## Introduction

The Bharatiya legal system has recently undergone a significant transformation with the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which has replaced the long-standing Code of Criminal Procedure, 1973 (CrPC), with effect from July 1, 2024. This legislative shift necessitates a thorough understanding of the changes in procedural laws, particularly concerning the initiation of criminal proceedings. The provisions governing the introduction of any criminal complaint to a Magistrate, form the very foundation of the criminal justice system. This analysis aims to provide a detailed comparative study of specific sections within the CrPC and the BNSS that pertain to the cognizance of offences by a Magistrate upon presentation of a complaint and the procedure followed upon the receipt of the same. Specifically, it will focus on Sections 190 and 200 of the CrPC and their corresponding Sections 210 and 223 of the BNSS, examining the old stance under the CrPC and the new position under the BNSS by scrutinizing in detail the full text, explanations, conditions for taking cognizance, procedures upon receiving a complaint, overall purpose, perspectives from legal scholarship, and relevant judicial pronouncements by the Supreme Court of India.

Before we do that, we must first understand what exactly the term 'cognizance' means. For this we must rely on the judgement of Supreme Court of Bharat in the case of Smt. Mona Panwar V.

Hon'ble High Court of Judicature at Allahabad through its Registrar[1]. Herein the hon'ble Court held that:

- Cognizance takes place at a point when the Magistrate 'first takes judicial notice' of an offence.
- Taking cognizance means the cognizance of an offence and 'not' the cognizance of the offender.
- It does not involve any formal action or indeed action of any kind. He must have 'applied his judicial mind' to the contents of the complaint presented before him but must have done so 'for the purpose of proceeding u/s 200 CrPC' and the other provisions following it.
- However, when he applies his mind only to order investigation u/s 156(3) CrPC or issue warrant for the purpose of investigation, he cannot be said to have taken cognizance of an offence.

To understand further we need to look at the case of St. of W. Bengal V. Bijoy Kumar Bose 1977[2] wherein the hon'ble Supreme Court held that cognizance is taken the moment Magistrate applies his judicial mind to the complaint presented to him i.e.

The Magistrate looks at the contents of the complaint, documents attached if any, statement of witnesses recorded in writing, and only then he decides whether cognizance to be taken or not on the said complaint.

Now that we have understood the basic terminology in play, it is time to get into the thick of things and explore the relevant provisions.

### Cognizance of offences by magistrate upon a complaint

Section 190(1) of the Code of Criminal Procedure, 1973, delineates the circumstances under which a Magistrate can take cognizance of any offence. These include receiving a complaint of facts that constitute such offence, upon a police report of such facts, or upon information received from any person other than a police officer, or upon the Magistrate's own knowledge or suspicion that such an offence has been committed. This framework provides a broad authority for Magistrates to initiate legal proceedings based on diverse sources of information, underscoring the principle that the judicial system should be accessible and responsive to various ways in which offences may come to light. The three clauses in Section 190(1) encompass formal accusations, outcomes of police investigations, and even informal knowledge or awareness of an offence by the Magistrate, ensuring that potential criminal activity is not overlooked due to limitations in reporting or investigation.

Likewise, Section 210(1) BNSS contains the same provisions. However, there is one change that has been brought under the new Sanhita. Under S. 210(1)(a)

1. (2011) 2 Cr. L.J. 1619 (S.C.)
2. 1978 SCR (2) 382

Magistrate may also take cognizance upon a complaint filed by a person authorized under any special law, which constitutes such offence. This addition may be seen as putting a legislative cloth over the crux of previous multiple judicial precedents which have justified the granting of power to file an application or complaint to the Magistrate/Court on behalf of the victim, to some other authorized person under various special laws like:

- Protection Officer may make application on behalf of woman under S.12, Protection of Women from Domestic Violence Act, 2005.
- Legal Heir or other person authorized by law may file complaint on behalf of the victim under S. 9, Prevention from Sexual Harassment of Women at Workplace Act, 2013; etc. It is a provision which recognises the practical difficulties existing in the society that persuade the victim not to seek legal help, and so it allows some other person related to the victim to approach the Court and set the criminal law in motion for the latter. Procedure Upon Receiving a Complaint.

For this part we may begin with a tabular representation as under:

**Table 1**

| Procedure/Feature | Section 200 CrPC | Section 223 BNSS | Key Differences/Similarities |
|---|---|---|---|
| Examination of Complainant & Witnesses | Mandatory for taking cognizance of an offence upon complaint. | Mandatory for taking cognizance of an offence on complaint. | Similar initial requirement. |
| Recording Examination | Substance to be reduced to writing and signed by complainant, witnesses, and Magistrate. | Substance to be reduced to writing and signed by complainant, witnesses, and Magistrate. | Identical. |
| Exception: Complaint by Public Servant/Court | Examination not required if complaint is in writing and made by a public servant in official capacity or by a Court. | Examination not required if complaint is in writing and made by a public servant in official capacity or by a Court. | Identical. |
| Exception: Transfer under Section 192/212 | Initial Magistrate need not examine before transfer. | Initial Magistrate need not examine before transfer under Section 212 BNSS. | Similar, with corresponding section number in BNSS. |
| No Re-examination After Transfer | Latter Magistrate need not reexamine if initial Magistrate already did so under Section 192. | Latter Magistrate need not reexamine if initial Magistrate already did so under Section 212 BNSS. | Similar, with corresponding section number in BNSS. |
| Accused's Right to be Heard Before Cognizance | No such provision. | Proviso mandates giving the accused an opportunity to be heard before taking cognizance. | Significant new provision in BNSS. |
| Procedure for Complaint Against Public Servant | Not specifically addressed. | Sub-section (2) requires opportunity for public servant to explain and report from superior officer before cognizance. | New specific procedure in BNSS. |

From the table we are able to get the gist of changes made to the procedure of examination of complaints under the criminal law. Now we must understand them in detail.

With regard to ‘procedure for complaint against public servant’ new provision in the form of Section 223(2) BNSS has been introduced. Sub-section (2) of Section 223 BNSS specifically addresses complaints against public servants, reiterating the requirement of providing an opportunity for the public servant to make assertions and receiving a report from a superior officer before taking cognizance. It lays down a limitation on Magistrate to take cognizance of a complaint against public servant only after the fulfilment of following conditions:

- such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and
- a report containing facts and circumstances of the incident from the officer superior to such public servant is received.

Prima facie, these may seem to be only added protections to the Executive, down to its lowest employee, but these conditions serve multiple purposes which are:

1. protection of public servant from unnecessary harassment in imparting public duty.
2. putting on notice the concerned public servant as well as the superior officer who is constitutionally answerable for the behaviour and working of his junior.
   iii. recording of statement of such accused/public servant in front of the Magistrate, making the same a credible evidence against the maker at the time of trial.

Thus, whatever comes up in a law, it must not be taken up only upon its face value without reading between the lines and finding about both sides of the coin.

Now we come to the most significant new introduction under BNSS with respect to the complaint proceedings. Section 223(1) I$^{st}$ Proviso states that:

No cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.

This proviso singlehandedly adds a whole new dimension of probable implications to the complaint proceedings u/s 223 by putting the said compulsion on the Magistrate. Reasons Behind Such Change

There has not been stated much about this approach in the ‘Ranbir Singh Committee for Reforms in Criminal Laws 2020’. The BNSS appears to be driven by a dual purpose: modernizing procedural aspects, such as the inclusion of electronic police reports, and incorporating a stronger focus on the rights of the potential accused at the initial stage of complaint cases. This shift in emphasis could reflect a legislative response to concerns about the potential for misuse of complaint mechanisms and a desire to ensure a

fairer process from the outset. While Section 223(1) I[st] Proviso, BNSS retain the core objective of enabling cognizance, it introduces a greater emphasis on providing an opportunity for the accused to be heard early in the process, potentially aiming to reduce false implications and unnecessary trials.

**Legal implications of I[st] proviso to S. 223(1) BNSS**
**Probable Positive Outcomes**

- Once the criminal law is set in motion, it is put to rest only upon

Discharge/Acquittal/Conviction. So, to avoid setting out on this cumbersome and unnecessary journey, the proviso provides the accused a key opportunity to present his side of the story, which could persuade the Magistrate not to take cognizance and dismiss the frivolous complaint with or without costs on the complainant for the inconvenience caused to accused as well as for wasting precious time of the Court.

- In case of compoundable cases or in which plea bargaining is a possibility, where the accused might be in the wrong or at least in grey, the summons or warrant sent to him by the Court may work as good stimulus to nudge him towards the said approach and make peace with the complainant; and decrease the Court's workload in the process if only by one case.
- Such notice by the Magistrate may prove to be a blessing in disguise as he may be saved from possible harassment and exploitation at the hands of Police, if the latter were working in collusion with the complainant.
- In case the accused doesn't appear after such procedure, the Court may adopt the process of declaring him a proclaimed offender under the BNSS provisions and resultantly, continue with the hearing of the case in his absence as provided under S. 356 (inquiry, trial or judgement in absentia of the proclaimed offender) and achieve justice for the deserving party.

**Probable negative outcome**s

- There is good chance of face-off between the victim and accused resulting in compromising the identity of the victim/complainant in such setup.
- An early intimation of such complaint may give the accused the initiative to flee from the Court's jurisdiction; although he may be prosecuted in absentia u/s 356 BNSS he may not be caught to be made serve the punishment awarded.
- It has been held in the case of Lakshmi K. Tonsekar V. St. of Maharashtra (1993) Bom [1]. It is highly undesirable to issue notice to the accused under Ch. XV CrPC (S. 200-203) as it defeats the specific object of the chapter and prejudice the accused if complaint is not dismissed later as:
- If accused doesn't appear it is likely to weigh against him.
- If he appears, he runs the danger of being committed to make a statement to Magistrate even before knowing with certainty the charges that might be framed against him.
- The scope and procedure of such summoning and hearing of the accused have been left undetermined by the Sanhita. Such misadventure may lead to "Mini-Trial" of the whole case and that too, even before the cognizance is taken upon it.
- Practically it is basically one more step added to the already lengthy Court procedure and thus it is bound to increase the Courts' backlog in cases where this step doesn't result in swift disposal of the complaint.
- Some legal luminaries have also commented that this step abandons the approach of 'cognizance of the offence' (as stated in Smt. Mona Panwar Case earlier) and moves the procedure towards the approach of 'cognizance of the offender'. This is seen against the settled principles of law and as a result, it has already been challenged in the case of Mannargudi Bar Association V. UoI[4] and is currently sub-judice in the hon'ble Supreme Court.
- Another point of contention is forming of a separate class of criminal cases under Section 210(1)(a) BNSS for which accused is provided with an early opportunity to present his viewpoint in front of the Court; while no such opportunity is provided to accused in cases cognizable by Court under Section 210(1) (b, c) BNSS. This issue has also been raised in the hon'ble Supreme Court in the case of Azad Singh Kataria V. UoI[5] and is currently sub-judice.

The prevailing discourse among legal scholars reflects a nuanced understanding of the potential impact of the mandatory pre-cognizance hearing. While some view it as a welcome and progressive step towards bolstering the rights of the accused, others express reservations about its practical implementation and the potential for it to impede the efficient administration of justice. This divergence in opinion underscores the novelty and potential complexities associated with this significant procedural change, suggesting a need for careful observation and analysis of its application in real-world scenarios. The core of the debate revolves around the delicate balance between safeguarding the rights of both the complainant and the accused during the initial stages of a criminal complaint. Furthermore, the potential for increased administrative workload on the judicial system and the risk of prolonged delays in the initiation of criminal proceedings, as discussed in detail above, are significant points of contention and evaluation within the legal scholarship.

1. 2024 SC
2. 2024 SC

**Finding light in judicial precedents**

In view of multiple possible adverse implications seen above, of the concerned provisions laid down by the Legislature, we must seek assistance of the Judiciary to scrutinise and possibly justify the same. For this we may lean on the case of Nirmaljit V. St. of W. Bengal (1972) [2, 3] wherein the Court stated that when on the basis of evidence adduced with the complaint no *prima facie* case is made out against the accused, there is no sufficient ground for proceeding. Here the "sufficient ground" is concerned only and only with a *prima facie* case and it is nowhere concerned with sufficient grounds for conviction of the accused.

This case may be employed as a counter to the reservations of scholars alleging a possibility of "Mini-Trial" at the pre-cognizance stage, as it prevents the Magistrate to look beyond his duty to ascertain at the pre-cognizance stage of possibility of taking cognizance and whether or not to issue process upon it.

The next few cases are fairly current and depict the trend of acceptance and accommodating interpretation of the law by various High Courts. The first one is Sri Basanagouda R Patil (Yatnal) V. Sri Sivananda S Patil (2024)[7] wherein the hon'ble High Court has held that the opportunity of being heard afforded to the accused under S. 223 BNSS before taking cognizance is not a mere formality. The court opined that the notice sent to the accused should be accompanied by the complaint and the sworn statements of the complainant and any witnesses, enabling the accused to effectively present their case before the Magistrate decides whether to take cognizance or not.

In another case of Suby Antony V. R1 and Ors. (2025) [4] the hon'ble High Court held that the Magistrate should first examine the complainant and witnesses on oath, as mandated by the main provision of Section 223(1) BNSS, and thereafter, if the Magistrate intends to proceed with taking cognizance of the offence, an opportunity of hearing should be granted to the accused. In another related case of Prateek Agarwal V. St. of U.P. thr. Addnl. Chief Secy. … and Anr. (2024) [5] it was held that an order summoning the accused before the statements of the complainant and witnesses are recorded on oath is a clear violation of the procedure established under Section 223 BNSS.

These early interpretations from the High Courts, suggest a developing trend towards recognizing the mandatory pre-cognizance hearing as a substantive right of the accused, requiring Magistrates to adhere to a specific sequence of actions: first, examining the complainant and witnesses; and second, providing an opportunity for the accused to be heard before formally taking cognizance of the offence. The established principles from Supreme Court case laws interpreting the meaning of "taking cognizance" and the purpose of examining the complainant under the CrPC are likely to continue to inform the interpretation of the corresponding provisions in the BNSS. These emerging jurisprudence from the High Courts on Section 223 BNSS specifically address the new elements of the pre-cognizance hearing, providing initial but crucial guidance on its practical implementation.

## Conclusion

The BNSS 2023, while retaining the core framework for the cognizance of offences by Magistrates and the procedure upon receiving complaints as laid down in the Code of Criminal Procedure, 1973, introduces several notable changes. Both statutes empower Magistrates to take cognizance based on complaints, police reports, and other information or their own knowledge. The examination of the complainant and witnesses upon oath remains a crucial step in the BNSS, mirroring the provisions of the CrPC. However, key differences emerge in the BNSS, including the explicit mention of complaints authorized under special laws and the submission of police reports in electronic mode under Section 210. Most significantly, Section 223(1) of the BNSS introduces a mandatory pre-cognizance hearing for the accused in complaint cases, a provision absent, in the CrPC 1973. Additionally, the BNSS provides a specific procedure under both Sections 210 and 223 for handling complaints against public servants, requiring a report from a superior officer and consideration of the public servant's assertions. The relevance of these provisions has already been addressed at length.

The legislative changes introduced by the BNSS aim to modernize the criminal procedure and potentially enhance fairness by providing an opportunity for the accused to be heard at an earlier stage of complaint proceedings. While this change has the potential to filter out meritless cases early on, its practical implications regarding potential delays and the precise procedure to be followed should also have been dealt with and laid down explicitly by the Legislature, instead of leaving the same open for the future judicial pronouncements. Overall, the transition from the CrPC to the BNSS marks an evolution in the approach to initiating criminal proceedings based on complaints, with a greater emphasis on the rights of the accused at the initial stages while also incorporating modern technological advancements in procedural aspects.

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