

COGNIZANCE OF OFFENCES BY MAGISTRATES UNDER THE BNSS: THE FIRST STEP TOWARDS JUSTICE

by

S. Priyadharshini

A criminal case does not always begin with a person being arrested or brought before a court. Sometimes, it begins when a complaint reaches a Magistrate. At that point, the Magistrate must decide whether the matter needs legal attention and whether the law allows the court to proceed. This step is known as taking cognizance of an offence. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which came into force on 1 July 2024, explains this process and the powers of Magistrates. The rules are important because a complaint should not be ignored without reason, but neither should a person face criminal proceedings without proper legal checks. The first decision can shape the rest of the case.

THE MOMENT A COMPLAINT GETS JUDICIAL ATTENTION

Section 210 of the BNSS deals with cognizance of offences by Magistrates. It allows a Judicial Magistrate of the first class, and a second-class Magistrate specially empowered for this purpose, to take cognizance in three main ways.

First, the Magistrate may receive a complaint describing facts that amount to an offence. Second, the Magistrate may act on a police report, including one submitted electronically. Third, the Magistrate may act on information received from someone other than a police officer, or on the Magistrate's own knowledge that an offence may have occurred.

For example, a person may complain that a neighbour has cheated them in a financial deal. The Magistrate can examine the complaint and decide what legal step is appropriate. In another case, the police may complete an investigation and submit a report asking the court to proceed against a suspect.

Taking cognizance does not mean that the accused is guilty. It means that the Magistrate has applied judicial thought to the alleged offence and is considering action under the law. The evidence still needs to be tested through the proper process.

COGNIZANCE IS NOT THE SAME AS ORDERING AN INVESTIGATION

The difference between taking cognizance and asking the police to investigate can be confusing. Yet it has a practical effect on the case.

Under Section 175(3) of the BNSS, a Magistrate may order an investigation in the circumstances permitted by law. This is different from taking cognizance and proceeding with a private complaint. The correct route depends on the material before the court and the action the Magistrate chooses to take.

The Supreme Court explained this difference in *Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy* (1976). While interpreting the earlier CrPC, the Court held that ordering a police investigation before taking cognizance is different from directing an inquiry after the Magistrate has begun dealing with a complaint. The principle remains useful under the BNSS because it helps identify which stage a case has reached.

This distinction also protects people from confusion about procedure. If a complaint is sent for investigation, the police may need to collect facts first. If the Magistrate proceeds on the complaint, the court follows the complaint procedure instead. These routes serve different purposes and should not be mixed without care.

A COMPLAINT MUST BE CHECKED, NOT BLINDLY ACCEPTED

Section 223 of the BNSS deals with the examination of a complainant. In an ordinary complaint case, the Magistrate examines the complainant and any witnesses present on oath, and records the substance of their statements in writing. This helps the court understand the basic facts before deciding the next step.

The BNSS has also introduced an important safeguard. The first proviso to Section 223(1) says that the Magistrate must give the accused an opportunity of being heard before taking cognizance on a complaint. This is a change from the usual position under the old CrPC, where the accused generally had no right to participate at this initial stage.

In *Parvinder Singh v. Directorate of Enforcement*, decided by the Supreme Court on 19 May 2026, the Court held that this proviso gives the accused a legal right to be heard before cognizance is taken on a complaint. It treated the requirement as mandatory and connected it with

the right to a fair trial under Article 21 of the Constitution. The Court held that cognizance taken without complying with this requirement would be void from the beginning.

This does not mean that the accused must be treated as innocent or guilty at this stage based on a full trial. The purpose is to provide the opportunity required by the new law. The Magistrate must still make an independent decision based on the relevant material.

WHEN THE MAGISTRATE NEEDS MORE INFORMATION

A complaint may contain serious allegations but provide too little information to decide whether proceedings should continue. Section 225 of the BNSS allows the Magistrate, in the situations covered by the section, to postpone the issue of process and conduct an inquiry or direct an investigation to find out whether there is sufficient ground to proceed.

This may be useful where the facts are unclear or where the accused lives outside the Magistrate's local area. The court may need to check whether the alleged incident took place as claimed or whether the complaint has a proper connection with its jurisdiction.

The purpose is not to conduct the entire trial at the beginning. It is to make a careful preliminary assessment. For example, if a person alleges that money was taken through a false online investment scheme, the Magistrate may need more information about the transaction and the persons involved before deciding whether to issue process.

However, the power should not become an excuse for endless delay. A preliminary inquiry must serve a clear purpose and follow the law.

THE COMPLAINT CAN BE DISMISSED, BUT THERE MUST BE A REASON

Section 226 of the BNSS allows a Magistrate to dismiss a complaint if, after considering the complainant's statements and the result of an inquiry or investigation under Section 225, there is no sufficient ground for proceeding. The Magistrate must briefly record the reasons for dismissal.

This is important because not every disagreement or personal dispute amounts to a criminal offence. Sometimes, a complaint may describe a civil dispute as a criminal matter. In other cases, the facts may not support the offence alleged.

A reasoned order helps show that the Magistrate considered the material rather than rejecting the complaint casually. It also helps the complainant understand why the case is not moving forward.

At the same time, dismissal should not happen simply because the case appears difficult to prove at the beginning. The question at this stage is whether there is sufficient ground to proceed, not whether guilt has already been established beyond reasonable doubt.

SUMMONS SHOULD FOLLOW A LEGAL DECISION

If the Magistrate finds sufficient ground to proceed, Section 227 of the BNSS deals with the issue of process against the accused. Depending on the case, this may involve issuing a summons or a warrant, as permitted by law.

This step can have a serious effect on the person named in the complaint. They may have to attend court, arrange legal representation and respond to the allegations. Therefore, the Magistrate must ensure that the required legal conditions have been met before issuing process.

The difference between taking cognizance and issuing process is also worth noting. Cognizance concerns the court's decision to take judicial notice of the alleged offence. Issuing process is a later step that calls upon the accused to appear. The two stages are connected, but they are not identical.

Section 210 provides the main routes for taking cognizance, while Sections 223 to 227 deal with important parts of the complaint procedure. Read together, these provisions help prevent criminal proceedings from moving forward without the checks required by law.

THE COURT MUST ALSO RESPECT LEGAL LIMITS

A Magistrate cannot take cognizance of every offence in every situation. The court must have the required jurisdiction, and some offences require prior sanction or special legal conditions before proceedings can begin.

Sections 217 and 218 of the BNSS deal with sanctions in certain cases, including specified offences affecting public order or allegations against public servants connected with their official duties. The exact requirement depends on the offence and the applicable law. Special laws may also contain their own rules.

Section 213 generally prevents a Court of Session from directly taking cognizance of an offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate, except where the BNSS or another law provides otherwise.

These limits are not just technical rules. They help ensure that the proper court deals with the case and that statutory protections are respected before prosecution begins.

CONCLUSION

The need for careful decisions is clear when we look at the pressure on Indian courts. The National Judicial Data Grid provides public information on pending and disposed cases across district, subordinate and High Courts. Its figures are updated regularly and can be viewed by state, court and case category. This information helps show why courts need procedures that are both fair and efficient. It does not, by itself, tell us how many cases involve incorrect cognizance orders, but it gives useful background about the workload facing the justice system.

In practice, Magistrates may receive complaints involving online fraud, family disputes, business dealings, threats or allegations against public officials. Each complaint needs attention, but each must also be examined according to law. A rushed decision can place an innocent person under unnecessary pressure. A careless rejection can leave a genuine complainant without a proper legal response.

Cognizance is therefore more than a formal entry in a court record. It is an early decision that helps determine whether the criminal process should move forward. Sections 210 and 223 of the BNSS, along with the later provisions governing inquiry, dismissal and issue of process, create a framework for that decision. When Magistrates apply these rules carefully, they can protect the complainant's access to justice while respecting the rights of the person accused. The aim is not simply to start more cases or close them quickly. It is to ensure that criminal proceedings begin on a lawful and fair basis.

Indian Journal of Contemporary
Legal and Social Issues