

WHEN THE POLICE DO NOT ACT: PRIVATE COMPLAINTS AND THEIR EXAMINATION UNDER THE BNSS

by

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Imagine a person who has lost ₹3 lakh in a business fraud. They visit the police station with bank statements, messages and other documents. But the police do not take the complaint seriously. After several visits, the person begins to wonder whether there is any other way to seek justice.

Indian law provides another option. A person can approach a Magistrate directly by filing a private criminal complaint. This allows the court to examine the allegations even when the complainant wants the matter to be considered without depending only on police action.

However, filing a complaint does not mean that the accused will automatically be called to court or punished. The Magistrate must examine the complaint and decide whether there are sufficient grounds to proceed.

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, came into force on 1 July 2024, replacing the Code of Criminal Procedure, 1973 (CrPC), subject to the rules governing pending proceedings. Sections 210 and 223 to 227 of the BNSS deal with taking cognizance of offences, examining complainants, making further inquiries and deciding whether a complaint should move forward.

One important change is that Section 223 introduces an opportunity of hearing for the accused before cognizance is taken in complaint cases, subject to the law governing particular types of proceedings.

The purpose of this process is to give genuine complainants access to the courts while protecting people from criminal cases that have no proper basis.

WHEN A COMPLAINT NEEDS ANOTHER DOOR

A criminal case can begin in different ways. In many cases, the police register an FIR and investigate the alleged offence. But a person may also approach a Magistrate directly by filing a complaint.

Section 2(1)(h) of the BNSS defines a complaint as an allegation, made orally or in writing to a Magistrate, that someone has committed an offence. It does not normally include a police report.

For example, suppose a person believes that a neighbour has forged documents to take possession of their property. The person may approach the Magistrate with details of the alleged act and any supporting material.

The Magistrate must examine whether the allegations disclose a criminal offence. A disagreement over property does not automatically become a criminal case. The facts must support the offence alleged.

Section 210 of the BNSS explains how a Magistrate may take cognizance of an offence. This includes receiving a complaint of facts that constitute an offence, subject to the applicable legal requirements.

The word cognizance may sound complicated, but its meaning is simple. It refers to the court applying its judicial mind to the alleged offence and deciding to consider the matter under the law.

It does not mean that the accused has been found guilty.

Private complaints are useful because they provide another route to the court. However, they must be based on facts and not simply on anger, suspicion or personal disputes.

BEFORE THE COURT DECIDES, IT MUST LISTEN

Section 223 of the BNSS deals with the examination of a complainant.

Under this section, a Magistrate having jurisdiction generally examines the complainant and any witnesses present on oath. The substance of their statements is recorded in writing and signed by the required persons and the Magistrate.

This gives the court an opportunity to understand the complaint before deciding what should happen next.

Suppose a person complains that a business partner deliberately used false documents to obtain money. The Magistrate may examine the complainant about the transaction, the documents and the events that led to the complaint.

This examination helps the court understand whether the allegations may disclose an offence.

Section 223 also contains exceptions to the usual examination procedure. For example, when a written complaint is made by a public servant acting in the discharge of official duties or by a court, the Magistrate need not examine the complainant and witnesses in the usual manner. There are also exceptions where the case is transferred to another Magistrate under Section 212.

The section also contains special rules for complaints against public servants. If a public servant is accused of an offence allegedly committed while performing official duties, the Magistrate must follow the required procedure. This includes giving the public servant an opportunity to explain the circumstances and receiving a report from a superior officer.

These safeguards aim to prevent unfair complaints against officials, but they must not become an excuse to ignore genuine allegations of misconduct.

THE NEW RULE THAT GIVES THE ACCUSED A CHANCE TO SPEAK

One of the notable changes under the BNSS is the first proviso to Section 223(1). It states that the Magistrate cannot take cognizance of an offence on a complaint without giving the accused an opportunity to be heard.

Under the earlier CrPC procedure, the accused generally did not have a right to be heard before the Magistrate took cognizance and issued process in an ordinary private complaint. The BNSS has introduced an important change to this process.

For example, a person may file a complaint against a business owner, alleging that the owner has committed fraud. Before taking cognizance under the ordinary complaint procedure, the Magistrate must follow the applicable hearing requirement.

This does not mean that the accused gets to decide whether the complaint should be accepted. The Magistrate remains responsible for examining the allegations and applying the law.

The purpose is to provide an additional opportunity to address the complaint before the case moves forward.

The Supreme Court considered this requirement in *Parvinder Singh v. Directorate of Enforcement* (2026). The case involved a complaint under the Prevention of Money Laundering Act (PMLA). The Court held that the hearing requirement under the first proviso to Section 223(1) was mandatory in the circumstances before it. It also held that failure to follow the requirement

invalidated the order taking cognizance. The Court explained that the rule was connected to the accused person's right to a fair trial under Article 21 of the Constitution.

The judgment shows that the new provision is not merely a small change in paperwork. It can affect the validity of the court's decision to begin proceedings.

However, the requirement must be understood with care. Special laws may have their own procedures. In *Sanjabij Tari v. Kishore S. Borcar* (2025), the Supreme Court held that the pre-cognizance hearing requirement under Section 223 did not apply in the same way to complaints under Section 138 of the Negotiable Instruments Act. This shows that the interaction between the BNSS and special laws depends on the particular legal framework.

A SUMMONS SHOULD NOT BECOME A PUNISHMENT

After examining a complaint, the Magistrate may need more information before deciding whether to issue a summons or warrant.

Section 225 of the BNSS allows the Magistrate to postpone the issue of process and conduct an inquiry personally or direct an investigation by a police officer or another suitable person.

In certain cases, this inquiry is compulsory. For example, when the accused lives outside the area in which the Magistrate exercises jurisdiction, the Magistrate must postpone issuing process and follow the procedure required by Section 225.

This helps prevent people from being called to court without a proper examination of the complaint.

Imagine a person living in Chennai who is accused in a complaint filed in another district. If the complaint contains unclear or unsupported allegations, an inquiry may help the Magistrate decide whether there are sufficient grounds to proceed.

The inquiry is not the full trial. Its purpose is to help the court decide whether the case should move forward.

This is important because receiving a summons can create stress, expense and damage to a person's reputation. The court must therefore be careful before directing someone to appear as an accused.

WHEN THE COMPLAINT HAS NO STRONG FOUNDATION

Sometimes, a complaint does not contain enough information to justify further proceedings.

Section 226 of the BNSS allows the Magistrate to dismiss a complaint if, after considering the statements made on oath and the result of any inquiry or investigation, there is no sufficient ground for proceeding.

The Magistrate must briefly record the reasons for the dismissal.

For example, a person may accuse a neighbour of theft but fail to provide facts showing what was stolen or how the neighbour was connected with the incident. If the examination and inquiry do not provide sufficient grounds, the Magistrate may dismiss the complaint.

On the other hand, if sufficient grounds exist, the Magistrate may issue process under Section 227.

In a summons case, this normally means issuing a summons for the accused to appear. In a warrant case, the Magistrate may issue a warrant or, where appropriate, a summons.

Section 227 also requires the list of prosecution witnesses to be filed before a summons or warrant is issued. In a complaint made in writing, a copy of the complaint must accompany the process issued to the accused.

These requirements help ensure that the accused knows the nature of the case and that the procedure is followed properly.

The decision to issue process is not a final decision about guilt. It only means that the court finds sufficient grounds for the case to proceed.

WHAT IF THE POLICE REFUSE TO INVESTIGATE?

A private complaint is not the only option when a person believes that the police have failed to act.

Section 173(4) of the BNSS provides a way to approach the Superintendent of Police when the officer in charge of a police station refuses to record information about a cognizable offence. The person may send the information in writing to the Superintendent of Police.

If the matter remains unresolved, the person may approach a Magistrate under Section 175(3), following the requirements of that provision, and seek an order directing a police investigation.

The Supreme Court's decision in *Priyanka Srivastava v. State of Uttar Pradesh* (2015), which dealt with the corresponding provision under the CrPC, is relevant here. The Court stressed that an application seeking a direction for police investigation should be supported by an affidavit. It also emphasised the importance of using the available remedies before approaching the Magistrate.

The BNSS now contains its own procedure, so applicants must follow the current statutory requirements.

This route can be useful when the police need to collect evidence that the complainant cannot obtain alone. For instance, the investigation may require access to CCTV footage, bank records or information held by other people.

The Magistrate must consider the application carefully. A direction for investigation should not be issued automatically merely because someone has made an allegation.

THE NUMBERS SHOW WHY CAREFUL SCREENING MATTERS

India's courts already handle a large number of cases. The National Judicial Data Grid, which is updated daily, showed approximately 4.02 crore pending criminal cases in district and subordinate courts when its dashboard was accessed in October 2026. This figure changes as cases are filed and disposed of. It includes criminal cases generally, not just private complaints.

The scale of criminal litigation makes it important for courts to use their time carefully. At the same time, people must not lose access to justice simply because the system is busy.

The National Crime Records Bureau's Crime in India 2023 report recorded 62,41,569 cognizable crimes across India during 2023, an increase of 7.2% over 2022. This figure includes crimes registered by the police under the Indian Penal Code and special and local laws. It does not measure the number of private complaints filed before Magistrates, but it gives some idea of the wider workload facing India's criminal justice system.

These numbers also show why it is difficult to solve the problem merely by asking courts to handle cases faster. They must identify complaints that deserve further action while preventing unsupported cases from moving forward unnecessarily.

Careful examination can help achieve both goals.

THE COURT MUST PROTECT BOTH SIDES

The Supreme Court explained the importance of careful scrutiny in *Pepsi Foods Ltd. v. Special Judicial Magistrate* (1998). The Court said that summoning an accused in a criminal case is a serious matter and that criminal law should not be set in motion automatically.

The Magistrate must apply their mind to the facts, the supporting material and the relevant law before issuing process.

This principle remains important under the BNSS.

A genuine complainant should have a fair opportunity to bring an alleged offence before the court. But a person should not be forced to face criminal proceedings merely because another person has made an accusation.

The court must look at the substance of the complaint. A dispute about money, a business agreement or property does not automatically amount to a criminal offence. The facts must meet the legal requirements of the offence alleged.

At the same time, the existence of a civil dispute does not always prevent criminal proceedings if the facts also disclose a criminal offence.

The Magistrate's job is to examine the facts without assuming that either side is automatically right.

A COMPLAINT IS THE BEGINNING, NOT THE END

Private complaints play an important role in India's criminal justice system. They give people another way to seek judicial attention when they believe that an offence has occurred.

Sections 210 and 223 to 227 of the BNSS set out the main steps for taking cognizance, examining the complainant, conducting an inquiry, dismissing an unsupported complaint or issuing process.

The new hearing requirement under Section 223(1) is an important development, although its application must be considered alongside the rules governing special laws. The decisions in *Parvinder Singh*, *Sanjabij Tari*, *Priyanka Srivastava* and *Pepsi Foods* show why the process requires careful attention to both legal rights and practical realities.

Ultimately, a private complaint should neither be ignored without proper consideration nor accepted without examination. The complainant must be heard, the accused must receive the protections provided by law, and the Magistrate must give the matter independent attention.

Justice begins when a complaint is taken seriously, but it becomes fair only when the court checks the facts before deciding what should happen next.



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