

COGNIZANCE

Meaning of "Cognizance"

- In law, the common understanding of the term 'cognizance' is "taking judicial notice by a court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter 'judicially'".
- It does not mean issuance of summons or start of trial, but rather the application of judicial mind to the facts of the case.

S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd., reported in (2008) 2 SCC 492

"19. The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a court or a Judge, it cannot 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone."

The cognizance is taken of an offence and not of an offender.

Important Provisions in B.N.S.S. (With Corresponding Cr.P.C. Sections)

Section (BNSS/Cr.PC)	Title	Relevance
Section 173 /154	Information in cognizable cases (FIR)	Analogous to Section 154 CrPC. FIR is registered when a cognizable offence is reported.
Section 174/155	Information in non-cognizable cases	No investigation without Magistrate's permission.
Section 175/156	Procedure when information is given about non-cognizable offence	Police to inform the informant and seek permission of Magistrate to investigation.
Section 176/157	Procedure for investigation	An officer in charge of police station may proceed to the spot, to investigate the facts and circumstances of the case.
Section 177/158	Report how submitted	Submitted through superior officer of police by general or special order.

Section	Title	Relevance
Section 208/188	Jurisdiction of Magistrate	Important for deciding whether the Magistrate is competent to take cognizance or should forward the case.
Section 210/190	Cognizance of offences by Magistrates	Primary provision: lays down the situations in which a Magistrate may take cognizance (on complaint, police report, or suo motu).
Section 211/191	Cognizance by Sessions Court	Specifies when and how a Court of Session may take cognizance (upon commitment or direct complaint).
Section 212/192	Commitment of cases to Court of Session	When offence is exclusively triable by a Sessions Court, the Magistrate must commit the case after cognizance.
Section 213/193	Magistrate's power to commit case	Allows a Magistrate to commit any case to the Court of Session after taking cognizance.

Section	Title	Relevance
Section 223/200	Filing of complaint to Magistrate	Deals with how a complaint is made before the Magistrate. Starting point of cognizance in complaint cases.
Section 224/201	Examination of complainant	If cognizance is taken on a complaint, the Magistrate must examine the complainant and witnesses on oath.
Section 225/202	Postponement of issue of process	Allows the Magistrate to postpone issuing process if he wants further inquiry.
Section 226/203	Dismissal of complaint	If no sufficient ground is found to proceed, the Magistrate may dismiss the complaint after taking cognizance.
Section 227/204	Issue of process	If sufficient ground exists, the Magistrate issues summons or warrant to the accused.

DIFFERENCE IN STAGES OF F.I.R. & COMPLAINT

Stage	FIR Case	Complaint Case	Relevant Section Under Bnss
Initiation / Filing	Information about a cognizable offence is given to police officer in charge.	Complaint is filed before a Magistrate either orally or in writing.	FIR: Section 173 Complaint: Section 223
Nature of Offence	FIR is registered only for cognizable offences.	Complaint can be for both cognizable and non-cognizable offences.	
Who can file?	Any person aware of the commission of a cognizable offence.	Any person including the aggrieved party.	
Duty to Register	Police must register FIR for cognizable offences.	Magistrate has discretion to take cognizance.	Section 173(1) and Section 220
Preliminary Inquiry / Examination	Not mandatory unless under certain guidelines.	Magistrate may examine complainant and witnesses.	Section 224
Role of Police	Police investigates the matter immediately.	No role of police initially; Magistrate may order investigation.	FIR: Section 178 Complaint: Section 225

Stage	FIR Case	Complaint Case	Relevant Section Under Bnss
Report Submission	Police files charge sheet or closure report.	After inquiry, Magistrate may dismiss or issue process.	Section 194 (Police Report) Sections 226–227 (Complaint case)
Cognizance by Magistrate	Taken on police report (charge sheet).	Taken on complaint after examination/inquiry.	Section 220
Dismissal at Initial Stage	FIR generally not dismissed; Police may file closure report.	Complaint may be dismissed if no sufficient ground is found.	FIR: Section 194(6) Complaint: Section 226
Issue of Process / Summons	After taking cognizance on charge sheet, summons/warrant is issued.	After satisfaction from complaint and inquiry.	Section 227
Further Investigation	Allowed even after filing of report.	Magistrate may direct further inquiry.	Section 195 (FIR case) Section 225(2) (Complaint)
Trial Stage	Proceeds after filing of charge sheet	Proceeds after issue of process.	

Steps in Taking Cognizance

Receipt of complaint / police report / own knowledge



Magistrate applies judicial mind



Decides whether offence is made out



Takes cognizance under appropriate sections



Issues process (summons/warrant) if needed

Section 210 of B.N.S.S.- Cognizance of offences by Magistrate.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts, including any complaint filed by a person authorised under any special law, which constitutes such offence;

(b) upon a police report (submitted in any mode including electronic mode) of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

[Similar to Section 190 of Cr.P.C.]

Section 175(3) in Bharatiya Nagarik Suraksha Sanhita, 2023

(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under subsection (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

Recording Satisfaction About Sufficient Grounds Mandatory To Summon Accused

Sachin Garg v. State of U.P., 2024 SCC OnLine SC 82

"20. While it is true that at the stage of issuing summons a magistrate only needs to be satisfied with a prima facie case for taking cognizance, the duty of the magistrate is also to be satisfied whether there is sufficient ground for proceeding, as has been held in the case of Jagdish Ram (supra). The same proposition of law has been laid down in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749]. The learned Magistrate's order issuing summons records the background of the case in rather longish detail but reflects his satisfaction in a cryptic manner. At the stage of issue of summons, detailed reasoning as to why a Magistrate is issuing summons, however, is not necessary. But in this case, we are satisfied that the allegations made by the complainant do not give rise to the offences for which the appellant has been summoned for trial.

- **Pepsi Food Limited v. Special Judicial Magistrate, reported in (1998) 5 SCC 749**

The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations.

- **Jagdish Ram v. State of Rajasthan [(2004) 4 SCC 432]**

A Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry.

Amresh Kumar Dhiraj v. State of Jharkhand, 2019 SCC OnLine Jhar 2775

"25. The order taking cognizance under Section 190 Cr.P.C. and order issuing process under Section 204 Cr.P.C., can very well be a composite order but as observed, the application of mind would be different in both cases. This application of mind must be reflected in the order itself. The order should not be mechanical. Magistrate has to mention at least that there are sufficient materials to proceed against the persons and what are the prima-facie materials to proceed against them. He need not pass a detail judgment evaluating the materials, which are before him. The detail reasons as to why he is taking cognizance or issuing process are not to be mentioned but at least what are the bare minimum prima-facie materials against the accused-petitioners should be mentioned in the order issuing summon and prima facie what offence is alleged, in the order taking cognizance."

Section 223(1) of Bharatiya Nagrik Suraksha Sanhita- Examination of complainant.

A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

- Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:
- Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-
- (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
- (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:
- Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

An accused should have an opportunity of being heard

- **Kushal Kumar Agarwal v. Enforcement Directorate, 2025 SCC OnLine SC 1221**

The proviso to sub-section (1) of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.

- **Suby Antony v. Judicial First-Class Magistrate-III, 2025 SCC OnLine Ker 532**

Being guided by the precedents on Sections 200 and 202 of the Code and the plain language of the proviso to Section 223(1) of the BNSS, this Court is of the opinion that, after the complaint is filed, the Magistrate should first examine the complainant and witnesses on oath and thereafter, if the Magistrate proceeds to take cognizance of the offence/s, opportunity of hearing should be afforded to the accused.

- **Basanagouda R. Patil v. Shivananda S. Patil, 2024 SCC OnLine Kar 96**

The taking of cognizance under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard.

- **Prateek Agarwal v. State of U.P., 2024 SCC OnLine All 8212**

A complaint is presented before the Magistrate under Section 223 of the BNSS; on presentation of the complaint, it would be the duty of the Magistrate/concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter.



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