HIGH COURT OF ANDHRA PRADESH:AT AMARAVATHI

DISTRICT JUDICIARY: KURNOOL

WORK SHOP

TO BE HELD ON 20-12-2025

TOPIC : COGNIZANCE OF OFFENCE IN CRIMINAL PROCEDURE CODE (Cr.P.C) AND IN BHARATHIYA NAGARIK SURAKSHA SANHITA,2023 (BNSS)

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INTRODUCTION :

The introduction of new laws heralds substantive and procedural reforms aimed at modernizing and streamlining the criminal justice system. Among the most consequential changes is the replacement of Section 200 of the Criminal Procedure Code (CrPC) with Section 223 of the BNSS, signifying a new dimension to the criminal complaint process in India.

Summary table of comparison between IPC/CrPC and BNS/BNSS

	Feature	
	IPC/CrPC	**BNS/BNSS**
Governing legislation	Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC)	Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS)
Cognizance procedure	Governed by Section 190 of the CrPC	Governed by Section 210 of the BNSS
Offenses by public servants	Governed by Section 197 of the CrPC	Governed by Section 218 of the BNSS
Sessions court cognizance	Prohibited, except in certain cases	Continues the same prohibition
New provisions	Limitations on taking cognizance under certain sections, like Section 195(1)(b)(i) of the CrPC	New limitation periods introduced under Section 514 of the BNS

1. Brief overview of the topic :

- Firstly let us see **What is cognizance** ?

The word cognizance is no where defined in Criminal Procedure Code as well as in BNSS. However In **Gopal Marwari v. Emperor A.I.R. 1943 Pat. 245**, it was observed that the word 'cognizance' is used in the Code to indicate the point when the Magistrate first takes judicial notice of an offence. It is a different thing from the initiation of proceedings. It is the condition precedent to the initiation of proceedings

by the Magistrate. The Hon'ble court noticed that the word 'cognizance' is a word of somewhat indefinite import and it is perhaps not always used in exactly the same sense. In the case of **R.R. Chari v State of Uttar Pradesh AIR 1951 SC 207** it is observed that : Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence.

- Pre- cognizance : The "pre-cognizance stage" refers to the period before a Magistrate formally takes cognizance of an offense, meaning before the Magistrate begins to formally examine a complaint or initiate proceedings. During this stage, the accused generally does not have the right to be heard or argue their case. However, the BNSS, which replaced the CrPC, introduces a new provision requiring a pre-cognizance hearing in some cases under section 223 (1) .

Now I am discussing Section 223 in Bharatiya Nagarik Suraksha Sanhita, 2023.

Section 223. Examination of complainant.

(1) 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 of BNSS.

* A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-(**a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.**

2. Scope of Section 200 of the CrPC to Section 223 of the BNSS: A Procedural Shift :

Under the traditional framework, if the police fail to register a First Information Report ("**FIR**"), the complainant may approach any Magistrate under Section 190 of the CrPC to seek a direction for the police to investigate the complaint under Section 156(3). However, if the Magistrate finds that the allegations disclose a cognizable offence and forwarding the complaint to the police would not be just, then Section 200 of the CrPC becomes applicable.

Under Section 200 of the CrPC requires the Magistrate to examine the complainant and witnesses on oath before taking cognizance. A bare reading of Section 200 indicates that, at this stage, the accused has no *locus standi* to put forth its case before the Magistrate. On finding sufficient grounds for proceeding, the Magistrate may issue summons under Section 204 of the CrPC, at that stage the accused has the right to appear, argue, and contest the case.

- The Honb'le Supreme Court in ***Chandra Deo Singh v. Prokash Chandra Bose & Anothers AIR 1963 SCR 1430*** *it was* observed that, since the very

question for consideration under Section 200 of the CrPC is whether the accused should be called upon to face the accusations / allegations made in the complaint, an accused does not have the right to take part in the proceedings nor can the Magistrate permit him to do so, till process has been issued to him. At this stage, only the intrinsic quality of the statements made before the Magistrate, i.e. the complaint, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant, are to be considered.

- Perhaps coming to Section 223 of the BNSS substantially builds upon the procedural framework of Section 200 of the CrPC but is distinct in that it retains the core requirement of examining the complainant and witnesses before cognizance, but goes further by incorporating certain additional procedural safeguards.

The *proviso* to Section 223(1) of the BNSS provides "*that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard*". Therefore, unlike Section 200 of the CrPC, Section 223 of the BNSS mandates that the accused shall be afforded opportunity to be heard at the preliminary stage, before cognizance is taken by the Magistrate is inserted in the new enactment.

- **In *Narayandas Bhagwandas Madhavdas* v. *State of W.B.AIR 1959 SC 1118*** it is observed, as to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. It is only when a Magistrate applies his mind for the purpose of proceeding under Section 200 and subsequent sections of Chapter XVI of CrPC or under Section 204 of Chapter XVII CrPC

that it can be positively stated that he has applied his mind and therefore has taken cognizance.

- In ***Devarapalli Lakshminarayana Reddy*** **v.** ***V. Narayana Reddy AIR 1976 SC1672***it discussed about , what is meant by "taking cognizance of an offence" by the Magistrate within the Section 190 of Cr.P.C . Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV(15) CrPC, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(*a*). If, instead of proceeding under Chapter XV, he has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3)، he cannot be said to have taken cognizance of any offence.

3. What is the Stage of Pre- Cognizance ?

The pre-cognizance hearing is *not* a platform for a mini-trial or for delving into factual defences. This applies only to complaint cases (private complaints) and not to cases initiated by police FIRs, where the pre-cognizance stage involves police investigation.

The proviso to section 223 of the BNSS requires that in a criminal complaint, after examining the complainant and the witnesses on oath, but before taking cognizance of an offence, the magistrate must issue a notice to the accused, giving them the opportunity to be heard. Recently, the Hon'ble Karnataka High Court ,--

In this context, in ***Basanagouda R. Patil v. Shivananda S. Patil ,Criminal petition No. 10076 of 2024*** has discussed about the Magistrate's procedural approach under Section 223.

- The facts of the case is that : This case arose from a private complaint, the Respondent (Complainant) filed case under Section 223 of BNSS, alleging defamatory remarks made against him during an election rally. The central issue before the Hon'ble Karnataka High Court was whether the Magistrate followed the procedure in – issuing the notice to accused – aligned with the *proviso* to Section 223(1) of the BNSS.
- The Petitioner (the accused) contended that the Magistrate had erred in issuing notice immediately after the complaint was filed, because Section 223 of the BNSS requires notice only before cognizance is taken. The Respondent (the original complainant) countered that the *proviso* to Section 223 of the BNSS only mandates the accused an opportunity to be heard before cognizance is taken, without specifying whether notice must be issued after filing the complaint or after recording sworn statements.
- The Hon'ble Court opined that the provision clearly stipulates that the Magistrate must, before taking cognizance of an offence, examine the complainant and witnesses on oath, and record their statements, and only then issue notice to the accused as per the *proviso* to Section 223(1) of the BNSS. Once, the notice is sent and submissions are considered, the Magistrate may take cognizance and proceed in accordance with law. Hence, issuing notice prematurely, without first recording the sworn statements, was deemed a

procedural error violating the mandatory safeguards under Section 223 of the BNSS.

- The Hon'ble Court also Emphasising that the opportunity to be heard is not a mere formality, the Court also opined that the notice sent under the *proviso* to Section 223(1) of the BNSS must include the complaint, the sworn statement, and the statements of any witnesses, ensuring the accused can appear and present their case before cognizance is taken.

- Therefore, the notice that was sent to the accused in the terms set out in the proviso to section 223(1) of the BNSS should have appended to it the complaint and the sworn statements of any witnesses. This would enable the accused to appear and submit their case before the magistrate takes cognizance of the matter. In the considered view of the court that was the clear purport of section 223 of the BNSS.

Relying on the Hon'ble Karnataka High Court's decision, and the Hon'ble Allahabad High Court in **"Surya prakash Yadav vs State of UP" – 2025 AHC 8095** and the Hon'ble Kerala High in **Suby Antony vs R1 -2025 Kerala 6236** reiterated that under Section 223 of the BNSS the accused must be afforded an opportunity to be heard after the Magistrate has examined the complainant and witnesses.

- Hence it is clear from the above discussion and going through the this Judgments that after recording of Sworn Statements of the Complainant and the statements of any witnesses on behalf of the Complaint, then notice is to be issued to the accused along with the copy of Complaint and statements of Complainant and witnesses.

4. Application of Section 223 BNSS to the Negotiable Instruments Act, 1881 cases :

- The question of whether notice must be served to the proposed accused prior to taking cognizance in cases under the Negotiable Instruments Act, 1881 (in short, "NI Act") as mandated by the proviso to Section 223 of the BNSS, has sparked considerable debate within the legal fraternity.

- The proviso to Section 223 of the BNSS becomes relevant when a complaint is lodged under Chapter XVI (16){Complaints to Magistrates } of the BNSS. It establishes an essential statutory right for the accused, enabling them to present a defence at the pre-summoning stage. This position finds support in judicial pronouncements from the Karnataka and Allahabad High Courts as well, which have clarified that notice under the proviso to Section 223 of the BNSS must be served after recording the complainant's and witnesses' statements. These rulings affirm that the requirement of notice prior to taking cognizance applies unequivocally to the NI Act cases as well. Consequently, it is now evident that serving notice to the proposed accused is a mandatory step under the proviso to Section 223 of the BNSS in such matters.

- In the **Mohammad Afzal Beigh vs Noor Hussain S/O Late and Gulam Ali** in Crl.M. no. 742/2025- of J&K and Ladakh it is held that Section 223 BNSS provides for issuance of pre-cognizance notice to the accused and said

provision was not available in the corresponding Section 200 of the repealed Code. Such requirement provided under Section 223 of the BNSS by way of proviso appear to be justice orientated as the same takes care of any legitimate defence of the accused to be appreciated by the Magistrate even at an earliest, while holding a preliminary inquiry and is not barred at all even in respect of complaints under N.I.Act .

- In this context I would like to refer Section 142 of Negotiable Instruments Act.

Section 142. **Cognizance of offences.**—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

- In this context The Hon'ble Madras High Court in **Criminal OP(MD) No.19778/2022** and other connected matters between **M/s.Ultimate Computer Care and Another Vs. M/s.S.M.K.Systems** decided on 12.02.2025 has held as that;

"Having regard to the fact that the N. I. Act has prescribed a special procedure, it is a Special Law within the meaning of Section 5 of the BNSS, 2023. Hence, the procedure of hearing the accused at the stage of taking cognizance as prescribed in

the proviso to Section 223 BNSS shall not apply to complaints under Section 138 of the N.I.Act, 1881.

- Further in **Neeti Sharma vs Saranjit Singh in Crl. M.C. no. 1495/2025** decided on 2 April, 2025 the Hon'ble High court of New Delhi also held that there is no need of issuing notice to accused in NI Act Cases as presecribed under sectio 223 of Cr.p.C by stating that The Negotiable Instruments Act is Special Statute.
- Further The Hon'ble Apex Court in **Mohd.Abdul Sammad Vs The State of Telangana and another** reported in 2024 INSC 506 observed that provisions of special law prevail over general law.
- In **Suresh Nanda Vs CBI** 2024 INSC 506 the Hon'ble Supreme Court observed that the Passport Act is a Special Law whereas Cr.P.C is a General Law. It is well settled that the special law prevails over General Law.
- The very recent Judgment of Hon'ble Karnataka High Court held in **AhokS/O Siddappa Bankar Vs Fayaz Ahmad S/O Aurangzeb Naikar decided on 28-04-2025** has decisively settled the controversy, holding that the section 223(1) of BNSS doesnot apply to proceedings under section 138 of NI Act.
- Hence from the above discussion , we got clear that there is no need of issuing notice to accused in Pre- cognizance stage in NI ACT cases.

4. ANALYSIS OF RELEVANT CASE LAWS :

Important points in**Suby Antony v. R1 Case. 2025 Kerala 6236**

- The petitioner in this case submitted that the Court **erred in issuing notice** to the accused named in the complaint even before examining the petitioner and witnesses on oath.
- It is their case that the illegality is perpetuated by the Magistrate issuing notice to the accused in spite of oral objection raised initially and the written objection filed thereafter.
- It was the case of the petitioner that the legal position was laid down by the Karnataka High Court in **Basanagouda R Patil v. Shivananda S Patil (2024)** The conundrum that the Court had to address in this case was whether Section 223 (1) of BNSS envisages issuance of notice to the accused named in the complaint before taking cognizance of the offence.

➢ The Hon'ble Court made the observation that Section 200 of Criminal Procedure Code, 1973 (CrPC) is corresponding to Section 223 (1) of BNSS.

➢ A **new proviso to Section 223 of BNSS is added** which provides that no cognizance of the offence shall be taken without giving the accused opportunity of being heard.

➢ Under the CrPC, the accused had **no locus standi** even at the stage where the Magistrate decides whether or not to issue process to the accused.

➢ Further, it was observed that in spite of the proviso to Section 223(1) making it mandatory to provide opportunity of hearing to the accused before taking cognizance, Section 226 does not reckon the accused's objection at the stage of taking cognizance as a relevant factor for dismissing the complaint.

➢ The Hon'ble Court held that 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.

- The Court thus held that the notice **could not have been issued** to the prospective accused before taking cognizance.

5. PRE-COGNIZANCE NOTICE TO PUBLIC SERVANTS :

Opportunity for hearing before taking cognizance :

If a complaint has been filed against the pubic servant for any offence alleged to have been committed in the course of discharge of his official duties , no cognizance shall be taken unless;

- Such a person is given an opportunity to make assertions as to the situation that lead to the incident so alleged ;
- And a report containing facts and circumstances of the incident from the superior officer of such public servant is to be received.
- **Deemed Sanction ;** The existing procedural law does not contain a provision for deemed sanction if the competent authority does not decide on the grant of sanction with a specific time frame. However section 218 (1) , proviso states that

  " Provided further that such Government shall take a decision within a period of one hundred and twenty days from the date of the receipt of the request for sanction and in case it fails to do so, the sanction shall be deemed to have been accorded by such Government "

Relevant citations :

In *Manju Sura*na Vs Sunil Arora reported in **AIR online 2018 SC 1002** decided on 27 March 2018, it held that in section 197 of the Cr.P.C. under the same chapter

prescribes a pre-condition of obtaining sanction before the court takes cognizance against a public servant. The relevant portion reads as under:

> "197. Prosecution of Judges and public servants.- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-
>
> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
>
> (b) in the case of a person who is employed or, as the case may be, was at the lime of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:
>
> Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted."

- In**Anil Kumar vs M.K. Aiyappa** reported in (2012) 10 SCC 517 (two Judges Bench), the Hon'ble Court proceeded to examine whether the Magistrate, while exercising his powers under section 156 (3) of the Cr.P.C., could act in a mechanical or casual manner and go on with the complaint after getting the report. The Hon'ble Supreme Court held that a magistrate cannot order an

investigation against public servant under section 156(3) of the Cr.P.C with out previous sanction. This principle is echoed in the BNSS ensuring safeguards against frivolous accusations.

- In that context, a reference was made to an earlier judgment in **Maksud saiyad vs State of Gujarath reported in AIR online 2007 SC 332** case, where it was observed that there was a requirement of the application of mind by the Magistrate before exercising jurisdiction under section 156(3) of the Cr.P.C. Thereafter the Bench proceeded to draw a conclusion that a Special Judge/Magistrate cannot refer the matter under Section 156(3) of the Cr.P.C against a public servant without a valid sanction order.

- In **Om Prakash Ambedkar vs The State of Maharashtra and others- AIR 2025 SC970** The Hon'ble Supreme Court set aside a Magistrate's order directing police Investigation under section 156(3) of the Cr.P.C, highlighting the need for Magistrates to consider Police Officer submissions before ordering investigations under section 175(3) BNSS.

- Hence by going through the above judgments and the provision of law it is clear that before taking cognizance against the Public officers we must hear them and call for the report from their Superior officers and then only we can take cognizance against the said Public officers.

- In **Subramanian Swamy vs. Manmohan Singh**, **(2012) 3 SCC 64** held that if no decision is taken by the sanctioning authority, then at the end of the extended time limit, sanction will be deemed to have been granted to the proposal for prosecution. It was further submitted that the issue of sanction

may be raised by the appellant either at the stage of cognizance or at any subsequent stage of the trial, so as to contend that since the cognizance has now been taken in the matter, the plea of sanction for prosecution may be taken by the appellant before the trial court when they appear in compliance with the summons or at the stage of discharge

- In **Gill vs King 1948 SCC Online PC 10 the Hon'ble** Supreme court has quashed a complaint at the inception for want of prior sanction, emphasizing that alleged acts must be reasonably connected to the discharge of official duty.

Some of the decisions which decided about the prior sanction to procced against Public servants as well as in connection with official duties etc… are

- **Abay Narayan Sing vs State of Bihar** decided on 18-06-2025
- **Surya Prakash Yadav vs State of Uttar Pradesh 2025 AHC 80**95 and
- In **D.T. Virupaksha vs C .Subash** the Hon'ble supreme court has highlighted the phrase that any offence alleged to have been committed in the discharge of his official duty.

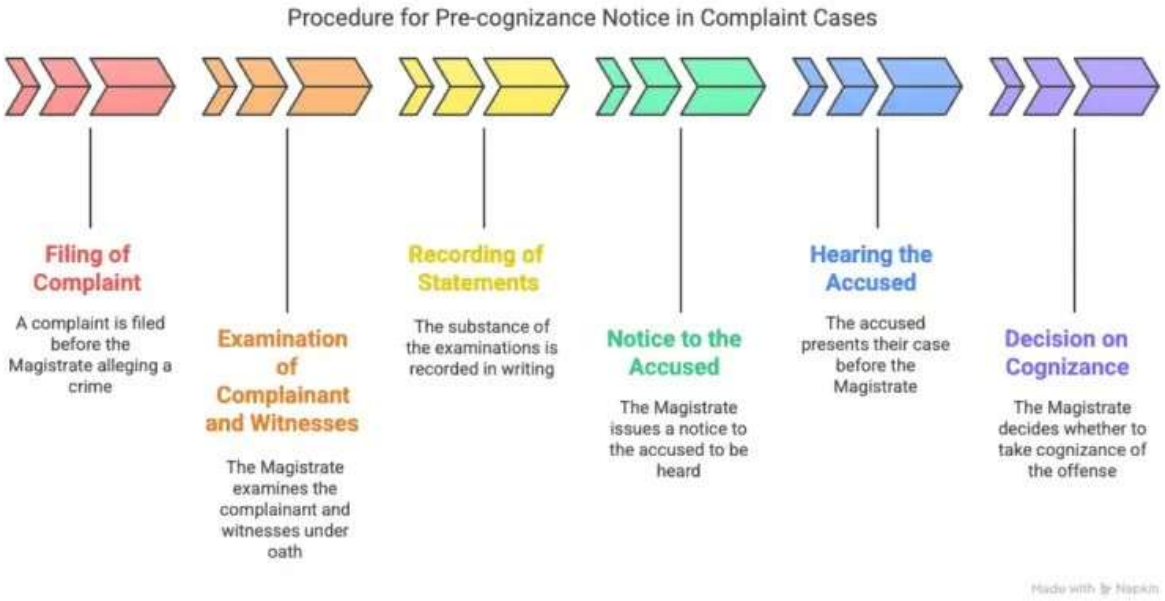
5. REMEDIES :

- There is no revision on taking cognizance. If, despite hearing the accused in terms of section 223, a magistrate takes cognizance ,then the aggrieved person will still have the other remedies available, as were available under the Cr.P.C, such as applying to quash the magistrate's order by a revision petition or criminal writ petition. The provision allows a balanced assessment of the complaint, enabling the dismissal of a meritless case before it goes further.

6. PRECAUTIONS :The Magistrate while taking cognizance of an offence should have with him the statement on oath of the complainant and if any witnesses are present, their statements. 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.

7. The procedural drill would be this way as per the Judgment of Basana Gowda R.Patil vs Shivanandha S.Patil. As per para no .10 it is discussed in this way :

- *First 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.*
- The proviso indicates that an accused should have an opportunity of being heard. Opportunity of being heard would not mean an empty formality. Therefore, the notice that is sent to the accused in terms of proviso to sub-section (1) of Section 223 of the BNSS shall append to it the complaint; the sworn statement; statement of witnesses if any, for the accused to appear and submit his case before taking of cognizance.



Procedure for Pre-cognizance notice in complaint case

Conclusion :

The pre-cognizance notice provision under Section 223 of the BNSS represents a significant legal reform in India's criminal procedure law. It introduces a crucial safeguard by ensuring that the accused has an opportunity to be heard before being subjected to criminal proceedings. This new procedural safeguard aims to filter out frivolous complaints while ensuring that genuine grievances continue to receive proper legal attention.

_____ THANK YOU _____