BLOGS

Cognizable & Non-Cognizable Offences under BNSS 2023 (CrPC)

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Cognizable and Non-Cognizable Offences under BNSS 2023

Introduction

Cognizable and non-cognizable offences are the two classes into which Indian criminal procedure divides every offence. The test is simple: can the police arrest without a warrant? If yes, the offence is cognizable. If no, it is non-cognizable.

Cognizable offence: an offence for which a police officer may arrest without a warrant, under the First Schedule or any other law (BNSS s.2(1)(g)). The police register an FIR and investigate without a Magistrate's order.

Non-cognizable offence: an offence for which a police officer has no authority to arrest without a warrant (BNSS s.2(1)(o)). The police record the information and need a Magistrate's order to investigate.

Since **1 July 2024**, these rules come from the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973 (CrPC). The definitions are worded the same as before, but the section numbers have changed. This article gives the BNSS section first and the old CrPC section beside it, since both still appear in exam questions and judgments.

The classification decides four practical things: whether police can arrest without a warrant, whether an FIR is registered, whether police can investigate on their own, and, broadly, how serious the offence is.

What are Cognizable Offences?

A cognizable offence is one for which the police can arrest without a warrant and start an investigation without waiting for a Magistrate. These are generally the more serious offences, such as murder, rape, dowry death, kidnapping and theft.

The definition: BNSS s.2(1)(g) and CrPC s.2(c)

BNSS s.2(1)(g) (in force from 1 July 2024)	**CrPC s.2(c) (repealed)**
"cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant	Same wording

The definition does not list offences. It points to the First Schedule of the BNSS, which marks each offence under the Bharatiya Nyaya Sanhita (BNS) as cognizable or non-cognizable, and to any other law that grants the power to arrest without a warrant.

What follows when an offence is cognizable

- The police must register an FIR when information discloses a cognizable offence (BNSS 173, formerly CrPC 154).
- An officer in charge of a police station may investigate without a Magistrate's order (BNSS 175, formerly CrPC 156).
- The police may arrest without a warrant, subject to the safeguards in BNSS 35 (formerly CrPC 41).

"May arrest" does not mean "must arrest". For offences punishable with up to 7 years, the police must record why an arrest is necessary, or issue a notice to appear instead. See Arnesh Kumar below.

What are Non-Cognizable Offences?

A non-cognizable offence is one for which the police cannot arrest without a warrant and cannot investigate without a Magistrate's order. These are generally less serious offences, such as defamation, simple hurt and public nuisance.

The definition: BNSS s.2(1)(o) and CrPC s.2(l)

BNSS s.2(1)(o) (in force from 1 July 2024)	CrPC s.2(l) (repealed)
"non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant	Same wording

Information to the police and the Magistrate's order (BNSS 174)

When someone reports a non-cognizable offence, the police do not register an FIR. BNSS 174 (formerly CrPC 155) sets out what happens instead.

Steps when police receive information in a non-cognizable case:

1. The officer in charge enters the substance of the information in the station register (the daily diary) kept for this purpose.
2. The officer refers the informant to the Magistrate.
3. The police send the daily diary reports of all such cases to the Magistrate every fortnight. This is new in the BNSS.
4. The police do not investigate unless a Magistrate who has power to try the case, or commit it for trial, orders an investigation.
5. Once ordered, the police can use the same investigation powers as in a cognizable case, except the power to arrest without a warrant.

If a case involves two or more offences and at least one is cognizable, the whole case is treated as cognizable. This rule carried over from CrPC 155(4) into BNSS 174.

A person aggrieved by a non-cognizable offence can also go straight to the Magistrate by filing a private complaint, without approaching the police first.

How to Tell Which is Which: the First Schedule

Whether an offence is cognizable is decided by the legislature, through the First Schedule of the BNSS, not by the police or the complainant. The Schedule has two parts.

- **Part I** lists each offence under the Bharatiya Nyaya Sanhita, 2023 (BNS) with six columns: the section, the offence, the punishment, whether it is cognizable, whether it is bailable or non-bailable, and which court tries it.
- **Part II** classifies offences under other laws by punishment. Broadly, offences punishable with 3 years or more are cognizable and non-bailable, and offences punishable with less than 3 years or with fine only are non-cognizable and bailable. A special law can override this by saying so expressly.

As a working rule, the more serious the punishment, the more likely the offence is cognizable. It is only a rule of thumb, so always check the Schedule entry.

Common offences

Offence	BNS section	Cognizable?	Bailable?
Murder	103	Yes	No
Rape	64	Yes	No
Dowry death	80	Yes	No
Theft	303	Yes	No
Kidnapping	137	Yes	Yes
Rioting	191	Yes	Yes
Voluntarily causing hurt	115	No	Yes
Defamation	356	No	Yes

Theft has a second row in the Schedule. Theft of property worth less than ₹5,000 by a first-time offender who returns it is punishable with community service, and that form is non-cognizable and bailable.

Kidnapping and rioting show that "cognizable" and "bailable" are separate questions. The police can arrest for both without a warrant, but the accused has a right to bail.

Police Powers: FIR, Investigation and Arrest

In a cognizable case the police can register an FIR, investigate and arrest on their own authority. These are the first steps in the stages of a criminal proceeding, and the BNSS changed several of them.

FIR (BNSS 173)

BNSS 173 (formerly CrPC 154) requires the officer in charge of a police station to record every piece of information about a cognizable offence, whether it is given orally, in writing or electronically. Oral information is written down, read back to the informant and signed. The informant gets a free copy of the FIR.

The BNSS adds a limited preliminary enquiry. For offences punishable with 3 years or more but less than 7 years, the officer may, with the permission of an officer not below the rank of Deputy Superintendent of Police, hold a preliminary enquiry within 14 days to see whether a prima facie case exists.

If the police refuse to register an FIR, the informant can send the information to the Superintendent of Police, and then apply to the Magistrate under BNSS 175(3). Test yourself with these practice questions on FIR under the BNSS.

Zero FIR and e-FIR

- **Zero FIR:** BNSS 173(1) requires the police to record information about a cognizable offence "irrespective of the area where the offence is committed". A police station cannot turn a victim away because the crime happened elsewhere. It registers a zero FIR and transfers it to the police station with jurisdiction. The practice existed before 2024, but the BNSS puts it in the statute for the first time.
- **e-FIR:** information can now be given by electronic communication, such as email or a state police portal. The informant must sign it within 3 days, after which it is taken on record as the FIR.

Arrest without warrant (BNSS 35)

BNSS 35 (formerly CrPC 41) lets a police officer arrest without a warrant in listed situations, most importantly for a cognizable offence. It also limits that power.

- For offences punishable with up to 7 years, the officer must be satisfied that arrest is necessary, for example to prevent further offences or tampering with evidence, and must record the reasons in writing.
- Where arrest is not necessary, the officer must issue a notice to appear (BNSS 35(3), formerly CrPC 41A). A person who complies with the notice cannot be arrested for that offence unless the officer records reasons.
- For an offence punishable with less than 3 years, a person who is infirm or above 60 years of age cannot be arrested without the prior permission of an officer not below the rank of Deputy Superintendent of Police. This is new in the BNSS.
- For a non-cognizable offence, the police need a warrant from a Magistrate. The narrow exception is a person who refuses to give a name and address (BNSS 39, formerly CrPC 42).

Difference between Cognizable and Non-Cognizable Offences

The core difference is arrest without a warrant. Everything else, including the FIR, investigation and seriousness, follows from it.

Basis	**Cognizable offence**	**Non-cognizable offence**
Definition	BNSS s.2(1)(g); CrPC s.2(c)	BNSS s.2(1)(o); CrPC s.2(l)
Arrest without warrant	Police may arrest	Police cannot arrest without a warrant
Recording information	FIR registered (BNSS 173; CrPC 154)	Entered in a register; informant referred to the Magistrate (BNSS 174; CrPC 155)
Investigation	Police may investigate without a Magistrate's order (BNSS 175)	Needs the Magistrate's order
Seriousness	Generally serious	Generally less serious
Bail	May be bailable or non-bailable	Usually bailable
Examples	Murder, rape, theft, dowry death, kidnapping	Defamation, simple hurt, public nuisance, criminal intimidation

CrPC to BNSS

Topic	CrPC	BNSS
Definitions of cognizable and non-cognizable offences	s.2(c), s.2(l)	s.2(1)(g), s.2(1)(o)
FIR in cognizable cases	s.154	s.173 (also covers zero FIR and e-FIR)
Information in non-cognizable cases	s.155	s.174
Police power to investigate	s.156	s.175
Arrest without warrant	s.41	s.35
Notice of appearance	s.41A	s.35(3)
Arrest on refusal to give name and address	s.42	s.39

Important Judgments

Two Supreme Court judgments shape how the police handle cognizable offences today. Lalita Kumari makes FIR registration compulsory, and Arnesh Kumar makes arrest the exception rather than the rule.

Lalita Kumari v. Government of Uttar Pradesh (2013)

A Constitution Bench held that registering an FIR is mandatory when information discloses a cognizable offence, and the police have no discretion to refuse. Where the information does not clearly disclose a cognizable offence, the police may hold a preliminary enquiry only to find out whether it does, not to test whether the information is true.

The Court listed five categories where a preliminary enquiry may be held: matrimonial and family disputes, commercial offences, medical negligence, corruption, and cases with abnormal, unexplained delay in reporting. The enquiry must be finished within 7 days. BNSS 173(3) now gives a statutory preliminary enquiry, within 14 days, for offences punishable with 3 to 7 years.

Arnesh Kumar v. State of Bihar (2014)

In a case arising out of the cruelty offence under s.498A IPC, the Supreme Court held that the police must not arrest automatically for offences punishable with up to 7 years. Before arresting, the officer must be satisfied that arrest is necessary under the conditions in CrPC 41 (now BNSS 35) and record reasons. Otherwise the officer must issue a notice to appear. Magistrates must not authorise detention mechanically, and officers who ignore the directions face departmental action and contempt. Read the full case note on Arnesh Kumar v State of Bihar.

Other cases

Case	Year	Held
State of Haryana v Bhajan Lal	1992	Listed the categories in which an FIR can be quashed. One is an FIR that discloses only a non-cognizable offence, since police cannot investigate it without a Magistrate's order
Ramesh Kumari v State (NCT of Delhi)	2006	Police must register an FIR when information discloses a cognizable offence; doubts about its genuineness are no ground to refuse
Om Prakash v Union of India	2011	Offences under the Central Excise Act, 1944 were non-cognizable, so officers could not arrest for them without a warrant

FAQs

Is every non-bailable offence cognizable?

No. Cognizable or not, and bailable or not, are two separate classifications in the First Schedule. Most serious offences are both cognizable and non-bailable, but they do not always go together. Kidnapping (BNS 137) and rioting (BNS 191), for example, are cognizable but bailable. See bail under the BNSS for how bail works.

Can police arrest without warrant in a non-cognizable offence?

Generally no. For a non-cognizable offence the police need a warrant from a Magistrate. The narrow exception is BNSS 39 (formerly CrPC 42): if a person accused of a non-cognizable offence in an officer's presence refuses to give their name and address, or gives a false one, the officer

may arrest them to find out who they are.

Is defamation cognizable?

No. Defamation under BNS 356 is non-cognizable, bailable and compoundable. The police cannot register an FIR or arrest for it without a warrant. A court takes cognizance of defamation only on a complaint by the person defamed (BNSS 222, formerly CrPC 199).

What is a zero FIR under BNSS?

A zero FIR is an FIR that any police station must register for a cognizable offence, wherever the offence was committed. BNSS 173(1) makes this a statutory duty. The station registers it and transfers it to the police station that has jurisdiction.

Who decides whether an offence is cognizable?

The legislature does, through the First Schedule of the BNSS and the law that creates the offence. For BNS offences, Part I of the Schedule marks each one. For offences under other laws, Part II classifies them by punishment, unless that law says otherwise. Neither the police nor the complainant can change the classification.

Conclusion

The line between cognizable and non-cognizable offences is drawn by one question: can the police arrest without a warrant? For cognizable offences they can, and they also register an FIR and investigate on their own. For non-cognizable offences they cannot, and a Magistrate controls the investigation. The BNSS kept these definitions unchanged from 1 July 2024, but renumbered the sections and added the zero FIR, e-FIR, the 14-day preliminary enquiry and new limits on arrest.

For exams, learn the BNSS section next to its old CrPC number, and remember that cognizable and bailable are separate questions. Then move on to bailable and non-bailable offences and these practice questions on FIR under the BNSS.