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COGNIZABLE AND NON-COGNIZABLE OFFENCES UNDER THE BNSS 2023 AND ITS PROCEDURAL CONSEQUENCES

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ABSTRACT

The enactment of the BNSS 2023, replacing the Code of Criminal Procedure, 1973 (CrPC), marks an institutional overhaul of India's procedural criminal justice delivery system. Cognizable and non-cognizable offences, categorised primarily in Section 2(1)(g) and Section 2(1)(o) read with the First Schedule of the BNSS. This classification establishes the threshold for state intervention, dictating the scope of sovereign police prerogatives, the necessity of judicial warrants for arrest, and the statutory preconditions for initiating investigations. It examines key statutory departures from the 1973 Code, including the institutionalisation of Preliminary Enquiries under Section 173(3) for cognizable offences carrying sentences between three and seven years, the formal codification of Zero FIRs and (e-FIRs) under Section 173(1), and the procedural mechanics of non-cognizable information under Section 174.

The paper analyses the judicial oversight over arrest mandates under Section 35, the requirement of senior supervisory sanction for arresting vulnerable and elderly individuals, and the constitutional friction generated between police pre-investigation inquiries and the landmark constitutional bench mandate in *Lalita Kumari v. Govt. of U.P.*⁽¹⁾.

The study concludes that while the BNSS attempts to balance administrative efficiency, digital modernisation, and the mitigation of frivolous prosecution, Section 173(3) introduces substantive discretion at the police threshold, demanding stringent judicial guidelines to preserve personal liberty under Article 21 of the Constitution of India.

Keywords: BNSS 2023, Cognizable Offences, Non-Cognizable Offences, Section 173, Preliminary Enquiry, First Information Report, Criminal Procedure.

I. Introduction

The procedural framework governing criminal justice administration mediates the tension between the sovereign police powers of the State and the fundamental constitutional liberties guaranteed to individuals under Articles 20, 21, and 22 of the Constitution of India. In Indian criminal jurisprudence, this statutory balance has historically rested upon the classification of offences into cognizable and non-cognizable categories.

With the coming into force of the BNSS, 2023 which repealed and substituted CrPC 1973, Parliament sought to modernize criminal procedure, incorporate digital evidentiary trails, and declutter judicial dockets. However, the foundational dividing line between cognizable and non-cognizable offences remains the principal gateway determining:

1. Whether an arrest may be effected without a judicial warrant.
2. Whether an investigation can be launched *suo motu* by the police or remains contingent upon an express direction by a jurisdictional Magistrate.
3. The degree of judicial supervision exerted over pre-trial process.

While preserving the binary distinction established under colonial and post-colonial codes, the BNSS introduces substantive procedural innovations. Most notably, Section 173 codifies electronic information (e-FIR) and jurisdictional bypass (Zero FIR), while carving out a statutory window for a "Preliminary Enquiry" (PE) in offences punishable with imprisonment between three and seven years.

II. Statutory Definitions and the Classification Matrix

The BNSS defines the dichotomy between cognizable and non-cognizable offences under Section 2, retaining the conceptual core of Section 2 of the 1973 Code while adjusting surrounding statutory cross-references:

- **Cognizable Offence and Cognizable Case:** Defined under Section 2(1)(g) of the BNSS as:

"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."

- **Non-Cognizable Offence and Non-Cognizable Case:** Defined under Section 2(1)(o) of the BNSS as:

"an offence for which, and 'non-cognizable case' means a case in which, a police officer has no authority to arrest without warrant."

For offences arising under laws other than the BNS, Part II of the First Schedule applies a residual statutory formula based on maximum imposable punishment:

Punitive Threshold	Classification	Power of Arrest Without Warrant
Punishable with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Yes (subject to statutory safeguards)
Punishable with imprisonment for 3 years and upwards, but not more than 7 years	Cognizable	Yes (subject to Preliminary Enquiry provisions of BNSS § 173(3))
Punishable with imprisonment for less than 3 years or with fine only	Non-Cognizable	No (strictly requires judicial warrant)

III. Procedural Consequences in Cognizable Offences

The classification of conduct as a "cognizable offence" triggers an autonomous executive machinery. The presence of a cognizable offence relieves the police of the immediate necessity to seek judicial imprimatur before stepping into the field of investigation.

1. The Statutory Mandate of Section 173: Codification of FIR, e-FIR, and Zero FIR

Section 173 of the BNSS, serving as the foundational portal through which cognizable offences enter the formal criminal justice system. Section 173(1) introduces several structural modifications:

- **Zero FIR:** Section 173(1) explicitly mandates that information relating to the commission of a cognizable offence must be recorded by the officer in charge of a police station *"irrespective of the area where the offence was committed"*. This statutory incorporation codifies the judicial doctrine of "Zero FIR" formulated by the Supreme Court in *State of A.P. v. Punati Ramulu*⁽²⁾ and reinforced in *Kirti Vashisht v. State (NCT of Delhi)*⁽³⁾, removing jurisdictional objections at the threshold of registration.

Information Given Electronically (e-FIR): Section 173(1) proviso permits information to be transmitted electronically. However, to prevent procedural abuse, the statute provides that the electronic record must be taken on record only upon being signed by the informant within three days of its submission, reconciling technological modernisation with evidentiary

accountability.

2. The Innovation of Preliminary Enquiry under Section 173(3)

The most consequential procedural modification introduced by the BNSS is Section 173(3). Under the CrPC regime, the Constitution Bench of the Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh*⁽¹⁾ established that the registration of an FIR under Section 154 was mandatory if the information disclosed the commission of a cognizable offence, carving out narrow exceptions (e.g., matrimonial disputes, commercial fraud, medical negligence, corruption) where a preliminary inquiry could be conducted within a strict timeline.

Section 173(3) of the BNSS legislatively qualifies *Lalita Kumari* by creating a statutory mechanism:

"Without prejudice to the provisions contained in this section, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence—

- (i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or
- (ii) proceed with investigation when there exists a prima facie case."

3. Arrest Without Warrant: Section 35 and the Safeguards of Liberty

The cognizable offence is the police prerogative to arrest without a warrant. Under the BNSS, this power is codified in **Section 35**, which consolidates.

- **The Two-Tier Threshold:** Under Section 35(1)(a) and (b), where an offence is punishable with imprisonment up to seven years, an arrest cannot be executed as a matter of routine course. The investigating officer must be satisfied that the arrest is necessary to prevent further offences, ensure proper investigation, prevent tampering with evidence, or prevent intimidation of witnesses. The officer must record reasons in writing both when making an arrest and when deciding not to arrest.
- **Special Protections for Vulnerable Persons:** Section 35(7) introduces a statutory safeguard providing that no person accused of an offence punishable with less than three years of imprisonment who is infirm, or above the age of sixty years, shall be arrested without the prior permission of an officer not below the rank of Deputy Superintendent of Police.

IV. Procedural Consequences in Non-Cognizable Offences

Non-cognizable offences represent wrongs where public harm is statutorily presumed to be subordinate to private interest. The procedure governing non-cognizable cases is anchored in **Section 174 of the BNSS**.

1. Recording of Information and Judicial Referrals

Under Section 174(1), when information is received regarding the commission of a non-cognizable offence:

1. The officer in charge enters the substance of the information in the prescribed station diary.
2. The police officer is statutorily barred from investigating the case *suo motu*.
3. The informant must be referred to the Magistrate having jurisdiction.

2. Absolute Bar on Warrantless Investigation and Arrest

Section 174(2) establishes an unequivocal negative covenant:

"No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial."

If a police officer conducts an investigation into a non-cognizable offence without magisterial sanction under Section 174(2), the defect goes to the root of the jurisdiction. The resulting investigative steps to quashment under the inherent powers of the High Court (Section 528 of the BNSS), unless cured under specific statutory exceptions.

3. Magisterial Supervision and Investigative Powers

Once the Magistrate examines the complaint/referral and issues an order directing an investigation under Section 174(2):

- The police officer exercises the same powers of investigation as in a cognizable case, **except the power to arrest without warrant** (Section 174(3)).
- The investigation culminates in a police report submitted to the Magistrate under Section 193 of the BNSS.

4. The Principle of Mixed Offences

A common procedural complication arises when an incident involves both cognizable and non-cognizable offences. Section 174(4) preserves the rule that where a case relates to two or more offences of which at least one is cognizable, **the case shall be deemed to be a cognizable**

case, notwithstanding that the remaining offences are non-cognizable.

V. Comparative Matrix: Procedural Consequences Under BNSS

Parameter	Cognizable Offence (BNSS sec 2(1)(g))	Non-Cognizable Offence (BNSS sec 2(1)(o))
Arrest Authority	Permissible without a warrant, subject to the conditions laid out in Section 35.	Impermissible without a valid warrant issued by a competent Magistrate.
Information Portal	First Information Report (FIR) under Section 173 (including e-FIR and Zero FIR).	Non-Cognizable Report (NCR) entered into the station diary under Section 174(1).
Commencement of Investigation	Mandatory and immediate, unless governed by the Preliminary Enquiry clause under Section 173(3).	Prohibited until the jurisdictional Magistrate issues an express order under Section 174(2).
Preliminary Enquiry Option	Explicitly permitted for offences punishable with 3 to 7 years imprisonment (sec 173(3)).	Inapplicable; the initial evaluation rests with the Magistrate upon referral.
Composite Case Operation	Absorbs non-cognizable components; the case is treated as cognizable <i>in toto</i> (sec 174(4)).	Subordinate to cognizable offences when arising from the same transaction.

VI. Critical Issues, Constitutional Challenges, and Judicial Dilemmas

The bifurcated procedural architecture of the BNSS creates specific constitutional and institutional friction points that require judicial interpretation:

1. Section 173(3) and the Tension with *Lalita Kumari*

The introduction of a discretionary Preliminary Enquiry for offences punishable between three and seven years directly recalibrates the doctrine established in *Lalita Kumari*. While the Supreme Court treated mandatory FIR registration as a shield against police suppression of crime, Section 173(3) institutionalises an administrative buffer.

2. Judicial Discretion vs. Police Power under Section 35

Section 35 re-enacts the procedural protections against mechanical arrests outlined in *Arnesh*

Kumar v. State of Bihar⁽⁴⁾. By requiring objective necessity for arrest and mandating that reasons be recorded, the BNSS formalizes judicial scrutiny over the classification of cognizable offences. Magistrates acting under Section 187 (remand proceedings, corresponding to Section 167 CrPC) are statutorily duty-bound to inspect these recorded reasons before authorizing detention, bridging the gap between police cognizability and judicial protection of liberty under Article 21.

3. Evidentiary and Jurisdictional Integrity in the Digital Paradigm

The procedural interplay between e-FIRs in cognizable offences and forensic requirements poses novel evidentiary questions. While Section 173(1) allows online transmission, the three-day physical signature requirement could create procedural anomalies in cybercrimes, where quick police intervention is essential to prevent dissipation of evidence and transaction trails. The procedural consequences of a non-cognizable cyber infraction similarly highlight the limits of the Section 174 magisterial referral process in dealing with dynamic, rapid digital harms.

The foundational authority is *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1. A Constitution Bench held that registration of an FIR is mandatory under the old Section 154 of the CrPC if the information discloses a cognizable offence, and that the police have no discretion to refuse. The Court did allow a narrow preliminary enquiry in limited categories, matrimonial and family disputes, commercial offences, medical negligence, corruption cases, and cases of abnormal delay, but capped that enquiry at seven days. Since Section 173(1) of the BNSS re-enacts the same mandatory-registration rule, the *Lalita Kumari* principle continues to govern.

In the case of *State of Haryana v. Bhajan Lal*⁽⁵⁾. The Supreme Court laid down seven categories of cases in which an FIR or criminal proceeding can be quashed at the threshold as an abuse of process, for instance, where the allegations, even taken at face value, don't make out an offence. The flip side of the same ruling is just as important: where a complaint does disclose a cognizable offence, the police must register and investigate. *Bhajan Lal* is the case both complainants and the accused reach for, depending on which way the facts cut.

In *Imran Pratapgadhi v. State of Gujarat*⁽⁶⁾ decided on 28 March 2025, the Supreme Court read Section 173(3) for the first time. It held that Section 173(3) is an exception to the general mandatory-FIR rule in Section 173(1), and that where an alleged offence relates to speech and falls within the reasonable restrictions of Article 19(2) of the Constitution, it is appropriate for the police to conduct a preliminary enquiry under Section 173(3) before registering an FIR.

VII. Conclusion

The statutory divide between cognizable and non-cognizable offences under the BNSS, 2023 forms the structural backbone of Indian criminal procedure. By delineating the boundaries of state coercion, this dichotomy regulates the point of contact between the citizen and the coercive machinery of the State.

While the BNSS introduces positive structural developments—such as the formal recognition of Zero FIRs, the integration of electronic reporting, and protective provisions for elderly and infirm individuals—it also introduces ambiguities through the Preliminary Enquiry mechanism in Section 173(3). To prevent Section 173(3) from functioning as a tool of procedural delay or selective enforcement, constitutional courts will need to establish clear judicial standards.

VIII. References

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