



EAGLE INSTITUTE OF LAW

BASIC TERMS IN BNSS

Cognizable Offence

Meaning: Cognizable = able to be apprehended.

Definition: S.2(1)(g) BNSS 2. (c) (Cr.P.C.) 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.

Cognizable offences are **usually** serious in nature. (For details see First Schedule of BNSS.)

Sec. **173 BNSS**/ 154 Cr.P.C. provides that the Police Officer has to receive **FIR** relating to cognizable offences without Magistrate's permission, and enters it in General Diary and immediately starts investigation.

The Police may **arrest the accused**, in cognizable offence without warrant.

In cognizable offences, police has a duty to investigate the case without seeking permission from the Magistrate.

Non- Cognizable Offence

Meaning: Non-Cognizable = not able to be apprehended.

Definition: S.2 (1)(O) BNSS /S.2.(1) (Cr.P.C.) 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.

Non-cognizable offences are **not so much serious** as cognizable offences.

Sec. **174 BNSS**/ 155 Cr.P.C. provides that the police officer is **not competent** to receive and **record FIR** pertaining to the offence of non-cognizable offences, unless he obtains permission from the Magistrate.

In non-cognizable offences, the police **cannot arrest** any person without warrant.

In non-cognizable offence, police has a duty to obtain permission first from the Magistrate and then investigates the case.

“Ashish Kumar Tiwari @ Rahul And 27 Others Vs. State Of U.P. Thru. A.C.S/Prin. Secy. Deptt. Home Govt. Lko. And Another 2024 :
The Allahabad High Court has observed that the investigation of a non-cognizable offence by the police without prior permission of the competent Magistrate is illegal, and subsequent permission by the Magistrate cannot cure this illegality.

Referring to the provision under sub Section (2) of Section 155 of CrPC, (Now section **174(2) of BNSS**) a bench of Justice Shamim Ahmed noted that asking permission of the Court to investigate a non-cognizable offence is mandatory in nature, and if such permission isn't taken, merely accepting the charge sheet by the Magistrate and taking the cognisance of the offence does not validate the proceeding.”

Bailable offence

In bailable offences (Section 2(1)(c) of BNSS), the accused can claim bail as a matter of right. Police is supposed to release such an accused on bail if he is prepared to give bail at any time while he is in the custody of a Police Officer.

Non-Bailable offence

In non-bailable offences (Section 2(1)(c) of BNSS), the accused is not entitled to bail as a matter of right. Police invariably does not take bail in such cases and only the Court grants bail. The list of bailable and non-bailable offences is given in the first schedule of the BNSS.

Can Police call someone for investigation even if granted anticipatory bail by the court?

Yes, certainly. The court only forbids the arrest but does not prevent police from calling the accused for investigation. In fact, invariably it is one of the conditions of the anticipatory bail that the accused shall make himself available for investigation as and when required by the investigating officer. Refusal to do so may entitle the investigating officer to move the court for cancellation of anticipatory bail. In case the investigating officer finds that a criminal case is made out against an accused granted anticipatory bail by the court, he will not arrest him but will release him on bail, even if the offence is Non-Bailable.

What is First Information Report (FIR)?

As per Section **173 of BNSS**, report pertaining to occurrence of a cognizable offence, received at the Police Station is called First Information Report (FIR), popularly known as FIR.

What the Police Station does with a complaint pertaining to Non-cognizable offence?

As per Section **174 of BNSS**, Police Station is required to record an abstract of such complaint in the **General Diary** and advise the complainant to file the complaint in the concerned court as police is not empowered to initiate action in such matters without the directions of the court. A copy of the entry made in the General Diary may be provided to the complainant free of cost.

What to do if the Police Station refuses to register the FIR?

As per Section **173(4) of BNSS**, if the Police Station refuses to register FIR, substance of the information in writing can be sent by post to the SP of the concerned district. He, if satisfied that the information discloses the commission of a cognizable offence, shall get the FIR registered and investigated.

Is it an offence to register/lodge false FIR?

Yes. Lodging of a false FIR/complaint is punishable under BNS. Such an informant / complainant can be proceeded against under section 217 of BNS or under section 248 of BNS by the police. Private person against whom false FIR/complaint has been lodged can also file complaint in the court for the offence of defamation.

How do I lodge F.I.R.?

The informant/ complainant can lodge his complaint at any/nearest police station irrespective of the jurisdiction (**Zero- FIR**) and report to officer in-charge/ station house officer about commission of a cognizable offence. In case information is given on telephone, the informant / complainant should subsequently go to the police station within 3 days of giving the complaint for registration of F.I.R.

How do I lodge a NC (Non cognizable) complaint?

Information about such offences is to be given in a similar manner as explained under F.I.R.. The officer in-charge would reduce the complaint in writing (about commission of Non cognizable offence) and give a copy thereof to the complainant free of cost. No police officer can investigate a non-cognizable case

unless he obtains prior permission of a Magistrate having power to try such case.

What is meant by a 'complaint'?

Complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under the BNSS, that some person (whether known or unknown), has committed an offence.

Is the complainant entitled to a free copy of the FIR?

Yes, definitely. As per BNSS Section 173(2) it is mandatory on the part of police to provide a copy of the FIR, free of cost to the complainant or the victim.

Why Police does not remove encroachments from public lands when complained about it?

Police is not empowered to remove encroachments from public lands under any law. The job of the police is to provide police assistance for maintaining law and order when sought by such agencies.

What is preventive arrest?

Police is empowered to arrest a person when it is satisfied that doing so is essential in order to prevent occurrence of a cognizable offence example Sec 126/170 of BNSS. Police can also make preventive arrests under special Laws.

ARREST

Arrest means the taking, seizing, or detaining of the person of another, either by touching, or putting hands on him, or by any act which indicates an intention to take him into custody, and subjects the person arrested to the actual control and will of the person making the arrest. Chapter V and Section 35 to 62 of BNSS 2024, deals with Arrest of Persons.

As per section **35 (1) of BNSS**, any police officer may, without an order from a Magistrate and without a warrant, arrest any person,

who has been concerned in any cognizable offence, or a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists; or

in whose possession anything is found which may reasonably be suspected to be stolen property; or

who obstructs a police officer while in the execution of his lawful duty, or who has escaped, or attempts to escape, from lawful custody;

Reasonably suspected of being a deserter from any of the Armed Forces.

As per Section **39 of BNSS.**, any person who, in the presence of a police officer, has committed or has been accused of committing a **non-cognizable offence**, **refuses** on demand of such officer to give his name and residence, can be arrested.

As per Section **47 of BNSS**, person arrested without warrant has to be informed about the grounds of his arrest and about his entitlement regarding bail.

As per Section **51 of BNSS**, when a person is arrested and if there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector (and for any person acting in good faith in his aid and his direction), to make such an examination of a person arrested as is reasonably necessary, and to use such force as is reasonably necessary for that purpose.

When a person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner. As per Section **57 of BNSS**, A police officer

making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case or before the officer in-charge of a police station.

As per Section **58 of BNSS**, No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section **187 of BNSS**, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

As per Section **170 of BNSS.**, a person can also be arrested to prevent commission of cognizable offences.