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A PROCEDURAL SHIFT IN CRIMINAL LAW: PRE-COGNIZANCE HEARINGS UNDER SECTION 223 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

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I. ABSTRACT

Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") fundamentally alters the procedural architecture of complaint-case adjudication in Indian criminal law. Under the Code of Criminal Procedure, 1973 ("CrPC"), the stage preceding issuance of process was ordinarily ex parte: the Magistrate examined the complainant, evaluated the threshold material and, if sufficient ground existed, issued process without any participation by the proposed accused. The first proviso to Section 223(1) now prohibits cognizance without giving the accused an opportunity of being heard. The Supreme Court of India, in its landmark decisions in Kushal Kumar Agarwal v Directorate of Enforcement (2025) and Parvinder Singh v Directorate of Enforcement (2026), has characterised this protection as mandatory, substantive and integral to the Article 21 guarantee of fair trial. Yet the provision leaves several critical questions unresolved: the precise point at which the hearing must occur, the materials that may be considered, the permissible degree of participation, its interaction with special statutes such as the Prevention of Money Laundering Act, 2002 and the Negotiable Instruments Act, 1881, and the consequences for expeditious justice. This paper employs doctrinal and comparative legal research methodology to argue that Section 223 should be understood as creating "controlled threshold adversariality"—a meaningful but confined hearing directed to legal maintainability and the existence of a prima facie basis for cognizance, without permitting cross-examination, contested defence evidence or a premature trial. Through a comprehensive analysis of the emerging judicial precedent, statutory architecture and constitutional implications, this paper further proposes a uniform procedural framework of ten practice

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directions designed to reconcile the protection against abusive prosecution with the complainant's right of access to justice.

II. KEYWORDS

BNSS; Pre-Cognizance Hearing; Section 223; Natural Justice; Fair Trial

III. INTRODUCTION AND RESEARCH PROBLEM

The decision to take cognizance is a modest-looking but consequential act in Indian criminal procedure. It marks the point at which a criminal court judicially notices an alleged offence and activates the statutory machinery that may eventually result in summons, coercive attendance, trial and punishment.[2] Although cognizance is distinct from issuance of process, the former supplies the jurisdictional foundation for the latter. An unreasoned or mechanical threshold decision can therefore expose an individual to substantial reputational, financial and personal costs even where the complaint is legally untenable.

The CrPC responded to this risk through judicial screening. A Magistrate receiving a private complaint could examine the complainant under Section 200,[3] inquire into the matter or direct a limited investigation under Section 202,[4] dismiss the complaint under Section 203,[5] or issue process under Section 204.[6] That model was principally unilateral until process was issued. The proposed accused had no right to contest the complainant's case during the preliminary inquiry. In *Chandra Deo Singh v Prokash Chandra Bose*,[7] the Supreme Court treated the inquiry as one concerned with the complainant's material and denied the proposed accused a right to participate or cross-examine witnesses at that stage.

Section 223 BNSS changes that allocation of procedural voice. Its first proviso directs that "no cognizance of an offence shall be taken by the Magistrate without giving the

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[2]RR Chari v State of Uttar Pradesh AIR 1951 SC 207.
[3]Code of Criminal Procedure 1973, s 200.
[4]Code of Criminal Procedure 1973, s 202.
[5]Code of Criminal Procedure 1973, s 203.
[6]Code of Criminal Procedure 1973, s 204.
[7]Chandra Deo Singh v Prokash Chandra Bose AIR 1963 SC 1430.

accused an opportunity of being heard."[8] The change is textually brief but structurally significant. It inserts the accused into a stage traditionally reserved for unilateral judicial scrutiny and creates an apparent tension with the settled doctrine that a Magistrate ordinarily takes cognizance when applying judicial mind to a complaint with a view to proceeding under the complaint chapter.

The controversy is not merely semantic. The timing of cognizance determines whether the accused must be heard before or after the complainant and supporting witnesses are examined. The scope of the hearing determines whether Section 223 functions as a genuine safeguard, an empty formality, or an invitation to conduct a mini-trial before the case formally begins. Its application to complaints under special statutes—especially the Prevention of Money Laundering Act, 2002 ("PMLA")[9] and the Negotiable Instruments Act, 1881 ("NI Act")[10]—raises questions of statutory consistency and procedural efficiency. Section 223(2), which creates additional conditions for complaints against public servants in respect of acts connected with official duty,[11] introduces a further institutional dimension.

The central research problem, therefore, is the absence of a coherent procedural framework for operationalising Section 223. Despite Supreme Court recognition of the provision's mandatory and substantive character, trial courts remain without definitive guidance on the sequencing, scope and evidentiary limits of the pre-cognizance hearing. These interpretive vacuum risks producing inconsistent applications that could either render the safeguard illusory or transform it into a mechanism for delay and obstruction.

A. Research Objectives

The objectives of this research are as follows:

[8]Bharatiya Nagarik Suraksha Sanhita 2023, s 223(1), first proviso.
[9]Prevention of Money Laundering Act 2002, ss 3, 4, 44, 46, 65, 71.
[10]Negotiable Instruments Act 1881, ss 138, 145.
[11]Bharatiya Nagarik Suraksha Sanhita 2023, s 223(2).

1. First, to trace the doctrinal evolution of cognizance and ex parte screening in Indian complaint-case procedure under the CrPC and to identify the specific procedural gap that Section 223 BNSS seeks to address.
2. Second, to analyse the statutory text and architecture of Section 223 BNSS in relation to Sections 210 and 225–227 and to determine the correct sequencing of examination, hearing and cognizance in private complaint cases.
3. Third, to critically examine the emerging jurisprudence of the Supreme Court and High Courts on the nature, scope and consequence of non-compliance with the pre-cognizance hearing requirement.
4. Fourth, to evaluate the interaction of Section 223 with special statutes, particularly the PMLA and the NI Act, and to assess whether uniform application is consistent with the distinct procedural regimes under those enactments.
5. Fifth, to propose a model of "controlled threshold adversariality" operationalised through uniform practice directions that reconcile the accused's right to a fair hearing with the complainant's right of access to justice and the systemic imperative of expeditious disposal.

B. Research Questions

This paper seeks to answer the following research questions:

1. At what precise point in the complaint-case procedure under Section 223 BNSS must the proposed accused be given an opportunity of being heard—before or after the Magistrate examines the complainant and supporting witnesses?
2. What is the permissible scope of the pre-cognizance hearing in terms of the nature of objections, evidentiary material and degree of participation available to the proposed accused?

3. How does the mandatory pre-cognizance hearing interact with the procedural regimes of special statutes, specifically the PMLA and the NI Act, and what framework governs cases of apparent inconsistency?
4. What uniform procedural model can operationalise Section 223 while preserving the distinct functions of cognizance, inquiry and issuance of process under the complaint chapter?

C. Research Hypotheses

This paper proceeds on the following hypotheses:

1. Cognizance under Section 223 BNSS is a composite decisional process rather than an instantaneous jurisdictional act, and the recording of the complainant's statement is a preparatory step that does not complete cognizance until the proposed accused has been heard.
2. The pre-cognizance hearing is properly confined to questions of legal maintainability and prima facie sufficiency of the complaint, excluding cross-examination, contested defence evidence and factual adjudication.
3. A standardised procedural framework of controlled threshold adversariality, implemented through practice directions, can effectively reconcile the protective function of Section 223 with the complainant's access to justice and the systemic need for expeditious disposal.

D. Research Methodology

This paper employs a doctrinal and comparative legal research methodology. The primary sources comprise the statutory text of the BNSS, the CrPC and relevant special statutes, together with the reported and unreported decisions of the Supreme Court and High Courts interpreting Section 223 and its predecessor provisions. The analysis proceeds through close textual interpretation, systematic doctrinal reconstruction and critical evaluation of emerging judicial approaches.

The comparative dimension draws upon the procedural frameworks of the United States (Federal Rules of Criminal Procedure, Rule 5.1), England and Wales (Magistrates' Courts Act 1980 and Prosecution of Offences Act 1985), and relevant international human rights standards, particularly Article 14 of the International Covenant on Civil and Political Rights and General Comment No. 32 of the UN Human Rights Committee. These comparators contextualise the Indian innovation within the broader common-law and international fair-trial framework.

Secondary sources, including legal commentaries, journal articles and institutional reports on criminal procedure reform, supplement the doctrinal analysis. The normative evaluation engages with constitutional principles under Articles 14 and 21 of the Constitution of India, balancing the right to fair trial against the right of access to justice.

E. Literature Review

1. Cognizance as Judicial Application of Mind

Neither the CrPC nor the BNSS defines "cognizance." Its meaning has consequently been developed through precedent. In *RR Chari v State of Uttar Pradesh*,[12] cognizance was associated with the Magistrate's application of judicial mind to the suspected commission of an offence for the purpose of proceeding under the Code. The act does not require a formal order or prescribed formula; it is inferred from the purpose for which judicial attention is applied.

The distinction between judicial application of mind for taking cognizance and application of mind for another purpose was sharpened in *Devarapalli Lakshminarayana Reddy v V Narayana Reddy*.[13] A direction for police investigation under Section 156(3) CrPC[14] was classified as a pre-cognizance step. By contrast, once the Magistrate proceeded under Section 200 and, if necessary, Section 202, cognizance had already been taken. *Tula Ram v Kishore Singh*[15] similarly organised the Magistrate's options after receiving a complaint and confirmed that the complaint procedure under Chapter XV followed the decision to take cognizance.

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[12] RR Chari v State of Uttar Pradesh AIR 1951 SC 207.
[13]Devarapalli Lakshminarayana Reddy v V Narayana Reddy (1976) 3 SCC 252.
[14]Code of Criminal Procedure 1973, s 156(3).
[15]Tula Ram v Kishore Singh (1977) 4 SCC 459.

Later decisions retained this functional understanding. *Chief Enforcement Officer v Videocon International Ltd*[16] explained that cognizance involves judicial notice of an offence and is distinct from the commencement of proceedings against a particular person. *Bhushan Kumar v State (NCT of Delhi)*[17] reiterated that cognizance is taken of an offence, whereas summons is issued to an offender. *Sarah Mathew v Institute of Cardio Vascular Diseases*[18] treated application of judicial mind for initiating proceedings as the critical event for limitation purposes.

In *Kallu Nat alias Mayank Kumar Nagar v State of Uttar Pradesh*,[19] the Supreme Court restated that cognizance has no rigid or formulaic taxonomy. Its occurrence depends upon the statutory procedure and the point at which judicial mind is applied for initiating criminal proceedings. Two propositions emerge from this body of precedent. First, cognizance and process are conceptually separate. Secondly, under the CrPC's complaint framework, proceeding to examine the complainant under Section 200 was generally treated as evidence that cognizance had already been taken.

2. Ex Parte Screening and the Position of the Proposed Accused

Under the CrPC, the preliminary complaint stage served a filtering function. The proposed accused ordinarily had no participatory right in this sequence. *Chandra Deo Singh*[20] rejected intervention by the accused during the Section 202 inquiry because the object was not to determine guilt but to assess whether the complaint deserved to proceed. The accused could watch the proceedings but could not cross-examine witnesses or introduce a competing evidentiary case.

At the same time, the Supreme Court repeatedly warned that summoning is not a routine administrative act. *Pepsi Foods Ltd v Special Judicial Magistrate*[21] described summoning in a criminal case as a serious matter and required application of mind to the allegations and supporting material. *Sunil Bharti Mittal v Central Bureau of*

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[16]Chief Enforcement Officer v Videocon International Ltd (2008) 2 SCC 492.
[17]Bhushan Kumar v State (NCT of Delhi) (2012) 5 SCC 424.
[18]Sarah Mathew v Institute of Cardio Vascular Diseases (2014) 2 SCC 62.
[19]Kallu Nat alias Mayank Kumar Nagar v State of Uttar Pradesh 2025 INSC 930.
[20] Chandra Deo Singh v Prokash Chandra Bose AIR 1963 SC 1430.
[21]Pepsi Foods Ltd v Special Judicial Magistrate (1998) 5 SCC 749.

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Investigation[22] and *Mehmood Ul Rehman v Khazir Mohammad Tunda*[23] similarly insisted upon a legally sustainable basis for proceeding.

The pre-BNSS structure therefore relied on conscientious judicial screening rather than adversarial participation as the principal safeguard against meritless complaints. That model contained an obvious vulnerability: judicial screening could become mechanical, particularly in high-volume courts. The accused obtained an effective opportunity to contest the case only after process, by which time reputational injury, litigation cost and coercive consequences could already arise. Section 223 attempts to address that vulnerability by adding an adversarial element before cognizance is completed.

IV. RESEARCH AND ANALYSIS

A. The Statutory Architecture of Section 223 BNSS

1. Textual Change from Section 200 CrPC

Section 200 CrPC began with the phrase: "A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant…" Section 223(1) BNSS states: "A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any…"[24]

The insertion of the word "while" is significant. It indicates that examination is part of an ongoing process of taking cognizance rather than an act necessarily occurring after cognizance has already crystallised.

The first proviso imposes a categorical restriction: "Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard."[25] The language is negative, mandatory and directed to the court's jurisdiction to complete the cognizance decision. It is not framed as a discretion

[22]Sunil Bharti Mittal v Central Bureau of Investigation (2015) 4 SCC 609.
[23]Mehmood Ul Rehman v Khazir Mohammad Tunda (2015) 12 SCC 420.
[24]Bharatiya Nagarik Suraksha Sanhita 2023, ss 210, 218, 223–228, 530, 531.
[25] Bharatiya Nagarik Suraksha Sanhita 2023, s 223(1), first proviso.

dependent upon the nature of the allegation or the Magistrate's preliminary satisfaction.

Section 223(2) separately addresses complaints against public servants. Where the alleged offence is said to have occurred in the course of official functions or duties, cognizance cannot be taken unless the public servant is permitted to make assertions concerning the situation leading to the incident, and a report containing the facts and circumstances of the incident is received from the public servant's superior officer.[26] This is distinct from the general hearing right under Section 223(1) and from the sanction requirement under Section 218.[27]

2. Relationship with Sections 210 and 225–227

Section 210 identifies the sources from which a Magistrate may take cognizance, including a complaint of facts constituting an offence. Section 225 permits postponement of process and an inquiry or investigation for deciding whether sufficient ground exists to proceed.[28] Section 226 requires dismissal with brief reasons if sufficient ground is absent. Section 227 authorises issuance of summons or warrant where sufficient ground exists.

This sequence confirms that three decisions must remain analytically separate: whether cognizance may be taken; whether further threshold inquiry is required; and whether process should issue. Section 223 adds a hearing at the first decision. It does not eliminate the Section 225 inquiry or collapse cognizance into issuance of process. The statutory design also cautions against importing the full scope of a discharge or quashing proceeding into Section 223. If the pre-cognizance hearing conclusively resolved disputed facts, Sections 225 and 226 would lose much of their independent function.

3. The Status of the "Accused" Before Cognizance

[26] Bharatiya Nagarik Suraksha Sanhita 2023, s 223(2).
[27]Bharatiya Nagarik Suraksha Sanhita 2023, s 218.
[28]Bharatiya Nagarik Suraksha Sanhita 2023, s 225.

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The proviso uses the term "accused" even though formal cognizance and process have not yet occurred. This drafting choice should not be read as conferring the full procedural status associated with a summoned accused. At this point, the person is better described, for operational purposes, as the "proposed accused." Notice under Section 223 is not summons under Section 227, does not require surrender, and should not trigger arrest or bail consequences. Treating it otherwise would undermine the protective purpose of the proviso and stigmatise a person before the court has even accepted the complaint for cognizance.

B. The Emerging Jurisprudence

1. Kushal Kumar Agarwal: The Statutory Embargo

The first authoritative Supreme Court treatment came in *Kushal Kumar Agarwal v Directorate of Enforcement*.[29] A prosecution complaint under Section 44 PMLA[30] had been filed after the BNSS commenced. Drawing upon *Yash Tuteja v Union of India*[31] and *Tarsem Lal v Directorate of Enforcement*,[32] the Supreme Court recognised that a PMLA prosecution complaint is governed by the procedural provisions applicable to complaints, so far as they are not inconsistent with the special enactment.

The Supreme Court characterised the first proviso to Section 223(1) as an "embargo" on the power to take cognizance. The cognizance order was set aside because the appellant had not been heard. The decision established two propositions of immediate importance: Section 223 applies to PMLA complaints filed after 1 July 2024, and compliance is not optional merely because the complaint is filed by a specialised investigating agency before a Special Court.

2. Parvinder Singh: A Substantive Article 21 Right

Parvinder Singh v Directorate of Enforcement[33] substantially deepened the doctrine. The PMLA complaint was filed shortly before the BNSS commenced, but cognizance was

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[29] Kushal Kumar Agarwal v Directorate of Enforcement 2025 SCC OnLine SC 1221; 2025 INSC 760.
[30] Prevention of Money Laundering Act 2002, s 44(1)(b).
[31] Yash Tuteja v Union of India (2024) 8 SCC 465.
[32] Tarsem Lal v Directorate of Enforcement (2024) 7 SCC 61.
[33] Parvinder Singh v Directorate of Enforcement 2026 INSC 519.

taken after 1 July 2024. The Supreme Court examined the transitional provision in Section 531[34] and concluded that mere filing and ministerial numbering of the complaint did not amount to a pending "inquiry" preserved under the CrPC. The BNSS therefore governed the cognizance decision.

More importantly, the Court classified the proviso as substantive in nature. It confers a right to be heard before cognizance, forming part of the accused's Article 21 right to fair trial. The word "shall" was construed as mandatory. Cognizance taken without due compliance was declared void ab initio, not a curable irregularity dependent upon proof of prejudice.

The Supreme Court also confirmed that the complaint procedure in Sections 223–228 applies to PMLA proceedings unless a specific inconsistency with the special statute is demonstrated. *Parvinder Singh* thus settles the legal force and consequence of the proviso: a court cannot treat the hearing as dispensable, cure its absence by giving the accused an opportunity at the stage of charge, or insist that the accused demonstrate specific prejudice. Yet the case did not squarely determine the ordering of oral examination and notice in an ordinary private complaint, nor did it define what "being heard" entails.

3. The High Court Sequencing Conflict

High Courts have divided over when notice should be issued. One line of authority, represented by *Neeti Sharma v Saranjit Singh*,[35] *Brand Protectors India Pvt Ltd v Anil Kumar*,[36] and *Basanagouda R Patil v Shivananda S Patil*,[37] places the hearing after the complainant's statement and supporting threshold material have been recorded, but before the court completes cognizance. This approach treats cognizance under Section 223 as a composite process rather than an instantaneous act.

The opposing view draws strength from the traditional doctrine under *RR Chari*, *Devarapalli* and *Tula Ram*. If a Magistrate's decision to proceed under the complaint

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[34]Bharatiya Nagarik Suraksha Sanhita 2023, s 531.
[35]Neeti Sharma v Saranjit Singh 2025 SCC OnLine Del 2329.
[36]Brand Protectors India Pvt Ltd v Anil Kumar 2025 SCC OnLine Del 5046.
[37]Basanagouda R Patil v Shivananda S Patil 2024 SCC OnLine Kar 96.

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chapter and examine the complainant itself amounts to cognizance, a hearing conducted only after examination comes too late. On that reasoning, notice must precede any Section 223 examination.

In *Dr Rita Bakshi v Seema Bajaj*,[38] the Delhi High Court identified the conflict and referred the issue for authoritative resolution by a larger Bench. The questions referred include: the point at which a Magistrate takes cognizance in a private complaint under the BNSS; whether examination of the complainant and witnesses is prior to, or part of, taking cognizance; and whether notice under the first proviso must be issued before or after such examination.

C. Resolving the Sequencing Problem

The sequencing dispute should not be resolved by mechanically transporting CrPC doctrine into altered statutory language. The classic cases interpreted Section 200, which contained no hearing proviso and described a Magistrate "taking cognizance." Section 223 uses "while taking cognizance" and expressly requires a hearing before cognizance. Parliament must be presumed to have legislated against the background of the pre-existing doctrine. The textual modification should therefore be given operative effect.

The more coherent construction is that cognizance in complaint cases under Section 223 is now a composite decisional process. Receipt and preliminary perusal of the complaint, and where required the recording of the complainant's statement, are preparatory judicial acts. They permit the Magistrate to identify the allegations and assemble the threshold record but do not complete cognizance. Legal cognizance crystallises only after the proposed accused has been given an opportunity to address that record and the Magistrate decides to proceed under the complaint chapter.

This construction is preferable for four reasons. First, it gives meaning to the word "while" and to the proviso without treating either as redundant. Secondly, it makes the hearing informed, as an accused cannot meaningfully answer a complaint where

[38] Dr Rita Bakshi v Seema Bajaj 2026:DHC:2282.

the complainant's sworn version has not yet been recorded or disclosed. Thirdly, it prevents unnecessary notice in facially defective matters. Fourthly, it preserves the distinction between the preparatory formation of a threshold record and the final jurisdictional decision.

The principal objection is that even preliminary examination requires application of judicial mind, traditionally sufficient for cognizance. The answer lies in the contextual nature of cognizance recognised in *Kallu Nat*.[39] Judicial attention does not invariably equal statutory cognizance; its legal character depends upon the purpose and procedure. Under the new structure, examination can similarly be treated as part of an incomplete statutory process whose culmination is expressly postponed until hearing.

D. Nature and Scope of the Section 223 Hearing

1. A Meaningful Opportunity, not a Ritual

Parvinder Singh's classification of the proviso as an Article 21 right excludes purely ceremonial compliance. A meaningful opportunity requires: adequate notice of the allegations; access to the material on which cognizance is proposed; reasonable time to respond; and genuine consideration of the response before the decision. A notice that merely directs appearance without supplying the complaint or relevant statements would not permit effective participation.

Representation through counsel should ordinarily suffice. Personal appearance should be required only where reasons are recorded, especially because compelling attendance before cognizance would reproduce the coercive burden the proviso is intended to regulate. Section 530 BNSS, which permits proceedings and examination through electronic means, supports flexible and proportionate participation.[40]

2. Permissible Objections at the Hearing

[39] Kallu Nat alias Mayank Kumar Nagar v State of Uttar Pradesh and Anr 2025 INSC 930.
[40] Bharatiya Nagarik Suraksha Sanhita 2023, s 530.

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The hearing should permit objections that can be decided without adjudicating contested evidence. These include: absence of territorial or subject-matter jurisdiction; a statutory prohibition on cognizance, including want of sanction where the bar is apparent; limitation, where determinable from admitted dates; absence of one or more essential ingredients of the alleged offence, even if the complaint is accepted at face value; legal immunity, prior adjudication or another patent maintainability defect; demonstrable non-compliance with a mandatory precondition under a special statute; failure to attribute any legally relevant act or mental element to a particular proposed accused; and abuse of process apparent from the complaint record or incontrovertible public documents.

3. Matters Ordinarily Excluded

The hearing should not permit cross-examination of the complainant or witnesses. The concern expressed in *Chandra Deo Singh* remains persuasive: allowing cross-examination would convert threshold scrutiny into an evidentiary contest and expose complainants to intimidation or attrition before process. Nor should the proposed accused ordinarily be permitted to lead oral evidence, summon defence witnesses, demand broad discovery, contest witness credibility, establish an alibi, seek findings on consent, intention, authorship or other disputed facts, or obtain a final adjudication on the merits.

Documentary defence material requires a calibrated rule. The preferable standard is to admit only material that is public, admitted, self-authenticating, or of such unimpeachable character that its consideration does not require a trial. The "sterling and impeccable quality" approach used in quashing jurisprudence, including *Rajiv Thapar v Madan Lal Kapoor*,[41] offers a useful but demanding analogy.

4. Standard of Decision and Form of Order

At cognizance, the Magistrate is not to determine guilt or whether conviction is probable. The question is whether the allegations and legally cognizable threshold

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[41]Rajiv Thapar v Madan Lal Kapoor (2013) 3 SCC 330.

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material disclose an offence and justify invoking the court's complaint jurisdiction. The proposed accused's burden is therefore limited: the accused need not prove innocence but may demonstrate that the complaint, even taken at its highest, does not satisfy the legal threshold, or that an incontrovertible legal bar prevents cognizance.

Because non-compliance renders cognizance void, the record must affirmatively show compliance. The cognizance order should identify: the date and mode of notice; the material supplied; appearance, representation or waiver; the principal objections raised; and the Magistrate's concise reasons. If the proposed accused, after valid service and adequate time, elects not to appear or respond, the court should be permitted to proceed; a right to be heard cannot become a power to veto cognizance through evasion.

E. Interaction with Special Statutes and Distinct Complaint Categories

1. PMLA Prosecution Complaints

PMLA litigation has supplied the leading Section 223 precedents because a Special Court takes cognizance on a complaint by the authorised authority under Section 44(1)(b).[42] *Tarsem Lal* and *Yash Tuteja* had already established that such proceedings are complaints and that ordinary complaint safeguards apply unless inconsistent with the PMLA. *Kushal Kumar Agarwal* and *Parvinder Singh* extend this reasoning to the BNSS. The institutional status of the complainant does not dilute the hearing right.

2. Negotiable Instruments Act Complaints

Section 138 NI Act proceedings present the sharpest efficiency problem because they are designed for expeditious disposal and are filed in very large numbers. Section 145 permits evidence by affidavit, and *AC Narayanan v State of Maharashtra*[43] permits the Magistrate to act on the complaint, documents and affidavit without necessarily examining the complainant on oath.

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[42] Prevention of Money Laundering Act 2002, s 44(1)(b).
[43] AC Narayanan v State of Maharashtra (2014) 11 SCC 790.

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Neeti Sharma treated the Section 223 hearing as an additional step while preserving the affidavit-based procedure. Delhi High Court practice directions issued on 6 November 2025 stated that summons need not be issued to the accused under Section 223 at the pre-cognizance stage in Section 138 complaints. That administrative response reflects genuine docket concerns but creates a difficult question after *Parvinder Singh*, because a practice direction cannot ordinarily negate a mandatory statutory right recognised by the Supreme Court as substantive and protected under Article 21.

The better solution is procedural compression rather than deletion. Section 138 cases can employ electronic service, short written objections, disposal without compulsory personal appearance, strict control of adjournments, and confinement of objections to statutory notice, limitation, territorial jurisdiction, payment, legal enforceability and basic drawer or signatory attribution.

3. **Complaints Against Public Servants**

Section 223(2) creates an enhanced screen where the alleged offence occurred in the course of official functions or duties. Its application must be tied strictly to a reasonable nexus with official duty; merely being a public servant is insufficient. The superior officer’s report should be treated as relevant but not binding; otherwise, an executive officer could effectively control judicial cognizance. Section 223(2) must also be distinguished from Section 218 sanction: the former is an informational and participatory prerequisite within complaint procedure, while the latter is a jurisdictional protection applicable to specified categories where the alleged act was committed while acting or purporting to act in official duty.

4. **Private Defamation and Corporate Criminal Complaints**

The hearing may have particular value in criminal defamation, commercial disputes presented as criminal offences, and complaints seeking vicarious liability against directors or officers. Such cases often turn on threshold legal questions including absence of specific attribution, lack of the required mental element, the essentially contractual nature of the dispute, operation of a statutory exception, and failure to plead how a director or officer was responsible for the alleged offence. A confined

Section 223 hearing can prevent indiscriminate initiation without requiring the court to decide the ultimate truth of the allegations.

F. Constitutional and Normative Evaluation

Parvinder Singh locates the hearing within Article 21. This is consistent with the post-*Maneka Gandhi*[44] understanding that procedure affecting life or personal liberty must be fair, just and reasonable. Although taking cognizance does not itself determine guilt, it exposes the individual to the authority and burdens of criminal adjudication. The safeguard also advances Article 14 by reducing arbitrary variation in threshold decision-making.

Fairness, however, is not unilateral. Complainants, including victims of violence, harassment, economic abuse or institutional wrongdoing, possess legitimate interests in accessible and timely remedies. An expansive pre-cognizance contest may privilege well-resourced proposed accused persons, create opportunities for intimidation, and exhaust complainants before the case begins. Section 223 must therefore be administered through proportionality: the hearing should be no broader than necessary to prevent legally untenable cognizance.

Whether Section 223 improves overall efficiency depends on procedural design. An undefined hearing invites mini-trials; a standardised written process can resolve narrow legal objections at comparatively low cost. The proper metric is the total institutional cost of criminal proceedings, including revisions, quashing petitions and trials generated by defective cognizance.

G. Comparative and International Perspective

Article 14 of the International Covenant on Civil and Political Rights guarantees equality before courts and minimum protections in the determination of criminal charges.[45] The UN Human Rights Committee's General Comment No. 32 emphasises the practical effectiveness of fair-trial guarantees.[46] Neither specifically requires a

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[44]Maneka Gandhi v Union of India (1978) 1 SCC 248.
[45]International Covenant on Civil and Political Rights, art 14.
[46]UN Human Rights Committee, General Comment No 32 (2007) CCPR/C/GC/32.

defendant to be heard before a court first takes cognizance. Section 223 should therefore be understood as a domestic rights-enhancing measure rather than a direct treaty command.

In United States federal procedure, Rule 5.1 of the Federal Rules of Criminal Procedure provides a preliminary hearing after arrest or initial appearance, at which probable cause is tested.[47] In England and Wales, Section 1 of the Magistrates' Courts Act 1980 permits issuance of a summons or warrant on an information,[48] with private prosecutions moderated by the Director of Public Prosecutions' statutory power under Section 6 of the Prosecution of Offences Act 1985.[49] These systems use prosecutorial control, probable-cause review or later adversarial hearings rather than a general right to contest judicial acceptance of a private complaint before cognizance. Section 223 therefore represents an unusually early allocation of participatory rights.

V. SUGGESTIONS AND RECOMMENDATIONS

Uniform rules or practice directions are necessary to operationalise Section 223. The following framework would give effect to the statutory right while preserving the structure of complaint procedure.

1. First, the Magistrate should conduct an initial non-merits scrutiny for jurisdiction, filing defects, statutory competence and the applicability of exceptions. This preliminary scrutiny should not complete cognizance.
2. Second, where oral examination is required, the complainant and present witnesses should ordinarily be examined before notice. Where examination is dispensed with, the written complaint, affidavit and annexures should constitute the initial threshold record.
3. Third, notice should be issued to the "proposed accused," expressly stating that it is not summons under Section 227 and does not require surrender or an

[47]Federal Rules of Criminal Procedure (United States), r 5.1.
[48]Magistrates' Courts Act 1980 (UK), s 1.
[49]Prosecution of Offences Act 1985 (UK), s 6.

application for bail. Electronic service should be permitted in addition to ordinary modes.

4. Fourth, the proposed accused should receive the complaint, relied-upon annexures, affidavits, recorded statements and any other material that the Magistrate proposes to consider for cognizance. Sensitive personal information may be redacted or protected through narrowly tailored directions.
5. Fifth, written submissions should ordinarily be filed within fourteen days of service, with one reasoned extension in exceptional circumstances. Oral hearing should be brief and capable of being conducted through counsel or video conference.
6. Sixth, objections should be confined to jurisdiction, statutory bars, limitation, absence of essential ingredients, mandatory statutory preconditions, absence of specific attribution, patent legal immunity and demonstrable abuse of process.
7. Seventh, no cross-examination or oral defence evidence should be allowed. Defence documents should be considered only where they are admitted, public, self-authenticating or demonstrably unimpeachable and can be assessed without deciding contested facts.
8. Eighth, the Magistrate should pass a concise reasoned order recording compliance with Section 223, the objections raised, the material considered and the legal basis for taking or declining cognizance. Findings should be expressly described as provisional and confined to the threshold stage.
9. Ninth, valid service followed by non-participation should permit the court to proceed. Evasion cannot suspend cognizance indefinitely. Section 225 should retain independent operation after cognizance.
10. Tenth, accelerated protocols should apply to high-volume complaints such as Section 138 NI Act matters, including digital pleadings, written-only objections by default, no compulsory personal appearance, standardised synopsis forms and strict adjournment control. In complaints attracting Section 223(2), the superior officer's report should ordinarily be called within thirty days; the

report should assist but never bind the Magistrate, and departmental default should not permanently prevent judicial consideration of the complaint.

VI. CONCLUSION

Section 223 BNSS is not a cosmetic restatement of Section 200 CrPC. It redistributes procedural participation at the threshold of complaint cases and replaces exclusive ex parte screening with a limited adversarial safeguard.

Kushal Kumar Agarwal establishes the statutory embargo. *Parvinder Singh* confirms that the right is mandatory, substantive, rooted in Article 21 and enforceable through nullification of non-compliant cognizance. The unresolved difficulty concerns implementation: timing, materials, participation and interaction with later complaint stages.

This paper has argued that the best interpretation treats cognizance under Section 223 as a composite process. The complainant's threshold material may be assembled first, but cognizance cannot be completed until the proposed accused receives that material and is heard. The hearing should test legal maintainability and prima facie sufficiency, not credibility or ultimate guilt. Cross-examination, contested defence evidence and elaborate factual adjudication should remain excluded.

Properly confined, Section 223 can improve the legitimacy of criminal initiation, prevent abusive complaints and reduce downstream litigation. Poorly administered, it can produce delay, inequality and premature trials. The future of the provision therefore depends less on abstract endorsement of natural justice than on precise procedural architecture.

Controlled threshold adversariality meaningful in substance, narrow in scope and strict in time is the model most consistent with the statutory text, constitutional fairness and effective criminal justice.

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