

# [Cognizable and non cognizable offences law essay](https://assignbuster.com/cognizable-and-non-cognizable-offences-law-essay/)

Cognizable offences have been defined under Section 2 (c) of the Criminal Procedure Code as follows; ” ‘ 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”.

A non-cognizable offence has been defined under Section 2 (l) of the Criminal Procedure Code as follows, “‘ 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”.

Now which offence falls under the category of cognizable offences and which falls under the category of non-cognizable offences can be determined as per the classification given in the First Schedule of the Criminal Procedure Code. The First Schedule has classified all acts punishable under the Indian Penal Code, 1860 into Cognizable and non-cognizable offences. Although the Code in itself does not give any reasoning as to this classification, certain patterns can be traced if the First schedule is studied carefully. All offences which have a punishment of more than 3 years under the Indian Penal Code are considered to be cognizable offences and all offences which have a punishment of less than 3 years are non-cognizable offences. Subsequently, it can be deduced that non-cognizable offences are relatively less serious in nature than cognizable offences.

Consequently, in case of cognizable offences, the police officers can arrest the accused person without any warrant or authority issued by a magistrate. They can initiate investigation on their own accord and they needn’t wait for the prior permission of a magistrate. In fact, they have a legal duty to initiate investigations. This duty has been endowed upon them by Section 156(1) of the Criminal Procedure code which reads; “ Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.” Section 156 (2) further reads, “ No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.”

On the other hand, police officers necessarily need prior permission of a magistrate to initiate investigations in cases of non-cognizable offences. Non cognizable offences are considered more in the nature of private wrongs and therefore the collection of evidence and the prosecution of offender are left to the initiative and efforts of private citizens.

Bailable and Non-bailable offences

Section 2 (a) of the Criminal Procedure Code defines bailable and non-bailable offences as “ an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and “ non-bailable offence” means any other offence” In here too, the code does not give any reason as to on what criteria has such classification been based upon. It just lays down a seemingly arbitrary classification of the same. However, it can be logically deduced that all serious offences are non-bailable whereas all less serious offences are bailable.

Similarly, all offences which have a punishment of more than 3 years under the Indian Penal Code are considered to be non-bailable offences and all offences which have a punishment of less than 3 years are bailable offences. This too is subject to the exception of existence of a contrary law. If a person accused of a bailable offence is arrested or detained without warrant he has a right to be released on bail. In case he is accused of a non-bailable offence, then his bail is subject to the discretion by the authorities.

Warrant case and Summons Case

According to Section 2 (x) of the Criminal Procedure Code, a warrant-case “ means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years”.

According to Section 2 (w) of the Criminal Procedure Code, “ a summons case means a case relating to an offence, not being a warrant case”.

This classification helps to determine the type of trial procedure to be adopted in the case. Naturally, the trial procedure in case of a warrant case is much more elaborate than that of a summons case. This classification is also useful at the stage of issuing process to the accused person in the first instance.

CHAPTER II – NEED FOR RECLASSIFICATION OF OFFENCES

The current classification of offences has been a major cause for the high incidence of arbitrary and unnecessary arrest in our country. The scheme of classification is outdated and redundant.

There is a serious need for revaluation for the classification between cognizable and non-cognizable and bailable and non-bailable offences. The nature and quantum of punishment attached to these offences also needs to be revaluated. It is not that the idea for reclassification has never come up before, but given the present situation of our judicial system, it becomes all the more relevant that it be done now. For instance, many minor offences against property are still classified as non-bailable, whereas it is evident that classifying them as compoundable offences and relying on methods such as ‘ plea-bargaining’ may be more effective and agreeable to address the injury caused by the same[1].

Also, it has been noted that the major portion of the backlog cases in the courts consists of regulatory offences such as dishonour of cheques, traffic violations, etc. Now, these acts were made offences under special laws whereby the legislature had felt that in lieu of public policy, these acts were better off classified as criminal even though they are more akin to civil wrongs. However, the fact that they will create a maximum backlog was envisaged by neither party. Hence, there is a need for an informed study and revaluation of criminal laws. It has been suggested that the offences be classified into a) The Social Welfare Code, b) The Correctional Code, c) The Criminal code and d) the Economic and other offences code.

This approach of classifying the offences as per their nature is considered to be far more useful than a blanket categorization of offences. This re-classification is proposed to be done on the basis of the gravity of the offences, appropriate procedures for investigation and dispute-resolution as well as the proportionate nature and quantum of fines and punishments.

CHAPTER III – RECOMMENDATIONS OF THE MALIMATH COMMITTEE

Considering the need for reclassification of offences, the Malimath committee gave the following recommendations for the same.

Its primary recommendation was to remove the distinction between cognizable and non-cognizable offences and make it obligatory on the Police to investigate all offences in respect of which a complaint is made. However, this is not a very practical option as it will lead to a further backlog of cases and will increase the burden on the police.

Section 262 of the Criminal Procedure Code provides for the procedure for summary trials, Section 263 provides for the record in summary trials and Section 264 provides for judgement in cases tried summarily. The Malimath committee recommended increasing the number of cases falling within the category of cases trialable by following the summary procedure presented by Sections 262 to 264.

It also recommended increasing the number of offences that fall under the category of “ Petty Offences” which can be dealt with by following the procedure prescribed by Section 206 of the Code. Section 206 reads “ If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 260, the Magistrate shall, except where he is, for reasons to be recorded in writing of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing, the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader: Provided that the amount of the fine specified in such summons shall not exceed one hundred rupees.

(2)  For the purposes of this section, “ petty offence” means any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939, (4 of 1939) or under any other law which provides for convicting the accused person in his absence on a plea of guilty.”

It advocated increasing the number of offences, for which an arrest needn’t be made and increasing the number of offences where arrest can be made only with the order of the court and reducing the number of cases where arrest can be made without an order or warrant form the Magistrate.

The Malimath committee further recommended increasing the number of offences which are bailable and reducing the number of offences which are not bailable.

A compoundable offence is one in which the trial court can compound the offence and dispose the case without trial. A non-compoundable offence is an offence in which the court cannot compound the case without trial. A compoundable offence is always a lesser degree offence punishable with a shorter jail term or fine. The Malimath Committee recommended increasing the number of offences that can be brought within the category of compoundable offences, to encourage settlements without trials.

CONCLUSION