



drishti

Re-imagining: Cognizable Offences

 drishtiias.com/printpdf/re-imagining-cognizable-offences

This article is based on “In pursuit of an ideal criminal process” which was published in The Hindu on 3/10/2019. It talks about reforming the concept of the cognisable offence.

Since one is presumed innocent until proven guilty, the criminal justice system is often faced with a dilemma that is, honouring the individual’s right on one side and effective law enforcement on another side

The ideal criminal law would need to empower police to arrest suspects. However, this power must be qualified, so as to deter the police from intruding into the privacy of the individual, as recognized by the supreme court in Puttaswamy v. Union of India case(2017).

What is Criminal Procedure?

- Criminal procedure is the adjudication process of the criminal law.
- It deals with jurisdiction, powers and process provided to courts, investigating agencies like police and corresponding rights for the citizens against such powers.
- In India, it is regulated under the Criminal Procedure Code 1973.
- Criminal law is featured in the concurrent list of the 7th schedule of the constitution of India.

Issues related to Cognisable Offences

- The police don't apply judgments of the Supreme Court that modifies definitions of offences to bring them in line with the Constitution.
- For instance, the definition of **sedition** was read down in **Kedarnath Singh v. Bihar (1962)** to encompass only speech or conduct that can “incite violence” or “involves the intention or tendency to create disorder”.
- According to the supreme court, an officer examining a sedition FIR needs to accurately understand and apply Kedarnath Singh, before taking cognisance of the offence.

- In spite of this, there has been increasing FIRs under cognisable offences like sedition or act of promoting enmity between religious groups.

Cognisable and Non-Cognisable Offences

- **Cognisable Offences**

- In cognisable offences, an officer can take cognizance of and arrest a suspect without seeking a court's warrant to do so, if she has "reason to believe" that the person has committed the offence and is satisfied that the arrest is necessary on certain enumerated bases.
- Within 24 hours of the arrest, the officer must have detention ratified by a judicial magistrate.
- According to 177th Law Commission Report, cognisable offences are those that require an immediate arrest.
- Cognizable offences are generally heinous or serious in nature such as murder, rape, kidnapping, theft, dowry death etc.
- The first information report (FIR) is registered only in cognizable crimes.

- **Non-Cognizable Offences**

- In case of a non-cognizable offence, the police cannot arrest the accused without a warrant as well as cannot start an investigation without the permission of the court.
- The crimes of forgery, cheating, defamation, public nuisance, etc., fall in the category of non-cognizable crimes.

- Further, there is **no restriction** on the powers of the police that **deters arrests** in case of the cognisable offence.
 - However, there can be errors in determining whether the suspect's conduct will result in or cause harm as a downstream effect.
 - This might cause hatred, contempt or excite disaffection against the government or promote enmity between religious groups.
 - Also, an arrest based on such an error would unconstitutionally curtail not only the arrested person's **freedom to engage in speech and conduct (Article 19) but also the liberty against arbitrary arrest (Article 22)**.
 - Multiple judgments of the supreme court such as Joginder Kumar (1994), DK Basu (1997) as well as Law Commission Reports (154th, 177th) **critiqued the wide powers of arrest for cognisable offences**.
 - This led to the 2009 amendment which restricted the power to arrest, to persons against whom "a reasonable complaint" or "reasonable suspicion" exists, or "credible information" is received, of having "committed a cognisable offence."
 - However, the term reasonable is very ambiguous and may be subjected to arbitrariness.
 - Therefore, the CrPC neither deters arbitrary arrests nor comprises incentives for carrying out arrests consistent with the individual liberty and autonomy of individuals.
- Also, **the Malimath Committee** held that many serious offences like public servants disobeying the law to cause injury to any person; bribery during the election; buying or disposing of any person as a slave; cheating; mischief; forgery; making or using documents resembling currency notes; and criminal intimidation were non-cognisable.

Way Forward

- India must adopt an **inquisitorial system of investigation** practised in countries such as Germany and France, where a judicial magistrate supervises the investigation.
- **Separation of investigation wing** from Law and Order.
- As of 2017, the **judge-population ratio in India is one judge per 19.66 per million people, against 50 judges per million population** in many parts of the world. therefore, the government needs to fill vacant judicial posts.
- Establishing **All India Judicial services** will be a step in the right direction.
- The higher courts, including the Supreme Court, should have a **separate criminal division** consisting of judges who have specialised in criminal law.
- According to the Malimath Committee, instead of the current classification of offences as cognisable and non-cognisable **offences needs to be classified as social welfare code, correctional code, criminal code, and economic and other offences code**.

- It also recommended providing for a Presidential Commission for a periodical review of the functioning of the Criminal Justice System.

Drishti Mains Question

The current framework of the cognisable offence under CrPC is a roadblock in pursuit of the ideal criminal justice system, that ought to balance the rights of the individual and effective law enforcement. Discuss.