

**Legal Issues  
in**

*The Code of Criminal Procedure, 1973 (Cr.P.C.) in the Context of IP Offences*

*Module 2 – Cognizability of the Offence of Copyright Infringement*

## Classification of Offences (Cr.P.C)

| OFFENCE  | COGNIZABLE OR NON-COGNIZABLE | BAILABLE OR NON-BAILABLE | TRIAL BY WHICH COURT          |
|--|------------------------------|--------------------------|-------------------------------|
| If punishment with death, imprisonment for life, or imprisonment for more than 7 years | Cognizable                   | Non-Bailable             | Court of Session              |
| If punishable with imprisonment for 3 years and upwards, but not more than 7 years     | Cognizable                   | Non-Bailable             | Magistrate of the First Class |
| If punishment with imprisonment for not more than 3 years                              | Non-Cognizable               | Bailable                 | Any Magistrate                |

## Copyright Infringement as an IP Offence

- ❖ Copyright infringement as a criminal offence has been provided for in Section 63 of the Copyright Act, 1957, which states-
  - *“Any person who knowingly infringes or abets the infringement of— (a) the copyright in a work, or (b) any other right conferred by this Act 1 [except the right conferred by section 53A], 2 [shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees]: Provided that 1 [where the infringement has not been made for gain in the course of trade or business] the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.]”* (emphasis added)

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## Copyright Infringement as an IP Offence (Contd.)

### ❖ **Section 64: Power of police to seize infringing copies –**

*“(1) Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all the plates used for the purposes of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable be produced before a Magistrate.*

*(2) Any person having an interest in any copies of a work, or plates seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies or plates being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.”*

### ❖ **Section 70: Cognizance of offences –** *“No Court inferior to that of 1[a Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence under this Act.”*

## Judicial Trends in Classification of the Offence

### ❖ **Jitendra Prasad Singh v State of Assam [2003 (26) PTC 486 (Gau).]**

- Court: High Court of Gauhati [Single Judge - *I.A. Ansari, J.*]
- Decision Date: September 2002
- Decision: **Cognizable**

### ❖ **Amarnath Vyas v. State of Andhra Pradesh [2007 Cri LJ 2025]**

- Court: High Court of Andhra Pradesh [Single Judge - *T. Ch. Surya Rao, J.*]
- Decision Date: December 2006
- Decision: **Non-Cognizable**

## Judicial Trends in Classification of the Offence (Contd.)

- ❖ **Abdul Sathar v. Nodal Officer, Anti-Piracy Cell, Kerala Crime Branch Office & Anr. [AIR 2007 Ker 212]**
  - Court: High Court of Kerala [Single Judge - *R. Basant, J.*]
  - Decision Date: May 2007
  - Decision: **Cognizable**
  
- ❖ **Sureshkumar v. The Sub Inspector of Police [2007(3)KLT363]**
  - Court: High Court of Kerala at Ernakulam [Single Judge - *R. Basant, J.*]
  - Decision Date: May 2007
  - Decision: **Cognizable**

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## Judicial Trends in Classification of the Offence (Contd.)

### ❖ **State Govt. of NCT of Delhi v Naresh Kumar Garg [2013 (56) PTC 282 (Del)]**

- Court: High Court of Delhi [Single Judge - *G.P. Mittal, J.*]
- Decision Date: March 2013
- Decision: **Non-Cognizable**

### ❖ **Pintu Dey v. State of Rajasthan & Anr. [2015(3) Cr.L.R. (Raj.) 1291]**

- Court: High Court of Rajasthan [Single Judge - *Vijay Bishnoi, J.*]
- Decision Date: April 2017
- Decision: **Non-Cognizable**

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## Judicial Trends in Classification of the Offence (Contd.)

### ❖ **Deshraj v. State of Rajasthan and Ors. [S.B. Criminal Miscellaneous (Petition) No. 5224/2016]**

- Court: High Court of Rajasthan, Jaipur Bench [Single Judge - *Deepak Maheshwari, J.*]
- Decision Date: April 2017
- Decision: **Non-Cognizable**

### ❖ **Gurukrupa Mech Tech Pvt Ltd v State of Gujarat and Ors [(2018) 4 GLR 3324]**

- Court: High Court of Gujarat [Single Judge - *J.B. Pardiwala, J.*]
- Decision Date: August 2018
- Decision: **Cognizable**



## Judicial Trends in Classification of the Offence (Contd.)

### ❖ **Anurag Sanghi v State and Ors [2020IIAD(Delhi)314]**

- Court: High Court of Delhi [Single Judge - *Vibhu Bakhru, J.*]
- Decision Date: November 2019
- Decision: **Non-Cognizable [bound by precedent]**

### ❖ **Nathu Ram v State of Rajasthan [SB Criminal Misc(Pet.) No. 5128/2019]**

- Court: High Court of Rajasthan, Jodhpur Bench [Single Judge- *Sandeep Mehta, J.*]
- Decision Date: April 2020
- Decision: Referred to Larger Bench

## To Summarize

| Cognizable & Non-Bailable   | Non-Cognizable & Bailable                            |
|---|--|
| ❖ Jitendra Prasad Singh v State of Assam  | ❖ Amarnath Vyas vs State of Andhra Pradesh           |
| ❖ Abdul Sathar v. Nodal Officer, Anti-Piracy Cell, Kerala Crime Branch Office & Anr | ❖ State Govt. of NCT of Delhi v Naresh Kumar Garg    |
| ❖ Sureshkumar v. The Sub Inspector of Police  | ❖ Deshraj v. State of Rajasthan and Ors.             |
| ❖ Gurukrupa Mech Tech Pvt Ltd v State of Gujarat and Ors                            | ❖ Anurag Sanghi v State and Ors (bound by precedent) |

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## Conclusion

- ❖ Oscillating views by different Courts
- ❖ Continued ambiguity based on judicial interpretation of the 2<sup>nd</sup> table to Schedule I of the CrPC in light of the relevant provisions under the Copyright Act
- ❖ Broad factors aiding classification of the offence under Section 63 –
  - Quantum of punishment (2<sup>nd</sup> Table of Schedule I of the CrPC)
  - Section 64 (*Power of police to seize infringing copies*)
  - Section 70 (*Cognizance of an Offence*)
  - The Copyright (Amendment) Act 1984

# THANK YOU!

## Questions?

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