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Limitation on taking cognizance

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Abstract
In the area of Criminal law and criminal jurisprudence, the most important thing is to define Crime or Criminal offences and another most important thing, if we consider is nothing but taking of cognizance. Criminal offences are such offences which are defined as an offence under Indian Penal Code or any other Criminal law. Criminal offences are different from the other offence as this is against the society at large, where other offences may be against private individual. For every offence, there is prescribed punishment by the code itself. Once the offence and punishment are defined by the code, the second issue comes that how it would be implemented? What is the machinery for the implementation, and here, Criminal procedure code comes into picture. As we said, taking of cognizance is one of the important aspect of Criminal law, so it becomes very important to understand about the taking of cognizance and also their limitations. The term cognizance has not been defined under the criminal law; it is refer to the incident when the judicial notice is taken on the suspected commission of the offence. As per Black's law dictionary cognizance means, judicial notice, or knowledge upon which a judge is bound to act without having it proved in evidence. There are certain limitations on taking cognizance, which is discussed in detail in this further reading.

Keywords: criminal law, criminal jurisprudence, Indian penal code

Introduction
The law of criminal procedure is intended to provide a mechanism for the enforcement of criminal law. Without proper procedural law, the criminal law is incomplete. Section 190 to 199 describes the process by which, and the limitation subject to which various criminal courts are entitle to take cognizance of offences. Section 190(1) provides that subject to the provision of section 195 to 199, any magistrate of first class and second class especially empowered may take cognizance of any offence.

Taking of cognizance has not been defined in the code. The word cognizance does not invoice any formal action or indeed action of any kind, but occurs as soon as a magistrate, as such applies his mind to the suspected commission of an offence for the purpose of investigation, he cannot be said to have taken cognizance of an offence [1]. there are certain limitation imposed on taking cognizance like section 195 to 199 of the code which is exception to the general rule that any person having knowledge of the commission of the offence, may set the law in motion by a complaint even though he is personally interested or affected by the offence.

Section 172 to 188 of Indian penal code, 1860, related to the offences of the contempt of lawful authority of public servant under these sections, private prosecution in respect of the offences is absolutely barred. section 2(c) to 2(l) r/w first schedule, all the offences covered by the section 172 to 187 are non- cognizable offence, even in the case of section 188, the statutory requirement for taking cognizance is equally applicable and magistrate can take cognizance only upon the complaint in writing of public servant concerned (whose authority has been defined) or some other public servant to whom he is administratively subordinate. Under sections 467 and 468 there is some limitation imposed in taking cognizance.

Meaning of cognizance
The expression 'cognizance' merely means 'become aware of' and when used with reference to a court or judge, it connotes to take notice of judicially [2]. In common parlance, 'cognizance' means 'taking notice of' [3]. As per Black's law dictionary cognizance means, judicial notice, or knowledge upon which a judge is bound to act without having it proved in evidence. Simply cognizance means knowledge or taking cognizance of offence means, taking notice or become aware of alleged commission of offence. In the term of law cognizance is nothing but taking of judicial notice by a court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceeding and determination of cause or matter judicially. "Cognizance" is defined in Wharton's Law Lexicon, 14th Edition, as "the hearing of a thing judicially".

The expression 'taking cognizance' under Section 190 of the Code, in its broad and literal sense, means taking notice of an offence. It would include the intention of initiation of judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes [4]. The word 'cognizance' in Sec.190 of the Code means judicial hearing of a matter [5]. It is an established principle of law that cognizance is taken of the offence and not of the offender. Therefore, the Magistrate will have to take cognizance of the offence first before he could proceed to conduct a trial [6].

Law relating to cognizance under the code of criminal procedure
Under chapter XIV of the code section 190 to 193 provides for taking cognizance, chapter XIV section 195 to 199 deals with the limitation on taking cognizance and chapter XXXVI, sections 467 to 469 also talks about the limitations.

Limitations on taking cognizance under section 195 of the code
Section 195 of the code expressly imposed the limitation on taking cognizance, under this section no court is entitle or

allowed to take cognizance of any offence which is punishable under section 172 to 188 of the Indian Penal Code, 1860. It also prohibits in case of any abatement of, or attempt to commit such offence except on the writing of the public servant concerned or the public servant to whom he is administratively subordinate. The main object of this section is to protect the person from being unnecessary harass by vexatious prosecution in retaliation [7].

In the case of *Sardul singh v. state of Haryana*, [8] it was observed that the provision of section 195 coupled with the procedure in section 340 of the code absolutely leave no doubt that not only cognizance of such offence without the complaint in writing of the court is barred, but also the investigation into such offence because that will amount to take over the function of the court.

section 172 to 188 of Indian penal Code, 1860 referred to above relate to offence of contempt of lawful authority of public servant for instances, absconding to service of summons, preventing service of summons, not obeying the legal order of public servant to attained, not producing a document when so required by a public servant. Intentionally omitting to give notice or information to a public servant, knowingly furnishing false information, refusing to take oath.

Limitation on taking cognizance under section 196 of the code

This section provides, that no court shall take cognizance of any offence punishable under chapter VI or under 153A, 295A, 505(1). If there is a criminal conspiracy to commit an offence, or any such abatement, as it describes in section 108A of Indian penal Code, 1860, then also court shall not take cognizance on the matter.

The object of conspiracy has to be determined not only by the reference of the section of the penal enactment refer to in the charge but on the reading of charged themselves [9].

Limitation on taking cognizance under section 197 of the code

This section provide that if any judge, magistrate or a public servant not removable from his office save by or with the sanction of the government, if accused of any offence while acting or purporting to act in the discharge of his official duty, no court is empowered to take cognizance unless there is a previous sanction from the competent government.

Under this section, it is clear that, this section does not apply to every public servant, it only applies on a judge, magistrate and those public servant who is not removable from his office save by or with the sanction of the government. Here the government implies governor or president as the case may be, if a public servant is removable below the authority than governor or the president, then this action does not applies.

Secondly, even the public servant who is not removable other than the concern government or the judge or the magistrate, if the alleged offence is showing that, the offence is not committed by the accused in the purporting his official duty then also this section is not attracted.

Whether sanction is required after the retirement?

the question arises when the accused retired from his post, in the case of *R. Bala Krishnan Jillai v. State of Kerala* [10], the supreme court held in the case of a person who is or was a public servant not removable from his office save by or with the sanction of a government he is accused of an offence committed in purporting his official duty, even after retirement, sanction is required under section 197. In case of *Charanjit Das v. State of Orrisa* [11], it was held that where sanction was refused by the government when public servant is or was in service he cannot be prosecuted later or after his retirement. Under this section, any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.

Section 197(1) capable of a narrow as well as wide interpretation, if these word construed too narrowly, the sanction will be altogether, sterile, for it is no part of an official duty to commit an offence [12]. The Supreme Court held in the case of *S. B Saha v. M.S Kochar* [13] that the question of sanction under section 197 can be raised and considered at any stage of proceeding.

In 2G spectrum case, the apex court delivered landmark judgement. The court refused to hold that question of granting sanction for prosecution arises only at the stage of cognizance and not before that. the court further held that grant or refusal of sanction for prosecution is not a quasi-judicial function and person for whose prosecution sanction is sought is not required to heard by the competent authority to decide the question of sanction and held that if decision is not taken by within the time limit sanction should be deemed to be granted [14].

In the case of *Kalicharan Mahapatra v. State of Orrisa* [15] while dealing with a case under prevention of corruption Act, 1988, the apex court held that even if public servant ceased to be public servant, so he liable to be prosecuted under the Act, however, cognizance can be taken of offence even without sanction if he is ceased to be public servant.

In the case of *Md. Hadi Raja v. State of Bihar* [16] it was held that protection by way of sanction under sanction 197 is not applicable to the officers of government companies or the public undertaking even when such public undertaking are state within the meaning of Article 12 of the constitution of India on account of deep and pervasive control of the government.

In the case of *Choudhary Parveen Sultan v. State of West Bengal* [17] an investigation officer went to the house of complainant and thereafter her husband to make a tortured statement and tried to obtain his signature on a blank paper, the court held that for such excess or misuse of authority no protection can be claimed.

In the case of *Sambhoo Nath v. State of U.P*, complaint under section 409 and 420 Indian Penal Code 1860, was dismissed by the trial court holding that sanction to prosecution has not been obtained. While resorting the complaint the apex court held that it is not official duty of public servant to fabricate false report and misappropriate public funds in furtherance or in discharge of his official duty is not integrally connected or is it inseparably interlinked with the crime committed in the course of same transaction.

In the case of *Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhusan* [18], apex court held that it is for the accused to produce relevant material to sue whether necessary ingredients to attract section 197 are present or not as the matter relates to the jurisdiction of the court to take a cognizance and accused is not required to wait till the stage under section 246(4) of the code of criminal procedure.

For whose prosecution, sanction is mandatory?

Prosecution without the sanction under section 197 shall be bad and taking cognizance will be without jurisdiction in the

case, the person accused belongs to following categories:

1. A judge as per section 19 of the Indian Penal Code 1860 or a magistrate, even when exercising non judicial function.
2. An ex- Judge or an ex- magistrate, this categories has been included by the new code by inserting the words was in section 197(5) to override the supreme court decision *Keshav Lal v. State* [19]. Under the old code that a public servant was not entitle to the protection of section 197 if the complainant against him was brought after he had left the service. The new code accepted the view of law commission [20], that the need for the protection of public servant for acts in the discharge of his official duty as much after retirement as before.
3. A public servant who is not removable from his office save by or with the sanction of the government.
4. A person was a public servant at the time when the court took cognizance of the offence the word was in new section 197(1) governs all the categories- judges, magistrate and the other public servants.

The change in the law has been affected by the code of 1973, by inserting word 'was' after the word 'who is' in sub-section (1) [21].

Test for determination whether the act complained was done in the purported discharge of official duty

It is not possible to lay down test of universal application to find out in which cases sanction under section 197 would be required. it will depend on the fact of each case [22]. Though the principle relating to this question have been settle by a number of Supreme Court decisions, difficulty remains in the application of these principles in the facts and circumstances of a particular case before the court.

From the leading decision it would appear that the following test are to be applied in finding answer the present questions:

1. Whether the public servant, when challenged, can reasonable claim that what he does must be in virtue of his official duty [23].
2. There must be reasonable relation between the act and the official duty, even though it may be in excess of the requirement of the situation [24].

If either of the two foregoing test are satisfied, sanction would be required, irrespective of whether the act done was, in fact, a proper discharge of his official duty, thus:

1. it being the duty of a civil surgeon to give certificate, sanction would be required for prosecuting him, for the offence of giving a false certificate, but not for the offence of abusing his subordinate because such act cannot be reasonably, connected within the duty of civil surgeon to carry on operation in course which the abuse took place [25].
2. No sanction is necessary where the act had no direct connection with his official duties, but his official status only furnished him an occasion or opportunity of committing the offence.
3. The test is not that the offence is capable of being committed only by a public servant and not by and one else, but that is committed by a public servant in or done or purporting to be done in the excess of his duty.
4. The expression 'purporting to act in the discharge of his official duty [26].
5. when the state's officers were required to take decision in matter placed before them by their subordinates or were required to apply their mind or were required to apply their mind or were required to take decision in supervision and complete of the government project or having regard to the rules of execution of business were required to take decision for and on behalf of the government or were required to by their superiors to render their individual options or were members of a committee assignment they could not decline or were under obligation to render their option being such a member, each of them was performing the official duty, so section 197 of the code is necessary, even if after the retirement no sanction is necessary under section 19 of the prevention or corruption Act,1988.

Plea in case of sanction

It is open to the accused to make an application to the criminal court at any stage of proceeding that the proceeding be quashed for want of sanction on the ground that the taking of cognizance without sanction is without the jurisdiction [27]. If such application is dismissed he may move to the High Court under Article 482 and from there to the Supreme Court of India [28]. Public servant who has no locus standi to take this plea of any stage prior to take issue of process against him [29].

The plea that sanction is required to be taken under section 197 of the Cr. P.C before cognizance is not considered even by raising at any stage of proceeding and need not raised only when the court reaches the stage of framing of charge [30].

The plea can be taken even at the conclusion or trial or after conviction [31]. However, when the plea of want of sanction was been raised at the initial stage, the court cannot postpone the hearing of a late date [32].

State at which sanction is required or to be obtained:

It is clear from the words of section 197 that sanction should be obtained before cognizance is taken. If the sanction is obtained after the cognizance is taken the trial vitiates [33]. Since the offence under section 341 and 409 of Indian Penal Code 1860 are distinct and separate, then, prior sanction for prosecution under section 341 is must. The whole proceeding will not be vitiated for loss of it [34].

State at which question of sanction arises

It is not always necessary that the need for sanction under section 197 is to be considered as soon as the complaint is lodged on the allegation contain therein. The question may be raised at any stage of the proceeding [35].

Determination of the authority for sanction

To determine whether it is the sanction of Central Government or State Government, which is required in the case, the question is to being asked is : where was the public servant was employed at the relevant time, which means the date of commission of alleged offence [36]. Under Article 311(1) of the Indian Constitution, an authority lower in rank than the appointing authority is not competent to remove an employee. The same principle would apply in case of sanction also. A valid sanction can only be given by a person who is appointing authority.

Joint trial of offences in which some requires sanction and other does not requires sanction.

If offences for which sanction is required are tried with

offence not requiring sanction, the case cannot proceed without sanction [37].

Sanction of speaker of Lok Sabha for prosecution of Member of Parliament

Where the government stated that if CBI, furnishes to government of state case dairies relevant for processing, sanction will be accorded. therefore direction were given to CBI to show or hand over the copies of said dairies within one week to the government for examine and consider matters and convey his decision to the court as early as possible [38].

Limitation under section 198 of the code

As per this section no court shall take cognizance of an offence punishable under chapter XX of Indian Penal Code, 1860. This section provides that no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or 498 of the code. It also provided that in the absence of husband, some person who had case of the woman on his behalf at the time when such offence was committed.

The object of this section is exception to the general rule that anybody having knowledge of the fact may file a complaint [49]. Under this section, there is a bar on cognizance unless complained by the aggrieved person. If it is not made by the aggrieved, the trial and conviction is to be considered as illegal [40]. for example, when an offence has been committed under section 494, 495, 498 the aggrieved person would be the husband, and no court can take cognizance unless the complaint has been filed by the husband, unless the husband is under the age of 18 years or is an idiot or lunatic, or is from sickness of infirmly unable to make a complaint some other person may with the leave of the court make a complaint on his behalf. Where the complaint is filed without the leave of the court is not maintainable.

Limitation under section 198A of the code

No court shall take cognizance of an offence punishable under section 498A of the Indian penal Code 1860, except upon a police report.

There is no bar under section 498A of Indian Penal Code for divorced wife to file complaint against her former husband for offence, committed by him during subsistence of their marriage under section 498A of IPC, section 198A, of Cr.P.C enables divorced wife to file such complaint.

Limitation under section 198B of the code

under this section of the code, no court shall take cognizance of an offence punishable under section 376B of the IPC, where the person are in marital relationship of the fact, which constitute the offence upon a complaint have been filed or made by the wife against the husband.

Limitation on taking cognizance under section 199 of the code

Under this section of Cr.P.C, no court is entitle to take cognizance of an offence punishable under chapter XXI of the IPC except upon a complaint made by some person aggrieved by the offence. It is also provided that where such person is under the age of eighteen years, or is from sickness or infirmity unable to make complaint, some other person may with the leave of the make a complaint on his or her behalf.

Person aggrieved for this section

the person aggrieved would be one against whom a defamative statement is published, if it is said that Mr. 'A' is dishonest, or that he is a man of bad character, the aggrieved person is certainly 'A'. In some case the person other than the person against whom the imputation is made against a member of joint Hindu family then all the member of joint Hindu family will be said to be aggrieved brother and sister living jointly, the imputation of unchaste against the sister makes the brother also aggrieved, but if the sister is living away and separately the brother cannot be said to be aggrieved against the allegation [41].

Defamation of class or society complained by an individual

As a matter of law, any person filing a complaint for demotion has to prove that, the imputation refer to him. If a person complaints that he has been defamed as a member of the class, he must satisfy the court that the imputation is against him personally and he is the person aimed at before he can maintain prosecution for defamation. In the case of defamation of a class of a person or society, where everyone can be said to be defamed, the collection of persons must be identifiable in the sense that one would with certainty say that his group of particular people has been defamed as distinguished from the rest of community. To say that the lawyer are dishonest is such a big class that no particular lawyers can be said to have been aggrieved. to the contrary, the imputation that the member of a particular Bar association are dishonest is certainly the defamation of a class of people who can easily be ascertained, and in such a case every individual of that society is an aggrieved person who can easily be ascertained, and in such a case every individual; at that society is an aggrieved person who can easily be ascertained, and in such a case every individual at that society is an aggrieved person who can who can file a complaint [42].

If a well-defined class is defamed, each and every member of that class is an aggrieved person and can file a complaint. Where the words reflects on each and every member of a certain number or class, each or all can sue [43].

Explanation 2 of section 499 of IPC refers to defamation of a company or an association or a collection of person as such. In such cases one of their member may make a complaint make a complaint on behalf of the collection or company of persons as a whole, but the defamation must be shown to be of all the person in the association or collection of such.

Prosecution for defamation can be filed by a company should be represented by a natural person. Criminal complaint for defamation on behalf of a company cannot be filed by any and every employee of a company any or every shareholder of the company [44].

Limitation for taking cognizance under chapter XXXVI of the code

This entire chapter with sections 467 to 473 has been inserted on the recommendation of joint committee. The main object of this chapter is to protect persons from prosecution from state grievances and complaints which may turn out to be vexatious. The reason for engrafting the rule of limitation is that, due to long lapse of time, necessary evidence will be lost and person prosecuted will be placed in a defenceless position. This may result in miscarriage of justice.

Limitation under section 468

This section prescribes a period of limitation of six months for offence punishable with fine only, one year for those punishable for imprisonment up to one year and three years for those punishable with imprisonment exceeding one year and not exceeding three years.

Under this section the limitation therein is only for the filing of the complaint and initiation of prosecution and for taking cognizance. It of course, prohibits the court to take cognizance of offence when the complaint is filed after the expiry of period of limitation in the said chapter.

In case of *Dharmendra Singh v. State of Orrisa* [45] the court held that where the cognizance of complaint deemed to be taken on the date when the case was posted for enquiry then, such cognizance is not barred under section 468(2)(c) of the code.

Mere filing of complaint, submitting of a police report within the period of limitation is not enough. The court should take cognizance of the offence within the period of limitation.

For example a complaint is filed on 5 Jan 2017 about an offence punishable with fine only which is committed on 5 July 2016, but, court makes no order up to 16 Jan 2017, the cognizance is illegal as it is not taken within the prescribed time period.

There is no any limitation for taking cognizance of an offence punishment with imprisonment for a period exceeds three years [46].

When accused was charged with more than one offence. Limitation prescribed for the offence which is punishable with the highest punishment was considered merely because a sequent to filing of complaint, offence with the highest punishment was held to be not made out. It would not make complaint time barred [47].

In the case of *Yukub Ali Sarang v. State of West Bengal* [48] the order of taking cognizance beyond the period of three years, as envisaged in section 468 of the code vitiated and such the order is illegal, incorrect and imperfect and the same cannot be sustained.

Limitation on cognizance under section 469 of the code

under this section commencement of the period of limitation is described, generally the period of limitation in relation to an offence commences on the date of offence, where a complaint under section 406 and 402 Indian penal code containing defamation matters is filed against one, Mr. B, on 31st Jan 2015 and he is aquitted on 5 dec 2017, the limitation for filing a complaint by B for determination under section 500 IPC will commence on the date of filing of complaint.

Methods of computing the period of limitation

In computing the period of limitation, the date from which the period is to be computed is to be excluded. This provision corresponds to section 12(1), limitation Act, consequently the case under that section will apply to this section [49].

Limitation on taking cognizance under section 470 of the code

This section says, in computing the period of limitation. The principle of this section is the protection against the bar of limitation of a person honestly doing his best to get his case tried.

Methods of computing the time to be excluded

in excluding the time during which former prosecution was pending the day on which that prosecution was instituted and the day on which that prosecution was instituted and the day on which it ended shall both counted towards the period to be excluded. Though there is no express provision in section 470(1) to this effect being the general principle is applicable even to the section 470(1).

Computation of the period of limitation in case of sanction or consent

Where in any law the previous sanction of government or any other authority is required for the prosecution of a person then in computing the period of limitation, the time required for consent or sanction including the date on which the application was made and the date of receipt of the order shall be excluded [50].

Situation when the offender is outside India

In computing the period of limitation, the time during which the accused has been absent from India or any territory under the administration of central government shall be excluded.

Limitation on taking cognizance under section 471 of the code

This section provides for exclusion of date in computation when the court is closed. Under the explanation to this section, a court shall be deemed to be closed if during any part of its normal working hours it remains closed on that day.

Limitation on cognizance under section 472 of the code:

This section talks about the continuing offence, for this section 'continuing offence' is susceptible of continuance and is distinguishable from an offence which is committed once for all. it is an offence which arise out of a failure to obey or comply with a rule or its requirement [51].

In the case of continuing offence, there is thus the ingredient of continuance of the offence which was absent in the case of an offence, which takes place when an act for omission is committed once and for all [52]. In the case of continuing offence, a fresh period of limitation shall begin to run at every moment of the time during the offence continues.

Limitation on cognizance under section 473 of the code:

This section talks about the extension of period of limitation in certain cases, this section empowers the court to take cognizance of an offence after expiry of the period of limitation if;

1. It is satisfied that the delay has been properly explained;
2. If it necessary to take cognizance in the interest of justice.

Section 5 of the limitation Act gives a wide discretion to the court to extent the prescribed period on being satisfied that there is sufficient cause.

the part of the section corresponds to section 5 of the limitation Act, with the only difference that in section 5 of limitation Act, the words used are ''he has sufficient cause'' where as the present section uses the words ''the delay has been properly explained.'' Though there is difference in words but there seems to be no difference in the meaning.

The Supreme Court has observed ''in the words in showing sufficient cause for the delay the party may be called upon to explain the delay [53].

Conclusion

After going through the above discussion, I would like to

conclude my whole discussion as, cognizance means judicial notice or application of judicial mind, As per Black's law dictionary cognizance means, judicial notice, or knowledge upon which a judge is bound to act without having it proved in evidence. Simply cognizance means knowledge or taking cognizance of offence, means, taking notice or become aware of alleged commission of offence. Under chapter XIV of the code section 190 to 193 provides for taking cognizance, chapter XIV section 195 to 199 deals with the limitation on taking cognizance and chapter XXXVI, sections 467 to 469 also talks about the limitations. Under section 197 of the code, there is requirement of sanction which simply protect the magistrate, judge or any official who is purporting his official duty. there is requirement of the concept of cognizance because if any problems or case reach to the door of the court then there is expectation of the applicant that his case will be dealt fairly and there is a kind of faith attach with that application, so it duty of the judicial system to be dealt with those matter as per the application of judicial mind and the second thing which make it important is if any application or case is file with the mala- fide intention with the motive of to only harass the defendant or the opposite party then protect the opposite party at the initial stage and reject that case.

there is various limitations are imposed on taking cognizance which is discussed above in detail, the main purpose to impose restriction or limitation on the taking of cognizance is to protect the party to harass unnecessarily and work freely, for example in case of section 197 there is requirement of sanction by the appropriate government before taking of cognizance, this is because the officials can do his office work freely and can give his best to his duty without any fear of proceeding. there is also some limitation where only aggrieved party can file suit, in other word, on the application of only aggrieved party cognizance can be taken it is only because to protect the interest of family. In case of family matter like husband and wife, if any offence is committed under the criminal matter then only aggrieved party is entitle to file suit subject to the certain exception.

after discussing all we can say that there is requirement of cognizance under the code of criminal procedure code and with all these it should not be free there is also check and balance on the power of taking cognizance and with all these there is also a special importance of limitation on the power of taking cognizance. The purpose of imposing is limitation is simply to avoid the malicious cases.

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