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NO LIMITATION FOR TAKING COGNIZANCE OF OFFENCE – A NEED FOR JUSTICE

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CHAPTER-1: INTRODUCTION

Criminal law has always been one of the most important branches of law because it deals with the most serious offences and it helps to protect society from falling into a state of anarchy. It consists of two branches- procedural and substantive law.

Procedural law provides machinery for the implementation of substantive criminal law. Substantive law provides a different kinds of offences and the punishment which is imposed on the offenders. If there is no procedural law, the substantive laws are of no use because no one will be able to know the way how the offenders will be prosecuted and they will be let off. So, from this, we can conclude that both laws are complementary to each other.

The main objective of criminal procedure is to provide a full and fair trial to the accused by taking into consideration the principles of natural justice. Various processes need to be followed to administer justice including pre-trial procedure lawsuits, answering a complaint, motion, discovery etc. The trial procedure includes cognizance of offence, beginning of proceedings, review of the procedure and finally arriving at a decision.

Under the Code of Criminal Procedure, there is a separate chapter that talks about "taking the cognizance of offence by the Magistrate". The power empowered on the Magistrate is not absolute; it also puts certain restrictions given under Sections 195 to 197 of the Code. Sections 190 and 193 talk about the mode for taking cognizance.

But in this article, I am going to emphasise on limitations of taking cognizance of an offence. It is prescribed in Chapter XXXVI (from Section 467 to 473) of the Code itself.

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Though the word 'cognizance' (rooting from Old French "*conoisance*", based on Latin "*cognoscere*") or the words 'taking cognizance' have not been deciphered and defined in the procedural law, the same derive definite connotation from a plethora of precedents and gain perceptive explanation and incisive exegesis from judicial pronouncements. While plain and dictionary meaning thereof is 'taking note of, 'taking account of, 'to know about, 'to gain knowledge about, 'awareness about certain things' etc. – and in Tamil "(transliteration:- "*gavanikkapada vendiya vishayam*". "*gavanam*"), in law, the common understanding of the term 'cognizance' is "taking judicial notice by a court of law, possessing jurisdiction, on a cause or matter presented before it to decide whether there is any basis for initiating proceedings and determination of the cause or matter 'judicially".

Thus, legal sense of taking judicial notice by a court of law or a Magistrate is altogether different from the view and idea a layman has for it; however, a broad and general comprehension is 'judicial notice by a court of law on a crime which, according to such court, has been committed against the complainant, to take further action if facts and circumstances so warrant' – in Tamil, (transliteration:- "*Sattapadi nadavadikkai edukka thakka kutram thodarpana vazhakkai koapil eduppadhu kurithu aaraidhal*").

In the language of the Hon'ble Apex Court employed in its earliest decision (Ref: ***R.R.Chari vs State of U.P*** , "*taking cognizance does not involve 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 offense*".

The purpose of enacting such provision is not to extinguish but to avoid the unnecessary delay in filing a complaint by the complainant.
Cognizance of any offence is taken by:

- Magistrate under Section 191.
- Court of Session under Section 193.

Limitation' refers to a legally specified period beyond which an action may be defeated. Any suit/trial prior to the institution must qualify the indirect requirement of limitation. Thus, the proceeding must be within the prescribed limitation period. The objective behind such provision is to protect the accused from unnecessary harassment by prioritizing the presumption of innocence. The concept of 'Limitation period' is commonly used in civil matters such as

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contracts, Family Law, torts etcetera but seems peculiar in criminal matters.

The requirement of 'Limitation period' in general can be traced back to two famous legal maxims i.e., "*Nullum tempus occurrit regi" and "vigilantibus et non dormientibus jura subveniunt.*" The former maxim states that the rights and power of the supreme is above the doctrine of limitation. On the other hand, the latter maxims imply a duty on the victim/plaintiff to be vigilant in exercising their rights. Thus, law should only assist those who are vigilant and should not cater to irresponsible and lazy individuals.

These two maxims raised a dilemma in ascertaining the middle ground as choosing any extreme will either violate the right of the Victim or of the accused. The doctrine of 'Limitation' has perfectly struck a balance in ensuring justice to the victims and prevent accused from unnecessary troubles. This essay will focus on the significance of the doctrine of 'Limitation' and will analyse the same in the criminal law through analysing catena of judgments, with the objective of identifying the need and success in incorporating it in the Code of Criminal Procedure,1973

Chapter XXXVI of the Code of Criminal Procedure, 1973 incorporates the Doctrine of 'Limitation' for criminal offences. The chapter contains 7 sections ranging from Section 467 to Section 473 of CrPC, 1973. The rationale behind incorporating limitation period is that, criminal matters heavily depend upon the witness testimony which obscures with the passage of time due to which the investigation for the detained/arrested accused under CrPC is also time bound under Section 167(2). Thus, opening of cases beyond a reasonable time will compromise the witness testimony and may lead the court on a false trail due to lack and non- authoritative evidences costing the accused.

The period of limitation under CrPC, 1973 varies from six months to three years depending upon the duration of punishment of the offence. Offence punishable with just fine or 6 months of imprisonment attracts a limitation period of 6 months. Whereas offence punishable with imprisonment up to one year with/without fine attracts a limitation period of 1 year and offences punishable with imprisonment up to three years with/without fine holds a limitation period of 3 years. However, offences holding punishment higher than three years does not attract limitation period and the case can be filed at any time post the occurrence of the offence.

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Thus, in a layman term any offence under the Indian Penal Code, 1860 or under any other criminal legislation, unless holds any special provision contrary to the Code of Criminal Procedure, 1973, attracts a period of limitation ranging from 6 months to 3 years. Thus, if the complainant whose proceeding is barred by such limitation cannot proceed with such proceedings post the limitation period. However, the legislation has ensured that if a proceeding holds merit, then it is not debarred on the admission stage itself.

The concept of allowing certain proceedings post limitation period is known as the 'condonation of delay.' The court holds the power to reject the delay and allow the case to be admitted on merits. However, the condition associated to such condonation is two-fold. First, that the prosecution must explain the rationale behind such delay up to the satisfaction of the court. Whereas, in certain circumstances the court can condone delay when it is necessary to do so in the interests of justice. The legislative intent behind such provision is to ensure that such limitation is not absolute and does not deprive the victim of justice just on the basis of technicality.

The concept of condonation of delay ensures rationality to prevail over absoluteness but does not provide any objective guidelines or framework determining such rationale. Thus, giving the honourable judiciary an arbitrary power to determine reasonable grounds. However, enactment of certain non-binding but persuasive guidelines or framework can provide an objectivity to such reasoning. The honourable Supreme Court in catena of judgments has provided the broad themes which can be used to create such a framework.

Whereas, the honourable court in State of Tamil Nadu vs N. Suresh Rajan & Ors., held that delay due to lawyer's contradictory advice is condoned. The complainant argued that the lawyer advised him in contradiction to file the Special leave petition before this honourable court so the delay of 1954 days be condoned.

The court in Sarah Mathew vs the Institute of Cardio-vascular diseases held that the delay caused by magistrate in taking cognizance of the offence must be condoned as the victim's intent was bona-fide and was out of his control. On the other hand, the honourable court in Provident Fund Inspector, Ludhiana vs Harminder Singh & Anr., adjudicated on the issue that the whether the fact that the legislation is a beneficial legislation is sufficient to mechanically condone the delay. The court while adjudicating upon the Employment provident fund act, 1952 provided a general ruling that the mere fact of a legislation being beneficial does not condone the delay automatically,

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circumstantial analysis is must.

The list or structure shall not be exhaustive and must be open to amendment. Additionally, such list must also be non-binding and only persuasive as to provide the victims/ complainant or lawyers sufficient understanding as to file an informed application for condonation of delay. Thus, catena of judgments and certain other factors such as societal pressure in cases of sexual harassment etc. must be considered for enactment of a structured framework to avoid the arbitrariness and to assist the judges in efficiently applying judicial mind to cases of condonation of delay.

The two additional factors to be considered is the lawyer's negligence and delay caused due to red - tapism in the governmental department. The former issue has been adjudicated by the honourable Supreme Court in Boutique Hotels India (P) Ltd. vs ACIT (ITAT Delhi). The court held that pleader's gross carelessness/negligence does not hold a sufficient ground to condone delay. Whereas, the court stated that the delay can be condoned when it is proved that the lawyer or adviser made a bona fide mistake and the council must disclose the particular circumstance when such advice was given. Thus, mistaken advice given by a lawyer negligently and without due care as well as a general statement as an excuse is not sufficient cause.

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CHAPTER-2: LEGISLATIVE PROVISIONS

LIMITATION IN TAKING COGNIZANCE OF OFFENCES

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 talk about the limitations.

It is well-established fact that the power vested on Magistrate to take the Cognizance of offence is not an absolute power and is subjected to the limitations which have been provided in the Chapter XXXVI (section 467 to 473) of the Act itself.

NON-APPLICABILITY OF THIS CHAPTER

The provision of this Chapter is not applicable in the case of certain economic offences.

BARE ACT PROVISION

Section 190: Cognizance of offences by Magistrates. —(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may

take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

Section 191: Transfer on application of the accused.—When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

Section 192. Making over of cases to Magistrates. — (1) Any Chief Judicial Magistrate may,

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after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

Section 193. Cognizance of offences by Courts of Session. —Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

Section 195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. — (1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),[except on the complaint in

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writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section

(1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

[195A. Procedure for witnesses in case of threatening, etc.—A witness or any other person may file a complaint in relation to an offence under section 195A of the Indian Penal Code (45 of 1860).]

Section 196. Prosecution for offences against the State and for criminal conspiracy to commit such offence. — (1) No Court shall take cognizance of—

(a) any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State

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Government.

[(1A) No Court shall take cognizance of—

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit 4[an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction [under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.

Section 197. Prosecution of Judges and public servants. — (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

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[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

[Explanation. —For the removal of doubts, it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the Contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the

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person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Section 198. Prosecution for offences against marriage. — (1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that—

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section

(4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under [section 494 or section 495] of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister [, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption].

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a person who has not been appointed or declared by a competent authority to be the guardian of

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the person of the minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

(4) The authorisation referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding Officer, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(5) Any document purporting to be such an authorisation and complying with the provisions of sub-section (4), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence.

(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code (45 of 1860), where such offence consists of sexual intercourse by a man with his own wife, the wife being under 3[eighteen years of age], if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

[198A. Prosecution of offences under section 498A of the Indian Penal Code.—No Court shall take cognizance of an offence punishable under section 498A of the Indian Penal Code (45 of 1960) except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.]

[198B. Cognizance of offence. —No Court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code (45 of 1860) where the persons are in a marital relationship, except upon prima facie satisfaction of the facts which constitute the offence upon

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a complaint having been filed or made by the wife against the husband.]

Section 199. Prosecution for defamation. — (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

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(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

Section 467: Definitions. For the purposes of this Chapter, unless the context otherwise requires," period of limitation" means the period specified in section 468 for taking cognizance of an offence.

Section 468: Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

1. Provisions of this Chapter shall not apply to certain economic offences, see the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), s. 2 end Sch.

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

Section 469: Commencement of the period of limitation.

(1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be

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excluded.

Section 470: Exclusion of time in certain cases.

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded: Provided that no such exclusion shall be made unless the prosecution relates to the same facts' and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

1. Ins. by Act 45 of 1978, s. 33 (w. e. f. 12- 12- 1978).

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. Explanation. - In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender-

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

Section 471: Exclusion of date on which Court is closed. Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens. Explanation. - A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

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Section 472: Continuing offence. In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

Section 473: Extension of period of limitation in certain cases. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

THE LIMITATION ACT, 1963

Section 5: Extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. —The fact that the appellant or the applicant was missed by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

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CHAPTER-3: JUDICIAL ANALYSIS

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 talk about the limitations.

COGNIZANCE OF OFFENCES BY MAGISTRATE

Any First class Magistrate and any Second Class Magistrate can acknowledge any offence. Section 190-199 of the code defines the procedures by which various criminal courts are entitled to take cognizance of offences, and the restrictions under which they are entitled.

(a) Section 190 of CrPC "Cognizance of offences by Magistrates"

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under subsection (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under subsection (1) of such offences as are within his competence to inquire into or try.

(b) Section 191 of CrPC "Transfer on application of the accused"

When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking

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cognizance,the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

(c) Section 192 of CrPC "Making over of cases to Magistrates"

(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, makeover the case for enquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, makeover the case for enquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

Tula Ram & Ors vs Kishore Singh: 1977 AIR 2401, 1978 SCR (1) 615

Taking cognizance does not require any formal procedure, or indeed intervention of any kind, but happens as soon as a judge, as such turns his mind to the suspected crime of an offence for the purpose of continuing to take further steps towards damage or trial. Furthermore, when a Magistrate applies his mind not for the purpose of proceeding as mentioned above but for taking action of some other kind, such as directing an investigation or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of the offence.

COGNIZANCE TAKEN BY A MAGISTRATE NOT EMPOWERED

If any magistrate were not allowed to recognize an offence under Section 190(1)(a) and 190(1)(b), if an offence is wrongly accepted in good faith, the proceedings shall not be set aside solely on the ground that it is not permitted to do so. On the other hand, if a magistrate who is not empowered to take cognizance of an offence takes cognizance by information received or his own knowledge pursuant to section 190(1)(c), his proceedings shall be null and void. In such a case it is immaterial whether he was acting erroneously in good faith or otherwise.

COGNIZANCE OF OFFENCES BY COURT OF SESSION

According to Section 193, "Courts of Session are not permitted to take note of any crime (as a court of original jurisdiction) unless the case is committed by a Magistrate." If it is specifically established by this code or by any other statute, then only Courts of Session are permitted.

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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.

In the case of Sardul singh vs state of Haryana, 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.

LIMITATION ON TAKING COGNIZANCE UNDER SECTION 197 OF THE CODE

This section provides 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

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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 servants 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 apply.

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 vs State of Kerala, 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 vs State of Orrisa, 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 this word construed too narrowly, the sanction will be altogether, sterile, for it is no part of an official duty to commit an offence. The Supreme Court held in the case of S. B Saha vs M.S Kochar 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.

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In the case of Kalicharan Mahapatra vs State of Orrisa 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 vs State of Bihar, 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 is 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 vs State of West Bengal 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 vs 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 vs Pandey Ajay Bhusan, 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 category has been included by the new code by

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inserting the words was in section 197(5) to override the supreme court decision Keshav Lal vs State[1]. 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[2], 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 subsection (1)[3].

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[4]. 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[5].
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[6].

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] AIR 1961 SC 1395
[2] 41st Report para 15, 123
[3] Rajendara vs state of Punjab (1982) Cr. LJ 1318
[4] Bhagwan vs Mishra AIR 1970 SC 1661
[5] 9892560909 - vsign
[6] Matajog VS Bhari; (1955) 2 SCR 925

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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[7].
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[8].
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[9]. If such application is dismissed he may move to the High Court under Article 482 and from there to the Supreme Court of India[10]. Public servant who has no locus standi to take this plea of any stage prior to take issue of process against him[11]. 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[12]. The plea can be taken even at the conclusion or trial or

[7] Srivastava VS Mishra AIR 1920 SC 1661
[8] Pukhraj VS State of Rajasthan
[9] State VS Kailash; AIR 1980 SC 522 para 3,5,6
[10] Arulswami VS state of Madarash; AIR 1967 SC776 para 6
[11] Budhi vs Sharma (1981) CR. LJ 993
[12] Abdul Wahab Anshari VS State of Bihar (2000) 8 SCC 500

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after conviction[13]. 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[14].

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[15]. 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[16].

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[17].

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[18]. 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[19].

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

[13] PK Pradhan VS State of Sikkim; AIR 2001 SC 2257
[14] Sankaram Moitra VS Sadhana Das; AIR 2006 SC 1599
[15] Baiznath VS State of Madhya Pradesh; AIR 1996 SC 220
[16] Ritesh kumar Bahari VS inspector Balakrishna; 1999 Cri LJ 207, Delhi
[17] Batuk Lal's commentary on the code of criminal procedural,1973, 1177 (orient publishing company., 5th edn., 2014 reprinted)
[18] Basu DD. Criminal Procedural Code, 1973. 1212 (Lexis Nexis., 5th edn., 2014)
[19] Pawan Kumar VS Ruldu Ram; 1983 Cri LJ 180

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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[20].

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[21].

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[22]. 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

[20] Rajiv Ranjan VS State of Jarkhand; (2003) Cri LJ 622 (jhar)
[21] Batuk Lal's commentary on the code of criminal procedural, 1973. 2704 (orient publishing company., 5th edn., 2014 reprinted)
[22] G Narsimah VS T.V chakkapt; AIR 1972 SC 2609

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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[23].

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 refers to him. If a person complaint 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

[23] Hira Lal VS Babban, 1968 ALJ 865

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society is an aggrieved person who can who can file a complaint[24]. 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 reflect on each and every member of a certain number or class, each or all can sue[25]. Explanation 2 of section 499 of IPC refers to defamation of a company or an association or a collection of persons as such. In such cases one of their members 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[26].

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.

Section 467

This section is inserted with the purpose of determining the limitations and scope that exists with regard to the specified period of taking cognizance of an offence as provided under Section 468.

For the purpose of this chapter, "period of limitation" is prescribed as the period specified for taking the cognizance of offence as specified in Section 468 unless the context otherwise requires.

Infringement of the prescribed period specified in Section 468 will be considered as ultra vires to the Section unless the exceptional circumstances otherwise provide or amendment has been made in the Code changing the above laws.

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

[24] Basu's commentary, code of criminal procedure code 2663 (whytes & co., 12th edn., 2015)
[25] Pratap Chandra Guha VS Emperor AIR 1925 Cal.1121
[26] Sohoni's code of criminal procedure (lexis nexis 21st edn., 2015)

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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 vs State of Orrisa[27] 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[28].

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[29].

In the case of Yukub Ali Sarang vs State of West Bengal[30] 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.

Bar to take the Cognizance of an offence

- No Court shall take the cognizance of an offence after the expiry of the prescribed period

[27] (2001) Cri LJ 439 (ori)
[28] Batuk Lal's commentary on the code of criminal procedural,1973, 1216 (orient publishing company., 5th edn., 2014 reprinted)
[29] Balbir Singh VS State, (2009) Cri LJ 3674 (del)
[30] (1995) cal. Cr. LR 286 (cal.)

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as specified in subsection (2)

- The period of limitation shall be:

Offence punishable with	Period of Limitation
Fine only	6 months
Imprisonment not exceeding 1 year	1 year
Imprisonment: Minimum of 1 year Maximum of 3 years	3 years

- In computing the period of limitation for the offence when two offences are tried together; the period of limitation shall be determined in pursuance of the offence which is punishable with the more severe punishment or the most severe punishment.

Non- Applicability of Section 468

In the case of ***Nirmal Kanti Roy vs State of West Bengal***[31], the Supreme Court held that Section 468 is not applicable to an offence under Section 7 (1) (A) (ii) of Essential Commodities Act, 1955.

In the Case of ***State of Himachal Pradesh vs Tara Dutta***[32], the Court held:
"The language of subsection (3) of section 468 gives a clear view that period of limitation that is provided under in Section 468 is in pursuance of the alleged offence charged but it is not used in respect of offence which is finally proved."

In the case of ***Venkappa Gurappa Hosur vs Kasawwa (1997),*** the Court held that: "Once the period of limitation begins to continue, it continues its full course." **Section 469**:
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 acquitted 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.

[31] (1998) Cr LJ 3282 (SC)
[32] AIR 2000 SC 297

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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[33]

Beginning of period of limitation

The period of limitation commences from the following points:

- On the day when the offence was committed
- When the person aggrieved by the act had no knowledge regarding the commission the offence or the police officer; it begins on the day when it comes to the knowledge of the aggrieved party or police making an investigation into the case whichever is earlier.
- When the person who has committed an act is unknown or not being identified, the first date on which the accused was known either to the aggrieved person or to the police officer making an investigation into the case whichever is earlier.

The day from which such period of limitation begins shall be excluded for the purpose of this Chapter. It means that the first day from which the period of limitation begins to be calculated shall not be included while computing the period of limitation. Let us understand from the example:

The offence punishable only with the fine was committed on 1st May 2019. The period of limitation begins from 2nd May 2019 and not from 1st May 2019.

In the case of ***State of Rajasthan vs Sanjay Kumar[34],*** the Court stated that the period of limitation will not commence from the date when the sample was taken but from the date when the report of Public Analysts was received in case of ***adulteration.***

Section 470:

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.

[33] Batuk Lal's commentary on the code of criminal procedural, 1973. 2704 (orient publishing company., 5th edn., 2014 reprinted)
[34] 1998 Cri LJ 256 (SC)

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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[35].

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.

Exclusion of Time in certain cases

This section provides the period which shall not be included in computing the period of limitation.

The period of limitation that is to be excluded in computing the period of limitation is explained below:

- The time during which such person is prosecuting another prosecution with due diligence whether it is a court of appeal, or in the Court of the first instance against the offender.

Such period will not be excluded unless another prosecution is related to the same circumstances or the facts of the case for which the previous prosecution has been initiated or the court in which the previous proceeding has been being is unable to entertain the case due to lack of jurisdiction.

- In the case where the institution of proceeding is stayed by the order or injunction, the time shall exclude:
  1. The period during the continuance of such order or injunction.

[35] ibid

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2. The day on which it was made or was issued.
3. The day on which it was withdrawn.

- In a case where the notice of prosecution of offence is given or the previous consent or the sanction of the Government is mandatory under this law or any other law for the time being in force the time during which: -
  1. The period of notice or;
  2. The period for obtaining the consent or sanction of the Government shall be excluded.
  3. It also specifies that the time which is required for taking the sanction or the permission from the Government or any other authority -The date on which the application was made for taking the consent or sanction and;

The date on which the permission or the consent was granted shall be excluded.

- In computing the period of limitation such period is to be excluded
  1. The time during which the offender is absent from India or from any territory which is outside from India but is under the administration of Central Government.
  2. The time during which the offender has avoided arrest either by concealing himself or either by absconding.

Section 471:

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.

Exclusion of date on which court is closed:

The day when the Court is closed is excluded from being accredited to the specified period of limitation.

It is a rule that in the case when the period of limitation expires on the day of the closure of court proceedings the cognizance of an offence is taken when the court reopens.

When the court closes on normal working hours for a particular period it is presumed that the Court has been closed for the same day.

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Section 472:

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[36].

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[37]. 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.

When the offence continues:

When the offences continue or are in the process of happening; fresh limitation begins to run at every moment, the offence is replicated throughout the full term that it continues.

Section 473: Extension of Period in Certain Cases:

- This section is the pivotal section as it focuses on administering justice. It gives a chance to the complainant or the aggrieved person to institute the suit even after the expiry of the prescribed period of limitation.
- In normal circumstances, the case is not to be instituted after the expiry of the prescribed period but in exceptional circumstances, the court allows for the institution of the suit.

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

[36] Basu's commentary, code of criminal procedure code 2668 (whytes & co., 12th edn., 2015)
[37] Wire machining mfg. co vs state; (1978) Cri.LJ 839

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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[38].

Discretion of the Court

It is the discretion of the Court to extend the period of limitation. This section does not mandate the court to extend the period of limitation.

Conditions:

- When the court is satisfied with the facts and circumstances of the case that complainant was prevented by sufficient cause from not appearing before the Court within the prescribed period of limitation.
- The cause of the delay is properly explained and the court is satisfied with it.
- The court is of the opinion that it is necessary to extend the period in the interest of justice.

The same provision is also explained in the Limitation Act. Section 5: Extension of the period in Certain Cases

Even in the civil case, the court has a discretionary power to extend the period of limitation when the court is satisfied that there was sufficient cause for not appearing within the prescribed period or that the cause of the reason was sufficiently explained or that it is necessary to do in the interest of justice.

Case: *State of Himachal Pradesh vs Tara Dutta AIR 2000 SC 1729*

The Court held that:

“When the provision is being invoked by the Magistrate, and it condones the delay then the order of Magistrate must show that the delay was properly explained to him and it was necessary for the condonation of delay in the interest of justice”.

In the case of *Srinivas Pal vs Union Territory of Arunachal Pradesh SC 1729,* the Court held that:

“It is not mandatory to determine whether the extension of the period of limitation under Section 473 must precede of taking the cognizance of the offence.”

[38] Ram Lal vs Rewa Coal Field Ltd

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CHAPTER-4: CASE REFFERED

Serial Number	*Cases*
1	Abdul Wahab Anshari VS State of Bihar (2000) 8 SCC 500
2	Arulswami VS state of Madarash; AIR 1967 SC776 para 6
3	Baiznath VS State of Madhya Pradesh; AIR 1996 SC 220
4	Balbir Singh VS State, (2009) Cri LJ 3674 (del)
5	Bhagwan vs Mishra AIR 1970 SC 1661
6	Boutique Hotels India (P) Ltd. VS ACIT (ITAT Delhi)
7	Budhi vs Sharma (1981) CR. LJ 993
8	Charanjit Das vs State of Orrisa
9	Choudhary Parveen Sultan vs State of West Bengal
10	Dharmendra Singh vs State of Orrisa
11	G Narsimah VS T.V chakkapt; AIR 1972 SC 2609
12	GillVS R; AIR 1948 PC 128 (133)
13	Gulabchandji Partani vs. Ashok & Anr. (1992) Crl. L. J. 2704.
14	Hira Lal VS Babban, 1968 ALJ 865
15	Kalicharan Mahapatra vs State of Orrisa
16	Keshav Lal vs State
17	M/s. Satyanarayana General Traders & Ors. vs. State (1993) 2 Crimes 203
18	Matajog VS Bhari; (1955) 2 SCR 925
19	Md. Hadi Raja vs State of Bihar
20	Nirmal Kanti Roy vs State of West Bengal
21	Pawan Kumar VS Ruldu Ram; 1983 Cri LJ 180
22	PK Pradhan VS State of Sikkim; AIR 2001 SC 2257
23	Pratap Chandra Guha VS Emperor AIR 1925 Cal.1121
24	Provident Fund Inspector, Ludhiana vs Harminder Singh & Anr
25	Pukhraj VS State of Rajasthan

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26	R. Bala Krishnan Jillai vs State of Kerala
27	R.R.Chari vs State of U.P
28	R.S. Arora vs. The State (1987) Crl. Law Journal 1225
29	Rajendara vs state of Punjab (1982) Cr. LJ 1318
30	Rajiv Ranjan VS State of Jarkhand; (2003) Cri LJ 622 (jhar)
31	Ram Lal vs Rewa Coal Field Ltd
32	Ritesh kumar Bahari VS inspector Balakrishna; 1999 Cri LJ 207, Delhi
33	S. B Saha vs M.S Kochar
34	Sambhoo Nath vs State of U.P
35	Sankaram Moitra VS Sadhana Das; AIR 2006 SC 1599
36	Sarah Mathew vs the Institute of Cardio-vascular diseases
37	Sardul singh vs state of Haryana
38	Srinivas Pal vs Union Territory of Arunachal Pradesh SC 1729,
39	Srivastava VS Mishra AIR 1920 SC 1661
40	State of Himachal Pradesh vs Tara Dutta
41	State of Himachal Pradesh vs Tara Dutta AIR 2000 SC 1729
42	State of Rajasthan vs Sanjay Kumar
43	State of Tamil Nadu vs N. Suresh Rajan & Ors
44	State VS Kailash; AIR 1980 SC 522 para 3,5,6
45	Suresh Kumar Bhikamchand Jain vs Pandey Ajay Bhusan
46	Venkappa Gurappa Hosur vs Kasawwa (1997
47	Wire machining mfg. co vs state; (1978) Cri.LJ 839
48	Yukub Ali Sarang vs State of West Bengal

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CHAPTER-5: APPRAISAL AND SUGGESTION

Chapter XXXVI of the Code of Criminal Procedure, 1973 incorporates the Doctrine of 'Limitation' for criminal offences. The chapter contains 7 sections ranging from Section 467 to Section 473 of CrPC, 1973. The rationale behind incorporating a limitation period is that criminal matters heavily depend upon the witness testimony which obscures over time due to which the investigation for the detained/arrested accused under CrPC is also time bound under Section 167(2). Thus the opening cases beyond a reasonable time will compromise the witness testimony and may lead the court on a false trail due to lack and non-authoritative evidence costing the accused.

The period of limitation under CrPC, 1973 varies from six months to three years depending upon the duration of the punishment of the offence. An offence punishable with just a fine or 6 months of imprisonment attracts a limitation period of 6 months. Whereas offence punishable with imprisonment up to one year with/without a fine attracts a limitation period of 1 year and offences punishable with imprisonment up to three years with/without a fine holds a limitation period of 3 years. However, offences holding punishment higher than three years do not attract a limitation period and the case can be filed at any time post the occurrence of the offence.

Thus, in layman's terms any offence under the Indian Penal Code, 1860 or under any other criminal legislation, unless holds any special provision contrary to the Code of Criminal Procedure, 1973, attracts a period of limitation ranging from 6 months to 3 years. Thus, if the complainant whose proceeding is barred by such limitation cannot proceed with such proceedings post the limitation period. However, the legislation has ensured that if a proceeding holds merit then it is not debarred on the admission stage itself.

The concept of allowing certain proceedings post limitation period is known as the 'condonation of delay.' The court holds the power to reject the delay and allow the case to be admitted on merits. However, the condition associated with such condonation is two-fold. First, the prosecution must explain the rationale behind such delay up to the satisfaction of the court. Whereas, in certain circumstances, the court can condone delay when it is necessary to do so in the interests of justice. The legislative intent behind such a provision is to ensure that such limitation is not absolute and does not deprive the victim of justice just based on a technicality.

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The concept of condonation of delay ensures rationality prevails over absoluteness but does not provide any objective guidelines or framework determining such rationale. Thus, giving the honourable judiciary an arbitrary power to determine reasonable grounds. However, enactment of certain non-binding but persuasive guidelines or frameworks can provide objectivity to such reasoning. The honourable Supreme Court in a catena of judgments has provided the broad themes which can be used to create such a framework.

The honourable Court in Mohsina & Ors vs Union of India held that illiteracy, poverty, and non-ability of a victim is a satisfactory rationale to condone the delay. The victim is an illiterate and poor lady; she lost her husband in the train accident; her father-in-law was pursuing the case before the Claims Tribunal; her father-in-law expired, whereupon her mother-in-law threw her out of the matrimonial home, and she is residing with her father who is also handicapped; she was working as a maidservant to make both ends meet due to which she made an 804 days delay in filing the suit and seek condonation. The court after analysing the surrounding facts held that considering the extreme poverty and illiteracy of the appellants, the application is allowed and the delay in filing the appeal is condoned.

Whereas, the honourable court in State of Tamil Nadu vs N. Suresh Rajan & Ors., held that delay due to the lawyer's contradictory advice is condoned. The complainant argued that the lawyer advised him in contradiction to file the Special leave petition before this honourable court so the delay of 1954 days is condoned.

The court in Sarah Mathew vs the Institute of Cardio-Vascular Diseases held that the delay caused by a magistrate in taking cognizance of the offence must be condoned as the victim's intent was bonafide and was out of his control. On the other hand, the honourable court in Provident Fund Inspector, Ludhiana vs Harminder Singh & Anr., adjudicated on the issue that the whether the fact that the legislation is beneficial is sufficient to mechanically condone the delay. The court while adjudicating upon the Employment provident fund act, 1952 provided a general ruling that the mere fact of legislation being beneficial does not condone the delay automatically, circumstantial analysis is a must.

The list or structure shall not be exhaustive and must be open to amendment. Additionally, such a list must also be non-binding and only persuasive to provide the victims/ complainant or lawyers sufficient understanding to file an informed application for condonation of delay. Thus, catena of

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judgments and certain other factors such as societal pressure in cases of sexual harassment etc. must be considered for the enactment of a structured framework to avoid arbitrariness and to assist the judges in efficiently applying judicial mind to cases of condonation of delay.

The two additional factors to be considered are the lawyer's negligence and delay caused due to red - tapism in the governmental department. The former issue has been adjudicated by the honourable Supreme Court in Boutique Hotels India (P) Ltd. VS ACIT (ITAT Delhi). The court held that the pleader's gross carelessness/negligence does not hold sufficient ground to condone the delay. Whereas, the court stated that the delay can be condoned when it is proved that the lawyer or adviser made a bona fide mistake and the council must disclose the particular circumstance when such advice was given. Thus, mistaken advice given by a lawyer negligently and without due care as well as a general statement as an excuse is not sufficient to cause.

With the passage of time, the evidence deteriorates, the accused may become unidentified, the circumstances might be changed. So, the suit may be brought within the specified period so that the lawyers can find the evidence, the situation of the accused does not change. It was not possible to bring the suit within the appropriate time so for this purpose Chapter, XXXVI was enacted. It is not brought to extinguish the rights of the person but it is brought to avoid the unnecessary delay in instituting a suit.

The period of limitation for criminal offences is necessary as to avoid filing of frivolous litigation as to secure the alleged accused from harassment and to safeguard the valuable time of the Judiciary. However, it is also significant to consider that a legitimate case is not rejected just on the basis of the technicality of limitation. Thus, there lies a provision which allows the judiciary to apply its judicial mind and decide whether the case holds any merit to qualify for condonation of delay. It is also necessary to consider that there lies a need to create a non- exhaustive and non-binding list of rationale suitable to hold condonation of delay as to limit the arbitrary power of the court as well as to provide the complainant and lawyer to have sufficient ground to seek the condonation of delay. Such list can be prepared through judicial precedents and certain other aspects.

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CHAPTER-6: CONCLUSION

In the Code of Criminal Procedure, 1973, Chapter XXXVI has been added prescribing limitation for taking cognizance of certain offences with a view to expedite the process of detection and investigation of crimes and also to ensure observances of the principle of fairness in the total of the offences by barring belated prosecution. Delay in prosecution of offences causes undue hardship as it keeps the sword handing on the heads of accused persons and it also results in the material evidence getting vanished. This chapter applies to all such offences for which punishment prescribed is less than three years. But it does not apply to offences for which punishment prescribed is more than three years and to economic offences under various Acts, which are excluded under Central Act 12 of 1974 or any State Acts. It contains seven sections (467-473). Section 467 defines the expression 'period of limitation' used in the chapter. Section 468 creates bar to taking cognizance of offences after lapse of period of limitation. Sections 469 to 473 deal with various aspects of computation of limitation. Of the aforementioned provisions, we are concerned with Sections 468 and 469. Sub-section (1) of Section 468 ordains that no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the 'period of limitation' prescribed thereunder. This, however, is subject to the other provisions of the Code. Sub-section (2) postulates different period of limitation for offences with reference to the punishment provided for them; if the punishment provided for an offence in any Act is only fine, the period of limitation fixed is six months; if the offence is punishable with imprisonment for a term not exceeding one year, the period of limitation prescribed is one year and if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation laid down is three years. And sub-section (3) spells out the rule of limitation in cases of joinder of charges; if a person is tried for more offences than one, then the period of limitation will be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment; for example, if a person is tried for various offences and some of them are punishable with fine and some with imprisonment for a term less than a year and some for which the punishment is provided up to three years, then the period of limitation for all the offences, if they are tried together, will be three years.

Section 469 deals with commencement of the period of limitation and it reads thus: " 469. Commencement of the period of limitation –

(1) The period of limitation, in relation to an offender, shall commence –

a. on the date of the offence; or

b. where the commission of the offence was not known to the person aggrieved by the

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offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

c. where it is not known by whom the offence was committed, the first the day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier."

A plain reading of the provision extracted above shows that in sub-section (1) three alternative starting points of limitation have been specified - (a) the date of the offence; (b) the first day on which an offence came to the knowledge of the person aggrieved by the offence or to any police officer, whichever is earlier, in a case where the commission of the offence was not known to any of them, or(c) the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier, but this can be called in aid in a case where it is not known by whom the offence was committed. basically, from the date of the offence the period of limitation will start but there will be cases where the commission of offence or identity of the offender comes to knowledge of those concerned with it long thereafter so in such situations clauses (b) and (c), as the case may be, would be the date of commencement of period of limitation.

Now we shall see which clause of sub-section (1) of Section 469 is attracted to the facts of the case. For this purpose, it will be necessary to revert to the facts of this case. The essence of the offences charged is manufacture of adulterated, sub-standard, misbranded, spurious drugs within the meaning of the relevant provisions of the Act and/or storage, distribution and sale of such drugs in contravention of the provisions of the Act. On the date of collection of samples from respondent No.16, on February 29, 1988, it could not have been said that any offence was committed as selling of drugs per se is no offence and the quality of the drugs was not known to the Drugs Inspector, the complainant on that date. It is only, when the report of the Government Analyst was received, that it came to light that the provisions of the Act are violated and offence is committed. So, on the facts of this case, it cannot be said that Clause

(a) of Section 469(1) is attracted. That the drugs which were offered for sale were substandard/adulterated, within the meaning of the Act, came to the knowledge of the Drugs Inspector only on July 2, 1988 when the report of the Government Analyst was received by him; and therefore, clause (b) of Section 469(1) will be attracted.

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Under cognate legislations of different States, similar questions arose before the High Courts. In R.S. Arora vs The State (1987) Crl. Law Journal 1225, the question which fell for consideration of Delhi High Court was whether for prosecution under Sections 7, 19 and 16(1) of the Seeds Act, 1966, the period of limitation of six months would start from the date of collection of samples under clause (a) or from the date of Seed Analyst report for purposes of clause (b) of Section 469(1) Cr.P.C. The learned Single Judge of the Delhi High Court took the view that the limitation commences from the date of submission of the report by the Seed Analyst to the Inspector, so Section 469(1) (b) would apply. The same view was taken by the Bombay High Court in Omprakash Gulabchandji Partani vs Ashok & Anr. (1992) Crl. L. J. 2704.

In M/s. Satyanarayana General Traders & Ors. vs State (1993) 2 Crimes 203, a learned Single Judge of the Andhra Pradesh high Court held that for prosecution of offences of mis-branding under Insecticides Act, the period of limitation would start from the date on which the report of the Analyst was received but not from the date of taking samples and thus Section 469(1) (b) would be attracted. We are in entire agreement with the views expressed by the learned Judges of the High Courts in the above cases. For the above reasons, in the instant case, the limitation for the purpose of Section 468(2) (c) will commence from July 2, 1988, the date of knowledge of the commission of offence to the concerned officer under Section 469(1) (b) but not from February 29,1988 (the date of collection of samples by the Drugs Inspector) and as the complaint was filed on June 28, 1991 which is within three years so the complaint is not barred by limitation under Section 468(2) (c). The High Court has missed this germane aspect erroneously took the date of commencement of the limitation as February 29,1988, the date on which the samples were collected by the Drugs Inspector form accused No. 16. It is thus clear that the High Court has committed illegality in so computing the period of limitation, which results in miscarriage of justice.

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