

# Limitation for taking cognizance of offence under Cr.PC

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*This article is written by [Richa Goel](#) of Banasthali Vidyapith in which she has discussed the prescribed period of limitation for taking cognizance of offence and its case laws.*

## 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 the society from falling into the 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 kind 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 the law are complementary with 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. There are various processes that need to be followed to administer justice includes pre-trial procedure lawsuits, answering a complaint, motion, discovery etc.. Trial procedure including 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 which 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 **Section 195 to 197 of the Code**. Section 190 and 193 talks about the mode for taking the cognizance.

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

## Meaning of cognizance

The word cognizance has origin from the old French term "**connaissance**" which means " recognition, wisdom, knowledge, familiarity" and also from the word "**conoistre**" which means " to know " and from the Anglo-Norman word "**conysance**" which has the meaning

"later, recognition, knowledge". It is derived from the Latin word "**cognosis**" where the con means to "with" and "gnosis" means "to know".

The word 'Cognizance' has not been defined in the procedural law but the meaning of cognizance is derived from the number of precedents and judicial pronouncements. The dictionary meaning of cognizance is "taking account of", "taking note of", "to gain knowledge about", "to have knowledge regarding something ". If we see the legal meaning of cognizance,

It is the power or authority of the court or the "taking judicial notice by court of law having jurisdiction on an action, matter or a cause for the purpose of deciding whether there is any ground for the initiation of proceedings and deciding of the matter or cause judicially".

In the case of *R.R Chari vs State of U.P*, the Supreme Court held that the cognizance occurs when the court applies his judicial mind to the suspicious cause of action but it is not necessary to take any indeed or formal action.

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 in taking cognizance of offences

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.

# Definitions

## 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: Bar to take the Cognizance of an offence

- No Court shall take the cognizance of an offence after the expiry of the prescribed period 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, (1998) Cr LJ 3282 (SC)*, 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, AIR 2000 SC 297*, 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: 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, 1998 Cri LJ 256 (SC)*, 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:** 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.
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:** 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.

**Section 472:** 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.

## 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.

## 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.”

## Conclusion

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.