LIMITATION IN CRIMINAL CASES IN RESPECT OF OFFENCES UNDER IPC/BNS AND OTHER SPECIAL LAWS

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1. INTRODUCTION

Law of limitation has been enunciated in the legal maxim **"interest reipublicae ut sit finis litium"** which means that it is for the general welfare to put a limit to litigation. The legislature strives to balance public interest by providing provisions for limitation on one hand and at the same time, it does not unreasonably restrict the right of a party to initiate proceedings.

Prior to the 42nd Law Commission Report dated June 2, 1971("Report of 1971") issued by the Ministry of Law, Government of India, only specific statutes had limitation periods prescribed for certain offences and the CrPC contained no general provision of limitation for prosecution.

The Law Commission of India noted that the reasons to justify the introduction of provisions prescribing limitation in general law for criminal cases are similar to those which justify such provisions as prescribed in civil law such as likelihood of evidence being curtailed, failing memories of witnesses and disappearance of witnesses. Such a provision, in the opinion of the Law Commission of India, was to quicken diligence, prevent oppression and in the public interest bring an end to the legal battle. The Law Commission of India also felt that the Courts would be relieved of the burden of adjudicating inconsequential claims. Paragraphs 24.3 and 24.4 of the Report of 1971 are material and reads as follows: "24.3 - In civil cases, the law of limitation in almost all countries where the rule of law prevails, Jurists have given several convincing reasons to justify the provision of such a law; some of those which are equally applicable to criminal prosecutions may be referred to here:

(1) the defendant ought not to be called on to resist a claim when "evidence has been lost, memories have faded, and witnesses have disappeared";
(2) the law of limitation is also a means of suppressing fraud, and perjury, and quickening diligence and preventing oppression;
(3) it is in the public interest that there should be an end to litigation. The statute of limitation is a statute of repose;
(4) a party who is insensible to the value of civil remedies and who does not assert his own claim with promptitude has little or no right to require the aid of the state in enforcing it.
(5) the Court should be relieved of the burden of adjudicating inconsequential or tenuous claims";

"24.4 Theoretically, all the aforesaid reasons apply with equal force in the

field of the criminal law. Evidence is as much likely to become stale in criminal cases as in civil cases. Memory, if it fades, would irrespective of the nature of the proceeding, subject to the qualification that a serious criminal injury perpetrated on a victim may remain fixed in his memory for a very long time".

In addition to the applicable provisions for criminal proceedings as prescribed in the Limitation Act and the CrPC, there are various special statutes like the Police Act 1861, the Trade Marks Act, 1999, the Geographical Indication of Goods (Registration and Protection) Act 1999, the Negotiable Instrument Act, 1881, Factories Act, 1948 and the Army Act, 1950, wherein the limitation period is governed by the period prescribed in such special statute and not as prescribed under the Cr.P.C.

2. HISTORY

The Joint Parliamentary committee (JPC) in respect of proposed Chapter XXXVI further made the following observations in favour of prescribing limitation to criminal proceedings, which is reproduced here as under:

1. *"Prescribing limitation on criminal offences becomes necessary owing to the fact that the sense of social retribution, which is one of the objectives of criminal law loses its edge after the expiry of a prolonged period.*
2. *The period of limitation would put pressure on organs of criminal prosecution to make efforts to ensure the detection and punishment of the crime expeditiously.*
3. *A person cannot be kept under continuous apprehension that he may be prosecuted at any time. People will have no peace of mind if period of limitation does not exist for petty offences.*
4. *The testimony of witnesses will become weaker because of lapse of memory and evidence becomes uncertain, which makes the deterrent effect of punishment impaired. Long delay may lead to destruction of evidence and this may tend to the prejudice of justice."*

By providing period of limitation for certain offences, the effort was to make the criminal justice system more orderly, efficient and just. The object of the CrPC in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of the offence. It was in pursuance of the aforesaid particular object that Chapter XXXVI was inserted in the CrPC. The larger

purpose of Sections 467 to 473 of the CrPC would indicate that the question of limitation is not only justiciable but also has to be decided within the parameters of those sections by the Court taking cognizance of the offence.

Read in the background of the Law Commission's Report and the Report of the JPC, it is clear that the object of Chapter XXXVI inserted in the Cr.P.C. was to quicken the prosecutions of complaints and to rid the criminal justice system of inconsequential cases displaying extreme lethargy, inertia or indolence. The effort was to make the criminal justice system more orderly, efficient and just by providing period of limitation for certain offences. In Sarwan Singh, this Court stated the object of Cr.P.C in putting a bar of limitation as follows: "The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to sub-serve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation.

Chapter XXXVI of the Cr.P.C. does not undermine this right of the accused. While it encourages diligence by providing for limitation it does not want all prosecutions to be thrown overboard on the ground of delay. It strikes a balance between the interest of the complainant and the interest of the accused. It must be mentioned here that where the legislature wanted to treat certain offences differently, it provided for limitation in the section itself, for instance, Section 198(6) and 199(5) of the Cr.P.C. However, it chose to make general provisions for limitation for certain types of offences for the first time and incorporated them in Chapter XXXVI of the Cr.P.C. It is now necessary to see what the words 'taking cognizance' mean. Cognizance is an act of the court.

In **Jamuna Singh & Ors. v. Bhadai Shah**, relying on R.R. Chari and **Gopal Das Sindhi & Ors. v. State of Assam & Anr,** this Court held that it is well settled that when on a petition or complaint being filed before him, a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Cr.P.C, he must be held to have taken cognizance of the offences mentioned in the complaint.

The relevant observations of this Court could be quoted:

> *"The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone".*

Therefore, the only harmonious construction which can be placed on Sections 468, 469 and 470 of the Cr.P.C. is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period. He would, however, be entitled to exclude such time as is legally excludable. The role of the court acting under Section 473 was aptly described by this Court in **Vanka Radhamanohari case** where this Court expressed that this Section has a non-obstante clause, which means that it has an overriding effect on Section 468. This Court further observed that there is a basic difference between Section 5 of the Limitation Act and Section 473 of the Cr.P.C. For exercise of power under Section 5 of the Limitation Act, the onus is on the applicant to satisfy the court that there was sufficient cause for condonation of delay, whereas, Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether, it is the requirement of justice to ignore such delay. These observations indicate the scope of Section 473 of the Cr.P.C. Examined in light of legislative intent and meaning ascribed to the term 'cognizance' by this Court, it is clear that Section 473 of the Cr.P.C. postulates condonation of delay caused by the complainant in filing the complaint. It is the date of filing of the complaint which is material.

It is well settled in **(U.P. Power Corporation Ltd. v. Ayodhaya Prasad Mishra)** that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. It held that if the complaint was filed within the stipulated period of one year, that satisfied the requirement. The complaint could not be thrown out because of the Magistrate's act of issuing process after one year.

In view of the above, the apex court hold that for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. Further hold that **Bharat Kale**

which is followed in **Japani Sahoo** lays down the correct law. **Krishna Pillai** will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C.

3.SECTIONS IN CHAPTER XXXVI CRPC/ XXXVIII BNSS

SEC. 467 CRPC/ 513 BNSS – 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.

SEC. 468 CRPC/514 BNSS – 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;
    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 a 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.

SEC. 469 CRPC/515 BNSS– Commencement of the period of limitation.

1. The period of limitation, in relation to an offence, 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 excluded.

SEC. 470 CRPC/ 516 BNSS – 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.
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, than, 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.

1. In computing the period of limitation, the time during which the offender:
   a) has been absent from the 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.

SEC. 471 CRPC/ 517 BNSS – 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.

SEC. 472 CRPC/ 518 BNSS– 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.

SEC. 473 CRPC/ 519 BNSS – Extension of period of limitation in certain cases

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitations, 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.

4. EVOLUTION OF CONCEPT OF LIMITATION IN THE DECISIONS OF THE SUPREME COURT;

(I). SURINDER MOHAN VIKAL VS ASCHARAJ LAL CHOPRA, AIR 1978 S.C.984 decided on the 28th of February 1978.

It appears to be the first decision from the Supreme Court dealing with the question of limitation in a criminal case relating to an offence under the Penal Code. The principal question was the commencement of limitation of the defamation case there. The High Court held that "cause of action for defamation arose only after acquittal on 01.04.1975. The Supreme Court spoke thus :-

> *"We are constrained to say that the question of "cause of action" could not really arise in this case as the controversy relates to commission of an offence…… It would therefore follow that the date of offence was March, 1972 when the defamatory complaint was filed in the Court of the Magistrate, and that was the starting point for purpose of calculating the three years' period of limitation. " The complaint was quashed by the Supreme Court as barred by limitation . Brief reference to Section 470 and 473 of the Code was also made and it was held that Section 470 is not at all applicable and that "the respondent has not sought the benefit of S. 473 which permits extension of the period of limitation in certain cases".*

(II). STATE OF PUNJUB –VS- SARWAN SINGH (1981)3 SCC 34 decided on the 2nd April 1981 was a case of misappropriation of the funds of a Co- operative Society by the accused Sarwan Singh. The charge-sheet was filed on 13.10.1976

and it showed that embezzlement was committed on 22.08.1972 and the audit report through which the offence was detected was dated 05.01.1973. On those dates both the High Court and the Supreme Court held that prosecution was clearly barred by three year period of limitation within Section 468(2) of the Code. The Supreme Court also held that the object of enacting a bar of limitation on prosecution is in consonance with the concept of fairness of trial enshrined in Article 21 of the Constitution of India.

The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. The prosecution against the respondent being barred by limitation the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent herein become non-est. For these reasons given above, we hold that the point of law regarding the applicability of Section 468 of the Code of Criminal Procedure has been correctly decided by the Punjab and Haryana High Court.

(III). BHAGIRATH KANORIA AND OTHERS –VS- STATE OF M.P., AIR 1984 S.C. 1688, decided on the 24th of August 1984 breaks further ground on the question of limitation in prosecution of offences. The principal question in the decision was regarding continuing offence spoken about in Section 472 but the Supreme Court also drew pointed attention of the Courts to the provisions of Section 473 of the Code. On the concept of continuing offence the Supreme Court spoke thus :- “The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence.” it was held that Section 473 of the Code enacts an overriding provision and courts confronted with provision laying down a rule of limitation governing prosecution will give due weight and consideration to provisions of Section 473 and take cognizance even after expiry of limitation if interest of justice so requires.

(IV). SRINIVAS PAL –VS- UNION TERRITORY OF ARUNACHAL PRADESH, AIR 1988 S.C. 1729 decided on the 1st of August, 1988 was a decision dealing with rash and negligent driving. The offence took place in November 1976 and till the court's order of August 1987 no investigation had taken place. On those dates though the High Court remitted the matter on the holding that since taking cognizance without first condoning the delay was bad and without jurisdiction the Supreme Court short- circuited the entire matter by quashing the prosecution on the ground of enormous delay in prosecution without deciding the contention urged relating to the prescription of Section 473 of the Code.

(V). GOKAK PATEL VOLKART LTD. –Vs- DUNDAYYA GURUSHIDDAIAH HIREMATH AND OTHERS, (1991)2 SCC 141 decided on the 14th February 1991 contains a detailed enunciation of the law relating to continuing offence provided for in Section 472 of the Code. Offence dealt with was under Section 630 of the Companies Act, 1956 on the allegation of continuing to occupy premises allotted to employees by the Company even after their retirement. The period of limitation under Section 468 (2) (a) of the Code is six months since the offence is punishable with fine only.

The Trial Court held that the complaint having not been filed within six months of the retirement, the prosecution is barred by limitation. The High Court concurred. The Supreme Court reiterated the law laid down in BHAGIRATH KANORIA (Supra) and held that

> *"Applying the law enunciated above to the provisions of Section 630 of the Companies Act, we are of the view that the offence under this Section is not such as can be said to have consummated once for all. Wrongful withholding or wrongful obtaining possession and wrongful application of the company's property, cannot be said to be terminated by a single act or fact but would subsist for the period until the property in the offender's possession is delivered up or refunded. It will be a recurring or continuing offence until the wrongful possession, wrongful withholding or wrongful application is vacated or put an end to."*

(VI). R. AGHORAMURTHY, REGISTRAR OF COMPANIES, BOMBAY –Vs- BOMBAY DYEING AND MANUFACTURING COMPANY LIMITED, 1991- JT-S-432, decided on the 7th March, 1991 was a prosecution for offences under Section 205 of the Companies Act, 1956. The principal question there was the date of

knowledge of the offence of the complainant under Section 469(1)(b) of the Code. The Registrar of Companies issued notice to the company and on receipt of the reply sent a Report to the Department of Company Affairs, Govt. of India who ordered an Enquiry. Question was whether the date of knowledge would be the date of receipt of the Report. The Supreme Court agreed with the concurrent findings of the two Courts below and held that limitation is to be counted from the date of knowledge of the complainant that is when the notice was issued specially when the complaint did not approach the Court under Section 473 of the Code.

(VII). VANKA RADHAMANOHARI (SMT) –VS- VANKA VENKATA REDDY AND OTHERS, (1993) 3 SCC 4 decided on the 20th April 1993 was a case where the Magistrate took cognizance of the offences under Section 498-A and 494 of the Penal Code. The High Court quashed the criminal proceedings on the ground of the bar under Section 468 of the Code since Section 498-A I.P.C prescribes punishment only up-to three years imprisonment. The High Court did not notice that for offence under Section 494 I.P.C. punishable with imprisonment up-to seven years no bar of limitation is applicable. The Supreme Court referred to SARWAN SINGH (Supra) and BHAGIRATH KANORIA (Supra) and held that the High Court should have considered the provisions of Section 473 of the Code, specially in a case of cruelty against women. The crux of the judgment is the highlighting of the difference between the provisions of Section 5 of the Limitation Act, 1963 and those of Section 473 of the Code covering the same ground but with considerable difference in application. The Supreme Court applied Section 473 and condoned the delay. The order of the Magistrate was restored.

(VIII). SUKHDEV RAJ –Vs- STATE OF PUNJUB, 1994 Supp (2) SCC 398, decided on the 28th of September, 1993 was a case where Sukhdev Raj was convicted and sentenced for an offence under Section 9 of the Opium Act, 1878. In the High Court the only point urged was that on the undisputed date of occurrence on 31.05.1974 and that of filing of the charge-sheet more than three years elapsed and thereafter on 29.08.1977 cognizance could not have been taken in view of Section 468 of the Code. An application under Section 473 of the Code filed almost at the close of the trial was held sufficient by the Supreme Court to condone the delay. The words "so to do in the interest of justice" are wide enough and the court accepted the explanation.

(IX). STATE OF MAHARASHTRA –VS- SHARADCHANDRA VINAYAK DONGRE AND OTHERS, AIR 1995 S.C. 231 decided on the 7th October, 1994 marks a watershed in the exposition of the law of limitation in criminal cases. This is a Three Judge unanimous decision of the Supreme Court. The police along with the charge-sheet filed two applications, one for condonation of the delay and the other seeking permission for further investigation and filing of additional charge-sheet. The Chief Judicial Magistrate kept the application for further investigation pending but allowed the application for condoning the delay and issued process against the accused persons. In the High Court, moved by the accused for quashing under Section 482 of the Code, the two-fold challenge to the order of the Chief Judicial Magistrate was (1) that cognizance could not have been taken on an incomplete charge-sheet and (2) that the delay could not have been condoned without notice to the affected party and without recording any reason. The High Court accepted both the contentions and quashed the proceeding. The State reached the Supreme Court via Article 136 of the Constitution. The Supreme Court disagreed with the High Court on the first contention by observing that the Magistrate's "power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) of Cr.P.C". For the purpose of this essay the more important of the two contentions is the second one and on it in para 5 of the Judgment the Three Judge Bench spoke thus :- "In our view, the High Court was perfectly justified in holding that delay, if any, for launching the prosecution, could not have been condoned without notice to the respondents and behind their back and without recording any reasons for condonation of the delay.

The Supreme Court remitted the case to the Chief Judicial Magistrate to decide the application by the prosecution for condonation of delay afresh after hearing both the parties. Thus while the decisions before this only emphasized the substantive aspects of the provisions of Section 473 of the Code the Three Judge Bench for the first time in no uncertain terms laid down the procedure to be followed in applying the said provisions.

(X). RASHMI KUMAR (SMT) –Vs- MAHESH KUMAR BHADA, (1997)2 SCC 397 decided on the 18th December, 1996 is another Three Judge decision of the Supreme Court dealing with a question of limitation in a criminal case under Section 406 of the Penal Code filed by a wife against the husband for committing breach of trust with respect to the "Stridhan" property of the wife. The High Court quashed the complaint. The Supreme Court dealt with the question of limitation arising in the case in para 15 of the Judgment thus :- "It is seen that the appellant

has averred in paras 21 and 22 of the complaint that she demanded from the respondent return of the jewellery and household goods on 05.12.1987 and the respondent flatly refused. The complaint was admittedly filed on 10.09.1990 meaning within three years from the date of the demand and refusal by the respondent. The learned Judge relied upon her evidence recorded under Section 200 of the Code.

That view of the learned Judge is clearly based on the evidence torn of the context with reference to the specific averments made in the complaint and the evidence recorded under Section 200 of the Code." Thus on facts the complaint was held to have been filed in time.

(XI) STATE OF RAJASTHAN –VS- SANJAY KUMAR AND OTHERS, AIR 1998 S.C. 1919, decided on 1st May 1998 answers the question as to when does the period of limitation commence in a prosecution under the Drugs and Cosmetics Act 1940. It was held that the period of limitation commences not on the date when the sample was taken but commences only on the date of receipt of the Govt. analyst's Report within Section 469(1) (b) of the Code.

(XII) ARUN VYAS –VS- ANITA VYAS, (1999)4 SCC 690 decided on the 4th May 1999 is a decision where the Magistrate took cognizance of offences under Section 498-A and 406 of the Penal Code on a charge-sheet submitted on 22.12.1995. On the day fixed for framing of the charge, however, the Magistrate discharged the accused husband on the ground of limitation as because the complaint specifically gave the date of occurrence to be 13.10.1988. The High Court set aside the order of discharge directed him to decide the case in accordance with law. The Supreme Court in so far as the offence under Section 406 is concerned upheld the order of discharge passed by the Magistrate on the ground of bar of limitation in the absence of any explanation of the inordinate delay of about 4 years in filing the charge-sheet. But for the other offence that is one under section 498-A the Supreme Court followed VANKA RADHA MONOHARI (Supra) and remitted the matter to the trial court for consideration of "the question of limitation taking note of Section 473 Cr.P.C.". it was specifically held that any finding recorded by a Magistrate holding the complaint to be barred by limitation without considering the provisions of Section 473 of the Code will be a deficient and defective finding. The mandate for liberal construction of Section 473 of the Code in favour of the wife, a victim of cruelty was emphasized in this decision.

(XIII). STATE OF H.P. Vs- TARA DUTTA, (2000)1 SCC 230 decided on the 19th November 1999 is again a Three Judge decision of the Supreme Court on the question of limitation in criminal cases. Three Judge Bench was constituted on a reference by a Two Judge Bench holding that ARUN VYAS (Supra) needs reconsideration. Two important holdings in this decision are these :- (1) that Limitation is to be applied to the offence charged and not to the offence eventually found proved at the trial in view of sub-section (3) of Section 468 added in 1978. (2) Under Section 473 of the code a discretion has been vested in the Court taking cognizance to extend the period of limitation if the delay is satisfactorily explained and it is in the interest of justice to extend the period. The said discretion has to be exercised on judicially recognized grounds and through a speaking order. By way of cutting down the width of the statement of law in this regard in relation to the offence under Section 498-A the Supreme Court reiterated above exposition of the law while adopting the need for liberal construction of the provisions of Section 473 of the Code.

(XIV). REGISTRAR OF COMPANIES –Vs- RAJASHREE SUGAR & CHEMICALS LTD. AND OTHERS, AIR 2000 S.C. 1643 decided on the 11th May 2000, again by a three Judge Bench of the Supreme Court deals with limitation for an offence under Section 113(2) of the Companies Act, 1956. Offence is punishable by fine only and as such the period of limitation is six months. The Magistrate overlooked the provision of Section 469(1) (b) and dismissed the complaint as barred even though it was found that the offence came to the knowledge of the Registrar of Companies on examination of the Books of Accounts only on 20.07.1992 and the complaint was filed on 20.08.1992. In the High Court the point took a different turn. The High Court overlooked the provisions of Section 621 of he Companies Act, 1956 and held that the Registrar of Companies is neither a person aggrieved nor a police officer within Section 469 (1)(b).

According to the High Court prosecution under Section 113 of the Companies Act, 1956 can only be launched by an affected share-holder. The Supreme Court corrected the errors of the High Court and the Chief Judicial Magistrate by reading Section 469(1)(b) with Section 621 of the Companies Act and holding that the Registrar of Companies is a person aggrieved and competent to maintain the prosecution counting the period of limitation from the date of knowledge within Section 469(1)(b) of the Code.

(XV). RAKESH KUMAR JAIN –VS- STATE, AIR 2000 S.C. 2754, decided on the 8th August, 2000 deals with an offence under Section 5(4) read with Section 5(2) and (3) of the Official Secrets Act, 1923. The period of limitation in that case commenced from the 24th April, 1985 and the complaint was filed on the 19th of May 1988. Thus the complaint was filed beyond 25 days of the three years period of limitation for the offence. But both the Chief Metropolitan Magistrate and the High Court applied Section 470(3) of the Code by equating the provisions of Section 13(3) of the official Secrets Act, 1923 with provisions requiring sanction or consult.

The Supreme Court held that Section 13(3) of the official Secrets Act, 1923 does not provide for requirement of any sanction or consent and as such as Section 470(3) would not be attracted. However, in para 10 of the Judgment, the Supreme Court held that the complaint deserves to be saved under Section 473 of the Code and the condoned the delay without remitting the case to the Trial Court.

(XVI). P.P.UNNIKRISHNAN AND ANOTHER –VS- PUTTIYOTTIL ALIKUTTY AND ANOTHER, AIR 2000 S.C. 2952 decided on the 5th September, 2000 is a decision where a Sub-Inspector and a Constable of Kerala Police sought to extricate themselves from a criminal complaint under Several Penal Code offences on the ground of limitation enacted in Section 64(3) of the Kerala Police Act, 1961 a provision similar to that of Section 42 of the Police Act, 1861. Failing before the Trial Court as also the High Court the two cops reached the Supreme Court to reiterate the bar under Section 64(3) of the Kerala Police Act. While upholding the conclusion of the two courts below the Supreme Court set aside the second reason for denying the protection on the ground that Section 473 of the Code additionally saves the prosecution. Thus the principal point of law laid down in this decision is that Section 473 of the Code is applicable only to the period of limitation prescribed by the Code and not by any other law such as the Kerala Police Act.

(XVII). RAMESH CHANDRA SINHA AND OTHERS –VS- STATE OF BIHAR AND OTHERS, (2003)7 SCC 254 decided on the 18th of August 2003 is yet another decision dealing with the application of Section 473 of the Code. In that case the Trial Court on an application under Section 473 of the Code condoned a delay of about three years on the ground that further proceedings were stayed by the High Court. On facts it was found that there was no such stay. The High Court refused to interfere with the order condoning the delay. The Supreme Court set aside the order condoning the delay on irrelevant consideration and quashed the

criminal proceedings because of the bar of limitation.

(XVIII). BHARAT DAMODAR KALE AND ANOTHER –VS- STATE OF A.P., AIR 2003 SC 4560, (2003) 8 SCC 559 decided on the 8th October 2003 marks yet another watershed in the development of the law of limitation in criminal cases. The case arose out of a complaint by the Drugs Inspector for an offence under the Drugs and Magic Remedies (Objectionable Advertisements) Act 1954. Competence of the concerned Drug Inspector to file the complaint and the bar of limitation are the two points argued before the High Court in a petition under Section 482 of the Code to quash the criminal proceedings. Both the points were answered against the accused petitioners by the High Court as well as the Supreme Court. On the question of limitation in para 10 and 11 of the Judgment relying on the statutory indication available from the provisions of Section 469 and 470 of the Code and applying the legal maxim "actus curiae neminem gravabit" (an act of the court shall prejudice no man) the Supreme Court laid down the law that the provision of chapter XXXVI of the Code "clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance."

The Judgment also drew support from the Three Judge decision in **RASHMI KUMAR** (Supra). In the case offence was detected on 05.03.1999 and the complaint was filed on 03.03.2000 well within the one year period of limitation. The cognizance, however, was taken on 25.03.2000 about 25 days after it was filed. On these facts applying the law as above the complaint was held not to be barred by limitation.

(XIX). HARNAM SINGH –VS- EVEREST CONSTRUCTION CO AND OTHERS, 2004 Cri.L.J. 4178 decided on the 17th August 2004 deals with a case where offences under section 420, 467, 471 and 474 of the Penal Code were the subject matter of a complaint on which the Magistrate took cognizance and issued process. However, the High Court without considering the stark fact that none of the offences came within Section 468 of the Code quashed the complaint only on the ground of delay. The Supreme Court set aside the order remitted the matter to the High Court for fresh disposal in accordance with the law.

(XX). M/S ZANDU PHARMACEUTICAL WORKS LTD. AND OTHERS –Vs- MD. SHARAFUL HAQUE AND OTHERS, AIR 2005 S.C. 9, decided on the 1st of November 2004 again is a decision highlighting the error of the Magistrate in failing

to notice, the provisions of Section 468 or Section 473 of the Code and taking cognizance of a complaint much delayed beyond the three year period of limitation. The High Court also failed to correct the glaring error of law. The Supreme Court quashed the proceedings on the ground of the bar of limitation.

(XXI). RAMESH AND OTHERS –VS STATE T.N., (2005) 3 SCC 507 decided on the 3rd March, 2005 was a case relating to offences under Section 498-A, 406 of the Penal Code and Section 4 of the Dowry Prohibition Act. Quashing of the criminal proceedings was sought on the ground of bar of limitation and lack of territorial jurisdiction. Failing in the High Court the accused persons reached the Supreme Court and urged the said two contention. The Supreme Court on the question of territorial jurisdiction relied on Y. ABRAHAM AJITH –VS- INSPECTOR OF POLICE, (2004)8 SCC 100 and came to the conclusion that the offences alleged cannot be said to have been committed wholly or partly within the territorial jurisdiction of the Trial Court and transferred the case to the Court at Chennai. On the question of the bar of limitation relying on ARUN VYAS (Supra) held thus : The last act of cruelty would be the starting point of limitation. The three year period as per Section 468(2) (c) would expire by 14.10.2001 even if the latter date is taken into account. But that is not the end of the matter. We have still to consider whether the benefit of the extended period of limitation could be given to the informant." Proceeding thus considering the date of the F.I.R. etc applied the provisions of Section 473 of the Code and condoned the delay without remitting the matter of condonation of delay under Section 473 of the Code to the Trial Court.

(XXII). JAPANI SAHOO –VS CHANDRA SEKHAR MOHANTY, AIR 2007 S.C. 2762 decided on the 27th of July 2007 is important in as much as an attempt was made before the Supreme Court for reconsideration of BHARAT DAMODAR KALE (Supra) that limitation prescribed is only for filing of the complaint or initiation of proceedings and not for taking cognizance. But the attempt failed and the Supreme Court reiterated the law laid down in BHARAT DAMODAR KALE (Supra)

(XXIII). SANAPAREDDY MAHEEDHAR SESHAGIRI & ANR –Vs- STATE OF ANDHRA PRADESH & ANR, AIR 2008 SC 787, decided on the 13th of December, 2007 deals with the question whether the Magistrate could take cognizance of offences under Section 498-A and 406 of the Penal Code read with Section 4 and 6 of the Dowry Prohibition Act after expiry of three years. The

Supreme Court reviewed the earlier decisions in STATE OF PUNJUB –VS- SARWAN SINGH (Supra), VANKA RADHAMANO HARI (Supra), ARUN VYAS (Supra), STATE OF H.P. –Vs- TARA DUTTA (Supra) and RAMESH (Supra) and answered the question thus :- "The ratio of the above noted judgments is that while considering applicability of Section 468 to the complaints made by the victims of matrimonial offences the court can invoke Section 473 and can take cognizance of an offence after expiry of the period of limitation. Having held as above, however, on the facts and circumstances of that matrimonial case the Supreme Court set aside the decisions of the Trial Court and the High Court and quashed the criminal proceedings.

(XXIV). S.K. SINHA, CHIEF ENFORCEMENT OFFICER – VS- VIDEOCON INTERNATIONAL LTD. & ORS., 2008(2) SCALE 23 decided on the 25th of January 2008 finds place in this conspectus as it also deals with a question of limitation in a criminal case, though of a peculiar characteristics. The Foreign Exchange Regulation Act, 1973 (FERA) was repealed with effect from 01.06.2000 on coming into force of the Foreign Exchange Management Act, 1999 (FEMA). Section 49(3) of FEMA says that notwithstanding in any other law no Court shall take cognizance of an offence under the repealed Act after expiry of a period of two years from the date of coming into force of FEMA, A complaint under FERA was filed, taken cognizance of on May 24, 2002 and issue of summons also was ordered on the same day making the process returnable on 07.02.2003. Process, however was issued on February 3, 2003. On these facts the High Court equated taking cognizance with issue of process and held the complaint to be barred under Section 49(3) of FEMA. The Supreme Court referred to BHARAT DAMODAR KALE (Supra) and JAPANI SHAHOO (Supra) and set aside the order of the High Court and ordered the trial to proceed.

(XXV). P.K. CHOUDHURY –Vs- COMMANDER, 48 BRTF (GREF) 2008(3) SCALE 575 decided on the 13th of March 2008 reiterates SHARADCHANDRA VINAYK DONGRE (Supra) and says, among other observations, that "if the delay is not condoned, the court will have no jurisdiction to take cognizance".

5. ANALYSIS OF AND COMMENTS ON THE LAW LAID DOWN

The analysis and comments may conveniently be categorized into following four sub-headings.

(i) Institution vis-à-vis taking cognizance;

(ii) Application of Section 473 of the Code;

(iii) Concept of continuing offence;

(iv) Limitation prescribed for offences under Laws other than Penal Code.

(I) INSTITUTION VIS-À-VIS TAKING COGNIZANCE

It has already been indicated that provisions of Chapter XXXVI of the Code by and large have been modelled on those of the Limitation Act, 1963 applicable to suits with necessary modification suitable for criminal proceedings. Criminal Courts take cognizance of offence. In contrast Civil Courts do not take cognizance of civil suits or actions. The Limitation act, 1963 speaks of institution of suits and not cognizance of suits. However in applying the bar of limitation in criminal cases this apparent conceptual distinction between civil suits and criminal cases had not affected the observations in a few decisions of the Supreme Court. Examples are SURINDER MOHAN VIKAL (Supra) of the 28th February, 1978 SARWAN SINGH (Supra) of the 2nd April 1981, R. AGHORAMURTHY (Supra) of the 7th March 1991, RASHMI KUMAR (Supra) of the 18th December 1996 and REGISTRAR OF COMPANIES (Supra) of the 11th May 2000. The last two are rendered by Three Judge Benches of the Supreme Court. At the time of drafting of the Code the draftsman had two different models in the existing law in Section 198 B (4) of the Code, 1898 and in Section 198 A of the same code to choose from in preparing the draft for Chapter XXXVI of the Code. Section 199 (5) of the Code as it existed even earlier clearly speaks of taking cognizance of a complaint made within six months. The draftsman could have obviated the lack of clarity in the law by adopting the existing model as in Section 199 (5) of the Code. The five decisions listed above have impliedly done the same thing and eventually BHARAT Damodar (Supra) of the 8th of October,2003 said so explicitly drawing support among other reasons from the observations by the Three Judge Bench in RASHMI KUMAR (Supra). JAPANI SHAHOO (Supra) reiterated the law laid down in BHARAT DAMODAR (Supra) with an additional reason based an Article 14 of the Constitution observing that if the limitation is for taking cognizance not for filing of the complaint or the charge-sheet the provisions would be arbitrary and thus will be in the teeth of the prescriptions of Article 14 of the Constitution. Thus the law is firmly settled that as in filing a plaint in a civil suits limitation is for the filing of the complaint or the charge-sheet in a criminal case. A few special laws also contain provisions for limitation of prosecution for offences under them. However despite settlement of the law as indicated above a Division Bench of the Andhra Pradesh High Court in KIMBERLY CLARK LIVER LTD.-Vs.- STATE, 2006 CRI.L.J. 2438 chose to follow

KRISHNA PILLAI Vs T.A. RAJENDRAN AND ANOTHER 1990 (Supp) SCC 121, a Three Judge decision of the Supreme Court interpreting Section 9 of the Child Marriage Restraint Act, 1929, which has now been repealed by the Prohibition of Child Marriage Act, 2006 operating from 01.11.2007. Incidentally Section 9 of the Child Marriage Restraint Act, 1929 is modeled on Section 198 A of the Code of Criminal Procedure 1898. No enunciation of the Doctrine of precedent permit the course adopted in KIMBERLY CLARK (Supra). The judgment did not notice that BHARAT DAMODAR KALE (Supra) has relied on RASHMI KUMAR (Supra) a Three Judge decision. Above all did not consider impact of the provisions of Section 4(2) and 5 of the Code while considering the problem. It is undoubtedly a Judgment per in-curiam. Lastly, it may not be out of place to mention at the end of the Section that the draftsman fulfilled the expectations of the Courts in the draft of the provisions of Section 142 (b) of the Negotiable Instruments Act, 1881 in operation since 01.04.1989 and its proviso in operation since 06.02.2003 where making of the complaint within the period of limitation has been pinpointed.

(II) SECTION 473 OF THE CODE

The provisions of Section 473 of the Code may be considered from two angles-one substantive and the other procedural. On the substantive aspect it will be useful to compare and contrast the language of two analogus provisions in Section 5 of the Limitation Act, 1963 and that of the proviso to Section 142(a) of the Negotiable Instruments Act, 1881 which came into force on and from the 6th of February, 2003. The key clause in Section 473 of the Code that is “or that it is necessary so to do in the interests of justice” is entirely absent in the provisions of Section 5 of the Limitation Act, 1963 and in the proviso to Section 142 (a) of the N.I. Act. Under Section 5 of the Limitation Act, 1963 it is the appellant or the applicant who has to satisfy the Court about the existence of sufficient cause for the delay. Similarly under proviso to Section 142(a) of the N.I. Act is the complainant who has to satisfy the court about existence of sufficient cause for the delay. In contrast under Section 473 of the Code because of the disjunctive proposition at the end of the section it is obligatory on the Court to consider whether interests of justice would be better served by extending the period rather than by terminating the prosecution on the ground of limitation. While for exercise of powers under Section 5 of the Limitation Act and under the proviso to Section 142 (a) of the N.I. Act the appellant or the applicant respectively has to move the Court for exercise of powers under Section 473 of the Code the Court can even act

Suo Motu. This is so because unlike in a Civil Case where private rights are only involved in a criminal case in a way interest of the society at large and public right is involved and the Court must act as the guardian of those rights. None of the twenty-five decisions from the Supreme Court considered above has specifically laid down as much but there are enough indications to that effect. An analysis of the said decisions of the Supreme Court exhibits three varying trends on the substantive aspect of Section 473 of the Code. SURENDRA VIKAL (Supra)of 1978 and R. AGHAROMURTHY (Supra) of 1991 imply that the complainant has to move the Court under Section 473 of the Code to obtain extension of the period. The observations in these two decisions carrying the said implication cannot however be elevated to the status of a binding precedent because such a question did not arise in these cases. The next trend is discernible first in BHAGIRATH KANORIA (Supra) of 1984 then in VANKA RADHAMANOHARI (Supra) of 1993 where the distinctions between the provisions of Section 473 of the Code and the cognate a provision of section 5 of the Limitation Act, which is already indicated had been highlighted. ARUN VYAS (Supra) also follow VANKA RADHAMANOHARI (Supra). Although the above two decisions deal with offence under Section 498-A that is cruelty against wife , the enunciation of the law there as regards Section 473 of the Code has to be understood as illustrative of the phrase “interests of justice” in the provision and the law stated there is therefore of general application. TARA DUTTA (Supra) though a Three Judge decision appears to have misread the provision of Section 473 of the Code in that it read the provision conjunctively instead of disjunctively thus implying that the prosecution has to satisfy the Court both as to existence of sufficient cause for delay as well as the requirement of the interest of justice. On the procedural aspect of the provisions of Section 473 of the Code it will be useful to remember that the implication of the decisions discussed in this Section is that it is the duty of the Court to be alive to the provisions of Section 473 of the Code on its own at the time of taking cognizance of an offence as indicated in Section 468 of the Code. Next question that arises is when the prosecution applies under Section 473 of the Code should the application be filed alongwith the complaint or the charge-sheet as the case may be. In SUKHDEV RAJ (Supra) of 1993 the application was filed **“almost at the conclusion of the trial and before judgment was delivered”**. It was observed that the words “so to do in the interest of justice” are wide enough to entertain and act on the application. However, the latter development of the law, to be considered shortly, would have certain impact on the entertainment of such an application not filed along with the

complaint or the charge-sheet. The Three Judge decision in SHARAD CHANDRA VINAYAK DONGRE (Supra) of October 1994 the application for condonation of delay was filed simultaneously with the charge-sheet and the Court allowed the application, took cognizance and issued process against the accused. The Supreme Court set aside the order of the Chief Judicial Magistrate and remitted the application for fresh disposal after hearing both the prosecution and the would be accused. To that extent SUKHDEV RAJ (Supra) will be in the teeth of SHARAD CHANDRA (Supra) a Three Judge Bench and must yield to the later decision by a larger Bench. Still later Three Judge decisions in ADALAT PRASAD –VS- ROOPLAL JINDAL, AIR 2004 S.C. 4674 and SUBRAMANIUM SETHURAMAN –Vs- STATE OF MAHARASHTRA, AIR 2004 S.C. 4711 would make an application under Section 473 of the Code filed after taking of cognizance and issue of process only one dimensional. In other words on such application after hearing both sides the Court can only condone the delay but cannot give relief to the accused by terminating the prosecution on the ground of bar of limitation. To get relief by the accused on that score he has either to wait till the stage of framing of charge or till judgment depending on the nature of the case that is summons case or warrant case on police report or on private complaint. It is surprising that SHARAD CHANDRA VINAYAK DONGRE (Supra) has been cited before the Supreme Court only in P.K. CHOUDHURY (Supra) of the 13th of March 2008. TARA DUTTA (Supra) another Three Judge decision on Section 473 of the Code did not notice it and only laid down that the Court taking cognizance after the expiry of limitation must through a speaking Order say that it acted under Section 473 of the Code. It did not go far enough to emphasize the necessity of hearing both the sides and to say that the delay cannot be condoned behind the back of the accused which is the essence of SHARADCHANDRA VINAYAK DONGRE (Supra). Lastly, on this aspect though in RAKESH KUMAR (Supra) another Three Judge Bench and in RAMESH (Supra) the Supreme Court had condoned the delay without remitting the matter to the Trial Court unlike in SHARAD CHANDRA (Supra) on the principle that the word rather than the deed of the Supreme Court is the law laid down and to be followed as such the course adopted in RAKESH KUMAR (Supra) need not be indeed cannot be followed by the High Courts and the subordinate Courts in view of the holding in SHARAD CHANDRA VINAYAK DONGRE (Supra).

(III) CONTINUING OFFENCE

Continuance is two dimensional. Continuance may be in space or locality and/or may be in time. Section 178(c) of the Code speaks of the space dimension and Section 470 of the Code speaks of the time dimension. So far the clearest enunciation of the concept of continuing offence as regards imitation in time can be read in GOKAK PATEL (Supra). It also has relied on the earlier judgment of the Supreme Court in BHAGIRATH KANORIA (Supra). Tested in the light of the law enunciated in the above two cases what has been stated in ARUN VYAS (Supra) in relation to an offence under Section 498-A of the Penal Code as being a continuing offence cannot be correct. It was also not necessary for a decision of that case to determine whether the offence under Section 498-A of the penal code is a continuing offence or not. Indeed the second and the third sentence in para 13 of ARUN VYAS (Supra) do not match the statement of law in GOKAK PATEL (Supra). It is surprising that in TARA DUTTA (Supra) the Supreme Court thought that the one of the points falling for determination in ARUN VYAS (Supra) was whether the offence under Section 498-A of the penal code is continuing offence or not. ARUN VYAS (Supra) was concerned more with Section 473 of the Code, as has already been pointed out, and the matter of continuing offence was only a casual observation.

(IV) LIMITATION OF PROSECUTION FOR OFFENCES UNDER LOCAL OR SPECIAL LAWS

It has already been indicated that Section 4 and 5 of the Code have to be applied in understanding any enactment creating a bar of prosecution by reason of limitation. Special laws in this regard may be of three categories. Some statutes like the copyright Act, 1957 the Dowry Prohibition Act 1961, the Patent Act, 1970 the Wild Life (Protection) Act, 1972 and the Environment and Pollution Laws etc simply create the offence and prescribe the punishment and say nothing else. The provisions of Chapter XXXVI of the Code will determine the limitation for prosecution in such cases. In the second category will be statutes like the Indian Police Act 1861 the Trade Marks Act 1999, and the Geographical Indication of Goods (Registration and Protection) Act 1999. In cases under those Acts limitation will be governed by the period prescribed there and not under the Code. Most importantly Section 473 of the Code also will not be applicable and as such there will not be any scope for extension of period of limitation. P.P. UNNI KRISHNAN (Supra) leaves no room to argue otherwise. In the third category will be statutes like the Negotiable Instruments Act 1881 where the special law not only creates

the offence prescribes the period of limitation but also prescribes special provision for extension of limitation. In such cases also the provisions of the Code will not apply. Though the Child Marriage Restraint Act, 1929 has been replaced by the Prohibition of Child Marriage Act, 2006 with effect from 01.11.2007 there may still be some statutes adopting the model in Section 198(6) of the Code. In such cases neither Chapter XXXVI of the Code nor decisions like BHARAT DAMODAR KALE (Supra) and JAPANI SHAHOO (Supra) will apply.

6. WHEN DOES THE LIMITATION PERIOD LAPSE

While the CrPC identifies instances as to when the limitation period commences, there is no provision which identifies as to when such period will conclude. In this context, courts had taken divergent views. There were one set of decisions as per which, if the date on which cognizance taken by the Magistrate was not within the time period specified in Section 468 of the CrPC, then such cognizance would be invalid. In contrast, courts have also held that justice would be served only if the date of filing of a complaint were to be taken for the purposes of determining the concluding period of limitation, since otherwise the act of taking cognizance may inhere fluidity in the time taken for taking cognizance (for example due to non-availability of Magistrate, matter not taken up due to paucity of time, etc.) The divergent views also came about in the context of how "period of limitation" was defined in the CrPC, i.e. "'period of limitation' means the period specified in section 468 for taking cognizance of an offence". A literal interpretation of "taking cognizance" would mean, that a Magistrate would be barred from taking cognizance even where an aggrieved party was diligent in filing a complaint within the limitation period provided in Section 468. For example, if a complaint is registered a week prior to the end of 1 year (in respect of an offence punishable with 1 year imprisonment); however cognizance is taken by a Magistrate post expiry of the 1 year period, it would result in the complaint being barred by limitation, though for no fault of the complainant.

7. SUPREME COURT TO THE RESCUE

A constitution bench of the Supreme Court in **Sarah Mathew v. Institute of Cardio Vascular Diseases** considered the issue of limitation in criminal cases. It was held that the concluding date of the period of limitation for a Magistrate to take cognizance would be the date of filing of the complaint/ institution of prosecution and not the actual date on which a Magistrate takes cognizance. The constitution bench reasoned its decision based on what the legislature could have

intended while inserting limitation period under Indian criminal law, which could not be to leave a diligent complainant remediless. The bench further noted that it would be unreasonable to take a view that the delay caused by a court in taking cognizance of a case would result in denial of justice to a diligent complainant.

8. REMAINING ISSUE

The above decision in Sarah Mathews pertained to a complaint case filed before the Magistrate. Even in a subsequent Supreme Court decision which followed Sarah Mathews, the facts pertained to a complaint case. However, in relation to a police case, the issue with respect to taking cognizance, i.e. whether the date of **filing of a complaint** with the police would be considered as the conclusion of the limitation period, or whether it would be the date of **filing of charge-sheet** was not clear.

As recent as on February 17, 2022, the Kerala High Court opined while interpreting Sarah Mathews that the date relevant for computing the period of limitation is the date of final report/charge-sheet. On the other hand, the Allahabad High Court held that the 'institution of prosecution' under the CrPC can be 'by giving of information relating to commission of a cognizable offence under Section 154', and therefore it would be the date of the complaint or the registration of the First Information Report ("FIR").

9. SUPREME COURT'S INTERPRETATION OF SARAH MATHEWS IN MARCH, 2022

In a recent case, titled Amritlal v. Shantilal Soni & Ors, the Supreme Court dealt with the issue of conclusion of period of limitation in the context of a police case.

a. Facts in Brief

The facts in brief are that FIR was lodged against the accused persons pursuant to a complaint filed after two years and nine and a half months from the date of commission of the offence. This was in context of an offence punishable with imprisonment for a term exceeding 1 year, and upto 3 years (for which a 3 year limitation period is prescribed). The police filed charge-sheet after four months from the date of the FIR. Accordingly, three years had passed by this time and the Magistrate took cognizance a few days thereafter and subsequently rendered the order on charge.

b. Issue for consideration

This order was challenged by the accused persons on the ground that the Magistrate was barred by Section 468 of the CrPC from taking cognizance since 3 years had elapsed. While the lower court dismissed the petition, however, the accused persons were successful in an appeal before the High Court of Madhya Pradesh (Indore Bench) which was of the opinion that taking of cognizance by the Magistrate was barred by limitation. The said High Court order was challenged before the Supreme Court.

c. What the Supreme Court held

The Supreme Court at the outset made it clear that the decision of the High Court deserved to be set aside on the ground that the same was contrary to the ruling of the constitution bench in Sarah Mathews. Accordingly, it went on to hold that for the purpose of computing the period of limitation under Section 468 of the CrPC, the relevant date would be the date of filing of the complaint or the date of institution of prosecution, and not the date on which the Magistrate takes cognizance.

10. KEY TAKEAWAYS

As we understand, Section 467 of the CrPC identifies 2 different stages in context of an offence, which a Magistrate is required to consider for the purposes of taking cognizance (the provision states – period of limitation for taking cognizance). In other words, taking cognizance is subsequent to and different from the (commencement and) conclusion of the period of limitation. Stage 1 would be the date of commission / knowledge of the offence, which is the commencement of the period of limitation and Stage 2 which is the conclusion of period of limitation would be the date of filing of the complaint / initiation of prosecution.

At the time when a Magistrate is to consider whether he / she is barred from taking cognizance (which is a subsequent Stage 3), he / she is required to determine if the initial two stages fall within the time period prescribed under Section 468 of the CrPC. If not, and if the delay is not condoned, then the Magistrate would be barred from taking cognizance. In this manner, the constitutional rights of a complainant would stand secured for the reasons stated in Sarah Mathews.

Further, so as to make out a case for seeking extension of period of limitation where the complaint is registered beyond the prescribed period, we believe that at the stage of making the complaint itself / in the complaint, sufficient reasoning as to the facts and circumstances that led to the delay (in filing of the

complaint) should be given. This may assist the complainant later when the Magistrate is adjudicating on its extension, as the investigation authorities in their preliminary investigation may also authenticate the veracity of this aspect.

11. VARIOUS PROVISIONS UNDER INDIAN LAW APPLICABLE TO LIMITATION IN CRIMINAL PROSECUTION

a) Certain provisions of the limitation act applicable to criminal appeals / revisions / petitions The object of the Limitation Act is that the court shall not entertain any application, except in the cases where there exist provisions for condonation of delay, on exclusion of time for computing the period of limitation or to allow a party to initiate a proceeding after the period prescribed under the Limitation Act is over. Such a provision has been made with a view to ensuring that one party to the lis does not suffer because of delay and laches on the part of others. As per the Limitation Act, the following Sections and Articles of the schedule of the Limitation Act apply to criminal prosecution:

"Section 2 – Definitions

(j) "Period of Limitation" means the period of limitation prescribed to any suit, appeal or application by the Schedule, and "prescribed period means the period of limitation computed in accordance with the provisions of the Act"

"Section 12 - Exclusion of time in legal proceedings

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. Explanation. In computing under this section, the time requisite for obtaining a copy of a decree or an order, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall not be excluded."

SCHEDULE OF THE LIMITATION ACT

The relevant provisions of the Schedule of the Limitation Act is reproduced here as under :

SECOND DIVISION – APPEALS

	Description of Application	***Period of Limitation***	***Time from which the period beings to run***
114.	*Appeal from an order of acquittal*		
	a) *under sub-section (1) or sub-section (2) of section 417 of the Code of Criminal Procedure, 1898 (5 of 1898);*	*Ninety days*	*The date of the order appealed from.*
	b) *under sub-section (3) of section 417 of the Code*	*Thirty days*	*The date of the grant of the special leave.*
115.	*Under the Code of Criminal Procedure, 1898 (5 of 1898):*		
	a) *from a sentence of death passed by a Court of session or by a High Court in the exercise of its original criminal jurisdiction;*	*Thirty Days*	*The date of the sentence*
	b) *from any other sentence or any order not being an order of acquittal:*		
	(i) to the High Court;	*Sixty Days*	*The date of the sentence or order.*
	(ii) to any other Court.	*Thirty days*	*The date of the sentence or order.*

THIRD DIVISION - APPLICATIONS

	Description of Application	***Period of Limitation***	***Time from which the period beings to run***
131.	*To any Court for the exercise of its powers of revision under the Code of Civil Procedure, 1908 (5 of 1908) or the Code of Criminal Procedure, 1898 (5 of 1898).*	*Ninety days*	*The date of the decree or order or sentence sought to be revised.*
132.	*To the High Court of a certificate of fitness to appeal to the Supreme Court under clause (1) of article 132, article 133 or sub-clause (c) of clause (1) of article 134 of the Constitution or under any other law for the time being in force.*	*Sixty days*	*The date of the decree or order or sentence.*
133.	*To the Supreme Court for*		

	special leave to appeal:		
	(a) in a case involving death sentence;	*Sixty days*	*The date of the judgment, final order or sentence.*
	(b) in a case where leave to appeal was refused by the High Court;	*Sixty days*	*The date of the order of refusal.*
	(c) in any other case.	*Ninety days*	*The date of the judgment or order.*

12. NOTABLE JUDICIAL PRECEDENTS ON LIMITATION PERIOD FOR TAKING COGNIZANCE OF CRIMINAL OFFENCES/RELATED MATTERS

a) Bar to taking cognizance after lapse of the period of limitation.

Some of the observations of the Honb'le Supreme Court and State High Courts on interpretation of Section 468 CrPC are as under: Mr. Justice S. Hegde and Mr. Justice B. P. Singh of the Hon'ble Supreme Court of India in Bharat Damodar Kale v. State of Andhra Pradesh, laid down the law that the provisions of Chapter XXXVI of the CrPC clearly indicate that the relevant date is not the date of taking cognizance by a Magistrate but the date of filing of complaint or initiating criminal proceedings. This Judgment is followed in another two-Judges Bench decision in Japani Sahoo v. Chandra Sekhar Mohanty.15 In Sarah Mathew v. Institute of Cardio Vascular Diseases, a Five-Judge Constitution Bench of the Hon'ble Supreme Court comprising of Judges Mr. Justice P. Sathasivam, Mr. Justice B.S. Chauhan, Ms. Justice Ranjana Prakash Desai, Mr. Justice Ranjan Gogoi and Mr. Justice S.A. Bobde held that the bar of limitation continued in section 468 of the CrPC applies, if the complaint is filed beyond limitation and not if cognizance is taken by the Court beyond limitation. The Court observed that taking the date of cognizance as material date would bring in uncertainty and would mean denying justice to diligent complaint for the fault of the Court. Since taking cognizance is an act of the Magistrate and it may be delayed because of various reasons such as delayed due to systemic reasons or it may be delayed due to the Magistrate's personal reasons. And law cannot be expected to put the burden on the complaint to explain something for which he is not responsible.

b. Rama Gowda v. Registrar (Vigilance),

The Hon'ble Karnataka High Court stated that for offences committed under section 466 IPC, where maximum punishment is 7 years, period of limitation would not be applicable even if cognizance for the same is taken after three years.

c. InMurari Lal Goel v. Sukhcharan Singh Bajwa,

The Punjab and Haryana High Court held that in situations where a complaint consists of multiple offences and limitation for some of them has expired but not for other offences, the case cannot be dismissed on the grounds of limitation. The Court can proceed with the latter category of offences.

13. SOME OF THE OBSERVATION OF THE HONB'LE SUPREME COURT AND STATE HIGH COURTS ON EXTENSION OF PERIOD OF LIMITATION ARE AS UNDER:

(i) it was held by the Hon'ble Supreme Court of India in **State of HP Vs. Tara Dutt**, that in respect of the offences, for which a period of limitation is provided in Section 468 of the CrPC, the power has been conferred on the Court taking cognizance to extend the period of limitation where a plausible and satisfactory explanation of the delay is available and where the Court upon taking cognizance finds that it would be in the interest of justice. Such discretion conferred with the Court has to be exercised judiciously and on well recognized principles;

(ii) it was further observed by the Hon'ble Supreme Court of India in **Udai Shankar Awasthi v State of UP** that, while condoning delay, the Court has to record the reasons for its satisfaction and the same must be manifest in the order of the Court itself and further required to state in its conclusion that such condonation is required in the interest of the justice;

(iii) it was observed by the Hon'ble **Rajasthan High Court in Mohd. Sher Khan v State of Rajasthan** that the power of the Court in Section 473 of the CrPC is wider than that as provided under Section 5 of the Limitation Act 1963. The satisfaction of the Court is always required to be based on definite plausible facts.

14. PROVISIONS OF OTHER INDIAN SPECIAL STATUTES GOVERNING LIMITATION IN CRIMINAL PROSECUTION

(I) Negotiable Instruments Act, 1881

Limitation period prescribed under the **Negotiable Instruments Act, 1881** ("NI Act") As per Section 138 of the NI Act, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because

of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of the NI Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. Further, the above provisions would be attracted provided that:

(a). the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier; The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Further, pursuant to sending notice to the drawer of cheque by the payee as per action contemplated in Section 138 (c) of the NI Act, as per Section 142 of the NI Act, the complaint is to be filed with the Metropolitan Magistrate or a Judicial Magistrate of First Class for taking cognizance of offence punishable under Section 138 of the NI Act within thirty days from the date of expiry of the notice period, within whose local jurisdiction, the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated.

(ii) Limitation period prescribed under the Police Act, 1861 (“the Police Act”)

Under Section 42 of the Police Act, it is prescribed that all actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of the Police Act, or under the general police-powers shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action end of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the District in which the act was committed, one month at least before the commencement of the action.

(iii) Limitation period prescribed under the Army Act, 1950 (“Army Act”)

As per Section 122 of the Army Act, the period of limitation for trial is prescribed and it provides that no trial by Court- martial of any person subject to the Army Act for committing any offence shall be commenced after the expiry of a period of three years and such period 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 the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, 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 authority competent to initiate action, whichever is earlier.

(iv) Limitation period prescribed under the Factories Act, 1948 ("Factories Act")

Section 106 of the Factories Act prescribes that the Court shall not take cognizance of any offence punishable under such Act until and unless the complaint is made within three months from the date on which alleged commission of the offence came to the notice/knowledge of an Inspector.

15.CONCLUSION

The concept of limitation is usually a must in all branches of law. In today's time, as far as criminal legal system is concerned, limitations are applied to most crimes by most countries, although the most serious crimes are not included within the limitation period. It should be noted, however, that limitation law is no assurance as to time of trial and its conclusion but only by when the criminal law can be set in motion. This is where the constitutional right to a speedy trial therefore comes into picture as an aid.

Criminal statutes of limitations undoubtedly serves several purposes, most of which relate to achieving the efficacy of criminal law administration. The principal reason for legal time limits is to shield the accused from the burden of defending himself against charges of long completed act. This is primarily because, over a period of time, witnesses upon whom the accused (or the victim) may have to rely either die or move away and records are lost especially if the occurrence of the event seemed insignificant at the time of happening, and hence the need of limitation period in criminal cases. In addition to this, the period of limitation ensures that no undue pressure is put on the system of the criminal prosecution

and the offender is prosecuted and convicted quickly. The deterrent effect that the criminal justice system aims at will also stand defeated in case the punishment has not been granted before the memory of the offence gets washed-off from the heads of those affected by it. It is however sometimes difficult to determine limitation on criminal offences due to their complex nature. The concept of limitation is usually a must in all branches of law. In India, clearly the principle of public policy has been followed while providing for statute of limitation for criminal offences, in order to safeguard the interests of its people. As noted, the cardinal principle of limitation relates to fixing or prescribing the time period for barring legal actions. Having said that, observing the long investigations and procedures that are required to be followed while dealing with criminal offences as well as fear in the minds of victims and their vested interests hinder the investigation and prosecution. A proper balance is therefore sought to be maintained under Indian law including by providing for a reasonable limitation period (distinct limitation periods for taking cognizance of various offences depending upon the gravity of those offences interlinked with the punishments), not applying limitation period to serious offences, making provisions for the commencement of the limitation period from the date of knowledge, exclusion of time in certain cases, making special provisions with respect to continuing offences by providing for a fresh limitation period at every moment of the time during which the offence continues and laying down a material provision concerning extension of the limitation period in certain cases. The law in India, it is believed, is clearly in consonance with the concept of fairness of trial, as enshrined in Article 21 of the Constitution of India, as it aims to strike a balance between the interests of the complainant/state and the interests of the accused.

Quite notably, the Cr.P.C has given a wide range of powers to the Court while determining the period of limitation for launching prosecution in certain cases. As noted above, the CrPC particularly empowers the Court to have discretion on matters for extending the period of Limitation for instituting a prosecution, where “sufficient reasoning” has been provided, and the Court is convinced that granting such extension is necessary in the interest of justice. However, this can sometimes lead to unwanted delays and multiplicity of proceedings, which does not serve the purpose of rules of limitation. To tackle this issue certain grounds have been established by way of judicial precedents in order to determine the circumstances where the Court can grant extension beyond the period of limitation as mentioned under Section 468.

The law relating to limitation on launching prosecution against criminal offences is still at a developing stage in India. When a case is registered years or even decades later, eyebrows are bound to raise. Some of these cases were closed/stayed, while others have been allowed to continue. The courts in India continue to struggle to balance the rights of the victim and the accused. The disappearance of material evidence and filing of vexatious and belated prosecutions long after the date of the alleged offence diluting a fair prosecution and trial and these continue to be some of the issues faced by Indian courts. Be that as it may, the legislature and judiciary continue to take positive steps to evolve the various aspects of limitation law and maintain harmony. We should be open to accept progressing laws and formulate them as the circumstances may demand from time to time.

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