COGNIZANCE OF OFFENCES UNDER IPC AND BNS

by

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INTRODUCTION

A Magistrate takes cognizance when he judicially applies his mind to the facts placed before him for the purpose of proceeding under law. It is the first judicial step in the criminal process and denotes the Court's acknowledgment that the allegations, if true, constitute an offence warranting inquiry or trial. Cognizance does not depend upon the issuance of summons or commencement of evidence, but merely upon the Magistrate deciding that the case deserves further legal action. Thus, taking cognizance marks the transition from information to judicial scrutiny and sets the criminal law machinery into motion.

Though the word 'cognizance' is not defined in the Code of Criminal Procedure, **'cognizable offence'** is defined in Section 2 (c) of the Code, which reads as follows:-

> *"Congnizable offence means an offence for which, and 'cognizable case' means a case in which a police officer may, in accordance with the First schedule or under any other law for the time being in force, arrest without warrant", and*

Section 2(l) defines **'non-cognizable offence'** as follows:-

> *"Non-Cognizable offence means an offence for which and 'non cognizbale case' means a case in which a police officer has no authority to arrest without warrant."*

Therefore, one must be clear about the application of the Code with reference to "taking cognizance" and distinction between "cognizable" and "non-cognizable" offences.

Once cognizance is taken, process may have to be issued against the person, who is alleged to have committed the offence and the procedure enumerated must necessarily follow.

For better analysis of the scope of cognizance and the consequences arising there from, it is worthwhile to highlight the scheme of relevant provisions in the Code and the case laws touching the same.

Chapter XIV of the Code under the heading 'Conditions requisite for initiation of proceedings' employs the word 'cognizance' and the very first Section in the said Chapter viz., **Section 190**, outlines as to how cognizance of offences will be taken by a magistrate of an offence on a complaint, or on a police report or upon information of a person other than a police officer.

Section 191 empowers the Chief Judicial Magistrate for transfer of a case taken on file suomotu by a Judicial Magistrate concerned since the Magistrate himself being a complainant, there may be scope for alleging prejudice or malice. By virtue of **Section 192**, a Chief Judicial Magistrate, who takes cognizance of an offence, by passing administrative order, transfer the case concerned to the file of any other Magistrate subordinate to him for inquiry or trial.

Section 193 prohibits cognizance of any offence by a court of Sessions stepping into the shoes of the court having original jurisdiction except in cases where power is conferred by the statute.

Section 194 empowers Sessions Courts for transfer of cases to the file of Additional and Assistant Sessions Judges.

Section 195 deals with prosecution for contempt of lawful authority of public servants for offences against public justice and for offences relating to documents given in evidence;

Section 196 pertains to offences against the State and for criminal conspiracy to commit the offence; and Sections 197, 198, 198-A and 199 relates to prosecution of Judges & public servants, prosecution for offences against marriage, offences under Section 498-A IPC and defamation respectively.

Chapter XV with the title 'Complaints to Magistrates' contain four sections viz., 200 to 203 regarding examination of complainant, procedure by Magistrate not competent to take cognizance of the case, postponement of issue of process and dismissal of complaint.

Sections 204 to 208 at **Chapter XVI** with the caption 'Commencement of proceedings before Magistrates' deal with the subsequent proceedings that would follow after cognizance is taken. It must be taken note of, in cases where police report is submitted for taking cognizance, the Magistrate may resort to one of the three options: (i) he may accept the report and take congnizance of the offence and issue process; (ii) he may disagree with the report and drop the proceedings or (iii) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report.

In a case where the report on the other hand states that, in the opinion of the police, no offence appears to have been committed, again, the Magistrate has three opinions viz., (a) he may accept the report and drop the proceedings; (b) he may disagree with the report and by holding that there is sufficient ground for proceeding further, take cognizance of the case and issue process or (c) he may direct further investigation to be made by the police under sub-section 3 of Section 156.

It is worthwhile to mention below certain case laws of the Hon'ble Apex Court wherein the scope and purview of the term 'cognizance' are vividly explained,

In ***R.R.Chari Vs. The State of Uttar Pradesh AIR (38 1951 Supreme Court 207:***

It was held that before it can be said that any Magistrate has taken cognizance of any offence under S.190 he must have applied his mind to the offence for the purpose of proceeding in a particular way as indicated in the subsequent provisions of Chapter. Proceeding U/S. 200 & thereafter sending it for inquiry & report U/S.202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of the Chapter but for taking action of some other kind, e.g. ordering investigation u/S. 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

In ***Narayandas Bhagwandas Madhavdas Vs. West Bengal AIR 1959 Supreme Court 1118 (V 46 C 150):***

It was held that As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuing of a search warrant for the purpose of an investigation or of a warrant of arrest for that purpose cannot by themselves be regarded as acts by which cognizance is taken of an offence. It is only when a Magistrate applies his mind for the purpose of proceeding under S.200 and subsequent sections of Ch. XVI of the code of Criminal Procedure or under S.204 of Ch. XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance.

In ***D.Lakshminarayana vs. V.Narayana AIR 1976 Supreme Court 1672:***

It was held that What is meant by "taking cognizance of an offence" by the Magistrate within the contemplation of Section 190? This expression has not been

defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein.

The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1) (a). If, instead of proceeding under Chapter XV, he has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Sec. 202 (1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Sec.156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190 (1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156 (3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156 (1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding." Thus

the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

In ***Bhagwant Singh Vs. Commissioner of Police and another AIR 1985 Supreme Court 1285:***

It was held that Magistrate deciding not to take cognizance of offence or drop proceedings against some persons mentioned in F.I.R. must give notice and hear first the informant. In a case where the Magistrate to whom a report is forwarded under sub-sec.(2) of S.173 decided not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. However, either from the provisions of the Criminal Procedure Code or from the principles of natural justice, no obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report can be spelt out, unless such person is the informant who has lodged the F.I.R. But, even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of S.173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process.

In ***Kishun Singh and others vs. State of Bihar (1993) 2 Supreme Court Cases 16:***

It was held that Sessions Court has jurisdiction, on committal of a case to it, to take cognizance of offence of persons not named as offenders, whose complicity in the crime comes to light from the material available on record – Hence on committal under S.209, Sessions Judge justified in summoning, without recording evidence, the appellants not named in police report under S.173 to stand trial along with those already named therein. Sessions Court having jurisdiction under S.193, mere exercise of power under a wrong provision (S.319) would not render its order invalid.

On committal, the restriction on the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. "The object of Section 190 is to ensure the safety of a citizen against the vagaries of the police by giving him the right to approach the Magistrate directly if the police does not take action or he has reason to believe that no such action will be taken by the police. Even though the expression 'take cognizance' is not defined, it is well settled by a catena of decisions of this Court that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. Cognizance is in regard to the offence, not the offender.

In ***State of W.B. and Another Vs. Mohd. Khalid and Another (1995) 1 Supreme Court Cases 684:***

It was held that Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. It has, thus, reference to the hearing and determination of the case in connection with an offence.

In ***Rashmji Kumar (smt) Vs. Mahesh Kumar Bhada 1997 Supreme Court Cases (Cri) 415:***

It was held that it is fairly settled legal position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173, as the case may be.
Further it was held in ***State of Bihar V. Rajendra Agarwall 1996 (8) SCC 164*** that it is not open for the Court to sit or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is equally settled law that it is open to the Court, before issuing the process, to record the evidence, and on consideration of the averments made in the complaint and the evidence thus

adduced, it is required to find out whether an offence has been made out. On finding that such an offence has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters.

In ***Ponnal @ Kalaiyarasi Vs. Rajamanickam and 11 others 1998 (4) Crimes 543:***

It was held that No doubt, it is true that the complaint filed by a private party can be dismissed by the learned Magistrate under Section 203 Cr.P.C., if he thinks that there is no sufficient ground for proceeding. While exercising his discretionary powers, the learned Magistrate should not allow himself to evaluate and appreciate the sworn statements recorded by him under Section 202 Cr.P.C. All that he could do would be, to consider as to whether there is a prima facie case for a criminal offence, which, in his judgment, would be sufficient to call upon the alleged offender to answer. At the stage of Section 202 Cr.P.C. enquiry, the standard of proof which is required finally before finding the accused guilty or otherwise should not be applied at the initial stage. This is what exactly is done by the learned Magistrate in the instant case.

In ***G. SagarSuri and another Vs. State of U.P AIR 2000 Supreme Court 754:***

It was held that A criminal complaint under S. 138 of the Negotiable Instruments Act was already pending against the appellants and other accused. They would suffer the consequences if offence under S.138 is proved against them. In any case there would be no occasion for the complainant to prosecute the appellants accused under Ss. 406/420 IPC and in his doing so it would be clearly an abuse of the process of law and prosecution against the appellants for those offences would be liable to be quashed.

In ***State of Karnataka and Another Vs. Pastor P. Raju (2006) 6 Supreme Court Cases 728:***

It was held that Several provisions in Chapter XIV of the Criminal Procedure Code use the word "cognizance". However, the word "cognizance" has not been defined in the Criminal Procedure Code. The dictionary meaning of the word "cognizance" is – "judicial hearing of a matter". Taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage

when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out."

To conclude, as remarked by the Supreme Court, there is no special charm or any magical formula in the expression 'taking cognizance' which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to take further judicial action.

Cognizance of an offence under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023:

It was held that is the judicial process where a court first applies its mind to the facts of a case to determine if there are sufficient grounds to initiate legal proceedings. This is a critical step, as a criminal trial cannot begin without it. The BNSS largely maintains the principles of the previous Code of Criminal Procedure (CrPC) but introduces key procedural changes, notably in complaint cases.

By Whom Cognizance is Taken:

a) Magistrates: Section 210 of the BNSS empowers a Magistrate of the first class, or a specially empowered Magistrate of the second class, to take cognizance of an offence.
b) Courts of Session: A Court of Session generally cannot take cognizance of an offence directly. Cases must first be received or committed to it by a Magistrate, except where a specific provision of law allows otherwise.

Sources of Cognizance (Section 210 BNSS)

A Magistrate may take cognizance of an offence under the following circumstances:

a) Upon receiving a complaint of facts: This refers to a private individual filing a complaint, orally or in writing, with the Magistrate.
b) Upon a police report: This occurs after the police complete their investigation and submit a charge sheet (under Section 193 BNSS, corresponding to Section 173 CrPC) or a closure report.
c) Upon information from any person other than a police officer, or upon their own knowledge (suomotu): The court can initiate proceedings based on third-party information or its own judicial notice.

Key Changes and Procedural Aspects under BNSS:

The BNSS introduces significant procedural safeguards, particularly concerning private complaints:

- Mandatory Hearing for the Accused in Complaint Cases: A major change is the

introduction of a proviso to Section 223(1) of the BNSS, which mandates that a Magistrate cannot take cognizance of an offence based on a private complaint without first giving the proposed accused an opportunity of being heard. This aims to prevent the misuse of legal provisions and filter out frivolous complaints at an early stage.

- Stage of Hearing: This hearing occurs after the Magistrate has examined the complainant and their witnesses on oath (under Section 223 BNSS) but before the formal order to issue process (summons or warrant) to the accused.
- Police Reports (Charge Sheets): The BNSS clarifies existing Supreme Court judgments that it is not mandatory for the police to physically arrest an accused who has cooperated with the investigation when filing a charge sheet (Section 190 BNSS). The Magistrate can secure their presence by other means, such as demanding a bond.
- Limitations on Cognizance: Certain sections (e.g., Sections 215-222 BNSS) impose restrictions on taking cognizance for specific offences, such as those against public servants acting in official duty, defamation, or certain offences against the state, without the required sanction or written complaint from the appropriate authority or aggrieved person.

Difference Between Cognizance and Issuing Process: It is important to distinguish between two stages:

a) Taking Cognizance: The court's initial application of the judicial mind to the facts to decide if a case warrants further legal action.
b) Issuing Process: The subsequent step, after taking cognizance and finding sufficient grounds, where the court summons the accused or issues a warrant to ensure their presence for trial.

The BNSS largely maintains the principles of the previous Code of Criminal Procedure (CrPC) but introduces key procedural changes, notably in complaint cases.

- **Section 210 of BNSS:** This section empowers Magistrates to take cognizance of offences based on various sources. A Magistrate of the first class or a specially empowered Magistrate of the second class can initiate proceedings upon receiving a complaint, a police report, information from a person other than a police officer, or even based on their own knowledge.

- **Section 211 of BNSS:** When a Magistrate takes cognizance based on information under Section 210(1)(c), the accused is informed about the right to have the case tried by another Magistrate if they object before evidence is taken.
- **Section 212 of BNSS:** After taking cognizance, the Chief Judicial Magistrate can assign the case for inquiry or trial to a competent Magistrate subordinate to them.
- **Section 213 of BNSS:** Courts of Session, under normal circumstances, can't take cognizance unless a Magistrate commits the case to them.
- **Section 214 of BNSS:** Additional Sessions Judges are designated to try cases made over to them by the Sessions Judge or the High Court.
- **Section 215 of BNSS:** This section outlines the conditions for taking cognizance of specific offences. It emphasizes that no Court shall take cognizance unless certain conditions, like a written complaint from a public servant, are met.
- **Section 216 of BNSS:** In cases of threatening, a witness or any other person can file a complaint.
- **Section 217 of BNSS:** Deals with offences against the State and criminal conspiracy. No court can start proceedings in the offences mentioned in Section 217 of BNSS without permission from the Central or State Government.
- **Section 218 of BNSS:** Offers protection to Judges, Magistrates, and public servants doing their duties. No legal action can be taken against them without prior approval from the Government, ensuring their independence and shielding them from unnecessary legal hassles.
- **Section 219 of BNSS:** Covers offences against marriage. Only the person affected by the offence can complain, with special provisions for various situations, like age or health concerns.
- **Section 220 of BNSS**: Focuses on offences under section 85. Action can only be taken based on a police report or a complaint from the person affected or specific relatives.
- **Section 221 of BNSS:** Pertains to offences under section 67, involving married individuals. Action can only be taken if the wife files a complaint against her husband.

- **Section 222 of BNSS:** Deals with defamation cases (section 356 of BNS). Proceedings can only begin if the person affected files a complaint.

Limitation on Taking Cognizance:

Statutory Framework — CrPC vs BNSS

Under Cr.P.C., (pre-BNSS / where Cr.P.C., still applies)

- **Section 467 CrPC** — Defines that for the purposes of limitation, "period of limitation" means that specified in Section 468.
- **Section 468 CrPC** — Bar to taking cognizance after lapse of limitation
  1) Except as otherwise provided, no court shall take cognizance of an offence of the categories in Sub-section (2) after the expiry of the period of limitation.
  2) The period of limitation depends on the punishment for the offence:
     a) 6 months — if offence is punishable with fine only
     b) 1 year — if offence punishable with imprisonment not exceeding one year
     c) 3 years — if offence punishable with imprisonment exceeding one year but not exceeding three years.
  3) If multiple offences (to be tried together), the limitation period is determined with reference to the offence with the most severe punishment.

Other related provisions (CrPC):

- **Section 469 Cr.P.C** — Commencement of limitation period: The limitation period commences:
  a) on the date of the offence; or
  b) where the offence was not known, when it comes to the knowledge of the aggrieved or police officer; or
  c) where offender unknown, the first day when offender becomes known. Also, In computing the said period, the day from which such period is computed is excluded.
- **Section 470 Cr.P.C** — Exclusion of time in certain cases: Time during which another prosecution is ongoing (for same facts) or where there is stay / injunction, or where prior sanction/consent is required — such time may be excluded in computation if such prosecution is with due diligence and in goof faith.

- **Section 471 Cr.P.C** — Exclusion when court is closed: If limitation ends on a day when Court is closed, cognizance may be taken on next date when court reopens.
- **Section 472 Cr.P.C** — Continuing offences: For continuing offences (i.e. offences continuing over a period), fresh limitation begins to run at every moment during which the offence continues.
- **Section 473 Cr.P.C** — Extension / condonation of limitation: A court may take cognizance even after expiry of limitation period if satisfied that delay is properly explained or it is in interest of justice.

Under BNSS the corresponding provisions are:

- **Section 513 BNSS** — Definition: "Period of limitation" means the period specified in Section 514 BNSS for taking cognizance.
- **Section 514 BNSS** — Bar to taking cognizance after lapse of limitation: Sub-section (2) provides same graded limitation as in Cr.PC. Sub-section (3) — where multiple offences tried together, limitation is based on the offence with most severe punishment.
- The BNSS also provides an Explanation: For computation of limitation, the relevant date is ordinarily date of offence; but if proceedings are based on complaint (under section corresponding to old Section 223) or on information under police report (corresponding to old 173), the limitation is from date of filing complaint or date of recording of information.
- The BNSS corresponds to exclusion / exceptions as in Cr.P.C: continuing offences, condonation / extension of limitation etc. (Sections in BNSS are same to that of Cr.P.C).
- On continuing offences (e.g. offences under matrimonial cruelty such as dowry harassment under old law) the limitation may commence from the "last act" committed. For example, in offences under Section 498-A IPC (in cases where acts of cruelty continue), limitation is to be computed from the last act of cruelty, not from the first.

In the case ***Ghanshyam Soni v. State (NCT of Delhi) (2025 INSC 803)*** decided on June 04, 2025. — held that for computing limitation under Section 468 CrPC, the relevant date is date of filing the complaint / institution of prosecution, not the date on which the Magistrate takes cognizance or issues process.

Thus, even with limitation prescribed, legal and equitable considerations may allow cognizance beyond the strict period in deserving cases.

How BNSS Changes / Retains the Cr.P.C., Scheme

BNSS retains the same limitation periods (6 months / 1 year / 3 year) for less-serious offences under its Section 514. BNSS clarifies in its Explanation that limitation is computed from date of filing complaint or date of recording of information (if offence reported via police / information), not necessarily date of offence — bringing statutory provision in line with what courts have held under Cr.P.C. BNSS retains counterpart provisions to Cr.P.C's Sections for continuing offences, condonation, exclusion of time/court-closures etc. Practically, where first information or complaint is filed within limitation, delay by court/police in taking cognizance / issuing process will not bar the case.

The BNSS substantially aligns with the scheme established under the Cr.P.C., regarding limitation for taking cognizance of offences. The underlying principle is that criminal law should not remain in perpetual uncertainty and that prosecution must commence within a prescribed period where the offence is not of a grave nature.

Under both Cr.P.C. and BNSS, the Court is barred from taking cognizance once the period of limitation, as defined in the respective limitation chapters, has expired. The computation of limitation depends on the nature and gravity of the offence, ordinarily determined by the maximum sentence prescribed.

However, the law also recognizes that rigid application of limitation may sometimes defeat the ends of justice. Therefore, the Court retains the discretionary power to condone delay upon being satisfied that sufficient cause prevented the complainant from initiating proceedings within the stipulated period. Such judicial discretion must be exercised judiciously and based on material indicating genuine and bona fide reasons for delay.

Thus, while limitation operates as a statutory safeguard against stale prosecutions, the provision for condonation ensures that deserving cases are not shut out merely on technical grounds.

In ***Pepsi Food Limited v. Special Judicial Magistrate (1998) 5 SCC 749***

It was held that the order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put

questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations.

In **Jagdish Ram v. State of Rajasthan (2004) 4 SCC 432**

It was held that a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry.

In ***Kushal Kumar Agarwal v. Enforcement Directorate 2025 SCC Online SC 1221***

The proviso to sub-section (1) of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall betaken by the Magistrate without giving the accused an opportunity of being heard.

In ***Suby Antony v. Judicial First-Class Magistrate-III 2025 SCC on line Ker 532,***

Being guided by the precedents on Sections 200 and 202 of the Code and the plain language of the proviso to Section 223(1) of the BNSS, this Court is of the opinion that, after the complaint is filed, the Magistrate should first examine the complainant and witnesses on oath and thereafter, if the Magistrate proceeds to take cognizance of the offence/s, opportunity of hearing should be afforded to the accused.

In *Basanagouda R. Patil v. Shivananda S. Patil 2024 SCC OnLine Kar 96* he taking of cognizance under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard.

Requirement of Sanction Before Cognizance:

The requirement of prior sanction operates as a statutory safeguard when criminal allegations are made against public servants for acts connected with their official functions. Under Section 197 CrPC and the corresponding Section 218 BNSS, no Court can take cognizance of an offence alleged to have been committed by a public servant "while acting or purporting to act in the discharge of official duty" unless previous sanction of the competent Government/authority is obtained.

1. Core Provisions
   a) **Section 197 CrPC / Section 218 BNSS** – Bar on taking cognizance against Judges, Magistrates, and public servants not removable without Government sanction, when the act complained of is reasonably connected with official duty.
   b) **Section 198 CrPC / Section 221 BNSS** – Sanction or specific complaint required for offences relating to marriage or sexual offences.
   c) **Section 197(2) & (3) CrPC / Section 218(2) & (3) BNSS** – Special protection for members of Armed Forces and forces charged with maintenance of public order.

   These are few provisions among others which together create a comprehensive sanction framework governing when prosecution may proceed.

2. When Sanction is Required

Sanction becomes mandatory when:

   a) a)The accused is a public servant not removable except with Government sanction; and
   b) The alleged act is directly connected with official duties, or
   c) The act was done under colour of office (purported discharge of official duty), even if in excess of authority.

   The key test is reasonable nexus between the act complained of and the official function. If such nexus exists, cognizance cannot be taken without sanction.

3. When Sanction is Not Required

Sanction is not necessary when:

   a) The act is wholly unconnected with official duty,
   b) The action is motivated by personal reasons,
   c) The act does not arise out of the official function entrusted to the servant, or
   d) The accused is not a public servant within the meaning of Section 21 IPC.

4. BNSS Enhancements

The BNSS retains the core concept of CrPC but introduces improvements:

- Mandatory timeline for deciding sanction requests **(notified as 120 days)** as per section 218 (1) provisio 2
- If the Government does not decide within the prescribed period, the law treats it as "deemed sanction" to prevent indefinite delays.

- Clearer wording in Section 218 BNSS regarding protection for acts done in discharge or purported discharge of official duty.

5. Effect on Cognizance

Sanction is a jurisdictional precondition. Police may investigate without sanction, but the Court cannot take cognizance unless valid sanction is on record. Cognizance taken without sanction is void and liable to be quashed.

CONCLUSION:

The law of limitation in taking cognizance under the Cr.P.C., and the BNSS plays a crucial role in ensuring fairness, preventing stale prosecutions, and promoting timely initiation of criminal proceedings. The object of prescribing limitation is to maintain efficiency and certainty in the criminal justice system by requiring that minor offences be prosecuted within a reasonable time, while also ensuring that delay caused by courts or authorities does not defeat legitimate complaints.

Both statutes adopt the same graded limitation structure—6 months, 1 year, and 3 years based on the maximum punishment of the offence. This ensures that only less serious offences are time-barred, while offences punishable with more than three years carry no limitation, allowing prosecution at any time. The law thereby balances societal interest in punishing serious crimes with the need to avoid outdated litigation in petty offences.

One of the most significant developments is the consistent judicial interpretation, culminating in ***Sarah Mathew vs Inst., Cardio Vascular Diseases & Ors decided on 26 November, 2013*** and reaffirmed in ***Ghanshyam Soni*** cited supra, that limitation is computed from the date of filing of the complaint or institution of prosecution, not the date of the Magistrate's cognizance. This prevents injustice that would arise if complainants were penalised for delays caused by the court. The BNSS incorporates this principle directly in its explanation, clarifying the computation and harmonizing statute with judicial precedent.

The doctrine of continuing offences also plays a vital role. For offences like cruelty or continuing harassment, limitation begins from the last act, ensuring that offenders cannot escape liability simply because the initial conduct occurred long ago. This principle protects victims in cases where wrongdoing unfolds over time or in repeated cycles.

Equally important is the flexibility built into the law. Provisions for exclusion of time (in cases of sanction, stays, or court closure) and condonation of delay under Section 473 CrPC and its BNSS equivalent prevent mechanical dismissal of cases. Courts may accept delayed complaints when it is in the interest of justice or when sufficient cause exists, ensuring that limitation serves justice rather than obstructing it.

In essence, the limitation scheme under CrPC and BNSS is a carefully crafted balance of promptness, fairness, and flexibility. It upholds the rights of the accused by preventing stale prosecution, protects victims by recognizing continuing offences and permitting condonation, and ensures uniformity through judicially clarified computation. The BNSS largely retains and strengthens this framework, making the law more transparent, predictable, and aligned with constitutional and judicial principles.

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