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## CERTAIN CRIMES STAY ALIVE : A STUDY WITH REFERENCE TO PERIOD OF LIMITATION OF TAKING COGNIZANCE OF CRIMES

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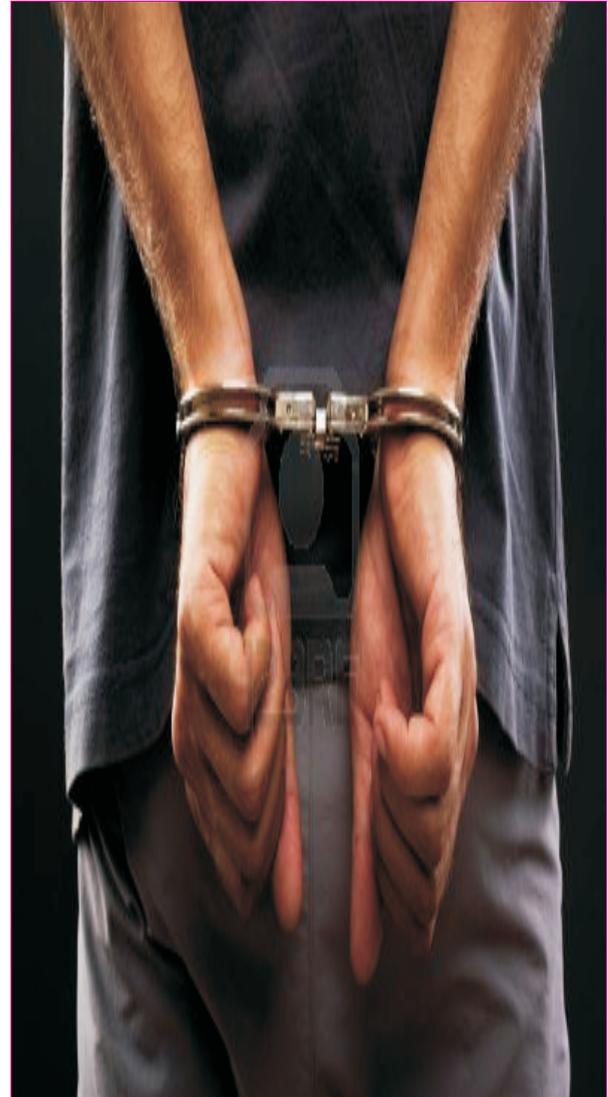
### ABSTRACT

**T**he Code of Criminal Procedure, 1973 (the Code hereinafter) came into force on the first of April, 1974. In Chapter XXXVI of the Code containing sections 467 to 473 for the first time detailed general provisions have been enacted prescribing limitation for prosecution as part of procedure for trial of offences.

**KEYWORDS:** Criminal Procedure , Certain Crimes Stay Alive , criminal prosecution .

### HISTORICAL BACKDROP

Previous to this there was no limitation of period of taking of cognizance of offences and the joint committee of parliament on the recommendation of the law commission thought it necessary to prescribe the period of limitation for the offences not punishable with the imprisonment for a term exceeding three years.



**Dr. Ashutosh Bairagi**

The reason and grounds stated for prescribing the period of limitation are as follows:

“At present there is no period of limitation for criminal prosecution and a court cannot throw out a complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for criminal prosecution in the laws of many countries and the committee feels that it will be desirable to proscribe such periods in the code as recommended by the law commission,”

1. As the time passes, the testimony of the witnesses becomes weaker and weaker because of lapse of memory and evidence

becomes more and more uncertain with the result that the danger of error becomes greater.

2. For the purpose of peace and repose, it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with the multifarious laws creating new offences may persons at some time or the other commit some crime or the other. People will have no peace of mind if there is no period of limitation even for petty offences.

3. The deterrent effect of punishment is impaired if the prosecution is not launched and punishment is not inflicted before the offence has been wiped off the memory of the person concerned.

4. The sense of social retribution which is one of the purposes of criminal law loses its edge after the expiry of a long period.

5. The period of limitation would put a pressure on the organs of the criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly.

The supreme Court in State of Punjab vs. Sarwan Singh AIR 1981 SC 1054: 1981 Cr LJ 722:(1981) 3 SCC 34 : 83 Punjab LR 457 observed as under:

“The object of the criminal procedure code in putting a bar of limitation on prosecution 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 prosecution long after the date of offence. The object which the statute seeks to sub serve in clearly in consonance with the concept of fairness of trail 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”

These provisions have been made inapplicable to certain economic offences as the nature of these offences is such that they do not generally come to light as soon as they are committed or the investigation takes longer period and if the period of limitation prescribed is made applicable the offenders may escape their liability.

As per the provisions of the Economic Offences (Inapplicability of Limitation) Act, 1974, there shall be NO period of limitation for taking cognizance of the offences mentioned under the following enactments or for the offences mentioned below of the following enactments:

- The Indian Income-tax Act, 1922 (11 of 1922).
- Clause (a) of Section 63 of the Copyright Act, 1957 (14 of 1957).
- The Income-tax Act, 1961 (43 of 1961).
- The Interest-tax Act, 1974 (45 of 1974).
- The Hotel-Receipts Tax Act, 1980 (54 of 1980).
- The Expenditure-tax Act, 1987 (35 of 1987).
- The Companies (Profits) Surtax Act, 1964 (7 of 1964).
- The Wealth-tax Act, 1957 (27 of 1957).
- The Gift-tax Act, 1958 (18 of 1958).
- The Central Sales Tax Act, 1956 (74 of 1956).
- The Central Excises and Salt Act, 1944 (1 of 1944).
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).
- The Customs Act, 1962 (52 of 1962).
- The Gold (Control) Act, 1968 (45 of 1968).
- The Imports and Exports (Control) Act, 1947 (18 of 1947).
- The Foreign Exchange Regulation Act, 1947 (7 of 1947).
- The Foreign Exchange Regulation Act, 1973 (46 of 1973).
- The Capital Issues (Control) Act, 1947 (29 of 1947).
- The Indian Stamp Act, 1899 (2 of 1899).

- The Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962).
- The Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962).
- The Emergency Risks (Goods) Insurance Act, 1971 (50 of 1971).
- The Emergency Risks (Undertakings) Insurance Act, 1971 (51 of 1971).
- The General Insurance Business (Nationalization) Act, 1972 (57 of 1972).
- The Industries (Development and Regulation) Act, 1951 (65 of 1951).

In addition to the above-mentioned Act, there might be State enactments( For instance, the Maharashtra Acts of 24 of 1976, 44 of 1977 and 22 of 1982.) excluding the operation of the periods of limitation as prescribed by the Code, in certain cases. Also, Supreme Court has excluded the operation of limitation in respect of offence under Section 498 A of IPC observing-

“When Section 498 A of the IPC is brought to use in the case cruelty on women, the law of limitation is not that rigid so as to non suit the aggrieved wife. A fair dose of liberalities is warranted, so that the law as an instrument comes in aid of the aggrieved due to gender inequalities” - *Vijaya v. Laxmanrao*, (1998) 8 SCC 415

In *S. Ramachandra Reddy v. P.N. Ravindra Reddy*, 1991 Cri.L.J. 1619 (A.P.) -It has been decided that if there is a conflict between the periods of limitation prescribed in the code and a local law, having regard to Section 4(2) of the Code, the limitation prescribed by local law shall be applicable.

Chapter XXXVI of the Code of Criminal Procedure, comprising of Sections 467 to 473, prescribes distinct limitation periods for taking cognizance of various offences, depending upon the gravity of those offences interlinked with the punishments, respectively. The accused, depending upon these sections may, in an appropriate case, take the plea that the criminal case against him is barred by the prescribed period of limitation.

As per sec. 467- Period of limitation means the period specified in sec. 468 for taking cognizance of an offence unless the context otherwise requires under the chapter XXXVI.

Sub-section (1) of section 468 provides that except as otherwise provided elsewhere in this Code , a court shall not take cognizance of an offence after the expiry of limitation. In section 468, limitation is prescribed for the three classes of offences only-

- Offences punishable with fine only;
- The offences punishable with imprisonment of one year;
- And the offence punishable with imprisonment of three years.

The cognizance can be taken within, six months from the date of commencement specified, if the offence is punishable with fine only; within one year if the offence is punishable with imprisonment of one year and within three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

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 more severe punishment or as the case may be the most severe punishment.

The opening words of sec 468 “Except as otherwise provided elsewhere in this Code.” These words directly point to the provisions of section 199 (5) of the Code providing for a limitation of six months for an offence described in Section 199(2) of the Code as also to those in Section 198(6) & (7). The provisions of Section 4(2) and 5 of the Code also will have an oblique impact on these opening words of Section 468 of the Code.

Sec 199 (2) of Code reads as under -Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Government of a State, the Administrator of a Union territory or a Minister of the Union or of a State or

of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

Sec 199 (5)- No Court of Session shall take cognizance of an offence under Sub-Section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

Sec. 198 (6) -No Court shall take cognizance of an offence under section 376 of the Indian Penal Code (45 of 1860), where such offence consists of sexual inter-course by a man with his own wife, the wife being under fifteen years of age, if more than one year has elapsed from the date of the commission of the offence.

Sec. 198 (7)-The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

Sec 4 (2) -All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Sec 5- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

The five judges' bench of the Supreme Court of India, consisting of P. Sathasivam CJ, Dr.B.S.Chauhan, Ranjana P.Desai, Ranjan Gogoi and S.A.Bobde, JJ, in the case titled as " Sarah Mathew Vs. Institute of Cardio Vascular Diseases & Ors."; 2014(2) SCC 62, sought to ensure justice to the citizens of the country, by striking a balance between the legal maxim "nullum tempus aut locus occurrit regi" which means the crown may decide to proceed with action that may be barred by time and that the lapse of time does not bar the right of the crown and the legal maxim "vigilantibus et non dormientibus, jura subveniunt" which means Law will help only those who are vigilant. Law will not assist those who are careless of his/her right.

The Court, while dealing with the two contradicting maxims, "vigilantibus et non dormientibus, jura subveniunt" and "nullum tempus aut locus occurrit regi", states that Chapter XXXVI of the Code of Criminal Procedure which provides the limitation period for certain types of offences for which lesser sentence is provided, draws support from the maxim 'vigilantibus et non dormientibus jura subveniunt' and that even certain offences such as section 384 or 465 of the Indian Penal Code, which have lesser punishment, may have serious social consequences and hence, the provision for the condonation of delay was made. The Court was thus, of the opinion that Chapter XXXVI is a part of the Code of Criminal procedure, which is a procedural law and it is a well settled principle that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistresses.

In the light of the same, the Court held that the relevant date, for the purpose of computing the period of limitation under Section 468 of the Criminal Procedure Code is the date of filing of the complaint or the date of institution of prosecution and not the date on which a Magistrate takes Cognizance.

One of the most well-recognized principles of criminal jurisprudence is that "crime never dies". Even though this concept has been well-established, its implementation raised several questions with regard to the trigger point for computing the period of limitation. The Supreme Court, in this landmark judgment has provided a much-required clarification as to the ambiguity created by the contradicting views qua the running points with respect to limitation

#### **COMMENCEMENT OF THE PERIOD OF LIMITATION:**

The provisions relating to the commencement of the period of limitation are contained in Sections 469 and 472. Section 469 fixes the date from which the period of limitation in relation to an offender shall

commence. As a general rule, the period of limitation begins to run from the date of the commission of the offence and to this general rule, two exceptions are provided by this section. One is where the aggrieved party or police was not aware of the commission of the offence and the second is where the identity of the offender was not known.

In computing the limitations, the first day shall be excluded. ( Sub-Section 2 of Section 469).

According to sec. 472, in case of a continuing offence, a fresh period of limitation shall begin to run every moment of the time during which the offence continues. Continuing offence means an offence that continues from a moment to moment without interruption or break. It is an offence that must continue without requiring any act on the part of the offender to keep it in existence. It is an offence which would come to an end only when the accused does an act to terminate it-Ramnugaar Cane & Sugar Co. Ltd. v. Asstt. Registrar of Companies, 1989 Cri.L.J. 2395 (Cal).

In Bhagirat Kanoria v. State of M.P. AIR 1980 SC 1688, the Supreme Court held that non-payment of the employer's contribution to the Provident Fund before the due date, is a continuing offence and therefore, the period of limitation prescribed in sec. 468 cannot have any application. Also, it was held in Balram Singh v. Sukhwant Kaur 1992 Cri.L.J. 792 (P&H) that the entrustment of stridhan and the refusal to return it despite repeated requests and persuasions amounts to the offence of criminal breach of trust and is a continuing offence until the return of property to the wife.

Exceptions to the Rule "Bar to take Cognizance"

470. Exclusion of time in certain cases.

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

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

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

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

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

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

Sec. 471 - Exclusion of date on which Court is closed.

Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.

Explanation – A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

Sec.473. Extension of period of limitation in certain cases.

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

interests of justice.

In *Asst. Customs Collector, Bombay v. L.R. Melwani*, AIR (1970) SC 962, 965, the Supreme Court held that:

"The question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict. But by itself it affords no ground for dismissing the complaint".

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