

Statute of Limitation for Criminal Prosecution in India

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Abstract: The law of limitation renders a guarantee to the litigant, because after the lapse of a specified time period prescribed by the law, the public prosecutor will no longer be able to prosecute the offender for the prescribed offence. Statutes of Limitation do not create new obligations but only provide for a period within which proceedings must be brought.¹ 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.

This Part provides for a detailed analysis of the law of limitation for criminal offences in India. Limitation laws in India are prescribed in the Limitation Act, 1963 (“**Limitation Act**”). The Limitation Act is divided into five parts, out of which, Part 1 of the Limitation Act deals with preliminary provisions such as extent, commencement, and definitions; Part 2 provides for the limitation of suits, appeals, and applications; Part 3 deals with the computation of period of limitation; Part 4 deals with acquisition of ownership by possession and Part 5 lays down the miscellaneous provisions. Further, the Limitation Act contains a Schedule that provides for the period of limitation. However, the Limitation Act has no application to criminal proceedings, except to the extent where there are express provisions in the Schedule of the Limitation Act, such as Articles 114 and 115 providing for appeal under the Code of Criminal Procedure, 1973 (“**CrPC**”); Article 131 of Schedule of the Limitation Act applies to applications of Criminal Revisions; Article 132 (1) is applicable to situations where “certificate of fitness” must be acquired from the High Court in order to appeal to the Supreme Court of India under Article 134 (1) (c) of the Constitution of India and Article 133 applies to applications to the Supreme Court of India for special leave to appeal.

Chapter XXXVI of the CrPC was introduced to provide for limitation period for launching criminal prosecution with respect to offences not punishable with imprisonment for a term exceeding three years. The Chapter comprises of Sections 467 to 473 and came into force on April 1, 1974. The rationale behind the inclusion of a period of limitation in the CrPC to ensure that criminal prosecution system convicts and punishes the accused/offender quickly.

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

¹ Aiyappa Raju v Venkatakrishnayya, AIR 1923 Mad 462.

in such special statute and not as prescribed under the CrPC. However, this Article does not deal with state specific amendments/laws relating to the law of limitation.

Keywords: India; criminal law; statute of limitations.

1. Rationale behind the Indian statute of limitation

Until the year 1859, there was no definite law in India to regulate the period of limitation for institution of action against the wrongdoer. At such time, regulations were passed at intervals to fix the period of limitation. However, in 1859, the Limitation Act was the first law relating to the prescription in India, which was followed by the Act 9 of 1871 and 15 of 1877. Till the Year 1908, the utility of a statute of limitation was not considered as a serious matter. Finally, the Limitation Act in 1908 was passed which consolidated the law relating to the limitation for suits, appeals and applications. On January 1, 1964, the present Limitation Act came into force with the objective to consolidate and amend the law for the limitation of suits and other proceedings.

The rationale behind the law of limitation is that an unlimited and perpetual threat of litigation leads to scepticism and creates a sense of instability and uncertainty. Thus, the rules of limitation have been formulated to safeguard public interest and ensure stability and expediency. However, the Courts are vested with the power to condone delay, if sufficient cause is shown for not availing the remedy within the stipulated time.²

The law of limitation establishes a life span for availing remedy for such legal injury. During the efflux of time, newer causes would emanate, which will further require newer persons to such legal remedy by approaching the Courts. Thus, a life span must be fixed for availing such remedy. For instance, if a claim for cheating concerning debt is made after many years, there may be difficulty in proving that if the debt ever incurred or that it has already been paid and so forth. That is why the law bars the action after a certain period has elapsed from the accrual of cause of action.

According to the learned author Andrew McGee³, arguments with regard to the policy underlying statutes of limitations fall into three main types. The first relates to the position of the defendant. It is said to be unfair that a defendant should have a claim hanging over him for an indefinite period and it is in this context that such enactments are sometime described as “statutes of peace”. The second looks at the matter from a more objective point of view, it suggests that a limit is necessary because with the lapse of time proof of claim becomes more difficult, documentary evidence, is likely to have been destroyed and the memories of witnesses will fade. The third

² Oriental Aroma Chemical Industries Ltd. V Gujrat Industrial Development Corporation, (2010) 5 SCC 459.

³ A. McGee, *Limitation Periods*, 2002 Edn, Chapter 1, para 34 in page xxxiii.

relates to the conduct of the plaintiff, it being thought right that a person who does not promptly act to enforce his rights should lose them.

Prior to the 42nd Law Commission Report dated June 2, 1971⁴ (“**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.

Pursuant to conducting an extensive study of criminal laws of various countries including codes of Argentina, Austria, Ceylon, Columbia, France, Germany, Japan, Norway, Russia and Yugoslavia wherein it was generally found that law of limitation has been prescribed not only for initiating prosecution but also for execution of sentences passed by the Courts, the Law Commission of India, realized that it would be good for the criminal justice system to provide provisions of limitation for the prosecution of criminal offences of a certain type in general law.

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*”.

⁴ 42nd Law Commission Report dated June 2, 1971.

The Law Commission provided the following explanation for extending limitation to original prosecutions: *“24.11-It seems to us that there is a strong case for having a period of limitation for offences which are not very serious. For such offences, considerations of fairness to the accused and the need for ensuring freedom from prosecution after a lapse of time should outweigh other considerations. Moreover, after the expiry of a certain period the sense of social retribution loses its edge and the punishment does not serve the purpose of social retribution. The deterrent effect of punishment which is one of the most important objectives of penal law is very much impaired if the punishment is not inflicted promptly and if it is inflicted at a time when it has been wiped off the memory of the offender and of other persons who had knowledge of the crime.”*

Paragraphs 24.13 to 24.14, 24.21 to 24.26 of the Report of 1971, which may be relevant and interesting to refer to, read as: *“24.13 - At present no Court can throw out a complaint solely on the ground of delay, because, as pointed out by the Supreme Court, “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 grounds for dismissing the complaint”. It is true that unconscionable delay is a good ground for entertaining grave doubts about the truth of the complainant's story unless he can explain it to the satisfaction of the Court. But it would be illegal for a Court to dismiss a complaint merely because there was inordinate delay.*

24.14.- We, therefore, recommend that the principle of limitation should be introduced for less serious offences under the Code. We suggest that, for the present, offences punishable with fine only or with imprisonment up to three years should be made subject to the law of limitation. The question of extending the law to graver offences may be taken up later on in the light of the experience actually gained.

24.21 - A Few matters of detail may now be considered. First, as in civil cases, in computing the period of limitation for taking cognizance of an offence, the day from which such period is to be reckoned should be excluded. It may in this connection be noted that Section 29, Limitation Act, 1963, (which applies the provisions of that Act to other laws), may not suffice to apply the corresponding provision (Section 12) of that Act to prosecution, as section 12 is confined to suits and applications. Though some judicial decisions regarding a complaint as an ‘application, and so falling within section 29, Limitation Act, it is better to have a specific provision.

24.22- Secondly, as in civil cases, in computing the period of limitation for taking cognizance of offence, the time during which any person has been prosecuting with the due diligence another prosecution whether in a Court of first instance or in a Court of appeal or revision, against the offender, should be excluded, where 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.

24.23- Thirdly, in the case of a continuing offence, a fresh period of limitation should begin to run at every moment of the time during which the offence continues; and we recommend the insertion of a provision to that effect.

24.24- Impediments to the institution of a prosecution have also to be provided for. Such impediments could be (a) legal, or (b) due to conduct of the accused, or (c) due to the Court being closed on the last day.

As regards legal impediments, two aspects may be considered, first, the time for which institution of prosecution is stayed under a legal provision, and secondly, prosecutions for which previous sanction is required, or notice has to be given, under legal provision. Both are appropriate cases for a special provision for extending the period of limitation. We recommend that, 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 for taking cognizance of that offence, the time 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.

24.25- We also recommend that where notice of prosecution for an offence has been given, or where for prosecution for an offence the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, then in computing the period of limitation for taking cognizance of the offence, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction, shall be excluded.

24.26- As illustrations of impediments caused by the conduct of the accused, we may refer to his being out of India, and his absconding or concealing himself. Running of the period of limitation should be excluded in both cases.”

Thereafter, Joint Parliament Committee ("JPC") accepted the recommendations of the Report of 1971 for prescribing limitation period for certain criminal offences. The relevant excerpts from the JPC's Report dated November 30, 1972 read as under:

“Clauses 467 to 473 (new clauses) - These are new clauses prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. At present, there is no period of limitation for criminal prosecution and a Court cannot throw out 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 prescribe such periods in the Code as recommended by the Law Commission.”

The 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.

2. Interruption and tolling of limitation period under the Limitation Act

Interruption means any act that causes hinderance in a continuous activity. Section 5 of the Limitation Act prescribes for extension of prescribed period in certain cases. This section is a beneficial provision which intends to lessen the hardship of the party from the rigors of Limitation for not moving to the Court on time, on justifiable grounds.

Section 5 of the Limitation Act is also applicable to appeal or application, where sufficient cause for not preferring the appeal/making the application within such prescribed period exist.⁵

‘Sufficient cause’ is a pre-condition for exercising discretion by the concerned Court with respect to “condonation of delay”. Each case has to be looked into, based on the facts and circumstances in which a litigant conducts himself. The Limitation Act does not define “sufficient cause”, hence the Courts have the discretion to decide and reach a conclusion as to whether the existing circumstances successfully establish a *sufficient cause* or not.

Section 5 of the Limitation Act makes it abundantly clear that the legislature has intentionally left the term “sufficient cause” undefined, for the reason that what is “sufficient cause” in one case may not be so in another case. Hence, the term is kept flexible and unfettered discretion has been conferred

⁵ K.N. Thankappan v Tribunal for Local Self Government Institutions, ILR 2015 (3) Ker 991.

on the Courts to do justice after examining facts and circumstances of the case. Even in circumstances where it appears that the applicant is negligent, that by itself will not disentitle him from getting the delay condoned unless a case of *malafide* intention is made out.

The High Court of Gujrat has spelled out the meaning of “*sufficient cause*” and lays down the following propositions:

1. the phrase sufficient cause pertains to the establishment of appropriate facts before the Court, to which the Court can apply its mind;
2. condonation depends upon the facts of each case, but the facts must be placed by the applicant before the Court;
3. Courts should take liberal views.⁶

3. 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.*

⁶ Municipal Corporation of Ahemdabad V Voltas Limited, AIR 1995 Gujj 29 (FB).

(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 begins to run
	Appeal from an order of acquittal:		
114	(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 special leave.
	Under the Code of Criminal Procedure, 1898 (5 of 1898):		
115.	(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

	<i>Description of application</i>	<i>Period of limitation</i>	<i>Time from which the period begins to run</i>
131	<i>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).</i>	<i>Ninety days</i>	<i>The date of the decree or order or sentence sought to be revised.</i>
132	<i>To the High Court for 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.</i>	<i>Sixty days</i>	<i>The date of the decree, order or sentence.</i>
133.	<i>To the Supreme Court for special leave to appeal:</i>		
	<i>(a) in a case involving death sentence;</i>	<i>Sixty days</i>	<i>The date of the judgment, final order or sentence.</i>
	<i>(b) in a case where leave to appeal was refused by the High Court;</i>	<i>Sixty days</i>	<i>The date of the order of refusal.</i>
	<i>(c) in any other case.</i>	<i>Ninety days</i>	<i>The date of the judgment or order.</i>

b) Provisions of the CrPC applicable to criminal prosecution

Notable Authors Ratanlal And Dhirajlal⁷ have observed in their commentary for the Code of Criminal Procedure that the general rule prescribed in the maxim '*nullum tempus occurrit regi*' which means lapse of time does not bar the right of the Crown, shows that in general, the rule of equity, i.e., '*vigilantibus et non dormientibus jura subveniunt*', does not apply to the Crown. The prosecution in criminal matter is generally launched by the State, as a criminal offence is considered an injury caused not only to the person but also to the society.

It was further observed that the period of limitation for criminal offences is necessary as to avoid filing of frivolous litigation as to secure the alleged accused from harassment and to safeguard the valuable time of the

⁷ Ratanlal and Dhirajlal, *Commentary on the Code of Criminal Procedure*, 19th enlarged Edition, Chapter XXXVI, - *Limitation for taking cognizance of certain offences*, Page No. 1969.

Judiciary. However, it is also significant to consider that a legitimate case is not rejected just based on the technicality of limitation. Thus, there lies a provision which allows the judiciary to apply its judicial mind and decide whether the case holds any merit to qualify for condonation of delay.

Relevant provisions pertaining to the limitation provided for criminal prosecution is prescribed in Chapter XXXVI - Limitation for Taking Cognizance of Certain Offences of the CrPC, which are prescribed in Sections 467 to 473 of the CrPC. The details of which are as under:

(I) Section 467 of the CrPC defines period of limitation for taking cognizance of offence⁸

(II) Section 468 of the CrPC prescribes the period of limitation for taking cognizance of offences punishable with imprisonment for less than three years and classified according to the quantum of sentence imposable in each category⁹.

(III) Section 469 of the CrPC then spells out the point of commencement of the limitation period in the three categories specified in the earlier Section¹⁰.

⁸ **Section 467 – Definitions-** For the purposes of this Chapter, unless the context otherwise, requires, “period of limitation” means the period specified in section 468 for taking cognizance of an offence”.

⁹ **Section 468 - Bar to taking cognizance after lapse of the period of limitation**

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

(2) The period of limitation shall be:

- (a) six months, if the offence is punishable with fine only;
- (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”.

¹⁰ **“Section 469 - 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”.

(IV) Sections 470 and 471 of the CrPC provides for the exclusion of time in certain cases and of the date on which the Court is closed¹¹.

(V) Section 472 of the CrPC with respect to continuing offences, spells out the rule that a fresh limitation period shall begin to run at every moment of the time during which the offence continues¹².

(VI) Section 473 of the CrPC lays down a material provision concerning extension of the limitation period in certain cases and even overriding the bar of limitation¹³.

¹¹ **“Section 470 - Exclusion of time in certain cases**

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

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

(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 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”.

“Section 471 - Exclusion of date on which Court is closed

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

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

¹² **“Section 472 - Continuing offence**

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

¹³ **Section 473 - 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.”

In addition, where the legislature wanted to treat certain offences under the CrPC differently, it provided for limitation in the penal provision itself, for instance, Section 198(6) and 199(5) of the CrPc which provide for limitation concerning prosecution for offences against marriage and prosecution for defamation respectively.

c) Provisions of other Indian special statutes governing limitation in criminal prosecution

(i) 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.

4. 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*,¹⁴ 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

¹⁴ *Bharat Damodar Kale v. State of Andhra Pradesh*, (2003) 8 SCC 559 : AIR 2003 SC 4560 : 2003 CrLJ 4543.

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*¹⁶, 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;¹⁷

(i) in another case, where the respondents lodged the FIR with the police station within the period provided for by law, the Court held that it would be completely unreasonable and inequitable if the respondents are told that their grievances could not be ventilated as the police could not obtain the prosecution sanction within the period of limitation;¹⁸

(ii) in *State of Rajasthan v Sanjay Kumar and Others*¹⁹, Mr. Justice M.K. Mukherjee and Mr. Justice S. S. Quadri of the Hon'ble Supreme Court answered 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 Government Analyst's Report within Section 469(1) (b) of the CrPC;

(iii) the Hon'ble Supreme Court, while dealing with the case where offences under Sections 420, 467, 471 and 474 of the Indian Penal Code ("IPC"), were the subject matter of a complaint on which the Magistrate took cognizance and issued process, held that in case the criminal proceedings are instituted after the expiry of limitation period, such proceedings will be governed under section 468 CrPC²⁰;

¹⁵ *Japani Sahoo v. Chandra Sekhar Mohanty*, (2007) & SCC 394 : AIR 2007 SC 2762 : 2007 CrLJ 4068.

¹⁶ *Sarah Mathew v. Institute of CardioVascular Diseases*, (2014) 2 SCC 62.

¹⁷ *Sarah Mathew v. Institute of Cardio Vascular Diseases*, AIR 2014 SC 448 : (2014) 2 SCC 62 : 2014 CrLJ 586. (SC) (Five-Judge Constitution Bench); *Bharat Damodar Kale v. State of Andhra Pradesh*, AIR 2003 SC 4560 : (2003) 8 SCC 559; *Japani Sahoo v. Chandra Shekhar Mohanty*, AIR 2007 SC 2762: (2007) 7 SCC 394.

¹⁸ *Shiv Kumar Agarwala v. State of Meghalaya*, 2011 Cr LJ 1999 (2002) (Gauh).

¹⁹ *State of Rajasthan –vs- Sanjay Kumar and Others*, AIR 1998 SC 1919.

²⁰ *Harnam Singh v. Everest Construction Co.*, (2004) 6 SCC 754: (2004) SCC (Cri) 1828: 2004 Cr LJ 4178 (4179,4180) (SC).

(iv) the Hon'ble Delhi High Court in *Chanchal Bhatti v. State (NCT of Delhi)* held that Section 468 of the CrPC does not bar investigation of offences by the police even if the period of limitation for taking cognizance by the Court, prescribed under the said section, has expired;²¹

(v) it was held by the Hon'ble Calcutta High Court in case titled as *Manindra Nath Das v. Public Prosecutor* that Section 468 of the CrPC will override the provisions of the Limitation Act itself if there is any conflict with that Limitation Act and the CrPC²²;

(vi) the Hon'ble Andhra Pradesh High Court in *Appu Ramani V. State of Andhra Pradesh*, while holding that the charge-sheet was not barred by limitation and that the cognizance was within time, laid down the following guidelines:

1. if a charge-sheet or complaint is found to be not within limitation, the Court must give opportunity to the police officer who filed the charge-sheet or the complainant should satisfy the Court for condonation of delay;

2. delay should not be condoned as a matter of course, but with exercise of judicial discretion. Section 473 of CrPC should also be liberally construed;

3. accused must be heard before condoning delay under section 473 CrPC.

4. if the complaint or charge-sheet is filed within time, the Court has the power to return it for removal of defects;

5. if it is presented after removal of the defects within the time granted by the Court, and that day falls beyond the period of limitation, still the Court has to take cognizance of the case by duly taking into account the original date of filing the complaint or charge-sheet at the first instance;

6. limitation prescribed u/s 468 CrPC is to be reckoned with the date of filing the complaint/charge-sheet at first instance and not with reference to the date of taking cognizance;²³

(vii) in the case of *Mohit Lal Mahto alias Naresh Mahto v. State of Jharkhand*, the accused committed an offence under Section 414 IPC on 17.06.2000, however, the cognizance of the offence was taken on 04.08.2007, i.e. after a period of more than seven years. Therefore, as limitation period for an offence under Section 414 IPC is three years, the cognizance was barred by limitation.²⁴ It was held in case titled as *Sachdeva v. Rakesh Kumar Jain* that where the prosecution for an offence under section 406 IPC, was

²¹ Chanchal Bhatti v. State (NCT of Delhi), 2011 Cr LJ 1195 (1197) (Del).

²² Manindra Nath Das v. Public Prosecutor, 1979 Cr LJ 1465 (Cal).

²³ Appu Ramani V. Satte of Andhra Pradesh, 1993 CrLJ 1974 (AP).

²⁴ Mohit Lal Mahto alias Naresh Mahto v. State of Jharkhand 2010 Cr LJ (NOC) 474 : 2009 (3) AIR Jhar R 889 (Jhar).

launched within three years of the date of commission of the offence it was held to be within time;²⁵

(viii) in *C. 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;²⁶

(ix) further, in *Murari 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.²⁷

(x) Further the Hon'ble Supreme Court in ²⁸*State of Punjab v. Sarwan Singh*, has pointed out the object of Section 468 CrPC 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 statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art. 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 is non est."

Thus, the Supreme Court has gone to the extent of saying that the object of Section 468 is in consonance with the concept of fairness of trial as enshrined in Art. 21 of the Constitution of India and that any proceeding culminating in the conviction in a criminal case, which has been taken cognizance of after the expiry of the period of limitation, is non est.

b) Exclusion of time in certain cases

Section 470 of the CrPC, deals with cases where time for computing the limitation period shall be excluded. It provides exclusion of time for calculating the period of limitation in the following circumstances:

(i) the time period where the person has been prosecuting another prosecution with due diligence.

²⁵ *Sachdeva v. Rakesh Kumar Jain*, 1983 A Cr R 317 : 1983 AWC 632 : (1983) 2 Crimes 821 (All); *Dev Ratan v. State of Haryana*, 1989 Cr LJ 1044 (P&H); *Birendra Narayan Singh v. State of Bihar*, 1989 PLJR 1104.

²⁶ 2006 Cr. LJ 1839 (1842) (DB); 2006 (2) Kant LJ 331 (Kant).

²⁷ *Murari Lal Goel v. Sukhcharan Singh Bajwa* (1989) 2 PLR 76: 1898 CC Cas 275: 1989 Cr LT 93 (P&H).

²⁸ *State Of Punjab vs Sarwan Singh* 1981 SCALE (1)619

In *Lajpat Rai Sehgal v State*, the Hon'ble Delhi High Court held that in a situation where notice of prosecution of an offence is given or where previous consent of sanction of the Government/ any other authority is required for obtaining consent, such time should be excluded from the period of limitation applicable;

(ii) the period during which the offender remains absent from India or any territory outside India, which is under the administration of the Central Government.

It was held by the Hon'ble Supreme Court in *Muthia Chethar v. Shanmughann* that, if the offender avoids his arrest by absconding or concealing, then that time period shall be excluded in calculating the limitation for the institution of a prosecution.²⁹

c) Exclusion of date on which Court is closed

Section 471 of the CrPC provision provides that, if the period of limitation under section 468 lapses on the day when the Courts are closed, the case may be instituted on the next re-opening day. For calculating the period of limitation under this provision the Court shall be deemed to have remained closed, even if it was closed for any part of the day. Section 471 of the CrPC is analogous to section 4 of the Limitation Act, 1963. If the prosecution was lodged before a wrong Court, under this provision, the benefit of filing the proceeding on the reopening day will not be available to the prosecutor.³⁰

4145

d) Continuing offence

Section 472 of the CrPC with respect to continuing offences, spells out the rule that fresh limitation period shall begin to run at every moment of the time during which the offence continues. Section 472 of the CrPC lays down the provisions for computing period of limitation for continuing offence. This provision corresponds to Section 22 of the Limitation Act. Observation of the Hon'ble Supreme Court on continuing offences is as under:

1. in *Bhagirath Kanoria v. State of M.P.*, the question before the Hon'ble Supreme Court was that whether a particular offence is a continuing offence or not depends upon the following factor:

(i) the language of the statute which creates the offence;
(ii) the nature of offence; and
(iii) the purposes intended to be achieved by constituting the particular act as an offence.³¹

²⁹ *Muthia Chethar v. Shanmughann*, AIR 1969 SC 552.

³⁰ *Amarchand Irani v Union of India*, AIR 1973 SC 313.

³¹ *Bhagirath Kanoria v. State of M.P.*, (1984) 4 SCC 222.

For the purpose of determining the period of limitation in a continuing offence, the last act of the offence administers the commencement of the limitation period and continues till the date of filing of the complaint.³²

e) Offences constituting continuing offences

In the case of a continuing offence, fresh limitation period shall begin to run at every moment of the time during which the offence continues. For instance, the cause of action in dowry cases will continue till the articles of dowry are returned, the limitation of three years will not apply in that case.³³

f) Extension of period of limitation in certain cases

Section 473 of the CrPC has been made for providing extension of time whenever the Court is satisfied that sufficient cause for delay for institution of the suit has been shown. This Section has invested the Court with the power to take cognizance of an offence even after expiry of the period of limitation.

Some of the observation of the Hon'ble 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 v Tara Dutt*³⁴, 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 ShankarAwasthi v State of UP*³⁵ 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.³⁶

³² Dinesh Supari Traders v. A.P.M. (Regulations) Committee, 2006 Cr LJ 255 (259).

³³ Chandra Prakash v. State, 1996 Cr LJ 4343 (Del).

³⁴ HP v Tara Dutt, AIR 2000 SC 297.

³⁵ Udai ShankarAwasthi v State of UP, 2013 (1) Crimes 231 (SC).

³⁶ Mohd. Sher Khan v State of Rajasthan, 2011 Cr LJ 1893 (Raj).

5. Non- applicability of the provisions of Chapter XXXVI of the CrPC

The provisions of Chapter XXXVI of the CrPC have been made inapplicable to certain economic offences as mentioned under the Economic Offences (Inapplicability of Limitation) Act 1974, by their character do not come into light as soon as they are perpetrated and often require long investigations or adjudication to discover such offences and may cross the period of limitation. In the said process, if the period of limitation is prescribed, it may enable the offenders to escape prosecution under these Acts.

Hence it was proposed to make the provisions of Chapter XXXVI of the CrPC inapplicable to offences under the Acts which are enumerated in the Schedule to the Economic Offences (Inapplicability of Limitation) Act, 1974. As per the Schedule I - Schedule of the Economic Offences (Inapplicability of Limitation) Act, 1974, Chapter XXXVI of the CrPC which prescribes the period of limitation for taking cognizance of the offences does not apply to various Acts, which are reproduced here as under:

“SCHEDULE 1

THE SCHEDULE

1. *The Indian Income-tax Act, 1922 (11 of 1922).*
[1-A. Clause (a) of Section 63 of the Copyright Act, 1957 (14 of 1957).]
2. *The Income-tax Act, 1961 (43 of 1961).*
[2-A. *The Interest-tax Act, 1974 (45 of 1974).*]
[2-B. *The Hotel-Receipts Tax Act, 1980 (54 of 1980).*]
[2-C. *The Expenditure-tax Act, 1987 (35 of 1987).*]
3. *The Companies (Profits) Surtax Act, 1964 (7 of 1964).*
4. *The Wealth-tax Act, 1957 (27 of 1957).*
5. *The Gift-tax Act, 1958 (18 of 1958).*
6. *The Central Sales Tax Act, 1956 (74 of 1956).*
7. *The Central Excises and Salt Act, 1944 (1 of 1944).*
8. *The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).*
9. *The Customs Act, 1962 (52 of 1962).*
10. *The Gold (Control) Act, 1968 (45 of 1968).*
11. *The Imports and Exports (Control) Act, 1947 (18 of 1947).*
12. *The Foreign Exchange Regulation Act, 1947 (7 of 1947).*
13. *The Foreign Exchange Regulation Act, 1973 (46 of 1973).*
14. *The Capital Issues (Control) Act, 1947 (29 of 1947).*
15. *The Indian Stamp Act, 1899 (2 of 1899).*
16. *The Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962).*
17. *The Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962).*
18. *The Emergency Risks (Goods) Insurance Act, 1971 (50 of 1971).*
19. *The Emergency Risks (Undertakings) Insurance Act, 1971 (51 of 1971).*

20. *The General Insurance Business (Nationalisation) Act, 1972 (57 of 1972)*
21. *The Industries (Development and Regulation) Act, 1951 (65 of 1951)."*

6. 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 CrPC 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. In India, in recent times, the ghosts of the past have returned to haunt people, especially public figures. A few public figures, for instance, faced molestation cases (after as long as 47 years of the alleged offence). 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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