

Cognizance of Offences

Introduction

“Cognizance” in general meaning is said to be ‘knowledge’ or ‘notice’, and taking ‘cognizance of offences’ means taking notice, or becoming aware of the alleged commission of an offence. The dictionary meaning of the word ‘cognizance’ is ‘judicial hearing of a matter’. The judicial officer will have to take cognizance of the offence before he could proceed with the conduct of the trial. Taking cognizance does not involve any kind of formal action but occurs as soon as a magistrate as such applies his mind to the suspected commission of an offence for the purpose of legal proceedings. So, taking cognizance is also said to be the application of judicial mind.

It includes the intention of starting a judicial proceeding with respect to an offence or taking steps to see whether there is a basis for starting the judicial proceeding. It is trite that before taking cognizance that court should satisfy that ingredients of the offence charged are there or not. A court can take cognizance only once after that it becomes ‘[functus officio](#)’.

If a magistrate involves his mind not for reason of proceeding as mentioned above, but for taking action of some other kind, example ordering investigation under Section 156(3) or issuing the search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of offence.

The term ‘Cognizance of offence’ has not been defined in the Criminal Procedure Code. [Section 190](#), [191](#), [192](#), [193](#), [194](#), [195](#), [196](#), [197](#), [198](#), and [199](#) deals with methods by which and the limitations subject to which various criminal courts are established to take cognizance of offences. However, the meaning of the term is well defined by the Courts. Taking cognizance is the first and foremost steps towards the trial. The judicial officer will have to take cognizance of the offence before he could proceed to conduct or trial.

In the case of [R.R Chari v. State of U.P.](#), it was held by the Apex Court that:

“Taking cognizance does not mean any formal action or expected action of any kind but occurs as soon as a magistrate as such involves his mind to the suspected commission of an offence.”

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Cognizance of offences by Magistrate

In [Section 190](#), Any Magistrate of the first class and the second class may take cognizance of any offence-

1. Upon receiving a complaint of facts related to offences.
2. Upon police reports of facts.
3. Upon information received from a person (other than a police officer), or upon his own knowledge.

In [Section 190\(2\)](#), it is given that Second class magistrate can be empowered by Chief Judicial Magistrate to take cognizance under Section 190(1).

Transfer on the application of the accused

[Section 191](#) deals with ‘Transfer on the application of the accused’.

When a Magistrate takes cognizance by another person other than a police officer, or upon his own knowledge, then accused is entitled to have the case inquired into or tried by another judicial magistrate. If accused or any of accused object to further proceedings before the magistrate taking cognizance, the case shall be transferred to such other magistrate specified by the Chief Judicial Magistrate.

In simple words, when a Magistrate takes cognizance by another person other than a police officer, or upon his own knowledge, then accused can change Judicial Magistrate according to his desire before taking any evidence.

Making over of cases to Magistrates

[Section 192](#) deals with ‘Making over of cases to Magistrates’.

Any Chief Judicial Magistrate can make over the case for inquiry or trial to any competent Magistrate subordinate to him. The Chief Judicial Magistrate can give general or specific order to any first-class magistrate to make over the case for inquiry or trial to another competent Judicial magistrate.

Cognizance of offences by Courts of Session

According to [Section 193](#), "Courts of Session are not allowed to take cognizance of any offence (as a court of original jurisdiction) unless the case has been committed to it by a Magistrate." When it is expressly provided by this code or by any other law, then only Courts of Session are allowed.

Limitations on the power to take cognisance

Prosecutions for contempt of the lawful authority of public servants

According to [Section 195\(1\)\(a\)](#), "Court will not take cognizance to those cases which punishable under [Section 172](#) to [Section 188](#) of Indian Penal Code unless a written complaint is made by a public servant." Section 172 to 188 of IPC deals with offences related to contempt of public servant. The court will not take cognizance in case of an attempt, conspiracy, abetment of offence given in Section 172 to 188 of IPC.

According to [Section 195\(2\)](#), "Court will not further proceed with the trial when the order of withdrawal is given by a superior officer of a public servant (who has complained)." Provided that if trial in the court has been concluded then no such withdrawal shall be ordered.

Prosecution for offences against public justice

According to [Section 195\(1\)\(b\)\(i\)](#), "Court will not take cognizance to those cases which are offensive under [Section 193](#) to [196](#), [199](#), [200](#), [205](#) to [211](#) and [228](#) of Indian Penal Code unless a written complaint is made by that court or by some other court to which that Court is subordinate." Above mentioned sections of IPC deals with offences against public justice. The court will not take cognizance in case of an attempt, conspiracy, abetment of offences against public justice.

Prosecution for offences relating to documents given in evidence

According to Section [195\(1\)\(b\)\(ii\)](#), "Court will not take cognizance to those cases which are offensive under [Section 463](#), or punishable under [Section 471](#), [475](#) or [476](#) of the IPC unless a written complaint is made by that court or by some other court to which that Court is subordinate." Above mentioned sections of the IPC deal with offences related to documents given in evidence. The court will not take cognizance in case of an attempt, conspiracy, abetment of offences relating to documents given in evidence.

[Section 195\(3\)](#) deals with the meaning of 'court' in [Section 195\(1\)\(b\)](#). 'Court' means a Civil, Revenue or Criminal Court, and included a tribunal constituted by or under a Central, Provincial or State Act if that Act has declared as Court for the purpose of this section.

[Section 195\(4\)](#) deals with the concept of the superior court and subordinate court discussed in [Section 195\(1\)\(b\)](#). When Court 'A' has appeal jurisdiction of the decision given by Court 'B', then we will say that Court 'B' is subordinate to Court 'A'.

Prosecution for offences against the state

According to [Section 196\(1\)](#), "Court will not take cognizance to those cases which are punishable under Chapter VI (Of Offences against the State) or under [Section 153A](#), [Section 153B](#), [Section 295A](#) or [Section 505](#) of Indian Penal Code except with the consent of the Central Government or of the State Government."

Above mentioned sections of IPC deal with offences against the state. Chapter VI of IPC deals with the offence against the state. [Section 153A](#) of IPC deals with harmony, [295A](#) deals with the offence of statements which result in infringements of religious belief. [Section 505](#) deals with an offence related to public mischief.

Prosecution for the offence of criminal conspiracy

According to [Section 196\(2\)](#), "Court will not take cognizance to offences of any criminal conspiracy under [Section 120B](#) of Indian Penal Code (other than a

criminal conspiracy to commit a cognizable offence punishable with death, imprisonment for life or rigorous imprisonment for two a term of two years or upwards) unless consent in writing is given by the State Government or the District Magistrate to initiation of the proceedings.”

Where Criminal Conspiracy under [Section 195](#) applies, no such consent shall be necessary.

According to [Section 196\(3\)](#), “A preliminary investigation by a police officer (not below the rank of inspector) is necessary before giving consent by Central Government, State Government or District Magistrate.”

Prosecution of Judges and Public Servants

According to [Section 197\(1\)](#), “Court will not take cognizance to offences done by Judges, Magistrates or any Public Servants during the course of employment unless consent in writing is given by the State Government (when offender is under course of employment of state government) or the Central Government (when offender is under course of employment of central government) to initiation of the proceedings.” In the case of State emergency in any state, only Central Government will give consent for such proceedings.

There is no consent requires for cognizance when Judges, Magistrate or Public Servants has done offence which is punishable under [Section 161A](#), [161B](#), [354A](#) to [354D](#), [370](#), [376](#), [376A](#), [376B](#), [376C](#) and [509](#) of Indian Penal Code.

Prosecution of members of Armed Forces

According to [Section 197\(2\)](#), “Court will not take cognizance to offences done by any member of the Armed Forces of the Union during the course of employment unless consent given by the Central Government.”

According to [Section 197\(3\)](#), “Section 197(2) will also apply to such class or category of the members of Forces charged with the maintenance of public order.”

According to [Section 197\(4\)](#), “The Central Government and the State Government may determine the person who will prosecution of such Judge, Magistrate or public servant.”

Prosecution for offences against marriage

According to [Section 198\(1\)](#), "Court will not take cognizance to offences punishable under Chapter XX (Of Offences related to Marriage) of Indian Penal Code unless complaint made by the victim".

1. With the consent of Court, the third person can also make a complaint on behalf of a victim who is idiot, lunatic, minor, sick, women(who can't appear in public). According to [Section 198\(3\)](#), 'Initially, guardian of the victim has reasonable opportunities to be heard'.
2. Third-person who is authorised by husband (serving in the armed forces of union and unable to get leave) can make a complaint on his behalf. According to [Section 198\(4\)](#), 'Authorization given by husband shall be in writing, signed or attested by husband, countersigned by his Commanding officer and shall be accomplished by a certificate signed by that officer'. According to [Section 198\(5\)](#), 'Any Certificate and signed document which is discussed in Section 198(4) is not presumed genuine and received in evidence unless the contrary is proved'.
3. Father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister of the wife who is the victim under [Section 494](#) of Indian Penal Code can make the complaint on behalf of the wife.

According to [Section 198\(2\)](#), "Court will not take cognizance to offences punishable under [Section 497](#) or [Section 498](#) (where the victim is husband) of the IPC unless the husband makes a complaint. Provided that in case of absence of the husband, some person who had care of the women on his behalf can make a complaint on behalf of the husband".

Prosecution of the husband for rape

A husband can also rape his own wife when the wife is under fifteen years of age. According to [Section 198\(6\)](#), "Court will not take cognizance to offences punishable under [Section 376](#) of Indian Penal Code if more than one year has elapsed from the date of commission'.

According to [Section 198\(7\)](#), [Section 198](#) also applies on abetment or attempt to commit an offence under chapter XX of IPC".

Prosecution for defamation

According to [Section 199\(1\)](#), "Court will not take cognizance to offences which are punishable under Chapter XXI (Of Defamation) of the IPC unless the complaint is made by the victim". Provided that the third party can also make a complaint on behalf of the victim, with the permission of the Court when the victim is not able to make a complaint.

According to [Section 199\(2\)](#), "Court of sessions will take cognizance to offences which are punishable under Chapter XXI of the IPC, alleged to have been committed against the President of India, the Vice President of India, the Governor 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 under state or union. The complaint in writing made by the Public Prosecutor". Section 199(2) is an exception to Section 193.

[Section 199\(3\)](#) deals with 'Contents of Complaint'. It includes information about facts of the offence, the nature of that offence and information about every sufficient point in a complaint through which sufficient notice is given to accused who have done offence of defamation.

According to [Section 199\(4\)](#), "Court will not take cognizance to offences which are punishable under Chapter XXI of the IPC, alleged to have been committed against Governor, Public servant and Minister of State unless the complaint is made by the Public prosecutor with the consent of State Government" and if the same is alleged to have been committed against the President, the Vice President, Public Servant employed under Union, then also Court will not take cognizance unless the complaint is made by the Public prosecutor with the consent of the Central Government.

According to [Section 199\(5\)](#), "It is mandatory to the complaint by the public prosecutor in the above section within 6 months of the commission of the offence".

According to [Section 199\(6\)](#), "Public Servant can also make complaint himself in Magistrate Court".

Complaints to magistrates

Examination of complainant

[Section 200](#) deals with 'Examination of the complainant'. The complaint shall examine upon oath the complainant and the witnesses present, and it should also be in writing and signed by the complainant, witnesses and also by Magistrate. Provided that, the Magistrate need not examine the complainant and the witnesses when the complaint is made in writing.

There is no need for re-examination in case of a 'complaint by a public servant or court' and 'Magistrate makes over the case to another Magistrate under [Section 192](#)'.

The procedure by Magistrate not competent to take cognizance of the case

According to [Section 201](#), "If a complaint is made before a Magistrate who is not competent to take cognizance of the case, then Magistrate will do two things are follows-

1. If Complaint is made in writing, then Magistrate will refer that case to that proper Court.
2. If the Complaint is not in writing, then Magistrate will direct the complainant to the proper Court."

Postponement of issue of process

According to [Section 202](#), "The Magistrate authorised to take cognizance or made over to him under Section 192 may postpone the issue against the accused, and either inquire himself or by police officers or other persons as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding".

Dismissal of the complaint

According to [Section 203](#), "The Magistrate can also dismiss the complaint if inquiry or investigation under Section 202 result no ground for proceedings".

Conclusion

The word 'Cognizance' is not defined in the Criminal Procedure Code. Basically, it means applying the Judicial mind in a suspected commission of the offence. Chapter XIV of Cr.PC deals with 'Conditions Requisite for initiation of proceeding' and Chapter XV of Cr.PC deals with 'Complaints to Magistrates'.