

Case Report**Notion of Cognizance Under Indian Law****M Shamima Parveen****How to cite this article:**

M. Shamima Parveen./ Notion of Cognizance Under Indian Law./ Indian J Law Hum Behav 2021;7(1):33-36.

<p>Author Affiliation: Guest Faculty, Tamil Nadu Dr Ambedkar Law University, Chennai 600028, Tamil Nadu, India.</p> <p>Corresponding Author: M Shamima Parveen, Guest Faculty, Tamil Nadu Dr Ambedkar Law University, Chennai 600028, Tamil Nadu, India.</p> <p>E-mail: ShamimaParveen@gmail.com</p>	<p>Abstract</p> <p>The administration of justice system in criminal law needs to be evaluated as a whole and not its components separately, any act or omission punishable by any existing law is called offence. Offences with element of force or moral turpitude are generally termed as crimes. Crime puts life, liberty, dignity and property of the people in danger and creates law and order problems. The law and order problem may spread its wings to disturb public peace and bring normal civic life to a grinding halt. This may, sometimes, pose a threat even to national security. Thus, crime is not just a concern of the victim or the criminal justice authorities; the hidden potential in it may harm the whole society or even the nation. In other words, crime undermines the 'rule of law' and thus digs out the very root of democracy as in most of the democratic countries, crimes are considered as injuries to the State.</p> <p>Keywords: Criminal law; Punishable; Democracy.</p>
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Introduction

The word 'cognizance' has its meaning from French word "cognizance" and based on Latin "cognoscere" or the words 'taking cognizance' have not been deciphered, 'taking note of', 'taking account of', 'to know about', 'to gain knowledge about', 'awareness about certain things' or method. CrPC Chapter XIV deals with 'Conditions Required to begin proceedings' and CrPC Chapter XV deals with 'Complaints to Magistrates'.

Crimes in India are classified as, namely, cognizable offences and non-cognizable offences. After crime prevention efforts, the next important function or process administrative process, i.e., investigation of crimes, filing charge-sheets in suitable cases, holding trials, and executing punishments. In the event of any reliable evidence coming forward, a closed case can be opened at any time. In charge-sheeted cases, the court scrutinizes the police charge-sheet and papers annexed to it for

framing the charge, however, seeing the gigantic proportions of the problem, many more efforts are needed to be taken urgently by the criminal justice functionaries before the situation goes out of control eroding the common man's faith in the whole criminal justice administration.

The criminal law envisages that an act to be constituted as a crime must conform to the following two cardinal principles, namely "Nullum crimen sine lege" and "nulla poena sine lege". The meaning if the first principle denotes that no is held criminally liable unless he has done an act. Which is expressly forbidden under the existing law of the land and as reprehensible to mind to do it. The second principle envisages that "no act is crime unless expressly mentioned under any provisions of law and made punishable under the law, Nobody can be punished except under procedures established by law

Indian Penal Code (IPC) defining crime and prescribing appropriate punishments as a sequel

to the IPC, a Code of Criminal Procedure and established the rules to be followed in all stages of investigation, trial, and sentencing.

Victims' Rights Legislation

If the defendant is charged, during the trial, it is the responsibility of the investigating officer to assist the Public Prosecutor in every way, including the production of witnesses. The defendant must be provided with free legal aid in case he cannot afford one. He must be made aware of all the rights available to him in all stages of the trial.

Prosecutorial and Judicial Process

A police investigation and the filing of a charge-sheet before a Magistrate precede a criminal trial. If the Magistrate believes that on the basis of the available record there is sufficient ground for prosecution, a summons or warrant is issued. Warrants are used for offenses punishable with death, life imprisonment, or for prison terms exceeding 2 years. When the accused appears before the Magistrate, the Magistrate ensures that, on the facts of the case, have been correctly framed and verifies the charges which is framed against the accused person.

At the district level, the lower criminal courts (sub-divisional courts) are headed by Magistrates (sub magistrates and sub-divisional magistrates) with jurisdiction over offenses listed in the First Schedule to the Criminal Procedure Code. Magistrates commit for trial to the sessions court certain offenses, such as murder, which are exclusively triable by Sessions Judges. Magistrates are competent to try and dispose of lesser offenses. Magisterial functions in addition to their own administrative duties. The most senior civil servant in a District, namely the Collector/Deputy Commissioner, is appointed as the District Magistrate.

Special courts

The criminal justice administration empowers the High Court, upon being requested by the Union or State Government, to confer on any person the powers to try cases or classes of cases as judicial magistrate.

Contrary to the practice under Hindu law, all crimes were not considered injuries to the State

under the Islamic penal law. The offences were classified under three heads, namely, (i) crimes against God, (ii) crimes against the State, and (iii) crimes against private individuals. Crimes against God and the State were treated as offences against public morals. Other crimes were treated as against persons; it was for the individual persons to approach State machinery against such offences and the State would not Suo-moto actions of the same.

A special feature of the Muslim law was that the Muslim criminal jurisprudence treated criminal law as a branch of private law rather than of public law. The principle governing the law was more in the nature of providing relief to the person injured in civil matters rather than to impose penalty for the offence committed. It was for the private persons to move the State machinery against such offences and the State would not Suo-moto take cognizance of the same. Powers of President and Governor to pardon, suspend, remit sentences (articles 72 and 161).

Executive Magistrates and Special Executive Magistrates

Although the Code of Criminal Procedure, 1973 has separated the judiciary from the executive, it still continues to describe Executive Magistrates as one of the classes of criminal courts under section 6 of the Cr. P.C. Generally the Executive Magistrates handle executive work which may be of quasi-judicial nature. However, in certain circumstances they can deal with judicial work, e.g. section 167(2A), Cr.P.C. provides that where a Judicial Magistrate is not available, a person arrested by police can be produced before the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred.

Section 20, Cr.P.C. provides that in every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them as District Magistrate. The State Government may also appoint Additional District Magistrate for a district. The State Government may place an Executive Magistrate in charge of a subdivision to be called Sub-divisional Magistrate. All Executive Magistrates except the Additional District Magistrate shall be subordinate to the District Magistrate.

Sub-section (5) of section 20, Cr.P.C. provides that nothing in section 20 shall preclude the State

Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area. In pursuance of these provisions, the State Governments have empowered the Commissioners of Police, Joint Commissioners of Police, Additional Commissioners of Police, Deputy Commissioners of Police and Assistant Commissioners of Police to exercise powers under sections 107, 108, 109, 110, 133, 144, etc. of the Cr.P.C., 1973 within the areas for which they are appointed.

In addition to the above, there are also provisions for appointment of Special Executive Magistrates for particular areas or for particular functions. Such of the powers as are conferrable under the Cr.P.C. on Executive Magistrates may be conferred on the Special Executive Magistrates under section 21 of the Cr.P.C. In case the court feels that the charge-sheet does not disclose a cognizable case or the case is otherwise not fit for trial/summary proceedings, it can reject the charge-sheet.

Provisions on Taking Cognizance by Magistrate

- Section 190 of the criminal procedure code- "Cognizance of offences by Magistrates" the criminal procedure code provides that any magistrate of the first-class and any magistrate of the second-class specifically empowered by the Chief judicial Magistrates can take cognizance of any offence on the following grounds. on receiving a complaint, on a police report, on information received from any person other than a police officer or upon his own knowledge that such offence has been committed
- Section 193-Cognizance of Offences by Court of Session Courts of Session are not allowed to take note of any crime unless the case is committed by a Magistrate. If it is specifically determined by this code or by any other statute, then only Courts of Session are permitted.

Offences against the state

"Court will not take cognizance to those cases which 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." The listed IPC sections

deal with state offences. Chapter VI of IPC describes the state offence. Section 153A of the IPC deals with harmony 295A deals with the offence of comments leading to violations of religious belief. Section 505 deals with an offence related to public mischief.

Contempt of the lawful authority of public servants

"Court shall not take cognizance of those cases which are punishable under section 172 to section 188 of the Indian Penal Code unless a public servant makes a written complaint." Section 172 to 188 of the IPC deals with offences related to public servant contempt. In case of an attempt, conspiracy abetment of offence set out in IPC section 172 to 188, the court will not take cognizance. According to Section 195(2), " Court will not proceed further with the trial when a superior official of a public servant (who has complained) gives the order of withdrawal. " Provided that no such withdrawal is ordered after a trial has been completed in court.

The offence of criminal conspiracy

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.

Additional and Assistant Sessions Judges to try cases made over to them. An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try.

Conclusion

The above discussion of the judiciary as a component of the criminal justice system shows that a well-defined hierarchy of criminal courts exists in India. The very fact that the Constitution itself contains elaborate provisions for the judiciary including the subordinate courts, indicates the importance the framers of the Constitution accorded to this important organ of criminal justice administration. In pursuance of this objective the functionaries are to follow the principle 'protect the good and

punish the wicked'. Succinctly, the administration of criminal justice system attempts to decrease criminal behavior in the society.

Like in every civilized country, the people of India are free to benefit from certain basic rights such as birth right, personal liberty, property, and dignity of the individual. The Constitution and many criminal laws intent at guaranteeing these human rights of the individuals. Criminal acts put these privileges in peril and thereby destabilize the authority of the Constitution and other laws.

To achieve the final goal of establishing a just society, various components of the administration of criminal justice system, viz. the police department, bar, courts, and adjudicating services, are expected to work harmoniously and cohesively. Success of one component may not endure unless other components to achieve success of almost similar degree.

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7. For one well-reviewed look at the opportunities presented by the current criminal justice moment, see Rachel Elise Barkow.