Subject Name: Code of Criminal Procedure
Topic Name: Cognizance under CrPC

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Introduction

Sections 190 to 199 provide the procedures and constraints under which various criminal courts are authorised to acknowledge offences. Section 190(1) states that, barring the provisions of Sections 195 to 199, any Magistrate of the First Class or any specifically empowered Magistrate of the Second Class may recognize an offence:

(a) based on a complaint presenting facts constituting the offence,

(b) upon receipt of a police report detailing such facts,

(c) upon information provided by a non-police individual or based on personal knowledge of the offence.

The Chief Judicial Magistrate holds the authority to empower a Magistrate of the Second Class, as mentioned above, to acknowledge offences falling within their jurisdiction to investigate or adjudicate.

Cognizance of Offences by Magistrates

According to Sec. 190(1), any Magistrate of the first class, and any Magistrate of the second class specially empowered by the Chief Judicial Magistrate under sub-sec. (2), may take cognizance of any offence:

- Upon receiving a complaint detailing the facts constituting the offence,
- Upon a police report presenting such facts,
- Upon information received from any persons (excluding police officers), or based on personal knowledge, that such offence has occurred.

The term "may take cognizance" implies "must take cognizance" in this context. The Magistrate holds no discretion in this matter; otherwise, the section would violate Article 14 of the Constitution ***(Sampat Singh v State of Haryana (1993) 1 SCC 561)***.

The term 'cognizance' literally means 'become aware of'. In the Code, it indicates the point at which the Magistrate/Judge first takes judicial notice of an offence. Taking cognizance involves the intention to initiate judicial proceedings against an offender regarding an offence or to assess whether there is a basis for such proceedings. It is a preliminary step before commencing the inquiry/trial.

Taking cognizance does not entail any formal action but occurs as soon as a Magistrate, in their official capacity, considers the suspected commission of an offence for the purpose of subsequent steps (under Sec. 200/202/204). However, if a Magistrate applies their mind for a different purpose, such as ordering an investigation under Sec. 156(3) or issuing a search warrant for investigation, they cannot be said to have taken cognizance of the offence ***(Tula Ram v Kishore Singh (1977) 4 SCC 459)***.

At the time of taking cognizance, the court is not obliged to scrutinise the evidence closely but only needs to satisfy itself that a prima facie case exists against the accused. Apart from the allegations in the complaint, the Magistrate should consider all evidence on record while taking cognizance ***State of Bihar v Kamla Prasad Singh, 1998 CrLJ 3601 (SC)***).

Whether cognizance has been taken by the Magistrate or not is determined as a question of fact in each case. In a case where a complaint was filed, and the Magistrate simply adjourned the case to the next day, and on a subsequent date, recorded the sworn statement of the complainant and marked certain exhibits, it was held that the act of recording the sworn statement and issuing process indicated that the Magistrate had taken cognizance of the offence ***(R. Rajendra Reddy v Sujaya Feeds, 1995 CrLJ 1427 (Karn)).***

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An order of the Magistrate under Sec. 190 must be a 'speaking order'. Therefore, a refusal to take cognizance of an offence should be accompanied by reasons. The power to take cognizance of an offence differs from the power to inquire into or try a case.

A court may have the former power but not the latter, and vice versa. Cognizance is taken of the offence, not of the accused. The taking of cognizance under Sec. 190 is independent of the presence of the accused in court. Similarly, a refusal to take cognizance of an offence does not amount to discharging the accused.

Relation between Sections 156, 173, and 190

Upon receiving a complaint, a Magistrate has two options: they may either take cognizance of the offence or order an investigation under Sec. 156(3) without taking cognizance. In the latter scenario, upon receiving a police report under Sec. 173(1), the Magistrate has three courses of action:

1. They may decide that there is insufficient ground to proceed further and drop the action.

2. They may take cognizance of the offence under Sec. 190(1)(b) based on the police report, without being bound by the police's conclusions, and direct the issuance of process to the accused. In such a situation, the Magistrate is not obligated to follow the procedures outlined in Secs. 200 and 202 for taking cognizance of a case under Sec. 190(1)(a), although they have the option to do so.

3. They may take cognizance of the offence under Sec. 190(1)(a) based on the original complaint and proceed to examine the complainant and witnesses under Sec. 200 **(H.S. Bains v State AIR 1980 SC 1883).**

Sec. 190(1)(b) is applicable to any police report, whether concerning a cognizable or non-cognizable offence. If, ultimately, the Magistrate determines that the facts outlined in the final report constitute an offence, they can take cognizance of the offence under Sec. 190(1)(c), regardless of the police's contrary opinion expressed in the report.

In Mod Lal Songara v Prem Prakash @ Pappu (2013) 40 SCD 424, it was held that a Magistrate is entitled to take cognizance of an offence upon receipt of a police report, even if the report suggests no case against the accused. The Magistrate can consider witness statements from the police investigation, independently apply their mind to the facts, and take cognizance of the offence complained of, directing the issuance of process to the accused.

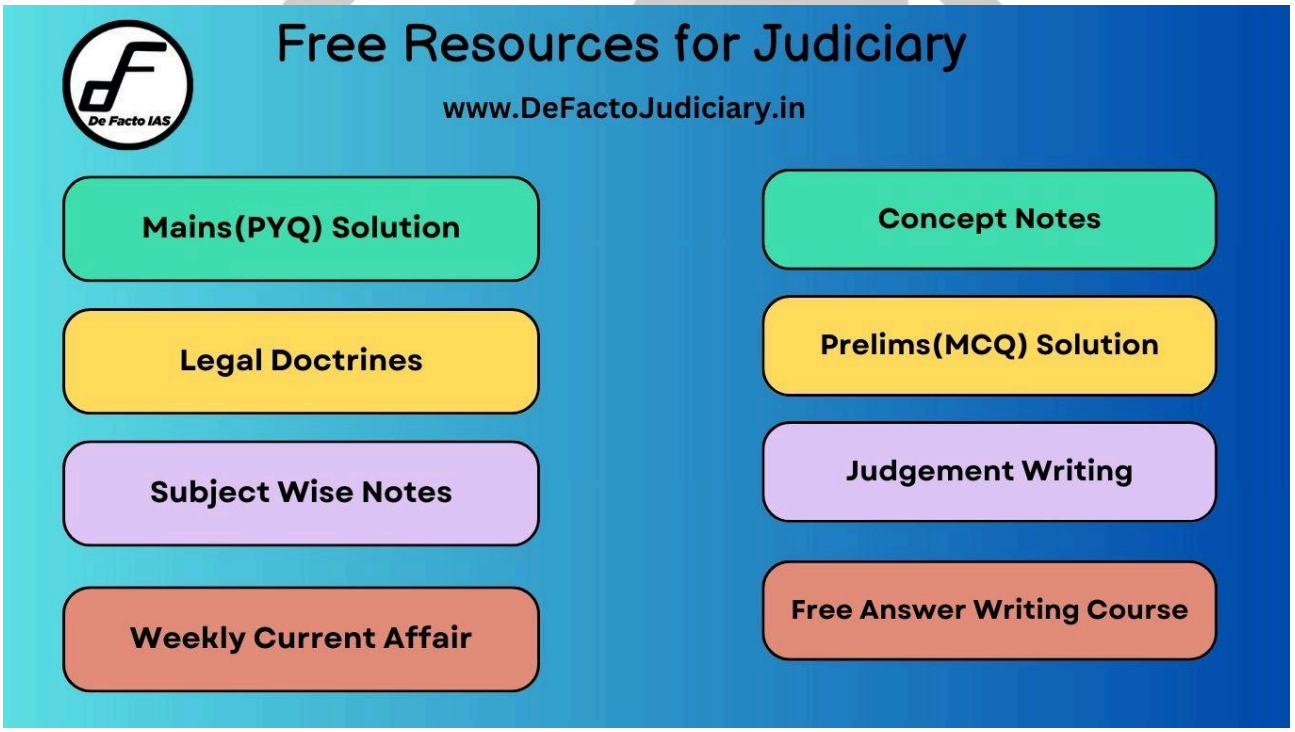
A 'complaint' under Sec. 190(1)(a) may be oral or written, and it may even be made by post. 'Information received from any person other than a police officer' [Sec. 190(1)(c)] refers to information that does not constitute a complaint or a police report. This clause applies only when the aggrieved party or their representative does not file a formal complaint.

The fundamental difference between a complaint [cl. (a)] and information [cl. (b)] is that a Magistrate acts on a complaint upon the complainant's request, while in the case of information, the Magistrate acts at their own discretion. Under Sec. 190(1)(c), a Magistrate can take cognizance of an offence without a complaint, only when they become aware that such an offence has been committed. Mere suspicion is insufficient.

Despite earlier refusing to take cognizance of a case based on a police report under Sec. 173, a Magistrate can still take cognizance of the offence upon receiving a complaint (or protest petition) with similar facts and allegations that were the subject of police investigation. Even if the Magistrate accepted the police's final report on the FIR, they are not legally barred from taking cognizance of the offence based on a subsequent complaint **(Gopal Vijay Verma v B.P. Sinha (1982) 3 SCC 510).**

Cognizance Taken by a Magistrate Not Empowered

If a Magistrate, not empowered to take cognizance of an offence under Sec. 190(1)(a)/(b), erroneously takes cognizance of an offence in good faith, his proceedings shall not be invalidated solely on the grounds of his lack of empowerment. However, if a Magistrate not empowered to take cognizance of an offence does so upon information received or based on his own knowledge under Sec. 190(1)(c), his proceedings shall be deemed void and ineffective [See Sec. 461(k)].



Cognizance of Offences by Courts of Session

Unless otherwise stipulated by the Code or any other law, a Sessions Court may not take cognizance of any offence as a court of original jurisdiction unless the case has been referred to it by a Magistrate under the Code (Sec. 193).

The purpose of this section is to ensure that the accused individual receives a preliminary inquiry, providing them with the opportunity to become acquainted with the circumstances of the alleged offence and to prepare their defence. A Sessions Court cannot initiate proceedings unless the case has been committed to it by a Magistrate, except in cases where it is explicitly authorised to take

cognizance of an offence. Therefore, the trial of a person not committed to the Sessions Court is beyond its jurisdiction.

However, a Sessions Judge can proceed against an individual, even if not committed for trial by a Magistrate, if their involvement in the commission of the crime is prima facie evident from the record, even in the absence of recorded evidence in the case **(Kishan Singh v State of Bihar (1993) 2 SCC 16).** In instances where the Sessions Court receives orders from the Supreme Court, its cognizance of the offence without committal proceedings is deemed valid.

Limitations on cognizance

Sections 195 to 199 serve as exceptions to the general principle that anyone with knowledge of an offence can initiate legal proceedings through a complaint, regardless of personal interest or involvement in the offence.

These sections, for valid policy reasons, impose restrictions on the broad authority of Magistrates to take cognizance of offences under Section 190. Therefore, when a Magistrate considers taking cognizance under Section 190, they must examine the complaint's facts before them to ascertain whether their authority under Section 190 is unaffected by any clauses in Sections 195 to 199.

An analysis of these sections reveals several limitations on the power to take cognizance of an offence:

1. Prosecution for contempt of lawful authority of public servants: Section 195(1)(b) prohibits any court from taking cognizance of offences punishable under Sections 172 to 188 IPC or any abetment or attempt to commit such offences, except upon a written complaint from the court or an authorised officer of the court or another court to which the former is subordinate. This section has been amended to clarify its scope concerning contempt of lawful authority of public servants, offences against public justice, and certain offences related to documents given in evidence.

2. Prosecution for offences against public justice: Section 195(1)(b) restricts courts from taking cognizance of offences punishable under various sections of the IPC related to false evidence, false statements, false personation, fraudulent actions in legal processes, and other related offences, when alleged to have been committed in or in relation to any court proceeding, except on the written complaint of that court or another subordinate court.

3. Prosecution of judges and public servants: Section 197(1) mandates that no court shall take cognizance of any offence alleged to have been committed by a judge, Magistrate, or public servant without the prior sanction of the appropriate government. This requirement applies when the accused individual holds a position not removable from office without government sanction, the alleged offence occurred while acting in official duty, and the accused is or was employed in connection with Union or State affairs.

4. Prosecution of members of armed forces: Section 197(2) stipulates that no court shall take cognizance of any offence alleged to have been committed by a member of the armed forces while acting in official duty without the prior sanction of the Central Government. Additionally, the State

Government may extend this requirement to certain categories of armed forces members charged with maintaining public order.

5. Prosecution for offences against marriage: Section 198(1) prohibits courts from taking cognizance of offences punishable under Chapter XX of the IPC, relating to deceitful cohabitation, bigamy, adultery, and similar offences, except upon a complaint by the aggrieved person.

6. Prosecution of husband or relatives for cruelty to wife: Section 198-A, introduced by the Criminal Law (Second Amendment) Act, 1983, restricts courts from taking cognizance of offences under Section 498-A IPC, relating to cruelty to a wife, except upon a police report or a complaint by the aggrieved person or certain relatives, indicating legislative concern to prevent harassment of innocent individuals.

De Facto IAS