

ROLE OF STATE GOVERNMENT IN PROSECUTING SENIOR POLICE OFFICERS IN MAHARASHTRA

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Abstract

The prosecution of public servants, particularly senior police officers, occupies a sensitive position within India's criminal justice system, as it involves balancing administrative efficiency with legal accountability. Police officers, while discharging official duties, are often protected from frivolous or vexatious litigation through procedural safeguards. A key safeguard is the requirement of prior sanction by the State Government before initiating prosecution, which acts as a filter against misuse of legal processes.

This requirement finds statutory recognition under provisions of the Code of Criminal Procedure, 1973 and has been retained in the Bharatiya Nagarik Suraksha Sanhita, 2023, alongside specific protections under the Maharashtra Police Act, 1951. However, the sanction mechanism has been criticised for potentially shielding errant officers and delaying justice, thereby raising concerns regarding transparency and accountability in governance.

The central issue addressed in this paper is the tension between protecting honest officials from undue harassment and ensuring accountability for abuse of power. The study adopts a doctrinal research methodology, analysing statutory provisions, judicial precedents, and policy considerations to evaluate the role of the State Government in prosecuting senior police officers in Maharashtra.

Introduction

The prosecution of public servants refers to the initiation of criminal proceedings against government officials for acts committed in the discharge of their official duties, particularly where such acts involve abuse of power, corruption, or violation of law.¹ In the Indian legal framework, this process is not absolute and is subject to procedural safeguards, most notably the requirement of prior sanction under Section 197 of the Code of Criminal Procedure, 1973, and relevant provisions under special statutes like the Prevention of Corruption Act, 1988.²

The concept of statutory protection for public servants is grounded in the need to ensure that honest officials are not subjected to frivolous or vexatious litigation for actions taken in good faith during the course of their duties.³ However, this protective mechanism often comes into tension with the principle of criminal liability, which mandates accountability of public officials, including senior police officers, for unlawful acts. This tension becomes particularly significant in cases involving abuse of authority, custodial violence, or corruption within the police force.

The relevance of studying senior police officers in Maharashtra lies in the state's complex administrative structure, high-profile criminal investigations, and frequent allegations of misuse of power by law enforcement authorities. Maharashtra, being one of India's most industrialised and populous states, presents a critical case study for examining how prosecutorial mechanisms operate in practice.⁴

A crucial aspect of this framework is the role of the State Government as the sanctioning authority. The requirement of prior sanction effectively places the State Government in a gatekeeping position, determining whether prosecution against a senior police officer can proceed.⁵ While this mechanism is intended to protect administrative efficiency, it also raises concerns about political influence, delays, and potential misuse as a shield against accountability.

This study seeks to address key research questions: whether the State Government functions as a genuine safeguard against frivolous prosecution or as a protective shield for errant officials, and whether the requirement of sanction contributes to delays that undermine the delivery of justice.⁶

¹ K.D. Gaur, *Criminal Law: Cases and Materials* 312 (LexisNexis, Gurgaon, 9th edn., 2020).

² The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197; The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 19.

³ Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44.

⁴ Upendra Baxi, "Crisis of the Indian Legal System" 98 (Vikas Publishing House, New Delhi, 1982).

⁵ State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339.

⁶ Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64.

Legal Framework Governing Prosecution

The prosecution of senior police officers in Maharashtra is governed by a complex legal framework comprising statutory protections, procedural safeguards, and judicial doctrines. These provisions aim to strike a balance between ensuring accountability of public officials and protecting them from frivolous or vexatious litigation arising out of the discharge of official duties.

(a) Section 197 CrPC

Section 197 of the Code of Criminal Procedure, 1973 mandates prior sanction of the State Government before prosecuting public servants, including police officers who are not removable from office without government approval.⁷ This provision acts as a procedural safeguard, ensuring that officials are not subjected to unnecessary criminal proceedings for acts performed in their official capacity.

The applicability of this provision depends on whether the alleged act has a reasonable nexus with the discharge of official duty. The Supreme Court has consistently held that sanction is mandatory where such a nexus exists.⁸ The doctrine of “official duty” has been interpreted broadly to include acts that are directly or reasonably connected with official functions, even if such acts are in excess of authority or performed negligently.⁹ However, protection is not absolute; acts done with mala fide intent or entirely outside the scope of duty do not attract such immunity.¹⁰

Thus, Section 197 operates as a threshold barrier, requiring judicial scrutiny before initiation of prosecution and placing significant responsibility on the State Government in granting or refusing sanction.

(b) Bharatiya Nagarik Suraksha Sanhita (BNSS)

The Bharatiya Nagarik Suraksha Sanhita, 2023, which replaces the Code of Criminal Procedure, retains the essential framework of prior sanction for prosecution of public servants.¹¹ The continuity of this requirement reflects the legislative intent to preserve institutional safeguards for officials performing sensitive functions.

At the same time, the BNSS introduces procedural reforms aimed at improving efficiency, transparency, and accountability in criminal justice administration. These include streamlined investigation processes and time-bound procedures, which may indirectly impact the manner in which prosecution against senior police officers is initiated and conducted.¹² Despite these reforms, the fundamental principle of requiring prior governmental sanction remains intact, thereby continuing the protective shield available under the earlier regime.

(c) Maharashtra Police Act, 1951

The Maharashtra Police Act, 1951 provides additional statutory protection to police officers for acts done in good faith in pursuance of their official duties.¹³ This protection serves to reinforce the safeguards available under general criminal procedure law by limiting liability where actions are undertaken honestly and without malicious intent.

The Act recognises the challenging nature of policing and seeks to ensure that officers are not deterred from performing their duties due to fear of legal repercussions.¹⁴ However, the requirement of “good faith” introduces an element of accountability, as protection is denied in cases involving abuse of power or mala fide conduct.

(d) Combined Interpretation

A combined reading of Section 197 CrPC (and its counterpart under BNSS) and the Maharashtra Police Act reveals overlapping layers of protection available to senior police officers. While Section 197 provides procedural immunity through the requirement of prior sanction, the Maharashtra Police Act offers substantive protection based on the principle of good faith.¹⁵

⁷ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

⁸ *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

⁹ *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

¹⁰ *Prakash Singh Badal v. State of Punjab*, (2007) 1 SCC 1.

¹¹ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 218.

¹² *Id.*

¹³ The Maharashtra Police Act, 1951 (Bom. Act 22 of 1951), s. 161.

¹⁴ *Id.*

¹⁵ *Supra* note 1; *Supra* note 7.

In terms of hierarchy, central legislation such as the CrPC/BNSS prevails in procedural matters, whereas state legislation supplements these provisions by providing additional safeguards.¹⁶ The interplay of these laws creates a robust yet complex framework, often leading to interpretative challenges in determining the scope and applicability of protection.

Overall, the legal framework reflects an attempt to balance two competing interests: safeguarding public officials from undue harassment and ensuring their accountability under the rule of law.

Role of State Government in Granting Sanction

The requirement of prior sanction for prosecuting public servants, particularly senior police officers, is a significant safeguard embedded within Indian criminal jurisprudence. Under the Code of Criminal Procedure, 1973, the State Government acts as the competent authority to grant or refuse sanction for prosecution in cases involving police officers serving in connection with the affairs of the State.¹⁷ In Maharashtra, this authority is primarily exercised through the Home Department, which evaluates requests for sanction before permitting criminal proceedings to be initiated.

(a) Authority to Grant Sanction

The State Government holds exclusive authority to grant sanction for prosecution of senior police officials, especially those belonging to the Indian Police Service or Maharashtra Police Service.¹⁸ This power stems from the recognition that such officers perform sovereign and sensitive functions requiring protection from frivolous litigation. However, the grant or refusal of sanction is not merely a mechanical exercise but involves administrative discretion.¹⁹ The government must assess whether the alleged act has a reasonable nexus with official duties and whether prosecution is warranted in the interests of justice.

(b) Nature of Power

The nature of the sanctioning power has been a subject of judicial debate, oscillating between administrative and quasi-judicial character. The Supreme Court has clarified that although the power is administrative, it must be exercised with due application of mind and cannot be arbitrary.²⁰ The sanctioning authority is required to consider relevant materials, including investigation reports and evidence, before arriving at a decision.²¹ Failure to apply mind or mechanical approval renders the sanction invalid in law.²² Thus, the process assumes a quasi-judicial flavour, ensuring fairness and accountability in decision-making.

(c) Purpose of Sanction

The primary objective of requiring prior sanction is to protect public servants from malicious or vexatious prosecution arising out of acts performed in the discharge of official duties.²³ It ensures that honest officers are not deterred from performing their functions due to fear of litigation. At the same time, it seeks to strike a balance by allowing prosecution in genuine cases of abuse of power.

Sanction, therefore, operates as a crucial filter against false or retaliatory cases, particularly in politically sensitive or high-profile matters involving senior police officers.²⁴ However, this protective mechanism has also been criticised for being misused to shield errant officials and delay accountability.

(d) Practical Process in Maharashtra

In Maharashtra, the process of granting sanction typically involves multiple stages of bureaucratic scrutiny. Initially, the investigating agency forwards the proposal for sanction along with relevant records to the State Government.²⁵

¹⁶ The Constitution of India, art. 246.

¹⁷ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

¹⁸ Id.

¹⁹ M.P. Jain, *Indian Constitutional Law* 1234 (LexisNexis, New Delhi, 8th edn., 2018).

²⁰ *State of Himachal Pradesh v. Nishant Sareen*, (2010) 14 SCC 527.

²¹ *State of Bihar v. P.P. Sharma*, 1992 Supp (1) SCC 222.

²² *Mohd. Iqbal Ahmed v. State of Andhra Pradesh*, (1979) 4 SCC 172.

²³ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197; see also *Matajog Dobby v. H.C. Bhari*, AIR 1956 SC 44.

²⁴ *Vineet Narain v. Union of India*, (1998) 1 SCC 226.

²⁵ Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, 2003).

The matter is then examined by the concerned administrative department, often in consultation with legal advisors and senior officials.

The Home Department plays a central role in this process, as it is responsible for evaluating the merits of the case and making recommendations.²⁶ In certain instances, inputs from vigilance authorities or departmental heads are also considered before arriving at a final decision.

Despite the structured procedure, the process is often criticised for significant delays and lack of transparency. Bureaucratic hurdles, inter-departmental consultations, and political considerations frequently prolong the decision-making timeline, thereby affecting the timely prosecution of cases. Such delays undermine the objective of accountability and may weaken the evidentiary basis of prosecution over time.

Judicial Interpretation on Role of State Government

Judicial interpretation has played a decisive role in defining the contours of the State Government's authority in prosecuting senior police officers, particularly in relation to the requirement of prior sanction under Section 197 of the Code of Criminal Procedure, 1973.²⁷ Courts have consistently evolved principles to balance the need for administrative protection of public servants with the imperative of accountability.

A foundational principle laid down by the judiciary is that sanction is required only when the alleged act has a reasonable nexus with the discharge of official duty. In *Matajog Dobey v. H.C. Bhari*, the Supreme Court held that there must be a direct and reasonable connection between the act complained of and official functions.²⁸ This position was reaffirmed in *P. Arulswami v. State of Madras*, where the Court clarified that acts not falling within the scope of official duty do not attract the protection of sanction.²⁹

Further, courts have emphasised that sanction is not required where the act is manifestly illegal or unrelated to official duty. In *Prakash Singh Badal v. State of Punjab*, it was held that offences such as corruption cannot be considered as acts done in discharge of official duty.³⁰ Similarly, in *State of Orissa v. Ganesh Chandra Jew*, the Court reiterated that protection under Section 197 CrPC cannot be extended to acts that have no nexus with official responsibilities.³¹

However, judicial trends also indicate a broader interpretation of "official duty" in certain contexts. In *B. Saha v. M.S. Kochar*, the Supreme Court observed that even if a public servant exceeds his authority, sanction may still be required provided there exists a reasonable connection with official duty.³² This principle was further developed in *Devinder Singh v. State of Punjab*, where the Court held that the test is not the legality of the act but its connection with official functions.³³

In cases involving custodial violence and abuse of power, courts have adopted a stricter approach. In *D.K. Basu v. State of West Bengal*, the Supreme Court underscored the importance of safeguarding fundamental rights against police excesses.³⁴ Likewise, in encounter-related cases such as *Om Prakash v. State of Jharkhand*, it was held that fake encounters cannot be shielded under the guise of official duty.³⁵

Thus, judicial interpretation reflects a nuanced approach: while protecting honest officers from vexatious litigation, courts have refused to extend immunity to acts of corruption, personal misconduct, or gross abuse of power. The evolving jurisprudence indicates a shift towards accountability, ensuring that the requirement of sanction does not become a tool for impunity but remains a safeguard for legitimate official actions.

Challenges in State Government's Role

The role of the State Government in prosecuting senior police officers in Maharashtra is fraught with several structural and procedural challenges that undermine the effectiveness of accountability mechanisms.

²⁶ Id.

²⁷ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

²⁸ *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

²⁹ *P. Arulswami v. State of Madras*, AIR 1967 SC 776.

³⁰ *Prakash Singh Badal v. State of Punjab*, (2007) 1 SCC 1.

³¹ *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40

³² *B. Saha v. M.S. Kochar*, (1979) 4 SCC 177.

³³ *Devinder Singh v. State of Punjab*, (2016) 12 SCC 87.

³⁴ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

³⁵ *Om Prakash v. State of Jharkhand*, (2012) 12 SCC 72.

a) **Delay in Grant of Sanction**

One of the most persistent issues is the delay in granting sanction for prosecution under Section 197 of the Code of Criminal Procedure, 1973.³⁶ The requirement of prior sanction, though intended to protect honest officers from frivolous litigation, often results in procedural bottlenecks. Administrative inertia, inter-departmental consultations, and lack of fixed timelines contribute to prolonged delays.³⁷ Such delays not only weaken the prosecution's case but also erode public confidence in the justice delivery system.³⁸ The Supreme Court has repeatedly emphasized that sanction must be granted or refused within a reasonable time to prevent miscarriage of justice.³⁹

b) **Political Influence**

The executive control of the State Government over the police machinery raises serious concerns about political interference. Since senior police officers often operate within the framework of the executive, decisions regarding sanction for prosecution may be influenced by political considerations.⁴⁰ This creates a risk of selective prosecution or protection, depending on the alignment of the officer with the ruling establishment. The judgment in *Prakash Singh v. Union of India* highlighted the need for insulating police from undue political pressure, yet implementation remains inconsistent.⁴¹

c) **Misuse of Protection**

While statutory protection is necessary to ensure fearless discharge of official duties, it is sometimes misused to shield corrupt or abusive officers.⁴² The broad interpretation of "official duty" allows authorities to deny sanction even in cases involving serious misconduct, including custodial violence or corruption. Institutional reluctance to prosecute fellow officers further compounds the problem, creating a culture of impunity within the police system.⁴³

d) **Lack of Transparency**

Another major challenge is the lack of transparency in the decision-making process for granting sanction. There are no uniformly prescribed timelines or mandatory disclosure requirements, leading to opacity and arbitrariness.⁴⁴ Moreover, judicial review of sanction decisions is limited, as courts generally refrain from interfering unless the decision is manifestly arbitrary or mala fide.⁴⁵ This lack of oversight weakens accountability and raises concerns under the principles of fairness and equality enshrined in the Constitution.

Constitutional & Accountability Perspective

The prosecution of senior police officers in Maharashtra raises significant constitutional concerns, particularly in light of the principles of equality, personal liberty, and the rule of law. Article 14 of the Constitution guarantees equality before the law and equal protection of the laws, implying that no individual, including public officials, should enjoy arbitrary immunity from prosecution. However, the requirement of prior sanction under Section 197 of the Code of Criminal Procedure, 1973 creates a distinct procedural shield for police officers, often resulting in differential treatment when compared to ordinary citizens.⁴⁶

Article 21, which guarantees the right to life and personal liberty, assumes particular importance in cases involving custodial violence and police excesses. The Supreme Court has consistently held that custodial torture and extrajudicial actions violate the fundamental right to life and dignity.⁴⁷ In *D.K. Basu v. State of West Bengal*, the Court laid down guidelines to prevent custodial abuse and emphasised accountability of law enforcement

³⁶ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

³⁷ Law Commission of India, "41st Report on the Code of Criminal Procedure, 1898" (1969).

³⁸ M.P. Jain, *Indian Constitutional Law* 1234 (LexisNexis, New Delhi, 8th edn., 2018).

³⁹ *Subramanian Swamy v. Manmohan Singh*, (2012) 3 SCC 64.

⁴⁰ K. Chandru, *Listen to My Case* 210 (Bar & Bench Publishing, Chennai, 2017).

⁴¹ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

⁴² The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

⁴³ Upendra Baxi, "Crisis of the Indian Legal System" 45 *Journal of Indian Law Institute* 112 (1982).

⁴⁴ The Constitution of India, art. 14.

⁴⁵ *State of Himachal Pradesh v. Nishant Sareen*, (2010) 14 SCC 527.

⁴⁶ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

⁴⁷ The Constitution of India, art. 21.

officials.⁴⁸ Similarly, in *Prakash Singh v. Union of India*, the Court stressed the need for police reforms to ensure transparency and accountability in policing.⁴⁹

Despite these constitutional safeguards, the practical implementation of accountability mechanisms is often hindered by executive control over sanction for prosecution. This raises concerns regarding the dilution of the rule of law, which mandates that all authorities are subject to legal accountability.⁵⁰ The discretionary power of the State Government in granting or refusing sanction may lead to misuse, thereby protecting errant officers and undermining public confidence in the justice system.

The debate surrounding sanction requirements thus centres on whether such provisions are necessary to protect honest officers from frivolous litigation or whether they create an unjustified layer of protection that violates Article 14. While the rationale behind sanction is to ensure efficient functioning of public administration, its misuse can result in denial of justice, particularly in serious cases involving abuse of power.⁵¹

Therefore, a careful balance must be struck between safeguarding police officers from vexatious prosecution and ensuring accountability in cases of misconduct. Strengthening judicial oversight and ensuring transparency in sanction decisions may serve as crucial steps toward aligning the existing framework with constitutional mandates.

Comparative Perspective

A comparative analysis of legal frameworks governing prosecution of public officials reveals significant contrasts with India's sanction-based model. In the United Kingdom, there is no general requirement of prior governmental sanction for prosecuting police officers. Prosecution decisions are primarily undertaken by the Crown Prosecution Service, ensuring institutional independence and minimizing executive interference. This approach enhances accountability by allowing legal scrutiny without procedural barriers.

In the United States, the doctrine of “qualified immunity” protects police officers from liability unless they violate clearly established statutory or constitutional rights. While this doctrine shields officers from frivolous litigation, it has been widely criticised for limiting accountability in cases of misconduct.⁵² Unlike India, where prior sanction under Section 197 of the Code of Criminal Procedure acts as a procedural safeguard, the U.S. model focuses on judicially evolved immunity doctrines rather than executive approval.

The Indian framework, particularly in states like Maharashtra, places the State Government in a central role as the sanctioning authority. While intended to protect honest officers from vexatious prosecution, this mechanism often leads to delays and potential misuse due to political or administrative considerations.⁵³

Lessons for India include the need for an independent prosecutorial mechanism, as seen in the UK, and a more clearly defined standard of immunity similar to the U.S. doctrine. A balanced approach would ensure accountability while safeguarding officers from undue harassment, thereby strengthening the rule of law.

Suggestions & Reforms

To address the challenges associated with the prosecution of senior police officers, several reforms are necessary. Firstly, statutory time limits should be imposed for the grant or refusal of sanction under Section 197 of the Code of Criminal Procedure. This would prevent undue delays and ensure timely administration of justice.

Secondly, the establishment of an independent sanctioning authority—comprising judicial or quasi-judicial members—would significantly reduce the risk of bias inherent in executive decision-making. Such a body could function similarly to oversight institutions recommended by various commissions on police reforms.

Thirdly, greater transparency must be introduced in the sanctioning process. Decisions should be accompanied by reasoned orders, subject to judicial review, thereby enhancing accountability and public trust.

Additionally, a clear distinction must be drawn between acts performed in the course of official duty and acts constituting serious criminal misconduct. Judicial precedents have emphasised that protection under Section 197

⁴⁸ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

⁴⁹ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

⁵⁰ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 110 (Macmillan, London, 10th edn., 1959).

⁵¹ *Subramanian Swamy v. Manmohan Singh*, (2012) 3 SCC 64.

⁵² *R v. Metropolitan Police Commissioner*, (1968) 2 QB 118.

⁵³ Law Commission of India, “41st Report on the Code of Criminal Procedure, 1898” (1969).”

should not extend to acts that are manifestly illegal or unrelated to official functions. Codifying this distinction would reduce ambiguity and prevent misuse.

Collectively, these reforms would strike a balance between protecting honest officers and ensuring accountability for misconduct, thereby strengthening the integrity of the criminal justice system.

Conclusion (200–250 words)

The prosecution of senior police officers in Maharashtra highlights the complex interplay between police autonomy and public accountability. The requirement of prior sanction under Section 197 of the Code of Criminal Procedure reflects a legislative intent to protect public servants from vexatious litigation while enabling them to perform their duties without fear. However, its practical application reveals significant challenges.

The State Government's role as the sanctioning authority is both crucial and problematic. While it provides a necessary safeguard, it also creates opportunities for delay, bias, and potential misuse. Judicial interventions have sought to clarify the scope and limitations of sanction, yet inconsistencies persist in its application.

Balancing the need for effective policing with the principles of accountability and rule of law remains a fundamental concern. Excessive protection may foster impunity, whereas inadequate safeguards may deter honest officers from performing their duties.

Therefore, reforms aimed at introducing transparency, independence, and procedural clarity are essential. The establishment of an impartial sanctioning mechanism and the imposition of clear guidelines would ensure that the process serves its intended purpose.

In conclusion, while the State Government's role in prosecuting senior police officers is indispensable, it requires structural reform to prevent misuse and to uphold constitutional values of fairness, equality, and justice.

References

1. The Code of Criminal Procedure, 1973 (Act 2 of 1974).
2. The Constitution of India.
3. H. L. A. Hart, *Punishment and Responsibility* (Oxford University Press, Oxford, 2nd edn., 2008).
4. Law Commission of India, "41st Report on the Code of Criminal Procedure, 1898" (1969).
5. Law Commission of India, "245th Report on Arrears and Backlog" (2014).
6. Second Administrative Reforms Commission, "Fifth Report on Public Order" (2007).
7. *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.
8. *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.
9. *Prakash Singh v. Union of India*, (2006) 8 SCC 1.
10. *Subramanian Swamy v. Manmohan Singh*, (2012) 3 SCC 64.
11. *Manoj Narula v. Union of India*, (2014) 9 SCC 1.
12. *Devinder Singh v. State of Punjab*, (2016) 12 SCC 87.