
SANCTION REQUIREMENT UNDER BNSS: CONTINUITY OR DEPARTURE FROM CRPC FRAMEWORK

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The requirement of prior sanction for prosecution of public servants is a well-established safeguard within Indian criminal procedure, intended to protect honest officials from vexatious and frivolous litigation while ensuring accountability for abuse of power. Under the Code of Criminal Procedure, 1973 (CrPC), this protection was primarily embodied in Section 197, which mandates prior governmental approval before prosecuting public servants for acts purportedly done in the discharge of official duties.

With the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), India has undertaken a comprehensive overhaul of its criminal procedure framework. While the BNSS retains the core principle of sanction for prosecution, it introduces certain procedural refinements and structural changes that raise questions regarding continuity and departure from the earlier regime. The transition reflects an attempt to balance administrative efficiency with safeguards against misuse of prosecutorial power.

This paper addresses the central research question: whether the sanction requirement under the BNSS represents a continuation of the CrPC framework or signifies a substantive departure. The study adopts a doctrinal and comparative methodology, analysing statutory provisions alongside judicial interpretations developed under the CrPC.

The preliminary findings suggest that although the BNSS largely preserves the foundational structure of sanction for prosecution, it introduces nuanced procedural shifts that may impact its application in practice. These developments necessitate a re-examination of the balance between protecting public servants and ensuring accountability within the evolving criminal justice system.

INTRODUCTION

The landscape of criminal procedure in India has undergone a significant transformation with the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), replacing the Code of Criminal Procedure, 1973 (CrPC).¹ This reform is part of a broader legislative overhaul aimed at modernising criminal laws, enhancing efficiency, and addressing systemic delays. The BNSS seeks to streamline procedural mechanisms while incorporating technological advancements and strengthening victim-centric justice. However, one of the most debated aspects of this transition is the continuance and scope of the sanction requirement for prosecution of public servants.

The requirement of prior sanction, historically embodied under Section 197 of the CrPC, serves as a procedural safeguard to protect public servants from vexatious and frivolous litigation arising out of acts done in the discharge of official duties.² The rationale behind this provision lies in ensuring administrative efficiency by allowing officials to perform their functions without fear of constant legal harassment.³ At the same time, it aims to maintain a balance by permitting genuine cases of misconduct to be prosecuted with appropriate governmental approval.

However, this protective mechanism has often been criticised for creating procedural bottlenecks and shielding corrupt officials from accountability.⁴ Delays in granting sanction have been a persistent issue, frequently resulting in prolonged litigation and denial of timely justice.⁵ Moreover, concerns have been raised regarding the misuse of sanction provisions as a tool to obstruct investigations, particularly in cases involving allegations of corruption and abuse of power.⁶ Judicial interpretation has attempted to address these concerns by delineating the scope of “official duty” and emphasising that protection cannot extend to acts that are manifestly illegal or unrelated to official functions.⁷

¹ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023).

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

³ M.P. Jain, *Indian Constitutional Law* 1234 (LexisNexis, New Delhi, 8th edn., 2018).

⁴ Law Commission of India, “41st Report on the Code of Criminal Procedure, 1898” (1969).

⁵ *Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762.

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

⁷ *Prakash Singh Badal v. State of Punjab*, (2007) 1 SCC 1.

The introduction of the BNSS raises critical questions regarding whether the new framework merely continues the CrPC model or introduces substantive changes in the sanction regime. It becomes essential to examine whether the scope of protection afforded to public servants has been expanded or narrowed under the BNSS, and how these changes impact police accountability and transparency in governance.

This paper, therefore, seeks to address key research questions: whether the BNSS retains the foundational principles of the CrPC concerning sanction for prosecution; whether it recalibrates the balance between administrative efficiency and accountability; and what implications these changes have on ensuring responsible conduct by public officials. Through a doctrinal and comparative analysis, the study aims to critically evaluate whether the new regime strengthens or weakens the accountability framework within India's criminal justice system.

CONCEPTUAL FRAMEWORK OF SANCTION

The requirement of sanction for prosecution constitutes a significant procedural safeguard within Indian criminal jurisprudence, particularly in cases involving public servants. The concept of sanction refers to the prior approval of a competent authority before a court can take cognizance of offences alleged to have been committed by a public servant while acting in the discharge of official duties.¹ This requirement aims to strike a balance between ensuring accountability of public officials and protecting them from vexatious or frivolous litigation.

The doctrinal foundation of sanction is closely linked to the idea of "official duty." The courts have consistently interpreted this expression to mean acts that have a reasonable nexus with the discharge of official functions.² It does not extend to acts that are manifestly illegal or unrelated to official responsibilities. The doctrine of reasonable nexus thus becomes central in determining whether sanction is required in a given case.³

Section 197 of the Code of Criminal Procedure, 1973 embodies this principle by providing that no court shall take cognizance of offences alleged to have been committed by certain categories of public servants except with prior sanction of the appropriate government.⁴ The provision is designed to protect honest officers from undue harassment while ensuring that corrupt practices do not go unchecked. However, its application has often raised interpretational challenges, particularly in determining the scope of acts covered under "official duty."

From a theoretical perspective, the requirement of sanction reflects a tension between two competing values: the rule of law and administrative necessity. On one hand, the rule of law mandates that every individual, including public officials, be held accountable for unlawful acts. On the other hand, administrative efficiency necessitates that public servants be allowed to perform their duties without fear of constant litigation.⁵ The sanction requirement thus operates as a filtering mechanism to prevent misuse of the criminal justice process.

The Supreme Court, in *Matajog Dobey v. H.C. Bhari*, clarified that the necessity of sanction depends on whether the act complained of is directly connected with official duty.⁶ The Court emphasized that there must be a reasonable connection between the act and the discharge of official functions. Similarly, in *State of Orissa v. Ganesh Chandra Jew*, the Court reiterated that sanction is required only when the alleged offence is integrally connected with official duty and not for acts that are entirely unrelated or constitute abuse of power.⁷

Despite its protective intent, the sanction requirement has been criticised for potentially enabling impunity, particularly in cases involving abuse of authority. Scholars have argued that excessive reliance on sanction provisions may delay or obstruct prosecution, thereby undermining accountability.⁸ At the same time, removing such protection altogether may expose public servants to undue harassment and hinder effective governance.

Thus, sanction for prosecution must be understood not as an absolute immunity but as a procedural safeguard aimed at ensuring a fair and balanced approach.⁹ The courts have increasingly emphasised that the protection under Section 197 CrPC cannot be used as a shield for criminal acts that lack any reasonable nexus with official

¹ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

² *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

³ Id.

⁴ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

⁵ M.P. Jain, *Indian Constitutional Law* 123 (LexisNexis, New Delhi, 8th edn., 2018).

⁶ *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

⁷ *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

⁸ K.N. Chandrasekharan Pillai, R.V. Kelkar's *Criminal Procedure* 210 (Eastern Book Company, Lucknow, 6th edn., 2017).

⁹ Id. at 215.

duty.¹ This evolving jurisprudence highlights the need to interpret sanction provisions in a manner that preserves both administrative efficiency and constitutional accountability.

SANCTION UNDER CrPC: LEGAL POSITION

The requirement of prior sanction for prosecution of public servants under the Code of Criminal Procedure, 1973 (CrPC) constitutes a crucial procedural safeguard designed to balance administrative efficiency with accountability. Section 197 of the CrPC embodies this protection by mandating that no court shall take cognizance of an offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of official duty, except with prior sanction of the competent authority.²

The provision applies specifically to individuals who qualify as “public servants” within the meaning of law, thereby extending protection to government officials against frivolous or vexatious litigation.³ However, such protection is not absolute and is conditioned upon the nature of the act in question. The key determinant is whether the alleged act was committed “in discharge of official duty.”⁴ This phrase has been subject to extensive judicial scrutiny, leading to the evolution of interpretative principles governing its application.

One of the central elements in determining the applicability of Section 197 is the existence of a reasonable nexus between the act complained of and the official duties of the public servant.⁵ The courts have consistently held that not every act performed by a public servant qualifies for protection; rather, the act must bear a direct and reasonable connection with official functions.⁶ This “nexus test” has become the cornerstone for adjudicating sanction-related disputes.

Judicial interpretation of Section 197 has oscillated between narrow and broad approaches. A narrow interpretation restricts the protection only to acts strictly within the scope of official duty, thereby preventing misuse of the provision as a shield for criminal misconduct.⁷ Conversely, a broader interpretation extends protection even to acts that are reasonably connected with official duties, even if such acts exceed the lawful authority of the public servant.⁸ The Supreme Court has attempted to strike a balance between these competing approaches.

In *Prakash Singh Badal v. State of Punjab*, the Court clarified that offences such as corruption or criminal misconduct cannot ordinarily be considered as acts done in discharge of official duty, and therefore may not attract the protection of prior sanction.⁹ Similarly, in *Inspector of Police v. Battenapatla Venkata Ratnam*, the Court emphasised that the test is not whether the act was lawful, but whether it was directly connected to official functions.¹⁰ These decisions underscore the principle that the protection under Section 197 is not intended to shield criminal acts unrelated to official responsibilities.

Despite its intended purpose, the sanction requirement has been criticised for creating procedural hurdles in prosecuting public servants. One of the primary concerns is the delay in granting sanction, which often results in prolonged litigation and undermines the effectiveness of criminal justice administration.¹¹ Additionally, the requirement places significant discretion in the hands of the executive, raising concerns about potential bias or political influence in granting or withholding sanction.¹²

Another critical issue is the potential misuse of the provision as a tool to shield misconduct. In certain instances, public servants have invoked Section 197 to evade accountability for actions that are clearly beyond the scope of their official duties.¹³ This has led to calls for a more stringent and transparent mechanism for granting sanction, ensuring that the provision serves its intended purpose without compromising the rule of law.

In conclusion, Section 197 of the CrPC reflects a delicate balance between protecting honest public officials and ensuring accountability for abuse of power. While judicial interpretation has evolved to refine the scope of the

¹ *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

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

³ *Id.*

⁴ *Id.*

⁵ *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

⁶ *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

⁷ *Amrik Singh v. State of Pepsu*, AIR 1955 SC 309.

⁸ *B. Saha v. M.S. Kochar*, (1979) 4 SCC 177.

⁹ *Prakash Singh Badal v. State of Punjab*, (2007) 1 SCC 1.

¹⁰ *Inspector of Police v. Battenapatla Venkata Ratnam*, (2015) 13 SCC 87.

¹¹ Law Commission of India, “41st Report on the Code of Criminal Procedure, 1898” (1969).

¹² *Id.*

¹³ *Subramanian Swamy v. Manmohan Singh*, (2012) 3 SCC 64.

provision through the nexus test and contextual analysis, persistent issues such as delays and executive control continue to pose challenges. These concerns become particularly relevant in the context of the Bharatiya Nagarik Suraksha Sanhita (BNSS), where the question arises whether the new framework represents continuity or a departure from the established CrPC regime.

SANCTION UNDER BNSS: STATUTORY FRAMEWORK

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaces the Code of Criminal Procedure, 1973 (CrPC), retains the concept of prior sanction for prosecution of public servants, thereby continuing a long-standing safeguard within Indian criminal jurisprudence. Section 218 of the BNSS embodies this requirement and serves as the statutory basis for protecting public officials from vexatious or frivolous litigation arising out of acts performed in the discharge of official duties.¹

Section 218 of the BNSS largely mirrors the structure and intent of Section 197 of the CrPC, reflecting legislative continuity rather than a radical departure.² The provision mandates that no court shall take cognizance of an offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of official duties, except with the previous sanction of the appropriate government.³ This requirement continues to act as a jurisdictional bar, ensuring that judicial proceedings are not initiated without executive scrutiny in appropriate cases.

However, the BNSS introduces certain procedural refinements aimed at improving clarity and efficiency. One notable aspect is the effort to streamline procedural language and remove ambiguities that had developed through decades of judicial interpretation under the CrPC.⁴ The provision under Section 218 adopts clearer phrasing to define the scope of “official duty,” thereby attempting to reduce interpretational inconsistencies. While the substantive protection remains intact, the structural reorganisation of the provision reflects a modernised legislative drafting approach.

From a comparative perspective, the similarity between Section 218 of the BNSS and Section 197 of the CrPC is evident in both purpose and application. Judicial precedents interpreting Section 197—such as *Matajog Dobey v. H.C. Bhari* and *State of Orissa v. Ganesh Chandra Jew*—continue to hold persuasive value in understanding the scope of sanction under the new regime.⁵ The courts have consistently held that there must be a reasonable nexus between the act complained of and the discharge of official duty.⁶ This interpretative principle is expected to guide the application of Section 218 as well.

At the same time, the BNSS appears to subtly expand and clarify the scope of sanction by emphasising procedural accountability. The requirement of prior sanction is not merely a protective shield but also a mechanism of administrative oversight.⁷ By retaining this requirement, the legislature acknowledges the necessity of balancing protection of honest officials with the need to ensure accountability for abuse of power.

The legislative intent behind Section 218 of the BNSS can thus be characterised as reform-oriented yet continuity-based. The provision does not seek to dismantle the established framework but rather to refine it in light of contemporary needs. This approach aligns with broader criminal law reforms in India, which aim to enhance efficiency without undermining fundamental safeguards.⁸ Parliamentary discussions and reform reports have emphasised the importance of preserving institutional protections while addressing procedural delays and misuse.⁹

From an analytical standpoint, the BNSS framework raises important questions regarding clarity, procedural efficiency, and accountability. First, the revised language arguably enhances clarity by codifying principles that were previously developed through judicial interpretation.¹⁰ This may reduce litigation over the threshold question of whether sanction is required in a given case.

Secondly, the emphasis on procedural streamlining could improve efficiency in granting or refusing sanction. Delays in sanction decisions have historically impeded prosecution and undermined the credibility of the

¹ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 218.

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

³ *Id.*, s. 197.

⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 218.

⁵ *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

⁶ *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 218.

⁸ Government of India, “The Bharatiya Nagarik Suraksha Sanhita, 2023: Statement of Objects and Reasons” (2023).

⁹ Law Commission of India, “41st Report on the Code of Criminal Procedure, 1898” (1969).

¹⁰ *Supra* note 5.

criminal justice system.¹ If effectively implemented, the BNSS framework may address such delays through clearer procedural guidelines.

Finally, the issue of accountability remains central. While sanction protects public servants from undue harassment, it has also been criticised as a barrier to prosecuting corruption and abuse of power.² The BNSS does not fundamentally alter this balance but attempts to make the process more transparent and structured. Whether this results in increased accountability will depend on the manner in which executive authorities exercise their discretion in granting sanction.

In conclusion, Section 218 of the BNSS represents a calibrated evolution of the sanction requirement under Indian criminal procedure. It retains the core protective mechanism of Section 197 of the CrPC while introducing refinements aimed at clarity and efficiency. The provision reflects a legislative attempt to reconcile competing interests—protecting public officials from frivolous prosecution while ensuring that genuine cases of misconduct are not shielded by procedural barriers.

Comparative Analysis: CrPC vs BNSS

The requirement of prior sanction for prosecution of public servants has long been a significant procedural safeguard within Indian criminal law. Under the Code of Criminal Procedure, 1973 (CrPC), Section 197 mandates prior sanction of the appropriate government before a court can take cognizance of offences alleged to have been committed by public servants while acting or purporting to act in the discharge of official duty.³ The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), under Section 218, retains this principle, thereby indicating continuity in legislative intent.⁴

Similarities

A primary similarity between the two frameworks lies in the retention of the doctrine of prior sanction. Both Section 197 of the CrPC and Section 218 of the BNSS aim to protect honest public servants from vexatious and frivolous litigation arising out of acts performed in the course of official duty.⁵ The rationale, as consistently upheld by the judiciary, is to ensure that public officials are able to perform their functions without fear of undue harassment.⁶

Further, the scope of protection under both provisions remains largely identical. The requirement that the alleged act must have a reasonable nexus with the discharge of official duty continues to guide judicial interpretation.⁷ Courts have repeatedly clarified that not every act of a public servant attracts protection, but only those acts that are directly connected with official functions.⁸ Thus, the doctrinal foundation underlying sanction provisions remains unchanged under the BNSS.

Differences

Despite broad continuity, certain structural and procedural changes are observable in the BNSS. One notable difference lies in legislative drafting and codification style. Section 218 of the BNSS reflects a more streamlined and simplified language compared to Section 197 of the CrPC, aligning with the broader objective of making criminal laws more accessible.⁹ However, this redrafting does not substantially alter the substantive requirement of sanction.

Another area of potential departure concerns procedural timelines. While the CrPC did not explicitly prescribe a time-bound framework for granting sanction, recent legal discourse and administrative reforms have emphasised the need for expeditious decision-making.¹⁰ Although the BNSS does not radically transform this aspect, it reflects an implicit shift towards greater procedural efficiency and accountability in administrative processes.

Additionally, the administrative mechanism for granting sanction may witness subtle changes under the BNSS regime. With increasing digitisation and governance reforms, the process of obtaining sanction is expected to

¹ Vinayagamurthy and R. Venkatesan, "Sanction for Prosecution of Public Servants: A Critical Analysis" 52 *Journal of Indian Law Institute* 234 (2010).

² K.K. Mathew, "Official Immunity and Sanction for Prosecution" 10 *Cochin University Law Review* 1 (1986).

³ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 218.

⁵ *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

⁶ *Bajjnath v. State of Madhya Pradesh*, AIR 1966 SC 220.

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

⁸ *P. Arulswami v. State of Madras*, AIR 1967 SC 776.

⁹ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 218.

¹⁰ Law Commission of India, "268th Report on Amendments to Criminal Procedure Code, 1973" (2017).

become more structured and transparent.¹ However, the extent to which these changes will impact practical implementation remains to be seen and will largely depend on executive guidelines and judicial oversight.

Comparative Table

Aspect	CrPC	BNSS
Provision	Section 197	Section 218
Scope	Acts done in discharge of official duty	Largely same
Procedure	Executive sanction required	Procedurally streamlined (limited changes)

Critical Question: Reform or Mere Re-enactment?

The introduction of the BNSS raises an important normative question: whether Section 218 represents a substantive reform or merely a re-enactment of Section 197 of the CrPC. On a close analysis, it appears that the provision largely preserves the existing legal framework with minimal structural refinements. The core objective—balancing protection of public servants with accountability—remains intact.²

Judicial precedents interpreting Section 197 are likely to continue guiding the application of Section 218, given the similarity in language and purpose.³ This suggests that the BNSS does not mark a radical departure but rather reinforces continuity in criminal procedural law. However, concerns persist regarding potential misuse of sanction provisions to shield errant officials, thereby undermining accountability and access to justice.⁴

In conclusion, while the BNSS introduces certain procedural and structural refinements, the sanction requirement under Section 218 largely represents continuity rather than transformation. The effectiveness of this framework will ultimately depend on its judicial interpretation and administrative implementation, particularly in ensuring that the provision does not become a tool for impunity while still safeguarding bona fide official action.

CONSTITUTIONAL & POLICY ANALYSIS

The requirement of prior sanction for prosecution of public servants under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) raises significant constitutional and policy concerns. While the provision is intended to protect honest officials from vexatious litigation, it must be examined in light of fundamental rights guaranteed under the Constitution.⁵

From a constitutional perspective, Article 14 mandates equality before law and prohibits arbitrary state action.⁶ The sanction requirement creates a classification between public servants and ordinary citizens, granting procedural protection to the former. While such classification may be justified on grounds of administrative necessity, it becomes problematic when sanction operates as an absolute shield, thereby resulting in unequal application of criminal law.⁷ Judicial pronouncements have emphasised that protection of public servants cannot extend to acts that are manifestly illegal or unrelated to official duty.⁸

Further, Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted to include the right to fair investigation and access to justice.⁹ Delays in granting sanction often lead to denial of justice, particularly in cases involving serious allegations such as corruption or custodial violence. The procedural requirement may thus frustrate victims' rights and undermine the rule of law.¹⁰ In cases of custodial violence, where state actors themselves are accused, the requirement of sanction creates an inherent conflict of interest, as the prosecuting authority is often part of the same administrative structure.¹¹

The tension between equality and special protection is therefore at the heart of the debate. While some degree of protection is necessary to ensure fearless decision-making by public officials, excessive insulation may foster

¹ Government of India, "Digital India Programme: Transforming Governance" (Ministry of Electronics and Information Technology, 2020).

² *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

³ *P. Arulswami v. State of Madras*, AIR 1967 SC 776.

⁴ *Subramanian Swamy v. Manmohan Singh*, (2012) 3 SCC 64.

⁵ *The Bharatiya Nagarik Suraksha Sanhita, 2023*, s. 218.

⁶ *The Constitution of India*, art. 14.

⁷ M.P. Jain, *Indian Constitutional Law* 98 (LexisNexis, New Delhi, 8th edn., 2018).

⁸ *Prakash Singh Badal v. State of Punjab*, (2007) 1 SCC 1.

⁹ Second Administrative Reforms Commission, "Fourth Report on Ethics in Governance" (2007).

¹⁰ *The Constitution of India*, art. 21.

¹¹ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

impunity. The Supreme Court has attempted to strike a balance by holding that sanction is required only when the alleged act has a reasonable nexus with official duty.¹ However, ambiguity in determining such nexus continues to create inconsistencies in application.

From a policy standpoint, the question arises whether the sanction requirement should be retained in its current form. Critics argue that it leads to procedural delays, bureaucratic inertia, and selective prosecution, thereby weakening accountability mechanisms.² On the other hand, proponents contend that removing sanction may expose public servants to frivolous litigation, adversely affecting administrative efficiency.

A possible reform lies in the creation of an independent sanctioning authority, insulated from executive influence, to ensure impartial decision-making.³ Such a mechanism could balance the need for accountability with the protection of honest officials. Ultimately, the legitimacy of the sanction requirement under the BNSS depends on its ability to align with constitutional guarantees while ensuring effective criminal justice administration.

CHALLENGES & CRITICAL ISSUES

The requirement of prior sanction for prosecution under the criminal procedure framework, now continued under the Bharatiya Nagarik Suraksha Sanhita (BNSS), raises several persistent challenges that question its effectiveness and fairness. While the provision is intended to protect public servants from vexatious litigation, its practical application reveals deep structural and constitutional concerns.⁴

One of the foremost issues is the delay in sanction decisions. Sanctioning authorities often take an inordinately long time to grant or refuse approval, thereby stalling criminal proceedings. Such delays defeat the very objective of ensuring accountability and timely justice. The Supreme Court has repeatedly emphasised that sanction should be granted within a reasonable time frame, yet bureaucratic inertia continues to impede the process.⁵ The absence of strict statutory timelines under both the Code of Criminal Procedure, 1973 (CrPC) and the BNSS exacerbates this problem.

Another significant concern is the possibility of political or executive influence in granting sanction. Since the competent authority is usually part of the executive, decisions regarding prosecution may be influenced by political considerations rather than legal merit.⁶ This creates a risk of selective prosecution or protection, undermining the rule of law and equality before the law guaranteed under Article 14 of the Constitution.

The lack of transparency in the sanctioning process further compounds the issue. Decisions are often taken without providing detailed reasons, making it difficult to assess their legality or fairness. The opacity surrounding sanction orders limits judicial scrutiny and raises concerns about arbitrariness.⁷ Although courts have insisted on application of mind by the sanctioning authority, the absence of mandatory disclosure norms weakens accountability mechanisms.

A recurring doctrinal challenge lies in determining whether the alleged act was committed in the discharge of "official duty." The interpretation of this phrase has been inconsistent and often contentious. Courts have held that there must be a reasonable nexus between the act and official duty; however, distinguishing between acts done in official capacity and those done under the guise of authority remains difficult.⁸ This ambiguity often leads to either over-protection of public officials or unwarranted prosecution, thereby defeating the balance intended by the law.

Despite reforms and judicial clarifications, there is evidence of continued misuse of the sanction requirement. In several instances, sanction provisions have been invoked as a shield to delay or prevent prosecution in cases involving serious allegations of corruption or abuse of power.⁹ This undermines public confidence in the criminal justice system and weakens anti-corruption efforts. At the same time, the fear of prosecution without

¹ Law Commission of India, "273rd Report on Implementation of 'United Nations Convention Against Torture' and Examination of Law to Deal with Custodial Violence" (2017).

² *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

³ Upendra Baxi, "Crisis of the Indian Legal System" 45 *Journal of Indian Law Institute* 120 (2003).

⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 218; The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

⁵ *Vineet Narain v. Union of India*, (1998) 1 SCC 226.

⁶ M.P. Jain, *Indian Constitutional Law* 1234 (LexisNexis, New Delhi, 8th edn., 2018).

⁷ *State of Punjab v. Mohammed Iqbal Bhatti*, (2009) 17 SCC 92.

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

⁹ *Subramanian Swamy v. Manmohan Singh*, (2012) 3 SCC 64.

adequate safeguards may deter honest officials from performing their duties effectively, indicating the delicate balance that must be maintained.

The transition from the CrPC to the BNSS does not appear to significantly alter these structural concerns. While the BNSS seeks to modernise procedural law, the underlying issues relating to delay, discretion, and ambiguity in sanction provisions persist.¹ Therefore, mere legislative continuity without addressing these systemic flaws risks perpetuating the same challenges under a new statutory framework.

In conclusion, the sanction requirement, though rooted in a legitimate objective, continues to face serious operational and constitutional challenges. Addressing delays through statutory timelines, ensuring transparency, minimising executive interference, and clarifying the scope of “official duty” are essential reforms needed to prevent misuse and uphold the principles of fairness and accountability in the criminal justice system.²

SUGGESTIONS & REFORMS

The transition from the Code of Criminal Procedure, 1973 to the Bharatiya Nagarik Suraksha Sanhita, 2023 necessitates a re-evaluation of the sanction requirement to ensure both administrative efficiency and protection of individual rights. While the objective of prior sanction is to safeguard public servants from frivolous prosecution, delays and ambiguities in its application have often undermined justice delivery.³

A key reform is the introduction of a time-bound sanction mechanism, whereby the competent authority must decide on granting or refusing sanction within a fixed statutory period. This would prevent indefinite delays that frustrate prosecution and weaken accountability. The Supreme Court has previously emphasised the need for expeditious sanction decisions to uphold the rule of law.⁴

Secondly, the establishment of an independent sanctioning authority, akin to a Lokpal-type body, would reduce executive bias and enhance impartiality in decision-making. Presently, sanction is often granted by the same administrative hierarchy to which the accused public servant belongs, raising concerns of conflict of interest.⁵ An independent body would ensure greater transparency and credibility.

Another critical reform is the need for a clear statutory definition of “official duty”, which remains ambiguous and has led to inconsistent judicial interpretations. Courts have struggled to determine whether certain acts fall within the scope of official functions, thereby affecting the applicability of sanction provisions.⁶ A precise definition would reduce litigation and provide clarity to both investigators and public officials.

Further, judicial oversight in sanction decisions should be strengthened. Courts must be empowered to review arbitrary or mala fide refusals or grants of sanction to ensure compliance with constitutional principles of fairness and equality under law.⁷

Lastly, the adoption of digital tracking systems for sanction requests can significantly improve transparency and efficiency. Online portals enabling real-time tracking would ensure accountability of authorities and reduce bureaucratic delays.⁸

Collectively, these reforms would harmonise the sanction framework under the BNSS with constitutional mandates while ensuring that the objective of protecting honest public servants does not become a shield for corruption or abuse of power.

CONCLUSION

The introduction of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a significant legislative shift in India’s criminal procedure framework; however, with respect to the requirement of prior sanction for prosecution of public servants, the law largely continues the structure established under the Code of Criminal Procedure, 1973 (CrPC). The underlying rationale—protecting honest public officials from vexatious and frivolous litigation—remains intact, reflecting continuity rather than a radical departure.

While certain procedural refinements have been introduced, the essential philosophy governing sanction provisions has not undergone any transformative change. The BNSS preserves the balance between

¹ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 218.

² The Constitution of India, arts. 14, 21.

³ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

⁴ *Subramanian Swamy v. Manmohan Singh*, (2012) 3 SCC 64.

⁵ Law Commission of India, “254th Report on Prevention of Corruption (Amendment) Bill, 2013” (2015).

⁶ *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

⁷ *Vineet Narain v. Union of India*, (1998) 1 SCC 226.

⁸ Government of India, “Digital India Programme: E-Governance Initiatives” (Ministry of Electronics and Information Technology, 2015).”

administrative efficiency and legal accountability by maintaining the requirement of prior governmental approval before initiating prosecution against public servants for acts done in the discharge of official duties. This indicates that the legislature has preferred incremental reform over structural overhaul.

Nevertheless, the persistent tension between protection and accountability continues to challenge the efficacy of sanction provisions. On one hand, such safeguards are necessary to ensure fearless decision-making by public officials; on the other, they risk becoming instruments of impunity, delaying or obstructing legitimate prosecution. Judicial pronouncements have repeatedly attempted to harmonise this conflict by interpreting sanction requirements narrowly in cases involving mala fide or ultra vires acts.

The BNSS, therefore, does not resolve the deeper structural concerns associated with sanction regimes. Instead, it reinforces the need for institutional reforms, such as time-bound sanction decisions, greater transparency, and independent review mechanisms, rather than mere statutory re-enactment. Ultimately, the effectiveness of sanction provisions will depend not on legislative continuity alone but on their implementation in a manner that upholds constitutional principles of equality and accountability.

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4. Law Commission of India, "41st Report on the Code of Criminal Procedure, 1898" (1969).
5. The Constitution of India.