
**PROTECTION VERSUS ACCOUNTABILITY: REASSESSING SECTION 197 CRPC IN
POLICE PROSECUTION CASES**¹Mr. Nitin Pawar and ²Dr. Kavita Lalchandani¹PhD Scholar, Department of Law, University of Mumbai²Principal, KC Law College, Mumbainitinpawar@gmail.com, kavitalalchandani@gmail.com**ABSTRACT**

Section 197 of the Code of Criminal Procedure, 1973 (CrPC) embodies a statutory safeguard requiring prior sanction of the appropriate government before prosecuting public servants for alleged offences committed “while acting or purporting to act in the discharge of official duty.” The provision is designed to protect honest public officials from vexatious, mala fide, or frivolous prosecution arising out of bona fide discharge of governmental functions. However, in the context of police prosecution cases, Section 197 has generated persistent constitutional and jurisprudential tensions between institutional protection and individual accountability.

This paper undertakes a critical reassessment of Section 197 CrPC, particularly in cases involving alleged police misconduct, custodial violence, abuse of authority, and violations of fundamental rights under Articles 14, 19, and 21 of the Constitution of India. The provision has often been invoked as a procedural shield, resulting in delayed or obstructed prosecution of erring officers, thereby raising concerns regarding impunity and erosion of rule of law.

The study further examines the evolving judicial interpretation of the phrase “reasonable nexus with official duty,” which has been expansively construed in certain decisions and narrowly interpreted in others, leading to doctrinal inconsistency. In light of contemporary criminal justice reforms, including the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and allied procedural restructuring replacing the Code of Criminal Procedure, 1973, the continued relevance and scope of prior sanction requirements demand renewed scrutiny.

A central concern addressed is whether Section 197 strikes an appropriate constitutional balance between protecting administrative efficiency and ensuring accountability for police excesses. The paper evaluates comparative jurisprudence, legislative intent, and constitutional mandates under Article 21, particularly the right to fair investigation and access to effective remedy.

The research concludes that while institutional protection of public servants remains necessary to prevent harassment and undue litigation, the current threshold for sanction operates in certain contexts as a barrier to justice. It argues for a calibrated reform model that preserves functional immunity while excluding acts of gross misconduct, human rights violations, and ultra vires actions from the protective umbrella of Section 197.

I. INTRODUCTION

Section 197 of the Code of Criminal Procedure, 1973 (CrPC) constitutes a foundational procedural safeguard designed to protect public servants from vexatious criminal prosecution for acts purportedly committed in the discharge of official duties. The provision mandates prior sanction of the appropriate government before a court can take cognizance of offences alleged against Judges, Magistrates, and public servants who are not removable from office save by or with the sanction of the government.¹ This statutory requirement operates as a jurisdictional precondition, thereby restricting the initiation of criminal proceedings in the absence of valid governmental authorisation.

A. Background of Section 197 CrPC

The underlying rationale of Section 197 is to ensure that public servants are not subjected to undue harassment through frivolous, mala fide, or politically motivated litigation.² By insulating official acts connected with public duty from immediate criminal scrutiny, the provision seeks to preserve institutional independence and administrative efficiency. It is premised on the assumption that fear of prosecution may otherwise impede honest and effective discharge of governmental functions, particularly within coercive arms of the State such as the police and revenue administration.

¹ Code of Criminal Procedure, 1973, s. 197.² Matajog Dobey v. H.C. Bhari.

B. Rationale Behind the Provision

Section 197 CrPC is rooted in the principle of functional protection, which aims to enable public servants to perform their duties without apprehension of retaliatory prosecution. The provision reflects a legislative balance between individual accountability and institutional necessity, ensuring that bona fide acts done in official capacity are not subjected to unnecessary judicial interference.¹ However, the protective umbrella is intended to be limited to acts reasonably connected with official duty and not to extend to acts of mala fide or criminal excess.

C. Context: Police Prosecution Cases

In contemporary criminal jurisprudence, Section 197 assumes particular significance in cases involving police personnel accused of custodial violence, illegal detention, encounter killings, and excessive use of force during investigation. Such cases often raise complex legal questions regarding the nexus between official duty and alleged criminal conduct. The core issue is whether acts amounting to human rights violations can be construed as falling within the scope of “official duty,” thereby attracting the protection of prior sanction. This tension has led to the perception that Section 197 may, in certain instances, operate as a shield against accountability rather than a safeguard for legitimate administrative action.²

D. Research Problem

The central research problem lies in reconciling the competing constitutional imperatives of protecting institutional autonomy of law enforcement agencies and ensuring accountability for violations of fundamental rights under Articles 14 and 21 of the Constitution of India. The doctrine of prior sanction raises critical concerns regarding access to justice, procedural fairness, and effective prosecution of State actors accused of abuse of power.

E. Research Objectives

This study seeks to examine the scope, ambit, and judicial interpretation of Section 197 CrPC, particularly in the context of police misconduct cases. It further aims to analyse whether the provision has been susceptible to misuse as a procedural barrier to prosecution, and to evaluate its continued relevance in light of procedural reforms introduced under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), wherein analogous sanction requirements have been retained under Section 218 of the new framework.

F. Research Questions

The study is guided by the following questions: whether Section 197 CrPC disproportionately shields police officers from criminal liability; under what circumstances sanction should be mandated in cases involving custodial violence or abuse of authority; and whether the restructured procedural regime under the BNSS, 2023 offers a more effective balance between protection and accountability.

II. HISTORICAL AND LEGISLATIVE EVOLUTION**A. Colonial Origins**

The genesis of Section 197 can be traced to colonial administrative law frameworks under British rule, where the primary objective was to insulate colonial officials from vexatious litigation arising out of acts performed in the course of governance.³ The provision was conceived as an instrument of administrative protection, ensuring that executive functioning remained unhindered by constant judicial scrutiny, particularly in a colonial context where law enforcement and revenue administration required broad discretionary powers.

B. Post-Constitution Development

Post-independence, the principle underlying Section 197 was retained and incorporated into the Code of Criminal Procedure, 1973. The provision was reoriented within a constitutional framework to

¹ P. Arulswami v. State of Madras.

² Devinder Singh v. State of Punjab.

³ Ratanlal & Dhirajlal, *The Code of Criminal Procedure* 1123 (LexisNexis Butterworths Wadhwa, Nagpur, 23rd edn., 2019).

balance two competing imperatives: the rule of law, which mandates accountability of public servants, and administrative efficiency, which necessitates protection against frivolous prosecution.¹ In this transformed constitutional setting, the sanction requirement was intended not as absolute immunity but as a procedural filter to prevent abuse of criminal process against State functionaries acting in good faith.

C. Judicial Expansion

Indian courts have significantly shaped the interpretative contours of Section 197 through the development of the “reasonable nexus test.” Under this doctrine, sanction is required only when the alleged act bears a direct and reasonable connection with official duty.² Conversely, protection is denied where the act is purely personal in nature or constitutes excessive force, brutality, or conduct wholly detached from the discharge of official functions. Judicial interpretation has thus attempted to prevent misuse of the provision as a blanket immunity for unlawful conduct, particularly in cases involving police excesses and custodial violence.

D. Shift under New Criminal Laws (BNSS, 2023)

With the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), Section 197 of the CrPC has been substantially restructured and replaced by Section 218 of the new procedural code.³ While the core principle of prior sanction for prosecution of public servants has been retained, the legislative reform introduces procedural modernization, including digitised sanction processing, prescribed timelines for decision-making, and enhanced procedural clarity. These reforms aim to reduce inordinate delays in sanction decisions while maintaining the protective rationale of the provision. However, the continuity of the sanction regime under the BNSS indicates legislative adherence to the principle that functional protection of public servants remains a necessary component of criminal procedural law.⁴

III. CONCEPTUAL FRAMEWORK

A. Meaning of “Sanction for Prosecution”

The concept of “sanction for prosecution” under Section 197 of the Code of Criminal Procedure, 1973 (CrPC) refers to a mandatory statutory prerequisite whereby prior approval of the competent government authority is required before a court can take cognizance of criminal offences alleged against specified categories of public servants.⁵ The absence of such sanction renders the cognizance legally incompetent, thereby acting as a jurisdictional bar at the threshold stage of criminal proceedings. This mechanism operates as a procedural filter intended to regulate the initiation of prosecution rather than adjudicate guilt or innocence.

B. Purpose of Section 197

The normative foundation of Section 197 lies in the need to protect public servants from vexatious, mala fide, or politically motivated prosecutions arising out of actions undertaken in discharge of official duties.⁶ The provision seeks to preserve administrative autonomy and ensure that governmental decision-making is not impeded by the constant threat of criminal litigation. It further functions as a screening device to prevent the criminal justice system from being misused as an instrument of harassment against State functionaries, thereby safeguarding institutional efficiency and continuity in governance.

¹ Shreekantiah Ramayya Munipalli v. State of Bombay.

² State of Orissa v. Ganesh Chandra Jew.

³ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218.

⁴ Law Commission of India, *154th Report on the Code of Criminal Procedure* (Reforms in Criminal Justice Administration).

⁵ Code of Criminal Procedure, 1973, s. 197.

⁶ Matajog Dobey v. H.C. Bhari.

C. “Official Duty” Test

A critical doctrinal component of Section 197 is the “official duty” test, which determines the applicability of sanction. Courts have consistently held that sanction is required only where there exists a reasonable nexus between the alleged act and the discharge of official duty.¹ Judicial interpretation has drawn a distinction between acts performed in the course of duty, acts done under the colour of office, and acts which are wholly unrelated to official functions. While the first two categories may attract protection, acts falling outside the scope of duty or involving manifest criminality are excluded from the ambit of Section 197 protection.

D. Police-Specific Application

In the context of police personnel, Section 197 assumes heightened significance due to the coercive nature of policing functions. It is frequently invoked in cases involving arrest, investigation, custodial control, and use of force during law enforcement operations.² The provision is intended to ensure that officers are not deterred from performing their duties by fear of prosecution for bona fide actions taken in the course of law enforcement. However, its application in cases alleging custodial violence and abuse of authority raises complex questions regarding the boundary between legitimate enforcement action and criminal excess.

E. Problem of Interpretation

The primary jurisprudential challenge arises from the potential for overly expansive interpretation of “official duty,” which may inadvertently extend protection to acts of misconduct or abuse of power. Such interpretation risks transforming Section 197 into a de facto shield against accountability, particularly in cases involving custodial violence or violation of fundamental rights under Article 21 of the Constitution. The issue becomes more pronounced in light of procedural reforms under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which retains the sanction requirement under Section 218, thereby continuing the debate on balancing institutional protection with constitutional accountability.

IV. LEGAL FRAMEWORK UNDER CrPC AND BNSS

A. Section 197 CrPC

Section 197 of the Code of Criminal Procedure, 1973 establishes a mandatory requirement of prior sanction from the appropriate government before any court can take cognizance of offences alleged against specified public servants, including police officers, for acts purportedly committed “while acting or purporting to act in the discharge of official duty.”³ This provision operates as a jurisdictional bar, meaning that in the absence of valid sanction, the court is legally precluded from initiating criminal proceedings. The underlying objective is to ensure that public servants are not subjected to unwarranted prosecution for actions undertaken in the course of their official responsibilities, thereby preserving administrative efficiency and institutional independence.

B. Exceptions

Judicial interpretation has consistently clarified that the protection under Section 197 is not absolute. It does not extend to acts which are wholly unconnected with official duty or where the conduct in question is motivated by personal animus or independent criminal intent.⁴ In such cases, the requirement of sanction is inapplicable, and prosecution may proceed without prior governmental approval. Courts have emphasized that the determinative factor is the existence of a reasonable nexus between the alleged act and official duty, rather than mere occurrence of the act during employment.

C. BNSS, 2023 Reforms (Section 218)

With the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the procedural framework governing prior sanction has been substantially retained but modernized under Section 218,

¹ State of Orissa v. Ganesh Chandra Jew.

² Devinder Singh v. State of Punjab.

³ Code of Criminal Procedure, 1973, s. 197.

⁴ P. Arulswami v. State of Madras.

which replaces Section 197 CrPC.¹ The reform introduces time-bound decision-making for sanctioning authorities, thereby addressing delays that historically impeded prosecution of public servants. It also incorporates digital communication mechanisms for processing sanction requests, enhancing procedural efficiency and transparency. The legislative intent reflects a shift towards greater procedural uniformity while preserving the protective rationale of the sanction requirement.

D. Other Relevant New Laws

The broader criminal justice reform package, including the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA), significantly impacts police accountability and evidentiary standards. The BNS introduces revised substantive criminal law definitions, which directly influence the scope of police liability in cases involving misuse of authority and excessive force.² The BSA modernizes evidentiary rules, particularly with respect to electronic and digital evidence, thereby strengthening evidentiary admissibility in cases of custodial violence or police misconduct. Additionally, the BNSS mandates expedited investigation timelines and reinforces procedural accountability mechanisms within policing structures, reflecting a broader legislative intent to enhance efficiency while ensuring greater institutional responsibility.

V. JUDICIAL INTERPRETATION AND CASE LAW

A. Supreme Court Principles

The Supreme Court of India has consistently developed and refined the interpretative framework governing Section 197 of the Code of Criminal Procedure, 1973 by applying the doctrine of “reasonable nexus” between the alleged act and the discharge of official duty.³ The Court has held that protection under Section 197 is not restricted merely to acts strictly within the scope of duty but may extend even to situations where a public servant exceeds or abuses authority, provided that the act retains a reasonable connection with official functions. However, this protective umbrella is not absolute and cannot be invoked to shield acts that are entirely detached from official responsibilities.

B. Key Case Principles

1. Official Duty Nexus

Judicial interpretation has firmly established that sanction under Section 197 is required only when the alleged act is directly or reasonably connected with the discharge of official duty.⁴ The determinative test is whether the omission or commission complained of could have been done only in the course of official duty or had a sufficient nexus with it. Where such connection is absent, the requirement of sanction is rendered inapplicable.

2. Custodial Violence Exception

In cases involving custodial violence, courts have increasingly held that acts of brutality, torture, or gross misuse of power fall outside the protective ambit of Section 197.⁵ Such conduct is treated as being incompatible with the lawful discharge of official duties and is therefore not entitled to procedural immunity. The judiciary has emphasized that constitutional protections under Article 21 override any statutory shield when fundamental rights are violated through abuse of State power.

3. Recent Judicial Trend

Recent jurisprudence reflects a discernible shift towards narrowing the scope of Section 197 protection, particularly in cases involving police excesses. Courts have demonstrated a greater willingness to allow prosecution to proceed without insisting on prior sanction where allegations disclose prima facie violations of human rights or abuse of authority. This trend indicates a judicial movement away from blanket immunity towards a more accountability-oriented interpretation.

¹ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218.

² Bharatiya Nyaya Sanhita, 2023.

³ State of Orissa v. Ganesh Chandra Jew.

⁴ Matajog Dobey v. H.C. Bhari.

⁵ Devinder Singh v. State of Punjab.

C. Illustrative Judicial Approach

The courts have consistently held that certain categories of conduct do not automatically attract Section 197 protection, including illegal detention, custodial torture, and fabrication of evidence.¹ These acts are treated as criminal in nature and are considered independent of official duty, thereby negating the requirement of prior sanction. The jurisprudence thus draws a clear distinction between legitimate exercise of coercive authority and criminal misconduct committed under the guise of official action.

D. Recent High Court Development

High Courts across jurisdictions have further clarified that custodial violence and police brutality cannot be mechanically treated as acts arising out of official duty for the purposes of Section 197 CrPC.² Judicial reasoning emphasizes that extending sanction protection to such acts would undermine constitutional guarantees and erode public trust in law enforcement institutions.

E. Constitutional Balance

The judiciary has consistently attempted to strike a delicate balance between protecting police officers from frivolous prosecution and ensuring accountability for violations of fundamental rights. This balancing exercise reflects the broader constitutional mandate under Articles 14 and 21 of the Constitution of India, which requires that State power be exercised in a fair, reasonable, and non-arbitrary manner. The evolving jurisprudence also aligns with the legislative reforms under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which retains the sanction framework under Section 218 while introducing procedural safeguards aimed at improving accountability and transparency in criminal proceedings.³

VI. CRITICAL ANALYSIS

A. Protection vs Accountability Dilemma

Section 197 of the Code of Criminal Procedure, 1973 embodies a structural tension between two competing constitutional imperatives: protection of public servants from vexatious litigation and ensuring accountability for abuse of official power.⁴ While the provision functions as a procedural safeguard intended to preserve administrative efficiency and independence, its operation in practice often results in a de facto immunity shield, particularly in sensitive cases involving police excesses. The requirement of prior sanction introduces an additional procedural layer that frequently delays initiation of criminal proceedings, thereby diluting the immediacy and efficacy of accountability mechanisms.

B. Misuse in Police Misconduct Cases

In cases involving allegations of custodial torture, fake encounters, illegal detention, and excessive use of force, Section 197 is frequently invoked as a threshold defence to stall prosecution.⁵ The sanction requirement, instead of serving as a preliminary safeguard against frivolous litigation, is often perceived as a procedural barrier that impedes judicial scrutiny of serious human rights violations. This has led to concerns that the provision may inadvertently contribute to institutional impunity in cases of police misconduct, undermining the constitutional mandate under Article 21.

C. Ambiguity in “Official Duty”

A major doctrinal challenge lies in the ambiguity surrounding the expression “official duty.” Judicial interpretation has oscillated between broad and narrow constructions. A broad interpretation tends to include even acts involving excessive force or procedural irregularities within the protective umbrella of Section 197, thereby extending immunity beyond its intended scope. Conversely, a narrow

¹ Prakash Singh Badal v. State of Punjab.

² D.K. Basu v. State of West Bengal.

³ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218.

⁴ Code of Criminal Procedure, 1973, s. 197; Constitution of India, arts. 14 and 21.

⁵ Devinder Singh v. State of Punjab.

interpretation excludes a wider range of conduct, exposing officers to potential harassment and undermining operational autonomy. This interpretive inconsistency creates uncertainty in application and weakens doctrinal predictability.¹

D. Impact on Victims

From the perspective of victims, particularly in cases involving custodial violence or abuse of authority, Section 197 often results in delayed access to justice. Procedural hurdles created by the sanction requirement can significantly prolong initiation of criminal proceedings, thereby affecting evidentiary integrity and diminishing the effectiveness of legal remedies. The perception of institutional bias further exacerbates the sense of injustice among victims, especially where sanction is withheld or indefinitely delayed by executive authorities.

E. Institutional Concerns

A critical institutional concern arises from the fact that the sanctioning authority is typically part of the executive branch, which may also have administrative control over the accused police officers.² This creates a potential conflict of interest, raising doubts about the neutrality and independence of the sanctioning process. The executive-centric nature of sanction determination has therefore been criticised for lacking adequate structural safeguards to ensure impartial decision-making.

F. Accountability Gap

The cumulative effect of procedural delays, executive discretion, and interpretive ambiguity contributes to an accountability gap in cases of police misconduct. In several instances, alleged violations fail to progress to prosecution in a timely manner, thereby weakening deterrence and undermining the rule of law. The gap between allegation and accountability remains particularly pronounced in custodial violence cases, where evidentiary challenges already exist.

G. Need for Reform

Given these concerns, there is increasing scholarly and judicial support for reforming the sanction regime. Proposed measures include replacing executive sanction with judicial or quasi-judicial authorization to enhance neutrality and transparency. The establishment of independent police complaints authorities has also been recommended to investigate allegations of misconduct objectively. Additionally, incorporation of time-bound sanction decision frameworks under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which retains the sanction mechanism under Section 218, represents a partial legislative response to concerns regarding procedural delay. These reforms collectively aim to recalibrate the balance between institutional protection and constitutional accountability.

VII. CONSTITUTIONAL DIMENSIONS

A. Article 14 – Equality Before Law

Section 197 of the Code of Criminal Procedure, 1973 raises significant concerns under Article 14 of the Constitution insofar as it creates a procedural differentiation between public servants and ordinary citizens with respect to criminal prosecution.³ While the provision is intended as a protective safeguard, its application in practice may result in unequal treatment where similarly situated victims of police misconduct face varying outcomes depending upon whether sanction is granted or withheld. The discretion vested in the executive authority to grant or refuse sanction has also been criticised as susceptible to arbitrariness, thereby implicating the constitutional mandate of non-arbitrariness in State action.

B. Article 21 – Right to Life

Article 21 guarantees the right to life and personal liberty, which has been expansively interpreted to include the right to fair investigation and timely justice. In cases involving custodial violence, illegal detention, or abuse of authority, delays arising from sanction requirements under Section 197 often

¹ State of Orissa v. Ganesh Chandra Jew.

² S.P. Sathe, *Administrative Law* 468 (LexisNexis, Gurgaon, 8th edn., 2019).

³ Constitution of India, art. 14.

impede the initiation of criminal proceedings. Such procedural delay can dilute the effectiveness of remedies available to victims and may result in denial of meaningful justice, thereby raising serious constitutional concerns under the doctrine of procedural fairness embedded within Article 21.

C. Rule of Law Principle

The rule of law, as a foundational constitutional principle, mandates that no individual is above the law, including members of the police force and other public servants.¹ While Section 197 seeks to protect bona fide official acts, its misapplication may inadvertently create zones of immunity that undermine the equality of all persons before the law. Excessive reliance on sanction requirements in cases involving alleged misconduct risks diluting the normative force of the rule of law by creating procedural barriers to accountability.

D. Doctrine of Reasonableness

Any restriction on prosecution under Section 197 must satisfy the constitutional doctrine of reasonableness. The requirement of prior sanction must therefore be proportionate to the legitimate objective of protecting public servants from frivolous litigation.² However, where the provision is invoked to shield prima facie illegal or excessive conduct, its application may fail the test of proportionality, particularly when balanced against the fundamental rights of victims. The doctrine thus requires a calibrated approach that ensures neither excessive protection nor undue exposure.

E. Human Rights Perspective

From a human rights standpoint, custodial violence and abuse of police power constitute grave violations of dignity, bodily integrity, and personal liberty. Such acts directly infringe upon the core guarantees under Article 21 of the Constitution.³ The sanction mechanism under Section 197, if applied too broadly, risks undermining the enforceability of these fundamental rights by delaying or obstructing prosecution in cases of serious abuse.

F. Judicial Balance

The judiciary has consistently attempted to strike a constitutional balance between protecting institutional integrity and ensuring accountability for violations of fundamental rights. Courts have recognised the necessity of safeguarding public servants from vexatious litigation while simultaneously affirming that such protection cannot extend to acts of criminal excess or human rights violations.⁴ The evolving jurisprudence, read alongside procedural reforms introduced under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), particularly Section 218, reflects a legislative and judicial attempt to harmonise administrative efficiency with constitutional accountability.

VIII. COMPARATIVE ANALYSIS

A. United Kingdom

The United Kingdom does not adopt a statutory regime equivalent to Section 197 CrPC requiring prior sanction for prosecution of police officers. Instead, accountability is ensured through independent oversight mechanisms such as the Independent Office for Police Conduct (IOPC), which investigates allegations of police misconduct without executive interference.⁵ The absence of a blanket sanction requirement ensures that criminal accountability is not structurally delayed at the threshold stage, thereby promoting prompt judicial scrutiny of alleged police excesses.

B. United States

In the United States, police accountability is shaped significantly by the doctrine of “qualified immunity,” which provides conditional protection to law enforcement officers acting in the course of official duties. However, this doctrine does not operate as an absolute bar to prosecution or civil rights

¹ A.D.M. Jabalpur v. Shivkant Shukla (principle of rule of law discourse in dissent and later constitutional evolution).

² Modern Dental College & Research Centre v. State of Madhya Pradesh.

³ D.K. Basu v. State of West Bengal.

⁴ State of Orissa v. Ganesh Chandra Jew.

⁵ Independent Office for Police Conduct (IOPC), UK statutory framework under Police Reform Act, 2002.

litigation.¹ Courts continue to permit claims under federal civil rights statutes, particularly where constitutional violations are clearly established, thereby ensuring a relatively accessible pathway for victims of police misconduct to seek redress.

C. South Africa

South Africa presents a constitutionally entrenched model of police accountability under its post-apartheid constitutional framework. The South African Police Service is subject to robust oversight by independent institutions such as the Independent Police Investigative Directorate (IPID).² The constitutional emphasis on dignity, equality, and freedom ensures that allegations of police misconduct are subject to prompt and independent investigation, thereby limiting institutional insulation.

D. Key Lessons

A comparative analysis reveals that jurisdictions with stronger independent oversight mechanisms and reduced executive control over prosecutorial thresholds tend to achieve greater accountability in policing systems. The Indian framework under Section 197 CrPC, even as carried forward in modified form under Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), continues to rely heavily on executive sanction, which may impede timely prosecution in cases of serious misconduct.³ International models suggest the need for independent oversight authorities, minimisation of executive discretion, and streamlined prosecution mechanisms to ensure both police efficiency and accountability.

IX. CONCLUSION

Section 197 of the Code of Criminal Procedure, 1973 represents a constitutionally recognised safeguard designed to protect public servants, including police officers, from frivolous and vexatious prosecution. While the provision serves a legitimate administrative purpose by ensuring that bona fide official actions are not subjected to unnecessary criminal litigation, its application has generated significant concerns in the context of police misconduct and custodial violence cases.

Judicial interpretation has progressively narrowed the scope of protection under Section 197, particularly in situations involving allegations of abuse of authority, illegal detention, and custodial brutality. Courts have emphasised that such acts may fall outside the ambit of official duty, thereby obviating the requirement of prior sanction. This jurisprudential evolution reflects an increasing emphasis on constitutional accountability and the protection of fundamental rights under Article 21.

The transition to the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which retains the sanction requirement under Section 218, introduces procedural modernization through digital processes and time-bound decision-making. However, it does not fundamentally resolve the underlying tension between institutional protection and accountability.

A sustainable criminal justice framework must therefore ensure a calibrated balance where police independence in law enforcement is preserved, while simultaneously guaranteeing that human rights violations are subject to prompt and impartial scrutiny. The future trajectory of reform lies not in expanding immunity but in strengthening independent oversight mechanisms, enhancing transparency, and ensuring timely prosecution of misconduct in accordance with constitutional principles.

References

I. Statutes & Constitutional Provisions

- Code of Criminal Procedure, 1973 – Section 197
- Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 – Section 218
- Bharatiya Nyaya Sanhita (BNS), 2023
- Bharatiya Sakshya Adhiniyam (BSA), 2023
- Constitution of India, 1950 – Articles 14, 21, 300A
- Prevention of Corruption Act, 1988

¹ Harlow v. Fitzgerald.

² Constitution of the Republic of South Africa, 1996; Independent Police Investigative Directorate Act, 2011.

³ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218.”

II. Landmark Supreme Court Cases

- *Vineet Narain v. Union of India* (1998)
- *Subramanian Swamy v. Manmohan Singh* (2012)
- *Prakash Singh v. Union of India* (2006)
- *Matajog Dobey v. H.C. Bhari* (1956)
- *Sankaran Moitra v. Sadhana Das* (2006)
- *Inspector of Police v. Battenapatla Venkata Ratnam* (2015)
- *Devinder Singh v. State of Punjab* (2016)
- *P.P. Unnikrishnan v. Puttiyottil Alikutty* (2000)

III. High Court Decisions

- *Brijesh Kumar v. State of UP* (Allahabad High Court)
- *State of M.P. v. Sheetla Sahai* (Madhya Pradesh High Court)
- *R.R. Chari v. State of U.P.*
- *Kalicharan Mahapatra v. State of Orissa*
- Custodial violence sanction jurisprudence (various High Courts)

IV. Cases on Police Misconduct / Custodial Violence

- *D.K. Basu v. State of West Bengal* (1997)
- *Nilabati Behera v. State of Orissa* (1993)
- *Raghubir Singh v. State of Haryana* (1980)
- *Prakash Kadam v. Ramprasad Vishwanath Gupta* (2011)

V. BNSS (New Criminal Law) & Reform Sources

- Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 218 commentary
- LiveLaw – “Sanction for Prosecution under BNSS vs CrPC”
- SCC Online Blog – BNSS procedural reforms
- Law Commission of India Reports on criminal procedure reform
- Ministry of Home Affairs – Criminal Law Reforms Notes (2023)

VI. Books

- R.V. Kelkar – *Criminal Procedure*
- K.N. Chandrasekharan Pillai – *General Principles of Criminal Law*
- Justice C.K. Thakker – *Criminal Procedure Code*
- Sarkar on Criminal Procedure
- Batuk Lal – *Criminal Procedure Code*
- K.D. Gaur – *Criminal Law Cases and Materials*

VII. Research Articles & Journals

- Indian Journal of Criminology
- Journal of Indian Law Institute (JILI)
- SCC Online Blog – Police Accountability Articles
- LiveLaw Articles on Section 197 CrPC & BNSS
- Economic & Political Weekly (EPW) – Police reform studies

VIII. Reports & Committee Recommendations

- National Police Commission Reports (1st–5th Reports)
- Malimath Committee Report (Criminal Justice Reforms, 2003)
- Law Commission of India – 14th, 177th, 239th Reports
- Justice Thomas Committee on Police Reforms
- United Nations Human Rights Reports on Custodial Violence

IX. International Materials (Comparative Law)

- UK Police Act Framework (CPS prosecution model)
- US Qualified Immunity Doctrine (civil rights litigation context)
- South African Police Accountability Framework
- European Convention on Human Rights (Article 6 & 13 jurisprudence)