
CRIMINAL PROSECUTION OF PUBLIC OFFICIALS IN INDIA: SANCTION, IMMUNITY AND LIMITS OF ACCOUNTABILITY

Neha, BA LLB, JIMS EMTC, GGSIPU

ABSTRACT

The provision of state immunity is given under section 218 of Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced section 197 of the Code of Criminal Procedure. It involves sanctions for the prosecution of a public servant who commits an offence during their official duty from appropriate government. It protects innocent public officials from malicious and false proceedings. This critically examines the provision of state immunity and accountability for misconduct and corruption. It also examines the misuse of powers, the delay in granting sanction and the addition of new provisions to resolve such problems. As there is a new addition in BNSS for delay proceedings, i.e. Deemed Sanction for providing timely justice. This paper involves scope, limitations and the need for sanction and immunity. It also includes various judgments that provide more understanding of the immunity provision. It includes constitutional principles like executive powers or the constitutional validity of state immunity.

Keywords: Sanction, frivolous, immunity, accountability, misconduct, deemed sanction, justice, judgments, executive powers, constitutional validity.

INTRODUCTION

As per criminal laws, i.e. Bharatiya Nagarik Suraksha Sanhita, 2023, public officials, to discharge their official duty, are provided some special powers. Public officials, like judges or magistrate or public servants, are assigned to serve the public and to perform their administrative work fearlessly, so they are granted immunity. They have a fear of harassment by the initiation of frivolous and malicious criminal proceedings. These malicious and false proceedings indirectly affect the public, as public officials are unable to discharge their administrative duties. So, this immunity ensures accountability to uphold the rule of law.

Section 218¹ of BNSS, which replaced Section 197² of CrPC, provides immunity to public officials in order to perform their official duties, but with prior sanction of the appropriate government. Section 218 embodies a principle of state immunity in which courts are prohibited to take cognizance of offences which are committed by public officials in discharging their official duties except with the sanction of the appropriate government. BNSS, by way of sanctions allow for protective discrimination in favour of public officials. This provision acts as a shield against frivolous proceedings and safeguards the innocent public officials.

The principle of state immunity is an issue of debate and has a huge impact on the general public. It causes a delay in granting permissions, probably caused by external interference, and frequently generates instances of corruption and abuse of authority, which may limit criminal accountability. This may create a challenge to strike a balance between accountability and protecting upright civil servants, and ensure that public officials do not see it as an opportunity to find loopholes to bypass duties.

In view of the foregoing, the doctrine of immunity has a huge importance in today's criminal justice system. It is essential to protect public officials from malicious or false proceedings and also limit their usage as a shield against corruption and abuse of authority. To enforce Section 218 of the BNSS (Section 197 of the CrPC), the legal framework of immunity, sanction and limits of accountability should be examined to evaluate whether the existing framework sufficiently upholds the dual imperatives of administrative efficiency and legal compliance.

¹ The Bharatiya Nagarik Suraksha Sanhita, 2023, section 218

² The Code of Criminal Procedure, 1973, section 197

REVIEW OF LITERATURE

The issue of immunity of prior sanction for the prosecution of a public servant under section 218 of BNSS (section 197 of CrPC) has been criticised for discrimination among public officials or the general public, and the misuse of this power of immunity, either by a public servant or by the sanctioning authority. This issue arises due to a lack of time limits, proper accountability and clarity of the provision. Many legal scholars, commentaries and the judiciary from time to time provide clarity of the provision through research papers and judgments. Various research papers and commentaries explain the objective and aim of state immunity, i.e. protect the public servants from malicious prosecution and from unnecessary harassment. The Supreme Court of India, through various judgments, derives the understanding of state immunity and the purpose of immunity. Judgments like *Matajog Dobey v. H.C. Bhari (1955)*³, in this case, the court explains that protection of sanction can only be provided when there is a reasonable nexus between the act and the official duty. In *Vineet Narain v. Union of India*⁴ and *Subramania Swamy v. Manmohan Singh*⁵, the court examines that the lack of a time limit in granting a sanction under section 197 of the CrPC leads to delay in proceedings, and it recommends the provision of a time limit for granting a sanction and promotes speedy justice. Further, the 41st Law Commission Report⁶ defines the scope of public servants and excludes the lower-level employees from receiving sanctions. The shift from CrPC to BNSS involves new additions like deemed sanction and a limited time period of granting sanction, i.e. 120 days. Scholars and the judiciary, through research papers and judgments addresses the need for the application of the mind while granting sanction to public servants. Overall, the study examines the necessity of granting sanctions to protect innocent public officials from false and malicious proceedings.

RESEARCH METHODOLOGY

This research follows a doctrinal method of research, which includes an analysis of legislation, judicial interpretations, and commentaries. This research involves legislation like the Code of Criminal prosecution and Bharatiya Nagarik Suraksha Sanhita. Case laws were added for the understanding of the provision of state immunity. This research is based on primary and

³ *Matajog Dobey v. H. C. Bhari*, AIR 1955 SCR (2) 925

⁴ *Vineet Narain v. Union of India*, Air (1998) 1 SCC 226

⁵ *Subramania Swamy v. Manmohan Singh*, AIR (2012) 3 SCC 64

⁶ Law Commission of India, (1969), 41st Report on the Code of Criminal Procedure

secondary sources. Primary sources like the Code of Criminal Procedure or Bharatiya Nagarik Suraksha Sanhita, and Secondary source like articles, research papers, commentaries, etc.

DOCTRINE OF IMMUNITY

Section 218 of Bharatiya Nagarik Suraksha Sanhita (197 of CrPC) codifies the doctrine of immunity for public servants by requiring prior governmental sanction for their prosecution regarding acts committed in the line of duty. It provides that if a judge, magistrate, or public servant commits an offence while acting or discharging their official duty, the court cannot take cognizance of the case without prior sanction from the appropriate government. To apply section 218(1) two conditions should be met:

1. The accused, whose removal requires governmental sanction, must be a public servant.
2. The accused must have committed an offence while acting or purporting to act in discharge of their official duty.

Section 218 does not include every act done by public officials, but it includes only those acts that have a reasonable nexus with their official duties. It means it does not protect all public officials, but protects only those who do not commit an act for personal gain, corruption or malicious practice. In short, this protection is not absolute. It differentiates between an act done in good faith and a criminal act. Section 223 of BNSS also specifies immunity for public officials in complaint cases. It provides that a court cannot take cognizance of a complaint that specifies an act committed by a public servant in discharging his official duty without prior sanction.

In *Om Prakash Yadav v. Niranjan Kumar Upadhyay*⁷, the Supreme Court clarified that a sanction is required to protect vexatious proceedings and innocent public officials, but not to protect corrupt practices.

Section 218(2) of BNSS (section 197(2) of CrPC) provides immunity of sanction to a member of the armed forces of the Union. Members of the armed forces do their jobs in disturbed areas, for which they need to make quick decisions for the safety of the public. Their jobs require more discretion. If all these actions are prosecuted, then they can not discharge their duty

⁷ Om Prakash Yadav v. Niranjan Kumar Upadhyay, AIR 2024 INSC 979

efficiently. So, to prosecute members of the armed forces, prior sanction from the central government is required. This provision provides three principles for the prosecution of public servant i.e. protection from false or malicious prosecution, independence to discharge their official duty, and evaluation of the act done by members of the armed forces. If the act is connected with the official duty of a member of an armed force, then the prior sanction of the central government is mandatory. Here, armed force functions under the union, so the sanctioning authority is the Central Government.

PUBLIC SERVANT:

As per section 218 of BNSS, “public servant” covers three categories: judges, magistrates, and any public servant who will not be removed from his office without the prior sanction of the sanctioning authority. A mere status of an employee of the government does not fall within the scope of section 218. The 41st Law Commission of India Report⁸ opposed widening the ambit of the Public Servant. The widening of the ambit of a public servant means the addition of lower level of government employees. As the immunity of sanction can only be provided to higher-level government employees If the immunity of sanction is granted to all levels of government employees, then it defeats the purpose of the rule of law, Article 14 of the Indian Constitution and trust of the public in the judiciary can be shaken. It results in the abuse of the purpose of section 218 and also causes the misuse of the provision of state immunity. Granting immunity to public servants who are mentioned in section 218 helps in maintaining a balance between protection and accountability.

ACTS TO FALL WITHIN THE SCOPE AND RANGE OF OFFICIAL DUTY FOR AVAILING OF PROTECTION

Section 218 of BNSS provides the benefit of sanction to the government officials who are holding public office. The sanction can be provided by the appropriate government to the responsible government officials and not to all employees of the state. When the public servant holds office at the union⁹, then the central government is the appropriate government to grant sanction, or when the public servant holds office at the state, then the state government is the appropriate government. This classification of the appropriate government helps distribute executive power between the central and state governments and maintains accountability. But

⁸ *ibid* 6

⁹ Biplab Kumar Lenin, Sanction for Prosecution of Public Servants: A Necessary Evil, Manupatra

the central and state governments can sanction grants only when there is a reasonable link between the act and official duty. The claim by the public that the act is done in official duty should be genuine and not a fanciful defence of escape.

EXCEPTIONS TO THE REQUIREMENT OF PRIOR SANCTION

The protection of public servants from prosecution with sanction is not absolute. There are conditions in which prior governmental sanction is not required, and a public official can be prosecuted without prior sanction from the government. This exception is mentioned in the third proviso of section 218 of BNSS (section 197 CrPC). This exception is important as it prevents them from taking advantage of sanctions and the misuse of their powers. This ensures that the protection under section 218 of BNSS is limited to actions taken in good faith, not to gross misconduct.

This exception¹⁰ applies to serious offences against women and human dignity, i.e. rape, sexual harassment, outraging modesty, trafficking, assault, voyeurism, stalking, and trafficking of person. The reason for the introduction of this exception is both moral and legal. These offences cannot be considered as part of any official duty, and imposing prior sanctions for these offences would weaken the constitutional validity of justice, equality and dignity. This exception protects human dignity. This ensures instant access to seek justice for victims, faster commencement of proceedings or prevent abuse of official position.

DEEMED SANCTION

The main aim of a sanction is to protect public officials from vexatious prosecution and not to act as a shield for corruption or abuse of authority. But public officials, while performing their official duty, exercise discretion that ultimately abuses the principle of the rule of law and frustrates legitimate prosecutions. While applying for sanctions, there is a delay in granting sanctions, obstructing the course of justice. Therefore Supreme Court of India, through different judgments interpret the provision as a statutory mechanism to shield upright public servants from frivolous prosecution. Judiciary, through its decisions create a balance between administrative efficiency and criminal accountability. To solve the problem of delay in granting sanction, the Supreme Court of India in *Vineet Narain v. Union of India*¹¹ prescribes 3 months

¹⁰ Ibid 1

¹¹ Ibid 4

for granting and refusing sanction and that 3-month period can be extended by an additional 1 month period. Similarly, in *Subramanian Swamy v. Manmohan Singh*¹², the court endorsed the parliament to introduce a mandatory time frame for granting sanction and a system for deemed sanction to prevent administrative delays from violating the right to a speedy trial.

By enactment of Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced the Code of Criminal Procedure, a major legal reform took place, in section 218 of BNSS (Section 197 of CrPC). The concept of the Deemed Sanction is incorporated in the second proviso of section 218 (1) of BNSS. This provision states that the government must decide on sanctions within 120 days, and if it does not give approval or disapproval of the sanction, it is deemed to have granted the sanction. The silence of the government automatically transforms into approval and allow court to proceed with the proceedings of the case. In this way, unnecessary delays can be prevented, and justice can be delivered. The impact of the deemed sanction is a step toward accountability. The concept of deemed sanction helps in providing timely justice, especially regarding instances of malfeasance or misuse of authority. It removes the governmental obstacles and grants fair justice. The concept of deemed sanction drives accountability, transparency, efficiency and safeguards against the misuse of authority discretion.

CONSTITUTIONAL VALIDITY OF STATE IMMUNITY

The provision of state immunity has been criticised for providing an advantage of protection to the public servants and creating discrimination¹³ among the citizens and the public servants. This special procedure has been challenged for its constitutional validity. This protection of state immunity violates Article 14 of the Constitution as it creates unreasonable discrimination and compromises the principle of equality before the law. As critics argued that the principle of state immunity does not violate Article 14, i.e., the principle of equality before the law. As the principle of taking prior sanction from the appropriate government states, a positive discrimination which favours the public servants over the citizens. This positive discrimination is needed so that they can perform their official duty fearlessly and efficiently. In the case of *Mata Jogdobey v. H.C. Bhari*¹⁴, the constitutional bench of the Supreme Court of India held that Section 218 of BNSS (section 197 of CrPC) does not create discrimination but establishes a reasonable classification based on intelligible differentia among public officials and citizens.

¹² Ibid 5

¹³ Ravi Charan Pentapati and Dheeraj Samanchi, Understanding the Law of Sanction, Lexology

¹⁴ Ibid 3

Public servants occupy a position in which they have to perform their official duties with discretionary power, which can have an impact on society. So, in the absence of the protection under section 218 of BNSS can cause harm to public servants by malicious or frivolous prosecution. This protection supports the public servants to discharge their official duties with honesty and without any fear of false prosecution. The discrimination is considered legally valid because it distinguishes the acts of a public servant from those of an ordinary citizen by reasonable classification. Immunity is not absolute, and it does not exempt public officials from criminal prosecution.

JUDICIAL PERSPECTIVE ON SANCTION AND LIMITS OF IMMUNITY

The Supreme Court of India, through various judgments, has stated the legislative intent behind statutory immunity for public officials. A bench of J.B. Pardiwala and Manoj Mishra duly noted that the immunity of prior sanction under section 218 of BNSS (Section 197 of CrPC) does not act as a shield¹⁵ or instrument for criminal or unlawful acts of public officials. The objective of providing such immunity is to protect the public servants who act responsibly or act in good faith. To provide a sanction, there should be a distinction between malice act and an innocent act. Official duties do not include false evidence, falsifying official records or faking First Information Report (FIR); these are out of the ambit of immunity. A case before the court that involves the registration of a false FIR by police officials of Madhya Pradesh to create an alibi for an individual who is charged with murder in Uttar Pradesh. The court emphasised that the conduct of police officials is not a part of their official duty. They do not act within the boundaries of their official duties and are not able to get immunity under section 218 of BNSS (section 197 of CrPC). The judgment further clarifies that honest or sincere public officials should be granted an environment in which they can discharge their official duty with honesty and without any fear of unwarranted harassment or malicious prosecution, but officials who discharge their official duty dishonestly should not be granted immunity.

In this judgment, the court states guiding principles to provide immunity of sanction. Firstly, there should be a clear or reasonable relation between the act done by a public servant and the official duty of the public servant. If the act is done by a public servant outside their official duty, then they are not liable to claim the protection under section 218 of BNSS. Secondly,

¹⁵ Utkarsh Anand, Immunity for public servants not to shield the corrupt: SC, Hindustan Times

official immunity should not apply just because a position provided the chance to break the law; the action must be a direct and necessary part of carrying out one's formal responsibilities. Lastly, the trial court should evaluate whether the act in question is indeed to perform while discharging their official duty.

In light of the facts of the above case, the court highlights the fact that a person can not be present simultaneously at two places at the same time, and from this, the court concludes that the FIR registered by the police officers is false and out of their official duty, so they can not be protected under section 218 of BNSS. Through the pronouncement of this judgment, the court stated the conditional nature of state immunity, acts which can be covered under official duty, and that immunity is a shield for the innocent public servants. In this judgment, the court also strengthens the principle of accountability of public officials and safeguards the principle of the rule of law.

In the case of *Baijnath Gupta and Ors. v State of Madhya Pradesh (1965)*¹⁶, the Supreme Court of India set a foundational stone to examine the need of prior sanction for the prosecution of a public servant for offences of criminal breach of trust. In this case, Baijnath Gupta is the office superintendent, and other officers were employed in the electric supply undertaking of the Madhya Pradesh government. They were charged for the offence of criminal breach of trust by a public servant under section 409 of IPC (section 316 of BNS) and falsification of accounts under section 477A of IPC (section 344 of BNS). The Supreme Court of India held that the act of falsification of accounts by public officers is linked to their official duty; therefore, there is a requirement of prior sanction before prosecution. But in case of criminal breach of trust, which is not connected to their official duty but is a part of their abuse of authority, and therefore, for this particular offence, there is no requirement of prior sanction for prosecution. The significance of the Supreme Court of India is that a prior sanction for prosecution is required in cases where the act is related to their official duty, but there is no requirement of prior sanction in cases of abuse of office.

Further, in the case of *P.V. Narasimha Rao v. State*¹⁷, the Supreme Court clarified the need of link between the act committed by a public servant and their official duty to grant sanction. In this case, the public servant is charged with bribery, and the court applies the test of whether

¹⁶ Baijnath gupta and ors. v. State of Madhya Pradesh, AIR 1966 SCC 220

¹⁷ P.V. Narasimha Rao v. State, AIR (1998) 4 SCC 626

the act of bribery falls within the scope of the official duty. The acceptance of bribery is completely outside the ambit of the official duty. So, the public servant is not protected under section 218 of BNSS. As stated earlier, the purpose of section 218 is not to protect corrupt public officers, so the court can take cognizance of the case without the prior sanction of the government.

NEXUS TEST CONFIRMED FOR SANCTION: JUDICIAL POSITION

Section 218 of BNSS requires a nexus test for granting sanction to public officials. The principle of the nexus test is determined through *Amal Kumar Jha v. State of Chhattisgarh and Another*¹⁸. In this case accused was in charge of the hospital. He does not provide transport to shift the emergency patient to another hospital, stating that it is not for the patient's use. Due to the delay, the patient died. Prosecution alleged that the death of the patient was due to the omission of duty by a public servant, and therefore, the prior sanction is not required for initiation of the proceeding. Issue arises before the court is whether the act of a public servant is related to their official duty, or a sanction is required for prosecution. The Supreme Court held that a sanction can be granted only when there is a relation or link¹⁹ between the act and the official duty. As there is no particular test to determine the connection between an act and official duty, it can be determined through the facts of the case. In the above case, the court observed the fact and concluded that the act done by the accused was its official duty. Here is a reasonable nexus between the act and the official duty, so the immunity of prior sanction can be provided. The immunity of prior sanction can not be taken away just because negligent act, but it can only be taken away when there is no reasonable nexus between the act and official duty.

SANCTION NOT TO BE GRANTED WITHOUT APPLICATION OF MIND

Section 197 of the CrPC, now section 218 of BNSS, does not specifically define the procedure of granting sanction. But the judiciary through different judgments, clarifies the procedure or format of the granting of sanctions. The Supreme Court clarifies that the sanctioning authority should apply their mind and determine all the facts and evidence available to them. The sanction should be the result of an examination of facts and evidence, with a recording of

¹⁸ *Amal Kumar Jha v. State of Chattisgarh*, AIR (2016) 6 SCC 734

¹⁹ *Shrabani Acharya and Ayushman Khadanga*, Immunity to public officials under BNSS: Unfathomable Scope, Excessive Ambiguity and Executive overreach, Indian Journal of Integrated Research in Law, 5

reason. The objective of reasoning is that it maintains transparency, enables the judiciary to review and maintains public confidence in the judiciary and the law. The provision of sanctions fulfils two main purposes of Section 218 of BNSS, firstly, it protects the honest or innocent public servants from false or malicious prosecution, and secondly, it prevents corrupt public servants to take section 218 as a shield to escape liability. It creates a duty on the public servants to grant sanction with application of their mind²⁰ or by verifying all the evidence and facts. If the sanction is granted without application of mind, then the purpose of section 218 is not fulfilled, and it also defeats the purpose of the rule of law. The application of mind by the appropriate authority can be seen in a case where the accused is the additional secretary of the Madhya Pradesh government, and the lokayukta found that he is a corrupt officer and caused the loss to the state of crores of rupees. This order of sanction shows that the appropriate authority, i.e. the lokayukta has applied its mind and considered all the facts and evidences and also serves the purpose of this provision. The non-application of the mind can cause injury to the honest public servant, efficiency of the administration and also protect the corrupt officer from prosecution, which ultimately diminishes the purpose of section 218. The provision of a deemed sanction and a time period of 120 days in BNSS does not allow the authority to not examine the evidence and not apply its mind. But the sanctioning authority is bound to carefully examine the evidence and apply its mind within the time period. The time limit can not be replaced with scrutiny but directs the sanctioning authority to take a rightful decision within the prescribed time period. So, it can be concluded that the provision of sanctions is not a shield to corrupt public officials but a provision to protect honest public officials.

DISCRETIONARY POWERS OF THE GOVERNOR IN RELATION TO GRANTING SANCTIONS FOR THE PROSECUTION OF PUBLIC SERVANTS

The benefit of prior sanction for the prosecution of a public servant by the appropriate government is provided so that they can discharge their official duty efficiently and without any fear of malicious prosecution. But the question arises whether the appropriate government includes the governor of the state or not. As the governor is the nominal head²¹ of the state. The Supreme Court of India, through various cases, clarified that even if a statute uses the word 'Governor', then the interpretation of this expression is the state government. It means that as

²⁰ Urmi H Raval, Sanction for prosecution : An Analysis of basis underlying the labyrinth of judicial decisions, JETIR.ORG, 9

²¹ Ibid 9

per the constitution of India, the Governor can not use its discretionary power, but the expression 'Governor' is treated as the state government. The grant of sanction is an administrative function, and not a discretionary function. The discretionary power of granting sanction can not be performed by the governor, but if he acts as a part of the state government, then he can grant sanction of prosecution of a public servant.

STATUS AND CONSIDERATION FOR SANCTION

*Mohammad Iqbal Ahmed v. State of Andhra Pradesh (1979)*²², this case determines the status and validity of the sanction. In this case, the Supreme Court of India held that a magistrate can take cognizance of a case of prosecution of a public servant only with prior sanction of the appropriate government. If the cognizance of a case of prosecution of a public servant is taken without prior sanction, then that proceeding is a void ab initio (void from the beginning). The court also emphasised that the purpose of a sanction is to protect public servants from false or malicious proceedings and not to shield the corrupt employee. The court also laid down the essentials of section 218 of BNSS, firstly that a sanction can only be granted by the appropriate government, secondly, the sanctioning authority must be aware of the facts and evidence of the case, and lastly application of mind should be done by the sanctioning authority.

SANCTION ON RETIREMENT

Section 218 allows the prior sanction for the prosecution of a public servant who commits any offence while discharging his official duty. But there is a question whether the benefit of the sanction is granted to the retired public servant or not. The answer to this question is given by the judiciary through various judgments. In the case of *State of Punjab v. Labh Singh*²³ and *Sikandar Singh v. State of Punjab*²⁴, Labh Singh and Sikandar Singh were charged of embezzled with government treasury for not preparing records. They were charged under the Prevention of Corruption Act and the Indian Penal Code. Before applying for sanction, they were retired from their office of public servants. They applied for a sanction but were refused to grant sanction. The High Court held that the denial of a sanction merely based on retirement is discriminatory. They are allowed to get immunity from sanction before prosecution, as other co-accused were still in service and can only be prosecuted with prior sanction. On appeal

²² Mohammad Iqbal Ahmed v. State of Andhra Pradesh, AIR 1979 SC 677

²³ State of Punjab v. Labh Singh, AIR (2014) 11 SCR 312

²⁴ Sikandar Singh v. State of Punjab, AIR (2014) 15 SCR 759

before the Supreme Court, it was held that the immunity of sanction is also provided to the retired public servant, but only when the act committed by the accused was while acting or purporting to act in the discharge of their official duty. The reason behind this is that the protection is attached to the act and not to the status. If the offence is within the scope of section 218, then the status of retirement does not affect the immunity of the sanction. The court held that the offence under the Indian Penal Code is protected with the provision of sanction, and the accused can not be prosecuted without prior sanction from the sanctioning authority, but in the case of an offence under the Prevention of corruption the accused is not protected with the prior sanction as per section 19 of the act. As per Section 19 of the Prevention of Corruption Act sanction can only be granted to the accused when the accused is a public servant.

STAGE OF SANCTION ARISEN

Sanction is provided to protect the innocent public officers for the act done in the discharge of their official duty from the false prosecution. But the question arises at what stage the need of sanction is determined. This can be understood from *Devinder Singh and Ors. v. State of Punjab*²⁵, the police officers killed an individual and portrayed that murder as an encounter, which is done to maintain public order and peace. They portrayed the murder as an encounter which is done in the discharge of their official duty. As police officers can get immunity from sanction only when the act committed by them is done while discharging their official duty, and it must be proved that it is not a fake encounter. The court held that if it is proved that the encounter was fake, then this act is out of the scope of their official duty, but that remains to be proved. The court, through the *Matajog Dobey* case, observed that the issue of sanction can be raised at any stage of proceeding it is not merely confine at the stage of taking cognizance. It was observed that the complaint is not always able to disclose that the act was committed while discharging their official duty. But in some cases, it can be concluded later by a police report, inquiry or by evidence at trial. So in that case, it does not mean that a public servant is deprived of immunity. Immunity is granted if the act is done while discharging²⁶ their official duty, either the nature of the act is determined at the time of cognizance or at a later stage. This case determines that the issue of sanction can be granted at any stage. In the end, it can be concluded that the sanction can be granted at the time of taking cognizance or also at a later stage, but the condition is that there should be a relation between the act and official duty. The

²⁵ *Devinder Singh and ors. v. State of Punjab*, AIR (2016) 12 SCC 87

²⁶ *Mrinal Shankart and Dharma Tej Konerutt*, Sanction to prosecute public servants: Change in Regime a Balancing Act, SCC Online

sanction can be granted on the facts basis and not based on the stage.

OVERRIDING AFFECT OF SPECIAL LAWS

If there is a conflict between the provision of BNSS and other special laws, then which law prevails, this situation is clarified in the case of *V.C. Chinnappa Goudar v. Karnataka State Pollution Control*²⁷. In this case, the accused were the commissioner and chief officer grade-II and were charged under the Water (Prevention and Control of Pollution) Act, 1974. These public servants argue before the court that they should be granted prior sanction before prosecution as per section 197 of the CrPC. But this act did not prescribe any provision of sanctions and creates a direct liability on the wrongdoers. Issue arises before the court as to which provision will apply on the accused. The court came to a conclusion that the provision of the Water (Prevention and Control of Pollution) Act will apply to the accused, as section 5 of the CrPC clearly states that any provision of this code shall not affect the application of any special law. The court observed that the Water Act is a special law that defines the liability of the accused and prevails over the general law, i.e., the CrPC. The accused are not entitled to protection under section 197 of the CrPC.

FINDINGS

This research paper analyses the provision of sanctions, immunity and accountability of public servants in criminal prosecution under section 218 of BNSS (section 197 of CrPC). This research examines the purpose and objective of sanctions, i.e. to protect honest public servants from false or malicious prosecution so that they can discharge their official duty. However, this immunity is misused by many official so to prevent this situation, the scope of immunity is narrowed down. The court, through its interpretation in various case laws, prescribes the scope of immunity. The Supreme Court of India, through various judgments, derives the application of the state immunity, i.e. through a reasonable nexus between the act and the official duty of the public servants. The court also clarified that the immunity of sanction does not act as a shield to protect any act of public officials, but it is granted only to protect innocent public officials, and it covers only those acts that are connected to their official duty. This interpretation of the state immunity provides a clarity of section 218 of BNSS. Earlier provision of the CrPC resulted delay due to a lack of time limits for granting sanction, and

²⁷ V.C. Chinnappa Goudar v. Karnataka State, AIR (2015) 14 SCC 535

many authority misuses this power. So, to tackle this problem, section 218 of BNSS introduces a new provision, i.e. deemed sanction, which states that if the sanctioning authority did not accept or reject the sanction within the given time period, then it is deemed that the sanction is granted. It helps in providing a speedy trial and speedy justice. This research also examines the constitutional validity of Section 218 of BNSS. In short, finding of this research derive the necessity of sanctions to provide justice, transparency, responsibility and accountability.

CONCLUSION

The research paper can be concluded that public servants are accountable for their misconduct while discharging their official duty, and they can be protected from malicious or false prosecution. The immunity of sanction that is provided under section 218 of BNSS (section 197 of CrPC). This immunity maintains a balance between administrative protection and public accountability. This protection is provided to public servant so that they can discharge their official duty without any fear or with their full potential. This ensures efficient performance of the public servants. The power of immunity is misused by both public servants and the sanctioning authority, so Bharatiya Nagarik Suraksha Sanhita come with a new addition, the state immunity provision, i.e. the time limit of granting sanction is fixed by 120 days, and the provision of deemed sanction is introduced so that delay in prosecution can be prevented. The Supreme Court of India also provides clarity in granting sanction through various judgments. For more clarity the apex court also defines the provision with a reasonable test, i.e. a reasonable nexus between the act and the official duty and stages for granting sanction. The apex court also defines the situations in which sanctions can be granted, like in the case of a retired public servant. It also determines the discretionary power of the governor to grant sanctions and the contradiction of special laws with the general laws. The court's main emphasis is on the application of the mind while granting a sanction, as it helps to maintain transparency and public trust in the law and order. From the above research it can be concluded that the main objective of the provision of state immunity is to ensure fairness, accountability, and equality before the law.

REFERENCES

1. The Bharatiya Nagarik Suraksha Sanhita, 2023, section 218
2. The Code of Criminal Procedure, 1973, section 197
3. Matajog Dobey v. H. C. Bhari, AIR 1955 SCR (2) 925
4. Vineet Narain v. Union of India, Air (1998) 1 SCC 226
5. Subramania Swamy v. Manmohan Singh, AIR (2012) 3 SCC 64
6. Law Commission of India, (1969), 41st Report on the Code of Criminal Procedure
7. Om Prakash Yadav v. Niranjana Kumar Upadhyay, AIR 2024 INSC 979
8. Biplab Kumar Lenin, Sanction for Prosecution of Public Servants: A Necessary Evil, Manupatra
9. Ravi Charan Pentapati and Dheeraj Samanchi, Understanding the Law of Sanction, Lexology
10. Utkarsh Anand, Immunity for public servants not to shield the corrupt: SC, Hindustan Times
11. Baijnath gupta and ors. v. State of Madhya Pradesh, AIR 1966 SCC 220
12. P.V. Narasimha Rao v. State, AIR (1998) 4 SCC 626
13. Amal Kumar Jha v. State of Chattisgarh, AIR (2016) 6 SCC 734
14. Shrabani Acharya and Ayushman Khadanga, Immunity to public officials under BNSS: Unfathomable Scope, Excessive Ambiguity and Excessive overreach, Indian Journal of Integrated Research in Law, 5
15. Urmi H Raval, Sanction for prosecution: An Analysis of basis underlying the labyrinth of judicial decisions, JETIR.ORG, 9

16. Mohammad Iqbal Ahmed v. State of Andhra Pradesh, AIR 1979 SC 677
17. State of Punjab v. Labh Singh, AIR (2014) 11 SCR 312
18. Sikandar Singh v.State of Punjab, AIR (2014) 15 SCR 759
19. Devinder Singh and ors. v. State of Punjab, AIR (2016) 12 SCC 87
20. Mrinal Shankart and Dharma Tej Konerutt, Sanction to prosecute public servants: Change in Regime a Balancing Act, SCC Online
21. V.C. Chinnappa Goudar v. Karnataka State, AIR (2015) 14 SCC 535