

FROM CrPC, 1973 TO BNSS, 2023: A COMPARATIVE STUDY OF PROSECUTION SANCTION AND STATUTORY SAFEGUARDS FOR SENIOR POLICE OFFICERS IN MAHARASHTRA

Mr. Nitin Pawar

PhD Scholar

Department of Law, University of Mumbai

Email: nitinpawar@gmail.com

Dr. Kavita Lalchandani

Principal

KC Law College, Mumbai

Email: kavitalalchandani@gmail.com

Abstract

The transition from the Code of Criminal Procedure, 1973 (CrPC) to the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has renewed the debate over the proper boundaries of prosecution sanction for public officials. Senior police officers in Maharashtra occupy positions requiring rapid operational decisions, supervisory responsibility and accountability for the use of coercive powers. This doctrinal and comparative paper examines section 197 CrPC and section 218 BNSS alongside the Maharashtra Police Act, 1951 and relevant judicial decisions. It argues that the principal substantive safeguard—the requirement of a reasonable connection between alleged conduct and official duty—survives the legislative transition, while the BNSS introduces a 120-day decision period and deemed sanction mechanism. The paper distinguishes immunity from a procedural condition governing cognizance, examines the implications of rank, appointing authority, police-specific protection and statutory limitation, and considers allegations of custodial violence, unlawful detention and abuse of investigative powers. It concludes that effective reform requires reasoned and transparent sanction decisions, faithful application of the duty-nexus test and careful coordination of central and Maharashtra-specific safeguards. Neither unrestricted immunity nor automatic criminalisation of operational policing adequately serves constitutional justice.

Keywords: Prosecution Sanction; Bharatiya Nagarik Suraksha Sanhita, 2023; Code of Criminal Procedure, 1973; Maharashtra Police Act; Senior Police Officers; Official Duty.

Introduction

Prosecution sanction lies at the intersection of two constitutional imperatives: public servants must perform lawful duties without intimidation by frivolous litigation, while the coercive authority of the State must remain subject to the criminal law. The police exercise powers of arrest, investigation, search, crowd control and maintenance of public order. Allegations against senior officers may concern decisions taken personally, directions issued to subordinates or failures of supervision. The law must therefore separate genuine acts connected with official duty from conduct for which office supplies merely an opportunity.¹²

Maharashtra presents a particularly useful jurisdictional case study. Its police establishment is governed not only by the general criminal procedure code but also by the Maharashtra Police Act, 1951, historically enacted as the Bombay Police Act. The latter contains protections relating to acts under colour of duty and a distinctive limitation regime. A comparison limited to the renumbering of section 197 as section 218 would miss these interacting rules and the practical question of which protection, if any, a particular officer may invoke.³

This article asks three questions: what substantive and procedural changes does the BNSS make to sanction; how do rank and the duty nexus affect senior officers; and how should Maharashtra-specific statutory protections be reconciled with accountability for serious wrongdoing? Its central proposition is that sanction should remain a carefully delimited screening mechanism, never a presumption that police conduct is lawful.

Objectives, Scope and Research Methodology

¹The Code of Criminal Procedure, 1973, No. 2 of 1974, s. 197 (India).

²The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, s. 218 (India).

³The Maharashtra Police Act, 1951, Maharashtra Act XXII of 1951, ss. 159–161 (India).

The study adopts a doctrinal methodology based on close reading of statutory texts and reported judicial decisions. It compares the operative language of section 197 CrPC and section 218 BNSS, reads them alongside the Maharashtra Police Act and the Prevention of Corruption Act, 1988, and analyses Supreme Court formulations of the reasonable-nexus test. The inquiry is confined to prosecution sanction and connected procedural safeguards; it does not undertake empirical measurement of sanction approvals or refusals. Consequently, institutional recommendations are normative rather than claims about measured administrative performance.⁴

“Senior police officer” is used descriptively rather than as a self-executing statutory category. The applicability of a sanction provision depends on the statutory requirements, service conditions, relevant notifications and character of the alleged act—not on a label such as superintendent, deputy commissioner or commissioner alone. This distinction is important because neither CrPC section 197 nor BNSS section 218 grants blanket protection to everyone holding a police designation.

The Pre-BNSS Framework: Section 197 CrPC

Section 197 CrPC restricted a court from taking cognizance of specified offences alleged against judges, magistrates and qualifying public servants without prior governmental sanction where the impugned act was committed while acting or purporting to act in the discharge of official duty. The qualifying public servant was one not removable from office except by or with governmental sanction. Thus the protection combined a status requirement with a functional requirement. Both had to be considered before the cognizance bar could operate.⁵

The object was institutional rather than personal. Government officers sometimes must choose between competing public interests under pressure. Fear of immediate prosecution for every disputed decision could inhibit lawful policing. Yet the text did not make sanction a prerequisite for investigating every allegation, nor did it create a substantive defence to criminal liability. Its central operation was directed at the judicial act of taking cognizance. This distinction matters when complaints contain allegations that must first be factually investigated.⁶

Judicial interpretation developed the “reasonable connection” or “reasonable nexus” test. The fact that an accused happened to be on duty, wore uniform or exercised authority at the time of an offence was insufficient. The impugned act had to bear such a relation to the official function that the officer could reasonably, rather than fancifully, claim to have acted in its discharge. Conversely, an excessive or mistaken exercise of a legitimate duty could remain within the protective perimeter. The law consequently resisted both mechanical immunity and mechanical denial of protection.⁷⁸

The point at which sanction should be assessed is also flexible. Where the complaint itself clearly shows the duty nexus, the court may address the question at the outset. Where facts are contested or the relationship between duty and alleged conduct is uncertain, evidence may be required. A premature conclusion can prejudice either complainants or officials. The Supreme Court has accordingly recognised that the issue may arise at different stages of criminal proceedings.⁹¹⁰

BNSS Section 218: Continuity and Reform

Section 218 BNSS substantially preserves the architecture of section 197 CrPC. It continues to focus on qualifying public servants, official-duty connection and previous sanction before cognizance. For Union and State public servants, the corresponding government remains the sanctioning authority, subject to the statute’s special provisions. The retention of this language strongly suggests that established judicial principles on the duty nexus remain relevant unless displaced by a specific change in the new enactment.¹¹

⁴The Prevention of Corruption Act, 1988, No. 49 of 1988, ss. 17A, 19 (India).

⁵The Code of Criminal Procedure, 1973, s. 197(1).

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

⁷P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704.

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

⁹Pukhraj v. State of Rajasthan, (1973) 2 SCC 701.

¹⁰Devinder Singh v. State of Punjab, (2016) 12 SCC 87.

¹¹The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218(1).

The most conspicuous procedural reform is the requirement that the government decide a sanction request within 120 days of receipt. Failure to decide within that period results, under the statutory proviso, in sanction being deemed accorded. This reverses the practical advantage previously created by indefinite administrative inaction. However, it also raises questions about the form of a valid request, proof of receipt, the completeness of supporting records and the consequences of a decision communicated close to the deadline.¹²

The new provision additionally identifies specified offences under the Bharatiya Nyaya Sanhita, 2023 for which the sanction requirement under that proviso is dispensed with. These exclusions matter because certain offences involving sexual violence, exploitation and serious misuse of public authority cannot be shielded merely through the ordinary sanction route. The precise charge and statutory wording must nevertheless be checked: a broad moral description of misconduct cannot substitute for the enacted list.¹³¹⁴

A 120-day rule is not a judicial finding of innocence or guilt. Deemed sanction removes a procedural impediment; it does not establish the offence or dispense with the burden of proof. Equally, an express refusal of sanction must be distinguished from mere delay. The new provision is best understood as promoting timely administrative accountability while preserving the court's independent duty to examine the ingredients of an alleged offence.

The BNSS also retains separate treatment for members of the Armed Forces of the Union and specified forces charged with maintaining public order. Those provisions should not be casually equated with the position of ordinary Maharashtra police officers. Whether a special notification applies must be established from the governing legal instrument rather than inferred from an officer's rank or operational deployment.¹⁵

Maharashtra Police Act: Additional Statutory Safeguards

The Maharashtra Police Act introduces a second layer of analysis. Sections 159 to 161 address acts done under colour of, or in excess of, statutory duty or authority. Section 161 prescribes a six-month period for covered prosecutions or suits, subject to a proviso permitting prosecution of a police officer with previous State Government sanction within two years of the offence. This is a specialised limitation and sanction arrangement; it should not be mistaken for the general cognizance rule under the CrPC or BNSS.¹⁶¹⁷

The existence of two statutory frameworks makes the threshold inquiry more complex. A litigant may contend that BNSS sanction is unnecessary because the accused officer does not satisfy its status requirement, while the officer invokes a police-specific statutory protection linked to acts under colour of duty. Conversely, compliance with a police-specific limitation rule does not automatically establish compliance with any independently applicable BNSS sanction requirement. Each statutory source must be separately identified and construed.¹⁸

The words “under colour of duty” demand particular care. They can encompass conduct purportedly undertaken by virtue of policing authority, including acts exceeding lawful powers. Yet they cannot reasonably transform every private dispute or intentional criminal enterprise into an official function. The adjudicator must analyse the nature of the act, the authority purportedly exercised and the factual proximity between the allegation and the officer's assigned responsibilities.¹⁹

Maharashtra's regime also reveals a potential access-to-justice concern. Short limitation periods can affect complainants who face delayed disclosure of records, fear retaliation or struggle to obtain medical and digital evidence. On the other hand, time restrictions aim to protect officials from stale claims and evidentiary deterioration. The appropriate response is not to ignore the statutory text but to construe its prerequisites carefully and consider legislative reform where documented barriers to legitimate complaints persist.

Judicial Standards and Their Application to Senior Officers

¹²Id., s. 218(1), second proviso.

¹³Id., s. 218(1), third proviso.

¹⁴The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, ss. 64–79, 143, 199–200 (India).

¹⁵The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218(2)–(4).

¹⁶The Maharashtra Police Act, 1951, ss. 159–161.

¹⁷Id., s. 161(1) & proviso.

¹⁸The Code of Criminal Procedure, 1973, s. 197; The Maharashtra Police Act, 1951, s. 161.

¹⁹The Maharashtra Police Act, 1951, ss. 159–161.

In *Devinder Singh v. State of Punjab*, the Supreme Court surveyed the jurisprudence and emphasised that a reasonable connection with official duty is essential; a pretended or fanciful claim is insufficient. It recognised that official conduct may be excessive yet still be related to duty, and that the sanction issue may require examination at a later stage. These principles are valuable when allegations concern operations ordered or supervised by senior officers rather than isolated acts by constables.²⁰

D. Devaraja v. Owais Sabeer Hussain concerned a senior police officer and allegations arising from investigation-related acts. The Supreme Court held that the relevant official-duty connection attracted the sanction protection in the circumstances before it. Importantly, the judgment did not announce that all police misconduct requires sanction; it applied the nexus test to the factual setting and the relevant statutory provisions. The case illustrates both the strength and the limits of the protective rationale.²¹

The distinction is particularly important for supervisory liability. A commissioner may issue a written deployment order, approve an investigative step or supervise an operation. If the complaint alleges that a lawful order was negligently executed, the connection with official functions may be substantial. If it alleges personal extortion, fabrication for private gain or conduct entirely outside assigned authority, office alone cannot create the necessary nexus. Each accused officer's own conduct must be evaluated; the designation of the most senior accused does not determine the position of every subordinate.^{22,23}

A further distinction concerns the gravity of allegations. Seriousness may be relevant to the underlying offence, but sanction cannot be decided solely by asking whether the conduct is morally reprehensible. The legal question is the nexus between the alleged act and duty, read with express statutory exceptions. At the same time, courts must not accept an implausible official-duty narrative that disguises deliberate violence or criminal profiteering.^{24,25}

Comparative Assessment: What Has Changed?

First, the core legal test has not been abandoned. CrPC section 197 and BNSS section 218 both condition protection on the officer's qualifying status and the alleged act's connection with official duty. Judicial precedents construing those expressions remain essential to legal analysis. Second, the BNSS introduces a determinate administrative timeframe with deemed sanction, thereby shifting the consequences of governmental silence. Third, the BNSS specifies additional offence-based exceptions, which may narrow the availability of sanction protection in covered prosecutions.²⁶

Fourth, Maharashtra-specific provisions continue to matter. They may govern police-related proceedings through their own conditions and limitation periods, requiring a structured inquiry into statutory overlap. Fifth, the transition does not eliminate procedural questions about who is competent to remove the officer, which government is competent to sanction, and whether the alleged act has a genuine connection with public duty. Those matters require service records, relevant rules and reliable descriptions of the conduct.²⁷

Finally, temporal application must be approached through the BNSS repeal-and-savings provision rather than a blanket assertion that every matter filed after July 2024 necessarily follows the same rule. Pending investigations, inquiries, trials, appeals and applications may engage transitional protections. Practitioners should identify the date and procedural posture of the proceeding before selecting the governing code.²⁸

Constitutional Accountability and Fair Procedure

Article 14 demands non-arbitrary administration of law; Article 21 requires fair and lawful criminal process. A sanction framework that becomes an indefinite executive veto over legitimate prosecution risks weakening both principles. Conversely, a system that exposes officers to criminal process for every operational

²⁰*Devinder Singh v. State of Punjab*, (2016) 12 SCC 87.

²¹*D. Devaraja v. Owais Sabeer Hussain*, (2020) 7 SCC 695.

²²*P.K. Pradhan v. State of Sikkim*, (2001) 6 SCC 704.

²³*Devinder Singh v. State of Punjab*, (2016) 12 SCC 87.

²⁴*Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

²⁵*D. Devaraja v. Owais Sabeer Hussain*, (2020) 7 SCC 695.

²⁶The Code of Criminal Procedure, 1973, s. 197(1); The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218(1).

²⁷The Maharashtra Police Act, 1951, s. 161; The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218.

²⁸The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 531.

disagreement without statutory screening may undermine lawful performance of public functions. The constitutional task is to preserve independent adjudication and prevent either side from treating sanction as a political instrument.²⁹

The right to seek redress is especially significant in allegations of custodial violence, unlawful confinement and fabricated criminal cases. Documentary records may be controlled by the very institution whose personnel are accused. Prompt preservation of station diaries, CCTV recordings, arrest memoranda, medical records and communications can help determine whether a genuine duty nexus exists. Sanction scrutiny should be evidence-sensitive rather than dependent exclusively on an officer's formal explanation.³⁰

The Prevention of Corruption Act presents a separate but related sanction regime. Its section 19 concerns prosecution for specified corruption offences, while section 17A regulates prior approval for certain investigative steps concerning decisions or recommendations made in discharge of official functions, subject to statutory qualifications. These provisions should not be merged into a generic "police sanction" rule. A prosecution involving multiple offences may require a provision-by-provision analysis.³¹

Findings and Recommendations

The study finds that legislative continuity is more substantial than the change in statutory numbering might suggest. The duty-nexus test remains the controlling conceptual safeguard. The BNSS, however, meaningfully addresses delay through the 120-day deemed-sanction provision and expressly recognises categories of offences for which sanction is unnecessary. Maharashtra's separate limitation structure makes local application more intricate than a simple national comparison would reveal.

A first recommendation is a standardised sanction-request protocol. The receiving authority should record the date of receipt, identify missing documents promptly, specify the offences and accused officials concerned and preserve an auditable record of each decision. A transparent acknowledgement mechanism would reduce disputes about when the 120-day clock begins and whether a decision was timely. These are administrative proposals, not claims that the BNSS itself prescribes a particular electronic portal.³²

Second, sanction decisions should be reasoned and individualised. The authority should assess the officer's removal status, precise conduct, connection with official duty, statutory exceptions and the evidence available. A decision based only on designation or a formulaic statement that the act occurred "during duty hours" would fail to confront the substantive test developed by the Supreme Court. Where several officers are accused, each should receive separate consideration.³³³⁴

Third, prosecuting agencies and courts should use a structured statutory checklist distinguishing BNSS section 218, the Maharashtra Police Act and corruption-law requirements. Such a checklist should identify the governing law, the relevant date, the officer's service status, any applicable notification, the duty nexus and any limitation issue. This approach would improve predictability without predetermining the merits of a complaint.³⁵

Fourth, independent preservation of evidence is indispensable where complaints involve the police hierarchy. Prompt collection of medical evidence, digital recordings and contemporaneous orders can protect both complainants and officers against distorted allegations. The fairness of sanction scrutiny depends on factual accuracy, not merely on the formal allocation of the power to grant permission.³⁶

Fifth, Maharashtra should periodically review the practical operation of section 161, particularly the interaction of limitation, sanction and access to relevant records. Any reform should be based on published administrative data and judicial outcomes rather than an assumption that all refusals are improper or all complaints are

²⁹The Constitution of India, arts. 14 & 21.

³⁰D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

³¹The Prevention of Corruption Act, 1988, ss. 17A & 19.

³²The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218(1), second proviso.

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

³⁴P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704.

³⁵The Maharashtra Police Act, 1951, s. 161; The Prevention of Corruption Act, 1988, s. 19.

³⁶D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

malicious. A carefully designed review could preserve protection for legitimate official action while addressing avoidable barriers to accountability.³⁷

Practical Illustrations and Procedural Implications

Consider first a senior officer who orders the deployment of a police unit during a volatile public gathering. A subsequent complaint alleges that the operation involved excessive force. The sanction inquiry should identify the particular order, its statutory source, the information available to the officer, the relationship between the order and the alleged violence, and the distinct acts of individual personnel. The mere presence of an official order cannot excuse deliberate wrongdoing, but the fact that a lawful operation produced an adverse outcome does not by itself eliminate the possibility of a duty nexus. A reasoned assessment is more defensible than an automatic conclusion drawn from the seriousness of the allegation.

Consider next an allegation that an officer demanded money in return for suppressing evidence in an investigation. Even where the encounter occurred at a police station, the authority should ask whether the alleged demand could plausibly be described as the performance of any police duty. The workplace setting and the officer's ability to influence an investigation may explain how the alleged offence occurred, but they do not necessarily connect the offence to a legitimate public function. Distinguishing the occasion for an offence from the nature of the act is essential to prevent misuse of sanction protections.

A third illustration concerns an officer accused of authorising an unlawful detention while supervising a complex investigation. The factual account may be contested: the prosecution may describe a deliberate abuse of power, while the officer may rely on an arrest instruction or operational intelligence. The correct inquiry is not settled by either characterisation alone. Contemporaneous orders, custody records, communications and judicial authorisations should be evaluated to decide whether the alleged conduct was sufficiently connected with the claimed duty. Where those facts cannot fairly be resolved at the threshold, the court may need to revisit sanction at a procedurally appropriate stage.

The examples also show why sanction administration should not be treated as an internal disciplinary exercise. Departmental proceedings, criminal investigation, cognizance and trial serve different functions and may involve different legal thresholds. An administrative decision declining sanction does not necessarily answer every question about departmental responsibility; equally, a disciplinary finding does not automatically establish the criminal ingredients of an offence. Careful separation of these processes protects the accused officer's procedural rights and the complainant's interest in a fair and meaningful examination of the allegation.

Finally, the interaction between central and State legislation should be reflected in legal education and institutional training. Investigating agencies should be trained to identify the specific source of protection asserted, the competent authority and the relevant time limits. Courts should record concise reasons when applying or declining a statutory bar. Such practices would make decisions easier to scrutinise on appeal and would discourage unnecessary procedural litigation. Their adoption would not require abandonment of the legitimate legislative objective of protecting police personnel from vexatious prosecutions.

Conclusion

The movement from the CrPC to the BNSS does not extinguish the rationale for prosecution sanction. Senior police officers require sufficient institutional protection to perform difficult statutory responsibilities, but the criminal law cannot permit official position to become a refuge for conduct unconnected with lawful duty. The enduring judicial test is whether the alleged act has a reasonable, non-fanciful nexus with official functions. The BNSS retains that standard while introducing a time-bound decision process and specified exceptions. In Maharashtra, the Police Act adds a distinct set of protections and limitation questions requiring careful interpretation.

The preferable approach is therefore neither blanket immunity nor routine rejection of sanction claims. It is a transparent, evidence-based and legally differentiated inquiry into status, duty, offence, timing and applicable statutory authority. With reasoned decisions, timely processing, preserved evidence and vigilant judicial

³⁷The Maharashtra Police Act, 1951, s. 161.

scrutiny, the transition to the BNSS can strengthen both operational confidence and accountability. Such a balance is the most defensible measure of criminal procedural reform in a constitutional democracy.

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2. The Code of Criminal Procedure, 1973, No. 2 of 1974, s. 197.
3. The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, ss. 218, 531.
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