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## INTERPLAY BETWEEN MAHARASHTRA POLICE ACT AND CRPC IN GRANTING PROSECUTION SANCTION

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### ABSTRACT

Statutory protection to police officers is a well-recognised principle in criminal jurisprudence, intended to ensure that public officials can perform their duties without fear of vexatious litigation. Such protection is primarily embodied in provisions requiring prior sanction before prosecution, particularly under the Code of Criminal Procedure, 1973 (CrPC) and special state legislations like the Maharashtra Police Act. The requirement of sanction acts as a procedural safeguard, balancing administrative efficiency with accountability.

Under the CrPC, sanction for prosecution is governed by Section 197, which protects public servants from prosecution for acts done in the discharge of official duties. Similarly, the Maharashtra Police Act provides additional protection to police personnel, often prescribing prior approval of competent authorities before initiating legal proceedings. However, the coexistence of these provisions has led to significant interpretational challenges, particularly regarding the scope, applicability, and extent of protection available under each statute.

The overlap between central and state legislation raises critical questions: whether both provisions operate cumulatively or independently, and how conflicts between them are to be resolved. This research adopts a doctrinal methodology, analysing statutory provisions and judicial precedents to examine the nature and extent of such protection.

The study finds that while these provisions are essential to safeguard honest officers, their broad application may inadvertently shield misconduct, thereby undermining accountability. A balanced approach is therefore necessary to ensure that statutory protection does not become a tool for impunity but continues to serve its intended purpose of facilitating effective policing within constitutional limits.

### INTRODUCTION

The criminal justice system recognises the necessity of protecting public servants, particularly police officials, from frivolous and vexatious litigation arising out of actions performed in the course of their official duties. Such protection is essential to ensure that officers can discharge their functions fearlessly and effectively, without the constant apprehension of malicious prosecution. At the same time, this protection must be balanced against the need to ensure accountability and prevent abuse of power.<sup>1</sup>

One of the key legal safeguards in this context is the requirement of prior sanction for prosecution. The doctrine of sanction serves as a procedural filter, preventing the initiation of criminal proceedings against public servants unless approved by the competent authority. This requirement assumes particular importance in maintaining administrative efficiency while safeguarding individual rights within the criminal justice framework.<sup>2</sup>

The legal framework governing prosecution sanction primarily derives from the Code of Criminal Procedure, 1973 (CrPC), which under Section 197 mandates prior sanction for prosecuting public servants for acts done in the discharge of official duties.<sup>3</sup> In addition, the Maharashtra Police Act, 1951 provides specific protections to police personnel under provisions such as Section 159, which grants immunity for acts done in “good faith” in pursuance of official duty.<sup>4</sup> The coexistence of these provisions creates a dual statutory regime governing prosecution of police officers in the State of Maharashtra.

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<sup>1</sup> M.P. Jain, *Indian Constitutional Law* 123 (LexisNexis, New Delhi, 8th edn., 2018).

<sup>2</sup> K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* 256 (Eastern Book Company, Lucknow, 6th edn., 2017).

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

<sup>4</sup> The Maharashtra Police Act, 1951 (Act 22 of 1951), s. 159.

A critical concept underpinning both statutes is that of “official duty” and actions performed in “good faith.” Judicial interpretation has consistently emphasised that protection is not absolute; it extends only to acts reasonably connected with official functions and performed without malice or ulterior motive.<sup>1</sup> However, determining the scope of “official duty” often becomes contentious, especially in cases involving allegations of excess or misuse of authority.

The core problem arises from the overlapping nature of the CrPC and the Maharashtra Police Act, which often leads to ambiguity regarding the requirement and extent of sanction. Questions frequently arise as to whether both provisions apply simultaneously, whether one overrides the other, and how conflicts between them are to be resolved. This ambiguity has significant implications for both prosecution agencies and accused officials.

Accordingly, this paper seeks to analyse the statutory provisions governing prosecution sanction, examine judicial interpretation of these provisions, and assess the practical challenges arising from their application. It also addresses key research questions, including: when is sanction for prosecution required, and which legal framework prevails in case of conflict between the two statutes. The study adopts a doctrinal methodology, relying on statutory analysis and judicial precedents to critically evaluate the interplay between the two laws.

### CONCEPTUAL FRAMEWORK: SANCTION FOR PROSECUTION

Sanction for prosecution is a legal prerequisite designed to protect public servants from frivolous, vexatious, or malicious litigation arising out of acts performed in the discharge of official duties. It serves as a safeguard ensuring that honest officers are not subjected to unnecessary harassment, while at the same time permitting legitimate prosecution where abuse of power is evident. Under the Code of Criminal Procedure, 1973, prior sanction is mandated before courts can take cognizance of offences alleged to have been committed by public servants in the course of their official functions.<sup>2</sup>

The underlying principle governing sanction is the doctrine of “official duty”, often tested through the “reasonable nexus” standard. This doctrine requires that the act complained of must bear a direct and reasonable connection with the official duties of the public servant. In *Matajog Dobey v. H.C. Bhari*, the Supreme Court clarified that the necessity of sanction depends on whether the act has a reasonable connection with official duty, even if the act exceeds or abuses such duty.<sup>3</sup> Thus, the focus is not on the legality of the act but on its relation to official functions.<sup>4</sup>

A crucial distinction arises between acts performed in official capacity and those in personal capacity. Acts in official capacity are those performed in discharge of statutory duties, even if done improperly or with excess. In contrast, acts in personal capacity are those entirely unrelated to official functions and therefore do not attract the protection of sanction. This distinction was further elaborated in *State of Orissa v. Ganesh Chandra Jew*, where the Court held that sanction is not required when the act complained of has no nexus with official duty.<sup>5</sup>

The debate surrounding sanction revolves around the tension between protection and accountability. While sanction provisions aim to prevent harassment of public officials, they are often criticised for shielding corrupt or abusive conduct and creating procedural hurdles in prosecuting wrongdoing. This becomes particularly significant in the context of police officers, where misuse of authority can directly affect fundamental rights.

Additionally, state police laws, such as the Maharashtra Police Act, incorporate the concept of “good faith” to extend protection to officers acting honestly and with due care.<sup>6</sup> The requirement of good faith acts as a qualifying condition—only those actions undertaken with bona fide intent and within the scope of duty are protected. Thus, the framework of prosecution sanction reflects a delicate balance

<sup>1</sup> *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

<sup>2</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

<sup>3</sup> *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

<sup>4</sup> *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

<sup>5</sup> The Maharashtra Police Act, 1951 (Bom. Act 22 of 1951), s. 161.

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

between ensuring administrative efficiency and upholding the rule of law by enabling accountability mechanisms.<sup>1</sup>

### STATUTORY FRAMEWORK UNDER CRPC

Section 197 of the Code of Criminal Procedure, 1973 (CrPC) embodies a crucial procedural safeguard for public servants by mandating prior sanction before their prosecution for acts done in the discharge of official duties.<sup>2</sup> The provision seeks to strike a balance between protecting honest officials from vexatious litigation and ensuring accountability for abuse of power. It applies to public servants who are not removable from office save by or with the sanction of the Government, thereby covering a wide range of administrative and police authorities.<sup>3</sup>

The requirement of prior sanction operates as a jurisdictional bar on courts, meaning that cognizance of an offence cannot be taken without approval from the competent authority. Depending on the nature of employment, the competent authority may be either the Central Government or the State Government.<sup>4</sup> This procedural requirement ensures that executive oversight is exercised before initiating criminal proceedings against public servants, particularly in cases involving decisions taken in the course of official functions.

Judicial interpretation of Section 197 has largely revolved around the phrases “while acting or purporting to act in the discharge of official duty” and the requirement of a reasonable nexus between the act complained of and official functions. In *Prakash Singh Badal v. State of Punjab*, the Supreme Court clarified that the protection under Section 197 is not absolute and is available only when the alleged act has a direct and reasonable connection with official duty.<sup>5</sup> Acts which are merely cloaked as official actions but are in reality motivated by personal or extraneous considerations do not attract such protection.

Similarly, in *Devinder Singh v. State of Punjab*, the Court emphasised that there must exist a clear nexus between the act and the official duty, and such nexus must not be fanciful or pretended.<sup>6</sup> The test is whether the omission or commission complained of was so integrally connected with official duties that it could be said to have been done in their discharge. The courts have consistently held that even if the act exceeds the scope of duty, sanction may still be required provided there exists a reasonable connection.<sup>7</sup>

However, there are well-recognised exceptions where prior sanction is not required. Acts that are wholly unrelated to official duties, such as custodial violence, fake encounters, or offences involving corruption and personal gain, fall outside the protective ambit of Section 197.<sup>8</sup> In such cases, the courts have refused to extend immunity, emphasising that criminal acts cannot be shielded under the guise of official authority.

Procedurally, the question of sanction can be raised at any stage of the proceedings and must be determined based on the facts of each case. Courts have also recognised that sanction should not become a tool to delay or obstruct justice, and its necessity must be carefully scrutinised. The evolving judicial approach reflects a nuanced balance—while genuine acts performed in good faith require protection, misuse of authority must remain subject to legal accountability.

### STATUTORY PROTECTION UNDER MAHARASHTRA POLICE ACT, 1951

The Maharashtra Police Act, 1951 provides statutory protection to police officers to ensure that they can perform their duties without fear of vexatious litigation. One of the key features of the Act is the protection granted for acts done in “good faith” in the discharge of official functions. Section 161 of the Act lays down that no suit or prosecution shall lie against any police officer for acts done under the

<sup>1</sup> K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* 210 (Eastern Book Company, Lucknow, 6th edn., 2014).

<sup>2</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> *Prakash Singh Badal v. State of Punjab*, (2007) 1 SCC 1.

<sup>6</sup> *Devinder Singh v. State of Punjab*, (2016) 12 SCC 87.

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

<sup>8</sup> *Devinder Singh v. State of Punjab*, (2016) 12 SCC 87.

Act or in excess thereof, provided such acts are done in good faith.<sup>1</sup> This provision reflects the legislative intent to shield police officers from unnecessary harassment arising out of bona fide actions performed during the course of duty.

Further, the Act imposes a procedural safeguard by requiring prior notice or sanction before initiating prosecution against a police officer. It mandates that no court shall take cognizance of an offence against a police officer unless previous sanction of the competent authority is obtained.<sup>2</sup> This requirement acts as a filtering mechanism to prevent frivolous or malicious proceedings and ensures that only genuine cases proceed to trial.

The scope of immunity granted under the Act, however, is not absolute. It extends only to acts that have a reasonable nexus with official duties and are performed in good faith. The expression “good faith” has been interpreted under the Indian Penal Code to mean actions done with due care and attention.<sup>3</sup> Thus, acts performed negligently or with mala fide intent fall outside the protective ambit of the Act. Courts have consistently held that protection cannot be claimed for acts that are wholly unrelated to official duty or are committed with ulterior motives.

Another important aspect is the limitation period prescribed under the Act. Proceedings against police officers must be initiated within a specified time frame, typically within six months from the date of the alleged act.<sup>4</sup> This limitation reinforces the objective of ensuring prompt action while preventing stale or delayed claims.

The legislative intent behind such special protection is to maintain the efficiency and independence of the police force. Given the nature of policing, officers are often required to take swift decisions in sensitive and volatile situations. The fear of prosecution could deter them from performing their duties effectively. At the same time, the law seeks to balance this protection by limiting immunity to acts done in good faith and within the scope of official duty.<sup>5</sup>

A crucial distinction arises between “good faith” and “official duty.” While “official duty” pertains to the nature of the act performed as part of one’s professional responsibilities, “good faith” relates to the intention and care with which the act is carried out. An act may fall within official duty but still lack good faith if performed recklessly or with malice. Therefore, both elements must coexist for a police officer to successfully claim statutory protection under the Act.

### **INTERPLAY BETWEEN CRPC AND MAHARASHTRA POLICE ACT**

The interplay between the Code of Criminal Procedure, 1973 (CrPC) and the Maharashtra Police Act, 1951 raises significant legal questions regarding the requirement of prior sanction for prosecuting police officers. While the CrPC is a central legislation governing procedural aspects of criminal law across India, the Maharashtra Police Act is a state-specific statute aimed at regulating the conduct and functioning of police personnel within the state.<sup>6</sup> The overlap arises primarily in the context of provisions relating to prior sanction, particularly Section 197 of the CrPC and Section 161 of the Maharashtra Police Act.<sup>7</sup>

Section 197 of the CrPC mandates prior sanction of the appropriate government before prosecuting a public servant for acts done in discharge of official duty.<sup>8</sup> Similarly, Section 161 of the Maharashtra Police Act provides protection to police officers for acts done under the colour of duty, requiring prior sanction for prosecution.<sup>9</sup> This creates a situation where both provisions appear to operate simultaneously, leading to the question of whether dual sanction is required. Judicial interpretation

<sup>1</sup> The Maharashtra Police Act, 1951 (Bom. Act 22 of 1951), s. 161.

<sup>2</sup> Id., s. 197 (as read with requirement of prior sanction for prosecution of public servants under criminal law framework).

<sup>3</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 52.

<sup>4</sup> The Maharashtra Police Act, 1951 (Bom. Act 22 of 1951), s. 161(1).

<sup>5</sup> Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44.

<sup>6</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974).

<sup>7</sup> The Maharashtra Police Act, 1951 (Bom. Act 22 of 1951), s. 161.

<sup>8</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

<sup>9</sup> The Maharashtra Police Act, 1951 (Bom. Act 22 of 1951), s. 161.

suggests that when both statutes are applicable, compliance with both provisions may be necessary, especially where the alleged act has a reasonable nexus with official duty.<sup>1</sup>

The issue also invokes the doctrine of repugnancy under Article 254 of the Constitution of India.<sup>2</sup> In cases where there is inconsistency between central and state law on a subject in the Concurrent List, the central law prevails unless the state law has received presidential assent. However, courts have generally avoided declaring repugnancy in such matters, instead favouring the principle of harmonious construction.<sup>3</sup> This principle requires that both statutes be interpreted in a manner that allows them to coexist without conflict.

Applying the doctrine of harmonious construction, courts have held that the CrPC and the Maharashtra Police Act operate in distinct yet overlapping domains. The CrPC provides general procedural safeguards applicable to all public servants, while the Maharashtra Police Act serves as a special law granting additional protection specifically to police officers.<sup>4</sup> Consequently, the principle of *lex specialis derogat legi generali* (special law prevails over general law) becomes relevant. In matters specifically concerning police conduct, the provisions of the Maharashtra Police Act may take precedence, provided there is no direct inconsistency with the CrPC.<sup>5</sup>

In the context of criminal prosecution, courts have emphasised the necessity of prior sanction under Section 197 CrPC where the act complained of is reasonably connected to official duty.<sup>6</sup> At the same time, Section 161 of the Maharashtra Police Act imposes an additional layer of protection. Therefore, in practice, both sanctions may be required before initiating prosecution against a police officer. This dual requirement often leads to procedural complexities and delays, thereby affecting the timely administration of justice.

With regard to departmental actions, the position differs. Departmental proceedings are governed by service rules and do not necessarily require sanction under Section 197 CrPC.<sup>7</sup> However, protections under the Maharashtra Police Act may still influence such proceedings, particularly where the alleged act falls within the scope of official duty.

Several practical challenges arise from this dual framework. First, the requirement of obtaining sanction under both statutes often results in prolonged delays, which can undermine the efficacy of criminal prosecution. Secondly, the discretionary power vested in the sanctioning authority may lead to arbitrary decisions, raising concerns under Article 14 of the Constitution.<sup>8</sup> Thirdly, the ambiguity regarding the necessity of dual sanction creates uncertainty for investigating agencies and prosecutors. Judicial decisions have consistently underscored two key principles in resolving such conflicts: harmonious interpretation and the distinction between special and general law. Courts have attempted to strike a balance by ensuring that statutory protections for public servants do not become shields for impunity, while also safeguarding them from vexatious litigation.

In conclusion, the interplay between the CrPC and the Maharashtra Police Act reflects a complex legal landscape where overlapping provisions must be carefully reconciled. While the requirement of prior sanction serves as an important safeguard, its dual application poses significant practical and constitutional challenges. A clearer legislative framework or authoritative judicial clarification is necessary to ensure a balance between accountability of police officers and protection against frivolous prosecution.

## JUDICIAL TRENDS AND CASE LAW ANALYSIS

The judicial interpretation of sanction for prosecution under the interplay between the Maharashtra Police Act and the Code of Criminal Procedure, 1973 (CrPC) has evolved through a series of landmark rulings. Courts have consistently grappled with the extent to which statutory protection should be

<sup>1</sup> Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44.

<sup>2</sup> The Constitution of India, art. 254.

<sup>3</sup> M. Karunanidhi v. Union of India, (1979) 3 SCC 431.

<sup>4</sup> Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663.

<sup>5</sup> Id.

<sup>6</sup> State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40.

<sup>7</sup> Prakash Singh Badal v. State of Punjab, (2007) 1 SCC 1.

<sup>8</sup> The Constitution of India, art. 14.

granted to police officers, particularly when allegations involve misuse of authority.<sup>1</sup> The Supreme Court has oscillated between a narrow and broad interpretation of such protection, ultimately emphasizing a balanced approach grounded in the “nexus test.”

Under Section 197 of the Code of Criminal Procedure, 1973, prior sanction is required before prosecuting a public servant for acts done “in the discharge of official duty.”<sup>2</sup> Similarly, provisions under the Maharashtra Police Act provide a protective shield to police officers for acts performed in good faith during the course of duty.<sup>3</sup> However, the scope of such protection has been the subject of extensive judicial scrutiny.

The Supreme Court in *Shambhoo Nath Misra v. State of U.P.* adopted a relatively narrow interpretation, holding that protection under Section 197 CrPC cannot be extended to acts that are manifestly illegal or unrelated to official duty.<sup>4</sup> The Court clarified that the test is not whether the act was committed during service, but whether it was reasonably connected to official functions. This marked a significant limitation on blanket immunity.

Similarly, in *Inspector of Police v. Battenapatla Venkata Ratnam*, the Court reaffirmed that the protection is not absolute and cannot be invoked to shield criminal misconduct.<sup>5</sup> The Court emphasized that there must be a direct and reasonable nexus between the act complained of and the official duty performed. If such a nexus is absent, prior sanction is not required, thereby allowing prosecution to proceed without procedural barriers.

The Bombay High Court has also contributed significantly to this jurisprudence, particularly in interpreting provisions of the Maharashtra Police Act. In several cases, the Court has reiterated that statutory protection is conditional and cannot be used as a tool to evade accountability.<sup>6</sup> It has consistently applied the “nexus test” to determine whether the alleged act falls within the ambit of official duty. Acts involving abuse of power, excessive use of force, or mala fide intent have been excluded from protection.

A key judicial observation across both Supreme Court and High Court rulings is that protection cannot extend to illegal acts. Courts have drawn a clear distinction between acts done in excess of duty and acts done in dereliction or abuse of duty. While the former may still attract protection if reasonably connected to official functions, the latter are categorically excluded.<sup>7</sup> This distinction is crucial in preventing misuse of statutory safeguards.

Despite these guiding principles, conflicting judgments have led to a lack of clarity in certain areas. Some decisions have adopted a broader interpretation, extending protection even in borderline cases, while others have strictly limited its scope.<sup>8</sup> This inconsistency has created practical challenges in determining when sanction is necessary, often resulting in prolonged litigation at the preliminary stage.

Moreover, the interplay between the Maharashtra Police Act and Section 197 CrPC has not always been harmoniously interpreted. While both provisions aim to protect bona fide actions of police officers, their overlapping application has sometimes led to confusion regarding the appropriate authority for granting sanction and the stage at which it is required.<sup>9</sup>

In conclusion, judicial trends indicate a gradual shift towards a stricter and more accountability-oriented approach. The consistent application of the nexus test and the exclusion of illegal acts from protection reflect the judiciary’s attempt to balance the need for safeguarding honest officers with the imperative of ensuring justice and accountability. However, the presence of conflicting precedents

<sup>1</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974); The Maharashtra Police Act, 1951 (Bombay Act 22 of 1951).

<sup>2</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

<sup>3</sup> The Maharashtra Police Act, 1951 (Bombay Act 22 of 1951), s. 161.

<sup>4</sup> *Shambhoo Nath Misra v. State of U.P.*, (1997) 5 SCC 326.

<sup>5</sup> *Inspector of Police v. Battenapatla Venkata Ratnam*, (2015) 13 SCC 87.

<sup>6</sup> *State of Maharashtra v. Dr. Budhikota Subbarao*, 1993 Supp (3) SCC 339.

<sup>7</sup> *Id.*

<sup>8</sup> *Devinder Singh v. State of Punjab*, (2016) 12 SCC 87.

<sup>9</sup> *Supra* note 2; *Supra* note 3.

underscores the need for greater doctrinal clarity, possibly through legislative intervention or authoritative judicial pronouncement.<sup>1</sup>

### CONSTITUTIONAL PERSPECTIVE

The requirement of prior sanction for prosecution under the Maharashtra Police Act and Section 197 of the Code of Criminal Procedure, 1973 (CrPC) raises significant constitutional questions, particularly in light of fundamental rights and the doctrine of rule of law. While such provisions aim to protect public officials from frivolous or vexatious litigation, they must be carefully scrutinised to ensure that they do not result in arbitrariness or impunity.

From the perspective of Article 14 of the Constitution, which guarantees equality before the law, sanction provisions create a classification between public servants and ordinary citizens.<sup>2</sup> While reasonable classification is constitutionally permissible, it must satisfy the twin tests of intelligible differentia and rational nexus. The protection granted to police officials under special statutes like the Maharashtra Police Act may be justified on the ground of enabling efficient discharge of official duties; however, excessive or blanket protection risks violating the principle of equality by shielding unlawful acts from judicial scrutiny.

Article 21, which guarantees the right to life and personal liberty, also plays a crucial role in this context.<sup>3</sup> Any procedural safeguard that delays or obstructs access to justice, particularly in cases involving abuse of power by law enforcement authorities, may be viewed as infringing upon the due process requirement implicit in Article 21. The Supreme Court has consistently held that fair, just, and reasonable procedure is integral to constitutional governance.<sup>4</sup>

The doctrine of rule of law further mandates that no individual, including state officials, is above the law.<sup>5</sup> Sanction provisions, if applied mechanically or without proper judicial oversight, may create an environment of arbitrariness by allowing executive authorities to control the initiation of prosecution. This raises concerns regarding potential misuse of discretion and lack of accountability.

However, the judiciary has adopted a balanced approach in interpreting such provisions. Courts have emphasised that sanction is required only when the alleged act has a reasonable nexus with official duty, and not for acts that are manifestly illegal or beyond the scope of authority.<sup>6</sup> This judicial filtering mechanism ensures that while honest officials are protected, those engaging in misconduct are not immune from prosecution.

Thus, the constitutional validity of sanction provisions lies in their careful and limited application. The challenge remains in maintaining a delicate balance between safeguarding public servants from undue harassment and upholding the fundamental rights of individuals against abuse of state power.

### CHALLENGES AND CRITICISM

The requirement of prior sanction for prosecution under the Maharashtra Police Act and the Code of Criminal Procedure, 1973 (CrPC) has attracted significant criticism due to its practical implications on accountability and justice delivery. One of the foremost challenges is the delay in granting sanction, which often leads to prolonged litigation and undermines the timely prosecution of erring police officials.<sup>7</sup> Administrative bottlenecks and procedural complexities frequently result in inordinate delays, thereby weakening the evidentiary basis of cases and frustrating the objectives of criminal justice.

Another major concern is the possibility of political and administrative bias in the sanctioning process. Since the competent authority granting sanction is often part of the executive, there exists a risk of decisions being influenced by extraneous considerations rather than objective legal standards.<sup>8</sup> This

<sup>1</sup> M.P. Jain, *Indian Constitutional Law* 102 (LexisNexis, New Delhi, 8th edn., 2018).

<sup>2</sup> The Constitution of India, art. 14.

<sup>3</sup> The Constitution of India, art. 21.

<sup>4</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>5</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 188 (Macmillan, London, 10th edn., 1959).

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

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

<sup>8</sup> *Id.*

raises questions regarding the independence and fairness of the process, especially in cases involving influential officers or politically sensitive matters.

The sanction requirement has also been criticised for being misused as a shield for police misconduct. While the original intent behind such provisions was to protect honest officers from frivolous litigation, in practice, it has sometimes operated to prevent legitimate prosecution.<sup>1</sup> This protective mechanism may inadvertently foster a culture of impunity, where accountability is diluted due to procedural safeguards.

Further, there is a notable lack of transparency in the decision-making process. The absence of clear guidelines and the non-disclosure of reasons for granting or refusing sanction contribute to arbitrariness and opacity.<sup>2</sup> This undermines public confidence in the justice system and creates ambiguity regarding the standards applied by authorities.

From the perspective of victims, the sanction requirement poses significant access to justice issues. Victims of police excesses often face additional hurdles in initiating prosecution, as they are dependent on state approval before legal proceedings can commence.<sup>3</sup> This procedural barrier can discourage victims from pursuing remedies and weaken the enforcement of fundamental rights.

Lastly, the cumulative effect of these challenges results in the under-prosecution of police misconduct. The combined impact of delays, bias, and procedural hurdles leads to a low rate of successful prosecution, thereby affecting deterrence and accountability within the police force.<sup>4</sup>

### Comparative & Reform Perspective

A comparative analysis of prosecution sanction requirements reveals that India's approach under the Code of Criminal Procedure and the Maharashtra Police Act is relatively stringent when compared to other jurisdictions. In the United Kingdom, there is no requirement of prior sanction for prosecuting public officials; instead, accountability is ensured through independent prosecutorial authorities such as the Crown Prosecution Service, which exercises discretion based on evidentiary sufficiency and public interest.<sup>5</sup> This model reflects a trust-based system that prioritises transparency and judicial oversight over executive protection.

In contrast, the United States follows the doctrine of qualified immunity, which protects public officials, including police officers, from liability unless their conduct violates "clearly established" statutory or constitutional rights.<sup>6</sup> While this doctrine does not mandate prior sanction, it effectively shields officials from frivolous litigation, thereby serving a function similar to sanction provisions in India. However, it has also been criticised for limiting accountability and access to remedies.

The Indian framework, particularly under Section 197 of the Code of Criminal Procedure, 1973 and relevant provisions of the Maharashtra Police Act, has been criticised for creating procedural barriers that may delay or obstruct justice.<sup>7</sup> The requirement of prior sanction often leads to prolonged delays and raises concerns about executive bias, especially when the sanctioning authority is closely connected with the accused official.

There is a pressing need for reform to balance accountability with protection of bona fide official actions. First, the establishment of an independent sanctioning authority could reduce executive interference and enhance impartiality. Secondly, imposing time-bound limits for granting or refusing sanction would prevent undue delays in prosecution. Lastly, clearer judicial and statutory guidelines defining the scope of "official duty" are essential to avoid misuse of sanction provisions as a shield for unlawful conduct.<sup>8</sup> Such reforms would align India's legal framework with global best practices while upholding constitutional principles of fairness and accountability.

<sup>1</sup> *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

<sup>2</sup> The Maharashtra Police Act, 1951 (Bom. Act XXII of 1951), s. 161.

<sup>3</sup> The Constitution of India, arts. 14, 21.

<sup>4</sup> *Subramanian Swamy v. Manmohan Singh*, (2012) 3 SCC 64.

<sup>5</sup> Crown Prosecution Service, "The Code for Crown Prosecutors" (2018).

<sup>6</sup> *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

<sup>7</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197; The Maharashtra Police Act, 1951 (Bombay Act 22 of 1951).

<sup>8</sup> M.P. Jain, *Indian Constitutional Law* 512 (LexisNexis, New Delhi, 8th edn., 2018)."

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## CONCLUSION

The analysis of the interplay between the Maharashtra Police Act and the Code of Criminal Procedure, 1973 (CrPC) in granting prosecution sanction reveals a complex and often ambiguous legal framework. The existence of dual protection mechanisms—under special state legislation and general criminal procedure law—has led to interpretational inconsistencies and procedural uncertainty. While Section 197 of the CrPC provides protection to public servants for acts done in the discharge of official duty, similar safeguards under the Maharashtra Police Act extend an additional layer of immunity, thereby creating overlaps that are not always clearly demarcated.

Judicial intervention has played a crucial role in resolving this ambiguity. Courts have consistently attempted to strike a balance between protecting honest officers from vexatious litigation and ensuring accountability for misuse of power. In cases such as *Matajog Dobey v. H.C. Bhari* and *Prakash Singh Badal v. State of Punjab*, the judiciary has clarified that the test for sanction depends on the reasonable nexus between the act complained of and official duty. However, inconsistent application of this test across cases has contributed to legal uncertainty and delays in prosecution.

The core argument emerging from this study is that while statutory protection for police officers is essential for the effective discharge of their duties, it must not become a shield for impunity. Excessive or mechanical grant of sanction, or prolonged delays in granting it, undermines the rule of law and public confidence in the justice system.

To address these challenges, there is a pressing need for legislative clarification delineating the scope and interaction of protections under the Maharashtra Police Act and the CrPC. Clear statutory guidelines would reduce ambiguity and ensure uniform application. Additionally, greater judicial consistency in interpreting the requirement of sanction is necessary to avoid conflicting precedents. Finally, strengthening accountability mechanisms—such as independent oversight bodies and time-bound sanction procedures—can ensure that the protective framework serves its intended purpose without obstructing justice.

A balanced approach that harmonises protection with accountability is essential to uphold both administrative efficiency and constitutional principles.

## References

1. The Code of Criminal Procedure, 1973 (Act 2 of 1974).
2. The Maharashtra Police Act, 1951 (Bom. Act XXII of 1951).
3. *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.
4. *Prakash Singh Badal v. State of Punjab*, (2007) 1 SCC 1.
5. *Subramanian Swamy v. Manmohan Singh*, (2012) 3 SCC 64.