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SANCTION FOR PROSECUTION: AN ANALYSIS OF BASIS UNDERLYING THE LABYRINTH OF JUDICIAL DECISIONS

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CHAPTER - I

INTRODUCTION

India's judiciary has been organized over the 120 years, spanning 1850s to 1980s, through a system of civil courts and criminal courts. It was realized that with the growing population, diverse nature of economic activities and specialized nature of disputes, it was necessary to develop specialized mechanisms for delivery of justice by establishing several Tribunals and regulatory authorities. With advance in times, the criminal justice system also had to be augmented with special courts.

To begin with, as a general proposition, all civil cases are to be tried by civil courts[1] unless statutorily excluded and all criminal cases are to be tried by criminal courts[2], unless the special statute creating offence otherwise provides. As far as the civil courts are concerned, the petitioner/ plaintiff has to show in his pleadings[3] that he has a cause of action[4], locus standi and that the matter is not barred by limitation; he will get one opportunity to prove his statements. If a statute purports to exclude the ordinary jurisdiction of a civil court it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion[5].

[1] Section 9 of Code of Civil Procedure, 1908 and also *Sahebgouda v. Ogeppa*, AIR 2003 SC 2743 : (2003) 6 SCC 151.
[2] Sections 4 and 26 of Code of Criminal Procedure, 1973 and also *Directorate of Enforcement v. Deepak Mahajan*, AIR 1994 SC 1775 : (1994) 3 SCC 440.
[3] *Bharat Singh v. State of Haryana*, AIR 1988 SC 2181 : (1988) 4 SCC 534
[4] *Om Prakash Srivastava v. Union of India*, (2006) 6 SCC 207.
[5] *Musamia Imam Haider Bax Razvi v. Rabri Govindbhai Ratnabhai*, AIR 1969 SC 439 and *Dewaji v. Ganpatlal*, AIR 1969 SC 560.

In Halsbury Laws of England (Fourth Edition) "*Cause of Action*" has been defined "*... as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which material is to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse.*"

All criminal cases are to be tried by criminal courts, unless assigned to Special Courts by specific statute, such as the TADA, CBI, Companies Act etc. The criminal procedure code assigns classes of cases to Magistrates and Sessions Judges according to the nature/ severity of the cases. The concept of *locus standi* is not applicable to criminal cases, as the criminal law can be set in motion by anybody[6]. In *Antulay's* case, a Constitution Bench of the Supreme Court has held as follows :

> *"6. It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the CrPC envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision Numerous statutory provisions, can be referred to in support of this legal position such as (i) Section 187 A of Sea Customs Act, 1878 (ii) Section 97 of Gold Control Act, 1968 (iii) Section 6 of Import and Export Control Act, 1947 (iv) Section 271 and Section 279 of the Income Tax Act, 1961 (v) Section 61 of the Foreign Exchange Regulation Act, 1973, (vi) Section 621 of the Companies Act, 1956 and (vii) Section 77 of the Electricity Supply Act. This list is only illustrative and not exhaustive. While Section 190 of the CrPC permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 of the Cr.P.C. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence.*
>
> *In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force (See Section 2(n), Cr.P.C.) is not merely an*

[6] *A.R. Antulay v. Ramdas Sriniwas Nayak*, AIR 1984 SC 718 : (1984) 2 SCC 500 and Dr. Subramanian Swamy v. Manmohan Singh (2012) 3 SCC 64

offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. ..."

It is a basic rule of judicial system that a plaintiff or complainant is to be given a chance to prove his averment. In criminal cases the chance to prove his allegation is to be given to complainant or police.

The chance to prove the allegations, though otherwise a matter of right, is however subject to certain restrictions on the jurisdiction of criminal court itself i.e. in other words even though the final report of police or complainant may disclose *prima facie* commission of offence under any statute, yet the criminal court is debarred from proceeding with certain matters without a further condition being satisfied.

The Supreme Court in *S.K.B. Jain v. A.B. Pandey*[7], explained its own observations in *K.M. Mathew v. State of Kerala.*[8] In *Mathew*, it was held that even if the process has been issued by the Magistrate under Section 204 of the Code, if the accused showed that the complaint does not disclose any offence attributable to him, then the situation is similar to the one where the Magistrate had no jurisdiction. The Magistrate gets jurisdiction to issue process under Section 204 only if an allegation of commission of an offence is made against the accused person. If this basic criterion is not met, the situation is that there is no jurisdictional fact necessary to raise and exercise the jurisdiction.

In *S.K.B. Jain*, the question was whether the Magistrate could issue the process where the accused was a public servant. Repelling the contention that it was open to the accused to resort to the method given in *Mathew*, the Supreme Court explained that the legislative mandate of Section 197(1) debars the Court from taking cognizance of the offence where the alleged offence is in pursuit of official work of the accused. If the accused was a public servant, irremovable from office except by the Government, had committed the offence either in actual or purported discharge of official duty, then the requirement of sanction touches the jurisdiction of the Court. In other words, it is different from establishment of jurisdictional fact as in *Mathew*. The difference is that in *Jain*, even if the offence is made out on the basis of the complaint, i.e., the jurisdictional fact from Section 204 was present, yet, the Court would lack legal jurisdiction for want of the sanction under Section 197. Thus, an application pointing out that the Court does not possess jurisdiction under Section 197 due to lack of sanction is different from demonstrating that the jurisdictional fact does not exist in response to the process.

However, the trial of the jurisdictional facts from where it has to be concluded that the proposed accused person is or is not entitled to the protection of sanction, have been a matter of contention. The components of

[7] AIR 1998 SC 1524 : (1998) 1 SCC 205
[8] AIR 1992 SC 2206 : (1992) 1 SCC 217

the jurisdictional facts, whereby the complainant would typically claim that the proposed accused person is not entitled to the protection of Section 197, are to be found from the interpretational aspects[9] of Section 197:

(a) The person concerned is or was a judge or magistrate or public servant.

(b) Such person is not removable from his office save by the sanction of the Government.

(c) Such person is accused of commission of an offence and

(d) Such offence is committed while the person concerned was acting or purporting to act in the discharge of his official duties.

Also, for the person claiming the protection of the sanction clause, it must be shown that the act complained of was done in good faith. There should not be personal ill-will or malice, no intention to malign and scandalize. Though the claims of "Good faith" and "public good" are questions of fact, it is required to be proved by adducing evidence[10].

The question of sanction is to be determined at the stage of cognizance, as the statute debars the Court from taking cognizance unless a sanction for prosecution was presented together with the complaint (u/s 200 CrPC) or the final police report (u/s 173 CrPC).

'Cognizance' is not defined anywhere in the criminal procedure code. However, it has acquired a judicial meaning by long series of judgments.

The debarment of taking cognizance has been provided in chapter XIV, section 195-199 of the criminal procedure code.

1) Section 195 : Prosecution for contempt of lawful authority of public servants for offences against public justice and for offences relating to documents given in evidence.

2) Section 196 : Prosecution for offences against the State/National Integration

3) Section 197 : Prosecution of Public servants and judges

4) Section 198 : Prosecution for offences against marriage

5) Section 199 : Prosecution for Defamation

The relevant portions of the texts of these Sections are quoted for ready reference:

[9] Urmila Devi v. Yudhvir Singh, (2013) 15 SCC 624
[10] General Officer Commanding v. CBI, (2012) 6 SCC 228

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.— (1) No Court shall take cognizance —

(a) (I) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860) or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

……

196. Prosecution for offences against the State and for criminal conspiracy to commit such offence. — (1) No Court shall take cognizance of —

(a) any offence punishable under Chapter VI or under section 153A, section 153B, section 295A or section 505 of the Indian Penal Code, (45 of 1860) or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code,(45 of 1860) except with the previous sanction of the Central Government or of the State Government

…….

197. Prosecution of Judges and public servants.— (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government

……

198. Prosecution for offences against marriage.—(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence ……..

199. Prosecution for defamation.— (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence……..

The debarment by the statue on taking cognizance is a matter of jurisdiction. These, broadly seem to be based on three different criteria or aspects. In the understanding of this writer, they are:

a) where the offence is against public justice and/or government functioning;

b) where offence is committed by public servant; and

c) where the offence against marriage or defamation.

The first category of debarment is intended to filter out cases where the offence may not grave and public resources need not be spent on trivial matters. The third category deals with offences related to marriages etc. which are basically offences against civil relationship/ contract or civil rights. While Muslim marriage is known to be civil contract in nature and a Hindu marriage is also civil relationship in nature, an offence against marriage should be considered breach of civil law but the statute has elevated it to be of criminal nature. Realizing that the application of normal criminal procedure allowing anyone to set the criminal law into motion would be detrimental to the interest of institution of marriage itself, which the statute seeks to protect by creating offences out of their breach, the statue has introduced the requirement of *locus standi*.

The second category is where the victim is usually a private citizen/ party and offender is a government servant. Obviously, it is one thing to say that Government servants are not expected not to commit any offence at all, and it is totally another thing to say that no government servant, who has committed offence against private citizens cannot even be prosecuted without permission of his employer. In fact, both the propositions are diametrically opposite; therefore the justification for debarment has to be found in some other public policy. After all, shutting out criminal remedy is a serious matter. Ordinarily the accused should be treated by ordinary law.[11] The protection by way of imposing the requirements of sanction under Section 197 of the Code of Criminal Procedure, 1973 is an exception to the general rule of equality[12], and so it has to be strictly construed. The requirement for sanction is to be determined based on the material placed before the court in support of the claim for the protection.

[11] Binod Kumar Singh v. State of Bihar, 1985 Cr LJ 1878

[12] Dr. Subramanian Swamy v. Dr. Manmohan Singh, AIR 2012 SC 1185 : (2012) 3 SCC 64 also Inspector of Police v. Battenapatka Venkata Ratnam, AIR 2015 SC 2403 : (2015) 13 SCC 87

That, also, on the principle that the entitlement to the protection of the requirements of sanction under Section 197 of the Code of Criminal Procedure, 1973 is only for bona fide official discharge of duties, the Hon'ble Supreme Court, has in several cases, held that the accused is not entitled to the protection of the requirements of sanction under Section 197 of the Code of Criminal Procedure, 1973.

Black's Law dictionary defines 'sanction' as penalty or punishment provided for means of enforcement of law.

The word "sanction" has multiple connotations. It is used differently under different fields of law. In Jurisprudence a law is said to have sanction when there is a state which will intervene if it is disobeyed, disregarded or disrespected. Thus, in the international law there is no sanction as there is not one particular state which will intervene if the law is disregarded.

In the present day organized societies, sanctions have always been imposed: that is, various types of punishments or preventive orders on individuals who breach the norms and laws in place within such societies. The very nature of these sanctions which are applied have evolved considerably with time.

At any time, the sanctions in place reflect the prevalent philosophy of the society and how that operates them, as well as mechanism in which the society is ruled. Modern legal systems typically restrict the authority to impose sanctions to the State and their sole aim is to ensure that punishment is not arbitrary or inhumane.

However, the expression 'sanction' has been used in the sense of permission in the Criminal Procedure Code, 1973 and the same meaning shall be used for the expressions Sanction throughout the dissertation.

The Purpose of Sanction:

Paranjape[13] explains the purpose of sanction in the present-day scenario and explains the various connotations attached to this word.

Punishment – to inflict some kind of pain on the offender and give formal public expression to the unacceptability of his behavior to the community he is part of.

Incapacitation/Deterrence - to restrain/ deter the offender so as to limit their opportunities to commit crimes in future.

Rehabilitation – A Concept which has developed in modern times specifically designed to include measures which might allow the person to desist from future offences and to assist him to reintegrate himself into society.

[13] Pranjape – Book on Jurisprudence

Types of sanctions:

Criminal Sanctions

Criminal sanctions are in the form of serious punishment such as imprisonment and community service.

Criminal sanctioning involves judges/magistrates punishing an individual for committing a crime. Some of the common criminal sanctions include imprisonment, imposing fines depending on the crime committed.

Civil Sanctions

The most prevalent form of a civil sanction is a monetary fine but other type of civil sanctions also exist. Suspension of business, cancellation of professional or hobby license are some types of civil sanctions.

International Sanction

One country may sanction another country if the sanctioning country feels that the other country is not complying to the terms of treaty signed bilaterally or multi-laterally. This sanction may by use of force (armed attack), or non-forceful, such as filing protest with United Nations, cutting off financial relations and creating economic embargoes.

Financial Sanction

Financial sanction is an order to prohibit a person from carrying out particular transactions with a person, organization or country. They are economic in nature.

Administrative Sanction

Corrective or Preventive order generally disciplinary in nature, or actions taken in consonance as a part of response to an incident where, policy, procedure or rule of behavior has been violated. Though administrative sanction is generally disciplinary in nature it is not always with regard to discipline. In the Indian scenario where a bill requires a presidential assent for becoming law, the assent provide by the president of India becomes the administrative sanction.

As mentioned above the word sanction has different facets but as far as my dissertation is concerned the word sanction mentioned in the section 197 of the criminal procedure code 1973 will only mean permission or authority to commence prosecution against a particular public servant.

The discussion in this Dissertation is aimed at categorizing the types of cases which require sanction, or as the case may be, do not, usually require sanction at the threshold and the basis of granting such sanction. However, there are some exceptions in the fringes of these categorization.

That the issue of 'sanction' under one kind of Special Enactments, such as the Armed Forces Special Powers Act, or relating to armed forces (not civil police, which is covered under Section 197 of the Code of Criminal Procedure), the Hon'ble Supreme Court held that a discretion is available to the Government to decide whether the case will be governed by Court Martials or normal criminal Courts, and has asked the Government take its decision accordingly. The section is intended to safeguard the public servants, magistrates, not removable from office except by sanction from higher authority against the vexatious and frivolous prosecution but this privilege immunity only extends to acts which are in furtherance of their official duty[14]. This section applies to the acts and omissions on behalf of the public servants complained of its inseparably connected with duties which such public servant is bound to perform which in ordinary course would constitute an offence[15]. For the getting the privilege of section 197 it is not enough to be a public servant but it has to ne further shown that such public servant can only be removed from the office he his holding by a sanction of the government itself and that the alleged offence should have been committed by the said public servant in discharge of his official duty or virtue of his office[16]. The protection under this section is not only for the person who is holding the office at the time of commission of such offence but also extends to person who is no longer holding that office but was in charge of the same when the act was committed. The protection is as much necessary after retirement as before otherwise a private complainant may wait for the said public officer to retire for instituting the complaint. The objective of the section is to prevent vexatious complaints against the public servants, the protection has to be provided to them even after retirement.

HISTORICAL BACKGROUND AND CONSTITUTIONAL VALIDITY

The necessary requirement of sanction for prosecuting a public servant for any act done while performing his duty is not a novel concept developed by Indian legislators. This concept is a colonial gift and its origin can be traced from the Government of India Act, 1935. Section 270 of the Government of India Act, 1935 reads as follows:

> **270. Indemnity for past acts.—** (1) No proceedings civil or criminal shall be instituted against any person in respect of any act clone or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.

[14] Pichai Pillai v. Balasundra Mudaly, (1935) 58 Mad 787
[15] Shankarrao v. Burjor Engineer, (1961) 64 Bom LR130
[16] Bihari Lal v. State, 2002 Cr LJ 3715(Del)

The word public servant has been used expressly with regard to sanction for prosecution in the criminal procedure code but the section 270 of the Government of India Act,1935 provides for protection of the servants of Crown from both civil and criminal proceedings against the acts done in discharge of their duties as provided by the Crown.

The criminal procedure code, 1882 provided under section 197 protection from criminal prosecution to public servants from offences committed while discharging their official duties.

Both the sections have been represented below: -

Section 197 of the Code of Criminal Procedure (as amended):

(1) When any person who is a Judge within the meaning of Section 19, I.P.C, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a Provincial Government or Home higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall cognizance of such offence except with the previous sanction-

(a) in the case of a person employed in connection with the affairs of the Federation, of the Governor-General exercising his individual judgment; and

(b) in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province exorcising his individual judgment.

(2) The Governor-General or Governor, as the case may be, exercising his individual judgment may determine the person by whom, the manner in which, the offence or offences for which, the

prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

(3) In relation to the period elapsing between the commencement of Part III of the Government of India Act 1935, and the establishment of the Federation, the references in this section to the Federation and to the Governor-General exercising his individual judgment shall be construed as references to the Governor-General in Council.

The purpose for providing the immunity to public servants or magistrates was to protect them from vexatious proceedings against them for discharging their duties. The whole idea of such protection was that the servants of Crown (then public servants) should not be troubled for complying with their duties provided to them by the Crown. The criminal procedure code, 1882 provided them protection only for criminal cases whereas the Government of India Act,1935 protection to the servants of Crown from both Civil and Criminal cases.

The question of applicability of sanction arose before the colonial courts also a number of time. It is from that time that the law is being expounded and various judgments of the privy council and federal courts was also referred by the constitution bench in the case of Mata Jogdobey for decided the question of law present before it which shall be dealt by me in depth later in the dissertation.

One interesting point to be highlighted here is the fact that the protection under section 270 of the government of India Act,1935 can only be provided to servants of the central government after the establishment of the federation in respect of the acts done before the date of establishment of federation.

CONSTITUTIONAL VALIDITIY OF SECTION 197 OF THE CRIMINAL PROCEDURE CODE, 1973

As seen above that the section 197 of the criminal procedure code is not a new provision, it is intended to protect the public servants from frivolous prosecutions which will help them facilitate their duty better and without fear of unwanted prosecutions.

It has been seen that this provision was put to a constitutional test before a constitution bench of the highest court of India. In the case of Matajog Dobey v. H.C Bhari[17] it was contended by the appellant that this section is violative of article 14 of the constitution. The constitution bench of the supreme court held that section 197 of the criminal procedure code is not violative of the article 14 of the constitution, ultra vires as the discrimination is based on a reasonable classification. Public servants have to be protected from anguish, fear or harassment by unwanted prosecution in the discharge of their official duties, while ordinary citizens not so engaged in such discharge of duties do not require this immunity. Section 197(1) does not create a discretionary discrimination; but to its contrary, it makes path for a reasonable differentia or positive classification for better facilitation of duty by the public servants. The bench had expressed that there is no question of any discrimination between any two ordinary persons, the difference section 197 creates is between an ordinary person and a public servant that to in acts or omissions done in pursuance of their official duty. If the question of discrimination was between two officials over the question of sanction the situation would have been different but in the above the case the question was of discrimination between an ordinary and public servant.

The reason for this positive classification could possibly be that the public servants who hold responsible and important positions and who have the pressure of discharging important functions shall alone be provided certain kind of privilege or immunity otherwise the public servants would lose out on the interest to perform their own duty in the absolute fear of harassment resulting from vexatious, frivolous prosecutions by ordinary persons or persons with vested interest. public servants not removable from their respective offices save by or with the sanction of a State Government or the Central Government, are put in one class and the public

[17] Supra

servants who are removable from their respective offices even without such sanction are put in another class such a classification cannot in any sense be regarded as arbitrary, discretionary or unreasonable and hence in my opinion as well in consonance with the constitution bench opinion the section is not, inconsistent with article 14 of the Constitution.

1.1 STATEMENT OF PROBLEM

What acts can be alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question and had often troubled various courts including the Apex court. The analysis of the law declared by the Hon'ble Supreme Court in several cases concerning the issue of 'sanction' shows that the question does have an analytical framework under which solutions can be drawn.

In other words, there is a theme running through, dependent on the nature of facts, which can be broadly classified as follows:

(i) Sanction under Special Enactments; and

(ii) Sanction under Section 197 of the Code of Criminal Procedure.

The question whether sanction is required or not is a question of jurisdiction of the Court, and not a matter of defence of the accused[18]. If the Complainant does not disclose that the accused is a public servant, not removable from his office except by sanction of the Government, and process is issued in response to which the accused produces material to claim protection of requirement of sanction, then the Court has to examine the question of sanction. So, the question of requirement of sanction need not always be decided at the threshold, and it can arise from stage to stage of trial.

1.2 OBJECTIVES OF RESEARCH

In this labyrinth of seemingly conflicting decisions interpreting section 197 and section 19 of the Prevention of Corruption Act and Armed Forces Special Powers Act dealing with requirement of sanction before taking cognizance of offences alleged to have been committed by public servant, we seek to find out or recognize a pattern leading to an analytical classification of cases requiring or not requiring sanction.

1.3 RESEARCH HYPOTHESIS

The issue of 'sanction' under another kind of Special Enactments, such as the Prevention of Corruption Act, the Hon'ble Supreme Court held that the offence is of such nature that it cannot be in discharge or purported discharge of official functions, and thus the nature of sanction required under that Act is very different from the nature of sanction contemplated under Section 197 of the Code of Criminal Procedure. The judgment in Anil

[18] *S.K.B. Jain v. Pandey Ajay Bhushan, AIR 1998 SC 1524*

Kumar v. M.K. Aiyappa[19], deals with such a case, and the discussion in this judgment with regard to the Code of Criminal Procedure, 1973 does not deal with the issue of 'sanction' under Section 197 thereof. Distinction between requirement of sanction under Prevention of Corruption Act and section 197 has also been discussed in case of Urmila v. Yudhvir Singh[20] in this case the court has given 4 essential ingredients for invocation of 197 whereas first 3 of these are sufficient for Prevention of Corruption Act.

That as far as the issue of 'sanction' under Section 197 of the Code of Criminal Procedure, 1973 is concerned, there are two distinct streams:

(i) In cases where force has been used, such as by police (maintenance of law and order) or revenue (recovery of dues to the Revenue) or municipal authorities (removal of encroachments or unauthorized constructions); sanction is necessary at the threshold.

(ii) In cases where force has not been used, such as noting, issue of sanction/ letters, or other documentation works (preparation of bills, passing them for payment, and stamp duty assessment/ government revenue) sanction is not necessary at the threshold.

(iii) There are some exceptions to both the above rules exceptions themselves follow certain rules.

That in the first stream (where force has been used), unless the end of duty and beginning of the offence can be clearly distinguished, the Hon'ble Supreme Court has held that a sanction would be necessary. These include the following cases, where sanction was held to be necessary:

1. S.K.B. Jain v. Pandey Ajay Bhushan[21],
2. State of Bihar v. K. P. Singh[22],
3. N.K. Ogle v. Sanwalmal Ahuja[23],
4. Abdul Wahab Ansari v. State of Bihar[24],
5. G. S. Prasad v. State of Bihar[25],
6. R. A. J. Shaikh v. J. Patel[26],
7. R. K. Mishra v. State of Bihar[27],

[19] [2013] 9 S.C.R. 869
[20] JT 2013 (14) SC 262
[21] AIR 1998 SC 1524
[22] AIR 1998 SC 2379
[23] AIR 1999 SC 1437
[24] AIR 2000 SC 3187
[25] AIR 2000 SC 3517
[26] AIR 2001 SC 2198

8. Shankaran Moitra v. Sadhna Dass[28],

That even in the first stream (where force has been used), the end of duty and beginning of the offence was clearly distinguished, and sanction was held to be not necessary:

1. S.K. Zutshi v. Bimal Debnath[29],
2. Prabhakar V. Sinari v. S. A. Verlekar[30],and
3. S.P. Vaithianathan v. K. Shanmuganathan[31] (in this case, the Hon'ble High Court itself had held sanction was not necessary and was not in issue before the Hon'ble Supreme Court).

That in the second stream (where force has not been used), the Hon'ble Supreme Court has generally held that a sanction would not be necessary, and in some cases, has held that the question of protection of the requirements of sanction under Section 197 of the Code of Criminal Procedure, 1973 cannot be argued or heard unless some evidence is led on both sides, and has relegated the decision on this question to the final judgment by the Trial Court.

1. P. K. Pradhan v. State of Sikkim[32],
2. Sambhoo Nath Misra v. State of U.P[33],
3. State of H.P. v. M.P. Gupta[34],
4. N. Bhargavan Pillai v. State of Kerala[35],
5. Inspector of Police v. B.V. Ratnam[36],

Even in cases where the offence is alleged to have been done by not using force but in some record keeping, stock keeping the supreme court has held that the bonafide of the accused person can be examined in the light of manual of office procedure, and whether the alleged act can be separated from the component of the duty. In such situation where the alleged act and duty can be separated court has held sanction is not necessary at all.

[27] 2006 (1) SCC 557
[28] AIR 2006 SC 1599
[29] (2004) 8 SCC 1
[30] AIR 1969 SC 686
[31] AIR 1994 SC 1771
[32] AIR 2001 SC 2547
[33] AIR 1997 SC 2102
[34] AIR 2004 SC 730
[35] AIR 2004 SC 2317
[36] AIR 2015 SC 2403

1.4 SURVEY OF LITERATURE

The entire research in this present dissertation is based on the study of judgements of the Supreme Court interpreting the Section and the dissertation itself is based on survey of literature.

As far as the study of decisions regarding sanction done previously by other authors, it is broadly observed that such articles seem to reiterate the observations of Hon'ble Justice Arijit Pasayat in the judgment in Center for Public Interest Litigation v. Union of India[37].

Therefore, this research attempts to figure out analytical framework and is an original effort.

1.5 CHAPTERIZATION

Chapterization will follow the same parts as that of the synopsis except that where hypothesis is discussed at length each will be a different chapter.

CHAPTER 1- Introduction and Historical Background

This chapter will introduce the audience about the meaning of 'sanction' and its necessity in India. This chapter will also provide the reader with a detailed description of the historical background of Sanction in India and statement of object and reasons for such legislation.

CHAPTER 2- DISTINCTION OF 'SANCTION UNDER VARIOUS LAWS IN FORCE IN INDIA'

This chapter will deal the various kinds of sanctions provided under different laws in force in India. It will also deal with various requirements under different laws.

CHAPTER 3- WHY SANCTION UNDER 197 AND BASIS OF SANCTION

This chapter will throw light on why a sanction is required under the section 197 of the criminal procedure code, 1973.

CHAPTER 4- IN CASES WHERE FORCE HAS BEEN USED, SUCH AS BY POLICE

This chapter sheds light in cases where sanction is granted in cases where force is used by public officer. This shall also deal with various sub headings arising during the detailed study of the first hypothesis.

CHAPTER 5- IN CASES WHERE FORCE HAS NOT BEEN USED

This chapter sheds light in cases where sanction is granted in cases where force is not used by public officer but violation of criminal law takes place. This shall also deal with various sub headings arising during the detailed study of the second hypothesis

[37] AIR 2005 SC 4415

CHAPTER 6- CONCLUSION: RECOMMENDATIONS AND SUGGESTIONS

This chapter covers the conclusions arrived at as a result of the discussions in the various chapters.

CHAPTER – II

DISTINCTION OF SANCTION UNDER VARIOUS LAWS IN FORCE IN INDIA

Under sec. 197 Cr.P.C., sanction of the Union or of a State Government is essential for the prosecution of a public servant (as defined under sec. 21 IPC) not removable from his office save with the consent of the Government. No sanction is required under this offense to indict a public servant removable by an Authority lower than the Government. Sanction isn't required under Sec. 19 of the P.C. Act, if the public servant is never again in benefit at the time the Court takes cognizance of the offense, yet it is required under Sec. 197 Criminal Procedure Code,1973. Under sec. 19 of the P.C. Act, sanction for prosecution is required for an offense culpable under Secs. 7, 10, 11, 13, 15 of the Act, while under Sec. 197(1) Criminal Procedure Code,1973 sanction is required for an offense conferred while acting or implying to act in the release of his official obligation, and not something else.

That as regards the question of applicability of Section 197 of the Code of Criminal Procedure, 1973, the Hon'ble Supreme Court has described it as follows in *Mohd. Hadi Raja v. State of Bihar*[38],

> *What acts can be alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question and had often troubled various courts including this Court.*

where an analysis of the law declared by the Hon'ble Supreme Court in several cases concerning the issue of 'sanction' shows that the question does have an analytical framework under which solutions can be drawn and distinction can be seen. In other words, there is a theme running through, dependent on the nature of facts, which can be broadly classified as follows:

(i) Sanction under Special Enactments; and

(ii) Sanction under Section 197 of the Code of Criminal Procedure.

That firstly, the question whether sanction is required or not is a question of jurisdiction of the Court, and not a matter of defence of the accused. If the Complainant does not disclose that the accused is a public servant, not removable from his office except by sanction of the Government, and process is issued in response to which the accused produces material to claim protection of requirement of sanction, then the Court has to examine the question of sanction. So, the question of requirement of sanction need not always be decided at the threshold, and it can arise at a later stage of trial. Secondly, the protection of the requirements of sanction under

[38] AIR 1998 SC 1945

Section 197 of the Code of Criminal Procedure, 1973 is an exception to the general rule of equality, and so it has to be strictly construed.

It is also pertinent to mention that, on the principle the entitlement to the protection of the requirements of sanction under Section 197 of the Code of Criminal Procedure, 1973 is only for bona fide official discharge of duties, the Hon'ble Supreme Court, has in several cases, held that the accused is not entitled to the protection of the requirements of sanction under Section 197 of the Code of Criminal Procedure, 1973, in the following kinds of cases:

(i) Where the offence was committed for personal benefit or personal pleasure;

(ii) Existence of personal malice, ill-will, maligner or scandalization

(iii) Conspiracy, cheating, Falsification of record, forgery etc. and

(iv) Misappropriation of Government funds

That the issue of 'sanction' under one kind of Special Enactments, such as the Armed Forces Special Powers Act, or relating to armed forces (not civil police, which is covered under Section 197 of the Code of Criminal Procedure), the Hon'ble Supreme Court held that a discretion is available to the Government to decide whether the case will be governed by Court Martials or normal criminal Courts, and has asked the Government take its decision accordingly.

That the issue of 'sanction' under another kind of Special Enactments, such as the Prevention of Corruption Act, the Hon'ble Supreme Court held that the offence is of such nature that it cannot be in discharge or purported discharge of official functions, and thus the nature of sanction required under that Act is very different from the nature of sanction contemplated under Section 197 of the Code of Criminal Procedure. The judgment in *Anil Kumar v. M.K. Aiyappa*[39], deals with such a case, and the discussion in this judgment with regard to the Code of Criminal Procedure, 1973 does not deal with the issue of 'sanction' under Section 197 thereof.

2.1 JUDICIAL OPINION OVER DISTINCTION OF SANCTION

The apex court in *Manzoor Ali Khan v. Union of India*[40] held that the need of sanction is for protection of honest and innocent public servants against mala fide prosecution. but nevertheless, there has to be zero tolerance corrupt in the bureaucracy which are against the basic ideals of the constitution of this country. But what has to be kept in mind is the fact that need of law for punishing the wrong-doer does not mean that immunity cannot be provided to the honest. Mere possibility of abuse of a particular provision cannot be a ground to hold it unconstitutional. And since the mandatory sanction cannot be held to be unconstitutional, it is

[39] [2013] 9 S.C.R. 869
[40] (2015) 2 SCC 33

the duty of the sanctioning authority to either accord the sanction or reject it and take a decision as early as possible. The decision of the authority should be such that it creates a balance between the immunity granted to the officials and also fulfilling the legislative object behind the prosecution of a wrong doer even though he is a public servant.

Sanction is a weapon the purpose of which is to provide immunity and safeguard the public servants who are performing their official duty diligently. It is for their liberty to perform duty without any hurdles that such protection has been granted. These servants should not fall prey to the fear of irrational complaints or prosecution which prohibit them to pursue their duty honestly and with full vigor. But the competent authority has to apply its mind while granting the sanction and grant it only to those officials who are discharging their duty for the benefit of public and within the limits, the sanctioning authority should not become Angraj Karn for the Corrupt public servants like Duryodhana and become a in penetrable shield for the guilty.

Where a sanction is asked for prosecution of a public servant which was earlier refused by the sanctioning authority while such official was in service cannot be prosecuted after the end of his tenure. The statue of prevention of corruption act does not provide for a mandatory sanction for prosecution of a retired public servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility. Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of final arguments after trial, the same way has to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service[41].

Sanction by the union or the state government is not required to initiate a prosecution against a public servant who has been alleged of an offence of abetting corruption under the prevention of corruption act, a bench of Justice Raveendran and Justice Reddy of the supreme court held that (quoting) ‘ the language employed in section 19 of the prevention of corruption act is couched in mandatory from directing the courts not to taker cognizance of an offence punishable under section 7,10,11,13 and 15 only, alleged to have been committed by any public servant except with previous sanction of the government.

When Section 19 of the Act specifically provides for Section 12 for the application of sanctions, the courts can not read section 12 of Section 19 on the basis of the interpretation process, since it may itself substitute Section 19. According to settled case-law, where there is no ambiguity the intention of the legislator is to be clearly communicated, the court has no opportunity to pursue any reading of the provisions which the

[41] (2011)7 SCC 167

legislature has consciously left in its wisdom. Such a practice, if the court can take action, may modify or modify the statutory provisions. 'The bench said: 'The court can not assume that the words used by the legislator are a mistake or neglect, correct or constitute a supposed lack when the words are clear and unambiguous, and courts have to decide what is law and not what should be. which makes the legislator's apparent intention but can not impose any legitimate judgment because such a course would be overwhelming due to violations of constitutional harmony.

The bench stated earlier that 'the punishment of an offender for the benefit of society is one of the greatest benefits of society behind the set of punishment rules, the right to initiate litigation can not go down, cut or lead by placing the locus standi of a placeholder.' In the present case, the CBI appealed against the Bombay Supreme Court's decision on Goa, which confirmed the order of discharge by an extra judge North Goa, Panaji, that the penalty was necessary for the crime in the Corruption Act was accused of two officials, Parmeshwaran Subramani (No. 1), then Panaji and another person (who was asked to offer bribes to the complainant's house at the complainant's No. 1). The appellant and the annulment of the judgment held that: 'In the present Opinion, the interpretation of Paragraph 19 of the High Court is completely erroneous. At this stage, the court can not intervene in the question of whether there are any offenses punishable under Article 7 or 11. Section 12 Clearly categorically stated that, subject to a criminal offense punishable under Article 7 or 11 or that the offense has not been committed, it is to be punished by imprisonment for a fixed period of time, which is precisely why Article 19 of the law expressly excludes from Section 12.'

2.2 SANCTION NOT TO BE GRANTED WITHOUT APPLICATION OF MIND

Under Section 197(1), there is no prescribed format of sanction which is necessary for prosecution of public servants. For a case instituted under Section 6 of the Prevention of Corruption Act, it is held by the Supreme Court that it should be clear from the form of the sanction that the sanctioning authority has considered the evidence present before it and after a considering of all facts and circumstances of the case present before it provided the sanction for prosecution, and, hence, the sanction should show that the authority had applied its mind before sanctioning the prosecution, if there is evidence to show otherwise the sanction will not hold any sanctity.

The accused in the given case was holding the post of Additional Secretary to the government of Madhya Pradesh in the department of Housing and environment. The lokayukta had found that he had caused a grievous loss to the state for crore of rupees. The order of sanction clearly mentioned all the necessary facts and circumstances and also that the accused was involved in criminal conspiracy. This shows the full application of mind on behalf the sanctioning authority.

Once the authority which is to grant sanction decides on the material present before it not to grant sanction, it exhausts its power to review or grant a re-sanction after re-consideration of matter.

2.3 POWERS OF GOVERNOR IN RELATION OF GRANTING SANCTION FOR PROSECUTION OF A PUBLIC SERVANT

For the prosecution of public servants for offences which are essentially criminal in nature, a grant of sanction under Section 197 of the Code of Criminal Procedure is mandatory. This grant of sanction is accorded to Judges, Magistrates, and Public servants, so that they can be prevented from frivolous prosecution and in cases where the prosecution of these persons is not in public interest.

The power to grant the sanction is nothing but an executive power of the Government. This is not a matter with respect to which the Governor is required under the Constitution to act in his discretion. Also, it was held by the Supreme Court that even though Article 243(g) of the Constitution was to be interpreted by the state government. 'Where functions entrusted to a Minister are performed by an official employed in the Minister's Department there is in law no delegation because constitutionally the act or decision of the official is that of the, Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister' is said to be the opinion of the Apex court of India.

It is imperative to mention the relevant articles of the constitution in order to decide whether the Governor has discretionary powers in such matters. The Constitution of India clearly states that the Executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officer's sub-ordinate to him in accordance to the law in force.

Wherever the Constitution requires the satisfaction of the Governor for the exercise of any power vested upon him by the mandate of the Constitution, the satisfaction required by the Constitution is not to be construed as the personal satisfaction of the Governor but is the satisfaction of the Governor in the constitutional sense under the Cabinet system of Government. This essentially implies that it is the satisfaction of the Council of Ministers as conveyed to the Governor, on the basis of which the Governor acts. The legal position has been unambiguously expostulated in this regard by the apex Court. 'It is an elementary principle of democratic Government prevailing in England and adopted in our Constitution that the Rajpramukh or the Governor as head of the State is in such matters merely a constitutional head and is bound to accept the advice of his Ministers'.

In State of Maharashtra v. R.S. Nayak[42] it was held that immunity under Section 197 is available only when alleged act done by public servant is reasonably connected with discharge of his official duty. For the interest of democratic government and its functioning, the Governor must act in such a case on his own.

Difference between sanction under Section 195 and sanction under Sections 96 and 197: A court granting sanction under Section 195(1)(b) in connection with offences in a judicial proceeding in such court, acts in its judicial capacity in granting the sanction upon legal evidence, whereas the Government granting sanctions

[42] 1982 AIR 1249

under Sections 196 and 197 acts purely in its executive capacity, and the sanction need not be based on legal evidence.

2.4 SANCTION UNDER THE PREVENTION OF CORRUPTION ACT AND THE DELHI POLICE ESTABLISHMENT ACT

The view of the supreme court being conflictive in nature on requirement of sanction under various laws for prosecution of a public servant under Section 19 of the Prevention of Corruption (PC) Act, 1988 created a legal vortex which will leave a scope for the unscrupulous public servants to create hinderances for a fair and independent criminal investigation process.

The independence of criminal investigation from the any kind of pressure is a sine qua non for success of a criminal justice system in simpler words an independent criminal administration is fundamental for justice in society- this plays an even more vital role when the police investigation begins in corruption cases which involves the public servants who are inextricably part of executive and control the police directly or indirectly.

Section 19 of the Prevention of Corruption Act states:

19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

The provision aims to create a balance between two differing interests. One is the necessity to ensure that an honest public servant is not harassed or hinderances are not created in the performance of his or her duties by frivolous and unnecessary complaints thereby effecting his career. Second being that the crimes don't go undetected or uninvestigated because they are committed by the public servants.

Section 19 provides for prohibition on the court to take 'cognizance' of an offence till previous sanction is granted from the competent authority to prosecute a public servant. The bar on the court is only against initiating a trial against that public servant. the prevention of corruption act or the criminal procedure code creates a wall or a bar to start trail but no such regulation exists for initiating investigation or lodging a FIR under the relevant sections of law in force at that time.

The court can even order for a court monitored investigation under section 156(3) of the criminal procedure code and this necessary requirement of sanction is not a bar to the same. It is the distinction of the

statute that creates complexity as well as creates a system which enables the honest public servants to carry on their duty without any fear and also creates reasonable fear in the mind of corrupt public servant that he will be subject to investigative agencies and not granted immunity for his illicit activities.

However, a two-judge bench in the case of Anil Kumar vs. M.K. Aiyappa[43] has put the law on this question into state of vagueness. The Hon'ble court held that investigation under section 156(3) cannot be initiated as prior sanction is needed for initiating any action against public servant under section 19 of the prevention of corruption act. The same has again been reiterated by the Supreme Court in the case of L. Narayana Swamy vs State[44].

While the decisions in Aiyappa and Narayana Swamy take the view that even an investigation cannot be ordered under Section 156(3) Criminal Procedure Code,1973 without sanction, larger benches of the apex court have taken a fully opposite view.

In R.R. Chari vs. State[45] (3 judges), the court held that there was no prior mandatory requirement of sanction for an investigation to be ordered under Section 156(3) Criminal Procedure Code,1973.

In State of Rajasthan vs Raj Kumar[46], it has been held that before filing of charge sheet under Section 173 Criminal Procedure Code requirement of sanction is not mandatory.

The decision of the larger benches is in consonance with the idea that a criminal investigation process should not be crippled at the threshold by the power mongering public servants by way of sanction. Sanction is a mechanism to protect the honest and responsible officers it should not become a mechanism by which corrupt and unscrupulous public servants carry out illicit activities by immunizing themselves and get away with no investigation due to requirement of sanction.

A bench of five judges of the Apex Court in Subramanian Swamy vs Union of India[47]held that Section 6A of the Delhi Special Police Establishment Act, which demanded for a prior sanction by the government for investigation into acts and omissions of the high-ranking officials as ultra vires to the constitution. It has been held that investigation is fundamental and essential for the criminal administrative system and cannot be tampered with at threshold by requirement of sanction. The court in my opinion has very rightly held that the status of the offender is irrelevant if the person is accused for bribery, demanding illegal gratification or is corrupt. Everyone is equal before law and no human being can ever attain a status above law.

[43] (2013) 10 SCC 705
[44] (2016) 9 SCC 598
[45] 1951 SCR 312
[46] (1998) 6 SCC 551
[47] (2014) 8 SCC 682

As this is to be the recorded legal position, there should be no objection on a court to order an investigation without sanction but the practical nuances and difficulties as mentioned in the case of Aiyappa and Narayana Swamy result in regulating the judges from even issuing an order of investigation by a court.

The apex court in Aiyappa and Narayana Swamy has given these officials enough scope to carry out their illicit activities under the garb of requirement of sanction in other words it can be said that this is one such loophole created by the court itself.

2.5 DISTINCTION BETWEEN SECTION 19 PREVENTION OF CORRUPTION ACT, 1988 AND SECTION 197 OF THE CRIMINAL PROCEDURE CODE,1973

Two noteworthy changes have been presented by Section 197, Criminal Procedure Code,1973 (hereinafter refereed as the C.r.PC.). The first of these progressions is that while under Section 197, Cr.PC. sanction of the Central Government or the State Government, by and large, was fundamental for the arraignment of public servants who were not removable from their workplaces spare with the sanction of Central Government or the State Government separately, no such capability is contained in Section 19 (old Section 6) in which the words utilized are 'submitted by an public servant'. Subsequently under the Criminal Procedure Code, no sanction was ever required to arraign an public servant removable by lesser expert than the State or Central Government, while now under Section 19 (old Section 6) of the Act the sanction of the proper specialist is important for the indictment of any public servant however subordinate, permitted to have perpetrated an offense under Sections 7 or 11 or 12 (old Sections 161 or Section 165 or Section 165-An Indian Penal Code or under Section 5 of the Prevention of Corruption Act, 1947).

The second change is that presented by the oversight in Section 19 (old Section 6) of the Act, the words showing up in. Section 197, 'while acting or indicating to act in release of his official obligation'. This oversight has all the earmarks of being conscious and to have been settled on in result of the choices of different High Courts and the Federal Court such that an officer who had acknowledged an influence or stole Government property was neither acting nor implying to act in the release of his official obligation, and that in this manner, no sanction for his indictment was essential. The sanction of fitting specialist under Section 19 [old Section 6] of the Act is in this manner, now fundamental for the indictment of any public servant under the Act, independent of the inquiry whether general society hireling was acting or indicating to act in the release of his official obligation.

In State of Bihar v. PP. Sharma[48], the Supreme Court observed that and laid down the law by explaining objects of sanction and that the sanction under Section 197, Cr.P.C. isn't an. purge convention. It is basic that the arrangements in that are to be seen with finish strictness. The objects of acquiring sanction is that the experts concerned ought to be capable, to consider for itself the material before the researching officer arrives at the

[48] 1991 AIR 1260

conclusion that the indictment in the conditions be authorized or taboo. To conform to the arrangements of Section 197 Cr.P.C. it must be demonstrated that the authorize was given in regard of the actualities constituting the offense charged. It is attractive that the certainties ought to be alluded to on the substance of the sanction. Segment 197 does not require the sanction to be in a specific frame. On the off chance that the realities constituting the offense charged are not appeared on the substance of sanction, it is available to the prosecution, if tested to demonstrate under the steady gaze of the court that these certainties were put before the endorsing specialist. It ought to be obvious from the type of sanction that the sanctioning authority considered the significant material put before it. what's more, after a thought of the considerable number of conditions of the case, it authorized the arraignment.

The essential contrast between authorize under Section 197 of Cr.PC. 1973 and Section 19 of the Act of 1988 [Old Section 6] is as per the following: to pull in authorize under Section 197 of Cr.PC. the charged offense is to be submitted while acting or indicating to act in release of his official obligation i.e., when the demonstration grumbled of is fundamentally associated with the release of his, official, obligation. However, the Court in Amrik Singh v. Province of Pepsu[49] provided that it isn't each and every offense by a public servant that requires sanction for indictment under Section 197(1) of Cr.P.C. nor even the acts done by him while he is really occupied with the execution of his official obligations. Yet, in the event that the acts whined of is straightforwardly worried about his official obligations so that it could be asserted to have been finished by goodness of his office, at that point sanction would be essential and that would be in this way, regardless of whether it was truth be told, an appropriate release of his duties, since that would truly involve resistance on the benefits, which would need to be researched at the trial and couldn't emerge at the phase of the give of sanction.

Depending on Amrik Singh's Case the court in Bhagwan Prasad Srivastava v. N.R Mishra[50] held that there was nothing to demonstrate that this demonstration was a piece of the official obligation of the common specialist and that no sanction was required under Section 197 Cr.EC. for arraignment of the common specialist. In consequent case the court completely emphasized that presence of legitimate authorize is a pre-imperative, to the taking of the awareness of the offence. Without such authorize the court would have no Jurisdiction to take the perception of the offense. Thus, trial without legitimate sanction under Section 6 [Now Section 19] is a trial without Jurisdiction.

In R-Balakrishna Pillai v. State of Kerala[51], learned Chief Justice Ahmadi has alluded to the Law Commission Report which recommended a change to Section 197 of the code. The perception of the Law Commission in section 15 of 123 of its Report read along these lines:

[49] Supra
[50] 1970 AIR 1661
[51] 1996 AIR 901

It appears to us that security under the section is required as significantly after retirement of general society worker as before retirement. The assurance managed by the area would be rendered deceptive in the event that it was available to a private individual harboring a grievance to hold up until the point when the general population worker stopped to hold his official position, and afterward to hold up a grumbling. A definitive defense for the security gave by Section 197 is people in general enthusiasm for seeing that, official demonstrations don't prompt unnecessary or vexatious arraignments. It ought to be left to the Government to decide starting there of view the subject of the. practicality of arraigning any public servant.

Their Lordship subsequent to alluding to the above Report have watched: 'It was in compatibility of this perception that the articulation 'was' came to be utilized after the articulation 'is' to make the sanction material even in situations where a resigned public servant is looked to be arraigned.' In State through Anti-Corruption Bureau. Legislature of Maharashtra. Bombay v. Krishan Chand Khushalchand-Iagtiani[52]. The Supreme Court held that it must be recalled that the protest of Section 6(1)(c) of the 1947 Act [Now Section 19 of the 1988 Act] or besides Section 197 of. the Criminal Procedure Code 1973 is that there ought to be no pointless provocation of an public servant, the thought is to spare the general population hireling from the badgering which might be caused to him assuming every single distressed or disappointed individual is permitted to organize a criminal protest against him. The assurance is no supreme or unfit, if the expert capable to expel such public servant agrees past sanction, such indictment can be initiated and continued with. The law presumes and the court should likewise assume until the point when the opposite is set up that such specialist will act decently and dispassionately and will accord sanction just where-he is fulfilled that the charges against people in general hireling requires to be enquired into by a court. The expert is ventured to, and anticipated that would, demonstration steady with open intrigue and the enthusiasm of law both of which request that while an public servant be not subjected to badgering, authentic charges and assertions ought to be permitted to be inspected by the courts.

Both the contemplations aforementioned ought to be available in the brain of the expert while choosing the topic of concede of past sanction required by Section 6(1) (c) of the 1947 [Now Section 19 of the 1988 Act] of the Act or, for that matter, Section 197 of the Criminal Procedure Code, 1973.

2.6 SANCTION UNDER AFSPA AND SITUATION IN KASHMIR

Armed forces Special Powers Act was passed on September 11, 1958 by the Parliament of India. Due to following reasons:

1. Failure of the administration and the local police to tackle local issues.
2. Maintenance of Peace and Tranquility.

[52] 2004 (0) AIJEL-SC 29985

It gives military officers the legitimate immunity of their actions. There can be no prosecution, litigation or other litigation to anyone who works under that law. Nor is the government's opinion as to why the area is said to be 'disturbed' if the court procedure is being monitored. Forced in Jammu and Kashmir in 1990, the law provides military officers with legal immunity from their activities. The law also gives the security force the ability to arrest people and search their homes without any warranty and use deadly power against people. The situation of Kashmir and requirement of sanction therein has been mentioned by a case study herein. More detailed discussion on the sanction under AFSPA will be discussed in the chapter describing the offences arising out of force.

Questions that emerge from the 17-year-old Tufail Matto's fake case killed a tear gas pipe that snooped during the demonstration in Srinagar in June 2010. All the arched gasses, gums and waterfowl in the world are used in situations where the demonstrations turn violent but the Indian ammunition seems to be the first and only defense line. Even tear gas is so poorly designed that they lead to death.

Even though the military has been detained by soldiers who are responsible for fake confrontation, the only reason they had been willing to commit such a fierce crime was because they were convinced that they would get away with it. Five military officers from kidnapping and murdering Kashmir civilians are still free despite being charged by CBI. The Ministry of Defense has refused to grant punishment for its prosecution and has always taken the matter to the highest court to prevent its men from being prosecuted. Even an insecure official can shoot at killing based on their suspicion that it is necessary to 'maintain public order' 34. Relevant question: What was the message that resulted from this? Probably we have to think to get the right answer.

The task of the Security Committee is to decide on September 13, 2010 at the request of the J & K Government to partially terminate the Special Forces Act on Armed Forces. But still J & K is facing the issue on a date. At times we wondered what could be done to avoid such things in the future and Hope Peace returns to Jammu and Kashmir. This is one such example of the number of cases that occur in daily basic education across the country. We must always remember and use the power given by law or legislation to our laws to make this place a wonderful place to live in the world.

CHAPTER – III

WHY SANCTION UNDER SECTION 197 OF THE CRIMINAL PROCEDURE CODE, 1973 AND BASIS OF SANCTION

A criminal trial is normally commenced by a complaint by any person to a magistrate competent to take cognizance of that offence. In criminal trial the locus standi is not applicable as criminal law can be set in motion by anyone. It is even for public servants that the criminal law can be set in motion with a complaint.

Where a complaint has been made to magistrate regarding an act or omission of a public servant without the details of the office he holds or the act or omission being done during the course of his official duty then the question of sanction if raised at the later stage of the proceedings shall be allowed. In various judgments the Supreme court has held that the question as to necessity of sanction for commencement of prosecution can be raised at any stage of the trial.

The question of sanction under section 197 of the Criminal Procedure Code,1973 arises when the complaint mentions the full details of the office held by the offender and the nature of his duty it is for the magistrate to see whether the sanction has been granted for the prosecution to be commenced. When the full facts are mentioned the requirement of sanction has to be seen before the process is issued in pursuance of the criminal law and prosecution is commenced.

Where the complainant has received the sanction at the stage of filing complaint then no difficulty in commencing the trial arises. But where the sanction is not granted and the trials proceeds the question of necessary requirement of the sanction arises and can be entertained even in the later stage. The need of prior sanction as mentioned earlier is to grant certain leverage and protect the public servant who in the virtue of his office can offend ordinary persons and create a sense of anguish in the hearts of ordinary public which can lead to frivolous and vexatious complaints and would not allow such public servant to perform impartial duty. This protection allows these public servants immunity from hardship caused by police authorities who move the criminal law into motion because of the complaint by ordinary citizens. The prosecution of a public servant for an offence challenging his honesty and integrity has also a bearing on the morale of public services. It is only the direct boss that is the administrative authority also the executive who is in correct or ideal position to judge the weight of the allegations leveled against a public servant.

It is the sanctioning authority which has full authority or discretion to wither accord someone with sanction or refuse to grant any sanction after considering all facets of the case present before it and if it finds the prosecution to be of utmost importance and in interest of public then such a sanction should be granted with immediate effect if not then such a sanction should not be granted.

If the facts present before the sanctioning authority are not enough then it is bound to reject the sanction and it cannot go beyond the record available before it. it has full authority to reject the sanction on the ground it finds it imperative to reject sanctioning a sanction to prosecute a public servant.

A public servant allegedly responsible for a criminal offense should be able to appeal to the court unless the sanctioning authority finds it justified to initiate the prosecution. Such a case that can lead to liberty is not enough to arrest punishment. Whether the evidence available is sufficient or not, it is up to the Court to consider and decide. In order for a sanctioning authority to be guided by such considerations, it is not appropriate and can lead to suspect bias and protection of the guilty party. Therefore, prosecution should

generally be punished even if the result is uncertain. The protection of the former sanction is available to a public official even if he ceased to exist when the court is asked to take account of the offense he has committed when he was an official when he acted or intends to act in discharge of his duties in 1974 under Article 197 of the 1971 Criminal Investigations Act) was changed when a person who is a public employee and can be removed from office solely by a government sanction is charged with a crime committed or allegedly acting in the performance of his or her official duties; then the court cannot determine the offense without the prior sanction imposed by the government, who was competent to remove him from office when the offense was committed.

Consequently, if an official has been charged with retaliation for the offense he has committed during his official duties, he must be punished for the authority competent to remove him from his post at that stage.

If a prior sanction of a competent authority cannot be obtained, the proceedings would be ab initio void and if it is initiated, it must be annulled. A fresh prosecution would be necessary after the appropriate sanction has been obtained and the accused has to be resumed on the basis of a criminal offense.

3.1 DETERMINATION OF QUESTION OF SANCTION

For the purpose of determination of the question whether a sanction under Section 197 of the Code of Criminal Procedure, 1973 is required, the facts alleged in the petition are to be taken as stated in the complaint. So long as the complaint makes a clear allegation of facts which prima facie disclose the essential ingredient of the offence, it has to be assumed that the offence has been committed for the purpose of determination of the question of necessity of sanction. The law in this regard has been summarized in *B. Saha v. M. S. Kochar*[53],in the following words:

> "Thus, the material brought on the record up to the stage when the question of want of sanction was raised by the appellants, contained a clear allegation against the appellants about the commission of an offence …. … … **Whether this allegation or charge is true or false is not to be gone into at this stage. In considering the question whether sanction for prosecution was or was not necessary, these criminal acts attributed to the accused are to be taken as alleged."**
>
> (Emphasis Supplied)

Even otherwise, at the time of taking cognizance, so long as the complaint makes a clear allegation of facts which prima facie disclose the essential ingredient of the offence, it has to be assumed that the offence has

[53] AIR 1979 SC 1841 : 1980 SCR (1) 111 : (1979) 4 SCC 177

been committed for the purpose of issue of process. The law in this regard has been summarized in *Bhaskar Lal Sharma v. Monica*[54],.

Determination of Question of Grant of Sanction - General

The Question of Necessity of Sanction is a question of law, and belongs to the domain of the Court, while the Question whether to Grant or not to grant Sanction is in the domain of the Government. The function of, or its exercise or non-exercise of the function by, the Government does not affect the function of the Court. In Matajog Dobey[55], the Constitution Bench of the Hon'ble Supreme Court held That it is imperative for the Apex Court to see whether the Court lower or higher could take perception of the case without past sanction and for this reason the Court needs to see whether the prosecution commenced against was conferred by the denounced while acting or implying to act in the release of authority obligation. When this is settled, the case continues or is tossed out. Regardless of whether sanction is to be agreed or not is an issue for the Government to consider. The total energy to accord or withhold sanction presented on the administration is unessential and unfamiliar to the obligation cast on the court, which is the ascertainment of the genuine idea of the demonstration.

In fact, unless the Court considers that the sanction is necessary, the Government's function, or its exercise or non-exercise thereof by the Government has no role in the progress of the case. If the sanction is not considered necessary by the Court, then the grant of sanction by the Government is merely superfluous.

The question whether the Government has can act arbitrarily to withhold sanction where such sanction has been held necessary has yet to be authoritatively decided by the Supreme Court. However, in view of the legal position that the decision of the Government under Section 197 of the Code of Criminal Procedure, 1973 being an administrative decision, it would necessarily follow that it is governed by principles of administrative law. In this connection, it may be useful to delineate the scope of judicial review of administrative action, or, as the case may be, inaction in the context of a request for sanction under the said Section 197.

In *Om Kumar v. Union of India*[56], the law regarding judicial review on the touchstone of Article 14 was summarized as follows:

> *"It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a*

[54] (2014) 3 SCC 383 : 2014 (2) SCR 990
[55] Supra
[56] AIR 2000 SC 3689: (2001) 2 SCC 386

nexus with the objective intended to be achieved by the administrator. Here the Court deals with the merits of the balancing action of the administrator and is, in essence, applying 'proportionality' and is a primary reviewing authority.

But where, an administrative action is challenged as 'arbitrary' under Article 14 on the basis of Royappa (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is 'rational' or 'reasonable' and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In G.B. Mahajan v. Jalgaon Municipal Council, [1991] 3 SCC 91, at 111. Venkatachaliah, J, (as he then was) pointed out that 'reasonableness' of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In Tata's Cellular v. Union of India, [1994] 6 SCC 651 (at PP. 679-680); Indian Express Newspapers v. Union of India, [1985] 1 SCC 641 at 691), Supreme Court Employees' Welfare Association v. Union of India and Anr., [1989] 4 SCC 187, at. 241 and U.P. Financial Corporation v. GEM CAP (India) Pvt. Ltd., [1993] 2 SCC 299, at 307, while Judging whether the administrative action is 'arbitrary' under Article 14 (i.e. Otherwise then being discriminatory, this Court has confined itself to a Wednesbury review always.

Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the Courts by applying proportionality. However, where administrative action is questioned as 'arbitrary' under Article 14, the principle of secondary review based on Wednesbury principles applies."

However, a clear delineation of the function of the Government, even though it is said to have absolute discretion, has been given in *Dr. Subramanian Swamy v. Dr. Manmohan Singh*[57], the law regarding judicial review on the touchstone of Article 14 was summarized as follows:

Determination of Question of Sanction – Where allegations stem from paper-work, i.e., use of force is not envisaged in the course of official work, and where no allegation of use of force is made sanction is needed at threshold.

[57] (2012) 3 SCC 64

3.2 BASIS OF GRANTING SANCTION

Section 197 makes a bar against pointless procedures. Indeed, even previously, such criminal procedures are propelled, it is viewed as legitimate to get, the assessment of predominant expert. Section 197 says, 'when an public servant is blamed for any offense affirmed to have been submitted by him while acting or indicating to act in the release of his official obligation, no court should take cognizance of such offense aside from with the past sanction' of the Central Government or the State Government by and large. The sanction of the Central Government or the State Government is necessary, when three conditions are satisfied:

(a) The accused must be a judge, magistrate or public servant

(b) The accused must be a public servant removable from his office only with the sanction of the State Government or Central Government and

(c) He must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties.

It is only when all the three criteria are fulfilled that the materialness of Section 197 will comes in. It is at exactly that point the restriction forced on the court from taking cognisance without a substantial sanction from the expert concerned comes into task. The way that the blamed is an public servant isn't adequate to pull in the arrangements of Section 197. Accordingly, regardless of whether sanction is required in a specific case is an issue of reality. On. the other hand, regardless of whether. a man is an open Servant is a blended inquiry of law and reality and it requires prove for its assurance. The expression 'office' happening in Section 197(1) ought not be understood as a private office, but rather an open office. Against false, negligible and mala fide indictments, there are two kinds of shields, one start in the basic rights ensured in the Constitution and the other from the compulsory, methodology recommended in the Criminal Procedure Code, and the Special Acts. For example, the Official Secrets Act, 1923 and the Atomic Energy Act, 1962. Courts are not allowed to take cognizance of an. offense, until the point when the obligatory methods sanctioned by the law are conformed to. What the police ought to and ought not do at the season of examination.

Governments in India discharge their executive functions in accordance with rules made under article 77 and 166 of the constitution. In the central government these rules take the shape of government of India (allocation of business) rules 1961 and government of India (transaction of business) rules 1961.

> 77. (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.
>
> (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules1 to be made by the President, and the

validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

166. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. Advocate-General for the State. Conduct of business of the Government of a State.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

While the allocation of business rules allocates subjects to various departments of the central government while the transaction of business rules provides for various levels at which final approvals are required for various kinds of decisions.

Article 78(c) of the constitution recognizes that ministers can take decisions on matters allocated to them but gives a discretionary power to the president to require the prime minister to escalate the matter to the decision of the council of ministers.

The Government of India (transaction of business) rules 1961 provides that decisions will be taken by or under orders of the minister concerned unless the matter is required to be decided at the level of a cabinet committee. It further provides that certain kinds of matter the file will be shown to president also.

Under allocations done by a minister within a department certain un-important category of decisions are relegated to lowest rung of gazetted functionaries. Various higher levels of the hierarchy have also been prescribed for disposal of other kinds of cases. Significant/ important cases are to be disposed of at the level of joint secretary to government of India or above.

Usually the service rules provide major penalty of dismissal, removal or compulsory retirement in respect of gazetted officers is to be done with the sanction of president of India which in each individual case would refer to concerned minister in-charge of the cadre controlling authority.

Thus, any executive decision detrimental, if at all to citizen might cause grudge/anger to such affected party. In order to prevent such a grudge taking the shape of a criminal case against such officer the statute provides for protective layer for scrutinizing the case by the government before the court applies it judicial mind into it.

The prosecution given on the basis of the material collected during the investigation shall not be invalidated if the investigation is subsequently considered ineffective. If re-examination reveals new facts, it is desirable that the sanctioning authority should reconsider whether an official should be blamed, taking into account all the facts of the recent investigation. If the new investigation does not disclose new facts and there are no changes in the nature of the offense to which the sanctions were previously applied, the previous sanction is good and the competent authority does not need to provide fresh[58].

It is fundamental to criminal jurisprudence that any private complaint under section 200 criminal procedure code,1973 or final report filed by the police under section 173 criminal procedure code,1973 entails one solid opportunity to the prosecution to prove its case. In a normal case this would require cognizance being taken and framing of charge after summoning the accused person. Even though the statute does not define cognizance and does not clearly lay down whether summoning precedes cognizance or vice-versa, it causes a lot of anxiety and unnecessary fear of prosecution for an officer who has disposed of a case in pursuance of the. Also, under the government of India act,1935 and under criminal procedure code ,1973, it was given that the citizen would not have access to same material as the officer had at the time of deciding the case. Thus, it was highly probable that unbridled access to criminal justice system against government servants deciding particular cases would have had a crippling effect on governance and would have brought the government to standstill. This has been expressed variously as vexatious proceedings etc.

The statue therefore provides that unless the concerned government sanctions the prosecution of alleged offender/ government servant, the court shall not even take cognizance. Although the statue does not fix the onus either on the complainant or on the police to procure the sanction, it has in practice worked out in such a manner that it burdens falls on the complainant/police to seek the sanction. The concerned government is thereafter expected to call for the concerned official record peruse it and come to a conclusion as to whether a) the government servant did anything which may amount to an offence; and b) whether such an act was done in good faith or not.

The government is then expected to balance the interest of efficiency in public service on one hand and accountability to the constitutional system on the other and to decide whether it is in public interest that the government servant concerned should be asked to stand trial.

[58] AIR 1962 Bombay 205

The rationale for extending similar protection to judges magistrates and other class of public servant mentioned in the section is obviously similar.

That the government is required to decide the matter and parameters under which it has to grant the sanction have been declared in Dr. Subramanian Swamy V. Manmohan Singh[59] -

> *We may also observe that grant or refusal of sanction is not a quasi-judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the Competent Authority before it takes a decision in the matter. What is required to be seen by the Competent Authority is whether the facts placed before it which, in a given case, may include the material collected by the complainant or the investigating agency prima facie disclose commission of an offence by a public servant. If the Competent Authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the Competent Authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail appropriate legal remedy.*

However, it is pertinent to mention that granting the sanction is discretionary power of the government or the competent authority. the apex court is of the opinion that before sanction is granted or rejected what has to be kept in the mind is the fact that discretionary power is not essentially discriminatory power and that it cannot be necessarily assumed that abuse of power exists because of discretion being vested in the government and not in the minor official. The court has reiterated that the basis of sanction and the question as to whether the sanction has to be granted or accorded is to be considered by the government itself. It is primarily the duty of the government and foreign to the duty cast on the court.

The Supreme Court held that Taswanth Singh v. Punjab State Court requested an sanction arrange that the punishment specialist ought to have the capacity to consider the proof before it goes to the arraignment of conditions under discipline or prohibited. The Court likewise held that it would be obvious from the type of sanction that the Sanctions Supervisory Authority managed the confirmation and every one of the conditions of the case before it, and after that the punishment was allowed. Therefore, unless it can be demonstrated by other proof to the sanction itself, reference must be made in such manner to the actualities and to show that the punishment expert has connected the certainties of the case and the conditions.

In Shiv Rai v. Delhi Administration, the Supreme Court rethought and re-certified on account of Taswanth Singh. For this situation, the sanction arranges Ex. p. 13 did not simply express the actualities of the criminal procedures in detail which are important to constitute an offense, however is a criminal offense since

[59] AIR 2012 SC 1185: (2012) 3 SCC 64

the C.D. Narrative confirmation, declaration, and so forth. It was inferred that the respondents were open authorities must be charged under the watchful eye of the court and, with a specific end goal to think about it, the specialist has chosen to force the arraignment. It hence satisfies all the basic prerequisites of the sanction

In Somnath v. Association of India, the Supreme Court revaluated the case and found that, when the punishment was substantial, it was important to demonstrate that the discipline was given for the certainties that constitute the offense for which the denounced is claimed to be charged.

As I would like to think, it is alluring that the realities ought to be alluded to the sanction themselves, however in the event that they are confronted, the prosecutor must build up prove that these actualities were forced before the endorsing expert. For this situation, the request of punishments, Ex. p. 13 contains every one of the subtle elements of the assertions made independently by the respondents and identify with the actualities that constitute the offense for which the blamed is proposed to be charged.

In a subsequent decision in Mohd. Iqbal Ahmed v. State of A.P.[60] the Supreme Court restated the said law and it was provided that it is the duty of the court to look into the matter regardless of whether the sanctioning authority at the season of giving sanction knew about the certainties constituting the offense and connected its psyche for the same and any resulting certainty which may appear after the determination giving approval has been passed, is completely unessential. The conceding of sanction isn't sit custom or a rancorous exercise yet a serious and consecrated act which bears assurance to Government Servants against pointless prosecution and should in this manner be entirely conformed to before any prosecution can be propelled against the required public servants concerned.

So also, in Raghu Bir Singh and Haryana. The Supreme Court held that the prosecutor must fall flat in light of the shortcoming of the sentence. The State Prosecutor v. K.N. Vadalingam. Mr M. Natarajan has considered that the endorsing expert has connected the certainties and conditions of the case before the burden of an sanction for the arraignment. Farming Against Inspector. Disclaimer and Corruption, in which this case Swamy Durai, J. considered that the sanction request ought to contain itemized data on the premise on which the endorsing specialist was fulfilled that the sanction arrange was made. In the accompanying case, Raja Singh v. The State, the Supreme Court held that the authorizing expert should apply to the claimed actualities simply after conviction that the punishment was essential. the sanction request ought to be agreed upon. For this situation, the records will be issued in a correctional request and his/her announcement on the settlement of the records previously the issuance of punishments.

Madan Mohan Singh v. State of Uttar Pradesh[61] expressed that the weight of verification that the asked for sanction was gotten depends on indictment and such a weight contains confirm, to the point that the

[60] 1979 AIR 677
[61] AIR 1954 SC 637

sanction was sanctioned by reference to the certainties that the arraignment would be based; and these realities may show up before the discipline or be demonstrated with ominous proof. On the off chance that the actualities of the encroachment are not showing up before a letter to arraign, the prosecutor's activity is to demonstrate by other confirmation that the material certainties that make up. the offense was conferred before the sanctioning authority. On the off chance that this isn't done, the sanction must be viewed as an inadequate and wrong punishment can't give the court the privilege to examine.

So also, in Shri Vinod Lai v. H.P. the inquiry is whether the court has the ability to perceive the offense under Article 13 of the 1988 Anti-Corruption Act without the legitimacy of the punishment before the capable specialist being indicted under Article 19 of the 1988 Law is legitimate or not? The Supreme Court of Himachal Pradesh decided that a trial without a legitimate sanction would render stomach muscle initio void a trial.

D.B Sood, J. had provided a very vital observation with regard to prosecution on the basis of the sanction. I have tried to reiterate his observation as per my understanding for the want of sanction for prosecution the examination of the acts done accommodates previous sanction for prosecution in the event of a man utilized regarding the issues of the association or State Government or other specialist, is undifferentiated from Section 6 of the Prevention of Corruption Act 1947 (Old Act) with the exception of proviso 19(3) Act of 1988 the (New Act) which gives that on the ground of anomaly of sanction. no finding, of the court can. Be switched. At the same time, it has additionally been given that no court can remain the procedures. In these cases, in view of anomaly in sanction or a some other ground. In Catona of cases, the Apex Court has held that the weight of verification is on the arraignment to demonstrate that the authorize allowed for indictment of a guilty party is legitimate. Such weight incorporates verification that the authorizing expert had given sanction in reference to the certainties on which the proposed arraignment was to be based. These actualities may show up on the substance of the authorize or it may be demonstrated by autonomous confirmation that sanction was concurred for indictment after those certainties had been set before the authorizing expert. The way that the sanctioning authority marked the sanction for the arraignment on the document and not the formal sanction delivered in the court has no material effect. I am upheld in taking this View by the perceptions made by their Lordships of the. Incomparable Court in State of Rajasthan v. Tarachand Jain[62]. The approach basic Section 6 Corresponding to Section 19 (New) of the Act of 1988 and comparative segments like Section 197 of the code is that there ought not be superfluous provocation of people in general, worker. The question as demonstrated above is to spare general public servant from frivolous and unconfirmed assertion. Presence of substantial sanction is essential to the taking of insight of the specified offenses affirmed to have been submitted by people in general worker. Without such authorize, the court would have no purview to take comprehension of the offenses. Therefore, a trial without an sanction renders the procedures stomach muscle initio void. A trial

[62] 1973 SCC (Cri) 774 : 1973 Cri. L.J.1396

without a substantial sanction where one is vital under the above said arrangements, is a trial without purview by the court. The said perceptions have been made in para 19 on account of R.S. Naik v. A.R. Antalav[63].

In Raghubir Singh v. State of Haryana,[64] the Supreme Court held that while the reality of the matter is that arrangement for. sanction before indictment of public servant ought not be an umbrella for security of degenerate officers however a shield against neglectful or noxious provocation of authorities whose upright release of obligations may incite disagreeableness. Also, antagonistic vibe, that is a zone of law change secured, we find by the 47th report of. the Law Commission of India. The Supreme Court in Mohd. Iqbab Ahmed v. State of Andhra Pradesh[65], held that the concede of sanction isn't a sit out of gear convention or a caustic exercise however a grave and hallowed act which manages insurance to Government workers against unimportant arraignments and should hence be entirely agreed to before any indictment can be propelled against people in general hireling concerned. The Supreme Court additionally held that for this situation, since the indictment sanction has been agreed mechanically and in this way it can not be viewed as legitimate and lawful. In Bhagirathi Routrav v. State of Orissa, the Orissia High court held that it is all around settled that where the law recommends sanction as the condition point of reference to an indictment, the court must not exclusively be fulfilled that the required sanction has been, agreed yet that the authorizing expert has concurred it subsequent to applying its brain to the certainties constituting the offense. The Supreme Court in Mansukhlal Vithaldas v. State of Gujarat[66], held that the concede of sanction for the indictment under Section 19 of the Prevention of Corruption Act, 1988 can't be a void convention and an utilization of brain was basic. Punjab and Haryana High Court in Gian Prakash Sharma v. C.B.I.[67] Chandigarh, held that the endorsing expert ought to apply its mind autonomously to the certainties and conditions of the case and furthermore the materials on the record before taking a proper choice for giving or denying the sanction for arraignment. In like manner the A.R High Court, in T Bathaiah v. State, held that while sanctioning authority has connected his brain by investigating all materials set before him, at that point the request giving assent, for arraignment is appropriate. In a prior case in particular, Anand Gonal Gurve v. State of Maharashtra, where in the legitimacy of sanction to arraign was tested. The court held that when there is no proof with respect to what material was put before endorsing expert and furthermore absence of confirmation regarding what material was considered by the sanctioning authority while conceding sanction and under these conditions allow of sanction is vitiated.

B.U. Wahane, J. while recording his opinion in a landmark case opined that availability of no evidence to show that material was placed on record was not sufficient to grant an authoritative sanction to prosecute the said public servant. Therefore, the alleged sanction Exh. 236 is bad in law. That the prosecution of the said

[63] A.I.R. 1984 S.C. 684 :1984 Cri. LJ. 613.
[64] 1974 AIR 1516
[65] Supra
[66] 1997 7 SCC 622
[67] 2004 CriLJ 3817

appellant is without evidence and the trial initiated against him in the trail court was void ab initio as the sanction granted for his prosecution is not valid.

Further said:

> *It needs mention that though the sanction for prosecution was accorded by Shri Sathe,* Conservator of Forest (EW. 14), to prosecute the appellant / accused for the offence punishable under Section 409, 420, 120 (b) of the Indian Penal Code arid under Section 5(1) (c) (d) read with Section 5(2) of the prevention of corruption Act 1947 the learned trial court has framed the charges under Section 468 read with S.34, 465 and 471 read with S.34 of the Indian Penal Code, and also under S. 5(1) (c) read with S.5(2) of the prevention of Corruption Act 1947. It is thus crystal clear that no sanction was accorded by appointing and dismissing authority, i.e., Shri Sathe, the Conservator of Forest, under Sections 468, 465 and 471. Therefore, the trial under these sections is ab initio illegal.

In a recent case namely Pravin Kumar v. State[68], the Goa Bench of Bombay High Court, restated that granting of Section under Section 19, for the prosecution of Public Servant is not an empty formality and emphasising its importance N.A., Britto, J. opined that there is almost certainty that conceding of sanction isn't an unfilled custom and it is basic that the arrangements as per procedure allows sanction ought to be watched totally, the protest of giving Sanction by the authority to grant the required sanction ought to have the capacity to consider for itself the proof before it arrives at a conclusion that the Prosecution is necessary in these conditions or not the case must be need a sanction or not must be the question which the sanctioning authority must ask to itself. It is vital for the Sanctioning Authority to consider the proof before it and every one of the conditions of the case whether the grant of sanction is required to be given or not. To the extent the case before the above-mentioned judge was concerned, the sanction was being given by under-secretary in place of the president of India, in the Ministry of Defense of Government of India. Regardless of whether such an under Secretary was approved to pass on the sanction under the Rules of Business is an issue which would be required to be gone into at the trial and not at the at first sight phase of surrounding the charge. The sanction dated 24-9-2003 issued by the official in place of president of India and marked by the under-Secretary to the GOI in the Ministry of Defense dated 24-9-2003 has been created and the same on its substance at the prime facie organize, must be considered as a legitimate sanction got for prosecuting the charged official.

3.3 ESSENTIAL PRE-REQUISITES OF A VALID SANCTION:

The Supreme Court in Anand Gopal Gurve set out the accompanying as the fundamental Pre-Requisites of a legitimate Sanction. A sanction must be given by a skillful expert after examination of record.

[68] 2005 CriLJ 2714

For the earlier sanction no sort configuration shape or sanctioned frame or specific arrangement of words has been recommended. Henceforth as per conventional and the necessity of equity, all that the request of sanction must demonstrate that all pertinent material was put before the endorsing specialist, which has considered those materials and passed the request as an outcome of it. The protest of this sanction is simply to guarantee the demoralization of unimportant, farfetched and impolitic indictment. Since designating expert has innate energy to expel the worker, in this manner he is capable to give sanction. The choice of Supreme Court in Taswanth Singh v. State of Punjab, is a specialist for the recommendation that the sanction under the aversion of Corruption Act isn't proposed to be nor is a programmed custom and it is fundamental that the arrangements as to sanction ought to be seen with finish strictness. The question of this arrangement is that the expert giving the sanction ought to have the capacity to considered for itself the confirmation before it reaches a conclusion that the arraignment in the conditions be sanctioned or illegal and that it ought to be obvious from the frame the sanction that the sanctioning authority thought about the proof, before it and after a thought of the considerable number of conditions of the case, sanctioned the indictment.

In Niranian Khatua v. Province of Orissa, the court legitimately chose that where the terms of an sanction are as basic as those of Section 19 of the 1988 Act. (Old Section 6 of the 1947 Act), a legitimate sanction is a condition point of reference to a substantial arraignment. In Indu Bhushan Chatteriee v. State[69], wherein the court held a legitimate sanction implies sanction given after a thought of important actualities. Those certainties, it. has been set down, may show up on the face, of the sanction itself and where they do as such show up the assignment of arraignment is simple. Where they don't show up on the substance of the sanction, the indictment has freedom of demonstrating such actualities by other proof however it isn't freedom alone. It is likewise an obligation in light of the fact that unless the arraignment demonstrates by reference to other confirmation that endorsing specialist had in actuality connected his. psyche to the pertinent actualities a legitimate sanction can't be made and it can't be demonstrated that the establishment of arraignment had been well and genuinely laid. In an ensuing case, State of Orissa v. Mrutuniava Panda, wherein the Supreme Court held when there is no material demonstrating that disappointment of equity occasioned because of blunder or abnormality in sanction, at that point sanction is legitimate and conviction additionally substantial.

M.K. Mukherjee, J. said:

> *On perusal of the impugned Judgement we find that the High Court's attention was not drawn to the provisions of Section 465 of the code of Criminal Procedure 1973 which expressly lays down, inter alia, that any error or irregularity in any. sanction for the prosecution shall not be a ground for reversing an order of conviction by the appellate court unless in the opinion of that court a failure of justice has in fact been occasioned thereby. The section further lays down that in determining whether any error or irregularity in any sanction for the prosecution has.*

[69] AIR 1972 All 557

occasioned a failure of justice, the court shall. have regard to the fact whether the objection could and should have been raised at an earlier stage of the proceedings. In view of the above provisions the High Court was required to decide, after recording a finding that there was some error or irregularity in the sanction, whether such error or irregularity occasioned a failure of justice and further whether such objection regarding the validity of the sanction was raised in the trial court. Admittedly, the above point was not raised in the trial court nor do we find anything on record from which it can be said that the error or irregularity in the sanction (even if we assume that the finding of the High Court in this regard is correct) did occasion any failure of justice. In that view of the matter it must be said that the High Court was not at all justified in acquitting the respondent on the ground that there was no valid sanction to prosecute him. Since on facts, the concurrent findings of the courts below are based on proper appreciation of evidence and supported by cogent reasons. the judgement of the High Court has got to be reversed...

In State of Tamil Nadu v. Rajendran[70], sanction was agreed by the City Commissioner of Police, Madras. On that premise the trial started. The High Court found that all the important materials including the announcements recorded by the Investigating Officer was definitely not put for thought before the City Commissioner of Police, Madras, in light of the fact that lone a report of the cautiousness office was put before him. The High Court went to the finding that in spite of the fact that the individual Assistant to the City Commissioner of Police, Madras has dismissed that appropriate sanction was concurred by the City Commissioner of Police after experiencing the definite report of cautiousness, however the announcements recorded amid the examination was not put before sanctioning authority and accordingly, there was no legitimate use of psyche by endorsing expert, all things considered sanction was invalid. In C.S. Krishna Murthy v. State of Karnataka[71], the Supreme Court held that the proportion is, sanction Order ought to justify itself and on the off chance that the actualities don't so show up, it ought to be demonstrated by driving proof that every one of the particulars were set before the endorsing expert for due use of brain. On the off chance that the sanction justifies itself with real evidence then the fulfillment of the endorsing expert is clear by perusing the request.

In the present case, the sanction arrange justifies itself that the officeholder needs to represent the advantages unbalanced, to his known wellspring of salary. That is contained in the sanction arrange itself. All the more in this way, as pointed out, the endorsing expert has come in the witness box as witness No. 40 and has dismissed about his utilization of brain and in the wake of experiencing the report of Superintendent of Police, C.B.I. furthermore, subsequent to talking about the issue with his lawful division, he agreed sanction, it

[70] (1994) 1 MLJ 526
[71] 2004 CriLJ 3440

isn't a case that the sanction is inadequate in the present case. The view taken by the Additional Sessions-Judge isn't right and the view taken by learned Single Judge of the High Court is legitimized.

The issue in Sukhdev Singh Lamwal v. State of Maharashtra[72] is whether sanction concurred under old Act, 1947 can be dealt with as sanction under New Act, 1988. The Bombay High Court held that there isn't a legitimate sanction. Henceforth confining of charge and lead of trial under New Act, 1988 vitiates the trial and along these lines. conviction and sentence forced upon the denounced is obligated to be put aside. D.G. Deshpande, J. watched and opined that in the cases where the sanctioning authority clearly and specifically admits that. the sanction was accorded under the old Act of 1947. In the event that that is in this way, reference to the new Act of 1988 to the authorize is of no assistance in light of the fact that the endorse is the result of use of psyche of the authorizing specialist and if the sanctioning authority on applying its mind arrives at a conclusion and assents sanction to prosecute the litigant under the old Act, the arraignment can't be allowed to contend that the sanction ought to be taken as one under the new Act. The demonstration of giving approval isn't a demonstration, mechanical or stereo compose act, - and therefor, sanction under the Act of 1947 can't be taken or regarded as endorse under the new Act 1988.

In Hariraman v. State[73], wherein the Madras High Court held that open door, of hearing before the sanction is allowed isn't required. Though the Bombay High Court for a situation in particular State of Maharashtra v. R.K. Porker, held that where sanction is to be given for arraignment of the blamed for ownership for property lopsided to his known wellspring of. pay, at that point the blamed must be given a chance to clarify wellsprings of his advantages, previously sanction for the indictment is given. The Supreme Court in State of Maharashtra v. Ishwar Piraii Kalpatri[74] following Deepak Chowdary held that there is no arrangement in law generally which makes it compulsory of a chance of being heard to be given to individual against whom report of a case under Section 5(1) (e) of the Prevention of Corruption Act, 1947 (comparing to Section 13(1) (e) of the Act of 1988) is to be stopped. Indeed, the open door which is to be managed, to the reprobate officer under Section 5(1) (e) to tastefully clarifying about his advantages and assets is under the steady gaze of the court, when the trial starts and not at a prior stage. Consequently, the finding that standards of regular Justice had been disregarded, as no open door was given before the enrollment of the case, would be obviously unjustifiable. In State M.R v. Dr. Krishan Chandra Saksena the Preeminent Court held that it is presently very much settled that at the phase of giving of sanction the charged need not be heard. Criminal procedures ought not be suppressed before the phase of trial on a simple ground of invalid sanction. On the off chance that in a proof the sanction is discovered invalid, the procedures would bring about support of the charged. It is presented that the perspective of the Supreme Court that a reprobate authority isn't lawfully entitled for a chance of hearing at the phase of allow of sanction for arraignment requires reexamination and a moment look. The foreswearing of chance of-

[72] 2004 CriLJ 4338
[73] 1995 CriLJ 3527
[74] 1996 SCC (1) 542

hearing to the reprobate isn't just against the lawful proverb 'Audi Alterm Partem', which imagines, that no one ought to be unheard, cottage additionally runs counter to the standards of common. Equity which are establishments of Rule of Law. On the off chance that the reprobate authority prevails to create fitting and securing proof before the concerned equipped expert, it may not permit the arraignment and people in general worker along these lines saved the psychological distress of a criminal trial. It might be called attention to that the question hidden the chance of hearing at the phase of indictment sanction clearly help the equipped specialist to choose with a receptive outlook, regardless of whether it is important to permit arraignment. On the off chance that it chooses not to permit indictment the issue closes there, which spares much time of the court as additionally human exertion and cost. Once the quick specialist does not accord sanction, the Superior expert should abstain from meddling in the carefulness of the previous unless there are great and legitimate motivations to do as such. Such reasons of not concurring with the prompt sanctioning authority, in all decency, ought to be recorded in the sanction arrange itself for the energy about the trial court. This in reality spare genuine and blameless government hirelings from provocation and injury of false allegation.

CHAPTER – IV

CASES ARISING OUT OF USE OF FORCE AND NON-USAGE OF FORCE

4.1 CASES ARISING OUT OF FORCE

Some public servants are required and empowered in the course of their employment to use force, arms and ammunitions while others are not empowered to use the same. Use of force in civil service may take several forms, such as search, seizure, raids of persons, premises or property; to restrain a person or object from moving further; to remove a person from a place; to demolish or seal premises or property; to arrest a person; or to use tear-gas shells or firing. Use of force in defense services may extend to physical force.

Defense services includes army, navy, air force and para-military force such as BSF, ITBP etc.

There exists a specific class of public servants who have to use force in order to discharge their official duty. Not all public servants are empowered to use force in discharge of their duty or their virtue of their office they are holding.

There are number of cases where public servants are empowered to use force while discharging their official duty and during the course of the duty have caused anguish to private individuals by use of such force. But these private individuals cannot prosecute these public servants without a prior sanction under section 197 even though the act committed is an offence had it not been in the virtue of the office held by such public servants.

For the sanction under section 197 the necessary requirement is of an act or omission by public servant which in its ordinary course is an offence. The question of sanction does not arise if the act or omission by public servant in discharge of duty is not an offence if it is done while not holding the office.

The English law while discussing about the use of force by the public servants laid down that 'If in the exercise of power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be reasonable means to remove the obstruction to in order to overcome the resistance. This accords with common-sense and does not seem to be contrary to any principle of law'[75].

An act of criminal assault or wrongful confinement can never be said to be in discharge of official duty by any public servant governed by a statue or warrant of authority. So, for any force used while performing the official duty by the public servant will get the immunity provided by the statue but where the act was done not in pursuance of discharge of duty there no question of immunity arises.

The Supreme Court in the one of the leading cases held that if the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction is needed[76].

The Apex Court has also repeatedly stated that reasonable force can used for lawful acts and obstruction caused for discharging such lawful act or official duty of a public servant then such a public servant can resist to clear of the obstruction by using reasonable force as and when necessary.

The apex court while laying out this principle relied upon the Broom's legal Maxims,10th edition which stated: 'it is a rule that when law commands, a thing to be done, it authorises the performance of whatever may be necessary for executing its command'.

It has been seen through in-depth study of various judgments of the Supreme Court that the necessity of sanction for prosecuting the public servants using force is required at the threshold and for this reasoning the Apex court has given two implicit reasons: -

(1) Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution. If in the exercise of the power or the

[75] (1823) 1 LJOSKB 139
[76] Amrik Singh v. State of Pepsu AIR 1955 SC 309

performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance[77].

(2) Section 99 of the Indian Penal code (the bare text has been reproduced for the benefit of the reader) provides for protection of public servants from the right of private defence against the public servants using force by any private individual.

*"**99. Acts against which there is no right of private defense.**—There is no right of private defense against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.*

There is no right of private defense against an act which does not, reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under color of his office, though that direction may not be strictly justifiable by law

There is no right of private defense in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised-

The right of private defense in no case extends to the inflicting. of more harm than it is necessary to inflict for the purpose of defense.

***Explanation 1-** A person is not deprived of the right of private defense against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.*

***Explanation 2-** A person is not deprived of the right of private defense against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded."*

The rationale behind these is that the Apex Court considers the public servants using force to be the most vulnerable class of public servant as use of force is generally misconceived and cannot be determined easily without application of mind and since the entire purpose of granting immunity by way of sanction is to enable the public servants discharge their duty without vexatious proceedings against them sanction is required at the threshold for prosecuting these class of public servants who use force.

[77] Matajog Dobey v. H.C. Bhari AIR 1956 SC 44

The Supreme Court in the case of Ogle v. Sanwaldas[78] clearly mentioned that the no court can take any cognizance till the act or omission in question has the Sanction to prosecute the said public servant from the competent authority. the relevant paragraph has been reiterated here with.

The Constitution Bench choice of this Court in Matajog Dobey's case[79] plainly articulates where a power is given or an obligation is forced by statute or generally and there is nothing said explicitly hindering the activity of the power or the execution of the obligation by any impediments or confinements, it is sensible to hold that it conveys with it the energy of doing every such demonstration or utilizing such means as are sensibly vital for such execution, since it is a decide that when the law charges a things to be done, it approves the execution of whatever might be essential for executing its summon. The Court was thinking about in the said case the charge that the authority approved in compatibility to a warrant issued by the Income Tax Investigation Commission regarding certain pending procedures previously it, coercively tore open the passage entryway and when some protection was put the said officer entered persuasively as well as tied the individual offering protection with a rope and ambushed him hardheartedly causing wounds and for such act a grievance had been documented against the concerned open officers. This Court, nonetheless, came to hold that such an objection can't be engaged without an sanction of the Competent Authority as gave under Section 197 Cr.P.C. This Court had watched that before reaching a conclusion whether the arrangements of Section 197 of the CrPC will apply the Court must arrive at a decision that there is a sensible association between the demonstration griped of and the release of authority obligation; the demonstration must bear such connection to the obligation that the charged could lay a sensible case that he did it throughout the execution of his obligation. Applying the previously mentioned proportion to the case close by the conclusion is inevitable that the demonstration of the Tehsildar in grabbing the bike of the respondent was in release of his official obligation which he was required to do based on the request issued by the Collector for getting the rent cash from the respondent and the said demonstration can't be said to be an imagined or whimsical claim with respect to the Tehsildar. The High Court, in our view conferred blunder at that phase in looking at the imperfection or legitimateness of the request of connection issued by the Tehsildar.

4.2 SANCTION UNDER THE ARMED FORCES (SPECIAL POWERS) Act 1958

The Armed Forces (Special Powers) Act of 1958 (AFSPA) is one of the more draconian legislations that the Indian Parliament has passed. It is a law with just six sections granting special powers to the armed forces in what the act terms as 'disturbed areas'. Even a non-commissioned officer is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to 'maintain the public order'. The AFSPA gives the armed forces wide powers to shoot, arrest and search, all in the name of 'aiding civil power.' It was first applied to the North Eastern states of Assam and Manipur and was amended in 1972 to extend to all the

[78] AIR 1999 SC 1437
[79] Supra

seven states in the north- eastern region of India. They are Assam, Manipur, Tripura, Meghalaya, Arunachal Pradesh, Mizoram and Nagaland, also known as the 'seven sisters'. The enforcement of the AFSPA has resulted in innumerable incidents of arbitrary detention, torture, rape, and looting by security personnel. Its continued application has led to numerous protests, notably the longstanding hunger strike by Ms. Irom Chanu Sharmila in Manipur. This legislation is sought to be justified by the Government of India, on the plea that it is required to stop the North East states from seceding from the Union of India.

The Armed Forces (Special Powers) Act, 1958 (AFSPA) a law operative in 'disturbed areas', including large parts of the Northeast region of India and Jammu Kashmir, has facilitated grave human rights abuses, including extrajudicial execution, 'disappearance', rape and torture by bestowing sweeping powers on the armed forces in these areas. The Act violates non-derogable provisions of international human rights law, including the right to life, the right to remedy and the rights to be free from arbitrary deprivation of liberty and from torture and cruel, inhuman or degrading treatment or punishment (ill-treatment) as enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party since 1979, and other treaties and standards. The AFSPA empowers security forces to arrest and enter property without warrant and gives the security forces power to shoot to kill in circumstances where members of the security forces are not at imminent risk. It facilitates impunity because no person can start legal action against any members of the armed forces for anything done under the Act, or purported to be done under the Act, without permission of the Central Government. [80]

In its concluding observations on India in 1997, the Human Rights Committee (HRC) recognized that 'terrorist activities in the border states that have caused the death and injury of thousands of innocent people, force the State Party to take measures to protect its population' yet emphasised that 'a measures adopted must be in conformity with the State Party's obligations under the Covenant'.[81]

The international community is concerned at the high incidence of custodial deaths, torture, rape, extrajudicial killings and 'disappearances' in the Northeast and Jammu and Kashmir in general and those among them which are facilitated by the AFSPA in particular. While some action has been taken in recent years to bring perpetrators of human rights violations in these areas to justice, the organization remains concerned that the AFSPA has enabled many perpetrators to escape punishment. The international community appreciates the efforts of the Supreme Court of India to limit the excessive powers granted to the military by the AFSPA, in particular by ruling that a declaration under Section 3 of the AFSPA is to be reviewed every six months, strengthening the safeguards for the rights of arrested persons and determining that a list of pre-existing 'do's and don'ts' are legally binding. However, even with these improvements, the AFSPA falls far short of

[80] The Armed Forces (Special Powers) Act, 1958 is in force in parts of the Northeast. In 1990, a version of the Armed Forces (Special Powers) Act was brought in force in parts of Jammu and Kashmir.
[81] Concluding observations of the Human Rights Committee: India, Report of the Human Rights Committee, UN Doc. A/52/40 (1997), paras. 416-450, at para. 419.

international standards, including provisions of treaties to which India is a state party. The United Progressive Alliance which came to power in May 2004 repealed POTA after recognizing 'concerns with the manner in which POTA had been grossly misused'.[82] Similar concerns exist with regard to the AFSPA.

Act was passed on September 11, 1958 by the Parliament of India. Due to following reasons:

1. Failure of the administration and the local police to tackle local issues.

2. Maintenance of Peace and Tranquility.

It gives Army officers legal immunity for their actions. There can be no prosecution, suit or any other legal proceeding against anyone acting under that law. Nor is the government's judgment on why an area is found to be 'disturbed' subject to judicial review. Enforced in Jammu and Kashmir in 1990, the law provides army officers legal immunity for their actions. The law also gives security forces the power to arrest people and search their homes without any warrant, as well as to use deadly force against people. Questions that arise, In Case of fake encounter of 17-year-old Tufail Mattoo, was killed by a tear gas canister which struck his head during a protest in Srinagar in June, 2010[83]. Tear gas, rubber bullets and water cannon are used all over the world in situations where protests turn violent but in India, live ammunition seems to be the first and only line of defence. Even tear gas canisters are so poorly designed here that they lead to fatalities. Though the Army has arrested the soldiers responsible for the fake encounter, the only reason they had the nerve to commit such a heinous crime was because they were confident they would Get away with it. The army officers involved in the kidnapping and murder of five Kashmiri civilians there continue to be at liberty despite being charge-sheeted by the CBI. The Ministry of Defence has refused to grant sanction for their prosecution and has taken the matter all the way to the Supreme Court in an effort to ensure its men do not face trial. Even a non-commissioned officer can shoot to kill based on the mere suspicion that it is necessary to do so to' maintain public order'[84]. Question that is pertinent is what was the message that went out as a result? Probably we need to think to get a proper answer.

It is examined in this chapter whether the mandatory pre-requisite 'prior sanction' from competent authority of Central Government has the tendency to block the justice delivery and encourage armed forces to commit extrajudicial execution with guaranteed immunity.

Such a situation, if exists, would mean total exoneration for violation of human rights by armed forces and a culture of impunity. The question of validity and competency of appointment of inquiry commission by State Government to investigate into allegations on armed forces whether amounts to legal proceeding without

[82] *Common Minimum Programme of the United Progressive Alliance*. May 2004. The misuse of POTA was recognized in the United Progressive Alliance's Common Minimum Programme; the terrorism prevention act was repealed in late 2004.
[83] The Hindu, Dated 5Th August 2010. As reportred by Siddharth Varadarajan.
[84] Section 4 of AFSPA Act

prior sanction was reviewed many times by the judiciary[85]. On several instances, armed forces appeared before the 196 inquiry commissions and represented themselves.

The Supreme Court passed its judgment in General Officer Commanding (Army) versus CBI[86] on May 01, 2012. The case tended to the issue of requirement for sanction to indict Army officers under the Armed Forces Special Powers Act (AFSPA).

The case managed two cases of charged phony experiences. Five individuals were executed by the Army in Assam in a counter rebellion task in 1994. Another five individuals were slaughtered in Jammu and Kashmir in March, 2000 of an experience.

In the two cases, it was claimed that the Army officers had organized phony experiences. In the two examples, the CBI was coordinated to explore the issue. CBI guaranteed that the general population who were slaughtered were in reality casualties of phony experiences. The CBI moved the court to start arraignment against the denounced Army officers.

The officers guaranteed that they must be indicted with the earlier sanction (authorization) of the focal government. The officers depended on arrangements of the AFSPA,1958 and the Armed Forces J & K (Special Powers) Act, 1990 to help their claim. These give that lawful procedures can't be founded against an officer unless sanction is allowed by the focal government.

It must be noticed that Army officers can be attempted either under the watchful eye of criminal courts or through court-military (as sanctioned under Sections 125 of the Army Act, 1950). The Army officers had bid that the two methodologies require earlier sanction of the legislature.

The judgment touches upon different issues. Some of these have been talked about in more detail beneath:

1. Is earlier sanction required to arraign Army officers for 'any' demonstration submitted in the line of obligation?
2. At what moment is sanction required?
3. Is sanction needed for court-martial?

The judgment emphasized a before decision. It held that sanction would not be required in 'all' cases to indict an authority. The officer just appreciates invulnerability from indictment in situations when he has 'acted in exercise of forces presented under the Act'. There ought to be 'sensible nexus' between the activity and the obligations of the authority.

[85] Union of India and others vs. State of Manipur and others
[86] General Officer Commanding (Army) versus CBI (2012) 6 SCC 228

The Court referred to the accompanying case to feature this point: If in an assault, an officer is assaulted and he strikes back, his activities can be connected to a 'legitimate release of obligation'. Regardless of whether there were a few erroneous conclusions in the countering, his activities can't be marked to have some individual intention.

The Court held that the AFSPA, or the Armed Forces (J&K) Special Powers Act, engages the focal government to learn if an activity is 'sensibly associated with the release of authority obligation' and isn't an abuse of expert. The courts have no purview in the issue. In settling on a choice, the legislature must make a target appraisal of the exigencies prompting the officer's activities.

The Court decided that under the AFSPA, or the Armed Forces (J&K) Special Powers Act, sanction is compulsory. In any case, the need to look for sanction would just emerge at the season of comprehension of the offense. Insight is the phase when the indictment starts. Sanction is thusly not required amid examination. The Court decided that there is no prerequisite of sanction under the Army Act, 1950. Thus, if the Army picks, it can arraign the blamed through court-military rather for experiencing the criminal court.

The Court noticed that the case had been postponed for over 10 years and recommended a period bound strategy. It requested that the Army settle on both of the two choices – court military or criminal court – inside the following two months. On the off chance that the Army settles on procedures under the watchful eye of the criminal court, the legislature will have three months to decide to give or withhold sanction.

Furthermore, the insurance given under Section 6 cannot, be viewed as conferment of an immunity on the people practicing the forces under the Central Act. Section 6 just gives assurance as past sanction of the Central Government before a criminal arraignment. Section 6 of the Central Act in so far as it gives a carefulness on the Central Government to concede or decline sanction for initiating indictment or a suit or continuing against any individual in regard of anything done or indicated to be done in exercise of the forces presented by the Act does not experience the ill effects of the bad habit of mediation. Since the request of the Central Government declining or allowing the sanction under Section 6 is liable to legal audit, the Central Government should pass a request giving reasons.

The Supreme Court's judgment[87] of July 8 2016 on the Armed Forces in Manipur is an essential move. AFSPA is a blotch on Indian federalism that our Army has a predominant, apparently lasting, nearness in the seven conditions of the Northeast and Kashmir. Outfitted help to the police is a certain something, ruthlessness and murder very another. It would be improper if our Constitution can't react to the Army's abhorrent disappointments.

The Armed Forces Special Powers Act, 1958 (AFSPA) is a general enactment to send the Army to a bothered zone 'in help of the common power' (Section 3), enabling it to wreck arms-dumps, capture, enter and

[87] Extra Judl.Exec.Victim Families . vs Union Of India & Anr

look without warrant on sensible doubt, keep up open request and 'utilize constrain even to the causing of death' (Section 4).

Captured people are to be made over to the police (Section 5), requiring government sanction for continuing against the Army or police for legitimate procedures.

The Army's forces and invulnerabilities are gigantic, and the way that they demonstration 'in help of the common power' is operationally pointless. In the Nagaland case (1998), among others I likewise seemed to challenge the legitimacy of the AFSPA.

The five-judge court appeared to have been awed by the 'do's and don't' guidelines of the Army, gave 26 headings - maintaining the AFSPA, declaring that it applies for constrained spans and by and large directed the Army to act in help of the common power, utilizing negligible power. The energy of the legislature not to sanction procedures against officers remained.

It was hard to contain our mistake with this choice which was so out of synchronize with reality. The Court was straightforwardly stood up to by counterfeit experience killings in Pathribal and Saikhowa.

The Army lapped this up. In the Manipur Extra Judicial Execution case (2013) the Court said that authoritative liquidation' isn't passable even despite grave crisis, however as opposed to guiding an uncommon examination group to assume responsibility, delegated a commission comprising of ex-equity Hegde, JM Lyngdoh and police DGP AK Singh to answer to the Court.

Hegde's report re-enters the present case with the firm conclusion that such savage experiences took put. I should clear up why choices allowing Army a decision of court military over criminal due process is vexing.

In the late '90s, equity Venkatachaliah, at that point seat of the NHRC, assembled a fabulous conference with the Army big bosses, the president, with every pertinent general, activists and the NHRC.

Since court military procedures were murky, I just asked for the Army to give straightforwardness by permitting no less than one onlooker. This was determinedly turned around the Army, which guaranteed self-sufficiency over straightforwardness.

The amicus in the present case is the super-skilled and sharp Menaka Guruswamy who needed to take superfluous fire from government advise Maninder Singh, later supplanted by the lawyer general.

It was extremely a bit much for the Union to manage questions settled by the Naga Peoples case. Be that as it may, equity Lokur appropriately said that delayed arrangement of the Army 'taunts at our vote-based process and (is)… a, tragedy of locale'. Equity Jeevan Reddy's advisory group had proposed canceling the

AFSPA and supplanting it with due process trained Unlawful Activities Act, 1967. The Court couldn't disregard the five-judge Naga judgment.

Be that as it may, Lokur J tended to critical protected concerns. He checked from developing in any way numerous apparently ridiculous contentions of the Union that anybody conveying arms was a foe of the Army!

Similarly, drawing on the Nagaland case, he crushed the myth that the Army's prudence for a court military was past legal survey - including, that in the present cases a court military was not feasible in light of the fact that the Army said no offense was conferred.

Lokur J elucidated that the Army couldn't assert that it had a sort of private self-preservation against those it confronted, on the grounds that there was a huge distinction between guaranteeing private self-protection and extreme or retaliatory power by the State.

The State is bound by sacred solutions regardless of whether 'psychological oppressors' were definitely not. The Punjab counteroffensive in the late '80s demonstrated unnerving overabundances.

One must be entertained by the Army's Ten Commandments which were set under the watchful eye of the court. In the wake of directing patience, bravery, forfeit, watchfulness, keeping up military guidelines, it included: 'Maintain dharma and take pride in your nation and the Army'.

In the aforesaid case, the Supreme Court has laid the lawful preparation for directing an enquiry into affirmed counterfeit experiences in Manipur. It held that utilization of over the top power by the Manipur Police or the Armed Forces of the Union isn't allowable, even in territories announced as 'aggravated' under the AFSPA and against aggressors, guerrillas and psychological oppressors. It coordinated that affirmations of utilization of unnecessary power bringing about death of any individual by the Manipur Police or the Armed Forces in Manipur must be enquired into. In any case, the choice on who will direct the enquiry was conceded, to be chosen after it had been educated about the particulars of cases in which a legal enquiry had just been held.

Thus, the Supreme Court's observation on the current circumstances in Manipur makes many things much more crystal immunity of the armed forces, at the same time it also puts forward doubts about AFSPA that might as well be outside the courts purview. As the Hon'ble Judges themselves observed– 'It is high time that concerted and sincere efforts are continuously made by the four stakeholders – civil society in Manipur, the insurgents, the State of Manipur and the Government of India to find a lasting and peaceful solution to the

festering problem, with a little consideration from all quarters. It is never too late to bring peace and harmony in society.'[88]

In a democratic system, this necessity of prior sanction ought to have no place. However, given the adjust of political and institutional powers in India today, it is idealistic to trust it should essentially be possible away with. What I am proposing, subsequently, is an unassuming cure. Let us not mess with the administration's capacity to shield officers from criminal procedures. Be that as it may, rather than the default setting being 'no arraignment without official sanction,' let the obstructing of an indictment require official activity.

Even the Justice Verma committee[89] said in reference to **Offences against women in conflict areas that** the continuance of Armed Forces (Special Powers) Act (AFSPA) in conflict areas needs to be revisited. At present, the AFSPA requires a sanction by the central government for initiating prosecution against armed forces personnel. The Committee has recommended that the requirement of sanction for prosecution of armed forces personnel should be specifically excluded when a sexual offence is alleged. Complainants of sexual violence must be afforded witness protection. Special commissioners should be appointed in conflict areas to monitor and prosecute for sexual offences. Training of armed personnel should be reoriented to emphasise strict observance of orders in this regard by armed personnel.[90]

4.3 CASES ARISING OUT OF NON-USAGE OF FORCE

As mentioned earlier as well the duty of public servant is not restricted to certain specific activities. Duties of public servant are mentioned in various statues according to which they are to perform the duty. There are cases where offences are committed without the use of force. The public in general is anguished by activities of public servants which are fundamentally criminal in nature even though there is no force involved in it. Even in such cases where force is not involved but the activities of the public servants are culpable as per law in force sanction is essential to prosecute them in court of law. The supreme court has expounded this law and has various times held that acts and omissions by public servants in cases where force has not been used but are criminal in nature and not in virtue of the office they are holding then the sanction is not mandatory at the threshold and the public servant has been asked to stand trial in accordance with law. To quote the Apex court the relevant paragraph has been reiterated from the abovementioned case.

> *Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can*

[88] Extra JudiExec.Victim Families ... v. Union of India & Anr.
[89] Justice Verma Report Summary - http://www.prsindia.org/parliamenttrack/report-summaries/justice-verma-committee-report-summary-2628/

be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main Judgment which may be delivered upon conclusion of the trial.

The activities which are criminal in nature but does not involve force are criminal breach of trust, forgery, misappropriation of funds etc. these acts can be performed by the public servants while performing their respective duty in order to create hurdles for the public at large or to fulfill their desires. In the case of P.K Pradhan[91] the supreme court asked the accused to stand trial where the paperwork done by the accused was alleged to have been forged. It has been clearly held in this case itself that the question of sanction can be raised at any time during the proceeding and it can even be after the cognizance has been taken and unlike the cases where force has been used by the public servant's sanction is not mandatory at the threshold.

The apex court does not find the public servants who commit offences without the use of force and also it may be of the opinion that more danger is caused by the pubic servants not using force to the general public as it has be strict enough to hold that bribery, forging documents or money bills can never be held to be a part of official duty and cannot fall within the purview of virtue of office and therefore the public servants need not be granted with any kind of immunity under the section but nevertheless where sanction has been granted then question does not arise.

Where the sanction has been granted and the appellant or victim challenges the validity of the sanction then it is altogether a different scenario and the usual tests of the administrative laws shall be applied the check the basis on which the sanction has been granted and whether the basis is only to protect the illicit activities of

[91] 2001 AIR(SC)2547

the public servant or fair in nature. The questioned sanction will be subject to the test of Wednesbury principle as well which has been reiterated by the apex court time and again whenever it has dealt with cases of administrative law.

Alleged cheating of the official by cheating, accounting or abusing cannot be said to fulfill his official duty. Their formal duty is not to make accounts or to allow tax evasion and result in revenue loss.

Unfortunately, the High Court left these important points. The learned judge has rightly held that if such a wording is entirely to be considered, it could only be done at the stage of the trial.

As laid down by the Supreme Court, a public servant can be said to act or purport to act in the discharge of his official duty if his act is such as to lie within the scope of his official duty. A judge neither acts nor purports to act as a Judge in receiving a bribe though the judgment which he delivers may be such an act; nor does a Government Medical Officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining though the examination itself may be such an act. The acid test is as to whether the public servant can reasonably be inferred to have acted by virtue of his office. What is important is the quality of the act. The question whether an offence was committed in the course of official duty or under colour of office depends on the facts of each case (Baijnath vs. State of Madhya Pradesh [92],S.B. Saha vs. M.S. Kochar[93]). The Supreme Court held, in the case of R. Balakrishna Pillai vs. State of Kerala[94], where the accused, Minister of Electricity, Government of Kerala, is alleged to have supplied certain Units of electricity without the consent of the Government, that the alleged criminal conspiracy has direct nexus with discharge of his official duties and that as such sanction is required for his prosecution under Sec. 197 Criminal procedure code.

That in the second stream (where force has not been used), the Hon'ble Supreme Court has generally held that a sanction would not be necessary at the threshold, and in some cases has held that the question of protection of the requirements of sanction under Section 197 of the Code of Criminal Procedure, 1973 cannot be argued or heard unless some evidence is led on both sides, and has relegated the decision on this question to the final judgment by the Trial Court.

There are some other judgments in Civil Proceedings, in which some observations on the question of sanction were made with regard to non-usage of force but commission of offence.

Tests on 'Discharge of Duty', 'During Course of Service', 'Official Position Merely Cloak for the Offence'

[92] AIR 1966 SC 220: 1966 Crl.L.J. 179 (SC);
[93] AIR 1979 SC 1841
[94] AIR 1996 SC 901

It is important for the discussion that preparing an office note is activity in the course of service of a Government Servant. However, as always, in a case of prosecution sanction for an offence committed with regard to public record, it is the quality of the act which has to be seen. Firstly, the power of the Disciplinary Authority flows from a statutory rule and issuing a charge-sheet is not an executive action. And even sending an offending note would amount to commission of an offence.

It has been recognized by the Hon'ble Supreme Court that an act in course of service may not be in discharge of his duty in *State of H.P. v. M.P. Gupta*[95], AIR 2004 SC 730 The relevant portions are quoted for ready reference:

> ……. For instance, a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act **in course of service but not in discharge of his duty** then the bar under Section 197 of the Code is not attracted. …….
>
> *(emphasis supplied)*

That in *State of Orissa v. Ganesh Chandra Jew*[96], the Hon'ble Supreme Court laid down a test, viz., whether the omission to do the act complained of could have made the accused liable for dereliction of duty, and if so, the act would be held to be official duty. The opinion of the court was as follows that the protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within

[95] AIR 2004 SC 730
[96] AIR 2004 SC 2179

the scope and range of the official duties of the public servant concerned. **It is the quality of the act which is important** and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. **One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant.**

This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. ……..

SANCTION NOT ESSENTIAL FOR CASES OF BRIBERY

Law has been laid down by the Privy Council that sanction under Section 197, is not necessary for case on a public servant who could be prosecuted for an offence under Section 161, I.P.C. A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is within the scope of his official duty. The required test for the necessity of sanction is to see whether the act in question by the public servant is in virtue of the office he holds or not. A public servant charged with an offence under Section 120-B read with Section 161, I.P.C., for receiving bribe cannot justify the same on the ground that it was in the virtue of his office to take bribe as no office would authorize a public servant to take bribe in discharge of his duty. However, it has been held by Karnataka High Court that where the investigating officer had called an accused for interrogation and the accused alleged that the investigating officer had demanded money, the act complained of having been done while discharging official duties, this provision will apply.

The Hon'ble Supreme Court of India in the case titled as Inspector of Police and Ors. v. Battenapatka Venkata Ratnam and Ors.[97] has dealt with the question of whether sanction under section 197 of Criminal Procedure Code, 1973 is mandatory to initiate criminal proceedings against the public servant and can a public servant take immunity to protect themselves when the criminal proceeding is already initiated against the public servant for fraud, criminal conspiracy. The brief facts of the case are as under: -

> The District Registrar, Vijayawada had lodged a complaint with the Inspector of Police, CBCID Vijayawada on 07.07.1999. The main allegation against the Respondents was that while they were working as Sub-Registrars in various offices in the State of Andhra Pradesh, they conspired with stamp vendors and document writers and other staff to gain monetary benefit and resorted

[97] Dr. Subramanian Swamy v. Dr. Manmohan Singh, AIR 2012 SC 1185 : (2012) 3 SCC 64 also Inspector of Police v. Battenapatka Venkata Ratnam, AIR 2015 SC 2403 : (2015) 13 SCC 87

to manipulation of registers and got the registration of the documents with old value of the properties, resulting in wrongful gain to themselves and loss to the Government, and thereby cheated the public and the Government.

On the basis of the complaint, F.I.R. No. 35/1999 was registered by the Appellant, and after investigation, report Under Section 173(2) Code of Criminal Procedure against 41 persons including the Respondents herein, was submitted before the III Additional Chief Metropolitan Magistrate, Vijayawada. The Respondents raised the objection that there was no sanction Under Section 197 Code of Criminal Procedure and hence the proceedings could not be initiated.

On July 3, 2007, the magistrate was approved by:

Irrespective of whether or not an authorization is required under Article 197 of the Code of Criminal Procedure or is not to be considered during the trial and the complainant's weight must show that the defendant has acted past his formal obligations, according to which the sentenced members act within their obligations. Distracting, the defendants transferred the Supreme Court under Section 482 of the Criminal Procedure Code, which resulted in an amended regime in which criminal proceedings were suppressed solely on the ground that the provisions of Section 197 of the Criminal Procedure Code were not adopted and henceforth the interests.

After perusal of the arguments of both the sides; *the Hon'ble Supreme Court was of the view that:*

There is no doubt, that the Respondents indulged in all alleged criminal activity, they had been working as public servants. The question is not whether they were in service or on duty or not but whether the alleged offenses have been committed by them 'while acting or purporting to act in the discharge of their official duty' and that question is no more res integra. The apex court in the case Shambhoo Nath Misra v. State of U.P. and Ors[98]*:*

The question is when the public servant is alleged to have committed the offense of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained.

[98] (1997) 5 SCC 326

The apex court in the landmark of Prakash Badal v. State of Punjab[99]has held that the: -The rule of resistance ensures all demonstrations which the general population worker needs to perform in the activity of the elements of the Government. The reason for which they are performed shields these demonstrations from criminal indictment. Be that as it may, there is a special case. Where a criminal demonstration is performed under the shade of expert however which actually is for the general population hireling's own pleasure or advantage then such acts should not be ensured under the convention of State invulnerability.

The inquiry identifying with the need of sanction Under Section 197 of the Code isn't really to be considered when the objection is held up and, on the charges, contained in that. This inquiry may emerge at any phase of the procedure. The inquiry whether an authorize is important or not may must be resolved from stage to arrange.

In a recent decision in Rajib Ranjan and Ors. v. R. Vijaykumar[100], at paragraph-18, this Court has taken the view that

> *even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct such misdemeanor on his part is not to be treated as an act in the discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted.*

Public servants have, in fact, been treated as special category Under Section 197 Code of Criminal Procedure, to protect them from malicious or vexatious prosecution. Such protection from harassment is given in public interest; the same cannot be treated as a shield to protect corrupt officials. In Subramanian Swamy v. Manmohan Singh and Anr. at paragraph-74, it has been held that the provisions dealing with Section 197 Code of Criminal Procedure must be construed in such a manner as to advance the cause of honesty, justice, and good governance. Public Servants/Officials are dealt with as a unique class of people getting a charge out of the said immunity so they can play out their obligations without dread and support and without dangers of malignant arraignment. Nonetheless, the said safeguard against malevolent prosecution which was reached out to open intrigue can't turn into a shield to ensure degenerate authorities. These arrangements being special cases to the uniformity arrangement of Article 14 are undifferentiated from the arrangements of defensive segregation and these assurances must be translated barely. These procedural arrangements identifying with sanction must be translated in such a way as to propel the reasons for genuineness and equity and great administration instead of the acceleration of defilement.

[99] AIR 2007 SC 1274
[100] (2015) 1 SCC 513

CHAPTER – V

CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS

Globalisation has brought many changes, which has also positively affected our country. We possess extraordinary resources as well as talent pools to bring changes in our system. i.e. the system which is corrupt. Every citizen of our country now takes interest in playing vitals roles for better governance of our country. They have become more vigilant and more protective about themselves as well as our country. Now they ask question, they criticise, they protest against any unhealthy activity which prevail in our system. Apart from doing these, they also make sure that the Government is taking steps or measures in order to improve the situation of our country in every perspective. When we speak about our government and system, a public servant plays a very pivotal role in governing our country, because they are one most important organ of our system, i.e. Executive. So the burden of executing every act of the system depends upon them. So considering the importance of the role they play in our system, it is very much necessary that public servant should inculcate the spirit of commitment within them and do excellence at the grass-roots level, without which it will be impossible to create an environment of positive growth and development in true sense. Although as a citizen of our country, even though I understand the difficulty, which they undergo while performing their duty, but it should be always remembered that, being such an important part of our system and governance, each and every public servant should make sure that utmost quality of our administration is maintained. They should be innovative enough to look for new opportunities. They must be sensitive enough to contribute to creating a just and humane society. They must be in a position to accept challenges in every step and should take every idealistic step in order to make our country India, free from fear of war, want and exploitation and make our country a better place in this world to live in.

There are numerous precautionary measures important to start and continue with an arraignment under the Prevention of Corruption Act, 1988. The primary thing is sanction from the best possible expert, before propelling criminal indictment under this Act. There is no particular Form sanction for agreeing authorize under this Act. Giving of Sanction isn't a void convention and it is fundamental that the arrangements as respects the give of sanction ought to be watched totally, the question of allowing authorize being that the expert giving the sanction ought to have the capacity to consider for itself the confirmation before it arrives at a conclusion that the arraignment in the conditions of the case must be authorized or not. The bigger enthusiasm of the proficiency of State organization requests that public servants ought to be allowed to play out their official obligation valiantly and resolute by any trepidation of their conceivable arraignment at the occasion of any individual to whom inconvenience of damage may have been caused by the true-blue acts done in the release of their official obligations. Consequently, there is have to offer assurance to public servants against pointless, vexatious or false indictment for offense charged to have been submitted by them, while releasing their official obligations. This empowers them to release grave and dependable capacities bravely.

Regardless of whether indictment will be propelled against the charged public servant, he merits hearing at the phase of the concede of arraignment sanction to keep away from false and vexatious indictment. This is tuned in to the one of the Principles of Natural Justice, 'Audi Alterm Partem', (No man might be denounced unheard).

Compelling, expedient and fruitful indictment is the need of great importance. The endorsing specialist should assume a key part in this specific situation. The endorsing expert, ought to be sufficiently cautious to Dispose of the issue either by allowing assent to arraign people in general hireling or declining to concede the same.

An examination of Section 19 of the Prevention of Corruption Act, 1988 demonstrates that no time-constrain is sanctioned for allowing of authorize arrange. The Supreme Court keeping in mind the end goal to fill the lacunae, without precedent for Vineet Narain case, prevalently known as Hawala case held that authorize arrange is to be passed inside 3 months. Authorizing expert needs to apply its own particular autonomous personality for the age of authentic fulfilment, regardless of whether sanction for arraignment must be allowed or not. Courts ought not usurp the tact of the endorsing specialist and direct the authorizing expert to accord important sanction ment for arraignment however they could unquestionably subdue the discretionary request and issue a bearing to the endorsing specialist to practice its own particular watchfulness as per law. This issue preceded the Supreme Court in Mansukhalal Vithaldas Chauhari v. state of Guiarat[101], the Supreme Court held that the Section 19 of the Prevention of Corruption Act, 1988 has given the authorizing expert, the carefulness to concede the sanction or not to authorize for the arraignment of blamed. Such watchfulness can't be taken away by the High Court. The Supreme Court additionally held that the endorsing expert needs to apply its own free personality for the age of certifiable fulfillment, regardless of whether authorize for arraignment must be conceded or not? The Supreme Court additionally decided that the High Courts ought not usurp the prudence of the general population expert under the law to take a choice in such manner. The Supreme-Court made it clear that the High Courts don't have the ability to guide the endorsing expert to accord important sanctionment for indictment yet they could absolutely suppress the self-assertive request and issue a bearing to the specialist to practice its own carefulness as per law.

Section 197 of Cr.PC gives the strategy of arraignment of Judges and public servantss. Section 197 (1) of the code gives that when any individual who is or was a Judge or Magistrate or an public servant not removable from his office spare by or with the sanction of the Government is blamed for any offense claimed to have been submitted by him while acting or implying to act in the release of his official obligation, no Court should take insight of such offense aside from with the past authorize on account of a man who is utilized or, all things considered, was at the season of commission of the charged offense utilized, regarding the undertakings of the Union, of the Central Government; on account of a man who is utilized or, all things considered, was at the

[101] 1997 7 SCC 622

season of commission of the charged offense utilized, regarding the undertakings of a State, of the State Government.

The stipulation to this section gives that where the charged offense was conferred by a man alluded to in condition (b) amid the period while a Proclamation issued under proviso (1) of article 356 of the Constitution was in drive in a State, provision (b) will apply as though for the articulation' State Government' happening in that, the articulation' Central Government' were substituted.

Section 197 (2) gives that no Court might take perception of any offense charged to have been submitted by any individual from the Armed Forces of the Union while acting or implying to act in the release of his official obligation, aside from with the past authorize of the Central Government.

Section 197 (3) gives that the State Government may, by notice, coordinate that the arrangements of sub-section (2) might apply to such class or classification of the individuals from the Forces accused of the support of open request as might be indicated in that, wherever they might serve, and immediately the arrangements of that sub-section will apply as though for the articulation' Central Government' happening in that, the articulation' State Government' were substituted.

Section 197 (3A) gives that despite anything contained in sub-section (3), no court should take comprehension of any offense, asserted to have been conferred by any individual from the Forces accused of the support of open request in a State while acting or implying to act in the release of his official obligation amid the period while a Proclamation issued under provision (1) of article 356 of the Constitution was in compel in that, aside from with the past sanction of the Central Government.

Section 197 (3B) despite anything in actuality contained in this Code or some other law, it is thusly announced that any sanction concurred by the State Government or any perception taken by a court upon such authorize, amid the period initiating on the twentieth day of August, 1991 and finishing with the date promptly going before the date on which the Code of Criminal Procedure (Amendment) Act, 1991, gets the consent of the President, as for an offense charged to have been carried out amid the period while a Proclamation issued under proviso (1) of article 356 of the Constitution was in constrain in the State, might be invalid and it should be skillful for the Central Government in such issue to accord authorize and for the court to take comprehension consequently.

Section 197 (4) gives that the Central Government or the State Government, by and large, may decide the individual by whom, the way in which, and the offense or offenses for which, the arraignment of such Judge, Magistrate or public servant is to be led, and may indicate the Court before which the trial is to be held.

Do All Actions Need Sanction?

In the Baijnath Vs State of MP [102] 1965 the Supreme Court held that it isn't each offense submitted by an open hireling that requires sanction for indictment under Section 197 (1) of the CrPC; nor even every demonstration done by him while he is really occupied with the execution of his official obligations so that, if addressed it could be asserted to have been finished by righteousness of his official obligations so that, if addressed it could be guaranteed to have been finished by temperance of the workplace, at that point authorize would be essential. It is the nature of the demonstration that is essential and on the off chance that it falls inside the extension and scope of his official obligations the assurance mulled over by Section 197 of CrPC will be pulled in. An offense might be totally detached with the official obligation in that capacity or it might be conferred inside the extent of the official obligation. Where it is detached with the official obligation there can be no security. It is just when it is either inside the extent of the official obligation or in overabundance of it that the assurance is claimable.

RECCOMENDATIONS -

1. The important should devise its provisional perspectives with respect to the move to be made on the demand of the Investigation Bureau and look for the counsel of the Central Vigilance Commissioner (hereinafter referred as CVC for the sake of brevity) in the issue. The directions additionally should set out that CVC would finish its suggestions inside 10 days to the concerned regulatory Ministry/Department, which should conclude its view in the issue and issue arranges appropriately. The directions likewise set out that the regulatory Ministry/Department might allude the case to CVC for re-examination just in excellent situations when new actualities become known and that CVC would render fitting exhortation to the skilled specialist in view of the discoveries of the master panel, inside a fortnight and that if the CVC on re-evaluation instructs to give with respect to authorize, the concerned Ministry/Department will issue the essential requests promptly. The guidelines additionally set out that if the concerned regulatory Ministry/Department proposes not to acknowledge the rethought counsel of the CVC, the case will be alluded to DoP&T for official conclusion and that the DoP&T should choose the case inside 3 weeks and pass on its choice to the concerned Ministry/Department.

2. The Government should constitute a Group of Ministers (GoM), with the sanction of the Prime Minister, to consider measures that can be taken by the Government to handle corruption. One of the terms of reference

[102] Baijnath Vs State of MP 1966 AIR 220, 1966 SCR (1) 210

(ToR) of the Group of Ministers is to be considered and exhort on – Fast following of all instances of public servants blamed for corruption'. The Group of Ministers, while thinking about this Terms of Reference, watched that it is basic that instances of sanction for indictment ought to be chosen speedily and inside the time period of 3 months. The Group of Ministers, in this way, suggested: -

(a) In all situations where the Investigating Agency has asked for sanction for arraignment and furthermore presented a draft charge sheet and related records alongside the demand, it will be obligatory for the able expert to take a choice inside a time of 3 months from receipt of demand, and pass a Speaking Order, giving explanations behind this choice.

(b) if the able expert rejects consent for sanction to arraign, it should present its request including purposes behind refusal, to the following higher specialist for data inside 7 days. Wherever the Minister responsible for the Department is the skillful specialist and he chooses to deny the consent, it would be occupant on the Minister to submit, inside 7 days of passing such request denying the authorization, to the Prime Minister for data.

(c) It will be the duty of the Secretary of every Department/Ministry to screen all situations where a demand has been made for consent to indict. Secretaries may likewise present an sanctioning consistently to the Cabinet Secretary such that no case is pending for over 3 months, the purposes behind such pendency and the level where it is pending may likewise be clarified.

3. All Ministries/Departments might hereafter guarantee –

(a) Strict consistence with the above methodology and timetables for authorizing arraignment of public servants;

(b) Submission of an authentication consistently by the Secretary of every Ministry/Department to the Cabinet Secretary such that no case is pending for over 3 months and wherever a case is pending for over 3 months, the purposes behind such pendency and the level where it is pending;

(c) Submission of contradiction cases, where the skillful expert proposes to differ with CVC, to the DoP&T giving no less than three weeks' time for DoP&T to settle its perspectives and convey the same to the capable specialist; and

(d) Submission of duplicates of requests declining authorization to indict to the following higher expert (Prime Minister, if there should arise an occurrence of a request go by a Minister responsible for a Ministry/Department), inside seven days.

The Government of India in its Notification No[103]. 142/15/2015-AVD.1 has said that - Hon'ble Supreme Court in Para 7 of the Judgment (Criminal Appeal No. 1838/2013) has observed that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions assenting to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. Sanction lifts the bar for prosecution.

Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution.
Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.

In para 8 of the judgment, Hon'ble Supreme Court has issued following guidelines which need to followed with complete strictness by the competent authorities while considering grant of sanction:

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favor of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

[103] No.142/15/2015-AVD.1 GOVERNMENT OF INDIA DEPARTMENT OF PERSONNEL & TRAINING MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS NOTIFICATION

Further the Civil Vigilance Commission vide its circular no 08/05/15 dated 25-5-2015[104] has said that -

The Commission has been underscoring the requirement for brisk and quick choices on solicitations of authorize for indictment got from CBI/other Investigating Agencies under the Prevention of Corruption Act, 1988 and furthermore to entirely stick to the time furthest reaches of three months for allow or generally of sanction for arraignment as set around the Hon'ble Supreme Court in Vineet Narain and Ors. Versus Association of India (AIR 1998 SC 889). Notwithstanding these guidelines and close observing of such pending issues, the Commission has been worried about the genuine defers holding on in handling demands for authorize for indictment by the skillful experts.

The Commission had before vide its Office Order No.31/5/05 dated 12-5-2005 conveyed to the notice of every able specialist the rules to be trailed by the endorsing experts. Accordingly, the Apex Court in the matter of Dr. Subramanian Swamy versus Dr. Manmohan Singh and another (Civil Appeal No.1193 of 2012) alluded to the above rules of CVC, and watched that 'the previously mentioned rules are in congruity with the law set around the Court that while considering the issue in regards to concede of refusal of sanction, the main thing which the able expert is required to see is whether the material put by the complainant or the examining organization by all appearances revealed 'commission of an offense'. The skillful expert can't attempt a nitty gritty request to choose whether or not the affirmations made against people in general hireling are valid.' Thereafter, the Commission vide round No.07/03/12 dated 28-3-2012 repeated its rules dated 12-5-2005 and exhorted all concerned capable specialists to stick to as far as possible for handling demands for arraignment authorize under Section 19 of PC Act as set around the Apex Court in letter and soul.

3. The Hon'ble Supreme Court has as of late in Criminal Appeal No.1838 of 2013 in the matter of CBI versus Ashok Kumar Aggarwal in para 7 of the judgment watched that there is a commitment on the endorsing expert to release its obligation to give or without authorize simply in the wake of having full learning of the material certainties of the case. Concede of sanction isn't a minor custom. In this way, the arrangements as to the authorize must be seen because of finish strictness keeping the general population intrigue and the assurance accessible to the denounced against whom the sanction is looked for. Authorize lifts the bar for arraignment. Along these lines, it isn't a bitter exercise however a grave and hallowed act which manages insurance to the Govt. worker against pointless indictment. Further, it is a weapon to demoralize vexatious arraignment and is a defend for the honest however not a shield for the liable.

[104] CVC Circular No.08/05/15 dated 25-5-2015

4. In para 8 of the above judgment, the Court has issued rules to be taken after with finish strictness by the capable specialists while thinking about give of sanction as underneath:

a) The indictment must send the whole significant record to the sanctioning authority including the FIR, revelation articulation, explanations of witnesses, recuperation reminders, draft charge-sheet and all other pertinent material. The record so sent ought to likewise contain the material/archive, assuming any, which may tilt the adjust for the blamed and on the reason for which, the able expert may reject sanction.

b) The expert itself needs to do finish and cognizant investigation of the entire record so delivered by the indictment freely applying its brain and mulling over all the applicable actualities previously concede of authorize while releasing its obligation to give or withhold the sanction.

c) The ability to concede authorize is to be practiced entirely remembering the general population intrigue and the assurance accessible to the blamed against whom the sanction is looked for.

d) The request of sanction should make it obvious that the specialist had known about every single significant actuality/material and had connected its brain to all the important material.

e) In each individual case, the arraignment needs to set up and fulfill the court by driving proof that the whole important realities had been set before the endorsing expert and the specialist had connected its psyche on the same and that the authorize had been conceded as per law.

5. The Commission would, thusly, as far as its forces and capacities under Section 8 (1) (f) of the CVC Act, 2003, guide every single regulatory specialist to conscientiously take after the rules contained in para 2 (I) to (vii) of Commission's round No.31/5/05 dated 12-5-2005 and the current unequivocal rules set down for consistence by the Hon'ble Supreme Court at para 4 above while considering and choosing demands for sanction for indictment. Since, resistance of the above rules vitiates the authorize for arraignment, capable endorsing experts should release their commitments with finish strictness and would be considered in charge of any deviation/non-adherence and issues scrutinizing the legitimacy of authorize emerging at a later stage in issues of authorize for indictment.

Finally, the recommendations for the CBI to sought expeditious Sanction for prosecution under the prevention of corruption act and section 197 of the criminal procedure code

The Central Vigilance Commission has been underlining the requirement for brisk and speedy choices on solicitations of sanction for indictment got from CBI/other examining offices under the Prevention of Corruption Act, 1988 and furthermore to entirely cling to the time furthest reaches of three months for allow or generally of authorize for arraignment as far as the requests of the Supreme Court in Vineet Narain and Ors. Versus Association of India[105]. In spite of these guidelines and consistent follow up of such pending issues, the Commission watches that the equipped experts take unduly lengthy time-frame in choosing these issues.

In instances of distinction of the assessment between the skilled experts in the Ministries/Departments/Organizations and CBI/other researching offices where the last have after examination looked for authorize for indictment of open hirelings, the Commission resolves such contrast of supposition by holding a joint gathering with the delegates of CBI and concerned Department/Organization. The Commission has, notwithstanding, watched that for the most part no new realities are brought out amid these gatherings and there are extensive deferrals with respect to the Departments/Organizations worried in clinging to the set down time limits for different exercises for looking at/thinking about such demands for authorize for indictment and in making a reference for conference with the Commission for guidance, and so forth.

In perspective of over, the Commission, on an audit of the current instrument has chosen to get rid of the system of holding joint gatherings with the agents of CBI and the concerned Department/Organization and from now on, every single such matter of distinction of sentiment with CBI/Investigating Agencies would be managed and settled by the Commission based on accessible reports/materials and speculative perspectives of the equipped experts of the concerned Ministry/Department/Organization. The Commission would likewise attract regard for the rules issued by the Commission to be trailed by the authorizing experts vide its Office Order No.31/5/05 dated 12-5-2005 and repeated vide Circular No.07/03/12 dated 28-3-2012 in preparing demands for sanction for indictment.

Appropriately, on receipt of examination reports from CBI/other Investigating Agencies asking for authorize for arraignment of open hirelings who are non-Presidential deputies, the able expert should inside three weeks figure its conditional perspectives in regards to the move to be made and in all issues including contrast of

[105] AIR 1998 SC 889

conclusion with the suggestions of CBI/Investigating Agencies look for the guidance of the Commission for determination of distinction of sentiment. The CVO of the Department/Organization concerned would guarantee that as far as possible as above are consented to in taking choices by the concerned Administrative specialists either to allow sanction for arraignment and to pass on the same to the office concerned or to guarantee a reference is made to the Commission for exhortation sending the speculative perspectives of the Administrative Authorities for settling the distinction of supposition.

Further, in all cases, where Commission exhorts sanction for indictment, as far as DOPT guidelines alluded above, and arrangements of the Vigilance Manual, the concerned Ministry/Department is required to allude the case to the Commission for re-examination just in remarkable situations when new certainties become visible. According to the current component set up, such re-evaluation recommendations are inspected by the Committee of Experts and the Commission renders suitable counsel, from that point to the equipped specialists.

The Commission has seen throughout the years that practically speaking, lion's share of the cases alluded back for re-evaluation are on similar certainties/materials as was accessible to the able expert and the Commission at first. At the end of the day, such re-evaluation recommendations don't contain any new fact(s) justifying change in the perspectives/exhortation of the Commission offered before. Such normal references/recommendations for re-examination of the Commission's recommendation should be entirely stayed away from. Keeping in mind the end goal to guarantee that cases for concede for sanction for indictment are chosen rapidly, the Commission would, in this manner, engage just those cases for re-evaluation wherein new actualities and conditions which warrant any change are brought out by the skilled experts/Administrative Authorities particularly while making such proposition to the Commission.

The Commission is of the considered view that consistence to the above said standards would encourage in decreasing postponements in choosing matters/solicitations of sanction for arraignment by the Administrative Ministries/Departments/Organizations.

And if this view of the commission is taken it shall allow the discretionary misuse of sanction to some influential public servants and also allow its purpose to be solved that is prevent vexatious proceedings against honest officers.

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