

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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CIVIL AND CRIMINAL IMMUNITIES FOR ACTIONS DONE IN GOOD FAITH BY CIVIL SERVANTS

A Constitutional and Statutory Analysis under Public Service Law

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ABSTRACT

Civil servants in India are conferred qualified immunities for acts performed in good faith in the discharge of official duties. These immunities, both civil and criminal, are essential for the efficient functioning of public administration. They protect honest officers from vexatious litigation while ensuring that mala fide, corrupt or ultra vires actions remain subject to legal accountability. This paper undertakes a detailed examination of the constitutional and statutory framework governing such immunities, with particular reference to Section 80 of the Code of Civil Procedure, 1908, Section 197 of the Code of Criminal Procedure, 1973 (corresponding to Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023), Sections 76–79 of the Indian Penal Code, Section 19 of the Prevention of Corruption Act, 1988, and the extensive body of Supreme Court jurisprudence. The paper also analyses the meaning of “good faith”, the distinction between personal and State liability, the position of judicial officers, and contemporary challenges in maintaining the balance between administrative efficiency and the rule of law.

Keywords: Civil Servants, Good Faith, Immunity, Section 197 CrPC, Section 80 CPC, Public Service Law, Article 311, Prevention of Corruption Act, BNSS.

1. INTRODUCTION

The recruitment, conditions of service and disciplinary control of civil servants in India are regulated by a combination of constitutional provisions, statutory enactments and detailed service rules. Civil servants form a separate species of the labour force and are given both rights and liabilities under the Constitution and the laws made thereunder. One of the distinctive features of this legal regime is the grant of qualified immunities for actions done in good faith

while discharging official functions.

These immunities are not a modern invention. They have roots in English common law principles that sought to protect public officers from personal liability for bona fide acts performed in the course of duty. In India, the principle was carried forward through colonial statutes and has been refined by constitutional provisions and a rich body of judicial decisions. The object is clear: public servants must be able to take decisions and perform their duties without the constant fear of personal civil or criminal liability for honest mistakes or for decisions that later turn out to be unpopular or even erroneous.

At the same time, the Indian legal system has never accepted absolute immunity. The Constitution is founded on the rule of law. No public servant is above the law. Acts done with mala fide intention, for personal gain, or wholly outside the scope of official duty remain fully actionable both civilly and criminally. The present paper examines this carefully calibrated system of qualified protection with specific reference to the topic “Civil and Criminal immunities for action in good faith” as prescribed in the syllabus of Public Service Law.

The paper is structured as follows. After examining the conceptual meaning of “good faith”, it analyses the constitutional framework. It then discusses civil immunities, with particular attention to Section 80 of the Code of Civil Procedure and the protection available to judicial officers. The criminal immunities under Section 197 CrPC / Section 218 BNSS, the Indian Penal Code and the Prevention of Corruption Act are examined next. The paper then surveys the leading judicial interpretations that have defined the boundaries of these immunities, discusses contemporary challenges, and concludes with observations on the continuing need to maintain the balance between administrative efficiency and accountability.

2. CONCEPTUAL FRAMEWORK: MEANING OF “GOOD FAITH”

The expression “good faith” is central to the grant of immunity, yet its meaning varies across statutes. Section 52 of the Indian Penal Code, 1860 provides that nothing is said to be done or believed in “good faith” which is done or believed without due care and attention. This definition imposes a relatively high threshold. Honesty of purpose alone is not sufficient; the officer must also have exercised due care and attention. The absence of due care may defeat the claim of good faith even if the officer subjectively believed that he was acting lawfully.

In contrast, Section 3(22) of the General Clauses Act, 1897 defines a thing as done in good faith when it is “in fact done honestly, whether it is done negligently or not.” This is a broader definition and is frequently adopted in administrative statutes and service rules. Many specific enactments that confer protection for “anything done in good faith” under the Act adopt this

General Clauses Act standard.

The practical consequence of this difference is significant. An officer who acts with honest belief but with some degree of negligence may still claim protection under statutes that incorporate the General Clauses Act definition, whereas criminal liability under the Indian Penal Code may not be excluded if due care and attention were absent. Courts have repeatedly held that the existence of good faith is a question of fact to be determined on the basis of the surrounding circumstances, the material available to the officer at the time of the act, and whether the officer applied his mind without personal gain or improper motive.

In the context of disciplinary proceedings, the Supreme Court and various High Courts have held that a mere error of judgment or a decision that does not meet the expectations of a superior authority does not amount to misconduct if it was a bona fide exercise of discretion free from corrupt intent, ill-motive or personal gain. Officers cannot be penalised merely because a different course of action would have been preferable in hindsight. This principle is essential for preserving the independence and decisiveness of the civil service.

3. CONSTITUTIONAL DIMENSIONS

Article 309 of the Constitution of India empowers the appropriate Legislature, and in its absence the President or the Governor, to regulate the recruitment and conditions of service of persons serving the Union or a State. The article forms the legislative foundation for the vast body of service rules that govern civil servants. While Article 309 is primarily concerned with the power to frame rules, the constitutional scheme as a whole recognises that civil servants must be protected against arbitrary action while remaining accountable for their conduct.

Article 311 provides important procedural safeguards against dismissal, removal or reduction in rank. A civil servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed, and cannot be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges and given a reasonable opportunity of being heard. These safeguards, however, are directed against arbitrary disciplinary action. They do not create a general immunity from civil or criminal liability for wrongful official acts.

A clear personal immunity is conferred by Article 299 in respect of contracts. All contracts made in the exercise of the executive power of the Union or of a State are to be expressed to be made by the President or the Governor, and are to be executed on his behalf by such persons and in such manner as he may direct or authorise. The officer who executes the contract is not personally liable. This constitutional protection is essential for the smooth functioning of government, as officers must be able to enter into contracts on behalf of the State without

exposing themselves to personal financial risk, provided they act within the scope of their authority.

Article 300 deals with the suability of the Government of India and the States. It provides that the Government may sue or be sued in the like cases as the Dominion of India and the corresponding Provinces might have sued or been sued if the Constitution had not been enacted. The traditional doctrine of sovereign immunity has been substantially narrowed by judicial decisions, particularly where fundamental rights are involved or where the functions performed are non-sovereign in character.

4. CIVIL IMMUNITIES

The principal procedural civil immunity is contained in Section 80 of the Code of Civil Procedure, 1908. The section provides that no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months next after notice in writing has been delivered to or left at the office of the appropriate authority. The Supreme Court in *Bihari Chowdhary v. State of Bihar* held that this requirement is mandatory and that non-compliance renders the suit not maintainable.

The object of Section 80 is to afford the Government or the public officer an opportunity to examine the claim, seek legal advice, and settle the matter if it is just and reasonable, thereby avoiding unnecessary litigation and saving public resources. The notice must contain the cause of action, the name, description and place of residence of the plaintiff, and the relief claimed. The requirement applies even if the act is alleged to have been done mala fide; the question of good faith is relevant to the merits but not to the procedural bar.

Judicial officers enjoy a higher degree of protection. The Judicial Officers' Protection Act, 1850 provides that no Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether within or beyond the limits of his jurisdiction, provided he, in good faith, believed himself to have jurisdiction. The Judges (Protection) Act, 1985 further strengthens this protection by barring both civil and criminal proceedings for acts done in the course of acting or purporting to act in the discharge of official or judicial duty.

In addition, numerous special statutes contain a standard clause providing that no suit, prosecution or other legal proceeding shall lie against any person for anything done or intended to be done in good faith under the Act. These clauses are found in regulatory statutes, welfare legislation and other enactments. They reflect a consistent legislative policy of protecting

officers who act bona fide in the implementation of statutory schemes.

On the question of State liability, the Supreme Court has progressively restricted the doctrine of sovereign immunity. While early decisions recognised immunity for sovereign functions, later decisions have held that the State cannot claim immunity merely because an activity is performed by a governmental authority. Where a public servant commits a tort in the course of employment while performing non-sovereign functions, the State is ordinarily vicariously liable. The individual officer may still enjoy personal immunity if the act was done in good faith and within jurisdiction. This structure ensures that citizens have a remedy against the public exchequer while officers are not deterred from performing their duties.

5. CRIMINAL IMMUNITIES

The most important criminal protection is contained in Section 197 of the Code of Criminal Procedure, 1973, which corresponds to Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The section provides that when a Judge, Magistrate or a public servant not removable from 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 of the appropriate Government.

The Supreme Court in *Matajog Dobey v. H.C. Bhari* laid down the foundational test. There must be a reasonable connection between the act complained of and the discharge of official duty. The act need not be one that the officer was strictly required by law to do; it is sufficient if it was performed under the colour of office. This test has been consistently applied and refined in subsequent decisions, including *P. Arulswami v. State of Madras* and *State of Orissa v. Ganesh Chandra Jew*.

The Court has repeatedly emphasised that the protection is not a shield for corrupt practices. Acts of fabrication of evidence, lodging of false cases, conspiracy, or accumulation of ill-gotten wealth lack a reasonable nexus with the legitimate discharge of official duty and therefore do not attract the requirement of sanction. The object of the provision is to protect responsible public servants against false or vexatious proceedings, not to enable officers to camouflage illegal acts under the colour of public office.

Section 218 of the BNSS introduces a significant procedural improvement. The Government is required to take a decision on the request for sanction within 120 days. If it fails to do so, the sanction is deemed to have been accorded. This provision addresses the long-standing problem of indefinite delay, which often effectively protected accused public servants. The section also

retains exceptions for certain serious offences, particularly sexual offences, for which no sanction is required.

Sections 76 to 79 of the Indian Penal Code confer substantive immunities. These sections protect acts done under a bona fide mistake of fact, acts of Judges acting judicially, acts done in pursuance of a judgment or order of a court, and acts done by a person who is justified by law or who in good faith believes himself to be justified by law. These provisions are particularly relevant to police officers, revenue officers and other functionaries who must often act on incomplete information.

Section 19 of the Prevention of Corruption Act, 1988 requires previous sanction of the competent authority before a court can take cognizance of specified offences under the Act. This requirement is mandatory and is distinct from the requirement under Section 197 CrPC. It is designed to protect honest public servants from frivolous prosecutions while ensuring that genuine cases of corruption are not stalled.

6. JUDICIAL INTERPRETATIONS AND LIMITS OF IMMUNITY

The jurisprudence on the scope of Section 197 CrPC and related provisions is extensive and consistent. Early decisions of the Federal Court and the Privy Council established that the act must have a reasonable connection with the discharge of official duty. The test is whether the public servant, if challenged, can reasonably claim that what he does, he does in virtue of his office. Subsequent Supreme Court decisions have refined this test without departing from its essential core.

Courts have held that the mere fact that the opportunity to commit the offence arose because of the official position is not sufficient. There must be a rational nexus between the act and the official duty. Acts of personal vendetta, bribery, fabrication of records for personal gain, or custodial violence motivated by private animus fall outside the protective umbrella even if they are committed during office hours or on official premises.

In the field of service law, the courts have held that a bona fide exercise of discretion, even if erroneous or contrary to the expectations of a superior authority, does not constitute misconduct in the absence of corrupt motive or personal gain. This principle protects officers from being subjected to disciplinary action merely because a different decision would have been preferable in hindsight. At the same time, the courts have made it clear that the protection does not extend to deliberate violation of rules, suppression of material facts, or acts done with improper motive.

The Supreme Court has also emphasised that public employment must ordinarily be made

through a regular and constitutionally compliant recruitment process. Backdoor appointments and irregular entries into service undermine the principles of equality and merit that the Public Service Commissions are required to uphold. While this principle is primarily concerned with recruitment, it reinforces the broader theme that official acts must be performed in accordance with law and in good faith.

7. CONTEMPORARY CHALLENGES

Despite the protective framework, several practical challenges remain. Delays in the grant or refusal of sanction under Section 197 CrPC / Section 218 BNSS continue to affect both honest officers and genuine complainants. While the 120-day deemed sanction provision is a significant improvement, its effective implementation depends on administrative capacity and the willingness of governments to take timely decisions.

There is also a continuing need to distinguish clearly between bona fide errors of judgment and acts of corruption or mala fides. Technological challenges in recruitment and examination processes, allegations of political interference in the functioning of Public Service Commissions, and the increasing volume of litigation in service matters place additional strain on the system. Maintaining the neutrality and independence of civil servants while ensuring accountability remains a delicate balance.

The introduction of the Bharatiya Nagarik Suraksha Sanhita has modernised certain procedural aspects, but the substantive principles governing good-faith immunity remain rooted in the constitutional values of the rule of law, equality before the law, and the need for an efficient and impartial public administration. Strengthening institutional mechanisms for timely sanction decisions, improving training on the limits of official authority, and ensuring transparent processes for appointment to constitutional bodies are essential steps for the future.

8. CONCLUSION

Civil and criminal immunities for actions done in good faith constitute an important and carefully limited feature of Indian public service law. They are justified by the public interest in enabling civil servants to perform their duties without the constant fear of personal liability for honest mistakes. At the same time, the Constitution, the statutes and the judiciary have ensured that these immunities do not become absolute shields against accountability.

Section 80 of the Code of Civil Procedure provides a procedural safeguard through the notice requirement. Section 197 of the Code of Criminal Procedure (and its successor Section 218 of

the BNSS) and Section 19 of the Prevention of Corruption Act require prior sanction for prosecution of specified public servants for acts connected with official duty. Sections 76 to 79 of the Indian Penal Code confer substantive protection for acts done under mistake of fact or in obedience to law. Judicial officers enjoy additional protection under special statutes. In all these cases, the protection is available only when the act is reasonably connected with the discharge of official duty and is done in good faith.

The Supreme Court has consistently held that the object of these provisions is to protect responsible public servants against vexatious proceedings and not to shield those who misuse their office for personal gain or illegal purposes. Maintaining this delicate balance remains essential for the integrity, efficiency and impartiality of the civil services in India. Continuous institutional reforms, timely decision-making on sanction requests, and rigorous adherence to the principles of good faith and reasonable nexus will strengthen both administrative effectiveness and public confidence in the system.

Further, the requirement of prior sanction under Section 197 CrPC and Section 19 of the Prevention of Corruption Act has been the subject of extensive judicial scrutiny. The Supreme Court has held that the sanctioning authority must apply its independent mind to the material placed before it. A sanction granted mechanically or without application of mind is invalid and vitiates the prosecution. At the same time, the Court has cautioned that the sanction requirement should not be used as a tool to delay or defeat legitimate prosecutions of corrupt officials. The balance between protecting honest officers and ensuring accountability for corruption remains a continuing judicial task.

In the context of All India Services and State civil services, the immunities operate alongside the detailed conduct rules and disciplinary procedures framed under Article 309. Officers are expected to maintain absolute integrity and devotion to duty. Actions taken in good faith in the implementation of government policy or in the exercise of statutory discretion are protected, but wilful disobedience of orders, suppression of material facts, or acts done with corrupt motive attract disciplinary as well as criminal consequences. The interplay between departmental proceedings and criminal prosecution is governed by well-settled principles: the two are independent, and an acquittal in a criminal case does not automatically bar departmental action, and vice versa.

The position of officers of the Supreme Court and High Courts, as well as members of the subordinate judiciary, is specially protected. In addition to the general provisions, the Judicial Officers' Protection Act and the Judges (Protection) Act confer a high degree of immunity for judicial acts. This is essential for preserving the independence of the judiciary. Similar

principles apply, with appropriate modifications, to members of the All India Services and to officers of the Central and State Governments. The constitutional status of the Public Service Commissions further reinforces the principle that recruitment and related functions must be performed independently and in good faith.

Comparative perspectives also illuminate the Indian position. In England, public officers enjoy qualified immunity for acts done in the exercise of public functions, subject to the limits imposed by the Human Rights Act and common law principles of misfeasance in public office. In the United States, the doctrine of qualified immunity for government officials has been the subject of considerable debate, particularly in the context of civil rights actions. The Indian approach, rooted in the constitutional values of equality and the rule of law, has sought a middle path: protection for bona fide official acts combined with accountability for mala fide or corrupt conduct. This approach is consistent with the objectives of the course on Public Service Law, which seeks to familiarise students with both the protections available to civil servants and the limits of those protections.

In conclusion, the framework of civil and criminal immunities for actions done in good faith is a mature and carefully balanced feature of Indian public service law. It draws upon constitutional provisions, statutory enactments and a large body of judicial precedent. The leading works of M. Rama Jois, Samaraditya Pal, H.M. Seervai, M.P. Jain and D.D. Basu provide the essential doctrinal foundation for understanding this area. Continued judicial vigilance, timely administrative decisions on sanction requests, and adherence to the principles of good faith and reasonable nexus will ensure that the immunities serve their intended purpose of promoting efficient and impartial public administration without compromising the rule of law.

The syllabus specifically lists “Civil and Criminal immunities for action in good faith” under the module on Conditions of Service. This placement is significant. Conditions of service encompass not only pay, allowances, leave and retiral benefits but also the legal environment in which a civil servant performs his duties. The existence of qualified immunities is itself a condition of service that enables officers to function effectively. At the same time, the limits of these immunities form part of the legal framework that ensures accountability.

Special category services such as the subordinate judiciary, officers and servants of the Supreme Court and High Courts, and the All India Services are also covered by these principles, subject to any special provisions applicable to them. The constitutional independence of the higher judiciary and the special status of All India Services do not place their members outside the general framework of good-faith immunity and accountability. On the contrary, the higher

the office, the greater the expectation of integrity and the more carefully the limits of immunity are scrutinised by the courts.

In practice, officers seeking the protection of Section 197 CrPC or Section 80 CPC must be able to demonstrate a reasonable connection between the impugned act and their official duty. The burden of showing that the act falls within the protective umbrella is ordinarily on the officer claiming the protection, while the burden of proving mala fides lies on the person alleging it. This allocation of burdens, combined with the requirement of prior sanction in criminal cases, provides a practical mechanism for filtering out vexatious claims while allowing genuine cases to proceed.

The role of the Union Public Service Commission and the State Public Service Commissions is also relevant in this context. These constitutional bodies are required to function independently and to ensure merit-based recruitment. Their members enjoy certain protections and are expected to act with the highest degree of integrity and good faith. Any action taken by them in the discharge of their constitutional functions is subject to the same principles of reasonable connection with duty and absence of mala fides that govern other public servants. The independence of these Commissions is itself a constitutional safeguard that complements the individual immunities available to civil servants.

Finally, it may be noted that the framework discussed in this paper is dynamic. Legislative amendments, including the enactment of the Bharatiya Nagarik Suraksha Sanhita, and continuing judicial interpretation continue to refine the scope of these immunities. Students and practitioners of public service law must remain attentive to these developments while remaining grounded in the foundational principles laid down by the Constitution and the leading decisions of the Supreme Court.

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