

Section of BNSS

218(1)



ODISHA POLICE
CRIMINAL INVESTIGATION DEPARTMENT
CRIME BRANCH

CRIME BRANCH CIRCULAR No. 17/2024

Sub: Standard Operating Procedure on Prosecution of Judges and Public Servants

1. Introduction

The BNSS, 2023 aims at providing immunity to public servant including the Judges against motivated, malicious, frivolous and vexatious litigation against their actions taken while discharging their lawful duty. Sec. 218 of BNSS-2023 provides that sanction of the concerned government is a must before the court takes cognizance of a chargesheet submitted after any investigation against them.

2. Procedure

- a) The protection under BNSS, 2023 is not available to all public servants. He must be covered under the following category. He should be:
 - A public servant as defined u/s Sec 2(28) of BNS or
 - A Judge as defined u/s 2(16) of BNS.
 - Not removable from office without order of the Govt.
- b) The acts or purported actions must have been done while he was or is discharging his official duty as public servant.
- c) Sanction shall be accorded by the Union Govt., in case where the person was or is an employee of Union Govt.
- d) Sanction shall be accorded by the State Govt., in case where the person was or is an employee of the State Govt.

- e) When an investigation/ inquiry is pending against a public servant before the Lokpal and Lokayukta by or under the Lokpal or Lokayuktas Act-2013, the State Govt. or Central Govt. has no power to grant sanction for prosecution. Only the Lokpal and Lokayukta have the power to grant sanction for prosecution under Sec. 20(7)(a) of the Lokpal or Lokayuktas Act-2013.

3. Sanction where not required

If the act in question is not done in discharging of his official duty as public servants such sanction would not be required. The protection of law is only for the acts done in official capacity and that too while discharging official duty. Further, sanction against Public Servant is not required if such public servant is alleged to have committed offence under sec. 64, 65, 66, 68, 69, 70, 71, 74, 75, 76, 77, 78, 79, 143, 199 and 200 of the Bharatiya Nyaya Sanhita, 2023.

4. How to move proposal for sanction

- (a) The investigating officer shall ascertain that the public servant concerned was or is in govt. service at the relevant time of commission of offence.

- (b) He shall obtain/seize (attested/original):

- Copy of appointment letter or the first page of service book
- Copy of posting order and joining report at the relevant post at the time of offence
- Copy of current posting order and joining report
- Date of birth, date of Superannuation
- Copy of any document to prove entrustment / assignment of such duty.

- (c) The investigating officer shall forward the proposal for sanction through the district Superintendent of Police with the following documents:

- Copy of the FIR
- Copy of the Supervision Note, if any
- A self-contained report on findings of investigation describing the issues/prima facie case against the public servant
- Copy of statement of major witnesses

- Copy of seizure lists and important documents of the case
- Draft sanction order
- Legal Opinion of Law officer/ PP/Addl. PP (original).

(d) The District Superintendent of Police shall forward all such proposals to CID-Crime Branch, Odisha, the nodal office in this regard, for necessary scrutiny and vetting and forwarding the same to the Competent Authority in the Govt.

(e) Role of the Nodal Office:

- The Nodal Office may direct an enquiry in the matter and call for a report from the Superior Officer of the public servant.
- The public servant concerned may be asked to submit his representation in the matter with regard to the alleged incident.
- After receiving the enquiry report and representation as mentioned above, opinion of law officer of the Nodal Officer will be sought for.
- On considering enquiry report of the Superior Officer, representation of the accused public servant and legal opinion of law officer, if the Nodal Office is satisfied proposal for sanction may be recommended to the competent authority.
- The competent authority on receipt of such proposal shall examine the matter after considering all relevant material.

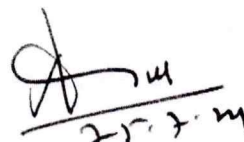
(f) The competent authority on receipt of such proposal shall examine the matter after considering all relevant materials.

(g) The competent authority may call the investigating officer for a discussion of his findings.

(h) After due application of judicial mind, the competent authority shall pass an order within a period of 120 days from the date of receipt of request for sanction.

(i) In the order the competent authority may allow or reject the sanction proposal.

- (j) If no order is passed by the competent authority within a period of 120 days, it shall be a deemed sanction of the competent authority for the purpose of filing charge sheet and taking cognizance against public servant.



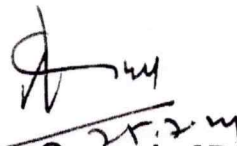
Arun Bothra IPS
Addl. Director General of Police,
CID Crime Branch, Odisha.

Memo No. 8482 /CID-Law

Date: 25.07.2024.

Copy forwarded to:

- All Dist. SsP including DCsP, Bhubaneswar / Cuttack, SsRP Cuttack/ Rourkela, SsP HRPC/ CAW & CW/ EOW/ STF
 - IGP Training, IGP CAW & CW, IGP EOW, IGP STF
 - All Range IsGP / DIsGP
- for information and necessary action.

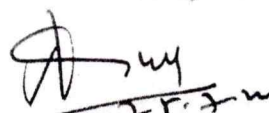


Addl. Director General of Police,
CID Crime Branch, Odisha.

Memo No. 8483 /CID-Law

Date: 25.07.2024.

Copy forwarded to Spl. D.G of Police/ Director SCRB/ HRPC, Commissioner of Police, Bhubaneswar- Cuttack, ADGP Railways & Coastal Security for kind information and necessary action.



Addl. Director General of Police,
CID Crime Branch, Odisha.