



കേരള ഗസറ്റ് KERALA GAZETTE

അസാധാരണം EXTRAORDINARY

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28th Agrahayana 1947

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GOVERNMENT OF KERALA

Home (S) Department

NOTIFICATION

G. O. (P) No. 105/2025/Home.

16th December, 2025

Dated, Thiruvananthapuram, 1st Dhanu, 1201

25th Agrahayana, 1947.

The Government of Kerala is pleased to notify the guidelines, which outlines the procedural steps to be followed for the requirement of prior government sanction for courts to take cognizance of offenses committed by Judges, Magistrates, or Public Servants in the discharge of their official duties under Section 218(1) of Bharatiya Nagarik Suraksha Sanhita



(BNSS), 2023. The guidelines under Section 218(1) of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, is attached herewith.

By order of the Governor,

BISHWANATH SINHA,
Additional Chief Secretary to Government.



Guidelines on Section 218(1) of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 – Prosecution of Judges, Magistrates and Public Servants

Introduction

Section 218 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 lays down the statutory framework governing the prosecution of Judges, Magistrates and certain categories of public servants in relation to acts committed while acting or purporting to act in the discharge of official duties. It provides that no court shall take cognizance of an offence allegedly committed by such persons without prior sanction of the competent Government. The section introduces a significant reform through the “deemed sanction” mechanism—where failure to issue an order within 120 days will automatically amount to grant of sanction. This provision replaces Section 197 of the Code of Criminal Procedure, 1973 and necessitates clear, uniform procedures across investigating agencies to ensure timely processing of sanction proposals.

Legal Provisions

Requirement of Prior Sanction:

A court cannot take cognizance of an offence allegedly committed by a Judge, Magistrate, or a public servant—whose removal from office requires prior approval of the government—if the alleged act was committed while acting in the discharge of their official duties, unless otherwise provided under the Lokpal and Lokayuktas Act, 2013.

Authority Granting Sanction:

(a) If the person was employed by the Central Government at the time of the alleged offence, sanction must be obtained from the Central Government.

(b) If the person was employed by a State Government, sanction must be obtained from the respective State Government.

(c) If the alleged offence occurred during a period when the State was under President’s Rule (as per Article 356 of the Constitution), the Central Government becomes the competent authority to grant sanction.

Deemed Sanction Clause:

The Government must take a decision on the request for sanction within 120 days of receiving it. If no decision is made within this period, the sanction is deemed to have been granted, and prosecution can proceed.

Cases where Sanction is not required

(a) If the act in question was not committed in the discharge of official duties, then prior sanction is not required for prosecution. Legal protection applies only to acts carried out in an official capacity and strictly while performing official duties.

(b) Prior sanction is not necessary if the public servant is accused of committing



an offence under Sections 64, 65, 66, 68, 69, 70, 71, 74, 75, 76, 77, 78, 79, 143, 199, and 200 of the Bharatiya Nyaya Sanhita, 2023.

Purpose

This provision seeks to strike a balance between two objectives:

- (a) Protecting public servants from malicious, frivolous, or vexatious legal proceedings for actions undertaken in the course of their official duties.
- (b) Preventing undue delays in the prosecution process caused by bureaucratic inaction in granting or denying sanction.

Scope

The protection applies to judges and public servants accused of offences related to their official duties, provided their removal from office requires a government order. This protection is not available to all public servants. It covers only those who:

- (a) Qualify as a public servant under Section 2(28) of the Bharatiya Nyaya Sanhita (BNS), 2023, or as a judge under Section 2(16) of the Bharatiya Nyaya Sanhita (BNS), 2023; and
- (b) Cannot be removed from office without a government order.

Procedure for Moving a Proposal for Sanction of Prosecution

(a) Verification by the Investigating Officer:

The Investigating Officer shall confirm whether the public servant concerned was in government service at the time of the alleged commission of the offence.

(b) Collection of Supporting Documents:

The Investigating Officer shall obtain or seize the attested copies or originals of the following documents:

- (1) Copy of the appointment letter or the first page of the service book.
- (2) Copy of the posting order and joining report relevant to the time of the alleged offence.
- (3) Copy of the current posting order and joining report.
- (4) Proof of date of birth and date of superannuation.
- (5) Any document that establishes entrustment or assignment of the duties related to the offence.

(c) Submission of Sanction Proposal:

The Investigating Officer shall forward the sanction proposal through the District Police Chief, along with the following documents:

- (1) Copy of the FIR.
- (2) Copy of the supervision note, if any.



- (3) A self-contained report detailing the findings of the investigation.
- (4) Clear description of issues and the prima facie case against the public servant.
- (5) Statements of key witnesses.
- (6) Copies of seizure lists and important documents related to the case.
- (7) Draft sanction order.
- (8) Original legal opinion from the Law Officer / Public Prosecutor / Additional Public Prosecutor.

(d) Role of the District Police Chief:

The District Police Chief shall forward the complete sanction proposal to the State Police Chief for scrutiny, legal vetting, and onward transmission to the competent authority in the government.

(e) Role of the State Police Chief:

- (1) The State Police Chief may order a preliminary enquiry and seek a report from the superior officer of the public servant.
- (2) The concerned public servant may be asked to submit a representation regarding the alleged incident.
- (3) Upon receipt of the enquiry report and representation, legal opinion shall be obtained from the Law Officer of the Nodal Office.
- (4) If satisfied after reviewing the enquiry report, the public servant's representation, and legal opinion, the State Police Chief may recommend the proposal for sanction to the competent authority.

(f) Role of the Competent Authority:

- (1) Upon receiving the sanction proposal, the competent authority shall examine the matter in detail, taking into account all relevant documents and reports.
- (2) The competent authority may summon the Investigating Officer for a discussion on the case, if required.
- (3) After applying judicial mind, the competent authority shall pass an appropriate order—either granting or denying sanction—within 120 days from the date of receipt of the proposal.

(g) Deemed Sanction:

If the competent authority does not issue an order within 120 days from the date of receipt of the complete proposal, sanction shall be deemed to have been granted. This enables filing of charge sheet and cognizance by the competent court.

