

Why is sanction for prosecution needed?

When is a Governor required to act on his own? What do judicial decisions say?

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Karnataka Governor Thawar Chand Gehlot and Chief Minister Siddaramaiah. File | Photo Credit: The Hindu

The story so far:

The issue of granting sanction to prosecute a public servant has once again come to the fore, following Karnataka Governor Thawar Chand Gehlot's approval to open an investigation against Chief Minister Siddaramaiah and to prosecute him in connection with alleged irregularities in the allotment of compensatory plots to his wife whose land had been lost to the acquisition process by the Mysore Urban Development Authority. The issue has raised legal and constitutional questions, resulting in the Karnataka High Court asking a trial court to postpone its consideration of private complaints against him.

Why is sanction required to prosecute a public servant?

Sanction for prosecuting a public servant has been a mandatory feature of anti-corruption law. This is intended to protect public servants from vexatious and malicious prosecution for actions and decisions made in the course of discharging their official duties. Section 197 of the Code of Criminal Procedure Code (CrPC) said no court could take cognisance of a case against a public servant unless an authority competent to remove that person grants sanction. Section 197 spoke of anyone who 'is or was' a public servant.

Section 6 of the Prevention of Corruption Act, 1947, has a similar provision. However, the sanction requirement was limited to the period when the public servant was in office, and, no sanction was necessary if the person no more held that office. Under both the CrPC and the Prevention of Corruption Act (PCA), the State and Central governments had the authority to sanction prosecution of their respective employees. The provision was preserved in Section 19 of the PCA, 1988.

What are the latest provisions on granting sanction?

Section 218 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), the procedure code that has replaced the CrPC, retains the sanction provisions. When the PCA was amended in 2018, a new provision was introduced under which the government's approval is required, even to begin an investigation. While under Section 17A, the appropriate authority's approval is necessary to begin an investigation, the provision for sanction under Section 19 is a pre-requisite for any court to take cognisance of a charge sheet or complaint of corruption. Another feature of the 2018 amendment is that it applies to those who are and were public servants.

What is the Governor's role in a case against a CM?

Provisions relating to sanction in the CrPC generally spoke of the State government and the Central government as the authority to grant sanctions for those employed by their respective governments. However, both the 1947 and 1988 versions of the PCA have a clause stating that in the case of "any other person", the sanction would be granted by the authority competent to remove the public servant in office. As the power the Governor is vested with the power to dismiss a CM, the Governor is seen as the authority to consider granting sanction for prosecuting a CM. Questions have often arisen as to whether the Governor exercises his discretion while considering sanction, or he is bound to act on the aid and advice of the Council of Ministers.

In the case of A. R. Antulay, the Supreme Court held that the Governor should act in his discretion: "... We have no doubt in our mind that when there is to be a prosecution of the Chief Minister, the Governor would, while determining whether sanction for such prosecution should be granted or not under s. 6 of the Prevention of Corruption Act, as a matter of propriety, necessarily act in his discretion and not on the advice of the Council of Ministers."

What have courts said on the issue?

In a Madhya Pradesh case concerning corruption charges against two Ministers, the Council of Ministers held there was no material against them even though the Lok Ayukta's report confirmed the charges. The Governor went against the Ministry's decision and granted sanctions because there was sufficient material against them. In *Madhya Pradesh Special Police Establishment vs. State of MP and others* (2004), the Supreme Court found the Council's decision "irrational" and upheld the Governor's action. It said: "... on those rare occasions where on facts, the bias becomes apparent and/or the decision of Council of Ministers is shown to be irrational and based on non-consideration of relevant factors, the Governor would be right, ... to act in his own discretion and grant sanction".