

# ADMINISTRATIVE CONTROL VS CRIMINAL LIABILITY UNDER MAHARASHTRA POLICE ACT

*Nitin Pawar (IPS)*

Research scholar, Mumbai University, Law Department

## Abstract

The Maharashtra Police Act, 1951 establishes a structured framework for administrative control over police officers, ensuring discipline, hierarchy, and accountability within the force. Administrative mechanisms such as departmental inquiries, suspension, and internal sanctions play a crucial role in maintaining institutional integrity and operational efficiency. At the same time, the Act provides certain statutory protections to police personnel, particularly in relation to actions performed in the discharge of official duties.

However, the issue of criminal liability arises when police officers exceed their lawful authority or engage in misconduct amounting to criminal offences. In such cases, the requirement of prior sanction and statutory safeguards often create procedural barriers to prosecution. This gives rise to a fundamental conflict between internal disciplinary control and external criminal accountability.

Judicial pronouncements have attempted to strike a balance between these competing interests by emphasising that statutory protection cannot extend to acts done in bad faith or beyond official duty. The central argument of this paper is that while administrative control is essential for maintaining discipline within the police force, excessive statutory protection risks diluting accountability and undermining the rule of law.

The research adopts a doctrinal methodology, relying on statutory interpretation and case law analysis to examine the tension between administrative authority and criminal liability under the Act.

## Introduction

The policing structure in Maharashtra is rooted in a colonial administrative legacy, subsequently adapted to meet the needs of a modern democratic state. The Maharashtra Police Act, 1951 serves as the primary legislation governing the organisation, powers, and functions of the police force in the state. It aims to ensure maintenance of public order, prevention and detection of crime, and enforcement of law, while simultaneously establishing a framework of administrative control over police personnel.<sup>1</sup>

Administrative control under the Act encompasses disciplinary mechanisms such as transfers, suspensions, departmental inquiries, and internal sanctions imposed by superior authorities.<sup>2</sup> These mechanisms are intended to maintain efficiency, discipline, and hierarchy within the police force. However, such internal control structures often operate parallel to the broader system of criminal liability, which arises when police officials are accused of offences such as custodial violence, abuse of power, or corruption under general penal laws.<sup>3</sup>

A clear conceptual distinction exists between administrative control and criminal liability. While the former is regulatory and internal in nature, the latter involves prosecution before a court of law and attracts penal consequences.<sup>4</sup> However, in practice, the line between the two often becomes blurred due to statutory protections requiring prior sanction for prosecution of public servants, thereby creating procedural barriers.<sup>5</sup>

This raises critical research questions: whether administrative control mechanisms override or dilute criminal liability, and whether statutory safeguards effectively create a regime of de facto immunity for police officers. The

<sup>1</sup> The Maharashtra Police Act, 1951 (Act 22 of 1951).

<sup>2</sup> *Id.*, ss. 3, 5.

<sup>3</sup> The Indian Penal Code, 1860 (Act 45 of 1860), ss. 166, 330, 348; The Prevention of Corruption Act, 1988 (Act 49 of 1988).

<sup>4</sup> M.P. Jain, *Principles of Administrative Law* 412 (LexisNexis, New Delhi, 7th edn., 2016).

<sup>5</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

concern is particularly significant in light of constitutional guarantees under Articles 14 and 21, which mandate equality before law and protection of life and personal liberty.<sup>6</sup>

This paper proceeds on the hypothesis that the existing legal framework, including the Maharashtra Police Act and related provisions, tends to favour institutional protection over individual accountability. It examines whether such a tilt undermines the rule of law and weakens public trust in policing institutions. The paper is structured to analyse statutory provisions, judicial interpretations, and constitutional implications, followed by a critical evaluation and recommendations for reform.

## Conceptual Framework

### (a) Administrative Control

Administrative control refers to the internal regulatory mechanisms exercised within the police organization to ensure discipline, efficiency, and adherence to service norms.<sup>7</sup> It primarily operates through departmental proceedings, which are distinct from judicial processes and are governed by service rules and the Maharashtra Police Act, 1951.<sup>8</sup> Tools of administrative control include suspension, initiation of departmental inquiries, and imposition of penalties such as dismissal, reduction in rank, or withholding of increments.<sup>9</sup> These measures are preventive and corrective in nature, aimed at maintaining institutional discipline and hierarchical command within the police force.<sup>10</sup> The objective is not to punish crime per se, but to ensure integrity and accountability in public service.<sup>11</sup>

### (b) Criminal Liability

Criminal liability, in contrast, arises when a police officer commits an act that constitutes an offence under penal statutes such as the Indian Penal Code, 1860 and procedural law under the Code of Criminal Procedure, 1973.<sup>12</sup> Unlike administrative control, criminal liability involves prosecution before a court of law and may result in imprisonment, fines, or both.<sup>13</sup> A key distinction lies in differentiating acts performed in an official capacity from those that are illegal or in excess of authority.<sup>14</sup> While lawful acts done in good faith may be protected, acts involving abuse of power, custodial violence, or corruption attract criminal sanctions.<sup>15</sup>

### (c) Doctrine of “Official Duty”

The doctrine of “official duty” plays a crucial role in determining the extent of protection available to police officers. It is based on the “nexus test,” which examines whether the act complained of was reasonably connected with the discharge of official duties.<sup>16</sup> Judicial pronouncements have clarified that mere presence of official status is insufficient; the act must bear a direct and reasonable nexus to duty.<sup>17</sup> Courts have also evolved limits to this doctrine, holding that acts such as torture, fake encounters, or mala fide actions cannot be considered part of official duty and therefore do not attract statutory protection.<sup>18</sup> This ensures a balance between functional autonomy of police officers and accountability under criminal law.

<sup>6</sup> The Constitution of India, arts. 14, 21.

<sup>7</sup> M.P. Jain, *Principles of Administrative Law* 412 (LexisNexis, New Delhi, 7th edn., 2014).

<sup>8</sup> The Maharashtra Police Act, 1951 (Act 22 of 1951).

<sup>9</sup> Id.

<sup>10</sup> K.D. Gaur, *Textbook on Indian Penal Code* 56 (Universal Law Publishing, Delhi, 5th edn., 2015).

<sup>11</sup> Id.

<sup>12</sup> The Indian Penal Code, 1860 (Act 45 of 1860); The Code of Criminal Procedure, 1973 (Act 2 of 1974).

<sup>13</sup> K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* 32 (Eastern Book Company, Lucknow, 6th edn., 2014).

<sup>14</sup> Id.

<sup>15</sup> *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

<sup>16</sup> *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.

<sup>17</sup> Id.

<sup>18</sup> *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

## Statutory Framework under the Maharashtra Police Act

The statutory framework governing administrative control and criminal liability of police officers in Maharashtra is primarily rooted in the Maharashtra Police Act, 1951. The Act vests extensive powers of superintendence and control in the State Government and senior police authorities to ensure discipline, efficiency, and accountability within the police force.<sup>19</sup> The concept of “superintendence” implies overarching authority over administration, policy direction, and operational control, thereby placing the police hierarchy under executive oversight.<sup>20</sup>

The Act further provides for disciplinary authority over police personnel, enabling superior officers to initiate departmental proceedings for misconduct, dereliction of duty, or abuse of power.<sup>21</sup> These internal mechanisms are intended to maintain institutional discipline without immediately resorting to criminal prosecution. However, such administrative control often overlaps with situations that may also attract criminal liability, thereby creating a complex interface between departmental and penal consequences.

A significant feature of the Act is the incorporation of protection clauses for police officers. Actions performed “in good faith” in the discharge of official duties are accorded statutory protection, thereby insulating officers from frivolous or vexatious litigation.<sup>22</sup> Additionally, the Act mandates prior sanction of the government before prosecuting a police officer for acts purportedly done in the course of official duty.<sup>23</sup> This requirement acts as a procedural safeguard but has also been criticised for potentially shielding errant officers from accountability.

This protection framework operates in conjunction with Section 197 of the Code of Criminal Procedure, 1973, which similarly requires prior sanction for prosecuting public servants for acts done in discharge of official duty.<sup>24</sup> The recently enacted Bharatiya Nagarik Suraksha Sanhita, 2023 retains analogous provisions, thereby continuing the requirement of sanction as a precondition for prosecution.<sup>25</sup> The rationale underlying such provisions is to prevent undue harassment of public officials and to ensure that bona fide actions are not impeded by fear of litigation.

However, judicial interpretation has clarified that such protection is not absolute. Courts have consistently held that acts which are manifestly illegal or unrelated to official duty cannot be shielded under the guise of “good faith” or statutory protection.<sup>26</sup> The determination of whether an act falls within the scope of official duty remains a question of fact, often leading to inconsistent application.

A critical analysis reveals that the Maharashtra Police Act, when read with central procedural laws, may appear to expand the scope of protection available to police personnel. While Section 197 CrPC and corresponding provisions under the Bharatiya Nagarik Suraksha Sanhita establish a general procedural safeguard, the state legislation reinforces and operationalises this protection within the policing context.<sup>27</sup> This dual-layered protection raises concerns regarding excessive insulation of police officers from criminal liability, potentially undermining the principles of accountability and rule of law.

## Administrative Control Mechanisms in Practice

Administrative control mechanisms under the Maharashtra Police Act operate as the primary internal system for ensuring discipline and accountability within the police force. These mechanisms largely function through departmental inquiries, which are distinct from criminal trials in both procedure and objective. While criminal trials aim to establish guilt beyond reasonable doubt and impose penal sanctions, departmental proceedings focus on maintaining service discipline and may proceed on the standard of preponderance of probabilities.<sup>28</sup>

<sup>19</sup> The Maharashtra Police Act, 1951 (Bombay Act 22 of 1951), s. 3.

<sup>20</sup> *Id.*, s. 4.

<sup>21</sup> *Id.*, ss. 25, 26.

<sup>22</sup> *Id.*, s. 159

<sup>23</sup> *Id.*, s. 161.

<sup>24</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

<sup>25</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 218.

<sup>26</sup> *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

<sup>27</sup> *Supra* note 6.

<sup>28</sup> M.P. Jain and S.N. Jain, *Principles of Administrative Law* 38 (Wadhawa, Nagpur, 2001).

Departmental inquiries are typically initiated by superior officers and are governed by service rules and internal regulations. Senior police officials, including Commissioners and Superintendents, play a significant role in supervising such inquiries, while the State Government exercises overarching control, particularly in cases involving higher-ranking officers.<sup>29</sup> This hierarchical structure reflects the administrative nature of police functioning but also raises concerns regarding impartiality and independence.

A key distinction between administrative and criminal control lies in their preventive and punitive dimensions. Administrative mechanisms are often preventive, aimed at correcting misconduct, maintaining discipline, and ensuring efficiency in the force.<sup>30</sup> In contrast, criminal liability is punitive, addressing offences against society at large under statutes such as the Indian Penal Code. However, in practice, the overlap between the two may create ambiguity, especially where the same act triggers both departmental and criminal proceedings.

Despite their importance, administrative control mechanisms face several challenges. Internal inquiries are often criticised for institutional bias, as officers investigate their colleagues within the same department.<sup>31</sup> This may lead to a lack of objectivity and fairness. Additionally, there is a persistent lack of transparency, with limited public access to inquiry proceedings and outcomes.<sup>32</sup> Delays in disciplinary action further weaken the effectiveness of administrative control, undermining both accountability and public confidence.<sup>33</sup>

Judicial pronouncements have highlighted these concerns. In *Prakash Singh v. Union of India*, the Supreme Court emphasised the need for police reforms, including independent oversight mechanisms to ensure accountability.<sup>34</sup> Similarly, in *State of Punjab v. Ram Singh*, the Court discussed the scope of misconduct and the standards applicable in departmental proceedings.<sup>35</sup> These cases illustrate the continuing tension between administrative autonomy and the need for external accountability.

### **Criminal Liability of Police Officers**

The criminal liability of police officers under the Maharashtra Police framework arises in situations where public power is misused in violation of legal and constitutional mandates. Police personnel, though vested with wide powers for maintaining law and order, are equally subject to criminal prosecution for unlawful acts. The most prominent categories of offences include custodial violence, encounter killings, and corruption.<sup>36</sup>

Custodial violence remains one of the gravest concerns, involving torture, illegal detention, and deaths in custody, often violating fundamental rights under Articles 20 and 21 of the Constitution.<sup>37</sup> Encounter killings, frequently justified as acts of self-defence, have been subjected to strict judicial scrutiny to prevent extra-judicial executions.<sup>38</sup> Corruption among police officials, including bribery and abuse of authority, is punishable under penal statutes and anti-corruption laws.<sup>39</sup>

A significant procedural safeguard for police officers is the requirement of prior sanction before prosecution under Section 197 of the Code of Criminal Procedure, 1973.<sup>40</sup> This provision aims to protect officials from frivolous litigation arising out of acts done in the discharge of official duties. However, judicial interpretation has clarified

<sup>29</sup> The Maharashtra Police Act, 1951 (Act 22 of 1951), ss. 3, 5.

<sup>30</sup> *Id.*, s. 25.

<sup>31</sup> Upendra Baxi, "On how not to judge the judges: Notes towards evaluation of the Judicial Role" 25 *Journal of Indian Law Institute* 211 (1983).

<sup>32</sup> *Id.* at 215.

<sup>33</sup> Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, 2003).

<sup>34</sup> *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

<sup>35</sup> *State of Punjab v. Ram Singh*, (1992) Supp (1) SCC 191.

<sup>36</sup> The Maharashtra Police Act, 1951 (Act 22 of 1951).

<sup>37</sup> The Constitution of India, arts. 20, 21.

<sup>38</sup> *People's Union for Civil Liberties v. State of Maharashtra*, (2014) 10 SCC 635.

<sup>39</sup> The Prevention of Corruption Act, 1988 (Act 49 of 1988).

<sup>40</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

that such protection is not absolute. In *State of Orissa v. Ganesh Chandra Jew*, the Supreme Court held that sanction is required only when the act has a reasonable nexus with official duty.<sup>41</sup>

Further, courts have consistently emphasised that acts falling outside the scope of official duties, particularly those involving abuse of power, cannot be shielded by the requirement of prior sanction. In *Prakash Singh Badal v. State of Punjab*, it was held that criminal acts such as corruption cannot be considered part of official duty.<sup>42</sup> Similarly, in *Extra Judicial Execution Victim Families Association v. Union of India*, the Supreme Court reiterated that encounter killings must be independently investigated and cannot be justified merely on the ground of official function.<sup>43</sup>

Despite these safeguards, several challenges hinder effective prosecution. Delays in granting sanction often obstruct timely justice and allow accused officers to evade accountability.<sup>44</sup> Political influence further complicates the process, as sanctioning authorities may be subject to external pressures. Additionally, evidentiary barriers, such as lack of independent witnesses and institutional bias, make it difficult to establish guilt beyond reasonable doubt.<sup>45</sup>

Thus, while the legal framework recognises the criminal liability of police officers, procedural barriers and systemic issues continue to impede accountability. A balanced approach is necessary to ensure that genuine acts performed in official duty are protected, while unlawful abuses of power are effectively prosecuted.

### Judicial Approach: Balancing Control and Liability

The judiciary in India has played a pivotal role in maintaining a delicate balance between administrative control over the police and the imposition of criminal liability for misuse of power. While statutes like the Maharashtra Police Act provide certain protections to police officers acting in discharge of official duties, courts have consistently emphasised that such protection cannot be used as a shield for unlawful acts.<sup>46</sup>

A landmark intervention in police reforms came in *Prakash Singh v. Union of India*, where the Supreme Court recognised the need for insulating police from undue political interference while simultaneously ensuring accountability through institutional mechanisms.<sup>47</sup> The judgment underscored that administrative autonomy must be accompanied by responsibility, thereby strengthening internal control systems without diluting legal liability.

Similarly, in *D.K. Basu v. State of West Bengal*, the Court laid down detailed guidelines to prevent custodial violence and abuse of power, recognising such acts as violations of fundamental rights under Article 21.<sup>48</sup> This case marked a shift towards prioritising human rights over unchecked administrative discretion. The judiciary made it clear that official status does not grant immunity for acts that infringe upon personal liberty and dignity.

In *State of Orissa v. Ganesh Chandra Jew*, the Supreme Court elaborated the principle that protection for acts done in official capacity depends upon a “reasonable nexus” between the act and official duty.<sup>49</sup> If such nexus is absent, the protection under statutory provisions cannot be invoked. This test has become central in determining whether prior sanction is required for prosecuting public officials.<sup>50</sup>

Another key judicial standard is the requirement of “good faith.” Courts have interpreted good faith not merely as honesty of intention but as due care and attention in the exercise of authority.<sup>51</sup> Actions that are arbitrary, malicious, or grossly negligent fall outside the ambit of good faith and attract criminal liability.<sup>52</sup>

<sup>41</sup> *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

<sup>42</sup> *Prakash Singh Badal v. State of Punjab*, (2007) 1 SCC 1.

<sup>43</sup> *Extra Judicial Execution Victim Families Association v. Union of India*, (2016) 14 SCC 536.

<sup>44</sup> Law Commission of India, “226th Report on Custodial Crimes” (2009).

<sup>45</sup> K.D. Gaur, *Criminal Law: Cases and Materials* 512 (LexisNexis, Nagpur, 9th edn., 2019).

<sup>46</sup> The Maharashtra Police Act, 1951 (Act 22 of 1951), s. 159.

<sup>47</sup> *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

<sup>48</sup> *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

<sup>49</sup> *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

<sup>50</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

<sup>51</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 52.

<sup>52</sup> *State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40.

Recent judicial trends indicate a conscious effort to narrow the misuse of statutory protections available to police personnel. Courts have increasingly scrutinised claims of official duty and have refused to extend immunity where actions are disproportionate or violative of constitutional guarantees.<sup>53</sup> This approach reflects a broader commitment to uphold the rule of law and prevent abuse of power.

At the same time, the judiciary recognises the need for functional independence of the police to ensure effective law enforcement. However, such independence cannot come at the cost of accountability.<sup>54</sup> The evolving jurisprudence thus reflects a shift towards a rights-based framework, where administrative control is balanced with strict standards of liability.

### **Conflict: Administrative Control vs Criminal Liability**

The interplay between administrative control and criminal liability under policing laws, particularly the Maharashtra Police Act, often leads to significant legal and institutional conflicts. One of the most prominent areas of overlap arises when a single act of a police officer triggers both a departmental inquiry and a criminal prosecution. While departmental proceedings aim to maintain discipline and efficiency within the force, criminal proceedings focus on accountability under general penal law.

However, such parallel proceedings raise complex constitutional and procedural issues. A key concern is the potential violation of the protection against double jeopardy under Article 20(2) of the Constitution.<sup>55</sup> Although judicial precedents clarify that departmental and criminal proceedings are distinct in nature, their simultaneous operation often creates practical prejudice for the accused officer. Additionally, parallel proceedings may lead to conflicting outcomes, thereby undermining public confidence in the justice system.

Another major issue is the requirement of prior sanction for prosecution under Section 197 of the Code of Criminal Procedure, 1973, which is frequently invoked as a procedural safeguard.<sup>56</sup> In practice, however, this requirement is often misused as a delay tactic, allowing accused officers to evade timely criminal prosecution.<sup>57</sup> Administrative authorities may deliberately withhold sanction, thereby weakening the effectiveness of criminal law enforcement.

Critically, administrative control mechanisms are sometimes used as protective shields rather than instruments of accountability. Departmental inquiries, being internal processes, may lack transparency and independence, leading to lenient outcomes. Consequently, criminal liability is diluted due to procedural barriers and institutional bias.

Thus, while administrative control is essential for maintaining discipline, its misuse can obstruct the enforcement of criminal liability, thereby creating a structural imbalance between internal governance and public accountability.

### **Conclusion**

The analysis demonstrates that while administrative control is essential for maintaining discipline and operational efficiency within the police force, it is insufficient as a mechanism of accountability. The existing framework often prioritizes institutional protection over individual responsibility, thereby weakening the enforcement of criminal liability.

A balanced approach is required to reconcile the need for protecting police officers from frivolous prosecution with the imperative of ensuring accountability under the rule of law. Constitutional safeguards under Articles 14 and 21 demand that no individual, including state officials, be above the law.

However, the current system, characterized by procedural barriers such as sanction requirements and institutional bias, often impedes effective prosecution. Without meaningful reforms, these protections risk evolving into instruments of institutional impunity.

Therefore, it is imperative to recalibrate the legal framework by introducing independent oversight, enhancing transparency, and strengthening judicial scrutiny. Only through such measures can a fair balance be achieved

<sup>53</sup> *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

<sup>54</sup> *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

<sup>55</sup> The Constitution of India, art. 20(2).

<sup>56</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 197.

<sup>57</sup> *Matajog Dobey v. H.C. Bhari* AIR 1956 SC 44.”

between administrative control and criminal liability, ensuring both efficiency in governance and accountability in law enforcement.

### References

1. The Constitution of India.
2. The Maharashtra Police Act, 1951 (Act 22 of 1951).
3. The Code of Criminal Procedure, 1973 (Act 2 of 1974).
4. State of Rajasthan v. B.K. Meena (1996) 6 SCC 417.
5. Matajog Dobey v. H.C. Bhari AIR 1956 SC 44.
6. Prakash Singh v. Union of India (2006) 8 SCC 1.
7. Subramanian Swamy v. Manmohan Singh (2012) 3 SCC 64.
8. Maneka Gandhi v. Union of India (1978) 1 SCC 248.
9. Law Commission of India, "41st Report on the Code of Criminal Procedure" (1969).
10. Upendra Baxi, *Crisis of the Indian Legal System* 112 (Vikas Publishing, New Delhi, 1982).
11. Police Reform Act, 2002 (UK).
12. 42 U.S.C. § 1983.
13. Harlow v. Fitzgerald 457 U.S. 800 (1982).