

Section 145 CrPC

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CRIMINAL LAW



*This article is written by **Monika Pilania**, a student of Maharshi Dayanand University, Rohtak. This article seeks to elucidate Section 145 of the CrPC, which contains the procedure where a dispute concerning land or water is likely to cause a breach of peace.*

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Introduction

Conflicts over immovable property, such as land, water, crops, and other products from the land, as well as the right to utilise such properties, sometimes result in violence or killing, which pushes people to commit crimes. Land conflicts must be resolved by the Civil Court since they are of a civil nature, i.e., between two parties over a civil problem such as ownership of the land, the title to the land, etc. What happens when a party uses force to obtain land or otherwise breaches the peace? In these situations, the law provides for an alternative criminal proceeding under [Section 145](#) of the [Criminal Procedure Code](#) (CrPC) in order to stop a breach of peace and fairly and justly protect the party's interests.

Chapter 10(D) of the Code of Criminal Procedure, 1978, which comprises Sections 145 to 148, contains the legal regulations that deal with preventing crimes related to property disputes. When a Magistrate finds that there is a dispute between two parties over a certain piece of land, how would he handle the circumstance?

This Section is self-contained, self-explanatory, and comprises ten subsections. The Magistrate who has been granted jurisdiction under this Section must limit his conduct to the provisions of this Section alone. Proceedings conducted in accordance with Section 145 are of a summary nature.

Section 145 deals with the following provisions, namely:

- Procedure when a land dispute is likely to result in a breach of peace
- Power of Magistrate

What is breach of peace

[Section 145](#) of the Code of Criminal Procedure contains provisions related to a breach of peace on account of a dispute over land or water. If there is a dispute between two parties/groups who own a piece of land, water, or a boundary, this will result in a breach of peace and the Executive Magistrate has the power to take action in this regard.

The following conditions must be met in order for a magistrate to have jurisdiction under Section 145:

1. That there is a dispute.
2. That it might result in a breach of peace.
3. That the disputed property includes buildings, markets, fisheries, crops, or other agricultural products, as well as the land's boundaries, rentals, or profits.
4. That the alleged possession occurred within two months of the Magistrate's first order, and
5. That it falls within the Magistrate's jurisdiction.

Let me illustrate this with an example: –

Two parties, 'A' and 'B,' are at odds over a plot of property.

'A' approaches 'B' with other men carrying deadly weapons and tells him that he will return on Monday and forcefully capture the land, firing a few bullets into the air.

Being a short-tempered individual himself, "B" threatens "A" not to attempt to capture the land on Monday and fires a few rounds into the air as well.

In such a circumstance, the parties are extremely likely to engage in a deadly fight. Therefore, in such a circumstance, if the Executive Magistrate is informed by the police report or any other material that a breach of peace is likely to occur, he might order the parties to appear in court and present their written arguments to him.

Procedure to prevent breach of peace

[Section 145](#) of the CrPC contains provisions related to the procedure which is being followed to prevent a breach of peace.

Procedure where dispute concerning land, etc is likely to cause breach of peace

A Magistrate of the First Class may take action if, after reviewing a police report or other information, he is convinced that there is a dispute over any immovable property, including buildings, markets, fisheries, crops, or other land products, and the rents or profits from such property, within the local limits of his jurisdiction that is likely to result in a breach of the peace. When a magistrate decides to take action in a dispute, he or she must issue a written order outlining the reasons why the parties must appear in court within a certain period and submit written statements of their respective claims regarding the fact that they actually possess the object of the dispute. There is no mention of any petition under Section 145(1). The "police report" or "other information" must satisfy the magistrate. This "information" could be a request made by a party with an interest, a third party, or even the Magistrate's personal information. He may have received the information orally or in writing, or he might have witnessed a party acting in a way that indicated he should be concerned about a possible breach of the peace. Thus, it would seem that no formal application is required for the start of the proceedings. A party need not often present a case to the Magistrate. When the Magistrate, who is himself suspicious of a breach of the peace, makes certain inquiries and is ultimately satisfied that there is an apprehension of a breach of the peace and issues a written order stating the grounds of his being satisfied, the date of his order cannot be traced back to the first piece of information he discovered. This is because the starting point of an application or even a police report may not always be available. [[Section 145\(1\)](#)]

Land or water

For the purposes of Section 145 of the Criminal Procedure Code, "land or water" refers to any immovable property, including houses, markets, fisheries, crops, and other agricultural products, as well as the rents and profits made by any such property. [[Section 145\(2\)](#)]

Service of summons etc

This order shall be served as a summons, and a copy thereof shall be published by affixing it to a visible location at or near the subject of dispute. [[Section 145\(3\)](#)]

Inquiry as to possession

The Magistrate will then investigate possession in the following steps. Regardless of the case's merits, he must read the submitted statements, hear the parties, receive any evidence they may present, consider the impact of that evidence, obtain any additional evidence he deems necessary, and, if possible, determine which of the parties was in possession of the subject at the time the order was

made. However, if it seems to the Magistrate that any party has been unlawfully and violently removed from possession during the two months prior to the date of such order, he may treat the person thus removed as if he had been in possession at such date. The Magistrate may attach the object of the dispute in an emergency while he makes a ruling. [Section 145(4)]

If there exists no conflicts

The Magistrate shall cancel his first order and cease all future actions thereon if either party proves that there is or has never been a dispute as described above; but, prior to such cancellation, the Magistrate's initial order shall remain in effect. The provisions of SubSection (5) are clear. All parties are allowed to show that no conflict "exists or has existed" that may lead to a breach of the peace. The sub-Section expressly states that the Magistrate shall withdraw his ruling in this situation and that all future actions shall be delayed. It's possible that at this point before a judgement has been taken, the suspicion of a breach of the peace has disappeared, but the conflict itself is still in progress. [Section 145(5)]

Possession shall be retained by the party in possession unless lawfully evicted

If the Magistrate determines that one of the parties was or should be considered to be in possession of the subject, he or she must issue an order stating that the party is entitled to possession of the subject until evicted from it in accordance with the law, or until the issue of title is resolved in a civil court. In addition, the Magistrate shall prevent any disturbances of such possession until such removal; however, if a party has been illegally and violently evicted within two months of the date of the first order, the Magistrate may return that party's possession. [Section 145(6)]

In the event of the death of any party to the proceedings, the following legal heirs will be considered a party to the inquiry

If a party to one of these proceedings passes away, the Magistrate may make the legal representatives of the deceased party a party to the proceeding and will then continue the investigation if there is any doubt as to who the legal representative of the deceased party is for the purposes of the proceeding. All individuals claiming to be the representative of the deceased party shall be made parties thereto. [Section 145(7)]

Disposal of crops or other property produce prone to rapid and natural decay

If the Magistrate believes that any crop or other product of the property that is in dispute is subject to rapid and natural decay, he may order its custody or sale and, after the investigation is complete, may make an appropriate order for the disposal of that property or the proceeds of its sale. [Section 145(8)]

Summoning of witness

On request from any party, the Magistrate may, at any time during the proceedings under Section 145, issue a summons to any witness requiring him to appear or to produce any document or material. [Section 145(9)]

Nothing in Section 107 limits the Magistrate's authority to proceed

Section 145 of the Criminal Procedure Code further states that nothing in the Section should be interpreted as limiting the magistrate's power to proceed under Section 107 of the Criminal Procedure Code. Section 107 of the Code of Criminal Procedure states that the magistrate may attach the object of the dispute until a competent court determines the rights of the parties thereto or the person entitled to possession thereof, if he determines that none of the parties was then in such possession or if he is unable to determine which of them was then in such possession. [Section 145(10)].

Powers of Magistrate



A Magistrate has the following powers in this regard:

1. The Magistrates have the authority to attach the subject of the dispute and appoint a receiver or order that a certain status quo be preserved, generally in favour of the person in possession of the property on the day of judgement.
2. The Executive Magistrate has the power to make an order requiring the parties to attend the court in person and to put in written statements of their respective claims.
3. The Executive Magistrate has the power to order an investigation.
4. The Executive Magistrate has the power to call upon the production of Documents.
5. The Executive Magistrate has the power to issue a summon to any witness to attend the court or produce any documents.
6. The Executive Magistrate has the power to make an order as he thinks fit.

Case laws related to Section 145 of CrPC

- [R. H. Bhutani V. Miss Mani J. Desai & Ors, AIR 1968 SC 1444](#)

Held:

According to the Section, the Magistrate must be convinced that there is a conflict over an immovable property and that this dispute is likely to result in a breach of peace before starting any legal proceedings. However, the provision requires him to grant a preliminary order under subsection (1) after he is satisfied with these two requirements, and then to make an inquiry under subsection (4) and pass a final decision under subsection (1). It is not essential for the suspicion of a breach of peace to be present or continue at the time the final order is given. Regardless of the parties' rights, the inquiry under Section 145 is only allowed to focus on the issue of who was in actual possession on the day of the preliminary order. The High Court refused to address the issue of whether the evidence presented to the magistrate was sufficient while exercising its revisional jurisdiction.

- [Debi Prasad V. Sheodat Rai, \(1908\) ILR 30](#)

Held:

Section 145 is solely meant to provide a fast remedy for preventing a breach of peace arising from disputes over immovable property by keeping one or both parties in possession. Section 145 proceedings are quasi-judicial and quasi-administrative in character, with the goal of preventing a breach of peace and preserving tranquillity.

- [Bhinka V. Charan Singh, AIR 1959 SC 960](#)

The orders that a magistrate issues in accordance with Section 145 of the Code of Criminal Procedure, 1973 are referred to as "police orders." A provisional police order based on prior possession is all that the Magistrate's order under this Section is. It is formed solely to prevent a breach of the peace, and because it is made regardless of the rights of the parties, it cannot allow the person in whose favour it is issued to defend an action on the property.

- [Prakash Chand Sachdeva v. State, \(1994\) 1 SCC 471](#)

The Executive Magistrate is asked to decide the fact of real possession, not which party has a right to possess, in the proceedings under Section 145 of the Code of Criminal Procedure, 1973. A person is often prevented from asserting the criminal court's jurisdiction if they have filed a suit or other remedy in civil court for possession and an injunction based on the title. However, if there is no question as to the title, this normal rule does not apply. When a claim or title is undisputed, the parties are co-owners on their own evidence, and there is no partition, one cannot be allowed to act violently illegally and demand that the other follow the law. The Magistrate is authorised to take cognizance under Section 145 of the Code of Criminal Procedure, 1973, if the dispute is not over the right to possession but rather over the question of possession.

- [Mathuralal v. Bhanwar Lal, AIR 1980 SC 242](#)

While considering Section 145 of the Criminal Procedure Code, the Supreme Court stated, "Quite obviously, Sections 145 and 146 of the Criminal Procedure Code together comprise a scheme for the settlement of a situation where there is a danger of a breach of the peace due to a dispute about any land or water or their limits."

Section 146 can be interpreted to mean that after an attachment has been made in any of the three circumstances listed there, the dispute can only be settled by a competent court and not by the Magistrate who made the attachment if it is taken out of its context and read independently of Section 145. However, Section 146 and Section 145 cannot be thus separated. It must only be interpreted in light of Section 145. Without a doubt, contextual construction will win out against isolationist construction. If not, it could be misleading. That is one of the fundamental elements of construction.

- [Rajpati v. Bachan & Ors., AIR 1981 SC 18](#)

Held as follows: As a result, it is obvious that a finding of the presence of a breach of the peace is not essential at the time a final order is given. Furthermore, there is no provision in the Code of Criminal Procedure that mandates a finding of the existence of a breach of the peace in the final order. It is not necessary for the breach of peace to continue at every stage of the proceeding once a preliminary order issued by the Magistrate outlines the grounds for holding that one exists, unless there is convincing evidence illustrating that the dispute has ended in order to bring the case within the purview of subsection (5) of Section 145 of the Code of Criminal Procedure. Unless a situation like this occurs, the procedures must proceed to their natural conclusion, which is the final ruling under Section 145, subsection (6).

- [Malkappa v. Padmanna, 1958](#)

Held: When a class lawsuit over the same subject matter is already ongoing, the provisions of Section 145 of the CrPC should not be used. The parties should, as law-abiding citizens, bring their disagreement before a civil court rather than take matters into their own hands, keeping in mind that the whole intent of that clause is to avoid the disturbance of public peace at their request.

- [Mahant Ram Saran Dass v. Harish Mohan And Another, 2001](#)

The main question that has been answered by the Supreme Court is whether the respondent had the right to use the Magistrate's jurisdiction under Section 145 CrPC under the facts and circumstances of the current case, where a civil suit for a declaration was already pending before the appropriate court, the civil court, and the Magistrate had the right to start the proceedings and issue any interim orders appointing a receiver therein. It is undeniable that the court issued an interim injunction during the civil case itself and placed limitations on the parties' ability to sell the subject property. It's true that the applicant before the Magistrate hasn't been named as a party-defendant in the civil suit, but that won't change the situation in any way since, in our opinion, the civil court is in possession

of the matter, it has the authority to grant any necessary relief, and the Magistrate lacks the authority to do so in the particular case at hand. In light of the situation, the High Court's impugned ruling as well as the proceedings started before the Magistrate in accordance with Section 145 CrPC are quashed. It goes without saying that the current situation must be preserved so that the parties can request the necessary orders from the civil court.

Latest Supreme Court and High Court rulings

In the recent judgement *U.Ramanjaneyulu vs The State of Andhra Pradesh (2019)*, the High Court of Andhra Pradesh pointed out that the actions under Section 145 CrPC are not maintainable if the issue involving the same subject property was either already resolved by a Civil Court or was already pending in that court. If civil litigation is ongoing in this situation, the Executive Magistrate shall instruct the parties to seek the necessary instructions from the relevant Civil Court. Similar to that, if the Civil Court has already decided the issue involving the same property, the Sub-Divisional Magistrate must instruct the parties to carefully abide by its ruling.

The Punjab and Haryana High Court ruled in a significant judgement (*Kuldip Singh vs State of Haryana, 2019*) that will change the way provisions of the Code of Criminal Procedure are used to interfere with a party's control over land in the event of a dispute. Proceeding under Section 145 cannot be used as a tool to obtain possession of the land on the basis of title. "*The parties should have been moved to the civil court where a lawsuit is already proceeding, according to the executive Magistrate. A tool to obtain control of the land on the basis of title cannot be used in the procedures under Section 145 of the Code*" Justice Kshetarpal added.

In *Mohd Shakir Vs State of Uttar Pradesh (2022)*, the Magistrate made observations and gave instructions regarding the rights of possession that one party possessed, and then urged the other party to refrain from interfering with the property under consideration. An issue was raised that whether the Magistrate's Court can make findings, observations, and interim orders while the Section 145 CrPC case is still pending in the civil courts. The Court stated that when all legal proceedings on a subject are dropped due to continuing proceedings on the same matter in civil courts, the Magistrate cannot make any further remarks or draw any conclusion based on the findings obtained.

There is a strange case where an F.I.R. is lodged in Crime 45 of 2020 under [Section 107 CrPC](#). The case name is *Bandi Parushuramudu v/s The State of Andhra Pradesh, (2021)*. This criminal petition under Section 482 of the Code of Criminal Procedure, 1973 was submitted in an attempt to quash the F.I.R. in Crime No. 45 of 2020, which was registered under Section 107 of the CrPC. Justice Manavendranath Roy expressed outrage and questioned how the SHO could file an FIR under the above-mentioned Section while disobeying basic legal principles.

The procedures under Section 107 are not punitive in nature and are purely preventive, according to Justice Roy. As it is not an offence for which an FIR is to be registered, he added, it is not required by law that an FIR be registered in order to begin proceedings under the provisions.

Conclusion

We have seen in real life various issues related to the possession of property. Section 145 is implemented in real life when there is a dispute over an immovable property and the dispute is such that it may likely cause a breach of peace. Then, in order to prevent the disturbance and breach of peace, this power is given to the magistrate to resolve the issue of the right of possession. Now the question arises how and when this Section is used and why it was included, as we all know, a civil dispute is handled by a civil court. This provision was essentially added because immediate action is required in this situation. However civil courts take years to resolve a dispute related to property. So, in order to prevent breach of peace and if there is a need to take immediate action, this power is given to the Magistrate. Its purpose is to determine who was in possession of the property either on the day a breach was likely to occur or, in cases where one party has been illegally and violently removed from the property, within two months of that date. Since the Magistrate is solely interested in the issue of real possession, he must resolve the issue of the right to possession.

Frequently Asked Questions (FAQs)

What is the object of enactment of Section 145 of CrPC?

Section 145 of the CrPC was enacted in order to prevent public disturbances and ensure that no party gains an advantage over another by making the other party prove his ownership in civil court. When there is a severe risk of a breach of the peace and the opposing parties are not in real possession of the property at the time of the preliminary order but have legitimate rights to succeed to it, Section 145 of the Criminal Procedure Code may be utilised.

Is the likelihood of a breach of peace essential for a proceeding u/s 145 of CrPC?

An action under Section 145 of the Criminal Procedure Code requires the Magistrate to be convinced that there is a probability of a breach of the peace, either by a police report or other information; the mere existence of a land dispute is insufficient to grant him

jurisdiction. The purpose of Section 145 was to allow the Magistrate to prevent a breach of the peace. He must also make the fact that a breach of the peace may occur a concern in his proceedings, and he must notify the parties that he is acting in accordance with Section 145 of the Criminal Procedure.

What is the preliminary order and what is the final order?

The preliminary order starts the legal machinery in action. The final order identifies which party is in possession, specifies that they will remain there until evicted by civil court order, and prevents any interference with their possession. The same Magistrate issues both preliminary and final orders. Preliminary and final orders are issued in the execution of the Magistrate's authority under Section 145 of the CrPC. The final order is made under subsection (4) of Section 145 of the Criminal Procedure Code, whereas the preliminary order is made under subsection (1).

What is the difference between the exercise of power under Section 107 and Section 145 CrPC?

The exercise of power under Section 145 of the Criminal Procedure Code is mandatory. In contrast to Section 145 CrPC, which deals with a specific situation where a dispute is allegedly present that is likely to result in a breach of the peace, among other things, involving immovable property, Section 107 does deal with the prevention of breach of peace, but it does so in a very general manner. In this opinion, Section 145 CrPC, which is of a particular nature, would apply to a matter involving a dispute over ownership of immovable property rather than Section 107 CrPC.

What is the difference between the exercise of power under Section 112 and Section 145 CrPC?

The nature of procedures under Ch. XI pertains to the avoidance of nuisance or apprehended danger and has the smack of being of a civil nature. In contrast, Section 112 CrPC. refers to security for preserving peace and for good behaviour, which in fact impacts a person's liberty and smacks of being punitive. The former concerns the detention of a person, whereas the latter concerns the attachment of property.

References

- <https://indiankanoon.org/doc/1405190/>
- <https://www.livelaw.in/news-updates/andhra-pradesh-high-court-section-145-crpc-simultaneous-civil-proceedings-land-dispute-abuse-of-process-197877>
- <https://main.sci.gov.in/jonew/judis/14006.pdf>
- <https://legislative.gov.in/sites/default/files/A1974-02.pdf>
- <http://www.casemine.com>

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