

Public Order and Tranquility

(Sec-129 to 148)

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For the smooth and proper functioning of society and for the citizens to enjoy their liberty peacefully and with free state of mind the enforcement of law and order is the duty and function of the police and legal system. Chapter X of the CrPC deals with Maintenance of Public Order and Tranquility

UNLAWFUL ASSEMBLY

An unlawful assembly is a group of five or more than five persons that have a common object and engages in illegal acts such as compelling a person to do an unlawful act.

Section 129: Use of civil force for dispersal of an assembly

The order to disperse any assembly that is an unlawful one and likely to cause disturbance to the public peace may be issued by-

- Any executive Magistrate
- Officer in charge of a police station or,
- Any police officer who is a sub-inspector or above the rank of sub-inspector in the absence of such officer in charge

After this order is issued ,it is the duty of the members of the assembly to whom such notice is issued to disperse accordingly. However, in case the assembly does not comply with the order and does not disperse then any Executive Magistrate or officer-in-charge of a police station or in absence of the officer-in-charge by a police officer, not below the rank of sub-inspector as

empowered under section 129 may use force in order to disperse such unlawful assembly. If necessary, even if a person is not an officer of armed force but acting as one, may arrest or confine the members of such unlawful assembly for subsequent punishing according to the law.

Section 130: Use of armed forces to disperse the assembly

When an unlawful assembly cannot be dispersed by any other means, and when it is necessary for the public security that such assembly should be dispersed, it can be dispersed with the help of armed forces by the order of Executive Magistrate of the highest rank present.

Such Magistrate may order any officer in command of any group of persons belonging to the armed forces to take the help of armed forces under his command to disperse the assembly. He is also empowered to arrest or confine the members of such assembly in order to maintain public security in accordance with the orders of the Magistrate. He has also the power to have them punished according to law.

The above requirement shall be obeyed by every officer of the armed forces empowered under this section in such manner as he thinks fit. While following the orders and taking any step to maintain public security, he shall use as little force with the objective of maintenance of public order.

Section 131: Powers of certain armed force officers to disperse the assembly

Where the officers of armed force are not in a position to communicate with the Executive Magistrate and it is important for the armed forces to maintain peace and order caused by the unlawful assembly and they cannot wait for the orders from the Executive Magistrate, they shall proceed to deploy force to disperse such assembly. However, during this time, if it becomes viable and possible for them to establish communication with the Magistrate they shall do so and act as per the orders by the Executive Magistrate.

Section 132: Protection against prosecution for acts done under preceeding sections

No prosecution shall be instituted in any Criminal Court against any person for any act purporting to be done under section 129, section 130 or section 131, except in the case where the central or state government sanctions the same. Since the officers, the Executive Magistrate, members of armed forces, and other officers were acting in good faith and as per the compliance with the sections as a part of their duty, they ought to be provided protection by the law. In case they fail they shall not be provided protection under section 132.

PUBLIC NUISANCES:

Section 133: Conditional Order for removal of nuisance

Section 133 provides for the passing of conditional order by any District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate in case of public nuisance caused by any of the things as specified below:

- **The unlawful obstruction** or nuisance to any public place or to any way, river or channel lawfully used by the public.
- The conduct of any trade or occupation or keeping of any goods or merchandise which is/can be injurious to the health or physical comfort of the community.
- The construction of any building, or disposal of any substance, as it is likely to occasion or explosion.
- A building, tent, or structure, or a tree as it is likely to cause damage or injury to a person.
- An unfenced tank, well or excavation near a public place or way.
- A dangerous animal that requires confinement, destruction, or disposal.

The conditional order must specify the time period in which the nuisance or obstruction is to be removed or resolved. The conditional order can be passed

- to remove the obstruction or nuisance, or
- to abstain from carrying on such trade, or
- to remove or regulate as ordered such goods or merchandise causing a nuisance, or
- to remove, repair or support such building, to confine or dispose of such dangerous animal in the manner prescribed in the order.

While instituting a criminal proceeding under section 133 there is no bar to institute a civil suit.

Section 134 and 135 of the CrPC provide for service or notification of order issued to the person for causing nuisance and to obey the order or show cause against the order issued respectively.

Section 136: Consequences of failing to obey such order

If the person against whom the order is issued fails to perform such act or appear and show cause, he is liable to the penalty prescribed under section 188 of the Indian Penal Code, i.e., Disobedience to order duly promulgated by a public servant.

Section 137: Procedure where existence of public right is denied.

The party against whom a provisional order is made shall appear before the magistrate, and deny the existence of the public right in question.

The party shall produce some reliable evidence admissible in the court, and support his denial of public right in question.

If the party fails to deny the existence of public right or fails to adduce the reliable evidence in

support thereof, he shall not in any subsequent proceedings be permitted to make any such denial

Section 138: Procedure where he appears to show cause

- The magistrate shall take evidence as in summoning cases when the person against whom the order is passed under section 133 of the Code of Criminal Procedure appears and show cause against the order.
- If the magistrate is satisfied, the order shall be made absolute with or without modification if the order either is reasonable and proper
- If the magistrate is not satisfied, further proceedings shall not be taken in the case.

139. Power of Magistrate to direct local investigation and examination of an expert. The Magistrate may, for the purposes of an inquiry under section 137 or section 138-

- (a) direct a local investigation to be made by such person as he thinks fit; or
- (b) summon and examine an expert.

140. Power of Magistrate to furnish written instructions, etc.

(1) Where the Magistrate directs a local investigation by any person under section 139, the Magistrate may-

- (a) furnish such person with such written instructions as may seem necessary for his guidance;
- (b) declare by whom the whole or any part of the necessary expenses of the local investigation shall be paid.

(2) The report of such person may be read as evidence in the case.

(3) Where the Magistrate summons and examines an expert under section 139, the Magistrate may direct by whom the costs of such summoning and examination shall be paid.

Section 141 lays down the procedure to issue an absolute order directing him to perform order within the time fixed in the notice. In case if the act is not performed, the magistrate can recover the cost of performing by the sale of immovable or any movable property.

Section 142 :Injunction pending inquiry: An injunction can be issued against whom the order is made by a magistrate under section 133 where immediate measure is required to prevent any imminent danger or serious injury.

Sec 143:Magistrate may prohibit repetition or continuance of public nuisance.

URGENT CASES OF NUISANCE OR APPREHENDED DANGER

144. Power to issue order in urgent cases of nuisance of apprehended danger.

(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

Sec 144 - A (Added by Criminal Law Amendment Act ,2005)

- The District Magistrate may, whenever he considers it necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by

public notice or by order, prohibit in any area within the local limits of his jurisdiction, the carrying of arms in any procession or the organising or holding of, or taking part in, any mass drill or mass training with arms in any public place.

- A public notice issued or an order made under this section may be directed to a particular person or to persons belonging to any community, party or organisation.
- No public notice issued or an order made under this section shall remain in force for more than three months from the date on which it is issued or made.
- The State Government may, if it considers necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by notification, direct that a public notice issued or order made by the District Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which such public notice or order was issued or made by the District Magistrate would have, but for such direction, expired, as it may specify in the said notification.
- The State Government may, subject to such control and directions as it may deem fit to impose, by general or special order, delegate its powers under Sub-Section (4) to the District Magistrate.

Disputes as to immovable property

145. Procedure where dispute concerning land or water is likely to cause breach of peace.

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute,

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute: Provided that if it

appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).

(5) Nothing in this section' shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under subsection (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub- section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub- section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub- section shall be served and published in the manner laid down in sub- section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of. such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale- proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

146. Power to attach subject of dispute and to appoint receiver.

(1) If the Magistrate at any time after making the order under sub- section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such

possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof: Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908);

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate-

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.

147. Dispute concerning right of use of land or water.

(1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims. Explanation.- The expression " land or water" has the meaning given to it in sub- section (2) of section 145.

(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such, evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right: Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub- section (1) of the report of a police officer or other

information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such a seasons or on the last of such occasions before such receipt.

(4) When in any proceedings commenced under sub- section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under subsection (1); and when in any proceedings commenced under sub- section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub- section (1) of section 145.

148. Local inquiry.

(1) Whenever a local inquiry is necessary for the purposes of section 145, section 146 or section 147, a District Magistrate or Sub- divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under section 145, section 146, or section 147, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and of pleaders' fees, which the Court may consider reasonable.