

# MODULE - I

## Introduction to Law & Magistracy

- Definition of State
- Theory of separation of powers
- Constitutional Status of the theory in India
- Definition of Law
- Types of Law
- Administration of Criminal Justice

# Definition of State

## Ingredients of State:

- Territory
- Population
- Sovereignty
- Government

# Organs of State

- i. Legislature
- ii. Judiciary
- iii. Executive

# Theory of Separation of Powers:

- i. The Legislature, the Judiciary and the Executive shall be independent of each other
- ii. No organ of a state shall encroach upon the sphere of activity of the other organ
- iii. There shall be checks and balances in the form of judicial review

## Constitutional status of the theory:

- Fully rejected in United Kingdom
- Accepted in France
- Fully accepted in United States of America
- Partly incorporated in the Constitution of India

- Rule of Law replaces separation of powers theory in United Kingdom
- Concept of Parliamentary sovereignty in U.K.
- Indian Constitution an amalgam of both Rule of Law and Separation of Powers
- Article 14, 15 and 16 of the Constitution of India incorporate Rule of Law
- The Union Ministers and State Ministers combine the functions of Legislature and Executive
- Directive Principles of State Policy – Article 50  
Separation of judiciary from executive in the Public Services

## Definition of Law

- Salmond – “ The Law may be defined as the body of Principles recognized and applied by the State in the administration of Justice. In other words, the law consists of rules recognized and acted on by Courts of Justice”
- Holland – “ Law is a general rule of external human action enforced by a sovereign political authority”
- Austin – “ Law is a command of the sovereign”
- Oxford Dictionary – “ The body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognizes as binding upon its members or subjects”

# Types of Law:

## Public Law:

- i. Constitutional Law
- ii. Admn Law
- iii. Criminal Law

## Private Law:

- i. Law of persons
- ii. Law of property
- iii. Law of obligations
  - a) Contract
  - b) Quasi-Contract
  - c) Tort
- iv. Substantive Law vs. procedural Law

## Administration of Criminal Justice:

- The Law of criminal procedure is intended to provide a mechanism for the enforcement of criminal law. Without proper procedural law, the substantive criminal law which defines offences and provides punishments for them, would be almost worthless

## Mechanism of Criminal Justice:

- Territorial Divisions
- Classification of offences
  - a) Cognizable vs. non-cognizable
  - b) Bailable non-bailable

## Types of Criminal Cases:

- i. Warrant case
- ii. Summons case
- iii. Summary trial case

## Main functionaries:

- i. Police
- ii. Prosecutors
- iii. Defence Counsel
- iv. Magistrates and Judges of Higher Courts
- v. Prison authorities / Correctional Services

## Segments of Criminal Procedure:

- i. Pre-trial procedures—  
Information regarding commission of offences; Arrests; Examination of persons; Search and Seizure; and similar other aspects of investigative process
- ii. Jurisdiction of Police and Courts in respect of investigation and trial of offences
- iii. Bail

iv. Trial procedures—

Cognizance of offences; Initiation of proceedings; Attributes of fair trial and other general provisions regarding trials; Charge; Types of trials; Judgement

v. Review Procedures –

Reference; Appeal; Revision; exercise of inherent powers of High Court.

vi. Execution of the final decision of the Court  
Other areas covered by code

a) Prevention of offences

b) Maintenance of wives, children and parents

c) Public nuisance

# The Courts

- The Supreme Court
- The High Court
- Court of Session
- Court of Judicial Magistrate
- Courts of Metropolitan Magistrates
- Special Judicial or Metropolitan Magistrates
- Courts of Executive Magistrates
- Courts of Special Executive Magistrates

- The Executive Magistracy:
- The Hierarchy:
  - i. The District Magistrates
  - ii. The Addl. District Magistrates
  - iii. The Sub-Divisional Magistrates
  - iv. The Executive Magistrates  
(Tahasildars)
  - v. The Special Executive Magistrates (for  
Metropolitan Cities / State Capitals)

- The Features of the Executive Magistracy:
  - i. Territory unlimited unless defined
  - ii. All have equal powers – Class less
  - iii. Independence
  - iv. Power of superintendence - Administrative control
  - v. Judicial superintendence – Power of review and revision lies with sessions judge / Chief Judicial Magistrate
  - vi. Sub-ordination to High Court and Sessions Courts

## Powers of Executive Magistrates:

- Power of arrest u/s 44 Cr.P.C.
- Power to compel appearance u/s 61 Cr.P.C.
- Power to compel production of documents or things u/s 91 Cr.P.C.
- Power of search and seizure u/s 93-105 Cr.P.C.
- Power of contempt u/s 345 Cr.P.C.
- Power of personal inspection u/s 310 Cr.P.C.

- Power demand security u/s 107-110.
- Power to disperse unlawful assemblies (using Civil Force u/s 129 Cr.P.C. or u/s 130 Cr.P.C. Armed Force)
- Power to order removal of public nuisance u/s 133 Cr.P.C.
- Power to issue order in urgent cases of nuisance or apprehended danger u/s 144 Cr.P.C.
- Power to intervene in a dispute concerning land or water – likely to cause breach of peace u/s 145 Cr.P.C.

- Power to attach subject of dispute u/s 146 Cr.P.C.
- Power to enforce warrants of outside Courts u/s 79 Cr.P.C.
- Endorcement of warrants by the Executive Magistrate u/s 79 Cr.P.C.
- Power of remand for not exceeding 7 days u/s 167 of Cr.P.C.
- Power to hold inquest u/s 174 (1)
- Power of enquiry into the cause of death u/s 176 Cr.P.C.

### Incidental powers:

- Taking and recording evidence in inquiries u/s 254 Cr.P.C.
- Disposal of property pending inquiry and at the conclusion of the inquiry u/s 451-459 Cr.P.C.
- Forfeiture of bonds furnished to the Executive Magistrates u/s 446 Cr.P.C.
- Issuing commission for examination of witness u/s 284 Cr.P.C.

- Holding local inspection u/s 310 Cr.P.C.
- Discharge of sureties u/s 444 Cr.P.C.
- Punishing for criminal contempt of court in view or in the face of the court u/s 345 Cr.P.C.

#### Power to attest Affidavit.

- Affidavit to be used before any court under the Cr.P.C. may be sworn or affirmed before and Executive Magistrate u/s 297 Cr.P.C.

## Presumptions as to Guilt

- “Innocent – Until – Proved – Guilty”: the Accusatorial Procedure.
- “Guilty – Until – Proved – Innocent”: The Inquisitorial Procedure.
- Accusatorial Procedure followed in U.K., U.S. and India, among others.
- Inquisitorial Procedure followed in France.

# MODULE - II

## Security Proceedings – The main domain of the Executive Magistrates

Security for keeping the peace.

- From a convicted person u/s 106 Cr.P.C.
- In other cases – When an Executive Magistrate receives information that any person is likely to-
  - i. Commit a breach of the peace, or
  - ii. Disturb the public tranquility, or
  - iii. Do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility.

- He may initiate proceedings u/s 107-110.
- There must be application of mind by the Magistrate. Non-application of mind fatal to the proceedings.
- The period of bond is one year.
- It may be with or without sureties – discretion of the Magistrate.
- The afore noted proceedings are covered by Section 107 Cr.P.C.

# Security for good behaviour Section 108-110 Cr.P.C.

- From persons disseminating seditious matters u/s 108.
- From suspected criminals u/s 109.
- From habitual offenders u/s 110.

# Proceedings against persons disseminating seditious matters.

- Authority – A Judicial Magistrate / Executive Magistrate (on special power conferred by the State Government u/s 478 Cr. P.C.)
- Procedure – Receipt of information that there is a person in his jurisdiction who --

- i. Intentionally disseminates or attempts to disseminate or abets the dissemination of:
  - a) Any matter the publication of which is punishable under Section 124-A (sedition), or Section 153-A (Promoting enmity between classes etc.) or Section 153-B (assertions prejudicial to national integration etc.) or Section 295-A (insulting the religious beliefs of any class) of the Penal Code, or
  - b) Any matter concerning a judge which amounts to criminal intimidation or defamation under the Penal Code.

- ii. Makes, produces, publishes or in any other matter puts into circulation any obscene matter such as referred to in Section 292 of the Penal Code,
  - The Magistrate should be of opinion that there is sufficient ground of proceeding.
  - He may require such person to show cause.
  - Why he should not be ordered to execute a bond (with or w/o surities).
  - For a fixed period not exceeding one year.

- Exception – Press and Registration of Books Act, 1867 -- The Editor, Proprietor, Printer or Publisher of any publication except with the sanction of the Government.
- 108 (i) – dissemination must be intentional.
- 108 (ii) – is not required to be intentional.

# Proceedings against suspected criminals u/s 109 Cr. P.C.

- When an Executive Magistrate receives information that --
  - i. There is within his local jurisdiction a person taking precaution to conceal his presence, and
  - ii. There is reason to believe that he is doing so with a view to committing a cognizable offence.
- The Magistrate may require such person
- To show cause why he should not be ordered to execute a bond with or without sureties
- For his good behaviour
- For a period not exceeding one year.

# Proceedings against habitual offenders – Section 110 Cr. P.C.

- Classification of offenders as per Police Manual.
  - a. Dossier criminal
  - b. Rowdy Sheeter
  - c. Known depredator (K.D.)
  - d. Habitual Offender

# Habitual Offenders.

- When an Executive Magistrate receives information that there is a person who -
  - a. Is by habit a robber, house-breaker, thief, or forger, or
  - b. Is by habit a receiver of stolen property knowing the same to have been stolen, or
  - c. Habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

- d. Habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII.
- e. Habitually commits or attempts to commit or abets the commission of offences involving a breach of the peace, or
- f. Habitually commits or attempts to commit or abets the commission of --

- i. Any offence under one or more of the following Acts, namely – the Drug and Cosmetics Act, 1940, the Foreign Exchange Regulation Act, 1973, the Employees Provident Funds and Family Pension Fund Act, 1952, the Prevention of Food Adulteration Act, 1954 the Essential Commodities Act, 1955, the Protection of Civil Rights Act, 1955, the Customs Act, 1962; or
- ii. Any offence punishable under any other law providing for the prevention of the hoarding or profiteering or of adulteration of food or drugs or of corruption, or

- g. Is so desperate and dangerous as to render his being at large without security hazardous to the community.
- The Magistrate may require such person to show cause –
- Why he should not be ordered to execute a bond with sureties for his good behaviour.
- For a fixed period not exceeding 3 years.

# Preliminary procedure for initiating action under Section 107-110 Cr.P.C.

- Order requiring the respondent to show cause must be in writing.
  - a. Setting forth the substance of information received.
  - b. The amount of the bond.
  - c. The term for which it is to be in force.
  - d. Number, Character and Class of sureties.
  - e. Failure to comply with the requirements vitiates the preliminary order.

# Communication of the Order

- If the person present in the Court – it is read over to him.
- Person not present in Court – A summons shall issue.
- Person in Custody – A warrant directing the Custodial Officer to bring him before the Court.
- If it appears to the Court that there is reason to fear Commission of a breach of peace which cannot be prevented otherwise than by the immediate arrest of such person.

- The Magistrate may issue a warrant for his arrest – Section 113 of Cr.P.C.
- The substance of the information shall be recorded by the Magistrate.
- Summons or Warrant u/s 113 of Cr.P.C. shall be accompanied by a copy of the order made u/s 111.
- And such copy shall be delivered by the officer concerned to the person proceeded against.

# Personal attendance can be dispensed with u/s 115

- The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause and may permit him to appear by a pleader.

# Inquiry as to truth of information

- After the order u/s 111 has been served, read or explained the Magistrate shall proceed to inquire into the truth of the information upon which action taken.
- And to take such further evidence as may appear necessary u/s 116 (i).
- Manner of inquiry – Such inquiry shall be made, as nearly as may be practicable in the manner prescribed for conducting trial and recording evidence in summons cases u/s 116(ii).

- Interim bond – The Magistrate may direct the person to execute a bond until the conclusion of the enquiry.
- May detain him in custody until such bond is executed.
- Or in default of the execution until the inquiry is concluded.
- Interim bond applies to cases under 108,109 or 110 not u/s 107.
- The amount of bond or the no. of sureties shall not be more onerous than those specified in order u/s 111.

- If two or more persons are associated together in the matter under inquiry they may be dealt with in the same or separate inquiries as the Magistrate thinks fit (116-(5).
- Time for completion of inquiry – 6 months from the date of order u/s 111.
- The Magistrate may extend the period by another 6 months for special reasons to be recorded in writing.

- If a person is kept in detention pending inquiry the proceedings against him shall stand terminated on the expiry of 6 months (116-(6).
- The order of extension can be challenged before the Sessions Judge (116-(7).
- The power of extension shall be exercised before expiry of 6 months.
- The date of commencement of inquiry is the date the opposite party challenges the allegation.

## Result of the Inquiry

- Order to give security – If the case is proved the Magistrate shall order the respondent to execute a bond for the amount shown in the order u/s 111 and for the period specified therein.
- The amount of security shall be fixed with due regard to the circumstances of the case and shall not be excessive.
- If the respondent is a minor the bond shall be executed only by his sureties.

# Discharge

- If the case is not proved the Magistrate shall make an entry on the record.
- If the person is in custody only for the purpose of inquiry he shall be released.
- If not in custody he shall be discharged.
- Events subsequent to the passing of the preliminary orders shall be taken into account while reaching the decision of discharge.

# Contents of bond and its commencement

- A person ordered to execute a bond shall be bound to keep the peace or to be a good behaviour and should he make any attempt to commit or abet the commission of any offense punishable with imprisonment it shall be breach of the bond u/s 120.
- The bonds may be furnished in the Forms No:12 or 13 as the case may be, prescribed in the second schedule.

- Commencement of period of security – If the person ordered to execute the bond is undergoing a sentence of imprisonment the period for which such security is required shall commence on the expiration of such sentence.
- In other cases, such period shall commence on the date of the order unless the Magistrate for sufficient reasons fixes a later date (u/s 119)

# Power to reject Sureties

- A Magistrate may refuse to accept nay surety offered or may reject any surety previously accepted on the ground that such surety is an unfit person for the purposes of the bond.
- Such rejection may be only on an inquiry on oath in to the fitness of such surety (121 (i))
- Before inquiry a reasonable notice shall be given to the surety and to the person by whom the surety was offered.

- In making the inquiry the substance of the evidence adduced before him shall be recorded (121 (ii))
- The Magistrate on being satisfied about the surety being an unfit person, he shall reject the surety after recording reasons (121(iii)).

# Imprisonment in default of security

- If a person required to give security does not give such security he shall be committed to prison.
- If already in prison, be detained in prison until such security period expires or until he gives the security (121 (i) (a))
- Breach of bond after security-If a person, after having executed a bond without sureties is proved to have committed breach of the bond, the Magistrate, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond.

- Such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable (122 (i) (b)).
- Failure to give security for more than a year
  - The Magistrate shall issue a warrant directing him to be detained in prison and shall lay the proceedings before the Sessions Judge.
  - The period of detention shall be until conclusion of the proceedings before the Sessions Judge.

- This period shall not exceed three years.
- The period also shall not exceed the period mentioned in the original order.
- If the Security is tendered to the Officer In-charge of the Jail, the same shall be referred to the Magistrate for orders (122 (6))
- The imprisonment shall be simple in case of section 107 but it shall be rigorous or simple u/s 109 or 110 as directed by the Magistrate.

# Power to release persons imprisoned for failing to give security

- The District Magistrate may discharge any person imprisoned for failing to give security if, in his opinion, such a person may be released without hazard to the community or to any other person (123(i)).
- The order of discharge may be conditional. The conditions shall cease to be operative on the expiry of the security period (123(3)).
- The State Government may prescribe conditions upon which a conditional discharge may be made (123(4)).

- The discharge order may be cancelled if the conditions are not fulfilled (123(5)).
- On such cancellation the person may be arrested without warrant by the Police and shall be produce before the concerning District Magistrate. (123(6)).
- The District Magistrate may then remand such person to prison to undergo the unexpired portion of the security period 123(7).
- On being so remanded he shall be released at any time on giving security in accordance with the terms of the original order (123(8)).

- Power of Higher Courts – The High Court or Court of Session may, for sufficient reasons to be recorded in writing, cancel any bond executed by any order made by an Exe. Magistrate (123 (9)).
- The District Magistrate may make such cancellation of the bond where such bond was executed under the order of the Magistrate in the District (123(9))
- Any surety may apply to the Court to cancel the bond and the Court shall then issue a summons or Warrant, requiring the person for whom such surety is bound to appear or to be brought before it (123(10)).

# Security for un-expired period of the bond

- When a magistrate rejects a previously accepted surety under Section 121(3) or when a surety applies for his discharge under Section 123(10) above, and the person who had executed a bond appears or is brought before the magistrate or court (in pursuance of the issue of a summons or a warrant), the magistrate or the court shall cancel the bond and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security (124).

# Appeals

- Any person –
  - i. Who has been ordered u/s 117 to give security for keeping the peace or for good behaviour, or
  - ii. Who is aggrieved by any order refusing to accept or rejecting a surety order to the court of session (u/s373). However, this provision (Sec.373) shall not apply to persons against whom the proceedings are laid before a Sessions Judge in accordance with the provisions of Section 122(2) or (4).

# The Nitty Gritty

- The cognizance can be taken either on a police report or on a complaint by any person or suo motto.
- On a police report, the following endorsement shall be made by the Magistrate himself:  
“I have gone through the Police Report. I am satisfied there is a prima facie case. Issue Summons and call on \_\_\_\_\_ date”.

- The order u/s 111 must reveal application of mind and basis of satisfaction of the Magistrate to proceed further. Non application of mind or non disclosure of the grounds of satisfaction shall render the proceedings void.
- The High Court may interfere u/s 482 Cr, P.C. or the Sessions Court may hear an appeal u/s 373.
- The person proceeded against shall not be called an accused. He is a respondent.

# Registers to be maintained

- i. Criminal Register No:6 – M.C.No. is allotted to each case filed u/s 107, 109,110,145 etc.
- ii. Criminal Register No:11- It is a diary containing the true copy of docket.
- iii. Criminal Register No:12 – Court fee, Process fee received.
- iv. Criminal Register No:12-A – Process Register.
- v. Criminal Register No:13 – Hearing Book.
- vi. Criminal Register No:13-A – Judgment Register.

# Record of the Proceedings

- The docket – Its nothing but a record of the minutes of whatever happened on each day of hearing.
- Interim orders can be passed on the docket followed by full documentation.
- Warrant of commission-It is a format of an order committing a person to prison for his failure to render security or interim security. It must sealed and signed by the Magistrate. It is addressed to the Superintendent of the Jail within the territorial limits of the Court. It should specify the period for which the person is committed to prison.

# Judgment

- Format of the judgment must be carefully drawn.
- It shall indicate the name of the Court and the officer present on the top of the page.
- It shall also indicate the case number and the year of the case.
- It also arrays the parties to the case. e.g., Inspector of Police \_\_\_\_\_, P.S. \_\_\_\_\_ Complainant  
\_\_\_\_\_

Vs.

- X,Y,Z. Respondent \_\_\_\_\_
- It also shows whether it is an order or judgment. It contains a preamble followed by issues framed by the Magistrate.

- Issues are followed by analysis of evidence furnished by both the parties followed by determination of the issues in the light of evidence.
- After determination of issues conclusion of the Magistrate is recorded convicting or acquitting the respondent.
- It is followed by an order which is the operative part of the judgement.
- It is followed by a testimonium indicating the date and time of the judgement
- Finally it is signed and sealed by the Magistrate

# Dispersal of unlawful Assemblies

- Use of Civil force – by any
  - i. Executive magistrate or
  - ii. Officer in-charge of a police station or
  - iii. In absence of above any police officer not below the rank of a sub-inspector may command to disperse.
    - a) Any unlawful assembly or
    - b) Any assembly of five or more persons likely to cause a disturbance of the peace.
    - c) It shall be the duty of the members of such assembly to disperse (S-129(1))

- d) If such assembly does not disperse despite an order the Executive Magistrate or Police Officer may proceed to disperse by force.
- e) And may require the assistance of any male person for the purpose (S-129(2))

### **Use of Armed forces:**

- a) If such assembly cannot be otherwise dispersed.
- b) And if it is necessary for the public security that it should be dispersed.
- c) The highest executive magistrate present may cause it to be dispersed by the Armed Forces (S-131)

- d) Such Magistrate may require any officer in command of the Armed Forces to disperse the assembly with the help of the Armed forces and
- e) To arrest and confine such persons forming part of such assembly (S-130(2))
- f) Every such officer of the Armed forces shall obeys such requisition in such manner as he thinks fit.
- g) But shall use as little force and do as little injury to person and property as may be consistent with dispersing the assembly and arresting such persons (S-130(3))

# **Power of Armed force Officers in the absence of Magistrate**

- When the public security is manifestly endangered by such assembly and no executive magistrate can be communicated with, any commissioned or gazetted officer of the armed forces may disperse such assembly with the help of the armed forces under his command, and make arrest and confine any persons forming part of it in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this provision, it becomes practicable for him to communicate with an executive magistrate, he shall do so, and shall thence forward obey the instructions of the magistrate (S-131)

# Protection against Prosecution for acts done for dispersal of assemblies

- Acts done under Section 129-131 shall not be deemed to tantamount to commission of any kind of offence even though it may result in death of one or more persons.
- No prosecution against any person for any act purporting to be done under Section 129-131 shall be instituted in any criminal court except —
  - a) With the sanction of the Central Government where such person is an officer or member of the armed forces.
  - b) With the sanction of the State Government in any other case (S-132(1))

# Removal of Public Nuisance

## S-133 Cr.P.C.

- Definition of public nuisance –  
S-268 I.P.C. in order to constitute a public nuisance, the injury, danger or annoyance must be caused to the public, or to the people in the vicinity or to persons who may have occasion to exercise any public right.
- Conditional order.
- Authorities competent: A District Magistrate / Sub-Divisional Magistrate / or any other Executive Magistrate specially empowered by the State Government.

## ➤ Basis of conditional order:

i. A police officer's report.

ii. Other information.

iii. Taking such evidence as he thinks fit

➤ The Magistrate may make a conditional order requiring the person causing public nuisance to remove it within a time fixed or to

➤ Appear before him or

- Some other Executive Magistrate sub-ordinate to him – if he has any objection to the order. This order applies to
  - i. Obstruction or nuisance at a public place lawfully used by the public.
  - ii. Conduct any trade or occupation, or the keeping of any goods or merchandise injurious to the health or physical comfort of the community.
  - iii. The construction of any building or disposal of any substance likely to occasion conflagration or explosion.

- iv. Any building, tent or structure or any tree in a precarious condition, likely to fall and thereby cause injury to persons in the neighborhood.
- v. To tanks, wells or excavation adjacent to any public place or way that may cause danger to the public
- vi. To any dangerous animal.
  - No order under S-133 shall be called in question in any Civil Court.

## ➤ Service or Notification of Order:

- The order shall be served as if it were a summons or if it cannot be so served
- It shall be noticed by proclamation duly published on the place of dispute.
- And a copy thereof shall be stuck at such place as may be fittest or conveying the information to such person (S-134)

- Persons to obey the order of Show cause:
- The person against whom such an order is made shall —
  - a. Perform, within the time and in the manner specified in the order, the act directed thereby; or
  - b. Appear and show cause against the order (S-135)
- Consequences of his failing to do so – if such person does not perform such act or appear to show cause, he shall be punishable under S-188 I.P.C. and the order shall be made absolute (S-136)

# Procedure where existence of public right is denied

- If the existence of public right is denied the Magistrate shall inquire into the matter.
- If he finds evidence in support of such denial he shall stay the proceedings until the matter is decided by the Civil Court.
- If he finds evidence in support of public right he shall proceed further (S-137)

# Procedure where he appears to show cause

- If the person shows cause the Magistrate shall take evidence in the manner as in a summons case.
- If the Magistrate is satisfied that the order under S-133 is reasonable and proper he shall make it absolute.
- If he is not so satisfied no further proceedings shall be taken.

# Local investigation and expert evidence

- The Magistrate may for the purposes of any inquiry under S-137 to S-138:
  - a. Direct a local investigation to be made; or
  - b. Summon and examine an expert (S-139) Where the magistrate directs a local investigation by any persons 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 expenses of the local investigation shall be paid.

# Procedure on order being made absolute and consequences of disobedience

- The Magistrate shall give notice to the person.
- Shall require him to perform the act directed by the order within the time fixed in the notice.
- And inform him that, in case of disobedience he shall be liable to punishment u/s 188 I.P.C. (S-141(1)).

- If such act is not performed within the time the Magistrate may cause it to be performed and recover the costs from the person.
- By selling any building or goods or any other property removed by his order or
- Distress and sale of any other movable property of such person (S-141(2)).
- No suit shall lie in respect of anything done in good faith under the above provisions S-141(3).

# Injunction pending inquiry

- Pending disposal of the case, if immediate measures are necessary to prevent imminent danger to the public an injunction may be issued against the person (S-142(1)&(2).
- In default the Magistrate himself may use such means as are necessary to obviate such danger (S-142(2)&(2).
- No suit shall lie in respect of anything done in good faith by a Magistrate.
- Magistrate may prohibit repetition or continuance of public nuisance.

# Urgent Cases of Apprehended Danger of Nuisance

- If the Magistrate feels that an urgent direction is warranted to prevent:
  - i. Obstruction
  - ii. Annoyance
  - iii. Injury to any person lawfully employed
  - iv. Danger to human life health or safety
  - v. A riot
  - vi. An affray

- He may issue an order in writing directing any person to abstain from a certain act or to take certain order with respect to certain property in his possession.
- The gist of the action is the urgency of the situation.

This order must be of a temporary character that it should not become a perpetual injunction.

- This order may be directed to a particular individual, or to persons residing in a particular place or to the public generally when frequenting a particular area or place (S-144(3)).
- This order can be ex-parte in cases of emergency.
- It shall not remain in force for more than two months.
- The State Government may extend the time by a special order.

# Preventive measures in respect of land or water disputes

- Since disputes over land water often result in breach of the peace, violence and blood-shed, the Executive Magistrate have been empowered under Sections 145-148 to intervene at an incipient stage of such a dispute and to compel the disputants to have recourse to legal remedies.
- Section 145— Procedure where dispute concerning land or water is likely to cause breach of peace.

## ➤ If

- i. Upon a report of a police officer or
- ii. Other information.

An Executive Magistrate is satisfied that

- a. A dispute concerning any land or water or the boundaries thereof exists.
- b. Such disputes is likely to cause a breach of the peace –  
He shall make an order in writing requiring the parties concerned to the dispute.
  - i. To attend his court on a specified day and time.
  - ii. To put in written statements of their claims regarding the fact of actual possession of the subject of dispute

- While making such order he shall state the grounds for his satisfaction.
- A copy of the order shall be served upon the concerned persons like service of summons.
- One copy shall be published affixing it to some conspicuous place at or near the subject of dispute (S-145(3)).
- If the respondents show that no such dispute exists, the Magistrate after hearing, shall cancel his order (S-145(5)).

- In other cases he shall proceed with the inquiry.
- The point of determination shall be to decide whether any or which of the parties was, at the date of the order made by him, in possession of the subject of dispute (S-145(4)).
- If it appears that any party has been wrongfully and forcibly dispossessed within two months next before the date on which the report of a police officer or other information was received by him or
- After that date and before the date of his order under S-145(1).

- He may treat the parties so dispossessed as if that party had been in possession on the date of order.
- The inquiry is limited to the question of actual possession on the relevant date and is not concerned with the right to possess the subject of dispute.
- If the Magistrate decides that one of the parties was in possession of the said subject he shall issue an order declaring such party to be entitled to possession until evicted in due course of law.

- The order shall forbid all disturbance of such possession until such eviction.
- A similar order would also be passed in favour of a party who had been forcibly and wrongfully dispossessed and the possession shall be restored to that party.
- The order passed shall be served and published in the same manner as the initial order.

- Death of any party- The Magistrate may bring the Legal Representatives on record.
- If any crop or any other produce of the property is subject to speedy and natural decay he may make an order for the custody or the sale of such property and upon conclusion of the inquiry shall make order for the disposal of such property or the sale proceeds thereof (S-145(8))

# **Attachment of property in dispute** **and appointment of receiver**

- Attachment – After making a preliminary order u/s 145(1), if the Magistrate ---
- Considers the case to be one of emergency, or
- Decides that none of the parties was then in such possession as is referred to in Section 145, or
- 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 (Civil) has determined the rights of the parties thereto with regard to the person entitled to the possession thereof (S-146 (1))


- The decision of the Civil Court will be of no consequence to the proceedings u/s 145 and 146-- they operate at different levels.
- Though the Civil court has jurisdiction to restrain the Criminal Court it shall interfere only sparingly.

- The Supreme Court ordered that if a Civil Proceeding is pending no Criminal Court should initiate proceedings u/s 145. (1985 Cri. L.J. 752)
- Composite order can be drawn but both the orders should be separately drawn and
- The order under u/s 145 (1) must precede the one u/s 146 (1).

- Appointment of receiver: -- When a property is attached the Magistrate shall appoint a receiver.
- If any received subsequently appointed by any Civil Court the receiver appointed by the Magistrate shall handover the possession to the receiver appointed by the Civil Court.

## Prevention measures in respect of disputes concerning right of use of land or water S-147

- Section 147 has the same object as Section 145 but the nature of dispute u/s 145 is different from the one u/s 147. Section 145 applies to disputes about the possession of the land or water itself while Section 147 relates to disputes regarding rights of user of land or water.
- The mode of inquiry u/s 147 is same as u/s 145.
- The question of attachment u/s 147 does not arise.
- Where the subject matter of dispute is a ferry including the land & water upon which the right to ferry is exercised, the case comes properly u/s 145



THE END  
THANK YOU  
MAY I HAVE YOUR SUGGESTIONS  
PLEASE..