

164 Disputes relating to land

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- Judicial Proceeding

S. 384. Procedure in certain cases of contempt.

- (1) When any such offence as is described in section 210, section 213, section 214, section 215 or section 267 of the Bharatiya Nyaya Sanhita, 2023 is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender to be detained in custody, and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding one thousand rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

S.388. Imprisonment or committal of person refusing to answer or produce document.

- If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 384 or section 385.

S.385. Procedure where Court considers that case should not be dealt with under section 384.

- (1) If the Court in any case considers that a person accused of any of the offences referred to in section 384 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding Thousand rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 384, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.
- (2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.

S. 389. Summary procedure for punishment for non-attendance by a witness in obedience to summons.

- (1) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding five hundred rupees.
- (2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

- X owes money to Y. Unable to pay the debt by X even after the due date, Y forcibly takes possession of X's cow against X's will to pressure X into paying the debt. Which of the following statements MOST accurately describes the legal implications of Y's actions?
- Y has legal authority to seize X's property to recover the debt
- X has lost all legal rights over the cow due to the unpaid debt
- Y is guilty of theft for taking X's property without consent
- Y's actions constitute a civil dispute and do not involve any criminal offence

- Raghu works as a Manager at a hotel in Mussoorie. Using his savings and a loan, he purchased a plot for Rs. 38 lakhs in 2024 in Kushi Nagar, Dehradun. In February 2025, Sanjeev, an advocate, constructed a temporary building on this plot with asbestos cement roofing and rented it out to Ganesh, a lorry driver. Raghu discovered this unauthorized construction on June 9th and approached the SDM, Dehradun on June 10th, requesting that appropriate action be taken and justice be served. Can the SDM help Raghu?
- A disagreement between parties specifically about actual possession of the property.

Procedure in cases of disputes likely to cause
breach of peace (Section 164)

- (1) Whenever an Executive Magistrate is satisfied, based on a police report or other information, that a dispute exists concerning any land, water, or their boundaries within his jurisdiction, and that such dispute is likely to cause a breach of the peace, he shall issue a written order. This order shall state the grounds of his satisfaction and require the parties involved to appear before him, either in person or through an advocate, on a specified date and time. The parties shall also submit written statements of their respective claims regarding actual possession of the subject matter in dispute.

Object of s.164

- Section 164 is intended to provide **a speedy remedy** for the **prevention of a breach of peace**. This is used when the dispute arises out of a dispute relating to immovable property. It is done by determining and maintaining one or other of the parties in the possession - which the Magistrate finds was the position before the dispute arose. This is until the rights of the parties are determined by a Court of competent jurisdiction. The object is to maintain the public peace and not to decide the dispute between contending parties or adjudicate upon the rights of the parties to possession.
- **Possession is nine points of the law** (holding something is often considered a strong indicator of ownership)

Conditions for the application of s.164

- Before initiating a proceeding under s.164(1), the magistrate must be satisfied as to the existence of the following conditions:
 - a) There must be a **'dispute' relating to land or water or the boundaries thereof,** on the date **when he initiates the proceeding**
 - b) The Magistrate must be satisfied, from a police-report or other information, that **the dispute is likely to cause a breach of peace**
 - c) The land or water must be **situated within the jurisdiction of the Magistrate**
 - d) Once he is satisfied as to all the foregoing conditions, he is to pass a preliminary order under sub-sec. (1) and thereafter make an inquiry under sub-sec. (4) and pass a final order under sub-sec. (6), on the basis of that inquiry.
 - e) It is **not necessary that at the time of making the final order, the apprehension of breach of peace should continue.**

Power to restore possession of immovable property/ S.502

- **Section 502. Power to restore possession of immovable property.** (1) When a person is convicted of an offense by use of *criminal force, show of force, or criminal intimidation*, and it appears to the Court that, by such use of force, show of force, or intimidation, any person has been dispossessed of any immovable property, the Court may, if it considers fit, order that the possession of the same be restored to that person, after evicting by force, if necessary, any other person who may be in possession of the property. **Provided that no such order shall be made by the Court more than one month after the date of conviction.**

Section 166. Dispute Concerning the 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 is claimed as an easement or otherwise—he shall make an order in writing, stating the grounds of his satisfaction and requiring the parties concerned in such dispute to attend his court in person or by an advocate on a specified date and time, and to submit written statements of their respective claims.
- 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 the three months** immediately preceding the receipt, under subsection (1), of the report of a police officer or other information leading to the institution of the inquiry. Where the right is exercisable only **during particular seasons or on specific occasions, an order shall not be made unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.**

Section 167. Local Inquiry

- (1) Whenever a local inquiry is necessary for the purposes of section 164, section 165, or section 166, 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. The Magistrate may also 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.

- What is the central purpose of Section 164 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) for an Executive Magistrate?
- (a) Settling disputes between two or more parties regarding immovable property
- (b) Resolving disputes over immovable property between individuals
- (c) Addressing disputes about possession or boundaries of land or water within their jurisdiction
- (d) Preventing breaches of peace and maintaining public order and tranquility

- When there is a dispute over possession of land or water under the Bharatiya Nagarik Suraksha Sanhita (BNSS), which of the following statements is/are correct?
- (a) The Sub-Divisional Magistrate's court and a Civil Judge's court have fundamentally overlapping jurisdiction in these matters.
- (b) Due to slow proceedings in civil courts, it is preferable to file immovable property disputes in the SDM's court.
- (c) Sometimes, a dispute over immovable property between the same parties may be ongoing in both the SDM's court and a Civil Judge's court, and the principle of res judicata does not necessarily apply.
- (d) Both options (a) and (b)

- Explanation:
- C (Correct Answer)
- The SDM's jurisdiction under BNSS is preventive and focused on maintaining public order, not on deciding title or permanent possession, which remains with civil courts. Thus, proceedings can occur in both forums without violating res judicata, and the SDM's court is not on par with a civil court in hierarchy.

- Regarding disputes over immovable property, which of the following statements inaccurately describe the jurisdiction and relationship between Executive Magistrate courts and Civil Courts under the Bharatiya Nagarik Suraksha Sanhita (BNSS)?

(a) There is no bar to initiating criminal proceedings under Section 164 BNSS for the same disputed immovable property even if civil proceedings are already pending.

(b) An Executive Magistrate acting under Section 164 must respect decisions and even interim injunctions granted by the Civil Court.

(c) A Civil Judge deciding a dispute over immovable property is bound by the findings or decision of the Executive Magistrate under Section 164 regarding possession.

(d) If the Civil Court has not determined which party is in actual physical possession, the Executive Magistrate may decide who was in possession on the relevant date or within two months before.

- Explanation:
- Inaccurately =C/Only options (a), (b), and (d) are correct.
- The Executive Magistrate's findings regarding possession under Section 164 BNSS are not binding on the Civil Court; they serve only as evidence. Civil proceedings and criminal preventive proceedings can run concurrently, and the Magistrate must respect any civil court injunctions or orders. If the civil court has not ruled on actual possession, the Magistrate may determine possession for the purpose of maintaining public order

- Where a civil court issued a status quo order, which observation(s) did the Supreme Court make regarding proceedings under the Bharatiya Nagarik Suraksha Sanhita (BNSS)?
- (a) If parties are co-owners with no title dispute or partition, the SDM should not drop Section 164 BNSS proceedings.
- (b) Executive Magistrates may act under Section 164 BNSS when the dispute concerns possession, not legal rights.
- (c) Dropping proceedings under Section 126 BNSS (security for peace) does not justify dropping Section 164 BNSS proceedings.
- (d) All the above observations are correct.

- Explanation:

(d) All the above observations are correct. (Correct Answer)

The Supreme Court emphasized that parallel criminal proceedings under BNSS Section 164 (previously CrPC Section 145) should not continue if a civil court is adjudicating possession. However, it clarified that:

Magistrates retain jurisdiction over possession disputes unless the civil court has explicitly decided the matter.

Proceedings under different BNSS sections (e.g., Section 107 vs. 164) address distinct issues and are not interdependent.

The Magistrate's role is preventive, not adjudicatory, and coexists with civil suits unless possession is conclusively settled

- Which of the following statements about proceedings under Section 164 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) is/are incorrect?
- (a) A final order granting possession to a party under Section 164 is provisional until a competent court adjudicates the rights of the parties.
- (b) Reports triggering Section 164 proceedings must originate from or be verified by the police.
- (c) The Executive Magistrate must act independently, not on instructions from higher administrative or judicial authorities, when issuing orders under Section 164(1).
- (d) There are no strict criteria for the sufficiency of evidence required for the Magistrate to pass a preliminary order under Section 164.

- Answer=B

(e) Only options (a), (c), and (d) are correct. (Correct Answer)

(a) Correct: Section 164 orders are provisional and do not affect civil courts' authority to determine ownership or title.

(c) Correct: The Magistrate acts based on their satisfaction from reports or credible information, not directives from higher courts.

(d) Correct: The Magistrate has discretion in assessing materials for initiating proceedings.

(b) Incorrect: Section 164 allows action based on police reports or other credible information, not exclusively police verification

- Under Section 164(1) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which statements about the Executive Magistrate's "satisfaction" for issuing a preliminary order are correct?
- (a) If the Magistrate **records satisfaction based on a police report or other information but fails to specify the grounds**, it reflects only the fact of satisfaction, not the grounds.
- (b) **Failing to document the grounds of satisfaction invalidates the preliminary order.**
- (c) Higher courts in revision cannot re-examine the adequacy of evidence underlying the Magistrate's satisfaction **if the grounds are not properly recorded.**
- (d) All of the above.

- Explanation:

(d) All of the above. (Correct Answer)

(a) Correct: Section 164(1) mandates that the Magistrate's order must explicitly state the grounds (e.g., police report or specific information) for concluding a breach of peace is likely. Merely noting satisfaction without detailing the basis violates this requirement.

(b) Correct: Omitting grounds renders the order legally void, as procedural compliance is mandatory.

(c) Correct: Revisionary courts focus on procedural validity, not the sufficiency of evidence, provided the Magistrate's grounds are lawfully recorded.

- Under Section 164 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which statements correctly define a "dispute" for initiating proceedings?
- (a) A disagreement between parties specifically about **actual possession of the property.**
- (b) A conflict where one party claims a legal right to possession while the other **asserts actual possession.**
- (c) No "dispute" exists if a Civil Court has already determined the parties' rights to possession.
- (d) Only options (a) and (c) are correct

- Explanation:
- (d) Only options (a) and (c) are correct. (Correct Answer)
- (a) Correct: Section 164 applies only when parties contest actual possession, not legal rights.
- (c) Correct: Once a Civil Court adjudicates rights to possession, the Executive Magistrate must enforce that decision and cannot independently initiate proceedings under Section 164.
- (b) Incorrect: A claim of legal right (e.g., ownership) against actual possession does not qualify as a "dispute" under Section 164, which focuses solely on factual possession.

- Which statements about an Sub-Divisional Magistrate's powers under the Bharatiya Nagarik Suraksha Sanhita (BNSS) are correct regarding land disputes involving potential breaches of peace?
- (a) As an administrative functionary, the SDM can issue possession orders.
- (b) The SDM is legally protected for errors in possession orders made in good faith while acting administratively.
- (c) As a criminal court, the SDM can *issue possession orders* under Section 164 BNSS.
- (d) The SDM is legally protected for errors in possession orders made in good faith while *acting judicially*.
- (e) Only options (c) and (d) are correct.
- (f) Only options (a) and (b) are correct

- Explanation:
- Correct Answer: e
- (c) Correct: Under BNSS Section 164, the SDM acts as a judicial authority (not an administrative one) to resolve possession disputes to prevent breaches of peace.
- (d) Correct: Judicial Officers' Protection Act, 1850 shields the SDM from liability for judicial acts done in good faith.
- (a) Incorrect: The Allahabad High Court has criticized SDMs acting as administrative authorities in such cases; their role here is strictly judicial.
- (b) Incorrect: Protection applies only to judicial, not administrative, functions.

- If an Sub-Divisional Magistrate commits a procedural or judgmental error in an order under Section 164 of the BNSS, and the aggrieved party files a writ petition in the High Court, which legal protections apply to the SDM?
- (a) The SDM is shielded by provisions within the BNSS if acting in good faith.
- (b) The SDM is protected under the Judicial Officers Protection Act, 1850.
- (c) The SDM is covered by the Judges (Protection) Act, 1985.
- (d) A departmental inquiry cannot be initiated against the SDM since they acted as a court presiding officer.
- (e) Only options (a), (b), and (c) are correct.

- Explanation:
- (e) Only options (a), (b), and (c) are correct. (Correct Answer)
- (a), (b), (c) Correct: The BNSS, Judicial Officers Protection Act (1850), and Judges (Protection) Act (1985) collectively protect the SDM from personal liability for judicial acts done in good faith.
- (d) Incorrect: The High Court may still direct departmental inquiries for gross procedural or legal errors, even if the SDM acted in a judicial capacity.

- Under Section 164(1) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which requirements must a report meet for an Executive Magistrate to issue a **preliminary order?**
- (a) The report must originate from the police, land revenue authorities, or any government official, regardless of seniority.
- (b) The report must clearly describe the nature of the dispute.
- (c) The report must explicitly list all parties involved in the dispute.
- (d) The report must **detail the specific threat to public peace.**
- (e) Only options (a) and (c) are correct
- (f) Only options (b) and (d) are correct

- Explanation:
- (f) Only options (b) and (d) are correct. (Correct Answer)
- (b) and (d) Correct: The report must outline the dispute's nature and the potential breach of peace.
- (a) Incorrect: A credible application from a disputing party (not just official reports) can trigger proceedings.
- (c) Incorrect: Missing parties can be added later; initial omission does not invalidate the order.

- Under Section 164(1) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which requirements an Executive Magistrate's order need not fulfill?
- (a) The order must be served on parties in the manner prescribed for summons.
- (b) A copy of the order must be affixed to a conspicuous place near the disputed property.
- (c) The order must require parties to submit written statements about their right to possession.
- (d) The order must require parties to submit written statements about their factual actual possession.

- Under Section 164(1) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which statements about the *preliminary order* are incorrect?
- (a) The order must be in writing.
- (b) It must be addressed to known individuals, not issued solely as a public proclamation.
- (c) The order is not similar to a show-cause notice under Sections 126-129 or a conditional order under Section 152.
- (d) The order initiates proceedings under section 164.

- A=C
- (e) Only options (a), (b), and (d) are correct. (Correct Answer)
- (a) Correct: Section 164(1) mandates a written order stating grounds for satisfaction.
- (b) Correct: The order is served directly on parties (like summons) and published publicly, but it is specifically addressed to involved individuals.
- (d) Correct: The order initiates formal proceedings, akin to a charge-sheet, requiring parties to submit claims about actual possession.
- (c) Incorrect: The preliminary order under Section 164 functions similarly to show-cause notices (Sections 126-129) or conditional orders (Section 152), as it compels parties to respond to allegation

- Regarding Section 164 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which statements are correct?
- (a) An Executive Magistrate can initiate proceedings under both Section 126 and Section 164 BNSS simultaneously.
- (b) Dropping proceedings under Section 126 BNSS due to no threat to public tranquility necessitates dropping Section 164 proceedings.
- (c) Violating an order under Section 164 is punishable under Section 223 of the Bharatiya Nyaya Sanhita (BNS).
- (d) Criminal contempt during an SDM's Section 164 inquiry has no remedy under the Contempt of Courts Act, 1971, though an FIR under BNS is possible.
- (e) Only options (a) and (c) are correct
- (f) Only options (b) and (d) are correct.

- Explanation:
- (e) Only options (a) and (c) are correct. (Correct Answer)
- (a) Correct: Sections 126 and 164 address distinct issues (security for peace vs. possession disputes), allowing concurrent proceedings.
- (c) Correct: Disobeying a Section 164 order attracts penalties under BNS Section 223.
- (b) Incorrect: The Supreme Court in *Prakash Chand Sachdeva v. State* ruled that dropping Section 126 proceedings does not automatically invalidate Section 164 actions.
- (d) Incorrect: The High Court can take cognizance of contempt against subordinate courts under the Contempt of Courts Act, 1971 (Section 15(2)), as clarified in *S.R. Sarkar v. Vinay Chandra Mishra*.

- Amala, a widow returns from a pilgrimage after three months to find her plot, purchased as an investment was occupied by a local history-sheeter immediately the next week after she has gone on pilgrimage, who now threatens her if she approaches the property. She approaches the SDM for relief. In this scenario, which statement is correct under Section 164 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)?
- (a) The SDM should proceed under Section 164(1) BNSS since there is a dispute over actual possession.
- (b) The SDM should proceed under Section 164(1) BNSS as there is a possibility of breach of peace, regardless of the nature of the dispute.
- (c) The SDM cannot take cognizance under Section 164(1) BNSS, as both parties do not disagree on the question of actual possession; amala's claim is about her right to possession, not actual possession
- (d) The SDM must inquire into the merits of the amala's claim to determine rightful possession.

- Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), consider the following statements about Section 164 proceedings:
- Statement 1: If an Executive Magistrate issues notices to parties to file written statements about actual possession without first passing a written preliminary order under Section 164(1), this is a minor procedural flaw that does not invalidate the proceedings.
- Statement 2: A preliminary order under Section 164(1) can be modified later if the Magistrate identifies errors or determines no emergency exists.
- Which statement(s) is/are correct?
- (A) 1 only
- (B) 2 only
- (C) Both 1 and 2
- (D) Neither 1 nor 2

- Explanation:
- (B) 2 only (Correct Answer)
- Statement 1 is incorrect. A written preliminary order under Section 164(1) is mandatory to initiate proceedings. Skipping this step violates procedural requirements and invalidates the process.
- Statement 2 is correct. Magistrates retain authority to modify or withdraw preliminary orders if errors are identified or circumstances change.
- Sol) In the Thamaraiammal versus Executive Magistrate, the Madras High Court held that not passing of preliminary order u/s 164(1) would vitiate the entire proceedings. It is the foundation for the exercise of jurisdiction by the Executive Magistrate.

- Under Section 164 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which statements about possession disputes and orders are correct?
- (a) Relief under this section is unrelated to decisions on title or legal rights to possession.
- (b) Proceedings under Sections 164/165 BNSS are non-judicial proceedings, as the SDM acts as a criminal court.
- (c) “Actual Possession” refers solely to physical control, even if held unlawfully (e.g., by a trespasser).
- (d) A final order under Section 164 ceases to have effect once a civil court decree is passed.
- (e) Only options (a), (c), and (d) are correct.

- Explanation:

(e) Only options (a), (c), and (d) are correct. (Correct Answer)

(a) Correct: Section 164 focuses on factual possession, not legal ownership or rights.

(c) Correct: “Actual possession” under BNSS means physical control, irrespective of legitimacy.

(d) Correct: Civil court decrees supersede SDM orders, as civil rulings bind criminal proceedings.

(b) Incorrect: Proceedings under Sections 164/165 are both quasi-criminal and quasi-civil, given their preventive and possession-based nature.

Legal Basis:

BNSS Section 164 mandates Magistrates to determine actual possession without adjudicating title

Civil court decisions override SDM orders under Section 164, as clarified in judicial precedents

POINTS TO BE NOTED

1. The crux of Sec 164 BNSS for an Executive Magistrate is **maintenance of Public Order and Tranquility**
2. Sec 164 BNSS is not meant for **resolving between two or more private parties dispute as to immovable property**
3. Sec 164 BNSS is **not meant for resolving the dispute of Right to Possession** over any land or water or the boundaries thereof, within his local jurisdiction
4. Thus, the object of section 164 is to maintain the public peace and not to decide any dispute between contending parties or **adjudicate upon the rights** of the parties to possession.
5. Regarding the **jurisdiction of EM court and Civil Court**, there is no bar to filing criminal proceedings u/s 164 over the same disputed immovable property for which civil proceedings are pending
6. **A civil suit pending does not bar the jurisdiction of the Criminal Court to proceed** under section 164 of this Code provided the conditions for application of that section are present and the Magistrate is satisfied that there is a reasonable apprehension of breach of the peace unless prompt measures are taken to prevent the same.

POINTS TO BE NOTED

7. Section 164 is used when the dispute arises out of a dispute relating to immovable property. It is done by determining and **maintaining one or other of the parties is in the possession - which the Magistrate finds was the position before the dispute arose.** This is until the rights of the parties are determined by a Court of competent jurisdiction.
8. The words 'may' in s.163 (1) and 'shall' in s.164 (1) make it clear that it is obligatory on the Magistrate to start a proceeding under s.164(1) if he is satisfied as to the likelihood of a breach of peace relating to land or water.
9. The provision in s.164 is made obligatory because **so long as the rights of the parties are not finally settled by a Civil Court, disputes relating to possession are likely to arise again and again, which should be settled by the Criminal Court, in order to maintain peace.**
10. S.164(1) will **not be attracted** unless both parties **claim exclusive possession** to the same property
11. S.164(1) will not be attracted when one party claims actual possession and the other party merely claims a right to possession or a public right of user

POINTS TO BE NOTED

12. The mere existence of a dispute is no ground for application of the section unless the Magistrate is **satisfied that there is a likelihood of breach of the peace.** It is the Magistrate who is to be satisfied and the apprehension of the party or of the Police is not enough.
13. Dispute within the meaning of sec 164 means that the parties disagree on the **question of Actual Possession.** What matters for an SDM is the question of Actual Possession. It is immaterial for him how that possession was obtained by a party (except for **2 months prior** to the first application made to him regarding the dispute
14. “Actual Possession” means actual physical possession. It does not mean lawful or legal possession. **In fact it may be that of a trespasser without any title whatever.**
15. **Proof of title is not proof of actual possession**
16. Thus, the opposite parties must disagree on the question of Actual Possession. An SDM acting only as a Criminal Court under sec 164 BNSS is empowered to pass order for possession when there is a dispute over land with the possibility of Breach of Peace

POINTS TO BE NOTED

17. **Where the Civil Court did not adjudicate as to which of the parties was in actual physical possession** of the property in dispute, it was held that the Executive Magistrate would be perfectly within jurisdiction to decide as to which of the parties was in possession of the house in dispute on the date of complaint or two months before
18. Thus, till the time the final decision or injunction is not granted by a civil court in a matter related to dispute over an immovable property, the mere pending of a suit in a Civil Court does not take away the jurisdiction of the EM.
19. The findings of the EM courts merely acts as an Evidence related to the fact of possession for the Civil Court. **The civil court independently goes into the merit of the case and comes to the decision related to the Right to Possession or Title.**
20. The final order passed by the SDM u/s 164 giving possession to one party is provisional until such time formal adjudication on the rights affected may be obtained by a Court competent to deal with the matter in due course of law.

POINTS TO BE NOTED

21. Thus, the Courts of SDM and that of a Civil Judge do not have overlapping jurisdiction in the matter and the SDM and Civil Court deal with different aspects.
22. An EM acting u/s 164 ought to respect the decision of and even interim injunction granted by the Civil Court
23. The court of SDM is inferior to that of a Civil Judge
24. There are times when a particular dispute as to the immovable property between the same parties might be undergoing in both the SDM's court and a Civil Judge court and still the principle of Res Judicata would not suffer.

POINTS TO BE NOTED

25. Before initiating a proceeding under s.164(1), the magistrate must be satisfied as to the existence of the following conditions:
 - a. There must be a 'dispute' relating to land or water or the boundaries thereof, on the date when he initiates the proceeding
 - b. The Magistrate must be satisfied, from a police-report or other information, that the dispute is **likely to cause a breach of peace**
 - c. The land or water must be **situated within the jurisdiction of the Magistrate**
 - d. Once he is satisfied as to all the foregoing conditions, he is to pass a preliminary order under sub-sec. (1) and thereafter make an inquiry under sub-sec. (4) and pass a final order under sub-sec. (6), on the basis of that inquiry.
 - e. It is not necessary that at the time of making the final order, the apprehension of breach of peace should continue.

POINTS TO BE NOTED

26. The period of **2 months shall be counted from the date of receipt by the Magistrate of the police report or other information**, which starts the proceedings under sub-sec. (1) of section 164 of BNSS
27. If the Magistrate is satisfied as to the existence of a dispute and the likelihood of breach of the peace, there is no bar against his acting under sec. 164 (1), without calling for a police report. **The expression 'Other Information' is wide enough to include an application by a private party.**
28. There is no hard and fast rule laid down as to the sufficiency of the materials for the satisfaction of the Executive Magistrate for passing the preliminary order u/s 164.
29. With respect to s.164(1) order, if an EM records that he was satisfied from the police report or other information that breach of peace was likely to be caused, he was recording the FACT of his satisfaction and not the GROUND of his satisfaction
30. The **failure to record the grounds of satisfaction u/s 164 BNSS vitiates the preliminary order.**

POINTS TO BE NOTED

31. When an EM records his satisfaction as to the existence of the breach of peace in his preliminary order, **the High Court or the Sessions Judge in REVISION cannot go into the sufficiency or otherwise of the materials on which the Magistrate's satisfaction was based.**
32. The Executive Magistrate **must act on its own initiative** and **not at the instance of the District Magistrate or Sessions Judge or of the High Court while passing order u/s 164(1).**
33. When the Rights of the parties have once been determined by a Civil Court, there is no longer a "Dispute" within the meaning of the sec 164
34. If Right to possession or Title has been declared by a Civil Court then there cannot be a "Dispute", the Police and the executive magistrate must implement the order of the Civil Court.
35. The **underlying report for making a preliminary order u/s 164(1) BNSS must contain the nature of Dispute, must compulsorily mention all the parties to the dispute for taking its cognizance as well as must include the nature of threat to the public peace**

POINTS TO BE NOTED

36. The preliminary order must necessarily be in writing but should not be in the form of public proclamation but must necessarily be addressed to known individuals
37. The preliminary order u/s 164 is akin to the show cause notice u/ss 126-129 or a conditional order u/s 152
38. The preliminary order shall ask the concerned parties to put in written statement of their respective claims as respect the Fact of Actual Possession
39. A copy of the preliminary order is to be notified in two ways-
 - a) Service on the parties concerned as a summons
 - b) Publication by affixing a copy at or near the subject matter of dispute
40. Inquiry means taking of evidence in the case. Inquiry, within the meaning of sec 164(4) does not mean local inspection

POINTS TO BE NOTED

41. After the preliminary order, during the stage of Inquiry if an EM is satisfied that there is no likelihood of a breach of peace, he ought to drop the proceeding.
42. U/s 164 BNSS the EM does not go into the Merit of the claims of any of the parties as to a Right to possess the subject of dispute
43. A final order under sub-sec. (6) can be made only if the Magistrate makes an inquiry as to possession of the disputed property 'at the date of the order made by him under sub-sec.(1). An order in writing made under sub-sec. (1) is thus the pivot of the subsequent proceedings under this section.
44. Under s.347 BNSS a Magistrate has, at any stage of an inquiry, the power to make a local inspection of the disputed property, 'for the purpose of properly appreciating the evidence given at such inquiry'.
45. With respect to local inspection, the Magistrate must record a memorandum of facts observed at such inspection and supply a copy thereof, free of cost, to either party; and also afford to the parties an opportunity to rebut the statements made in memorandum.

POINTS TO BE NOTED

46. Sub-section (6) provides for the final order to be passed by the Magistrate on the result of the inquiry as to possession made under sub-sec (4). It contemplates two eventualities:

- a) Where the Magistrate finds that one of the parties is in actual possession but not as a result of forcibly or wrongfully dispossessing another party within 2 months previous [as specified in the proviso to sub-sec. (4)]- in such a case the **proper order would be to declare him to be in possession until evicted therefrom in due course of law and forbid other parties from disturbing his possession**
- b) Where the Magistrate finds that a party was in possession but **has been forcibly or wrongfully dispossessed by another party within two months previous [as specified in the proviso to sub-section (4)] - in such a case the proper order would be to declare the party, so dispossessed, as being entitled to possession until evicted therefrom in due course of law and to forbid the other parties from disturbing his possession.**

POINTS TO BE NOTED

47. If the Magistrate is unable to come to a finding about actual possession by either of the parties, **he must make an order of attachment under s.165(1)**
48. The preliminary order issued under s.164 (1) be **cancelled as soon as the Magistrate is satisfied that there is no such dispute as to actual possession. The preliminary order maybe cancelled at any stage of the proceedings before a final order under sub-sec(6) is made**
49. A **preliminary order passed under sub section (1) of sec 164 can be modified** at any stage if the Magistrate is satisfied that he has gone wrong in certain respects or that no emergency exists
50. **Taking forcible possession in violation of the order under s.164 (6) constitutes an offence under s.223 BNS.** Moreover, a willful violation of the order under s.164(6) also constitutes 'civil contempt' under s.2(b) of the Contempt of Court Act, 1971.
51. A final order under section 164(6) cannot be reviewed by Magistrate or his successor

POINTS TO BE NOTED

52. An **appeal has not been provided** for against an order made under s.164, because the party against whom such order is made has his remedy before the Civil Court .However, **revision lies** from an order under s.164 to the High Court or the Sessions Judge under section 438 of BNSS
- 53. An Executive Magistrate can simultaneously proceed with both Sec 126 and 164 BNSS**
54. Dropping of proceedings u/s 126 BNSS does not automatically furnish ground for dropping proceedings u/s 164
- 55. In case of a threat of breach of the order under s. 164(6), action under s.126 may be taken**
56. An SDM acting only as a Criminal Court under sec 164 BNSS is empowered to pass order for possession. For that he is protected by the “*Judicial Officer’s Protection Act 1850*” etc. The SDM in such a situation is protected by statute/ law for an error of judgment in passing an order for possession, done in good faith.

POINTS TO BE NOTED

57. In fact in cases of gross negligence in procedure or understanding of the law by the Magistrate in passing order u/s 164, ***the High Court generally orders the Chief Secretary or the Chairman BoR to start departmental enquiry against such erring officers.***
58. In fact the High Court of Allahabad has passed strong strictures against the habit of SDMs acting as Administrative functionaries for passing order for possession over disputed land.
59. Proceedings u/s 164 and 165 are both quasi-criminal as well as quasi-civil
60. A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. Thus a decree by a Civil Court ousts the final order u/s 164.
61. S.164 is meant for resolving the dispute of Right to Possession over any land or water or the boundaries thereof, within his local jurisdiction

How the period of 2 months is to be counted?

- The period of 2 months shall be counted from the date of receipt by the Magistrate of the police report or other information, which starts the proceedings under sub-sec. (1) of BNSS.

Meaning of word 'may' in section 163 (1) and 'shall' in section 164 (1)

- The words 'may' in s.163 (1) and 'shall' in s.164(1) make it clear that while s.163(1) is in general terms and confers a discretion to exercise it for the purposes specified therein, it is obligatory on the Magistrate to start a proceeding under s.164(1) if he or she is satisfied as to the likelihood of a breach of peace relating to land or water.

Why the provision has been made obligatory?

- The provision in s.164 is made obligatory because so long as the rights of the parties are not finally settled by a Civil Court, disputes relating to possession are likely to arise again and again, which should be settled by the Criminal Court, in order to maintain peace.

Is a report from police officer necessary for the Magistrate to act under section 164 of BNSS.?

- No. The expression 'Other Information' is wide enough to **include an application by a private party**, so that if, the Magistrate is satisfied as to the existence of a dispute and the likelihood of breach of the peace, there is no bar against his acting under sec. 164 (1), without calling for a police report.

When will the provision of sec. 164 not be attracted?

- The expression 'actual possession of the subject of dispute' in sub-sec.(1) indicate that s.164(1) will **not be attracted unless both parties claim exclusive possession to the same property**, e.g. when one party claims actual possession and the other party merely claims a right to possession or a public right of user. In cases of this type, the Magistrate may convert the proceedings under s.166 (4).

Is the mere existence of a dispute sufficient enough to invoke provisions of sec. 164?

- The mere existence of a dispute is no ground for application of the section **unless the Magistrate is satisfied that there is a likelihood of breach of the peace.** It is the Magistrate who is to be satisfied and the apprehension of the party or of the Police is not enough.

When can the final order under section 164 (6) can be made?

- A final order under sub-sec. (6) can be made only if the Magistrate makes an inquiry as to possession of the disputed property 'at the date of the order made by him under sub-sec.(1). An order in writing made under sub-sec. (1) is thus the pivot of the subsequent proceedings under this section.

How the order made under section 164 (1) is being served?

- A copy of the preliminary order is to be notified in two ways-
 1. Service on the parties concerned as a summons
 2. Publication by affixing a copy at or near the subject matter of dispute

Can Magistrate make local inspection of the site of dispute?

- Under s.347 BNSS, a Magistrate has, at any stage of an inquiry, the power to make a local inspection of the disputed property, 'for the purpose of properly appreciating the evidence given at such inquiry'. B] **The memorandum of inspection held by the Magistrate or his observation made therein cannot be treated as evidence in the proceeding.** C] The Magistrate must record a memorandum of facts observed at such inspection and supply a copy thereof, free of cost, to either party; and also afford to the parties opportunity to rebut the statements made in memorandum.
- S. 347=Visit and inspect any place in which an offence is alleged to have been committed, or any other place which, in his opinion, it is necessary to view for **the purpose of properly appreciating the evidence** given at such inquiry or trial, and shall, without unnecessary delay, record a memorandum of any relevant facts observed at such inspection.

Can the preliminary order issued under s.164 (1) be cancelled?

- Apprehension of a **breach of the peace being a condition** to give jurisdiction to the Magistrate under s.164, as soon as he is satisfied that there is **no such dispute, he is bound to cancel his order** made under sub-sec. (1). The preliminary order may, accordingly, be cancelled at any stage of the proceedings before a final order under sub-sec(6) is made.

What are the eventualities section 164 (6) contemplates?

- Sub-section (6) provides for the final order to be passed by the Magistrate on the result of the inquiry as to possession made under sub-sec (4). It contemplates two eventualities:
 - a) Where the Magistrate finds that **one of the parties is in actual possession** but not as a result of forcibly or wrongfully dispossessing another party within 2 months previous [as specified in the proviso to sub-sec. (4)]- in such a case the proper order would be to declare him to be in possession until evicted therefrom in due course of law and forbid other parties from disturbing his possession
 - b) Where the Magistrate finds that **a party was in possession but has been forcibly or wrongfully dispossessed by another party within two months previous** [as specified in the proviso to sub-section (4)]- in such a case the proper order would be to declare the party, so dispossessed, as being entitled to possession until evicted therefrom in due course of law and to forbid the other parties from disturbing his possession.
- **If the Magistrate is unable to come to such finding, he must make an order of attachment under s.165 (1)**

Pending civil suit, can provision of section 164 still be invoked?

- The case where s.164 proceeding is instituted during the pendency of a suit in the Civil Court should be distinguished from a case where there has been an adjudication by the civil court of the rights of the parties, culminating in a decree. B] There is a body of opinion that the **mere fact that a civil suit is pending does not bar the jurisdiction of the Criminal Court to proceed under section 164 of this Code** provided the conditions for application of that section are present and the Magistrate is satisfied that there is a reasonable apprehension of breach of the peace unless prompt measures are taken to prevent the same.

What actions to be taken when there is breach of the final order?

- When an order under s. 164(6) has been made, it is the duty of the Magistrate to maintain the possession of the successful party, so long as it subsists. 2. **In case of a threat of breach of the order, action under s.126 may be taken.** 3. **Taking forcible possession in violation of the order under s.164(6) constitutes an offence under s.223 BNS.** 4. A wilful violation of the order under s.164(6) may also constitute 'civil contempt' under s.2(b) of the Contempt of Court Act, 1971.

Can a final order under section 164(6) be reviewed by Magistrate or his successor?

- No

Where does the revision lies of the order under section 164?

- Revision lies from an order under s.164 to the **High Court or the Sessions Judge** under section 438 of BNSS. No appeal has been provided for against an order made under s.164, because the party against whom such order is made has his remedy before the Civil Court. But the Supreme Court may grant special leave to appeal, under Art. 136 of the Constitution.

Does mere pendency of a Civil Suit oust the jurisdiction of an Executive Magistrate to proceed u/s 164 BNSS ?

- No, mere pendency of a civil litigation in respect of dispute property will not oust the jurisdiction of the Magistrate to proceed u/s 164 BNSS.

When a suit involving the possession of immovable property has been pending and a temporary injunction restraining the defendant from interfering with the plaintiff's possession granted therein, is initiation of a proceeding by the Magistrate u/s 164 BNSS justified?

- No, when a suit has been pending and a **temporary injunction has been issued by the civil Court in aid of the possession of a party, a proceeding u/s 164 BNSS must not be allowed to be initiated**

Is a decree or decision of the Civil Court on the point of possession binding upon an executive Magistrate in a proceeding u/s 164 BNSS?

- **Yes, it is binding.** In a proceeding u/s 164 BNSS, it is the duty of the Executive Magistrate to give effect to the decision of the Civil Court and to see, as far as possible, that the decree is maintained.