

Public Nuisance

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Magistrates competent to deal with Public Nuisance

- (a) District Magistrate, or
- (b) a Sub-Divisional Magistrate, or
- (c) any other Executive Magistrate specially empowered by the State Government in this behalf.

Statutory circumstances under Section 152

- An order under 152 BNSS can be made when the Magistrate (DM/SDM/other empowered Executive Magistrate), on a police report or other information and such evidence as he thinks fit, considers that any of the following exists:
- **Unlawful obstruction or nuisance in public places**
- Any unlawful obstruction or nuisance in a public place, or in any way, river or channel which is or may be lawfully used by the public.
- **Trade, occupation or goods injurious to community health/comfort**
- Conduct of any trade or occupation, or keeping of any goods/merchandise, which is injurious to the health or physical comfort of the community, so that such trade must be prohibited/regulated or such goods removed/regulated.

- **Construction or disposal of substances risking fire or explosion**
- Construction of any building, or disposal of any substance, likely to cause conflagration or explosion, which needs to be prevented or stopped.
- **Dangerous structures or trees likely to fall**
- Any building, tent, structure or tree is in such condition that it is likely to fall and cause injury to persons living, doing business nearby, or passing by; removal, repair or support is therefore necessary.
- **Unfenced tanks, wells or excavations near public ways**
- Any tank, well or excavation adjacent to a public way or place which needs fencing to prevent danger to the public.
- **Dangerous animals**

Common Invocation Cases:

- Unauthorized religious structures causing obstruction
- Illegal encroachments on public land
- Polluting industries near residential areas
- Dangerous construction sites without safety barriers
- Hoarding/illegal advertisements blocking vision
- Stray animal problems in localities
- Unsanitary conditions (slaughterhouses, dumping sites)

152 and 163

- Section 152 and Section 163 BNSS are both preventive powers of Executive Magistrates, but they differ sharply in purpose, scope, procedure and nature of orders.
- Section 152: Removal of existing public nuisance (obstruction, pollution, dangerous buildings, wells, animals, etc.) affecting public health, safety or comfort.
- Section 163: Meeting urgent cases of nuisance or apprehended danger to public order, tranquillity, safety or human life, **often before the harm occurs (e.g. riots, violent protests, serious law-and-order threats).**
- **Commonly Used for**=Encroachment on public way, polluting factory, dangerous building/tree, open well, dangerous animal
- **Prohibiting assemblies, processions, carrying of weapons, curfew-like restrictions**

PROCEDURE- A BROAD OUTLINE

- (a) Competent Executive Magistrate
- (b) Police report or other information laid before him.
- (c) Application of mind by the Magistrate.
- (d) He *may take evidence, if he considers it necessary at that stage.*
- (e) He should prima facie satisfy himself as to the existence of any of the six situations as laid down in Sec. 152(1) and as to the need for taking any of the actions contemplated therein, such as removal of obstruction, fencing of a tank, destruction of a dangerous animal etc. etc.
- (f) If he is so satisfied, he makes a conditional order u/s 152(1) calling upon the alleged wrongdoer to perform the act directed by a specified date or if he objects to appear before the Magistrate and to show cause why the order should not be made absolute vide form No. 20, Sch. II, BNSS.

- (g) Personal Service of the conditional order upon the opposite party.
- (h) If such service not possible, then it may be notified by Proclamation.
- (i) If the opposite party neither performs the act directed nor appears and shows cause, the conditional order shall be made absolute u/s 157
- (j) If the opposite party appears, the Magistrate should question him as to whether he denies the existence of any public right. This is necessary only when a public right is involved, say, for instance, in cases covered by 152(i) (a). **(Unlawful obstruction or nuisance in public places)**
- (k) If he denies, an enquiry has to be held u/s 156
- (l) At such inquiry, **if reliable evidence is produced** by the opposite party in support of the denial, **the Magistrate shall stay the proceeding.**
- (m) In such event, **the question as to the existence or non-existence of Public Right, should be decided by a Civil Court** of competent jurisdiction.

- (n) If the opposite party appears and shows cause but does not deny the existence of public right or having denied, fails to produce reliable evidence in support of such denial, the Magistrate shall proceed to hold an inquiry u/s 157
- (o) If the case does not involve any question of public right, Section 156 is not attracted. If the opposite party shows cause, the Magistrate shall, in such a case proceed to hold an inquiry u/s 157
- (p) At the Inquiry u/s 157, the Magistrate shall take evidence of both sides, if tendered by them, as if it is a summons case.
- (q) The Magistrate has powers u/s 158 :
- (i) to direct **local investigation**
 - (ii) to **examine an expert**
- for the purposes of inquiry (for 156 or u/s 157)

- (r) At the conclusion of the inquiry u/s 157, if the Magistrate is satisfied that the conditional order is reasonable and proper, he shall confirm it u/s 157. He may, if he thinks necessary, modify the conditional order and thereafter make it absolute.
- (s) If the Magistrate is not so satisfied, he shall drop the proceeding.
- (t) The Magistrate, after having confirmed the conditional order, either in original or modified form shall issue notice to the opposite party asking him to perform the act directed on pain of penalty u/s 223 BNS. vide Form No.2 1, Sch.II BNSS
- (u) If the act is not performed by the date fixed, the Magistrate shall get it done and recover the costs from the person bound by the order.(Enforcement of the order and recovery of costs of execution.)
- (v) Such recovery may be made either by sale, distress and sale and attachment and sale, as the case may be.

DCP Now Empowered to Combat Public Nuisances:

- Section 162 of the BNSS introduces a significant expansion of authority in addressing public nuisances. This amendment extends the power to prohibit the repetition or continuance of public nuisances to the Deputy Commissioner of Police (DCP), in addition to the existing authorities such as the District Magistrate, Sub-Divisional Magistrate, and Executive Magistrate. This provision applies to public nuisances as defined in the Bharatiya Nyaya Sanhita, 2023, as well as those specified in any special or local law. By including the DCP in this list of empowered officials, the BNSS enhances the efficiency and responsiveness of law enforcement in dealing with public nuisances.

- The National Highway passing through your district has been under maintenance for the last three years. A complaint under Section 152 of the BNSS has been received, alleging that the contractor has been dumping construction material haphazardly on the only usable part of the carriageway for many months, thereby causing a public nuisance.
- a. The petition is maintainable. Dumping construction material on the road is clearly a public nuisance.
- b. Road maintenance is a sovereign function. The contractor enjoys sovereign immunity.
- c. This is a minor nuisance compared to the larger issue of bad roads. Hence, no liability.
- d. A road under repair cannot be lawfully used by the public. Hence, no liability of the contractor.

- Answer: Option a. There is no blanket immunity from Section 152 jurisdiction. The Magistrate must use his discretion to determine if the road has been encroached upon in a manner that makes its use impossible. There is no sovereign immunity in such cases, as held by the Supreme Court in the Vardhichand case.

- Proceedings under Section 152 of the BNSS are underway in your court. The Opposite Party submits that they have filed a civil suit regarding the public's right to use a road (on the same issue) before the District Court.
 - a. Proceedings in your court will abate, as the Civil Court takes precedence.
 - b. The case will become dormant and revive once the Civil Court decides the matter.
 - c. Proceedings will continue. Section 152 and the civil suit address different legal fields, and no stay has been granted yet.
 - d. The petitioners must seek permission from the Civil Court for this case to continue.

- Answer: Option c. Mere filing of a civil suit does not preclude Section 152 jurisdiction. An **exception arises only if:**
 1. The proceeding falls under Section 152(1)(a) and the existence of a **public right is denied under Section 156, and the civil suit demonstrates substantial grounds to support this denial.**
 2. A **status quo order or interim stay has been granted by the Civil Court.**

- A ramshackle building may collapse onto a public place at any time. The Sub-Divisional Magistrate has started proceedings under Section 152 to have it pulled down. The tenant submits that this is a case of colourable exercise of power- Section 152 cannot override the governing Rent Control Act, and the proceedings must therefore be quashed.
- a. A specific legislation always takes precedence over a general legislation; hence, Section 152 cannot be sustained.
- b. The purpose of Section 152 is to prevent public nuisance. It remains unaffected by any other Act unless expressly prohibited.
- c. Section 152 will remain in effect until Rent Control proceedings are initiated in the competent court, after which the latter will supersede the former.
- d. The matter will be put on hold pending resolution of the Rent Control proceedings.

- Powers of a Special Executive Magistrate have been conferred upon a Block Development Officer for the duration of a large Mela. An illegal shack is found blocking the public way leading to the mela grounds. The Block Development Officer initiates proceedings under Section 152 against it.
- a. Yes. Section 152 is available to all Executive Magistrates.
- b. Yes. Since he has been appointed as an Executive Magistrate for the Mela, the powers to remove any obstacles to the event are deemed to be conferred upon him.
- c. No. Eviction cannot be carried out under Section 152 when alternative remedies are available.
- d. No. He needs to be specifically conferred with Section 152 powers separately.

- You are the District Magistrate and have received persistent complaints from local MLAs after your Sub-Divisional Magistrate (SDM) passed orders under Section 152 of the BNSS against their business interests. While you agree with the SDM's order, you decide to temporarily stay its execution until after the Assembly session, invoking your revisionary powers by calling for the records.
- Options:
 - a. Section 17 makes all Executive Magistrates subordinate to the District Magistrate; hence, this action is permissible.
 - b. Section 370 allows the District Magistrate to withdraw any pending case and dispose of it personally. Therefore, this is permissible.
 - c. Revisional powers are vested exclusively in the Sessions Court under Section 438.
 - d. There is no provision for revision under Section 133.

- Answer: Option c. **Orders under Section 152 are judicial (not administrative, unlike those under Section 163).** Consequently, revisional jurisdiction lies solely with the Sessions Court and High Court. The District Magistrate cannot exercise revisional powers over such orders.

- Can an order under Section 152 of the BNSS be issued against the public at large for a public nuisance caused by an indeterminate group (e.g., illegal parking)?
- Options:
 - a. Yes. Public nuisance does not require quantification.
 - b. Yes. An order directed to a community (e.g., “Residents of Ram Nagar”) is valid.
 - c. No. Section 152 requires identifiable natural persons.
 - d. No. However, it can be issued against an association or society.

- Answer: Options © and (d).
- Explanation:
- **Section 152 mandates that the person(s) causing the nuisance must be given an opportunity to appear and show cause.**
- **Orders cannot target an indeterminate group** (e.g., “the public”).
- Exception: If the **nuisance is perpetrated by members of a defined organization (e.g., Bus Owners Association of Ramanagar), the notice may be served on the organization itself.**

- The Sub-Divisional Magistrate has accepted a private petition under Section 152, issued a conditional order, and directed the opposite parties to show cause on a specified date. The police enquiry was conducted after the show cause notice was issued. Are the proceedings valid?
 - a. No. A prior enquiry by the police is mandatory.
 - b. Yes. A police enquiry is required but can be conducted at any stage.
 - c. Yes. A police enquiry is optional.
 - d. No. An interim order cannot be made ex parte.

- Answer: Option c.
- There is nothing in the BNSS that mandates a police enquiry. Any credible information is sufficient to initiate proceedings under Section 152. The only essentials are that the party being proceeded against must be given an opportunity to be heard, and evidence must be taken if a show cause is submitted.

- A Sub-Divisional Magistrate issues a conditional order under Section 152 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), directing the Opposite Party (OP) to remove an obstruction within seven days or face prosecution under Section 223 BNS. What is the validity of this order?
- a. Valid. The OP retains the opportunity to comply and later show cause.
- b. Valid. The BNSS does not prohibit combining conditional and final orders.
- c. Invalid. Hybrid orders merging conditional and final directives are unrecognized under the BNSS.
- d. Invalid. Seven days is insufficient; a longer compliance period must be granted.

- Explanation:
- The BNSS mandates a clear distinction between conditional orders (requiring compliance or a show-cause response) and final orders (issued after due process).
- Prosecution under Section 223 BNS for disobedience can only follow a final order, not a conditional one.
- A hybrid order that conflates these stages bypasses procedural safeguards, rendering it invalid.

- After passing a final order, the Sub-Divisional Magistrate realizes that both the conditional and final orders erroneously refer to a property unrelated to the dispute. Additionally, a crucial party was not impleaded. The Sub-Divisional Magistrate issues notices to all parties and, with their consent, modifies the order accordingly.
- Options:
 - a. The modification is legal since all parties were notified, and natural justice principles were followed.
 - b. Section 403 prohibits substantive corrections after a final order/judgment is pronounced.
 - c. A fresh proceeding under Section 152 can be initiated to modify the original order.
 - d. The District Magistrate's permission can be sought to amend the order.

- Answer: Option b.
- Explanation:
- Once a final order is pronounced and signed, the court becomes *functus officio* (exhausted of jurisdiction).
- Corrections under Section 403 are limited to clerical or arithmetic errors. Substantive changes (e.g., altering the subject property or adding parties) are impermissible, even with consent.
- The SDM lacks authority to revisit the merits of the case post-final order.

- Jack keeps a pet tiger named Tige in his house. Every night, he lets the animal loose in his garden. Tush, his neighbor, fears for his family's safety because the garden is not properly fenced. He approaches the Sub-Divisional Magistrate under Section 152, seeking destruction of the animal. Jack argues that he lives in an isolated farmhouse and Tush is the only person who comes within half a kilometre of his pet. Therefore, according to Jack, no public nuisance is being caused. What would be the appropriate response?
- a) Jack is correct. One person does not constitute "public." Tush can use some other Act, but not Section 152.
- b) There is no mention of "public" in Section 152(f) dealing with dangerous animals. Hence, Tush will succeed.
- c) Tush will succeed only in this particular case. In all other sub-sections, a large number of people must be affected.
- d) Section 152 protects even a single person or a small group of persons.

- Answer: Option d. Numerous High Courts have held that the word "public" should be liberally construed. Even one person or a small group of people are entitled to the protection of Section 152.

- In a proceeding under Section 152(1)(c) of the BNSS, the Opposite Party (OP) appears, shows cause, and requests permission to present evidence. However, the Tehsildar (an IAS probationer from the 2025 batch) submits a concise, detailed report-supported by photos and videos-that conclusively refutes the OP's claims. The Sub-Divisional Magistrate , convinced by this report, finalizes the order without allowing further evidence.
- Options:
 - a. Presenting evidence is a privilege, not a right. The SDM correctly denied the OP's request.
 - b. While evidence is generally allowed, the Tehsildar's comprehensive report justifies bypassing further hearings to avoid delay. The SDM acted in the interest of justice.
 - c. Section 157(1) states "shall take evidence," not "must take evidence." The SDM has discretion.
 - d. Section 157(1) is mandatory. The order is legally invalid.

- Answer: Option d.
- Explanation:
- Section 157(1) uses the term “shall take evidence,” which is unequivocally mandatory.
- Once the OP shows cause, the Magistrate must allow evidence to be led. The thoroughness of the Tehsildar’s report does not override this statutory obligation.
- The SDM’s failure to comply with this procedural requirement renders the order invalid.

- In a proceeding under Section 152(1)(a) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), the Opposite Party (OP) claims that the road in question has been declared a private road for their exclusive use by a Civil Court. The petitioner argues that this decision is under appeal before the District Judge, and the appeal has been admitted.
- Options:
 - a. Section 152 proceedings are independent of civil proceedings. If the public uses the road, the SDM retains jurisdiction.
 - b. Since the appeal has been admitted, a prima facie case exists in favor of the petitioner. Section 152 proceedings can continue.
 - c. The matter must be suspended or dismissed under Section 156 because the public right is disputed.
 - d. The OP succeeds as the lower court ruled in their favor.
 - e. Both c and d

- Answer: Options c and d (with clarification).
- Explanation:
- Option c is correct under Section 156(2). If the public right is denied (as affirmed by the Civil Court's declaration of private ownership), the Magistrate must stay the Section 152 proceedings until the civil dispute is resolved.
- Option d is partially correct but context-dependent. While the Civil Court's ruling is persuasive, the pending appeal means the lower court's decision is not final. However, the Magistrate may still defer to the Civil Court's findings under Section 156(2).

- Can a Magistrate use the initial police report regarding the existence of a nuisance as evidence for the purposes of Section 157 of the BNSS?
- a. Yes. The police have visited the spot and furnished a detailed report.
- b. No. The police are an instrumentality of the State and are biased.
- c. No. Evidence must be produced after the show cause notice.
- d. Yes. Unless it can be shown to be false in court.

- Answer: Option c.
- The majority of High Courts have held that the initial police report under Section 152(1) cannot be used as evidence for the purposes of Section 157. Evidence must be presented after the show cause stage.

- X learns that Y, a garbage recycling contractor, has purchased land adjacent to his property. Concerned that Y might use the land to store garbage and create a public nuisance, X approaches the Sub-Divisional Magistrate (SDM) under Section 152 of the BNSS. Can the SDM issue a conditional order in this case?
- Options:
 - a. Yes. There is certainty about the nuisance, and Section 152 is preventive.
 - b. Yes. The SDM can proceed as long as a hearing is conducted before finalizing the order.
 - c. No. A police report is mandatory to initiate proceedings.
 - d. No. The BNSS does not cover future or potential nuisances.

- Answer: Option d.
- Explanation:
- Section 152 applies to existing or imminent nuisances, not speculative future ones.
- While preparatory acts (e.g., constructing a garbage dump) may warrant action under the BNSS, mere apprehension of a nuisance without evidence of current or imminent harm is insufficient.
- The SDM cannot issue a conditional order based solely on X's fear.

- A conditional order has been issued against Z, directing him to desist from constructing a wall that blocks a drain. Z is required to show cause within fifteen days. In the meantime, even after receiving the conditional order, Z continues with his construction and completes it a week before the show cause due date. **Would criminal proceedings be maintainable against Z for disregarding the order?**
- a. No. Money had already been invested, and the work was deemed to be ongoing.
- b. Yes. A conditional order under Section 152 BNSS is a clear injunction.
- c. No. A conditional order is not an injunction.
- d. Yes. This constitutes an abuse of the process of law.

- Answer: Option c.
- A conditional order is not an injunction but is merely in the nature of a show cause notice. Unless an order is issued under Section 161, there is no immediate prohibition requiring the opposite party to stop work. Therefore, criminal proceedings would not be maintainable in this scenario.
- **Section 161. Injunction Pending Inquiry**
- (1) If a Magistrate making an order under section 152 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury, pending the determination of the matter.

Section 161. Injunction Pending Inquiry

- (1) If a Magistrate making an order under section 152 considers that immediate measures should be taken to prevent imminent danger or serious injury to the public, he may issue such an injunction to the person against whom the order was made as is necessary to obviate or prevent such danger or injury pending the determination of the matter.
- (2) In the event of such person's failure to obey the injunction immediately, the Magistrate may himself use, or cause to be used, such means as he considers appropriate to obviate the danger or prevent the injury.
- **Conditional order only asks the parties concerned to stop the activities on their own or show cause as to why the order should not be made final. In that context, if the opposite party is carrying on some activity which may constitute public nuisance, the work can be stopped with immediate effect if an injunction is issued under section 161 by the DM or SDM.**

Points to be Noted

1. If any other government authority indulges in public nuisance, section 152 proceeding can be initiated against such authority
2. Mere filing of a civil suit does not shut out S. 152 jurisdiction. An exception can be when the proceeding is one under S. 152 (1) (a) where the existence of a Public right is denied under Section 156 and the civil suit reveals good grounds to support it. Another exception is a status quo or interim stay granted by the Civil Court
3. S.152 is unaffected by any other enactment unless expressly prohibited.
4. If an authority other than a DM or SDM wishes to initiate proceedings U/S.152, he must be conferred with powers under section 152 specifically. It would not be enough if executive magistrate powers are conferred generally on that authority.
5. A DM does not enjoy revisionary powers (jurisdiction) with respect to 152 orders passed by an SDM. Therefore, a DM cannot call for records or grant a temporary stay on the execution of 152 orders passed by SDM.

Points to be Noted

6. Section 152 requires the person causing such nuisance to appear and show cause. Hence it cannot be made against an indeterminate crowd. However, if all the nuisance creators are part of an organization (like the Bus Owners Association of RK Nagar), then the notice can be served on that body.
7. There is nothing in the Code mandating a Police enquiry. Any information is good enough for proceeding under S. 152. The only essentials are that the party being proceeded against must be heard and evidence taken if show cause is given.
8. Once judgment/final order is pronounced, section 403 prohibits any major correction. As a judicial forum, the Court becomes *functus officio* once the order is pronounced and signed. Any corrections thereafter can only be clerical or arithmetical.
9. Even one person or a small group of people are entitled to the protection of S.152. Numerous High Courts have held that the word public should be liberally construed.

Points to be Noted

10. Where cause is shown, the Magistrate must take evidence from the opposite party. The 'shall' clause is a mandatory and binding one. There may be other satisfactory evidence with respect to the existence of nuisance, however, still the Magistrate must take evidence from the opposite party.
11. With respect to an 152(1)(a) proceeding, if a civil court decides the subject matter to be a private property, it is persuasive enough for proceedings to be stayed under Section 156 (2) as public right is denied.
12. The initial police report under S. 152 (1) cannot be used as evidence for the purposes of passing a final order U/S. 157.
13. Mere possibility of a nuisance is not a valid ground. The nuisance must exist for proceedings to take place. Even preparatory activities towards committing the nuisance may count in some instances.
14. Conditional order only asks the parties concerned to stop the activities on their own or show cause as to why the order should not be made final. In that context, if the opposite party is carrying on some activity which may constitute public nuisance, the work can be stopped with immediate effect if an injunction is issued under section 161 by the DM or SDM.

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Which Magistrates are competent to act u/s 163 BNSS?

- District Magistrate.
- Sub-Divisional Magistrate.
- Any other Executive Magistrate specially empowered by the State Government in this behalf.

Nature of the order u/s 163 BNSS

- Generally, it is prohibitory
- In appropriate cases, it may be mandatory, say, for instance, Magistrate may enjoin the opposite party to direct removal of an obstruction when it is needed to prevent a breach of peace.
- ***The term "Curfew" does not occur in Sec. 163 BNSS or anywhere in BNSS***

Order u/s 163 BNSS - the essentials

1. Order must be in writing.
2. It must be definite and specific
3. It must set out the material facts.
4. It must **show application of mind and satisfaction as to the existence of sufficient ground.**
5. Emergency - the order should **indicate that an emergent situation has arisen.**

A PROHIBITORY ORDER U/S 163 BNSS MUST SPECIFY

1. **the thing which is prohibited.**
2. **the persons who are prohibited.**
3. **the place covered by the order.**
4. **period of time.**

The object of an order u/s 163 BNSS is to prevent
any of the following

1. Obstructions, annoyance or injury to any person lawfully employed.
2. Danger to Human life, health or safety.
3. Disturbance of public tranquility.
4. Riot or affray.

Can an order u/s 163 BNSS be passed ex-parte?

- Yes, either in cases of emergency or in cases where circumstances do not permit service of timely notice upon the person against whom the order is directed.
- **Order under 163 BNSS - Valid for two months only - temporary in nature**
- Provided that if the State Government considers it necessary to prevent danger to human life, health, or safety, or to prevent 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 expired if not for such order, as it may specify in the notification.***

Examples Of The Kinds Of Orders u/s 163 BNSS

- To prohibit an assembly, a meeting, or procession for prevention of breach of peace, but not for interfering with the lawful exercise of legal rights.
- To prohibit carrying of arms or weapons.
- To prohibit a person from entering into a particular area.
- To prohibit using of loudspeakers.
- To prohibit people from coming out of their houses on the public road/street/lane (curfew).
- To prohibit raising of provocative slogans which are likely to cause breach of peace.

Remedies against an order u/s 163 BNSS

1. Rescission or alteration
 - u/s 163(5) by the Magistrate who passed the order or by his successor-in-office or by a Magistrate to whom he is subordinate.
 - u/s 163(6) by the State Government.
2. Revision before the High Court or Court of Sessions.
3. Writ petition before the High Court or the Supreme Court.
4. A Civil Suit.