

MAINTENANCE OF PUBLIC PEACE AND ORDER

Radhika G, IPS

CHAPTER X

Maintenance of
Public Order

Unlawful Assembly

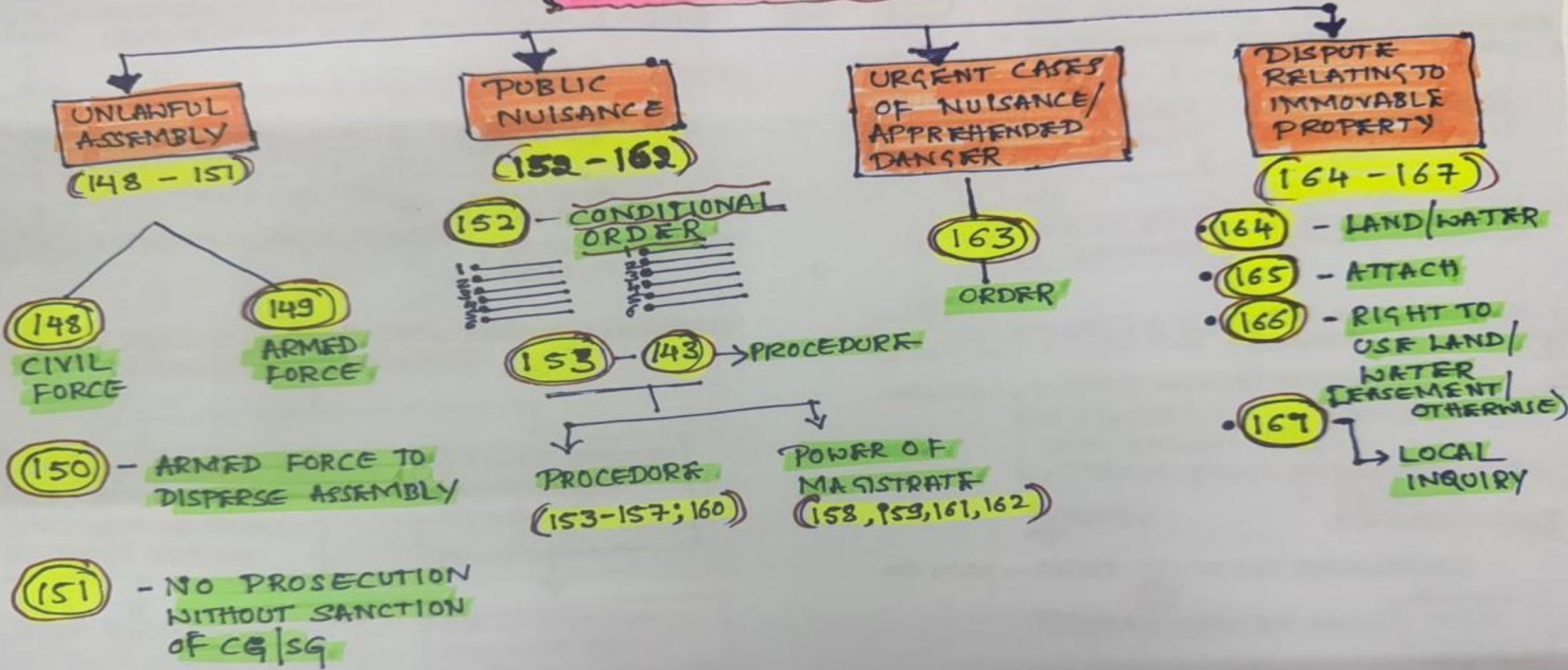
Public Nuisance

Urgent cases

Immovable Property
Dispute

SUMMARY SHEET

CHAPTER - 10 (SEC 148 - 167) BNSS



PART - D

**D.—DISPUTES AS TO
IMMOVABLE
PROPERTY**

**SECTION 164 BNSS (145
CRPC)**

[S 164 BNSS (145 CRPC)] PROCEDURE WHERE DISPUTE CONCERNING LAND OR WATER IS LIKELY TO CAUSE BREACH OF PEACE.—

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

**[S 164 BNSS (145 CRPC)] PROCEDURE WHERE
DISPUTE CONCERNING LAND OR WATER IS
LIKELY TO CAUSE BREACH OF PEACE.—**

- (2) For the purposes of this section, the expression “**land or water**” includes **buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.**
- (3) A **copy of the order** shall be served in the manner provided by this Code for the **service of a summons** upon such person or persons as the Magistrate may direct and **at least one copy shall be** published by being **affixed to some conspicuous place at or near the subject of dispute.**

[S 164 BNSS (145 CRPC)] PROCEDURE WHERE DISPUTE CONCERNING LAND OR WATER IS LIKELY TO CAUSE BREACH OF PEACE.—

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

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

**[S 164 BNSS (145 CRPC)] PROCEDURE WHERE
DISPUTE CONCERNING LAND OR WATER IS
LIKELY TO CAUSE BREACH OF PEACE.—**

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

**[S 164 BNSS (145 CRPC)] PROCEDURE WHERE
DISPUTE CONCERNING LAND OR WATER IS
LIKELY TO CAUSE BREACH OF PEACE.—**

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

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

[S 164 BNSS (145 CRPC)] PROCEDURE WHERE DISPUTE CONCERNING LAND OR WATER IS LIKELY TO CAUSE BREACH OF PEACE.—

- (7) When **any party to any such proceeding dies**, the Magistrate may cause the **legal representative** of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any **question arises as to who the legal representative** of a deceased party for the purposes of such proceeding is, **all persons claiming to be representatives of the deceased party shall be made parties thereto.**
- (8) If the Magistrate is of opinion that **any crop or other produce of the property**, the subject of dispute in a proceeding under this section pending before him, is subject **to speedy and natural decay**, he may make **an order** for the **proper custody or sale of such property**, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

**[S 164 BNSS (145 CRPC)] PROCEDURE WHERE
DISPUTE CONCERNING LAND OR WATER IS
LIKELY TO CAUSE BREACH OF PEACE.—**

- (9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, **issue a summons to any witness directing him to attend or to produce any document or thing.**
- (10) **Nothing** in this section shall be deemed to be in **derogation** of the powers of the Magistrate to proceed under section 126 BNSS(107 CrPC).

EXAMPLE SCENARIOS

EXAMPLE SCENARIOS

➤ **Scenario: Family Dispute Over Ancestral Home**

- **Situation:** Two siblings, Sibling A and Sibling B, are in conflict over the possession of their ancestral home after the death of their parents. Both claim rights to live in the house, leading to frequent altercations.

➤ **Dispute Between Business Partners**

- **Situation:** Two business partners, Partner A and Partner B, are in a dispute over the possession of a commercial property used for their joint business. Partner A locks Partner B out of the property, leading to confrontations.

EXAMPLE SCENARIOS

➤ **Land Dispute Between Neighbors**

- **Situation:** Two neighboring farmers, Farmer X and Farmer Y, are in conflict over a piece of agricultural land. Both claim ownership and have planted crops, leading to physical altercations.

➤ **Scenario: Conflict Over Pond Use**

- **Situation:** Two villages, Village A and Village B, dispute over the use of a pond for irrigation. The conflict escalates as both villages attempt to assert control, leading to violent clashes.

EXAMPLE SCENARIOS

1. Buildings

- **Scenario:**
- Two neighbors are in dispute over the ownership of a small shed that stands on the boundary line between their properties. One neighbor claims the shed is entirely on their land, while the other insists that part of the shed encroaches on their property. The dispute escalates, leading to the potential for a breach of the peace.

EXAMPLE SCENARIOS

2. Markets

- **Scenario:**
- Vendors in a local market are in conflict over the allocation of stalls. A new vendor has set up shop in a space that another vendor claims they have the right to use. This dispute is causing significant tension and has the potential to disrupt market operations and public order.

EXAMPLE SCENARIOS

- **3. Fisheries**
- **Scenario:**
- Two fishing communities are arguing over the rights to fish in a particular section of a river. One community claims historical rights to the area, while the other insists they have been granted recent permits by local authorities. This dispute threatens to lead to violent clashes between the communities.

EXAMPLE SCENARIOS

4. Crops

- **Scenario:**
- Farmers from two neighboring farms are in a dispute over a stretch of land where both have planted crops. One farmer accuses the other of encroaching onto their land and damaging their crops, leading to heightened tensions and threats of physical confrontation.

EXAMPLE SCENARIOS

5. Other Produce of Land

- **Scenario:**
- Two parties are in conflict over the harvesting rights of a forest area producing valuable timber. One party claims to have a lease for logging, while the other asserts they have inherited the rights from previous generations. This dispute risks escalating into a violent conflict as both parties prepare to enforce their claims.

EXAMPLE SCENARIOS

6. Rents or Profits

- **Scenario:**
- A landowner and a tenant are in dispute over the profits from a piece of agricultural land. The tenant claims that they are entitled to a larger share of the profits based on an oral agreement, while the landowner insists that the written lease agreement, which specifies a lower share for the tenant, should prevail. The tension over this dispute threatens to lead to violence.

**SPECIMEN ORDER U/S
164 BNSS (145 CRPC)-
FORM 26**

It appears to me, on the grounds duly recorded, that a **dispute, likely to induce a breach of the peace, existed** between (describe the parties by name and residence, or residence only if the dispute be between bodies of villagers) **concerning certain** (state concisely the subject of dispute), **situated within my local jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (the subject of dispute)** and being satisfied by due inquiry had thereupon, **without reference to the merits of the claim of either of the said parties to the legal right of possession,** that the claim of actual Possession by the said (name or names or description) **is true**, I do decide and declare that he is (or they are) **in possession of the said (the subject of dispute) and entitled to retain such possession until ousted by due course Of the law, and do strictly forbid any disturbance of his (or their) possession in the meantime.**

Date, this 10th day of April, 20....

(Seal of the Court)

(Signature)

ILLUSTRATIONS

CASE STUDY 1 - FORCIBLY OR WRONGFULLY DISPOSSESSED

- **R.H. Bhutani v. Mani J. Desai, AIR 1968** SC 1444=1969 Cr.LJ 13.
- Miss **Mani let out one cabin to Bhutani** on an agreement for **11 months** and **thereafter forcibly thrown him out of possession and let out the cabin to another person**. (Police registered a case of assault under Section 126(2) BNS (341 IPC) against Miss. Mani).
- Bhutani reported the matter to Magistrate who drew the proceedings **under Section 164 BNSS (145 CrPC)** and **held that Bhutani was in actual possession as he was forcibly dispossessed**.

FORCIBLY OR WRONGFULLY DISPOSSESSED

But **on appeal, the High Court quashed the order** of the Magistrate on the grounds:

(1) There was **no dispute likely to cause breach of peace when Magistrate passed initial order because the Cabin was in peaceful possession of a new tenant.**

(2) When Magistrate, after inquiry, **passed final orders of possession in favor of Bhutani** the **new tenant was already in possession of the cabin whose possession would be disturbed if Bhutani is given possession of it.**

FORCIBLY OR WRONGFULLY DISPOSSESSED

The **Supreme Court quashed the order of the High Court** and restored the Magistrate's order on the following grounds:

(1) Forcible possession of cabin was taken from Bhutani within two months of the initial order of the Magistrate. He would be presumed to be in actual possession.

(2) If there was no violence or breach of peace by Bhutani after his forcible dispossession, it meant that Bhutani relied on law and court and did not take law in his own hands.

(3) Hence, **Bhutani was restored to possession** and **Miss. Mani was at liberty to file a civil suit** to establish her title and enforce the agreement of 11 months tenancy with Bhutani. The **Magistrate under Section 164 BNSS (145 CrPC) was concerned only with the actual possession of the cabin not with the agreement.**

CASE STUDY 2- ACTUAL POSSESSION

- A Magistrate without taking any evidence and before the inquiry, passed interim order giving back the possession of a bookstall to one who claimed to have been dispossessed.
- It was held that Magistrate acted illegally when he delivered the possession without determining the rights of the parties during inquiry. (A.H. Wheeler (P) Ltd. v. Bihar, 1988 Cr.L.J. (NOC) 6 Part).

CASE STUDY 3 - CIVIL COURTS DECISIONS

- When **civil court ordered maintenance of status quo**, the Magistrate can not act on Police report and start proceeding under Sections 164 and 165 BNSS (145 and 146 CrPC.) and appoint a receiver by dispossessing the party in possession. The **Magistrate should act under Section 126 BNSS (107 Cr.P.C.)** (Ram Krishna Das v. Rameshwar Das, 1988 Cr.LJ 291).
- In a recent case, the Supreme Court has affirmed the same point that **the Magistrate should not interfere in the interim injunction of the civil court** which may also give any appropriate relief - Mahant Ram Saran Das v. Harish Mohan and others, 2003 SCC (Cri.) 1053.

DIFFERENCE BETWEEN
126 & 164 BNSS (107 &
145 CRPC)

DIFFERENCE BETWEEN SECTIONS 126 AND 164 BNSS (107 AND 145 CR.P.C.)

Section 126 BNSS (107 CrPC)

Section 164 BNSS (145 CrPC)

1. It is discretionary.

1. It is mandatory,

2. In case of apprehension of breach of peace on possession of land, the Magistrate may also convert the proceeding under Section 126 to 164 BNSS (107 to 145 Cr.P.C.)

2. If during the proceedings under Section 164 BNSS (145 CrPC), there is apprehension of breach of peace, police may arrest them under Section 170 BNSS (151 CrPC) and Magistrate may draw proceedings under Section 126 BNSS (107 CrPC) also.

**SECTION 165 BNSS (146
CRPC)**

[S 165 BNSS (146 CRPC)] POWER TO ATTACH SUBJECT OF DISPUTE AND TO APPOINT RECEIVER.—

(1) If the Magistrate at any time **after making the order under sub-section (1) of section 164 BNSS (145 CrPC)** considers the case **to be one of emergency**, or if he decides that **none of the parties was then in such possession as is referred to in section 164 BNSS (145 CrPC)**, or if he is **unable to satisfy himself as to which of them was then in such possession of the subject of dispute**, he may **attach the subject of dispute until a competent Court has determined** the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such **Magistrate may withdraw the attachment** at any time if he is satisfied that there is **no longer any likelihood of breach of the peace** with regard to the subject of dispute.

[S 165 BNSS (146 CRPC)] POWER TO ATTACH SUBJECT OF DISPUTE AND TO APPOINT RECEIVER.—

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

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

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

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

**SPECIMEN ORDER U/S
165 BNSS (146 CRPC)-
FORM 27**

To the Officer-in-Charge of the Police Station at.....

(or To the Collector of.....)

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (describe the parties concerned by name, and residence or residence only if the dispute be between bodies of villagers) concerning certain (state concisely the subject Of dispute) situated within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (the subject of dispute), and whereas, upon due inquiry into the said claims, ***I have decided that neither Of the said parties was in possession of the said*** (the subject of dispute) (or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid);

This is to authorise and require you to attach the said (the subject of dispute) by taking and keeping possession thereof, and to hold the same under attachment ***until the decree or order of a competent Court determining the rights of the parties*** or the claim to possession, shall have been obtained, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this 10th day of April, 20....

(Seal of the Court)

(Signature)

**SECTION 166 BNSS (147
CRPC)**

[S 166 BNSS (147 CRPC)] DISPUTE CONCERNING RIGHT OF USE OF LAND OR WATER.—

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

Explanation.—The expression “land or water” has the meaning given to it in sub-section (2) of section 164 BNSS (145 CrPC).

[S 166 BNSS (147 CRPC)] DISPUTE CONCERNING RIGHT OF USE OF LAND OR WATER.—

- (2) The Magistrate shall then peruse the statements so put in, hear the parties, **receive all such evidence** as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, **decide whether such right exists**; and the provisions of section 164 BNSS (145 CrPC) shall, so far as may be, apply in the case of such inquiry.
- (3) If it appears to such Magistrate that **such right exists**, he may make an **order prohibiting any interference with the exercise of such right including**, in a proper case, **an order for the removal of any obstruction in the exercise of any such right**:

[S 166 BNSS (147 CRPC)] DISPUTE CONCERNING RIGHT OF USE OF LAND OR WATER.—

Provided that no such order shall be made

where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) **of the report of a police officer** or other information leading to the institution of the inquiry,

or

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

[S 166 BNSS (147 CRPC)] DISPUTE CONCERNING RIGHT OF USE OF LAND OR WATER.—

(4) When in **any proceedings commenced under sub-section (1) of section 164 (145)** the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, **continue** with the proceedings **as if they had been commenced under sub-section (1);**

and when in **any proceedings commenced under sub-section (1)** the Magistrate finds that the dispute should be dealt with **under section 164(145)**, he may, after recording his reasons, **continue** with the proceedings **as if they had been commenced under sub-section (1) of section 164 (145).**

EXAMPLE SCENARIOS

**U/S 166 BNSS (147
CRPC)**

EXAMPLE SCENARIOS

Easement Example Scenarios

1. Right of Way:

- **Scenario:** Person A owns a landlocked property and has historically used a path through Person B's property to access the main road. Person B decides to block the path, claiming it is private property.
- **Dispute:** Person A claims an easement of necessity, arguing that they have a legal right to use the path to access their property.

EXAMPLE SCENARIOS

2. Drainage Easement:

- **Scenario:** Person C has a drainage system that directs water through Person D's property. Person D decides to alter their landscape, blocking the drainage system and causing flooding on Person C's property.
- **Dispute:** Person C claims an easement by prescription, asserting that the drainage system has been in place for decades and they have the right to maintain it.

EXAMPLE SCENARIOS

3. Utility Easement:

- **Scenario:** A utility company has underground cables running through Person E's property. Person E wants to dig a pond where the cables are located.
- **Dispute:** The utility company claims an easement allowing them to maintain their infrastructure, while Person E disputes the extent or existence of this easement.

EXAMPLE SCENARIOS

Otherwise Example Scenarios

1. Customary Right:

Scenario: Residents of a village have traditionally used a particular pond on private land for collecting water and fishing. The new landowner wants to prohibit this use.

Dispute: The villagers claim a customary right to use the pond, based on long-standing local traditions.

EXAMPLE SCENARIOS

2. Agricultural Use:

Scenario: Person H has been allowed by Person I to graze cattle on their land for years. Person I now wants to use the land for other purposes and stops Person H from grazing there.

Dispute: Person H claims they have a right to continue grazing based on a long-term informal arrangement, possibly arguing for a type of implied consent or equitable right.

EXAMPLE SCENARIOS

3. License:

Scenario: Person F has a verbal agreement with Person G allowing them to park their car on Person G's land. Person G decides to revoke this permission.

Dispute: Person F claims a license to park there, arguing that they made improvements to the parking area based on the agreement.

EXAMPLE SCENARIOS

4. **Right to Collect Firewood:**

Scenario: Villagers have always collected firewood from a forest owned by Person P. Person P decides to fence off the forest and restrict access.

Dispute: The villagers claim a customary right to collect firewood based on historical usage.

EXAMPLE SCENARIOS

5. **Water Collection from a Well:**

Scenario: Person Q owns a well that has been used by neighboring families for water collection for decades. Person Q decides to restrict access to the well.

Dispute: The neighbors claim a customary right to continue using the well for water collection.

EXAMPLE SCENARIOS
U/S 167 BNSS(148 CRPC)

[S 167 BNSS (148 CRPC)] LOCAL INQUIRY

- (1) Whenever a **local inquiry is necessary** for the purposes of section 164 BNSS (145 CrPC), section 165 BNSS (146 CrPC) or section 166 BNSS (147 CrPC), **a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry**, and may furnish him with such **written instructions as may seem necessary for his guidance**, and **may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid**.
- (2) The **report of the person** so deputed may be **read as evidence** in the case.

[S 167 BNSS (148 CRPC)] LOCAL INQUIRY

(3) When any costs have been incurred by any party to a proceeding under section 164 BNSS (145 CrPC), section 165 BNSS (146 CrPC), or section 166 BNSS (147 CrPC), the **Magistrate passing a decision may direct by whom such cost shall be paid**, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and of pleaders' fees, which the Court may consider reasonable.

FLOWCHART

DISPUTES AS TO IMMOVABLE PROPERTY LIKELY TO CAUSE BREACH OF PEACE -164 BNSS (145 CRPC)

What

- **A Dispute Likely To Cause A Breach Of The Peace Exists**
- **Concerning Any Land Or Water**
- **Exists within his local jurisdiction**

What

- **"Land Or Water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property**

Who

- **an Executive Magistrate**

DISPUTES AS TO IMMOVABLE PROPERTY LIKELY TO CAUSE BREACH OF PEACE – 164 BNSS (145 CRPC)

How

- **An Executive Magistrate is satisfied from a report of a police officer or upon other information**

How

- **he shall make an order in writing, stating the**
- **grounds of his being so satisfied,**

How

- **Ask the parties to attend his court and submit written statements**

Peruse the statement , hear the parties and received evidence

he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law,

and forbidding all disturbance of such possession until such eviction;

In cases of emergency or when it cannot be established who is in possession

EM may attach the subject of dispute until a competent Court has determined the rights of the parties and appoint a receiver u/s 165 BNSS (146 CrPC).

DIFFERENCE
BETWEEN 164 & 166
BNSS (145 & 147 CRPC)

DIFFERENCE BETWEEN SECTION 164 AND 166 BNSS (145 AND 147 CRPC)

The main points of distinction between S. 164 BNSS (145 CrPC) and S. 166 BNSS (147 CrPC) are as follows:

(i) Whilst S. 164 BNSS (145 CrPC) applies to **disputes as to possession of land**, S. 166 BNSS (147 CrPC) applies to the **right as to the use of land or water claimed as an easement** or otherwise.

(ii) Whereas S. 164 BNSS (145 CrPC) provides **for attachment**, S. 166 BNSS (147 CrPC) does not contain any such provision, as this **deals with abstract rights of the user**.

(iii) S. 164 BNSS (145 CrPC) requires **proof of actual possession**, irrespective of the legal right. S. 166 BNSS (147 CrPC), on the other hand, requires the Magistrate to **ensure if the right of the actual user appears to exist**, irrespective of the legal rights.

(iv) Whereas S. 166 BNSS (147 CrPC) is **discretionary**, S. 164 BNSS (145 CrPC) is **mandatory**, and the Magistrate has no option but to proceed under the section.

(v) Under S. 166 BNSS (147 CrPC), the commission of a **breach of the peace is alleged to arise from the person against whom an application is made**, whereas under S. 164 BNSS (145 CrPC), **a breach of the peace may be occasioned by any of the disputant parties**.

OTHER CONEPTS

- The **Allahabad High Court** has observed that the proceedings under Section 164 BNSS (145 CrPC) are **quasi-judicial and quasi-administrative** in nature, and **their object is to prevent a breach of the peace and maintain tranquility.** (Bhagwat. AIR 1967 All. 164)
- However, before initiating any proceedings, the Magistrate must be satisfied about the following **two conditions**, viz. -
 - (i) that a dispute regarding **immovable property** exists; and
 - (ii) that such a dispute is likely to **cause breach of the peace.**

- Once he is satisfied about these two conditions, he can pass a **preliminary order, thereafter make an inquiry**, and **then pass a final order**. The Supreme Court has rightly observed that it is not necessary that, at the time of passing the final order, the apprehension of breach of the peace should continue to exist. (R.H. Bhutani v. Mani J. Desai, 1969 1 S.C.R. 80)
- It is also to be noted that the Magistrate's jurisdiction under S. 164 BNSS (145 CrPC) depends upon there being a dispute which is likely to cause a breach of the peace. Therefore, when the right of the parties have already been determined by a competent Court, the dispute is at an end, and it is the duty of the Magistrate to maintain the rights of the successful party. In such a case, the defeated party cannot be to invoke the aid of the Magistrate and the police to neutralize the effect of the Civil Court's decree, and it is not open to the Magistrate to ignore the decree. The proper course for a Magistrate in such a Case is to take action under S. 126 BNSS (107 CrPC) of the Code. (Gobind, 6 Cal. 835)

- It is to be noted that S. 164 BNSS (145 CrPC) is intended only to provide a **speedy remedy** for the prevention of breaches of peace arising out of disputes relating to immovable property,
- The object of this section is to enable a Magistrate to intervene and pass a **temporary order** in regard to the property in dispute, the order to have effect until the actual rights of the parties are determined by a competent Civil Court.
- Thus, the object of section 164 BNSS (145 CrPC) is **not to provide the parties with an opportunity of bringing their civil disputes before a Criminal Court, or maneuvering for possession for the purpose of subsequent civil litigation**, although unfortunately, that is very often the actual effect of such proceedings.

- The rear object of this provision **is to arm the Magistrate with an additional weapon for maintaining peace within his area.** The Magistrate must, therefore, guard himself against an abuse of this provision, by persons whose object may be to get possession of the property, and drive the other side to a Plaintiff in a civil suit and prove his title. (Gajadhar, 50 Cr. L.J. 967)
- In proceedings under S. 164 BNSS (145 CrPC), the Magistrate **does not have to enter into questions of title or the rights to possession,** and **the foundation of his jurisdiction is the existence of a dispute likely to cause a breach of the peace, Pendency of a civil suit also does not fetter the hands of a Magistrate.**

- However, a Magistrate has **no jurisdiction to order division of crops on the land between the parties. Nor can he pass an order that a person shall continue in possession until he has reaped the crops, and then give the crops to the other party**: Similarly, a Magistrate is **not competent** under the section to pass an order **directing the method by which possession is to be exercised or the agency by which the person in possession is to collect the profits.** (Akaloo, 36 Cal. 986)
- In a proceeding under this section, **the Magistrate is bound to ascertain and define the land in dispute, and he has no jurisdiction to pass an order in respect of lands which are not covered by the initial proceedings.** (Amriteswari, 7 C.W.N. 558)

REMEDIES

No remedy is available by way of a review. S. 362 prohibits a Magistrate from reviewing his final order. Thus, **no Magistrate can review any final order passed either by himself or by his predecessor under S. 164 BNSS (145 CrPC)**. The **remedy of the aggrieved person in such a case would be to approach a Civil Court**.

However, a remedy by way of revision is available, and **both the Session Judge and the High Court** have revisional powers in the matter. Although the High Court is vested with powers of revision, yet **any order passed by a competent Magistrate is not to be unduly interfered with by the High Court, except in exceptional cases**. This is so because **the object of such an order is to preserve the peace, and in any event, the aggrieved party does have a remedy by way of a civil suit**. (Krishnepier, 18 Cr. C.J. 23)

THE HIGH COURT MAY, HOWEVER, INTERFERE IN THE FOLLOWING CASES:

- (i) where necessary parties were left out or wrong persons were made parties; or
- (ii) where the Magistrate refused to receive evidence tendered to him; or
- (iii) where the Magistrate's findings of facts regarding possession were perverse and contrary to a mass of unrebutted evidence; or
- (iv) where no order in writing was recorded by the Magistrate; or
- (v) where the Magistrate refused to issue process for the attendance of material witnesses; or
- (vi) where the Magistrate discarded the evidence altogether, and based his decision merely upon his local inquiry; or
- (vii) where the Magistrate declared possession with a party who had long been out of possession.

ATTACHMENT CONCEPT

- *It has been held that the property in dispute can be attached only if one of the three contingences mentioned above exists; if not, such an attachment will be illegal.* (Mulk Raj v. State, 1978 Cr. L. J. 161)
- As observed by the Supreme Court, the object of such attachment is to keep the property in **custodia legis**, so as to prevent the disputants from causing a breach of the peace while attempting to obtain actual possession of the property. (Deo Kuer, A.I.R. 1966 SC 359)
- The scope of Sections 164 BNSS and 165 BNSS (145 and 146 CrPC) was considered by the **Supreme Court in Mathuralal v. Bhanwarlal and Another (1980 Cri. L.J. 1)**. The Court observed that **S. 165 BNSS (146 CrPC) is not to be torn out of its setting and read independently of S. 164 BNSS (145 CrPC)**. The Court held that the Magistrate's jurisdiction does not come to an end as soon as an attachment is made on the ground of emergency.

- The **Kerala High Court** has held that, under Sections 164 and 165 BNSS (145 and 146 CrPC), where there is a dispute as to possession, **the Magistrate or the Court of Session has no power or authority to refer the dispute regarding the possession of the property to a Civil Court for a finding on the question of possession.** (C. Vijayamma v. Padmanabhan Vasudevan and others. 1980 Cr. L.J. 119).

DISPUTES AS TO IMMOVABLE PROPERTY (164 - 167) BNSS

Sec **164** →

PROCEDURE WHERE DISPUTE CONCERNING LAND OR WATER IS LIKELY TO CAUSE BREACH OF PEACE

By → RM

When → Report of Police
Other Information

DISPUTE LIKELY TO CAUSE

BREACH OF PEACE
EXISTS FOR

→ LAND & WATER
- Includes Buildings, Markets, Fisheries, Crops & other produce, RENT/PROFIT OF ANY SUCH PROPERTY

Land, Water, ITS boundaries

FORCEFULLY DISPOSSESSED
AWARDING OF POSSESSION - 2 months before the report & after this & before the date of order

NATURAL DECAY

ORDER FOR PROPERTY CUSTODY & SALE OF SUCH PROPERTY

Within → His local jurisdiction

Order → PARTIES TO ATTEND HIS COURT
TIME/PLACE
⊕ PUT WRITTEN STATEMENT

IN PERSON & BY PLEADER

Sec **165** → **POWER TO ATTACH SUBJECT OF DISPUTE AND TO APPOINT RECEIVER** - 3 cases

Sec **166** → **DISPUTE CONCERNING RIGHT OF USE OF LAND & WATER**

RIGHT DERIVED AS EASEMENT & OTHERWISE

WHERE THE RIGHT IS EXERCISED THROUGHOUT YEAR

WHERE THE RIGHT IS EXERCISABLE AT PARTICULAR SEASON OR OCCASSION

EXERCISED WITHIN 3 MONTHS BEFORE THE REPORT

EXERCISED DURING LAST SUCH SEASON OR LAST SUCH OCCASSION

Sec **167** → **LOCAL INQUIRY** (for 164, 165, 166)

THANK YOU