

MAINTENANCE OF PUBLIC PEACE AND ORDER

Radhika G, IPS

DD(CoE)

CHAPTER X

Maintenance of
Public Order

Unlawful Assembly

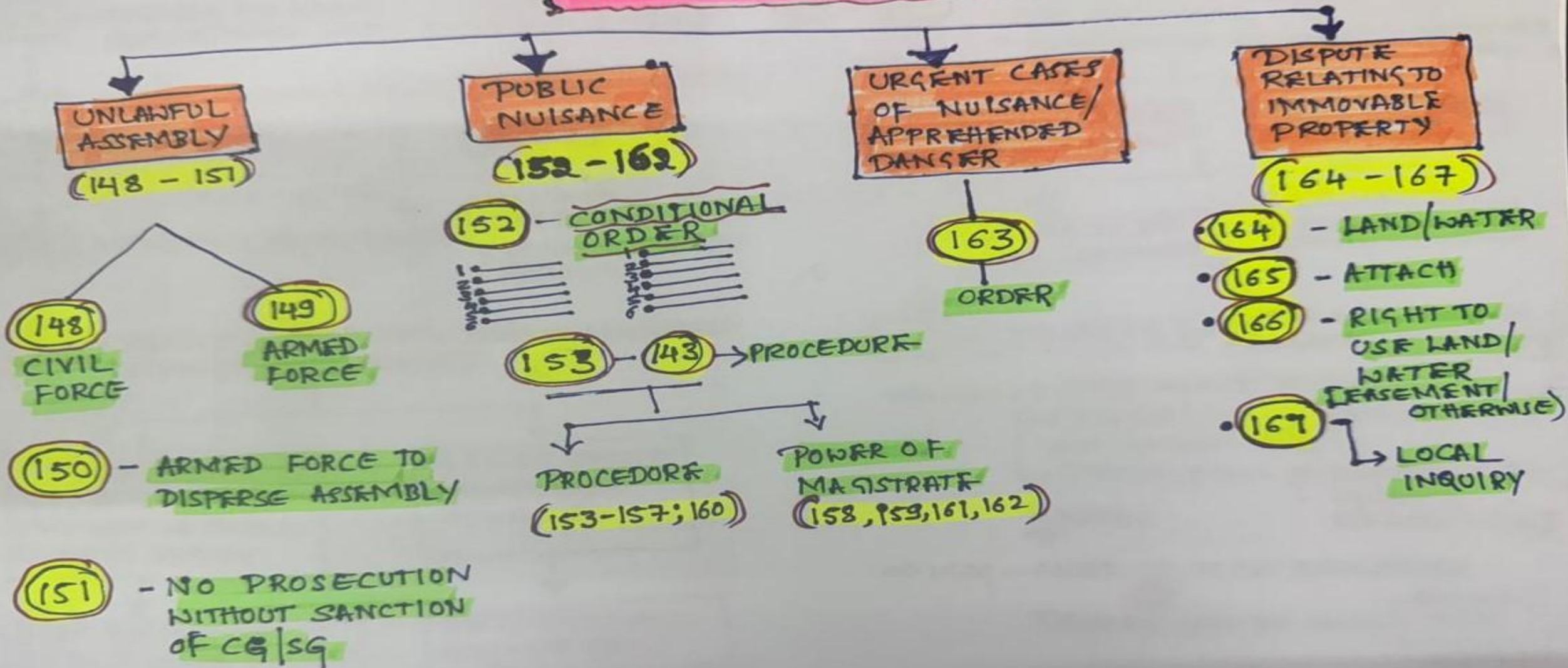
Public Nuisance

Urgent cases

Immovable Property
Dispute

SUMMARY SHEET

CHAPTER - 10 (SEC 148 - 167) BNSS



PART - B

**B.—PUBLIC
NUISANCES**

PUBLIC NUISANCES (SECTIONS 152 TO 162 BNSS (133 TO 143 CR.P.C.)

- Not **only unlawful assemblies** – Ordinary nuisance becomes the cause of breach of peace. For example **causing of unlawful obstruction, carrying on injurious trade, disposal of substance causing explosion or keeping dangerous animals become the cause of breach of peace.**
- These **are matters of civil nature**, yet police and the Executive Magistrate have been empowered by Section 152 BNSS (133 Cr.PC) to remove these obstructions etc., in the interest of the general peace and tranquility in cases of imminent danger.
- **Disobedience is punishable under Section 223 BNS (188 IPC).**
- This section is not a substitute for settlement of title by the civil court.

PUBLIC NUISANCES (SECTIONS 152 TO 162 BNSS (133 TO 143 CR.P.C.)

Where is it defined –BNS 270 (IPC 268) - **Chapter XV**

Any act or an illegal omission which causes any

Common Injury,

Danger Or

Annoyance

to the public or to the people in general who dwell or occupy property in the vicinity,

or

which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

SECTION 223BNS- DISOBEDIENCE TO ORDER DULY PROMULGATED BY PUBLIC SERVANT

(a) shall, **if such disobedience causes or tends to cause obstruction, annoyance or injury**, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend **to six months**, or with fine which may extend to **two thousand and five hundred rupees**, or with both;

(b) and where **such disobedience causes or tends to cause danger to human life, health or safety**, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend **to one year**, or with fine **which may extend to five thousand rupees**, or with both.

[S 152 BNSS (133 CRPC)] **CONDITIONAL ORDER FOR REMOVAL OF NUISANCE.—**

1. Whenever a **District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate** specially empowered in this behalf by the State Government,

on receiving the **report of a police officer or other information** and **on taking such evidence (if any)** as he thinks fit, considers

[S 152 BNSS (133 CRPC)] CONDITIONAL ORDER FOR REMOVAL OF NUISANCE.—

Srl No.	Nuisances	Within a time fixed in the order
1	that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public;	to remove such obstruction or nuisance;
2	that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated	to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed;

[S 152 BNSS (133 CRPC)] CONDITIONAL ORDER FOR REMOVAL OF NUISANCE.—

Srl No	Nuisances	Within a time fixed in the order
3	that the construction of any building, or the disposal of any substance , as is likely to occasion conflagration or explosion , should be prevented or stopped; or	to prevent or stop the construction of such building, or to alter the disposal of such substance;
4	that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by , and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary;	to remove, repair or support such building, tent or structure, or to remove or support such trees;

[§ 152 BNSS (133 CRPC)] CONDITIONAL ORDER FOR REMOVAL OF NUISANCE.—

Srl No.	Nuisances	Within a time fixed in the order
5	that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public;	that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public;
6	that any dangerous animal should be destroyed, confined or otherwise disposed of,	to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation; or owning or possessing such animal or tree,

[S 152 BNSS (133 CRPC)] CONDITIONAL ORDER FOR REMOVAL OF NUISANCE.—

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A “public place” includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

EXAMPLE SCENARIOS

1. **Blocking of a Public Pathway**

Situation: A shopkeeper extends their stall onto the public footpath, blocking pedestrian access.

2. **Risk of Building Collapse**

Situation: An old, abandoned building in a crowded market area shows signs of imminent collapse.

3. **Hazardous Tree Branches**

Situation: Large tree branches overhang a public playground, posing a risk of falling and injuring children.

EXAMPLE SCENARIOS

4. Aggressive Stray Dog in a Residential Area

- **Situation:** An aggressive stray dog is roaming in a residential neighborhood, attacking residents and pets.

5. Unauthorized Storage of Explosives in a Building

- **Situation:** A contractor illegally stores large quantities of explosives in an under-construction building in a densely populated area.

6. Illegal Dumping of Chemical Waste

- **Situation:** A factory disposes of chemical waste in an open field near a residential area, leading to the risk of fire or explosion.

EXAMPLE SCENARIOS

7. **Storage of Hazardous Chemicals in a Grocery Store**

- **Situation:** A grocery store in a busy market area stores hazardous chemicals like pesticides and solvents along with food items, posing a risk of contamination and health hazards.

8. **Blocked Drainage Canal**

- **Situation:** A construction company dumps debris into a drainage canal, causing water to overflow and flood nearby homes.

9. **Unauthorized Chemical Manufacturing Unit**

- **Situation:** A small unauthorized chemical manufacturing unit operates in a densely populated residential area, emitting toxic fumes and disposing of hazardous waste improperly.

EXAMPLE SCENARIOS

10. Unauthorized Road Excavation

- **Situation:** A contractor digs up a public road for utility work without proper authorization, disrupting traffic and causing accidents.

11. Polluting Factory Emissions

- **Situation:** A factory emits noxious fumes that cause health problems for nearby residents.

[S 152 BNSS (133 CRPC)] CONDITIONAL ORDER
FOR REMOVAL OF NUISANCE. — **SPECIMEN**

ORDER U/S 152 BNSS (133 CRPC) FORM 21

(Name, description and address)

WHEREAS it has been made to appear to me that you have caused an **obstruction (or nuisance) to persons using the public roadway** (or other public place) which, etc., (describe the road or public place), by etc. (state what it is that causes the obstruction or nuisance), and that such obstruction (or nuisance) still exists; **or**

WHEREAS it has been made to appear to me that you are carrying on, as owner or manager, **the trade or occupation of** (state the particular trade or occupation and the place where it is carried on), **and that the same is injurious to the public health** (or comfort) by reason (state briefly in what manner the injurious effects are caused) and should be suppressed or removed to a different place; **or**

[S 152 BNSS (133 CRPC)] CONDITIONAL ORDER
FOR REMOVAL OF NUISANCE.— **SPECIMEN**
ORDER U/S 152 BNSS (133 CRPC) FORM 21

WHEREAS it has been made to appear to me that **you are the owner** (or are in possession of or have the control over) **a certain tank** (or well or excavation) **adjacent to the public way** (describe the thoroughfare), **and the safety of the public is endangered by reason of the said tank** (or well or excavation) **being without a fence (or insecurely fenced);**

I do hereby direct and require you within (state the time allowed) (**state what is required to be done** to abate the nuisance) or **to appear** in the Esplanade Court at Mumbai on the 20th day of April, 20..., and to show cause why this order should not be enforced; **or**

[S 152 BNSS (133 CRPC)] CONDITIONAL ORDER
FOR REMOVAL OF NUISANCE. — **SPECIMEN**

ORDER U/S 152 BNSS (133 CRPC) FORM 21

I do hereby direct and require you within (state the time allowed) **to cease carrying on the said trade or occupation** at the said place, and not again to carry on the same or to remove the said trade from the place where it is now carried on, **or to appear** in the Esplanade Court at Mumbai on the 20th day of April, 20....., and to show cause why this order should not be enforced; **or**

I do hereby direct and require you within (state the time allowed) **to put up a sufficient fence** (state the kind of fence and the part to be fenced), **or to appear** in the Esplanade Court at Mumbai on the 20th day of April, 20..., and to show cause why this order should not be enforced.

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

(Seal of the Court)

(Signature)

ILLUSTRATIONS

ILLUSTRATIONS

Case 1:

- Respondent's industrial unit discharged effluents, causing public nuisance. The Magistrate drew proceedings under Section 152 BNSS (133 Cr.P.C.) ordering him to close the unit. He challenged it in the High Court on the ground that:-
- (1) After passing of the Water (Prevention and Control of Pollution) Act, 1974;
- (2) and Air (Prevention and Control of Pollution) Act, 1981. (3) S. 152 BNSS (133 Cr.P.C.) **was impliedly repealed.**

ILLUSTRATIONS

- High Court agreed. Supreme Court on appeal reversed the order and held:
 - (a) Unless **Legislature specially repeals an Act** or Section 152 BNSS (133 Cr.P.C.), there is **no presumption about such repeal**.
 - (b) The **area of operation** of Section 152 BNSS (133 Cr.P.C.) **is different** which deals with prevention; while Water Act and Air Act operate as curative, preventive and penal,
 - (c) The provisions in **both are mutually exclusive** and the question of replacing the other does not arise — State of M.P. v. Kedia Leather and Liquor Ltd. and others, 2003 SCC (Cri.) 1642.

ILLUSTRATIONS

Case 2:

- A person **carried on trade of auctioning vegetables in his house** and many carts which brought the vegetables from villages, obstructed the traffic and the noise caused by auctioning caused discomfort to the neighbors.

Supreme Court held that merely because some discomfort was caused by a trade necessary for the well being of the community, Section 152 BNSS (133 Cr.P.C.) would not apply. (Ram Avtar v. State of 1.1.2, 1963 (3) SCR 9= AIR 1962 SC 1794 = 1963 (1) Cr.L.J. 14).

Case 3:

In another case, where an engine of a factory caused nuisance by its noise, the Magistrate forbade the working of this engine from 9 p.m. to 5 a.m. (Raghunandan Prasad v. u.p.t (1931) 53 All. 706).

ILLUSTRATIONS

Case 4:

The **prostitutes carrying on their occupation at a place on a public road** can be **ordered to stop** such occupation under this section. But the prostitutes **who live in their own houses** and behave in orderly manner, can not be dealt with under this section. However, **under some other Acts** action may be taken if need is felt.

ILLUSTRATIONS

Case 6:

- In *K Ramakrishnan v. State of Kerala* (1999), the court declared **public smoking of tobacco in any form to constitute a public nuisance**. Smoking is harmful to the public at large, thereby fulfilling the requisites of public nuisance.

Case 7:

- In *Soltau v. De Held* (1851), **the plaintiff resided in close quarters to the roman catholic church**. The chapel bell of the church was rung all through day and night. **It was held that the continuous ringing of the bells constituted a public nuisance**

ILLUSTRATIONS

Case 8:

- The Madhya Pradesh High Court has held that the **working of a glucose saline manufacturing unit in a residential area** was a nuisance causing disturbance to the people. The court reinstated the SDM's order asking the firm to remove the unit from there.

[S 153 BNSS (134 CRPC)] SERVICE OR NOTIFICATION OF ORDER.—

- (1) The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for **service of a summons**.
- (2) If such order cannot be so served, it shall be notified **by proclamation, published in such manner as the State Government may, by rules, direct**, and a **copy** thereof shall be **stuck up** at such place or places as may be fittest **for conveying the information to such person**.

[S 154 BNSS (135 CRPC)] PERSON TO WHOM ORDER IS ADDRESSED TO OBEY OR SHOW CAUSE.—

The person against whom such order is made shall—

(a) **perform**, within the time and in the manner specified in the order, the act directed thereby; **or**

(b) **appear** in accordance with such order and show cause against the same.

[S 155 BNSS (136 CRPC)] CONSEQUENCES OF HIS FAILING TO DO SO.—

If such person does not perform such act or appear and show cause, he shall be liable to the **penalty** prescribed in that behalf in **section 223 (188 IPC) of the Bharatiya Nyaya Sanhita** (45 of 1860), and the **order shall be made absolute.**

[S 156 BNSS (137 CRPC)] PROCEDURE WHERE EXISTENCE OF PUBLIC RIGHT IS DENIED.—

(1) Where an order is made under section 152 BNSS (133 CrPC) for the **purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place,**

the Magistrate shall, on the appearance before him of the person against whom the order was made,

question him as to whether **he denies** the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 157 BNSS (138 CrPC), **inquire into the matter.**

[S 156 BNSS (137 CRPC)] PROCEDURE WHERE EXISTENCE OF PUBLIC RIGHT IS DENIED.—

(2) If in such inquiry the Magistrate finds that there is **any reliable evidence in support of such denial**, he **shall stay the proceedings until** the matter of the existence of such right has been **decided by a competent Court**; and,

if he finds that there is **no such evidence**, he **shall proceed** as laid down in **section 157 BNSS (138 CrPC)**.

[S 156 BNSS (137 CRPC)] PROCEDURE WHERE EXISTENCE OF PUBLIC RIGHT IS DENIED.—

(3) A person who has, on being questioned by the Magistrate under sub-section (1), **failed to deny the existence** of a public right of the nature therein referred to,

or who, having made such denial, has **failed to adduce reliable evidence** in support thereof,

shall **not** in the subsequent proceedings **be permitted to make any such denial**.

[S 157 BNSS (138 CRPC)] PROCEDURE WHERE HE APPEARS TO SHOW CAUSE.—

- (1) If the person against whom an order under section 152 BNSS (133 CrPC) is made **appears** and shows cause against the order, the Magistrate shall **take evidence** in the matter as in a **summons case**.
- (2) If the Magistrate is **satisfied** that the **order**, either as originally made or subject to such modification as he considers necessary, is **reasonable** and proper, the order shall be made **absolute without** modification or, as the case may be, **with** such **modification**.
- (3) If the Magistrate is **not so satisfied**, **no further proceedings** shall be taken in the case.

[S 157 BNSS (138 CRPC)] PROCEDURE WHERE HE APPEARS TO SHOW CAUSE.—

(This is not there in CRPC, it is a new addition in BNSS)

Provided that the **proceedings** under this section shall be **completed**, as soon as possible, within a **period of ninety days**, which **may be extended for the reasons to be recorded in writing**, to **one hundred and twenty days**.

**[S 158 BNSS (139 CRPC)] POWER OF MAGISTRATE
TO DIRECT LOCAL INVESTIGATION AND
EXAMINATION OF AN EXPERT.—**

The Magistrate may, for the purposes of an inquiry under section 156 BNSS or section 157 BNSS—

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

[S 159 BNSS (140 CRPC)] POWER OF MAGISTRATE TO FURNISH WRITTEN INSTRUCTIONS, ETC.—

(1) Where the Magistrate directs a local investigation by any person under section 158 BNSS (139 CrPC), the Magistrate may—

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

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

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

[S 160 BNSS (141 CRPC)] PROCEDURE ON ORDER BEING MADE ABSOLUTE AND CONSEQUENCES OF DISOBEDIENCE.— FORM 22

(1) When an order has been made **absolute** under section 155 or section 157 BNSS,

the Magistrate shall **give notice of the same** to the person against whom the order was made,

and shall further require **him to perform** the act directed by the order **within a time** to be fixed in the notice,

and inform him that, in **case of disobedience**, he will be liable to the penalty provided by section **section 223 (188 IPC) of the Bharatiya Nyaya Sanhita** (45 of 1860).

[S 160 BNSS (141 CRPC)] PROCEDURE ON ORDER BEING MADE ABSOLUTE AND CONSEQUENCES OF DISOBEDIENCE —

(2) If such act is **not performed** within the time fixed, the Magistrate **may cause it to be performed**, and **may recover the costs** of performing it, either by the **sale** of any **building, goods or other property removed** by his order, or by the distress and sale of **any other moveable property of such person within or without** such Magistrate's **local jurisdiction** and if such other property is without such jurisdiction, the order shall authorise its *attachment and sale when **endorsed by the Magistrate** within whose local jurisdiction the property to be attached is found.*

**[S 160 BNSS (141 CRPC)] PROCEDURE ON ORDER
BEING MADE ABSOLUTE AND CONSEQUENCES OF
DISOBEDIENCE.—**

(3) No suit shall lie in respect of anything done in good faith under this section.

[S 161 BNSS (142 CRPC)] INJUNCTION PENDING INQUIRY.— FORM 23

(1) If a Magistrate making an order under section 152 BNSS (133 CrPC) 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.**

(2) In **default** of such person forthwith obeying such injunction, **the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.**

(3) **No suit** shall lie in respect of anything done in good faith by a Magistrate under this section.

[S 162 BNSS (143 CRPC)] MAGISTRATE MAY PROHIBIT REPETITION OR CONTINUANCE OF PUBLIC NUISANCE.— FORM 24

A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person **not to repeat or continue a public nuisance**, as defined in the BNS 2023, or any special or local law.

PUBLIC NUISANCE PROCEDURE

PUBLIC NUISANCE PROCEDURE (SEC 153-162 BNSS)

153 → SERVICE OF ORDER ON PERSON (i.e., AGAINST WHOM AN ORDER IS PASSED)

154 → PERSON TO WHOM ORDER IS ADDRESSED SHALL

PERFORM
(WITHIN THE TIME DIRECTED)

APPEAR

155 → IF PERSON FAILS U/S 154

LIABLE U/S 223 BNS/188 IPC
ORDER TO BE MADE ABSOLUTE

156 → PROCEED WHERE AFTER INQUIRY MAGISTRATE FINDS (PUBLIC RIGHT)

RELIABLE EVIDENCE TO SUPPORT DENIAL OF EXISTENCE OF PUBLIC RIGHT OF PERSON

PERSON FAILED TO ADDUCE EVIDENCE

STAY PROCEEDING UNTIL MATTER DECIDED BY COMPETENT COURT

SUCH PERSON WILL NOT BE FURTHER ALLOWED TO DENY IT

155 ⊕ **157** → WHEN PERSON APPEARS TO SHOW CAUSE

- U/S 152 ORDER
- MAG - TAKES EVIDENCE - SUMMARY CASE

SATISFIED ORDER IS REASONABLE / PROPER

NOT SATISFIED

ORDER TO BE MADE ABSOLUTE

NO FURTHER PROCEEDINGS

160 → PROCEDURE → WHEN ORDER MADE ABSOLUTE U/S 155/157

→ MAG → GIVES NOTICE TO PERSON
→ REQUIRES HIM TO PERFORM ACT WITHIN TIME
→ INFORM HIM - IF DISOBEDIENCE - PENALTY U/S 223 BNS/188 IPC

⇓ FAILS

⇒ MAG - CAUSE IT TO BE PERFORMED

⊕ RECOVER COST BY SALE → BUILDINGS / GOODS / MOVABLE PROPERTY

→ IF RECOVERY BY PROPERTY

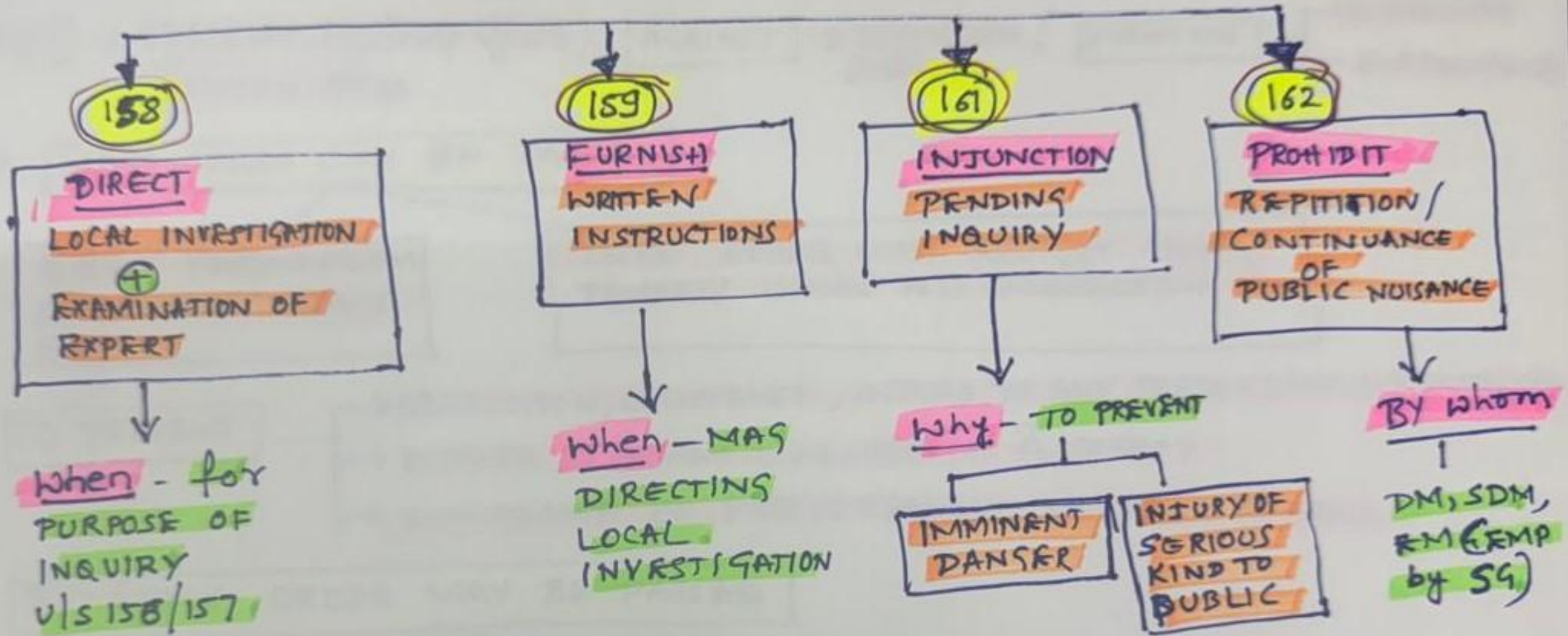
↓ OUTSIDE JURISDICTION

↓ ATTACHMENT ⊕ SALE

→ ONLY WHEN THAT MAGISTRATE ENDORSES

POWERS OF MAGISTRATE

POWERS OF MAGISTRATE



VARIOUS COURT JUDGEMENTS

DIRECTIONS FROM THE ORISSA HIGH COURT JUDGMENT

- Case: Trinath Panda vs. Commissioner-cum-Secretary, Health & Family Welfare Department, Government of Odisha & Others
- Judgment Date: 21.02.2024

DIRECTIONS FROM THE ORISSA HIGH COURT JUDGMENT

Direction 1

Magistrate's Duty on Receiving Information

Magistrates (District, Sub-Divisional, or Executive) must make a conditional order for the removal of obstruction or nuisance upon receiving information or a police report.

They must ensure compliance or order the proceedee to appear and show cause.

DIRECTIONS FROM THE ORISSA HIGH COURT JUDGMENT

Direction 2

Duty of Local Authorities and Police

Chief Executive Officers or authorized officers of local bodies and Officers-in-charge of police stations must inform the Magistrate of any obstruction or nuisance.

Failure to inform the Magistrate will result in disciplinary action.

Direction 3

Proceedings by Magistrates

Magistrates must proceed under Section 152 (133 CrPC) of the BNSS upon receiving information and pass appropriate orders.

Any inaction by Magistrates will lead to disciplinary action.

DIRECTIONS FROM THE ORISSA HIGH COURT JUDGMENT

Direction 4

Compliance with Conditional Orders

Conditional orders, if not objected to, or made absolute, must be obeyed. Disobedience will attract penal provisions of Section 223 (188 IPC) of the BNS.

Direction 5

Role of Tahasildars under OPLE Act

Tahasildars must act per the OPLE Act upon noticing unauthorized occupation of government property.

They must ensure eviction and protection of government lands.

DIRECTIONS FROM THE ORISSA HIGH COURT JUDGMENT

Direction 6

Adherence to the Judgment

All concerned authorities must follow the directions with utmost diligence.

Non-compliance will result in disciplinary/criminal action and contempt of court.

Conclusion

The Court emphasized the importance of authorities exercising their statutory powers for public benefit.

This judgment aims to ensure that public nuisances and unauthorized land occupations are addressed promptly and effectively.

The High Court of Madras in the case of the Manager v. the Sub Divisional Magistrate (2008) gave out some important guidelines pertaining to Section 152 BNSS (133 CrPC.) These are-

- Any order made under Section 152 BNSS (133 CrPC) must be based **only upon material factors.**
- The restrictions imposed under such an order **must be reasonable and fair.**
- Proceedings under this Section **cannot be used for the settlement of private disputes.**
- An order under Section 152 BNSS (133 CrPC) can be passed only if there **is any imminent danger to the physical comfort of the public.**
- This imminent danger **must lead to public nuisance.**
- An order made under Section 152 BNSS (133 CrPC) cannot be substituted with civil proceedings.
- The provision only comes into play **when there is a sense of urgency** and not when the nuisance has been in place for a long period of time.

- The Jammu and Kashmir High Court in the case of *Girdhari Lal v. State of Jammu and Kashmir (2018)* once again **emphasised that Section 152 BNSS (133 CrPC) cannot be used to settle private disputes** and must be used only to protect the public from any nuisance.
- Karnataka High Court judgement, the Court in the case of *Achut D. Nayak and Ors v. the Sub Divisional Magistrate and Anr. (2022)* held that a Magistrate exercising power under Section 152 BNSS (133 CrPC) **must do so only after providing the party with a reasonable and sufficient opportunity of being heard** and recording evidence in order to arrive at a conclusion that the actions of the person/party caused any kind of public nuisance.

THANK YOU