

MAINTENANCE OF PUBLIC PEACE AND ORDER

Radhika G, IPS

DD(CoE)

(For 78 RR)

CHAPTER X

Maintenance of
Public Order

Unlawful Assembly

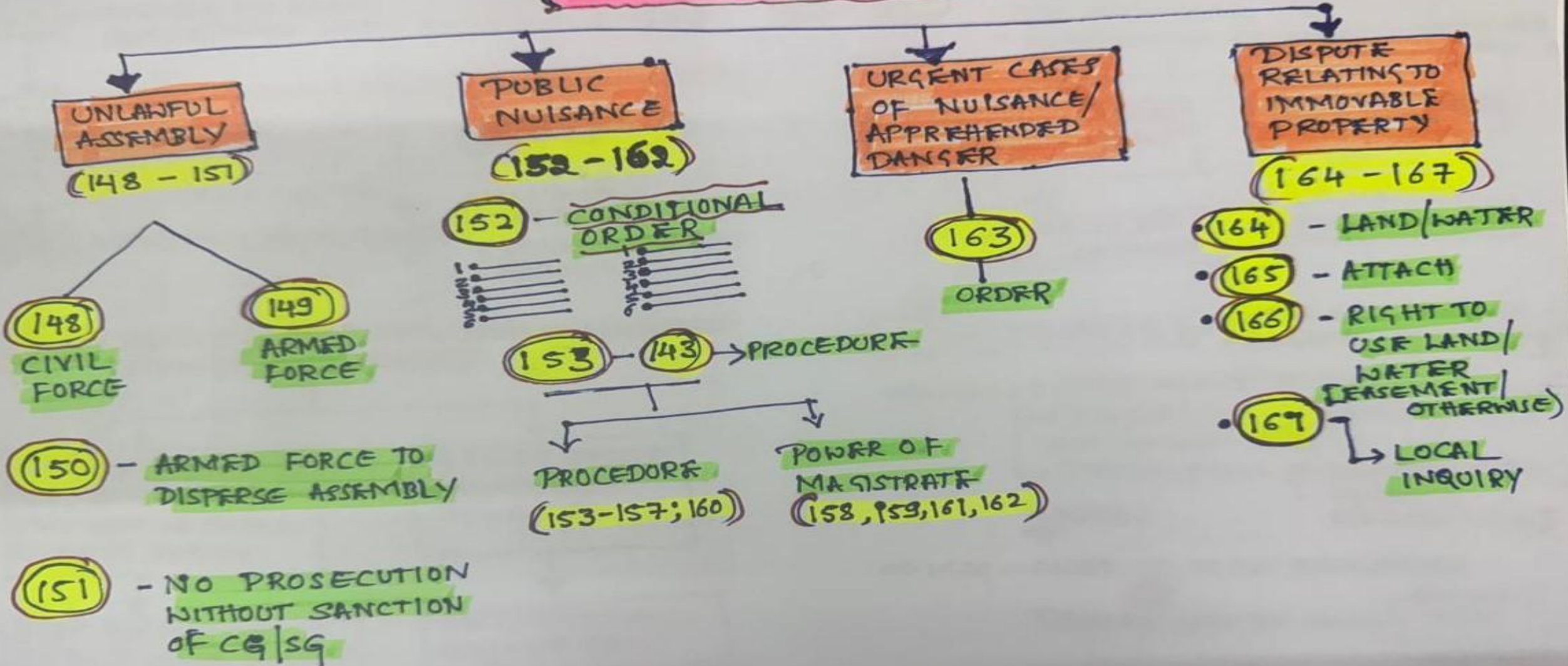
Public Nuisance

Urgent cases

Immovable Property
Dispute

SUMMARY SHEET

CHAPTER - 10 (SEC 148 - 167) BNSS



PART - A

UNLAWFUL ASSEMBLY
SEC 148-151 BNSS
(SEC 129-132CRPC)

[S 148 BNSS (129 CRPC) DISPERSAL OF ASSEMBLY BY USE OF CIVIL FORCE.—

- 1) Any **Executive Magistrate** or **officer incharge of a police station** or, in the absence of such officer incharge, any police officer, **not below the rank of a sub-inspector,**

may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse;

and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse,

any Executive Magistrate or police officer referred to in sub-section (1),

may proceed to disperse such assembly by force,

and may require the assistance of any person, not being an officer or member of the armed forces

and acting as such, for the purpose of dispersing such assembly,

and, **if necessary, arresting and confining** the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

**UNLAWFUL ASSEMBLY
DISPERSAL OF ASSEMBLY BY USE OF CIVIL FORCE –
148BNSS (129 CRPC)**

Who can do it

- **Any Executive Magistrate**
- **or Officer in charge of a police station**
- **or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector**

An authorized officer



```
graph TD; A[An authorized officer] --> B[Commands dispersal]; B --> C[If does not disperse]; C --> D["or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse"]
```

Commands dispersal

If does not disperse

or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse

May proceed to disperse
such assembly by force,



if necessary,
arresting and confining
the persons

Unlawful Assemblies : (Sections Sec 148-151 BNS (129 to 132 Cr.PC) and Sections 30 and 30-A Police Act)

- Section 189 BNS (141 IPC) defines unlawful assembly as an assembly of five or more persons with common object.
- Chapter XI BNS (VIII IPC) Sec. 189 to 194 BNS (141 to 160 IPC)– Offences against the public tranquility.
- **The Sections from 148 to 151 (129 to 132) deal with the dispersal of such assemblies by Magistrate, Police and Army and the legal protections available to such officials.**

Constitutional Validity

Article 19(1)(c) of the Constitution gives **a right to every citizen to assemble peacefully without arms.**

As such the line of demarcation between a lawful assembly and unlawful assembly is very thin, and it is still more difficult to determine when a lawful assembly turned unlawful - - **The Police has a duty to prevent them from turning violent, either by words of command or by use of force.**

Article 19(2) **permits reasonable restriction** on the Fundamental Right in the interest of sovereignty and integrity of India and public order. Section 148 BNSS (129 Cr.PC) in its scope is intra vires.

ILLUSTRATION-1

Under orders of the Executive Magistrate, the Police made a **mild lathi charge** and dispersed the unlawful assembly. A person injured in the action filed a criminal complaint against Police without obtaining sanction from the Government. His plea was that Police acted beyond the scope of its authority.

ILLUSTRATION - 1

It was held that:

- (1) **Police would not prove its innocence**. It is for the complaint to prove that Police acted beyond its scope of duty and caused injuries.
- (2) The Police produced the documentary evidence consisting of the orders of the Executive Magistrate and the F.I.R. which Police recorded under Section 193(1), 324 BNS (148, 427 I.P.C.) against the complainant for unlawful assembly.
- (3) The court dismissed the complaint as violative of Section 151 BNSS (132 Cr.P.C.) (Krishna pillai v. Sadasivan Pillai, AIR 1963 Ker.7).

ILLUSTRATION-2

- A **group of 21 Sikhs doing kar seva** by repairing the Gurudwaras during day, stayed in a Gurudwara during a winter night. In the morning the group **had some heated arguments with the sewadar of the Gurudwara** who could not supply sufficient blankets to them.
- While this argument was going on within the Gurudwara, a **Dy. S.P.** along with his force came there and **asked the group to come out of Gurudwara which they did.**
- **The Dy. S.P. took them to some distance then ordered his men to shoot at the group as result of which six persons died.** A complaint was filed against the Dy. S.P. under **Section 103 BNS (302 I.P.C.)**

ILLUSTRATION-2

- The Dy. S.P. **took the defence that it was unlawful assembly and he ordered them to disperse which they refused.** Hence, Dy.S.P. used fire arms to disperse them and **sought protection under Section 151 BNSS (132 Cr.P.C.)**
- It **was held that there was no unlawful assembly at all** and Dy. S.P. acted beyond the scope of his duty. **Hence no sanction was required for his prosecution.** (Karam Singh v. Hardayal Singh, 1979 Cr.L.J. 1211).

ILLUSTRATION- 3

- On February 26, 1962, the **counting of votes** for the election of Shri Gurdayal Singh Dhillon was going on at **Taran-Taran Tehsil of Punjab**. Where the **S.P. saw a crowd coming towards the Tehsil protesting against the wrong declaration of the election result** of Master Tara Singh on February 25, 1962 at Sarhali constituency.
- Apprehending trouble, the **S.P. forcefully dispersed the crowd causing injuries to many persons. In his anxiety to justify his use of force on the peaceful crowd, he directed his men to damage the doors window, furniture of the Tehsil office.**
- On a complaint by the injured persons, the **Punjab High Court held that the Police exceeded in its powers to use force on the peaceful assembly and they were also liable for creating false evidence** under Section 229/231 BNS (193/195 IPC.) (Giani Ajmer Singh Vrs Ranjit Singh Grewal, AIR 1965 Punjab 192).

ILLUSTRATION -4

JAY ENGINEERING WORKS LTD. V. WEST BENGAL

- Facts were that the Jay Engineering Co. retrenched some workers who in retaliation 'Gheraoed' the Manager and supervisors of the company for 33 hours without food and water, and trespassed, humiliated and assaulted the staff. **The Police did not interfere because of the two cabinet decisions of the Government.**
- Decisions No. 513 P.C. confidential, dated March 17, 1967 and No. P-914 P.C., dated June 12, 1967 briefly provided that **in cases of Gherao by industrial workers, the matter should be reported to the Labour Minister before Police take any action.**

ILLUSTRATION -4

JAY ENGINEERING WORKS LTD. V. WEST BENGAL

- And that the **Police and Magistrate should not interfere in the law and order problem created by 'Legitimate Labour Movements'**, When any complaint is made to the Police about it the **Police ought to first investigate and find out the truth of such complaint. If there is some basis, only then Police should register the case.**

THE HIGH COURT QUASHED BOTH THE CIRCULARS AND LAID DOWN:

(1) There is no legal basis for such Cabinet decisions. It violated Article 166 where transaction of business of law and order was to be carried on by the **Home Minister and not by the Labour Minister.**

(2) The Cabinet decisions violated Article 14 where **industrial workers breaking the law were given different treatment from that of other wrongdoers.** No equality before the law was observed.

THE HIGH COURT QUASHED BOTH THE CIRCULARS AND LAID DOWN:

(3) The Cabinet decisions violated Sections 170,173 and 103 BNSS (151, 154 and 100 Cr.P.C.) which provided for immediate action by Police when cognizable offence was committed.

(4) This is an exceptional case when the aggrieved party challenged the Cabinet decision in the High Court.

There are many more telephonic and verbal orders of the politicians which control the Police working.

ILLUSTRATION - 5

NAGRAJ V THE STATE OF MYSORE, 1964 AIR 269.

- The sub-inspector, says that while he along with a constable were taking X to the Police Station after arresting him, twenty or thirty people attacked them to rescue X.
- Ignoring his advice to refrain from violence, the crowd asked him to wait for Y to arrive, which he refused.
- On his refusal, and on the arrival of Y the crowd threatened apprehending danger to his and the constable's lives, the appellant at first fired in the air, in response the people pelted stones at him and grappled with him, resulting in two shots being fired, injuring two people.
- Does this attract section 148 BNSS (129 CrPC)
- The Court held this action of the sub-inspector using force to disperse an unlawful assembly by Section 148 BNSS (129 CrPC) is correct.

*IN RE-RAMLILA MAIDAN INCIDENT V
HOME SECRETARY AND ORS*

<https://youtu.be/ZtExN2Uk-ic>

<https://youtu.be/WpRtOT7k-JQ?si=sA9mE6H93cVUvJnK>

IN *RE-RAMLILA MAIDAN INCIDENT V HOME SECRETARY AND ORS*

- Ramdev Baba, along with his followers, were agitating against corruption
- The **Delhi Police claimed that Baba Ramdev instigated his followers** to resort to violence, compelling them to take action.
- **Late in the night the Police informed him that permission to set camp was withdrawn**, and it would lead to detention.
- At around 12.30 a.m., a large number of police and armed force personnel reached the location, the Ramlila Maidan.
- The **Supreme Court took *suo moto* action** against this incident. The use of violence was not justified as the protestors were sleeping and the assembly could not have qualified as an unlawful assembly, and hence, Section 148 BNSS (129 CrPC) was not applicable.

IN *RE*-RAMLILA MAIDAN INCIDENT V HOME SECRETARY AND ORS

- It is evident from the order passed under Section 163 BNSS (144 Cr.P.C.) itself that the **people at large, sleeping in tents, had not been informed about such promulgation** and were not asked to leave the place.
- There had been a **dispute regarding the service of the orders** on the organizers only. Therefore, there was **utter confusion and the gathering could not even understand what the real dispute was** and **had reason to believe that police was trying to evict Baba Ramdev forcibly.**
- **At no point of time, the assembly was declared to be unlawful.**
- In such a fact-situation, the police administration is to be blamed for not implementing the order, by strict adherence to the procedural requirements.
- Thus, the present is **a clear cut case of Human Rights violation.**

OTHER IMPORTANT COURT RULING

- It is interesting to note that unauthorized firing is disapproved by the courts. **In a situation which did not justify firing, firing was resorted to without the orders from authorized officers the dependents of the victim were ordered to be compensated by the State.**

PUNJAB-HARYANA HIGH COURT KARAM SINGH VS HARDAYAL SINGH AND ORS. 1979

Punjab & Haryana High Court held that three pre-essential conditions must be satisfied before an Executive Magistrate can order the use of force to disperse a crowd.

- *Firstly*, there should be an unlawful assembly consisting of five or more persons whose object is to commit violence or likely to cause a disturbance of public peace and tranquillity.
- *Secondly*, an order of dispersal should be given by an Executive Magistrate.
- *Thirdly*, the people don't move away in spite of such given orders.

[S 149 BNSS (130 CRPC)] USE OF ARMED FORCES TO DISPERSE ASSEMBLY.—

- (1) If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the **District Magistrate or any other Executive Magistrate authorized by him**, who is present, may cause it to be dispersed **by the armed forces**.
- (2) Such Magistrate may require any **officer in command** of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to **arrest and confine** such persons forming part of it as the Executive Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.
- (3) Every such officer of the armed forces **shall obey** such requisition in such manner as he thinks fit, but in so doing he shall use as **little force**, and do as **little injury** to person and property, **as may be consistent with dispersing the assembly and arresting and detaining such persons**.

FORMAT OF THE MAGISTRATE'S ORDER:

- I,..... Magistrate of the Class, acting under Section 149 BNSS (130 Cr.P.C.) require No. RankName of the unit.....to disperse an unlawful assembly at..... O'clock (approximately) on the day of..... 19.....at.....
- Countersigned.....Signed..... Military officer.

[S 150 BNSS (131 CRPC)] POWER OF CERTAIN ARMED FORCE OFFICERS TO DISPERSE ASSEMBLY.—

When the public security is manifestly endangered by any such assembly and **no Executive Magistrate can be communicated with,** **any commissioned or gazetted officer of the armed forces** may disperse such assembly with the help of the armed forces under his command, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law;

[S 150 BNSS (131 CRPC)] POWER OF CERTAIN ARMED FORCE OFFICERS TO DISPERSE ASSEMBLY.—

but if, while he is acting under this section, **it becomes practicable for him to communicate with an Executive Magistrate**, he shall do so, and shall thenceforward **obey the instructions of the Magistrate, as to whether he shall or shall not continue such action.**

PROTECTION AGAINST PROSECUTION FOR ACTS DONE UNDER SEC 148, 149, 150 BNSS (129, 130, 131 CRPC)



Sec 151 BNSS (132
CrPC)



Protection against prosecution for
acts done under preceding sections

[S 151 BNSS (132 CRPC)] PROTECTION AGAINST PROSECUTION FOR ACTS DONE UNDER PRECEDING SECTIONS.—

- 1) No prosecution against any person for any act purporting to be done under section 148 BNSS (129 CrPC), section 149 BNSS (130 CrPC) or section 150 BNSS (131 CrPC) shall be instituted in any Criminal Court except—
 - (a) **with the sanction of the Central Government** where such person is an officer or member of the **armed forces**;
 - (b) **with the sanction of the State Government** in any **other case**.

**[S 151 BNSS (132 CRPC)] PROTECTION AGAINST
PROSECUTION FOR ACTS DONE UNDER
PRECEDING SECTION.-**

- (2)(a) **no Executive Magistrate or police officer** acting under any of the said sections in **good faith**;
- (b) **no person** doing any act in good faith **in compliance with a requisition** under section 148 BNSS (129 CrPC) or section 149 BNSS (130 CrPC);
- (c) **no officer of the armed forces** acting **under section 150** in good faith;
- (d) **no member of the armed forces** doing any act in obedience to any order **which he was bound to obey**, shall be **deemed to have thereby committed an offence.**

[S 151 BNSS (132 CRPC0] PROTECTION AGAINST PROSECUTION FOR ACTS DONE UNDER PRECEDING SECTION.-

3. In this section and in the preceding sections of this Chapter,—
- (a) the expression “**armed forces**” means the **military, naval** and **air forces**, operating as land forces and includes any other Armed Forces of the Union so operating;
 - (b) “**officer**”, in relation to the **armed forces**, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a **junior commissioned officer, a warrant officer, a petty officer, a non-commissioned officer** and a **non-gazetted officer**;
 - (c) “**member**”, in relation to the **armed forces**, means **a person in the armed forces other than an officer**.

THANK YOU