

Security for Keeping Peace and Good Behaviour

(Chapter IX of BNSS – 125 to 143)

(Chapter VIII of CrPC -106 to124)

- **Radhika G, IPS**

Deputy Director



PREVENTIVE SECTIONS USED
IN ELECTION ATTACHMENT...?

Election Violence and Preventive Measures

FORM LOK - FORM II

Election Commission of India
Daily Law & Order Report for State for Electoral Events
Election ID : STATE ELECTIONS, 2004

(Report for a day should cover a period of 24 hours from 6.00 AM of that day to 6.00 AM of next day)

To

The Secretary

Election Commission of India

Start Date for these Reports (1): Date			Month			Year			
Report for..... day (2) : Date			Month			Year			

Name of State:

Sl. No.	Item	Reporting Day	Cumulative from Start Date upto and including Reporting day
1.	No. of Unlicensed Arms/Explosive seized a) Arms/Weapons b) Cartridges/Explosives(Quantity/Numbers)		
2.	No. of illicit arms manufacturing centres raided and seizures made		
3.	Licensed Arms deposited/impounded/		
4.	No. of persons bound down U/S 107/116 CrPC etc.		
5.	Execution of non-bailable warrants a) Executed b) Pending		
6.	a) No. of incidents of violence related to poll campaign, political rivalry etc. b) Total killed c) Total injured d) Damage to property (in Rs. Lakhs)		
Signature Of CEO:		Name of CEO:	

**No. of persons bound down u/s 126 / 135
BNSS (u/s 107 / 116 CrPC) etc.**

Poll Related Violence is commonly seen in India...(This video pertains to Andhra Pradesh post poll violence - 2024)

- **Inspite of elaborate planning why we not able to effectively control violence and act against perpetrators??**
- **Failing to maintain Law & Order Results in Disciplinary action**



<https://youtu.be/A7o5YO2uyz4?si=VqTLtd2ncWSKIJj5>

Communal Violence..

How to prevent such riots... ???

Offensive Facebook post leads to riots in Bengaluru, three dead

Around 700 youths attack police station, torch vehicles and assault policemen



Police and residents walk past charred remains of vehicles vandalised by a mob



Status of Riots in India....

(Source: Crime in India 2022)

900+ police personnel were injured/killed by riotous mob

57,082 incidents against public tranquility

67739 cases of rioting were investigated by Police

29,024 cases were disposed by courts

Conviction rate of **24.9%** in Rioting Cases.

What are the reasons for failure to control riots in India?

How to prevent such incidents using the provisions of BNSS (CrPC) ???

- Belgavi Incidence
- Mangalore Incidence



CLASSIC EXAMPLE

Security arrangements during Hindu Samajotsava- Communally Sensitive bandobast

- ❖ **P RAJENDRA PRASAD, IPS - Dy. Inspector General of police (R) - When Sir was SP Madikeri District**
- ❖ **Bound over the organizer successfully for Rs 50 Lakhs**

Security arrangements during Hindu Samajotsava- Communally Sensitive bandobast

Sequence of Events

- On 08-04-2017, VHP President and Secretary submitted a letter requesting for conducting of **Hindu Samajotsava on 05.05.2017**. The programme include **massive procession (Shobayatra) for 2 km** from the Aiyappa temple located in Siddapura town to the place of function **from 10 am to 2 pm**. The expected **gathering was around 6000**.
- On 18-04-2017, **wrote an official letter to District Magistrate** explaining the likely Law & order issues in the event of permitting the Shobayatra (Religious Procession) and the public function.

Sequence of Events

1. The **Procession covers 2 km** from Aiyappa temple, Siddapura town to Nellihudikeri **function place near the Kabarasthan (Muslim Burial Ground)**.
2. The Shobayatra **passes through one mosque and two churches and commercial establishments on either side of the procession route**. Most of the **shops are owned by the Muslims**.
3. The stage Programme is between **11 am to 2 pm**.
4. The Proposed **Public Function /Stage Programme is to coincide with the Friday Congregational prayers at the nearby Mosque**. This may result in possible law and order issues and tensions in the town.

Sequence of Events

5. **Muslim Burial Ground (Kabarasthan) and mosque located near to the place of function.**
6. There are **no approach road/motarable road to the function place** from the main road.
7. **Lunch** for the participants of the function numbering **around 6000** to be arranged **near the function place /Kabarasthan.**
8. Hence the organizers **may be requested to change the date and place of the function.**



PREVENTIVE MEASURES TAKEN

Bandobast Security Arrangements made (**PREVENTIVE Measures**)

- Instructed the **SDPO, Madikeri Sub-division** to write an official letter to Taluk Magistrate to change the Proposed place of function and **requested to obtain security for good behaviour U/s 127 BNSS (108 CrPC)**
- **After hearing both the sides (Police and the Organiser)**, the taluk Magistrate made an order as per section 130 BNSS (111 CrPC) and **ordered the General Secretary Vishwa Hindu Praishad to execute bond for Rs. 50 Lakhs.**
- Accordingly the General Secretary Vishwa Hindu Parishad **Executed a bond for Rs.50 Lakhs for keeping good behaviour during the proposed Shobayatra (Procession) and the stage programme.**

FORM No. 14

SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE

(See section 113)

To

of

WHEREAS it has been made to appear to me by credible information that _____ (*state the substance of the information*), and that you are likely to commit a breach of the peace (*or by which act a breach of the peace will probably be occasioned*), you are hereby required to attend in person (*or by a duly authorised agent*) at the office of the Magistrate of _____ on the _____ day of _____ 19____, at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees _____ [*when sureties are required, add, and also to give security by the bond of one (or two, as the case may be) surety (or sureties) in the sum of rupees _____ (each if more than one)*], that you will keep the peace for the term of _____

Dated, this _____ day of _____, 19____.

(Seal of the Court)

(Signature)

BOND FOR GOOD BEHAVIOUR

(See sections 108, 109 and 110)

WHEREAS I, _____ (*name*), inhabitant of _____ (*place*),
have been called upon to enter into a bond to be of good behaviour to Government and all the citizens
of India for the term of (*state the period*) or until the completion of the inquiry in the matter
of _____ now pending in the Court of _____, I hereby bind myself to be of
good behaviour to Government and all the citizens of India during the said term or until the completion of
the said inquiry; and, in case of my making default therein, I hereby bind myself to forfeit to Government
the sum of rupees _____

Dated, this _____ day of _____, 19 ____ .

(*Signature*)

(*Where a bond with sureties is to be executed, add*)

We do hereby declare ourselves sureties for the above-named
that he will be of good behaviour to Government and all the citizens of India during the said term or until
the completion of the said inquiry; and, in case of his making default therein, we bind ourselves, jointly
and severally, to forfeit to Government the sum of rupees _____

ಸೋಮವಾರಪೇಟೆ ತಾಲೂಕು ತಹಶೀಲ್ದಾರರು ಮತ್ತು ದಂಡಾಧಿಕಾರಿಯವರ ನ್ಯಾಯಾಲಯ ಸೋಮವಾರಪೇಟೆ

ನಂ:ಎಂಎಚಿ: 3/2017-18.

ದಿನಾಂಕ:27/4/2017

ವಾದಿ ಮೋಲೀಸ್ ಉಪ ಅಧೀಕ್ಷಕರು ಮಡಿಕೇರಿ ಉಪವಿಭಾಗ ಮಡಿಕೇರಿ.	ಪ್ರತಿವಾದಿಗಳು 18. ನಿಲಿ ನಿಂಗೆ ಶ್ಯಾನ್ ಶಾಯೀದೇಶ ನಂ. 108 ಸಿಆರ್‌ಪಿಸಿ ಕಲಂ III ಮಡಿಕೇರಿ
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ವಿಷಯ ಸಿಆರ್‌ಪಿಸಿ ಕಲಂ III ರಂತೆ ಆದೇಶ

ಮೋಲೀಸ್ ಉಪ ಅಧೀಕ್ಷಕರು, ಮಡಿಕೇರಿ ಉಪವಿಭಾಗ, ಮಡಿಕೇರಿ ಇವರ ಪತ್ರ ದಿನಾಂಕ 25/4/2017 ರ ಮೇರೆ ಸಿಆರ್‌ಪಿಸಿ ಕಲಂ 108 ರಂತೆ ಶಾಂತಿಪಾಲನೆಗಾಗಿ ಬಾಂಡ್ ಪಡೆಯಲು ವಾದಿಗಳು ತಮ್ಮ ವರದಿಯಲ್ಲಿ ವಿನಂತಿಸಿಕೊಂಡಿರುತ್ತಾರೆ.

ಸಮಾವೇಶ ಕಾರ್ಯಕ್ರಮದ ಸ್ಥಳವನ್ನು ಬದಲಾಯಿಸಲು ಕೋರಿರುವ ಬಗ್ಗೆ ಹಾಗೂ ಭದ್ರತಾ ದೃಷ್ಟಿಯಿಂದ ಮುಚ್ಚಳಿಕೆ ಪಡೆದುಕೊಳ್ಳಲು ತಿಳಿಸಿರುವುದನ್ನು ಪರಿಶೀಲಿಸಲಾಯಿತು. ಮೇಲ್ಕಂಡ ವಾದಿಯ ಕೋರಿಕೆಯಂತೆ ವಿಚಾರಣೆ ಮಾಡುವುದು ಅವಶ್ಯಕವೆನಿಸಿದ್ದು ಸಿಆರ್‌ಪಿಸಿ ಕಲಂ III ರಡಿಯಲ್ಲಿ ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಿದೆ.

ವಾದಿ/ಪ್ರತಿವಾದಿಗಳು ದಿನಾಂಕ:27/4/2017 ರಂದು ಅಪರಾಹ್ನ 4.00 ಗಂಟೆಗೆ ಈ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಖುದ್ದು ಹಾಜರಾಗಿ ಸದ್ವರ್ತನೆ ಬಗ್ಗೆ ನಿಮ್ಮಿಂದ ಯಾಕೆ ಮುಚ್ಚಳಿಕೆ ಪಡೆಯಬಾರದು ಎಂಬ ಬಗ್ಗೆ ಲಿಖಿತ ಸಮಜಾಯಿಷಿ ನೀಡಲು ಆದೇಶಿಸಿದೆ.

ತಾಲೂಕು ದಂಡಾಧಿಕಾರಿ

ಸೋಮವಾರಪೇಟೆ ತಾಲ್ಲೂಕು

ಪ್ರತಿಯನ್ನು:-

ಮೋಲೀಸ್ ಉಪ ಅಧೀಕ್ಷಕರು, ಮಡಿಕೇರಿ ಉಪವಿಭಾಗ, ಮಡಿಕೇರಿ ಇವರಿಗೆ ರವಾನಿಸುತ್ತಾ ಸಂಬಂಧಪಟ್ಟ ಪ್ರತಿವಾದಿಗಳಿಗೆ ಜಾರಿ ಮಾಡಿ ಸ್ವೀಕೃತಿಯನ್ನು ಪಡೆದು ವಿಚಾರಣೆಗೆ ಹಾಜರಾಗಲು ಆದೇಶಿಸಿದೆ.

ನಮೂನೆ ಸಂಖ್ಯೆ 13

ಸದ್ವರ್ತನೆಗಾಗಿ ಮುಚ್ಚಳಕೆ

(108 ನೇ ಪ್ರಕರಣಗಳನ್ನು ನೋಡಿ)

ನರಸೀಪುರ, 13. ಲಯಸುಲನಾಚಾರ್ಯ ಸುಲೋಕಾಚಾರ್ಯ.

(ಸ್ಥಳದ) ನಿವಾಸಿಯಾದ (ಹೆಸರು) ನಾನು **5/5/2017 (ಬಂಜು 13)**

ಅವಧಿಯವರೆಗೆ (ಅವಧಿಯನ್ನು) ಉಲ್ಲೇಖಿಸಿ ಅಥವಾ ಈಗ ಕಾರ್ಯಾಚರಣೆ ಸಂಚಾರಿಗಳಿಗೆ
ನ್ಯಾಯಾಲಯದಲ್ಲಿ ನಡೆಯುತ್ತಿರುವ ಕೊಡು ಕೊಡು ಕೊಡು ವಿಷಯದ ಬಗ್ಗೆ ವಿಚಾರಣೆಯು
ಮುಗಿಯುವವರೆಗೆ ಸರ್ಕಾರದ ಬಗ್ಗೆ ಮತ್ತು ಭಾರತದ ಎಲ್ಲ ನಾಗರಿಕರ ಬಗ್ಗೆ ಸದ್ವರ್ತನೆಯಿಂದಿರುತ್ತೇನೆಂದು
ಮುಚ್ಚಳಕೆ ಬರೆದುಕೊಡಬೇಕೆಂದು ಕೇಳಲಾಗಿರುವುದರಿಂದ ನಾನು, ಸದರಿ ಅವಧಿಯಲ್ಲಿ ಅಥವಾ ಸದರಿ
ವಿಚಾರಣೆಯು ಮುಗಿಯುವವರೆಗೆ ಸರ್ಕಾರದ ಬಗ್ಗೆ ಮತ್ತು ಭಾರತದ ಎಲ್ಲ ನಾಗರಿಕರ ಬಗ್ಗೆ
ಸದ್ವರ್ತನೆಯಿಂದಿರಲು ಬದ್ಧನಾಗಿರುತ್ತೇನೆ. ಹಾಗೆ ಮಾಡಲು ತಪ್ಪಿದರೆ ನಾನು ಸರ್ಕಾರಕ್ಕೆ **₹ 50,00,000/-**
ರೂಪಾಯಿಗಳನ್ನು ಕೊಡಲು ಈ ಮೂಲಕ ಬದ್ಧನಾಗಿರುತ್ತೇನೆ. ಐದತ್ತು ಲಕ್ಷ ರೂಪಾಯಿ
ದಿನಾಂಕ: 27/4/2017 ರಂದು 10.13.17 ಶಾಖೆ ಸಹಾಯಕ ಪ್ರಾಧಿಕಾರಿ ವ್ಯಕ್ತಿಯಾದ ಬದ್ಧನಾಗಿರುತ್ತೇನೆ.

ದಿನಾಂಕ 27/4/2017

(ನ್ಯಾಯಾಲಯದ ಮೊಹರು)



(Signature)
(ರುಜು)

ನನ್ನ ಜಮಾತ್

(Signature)
ತಹಶೀಲ್ದಾರ್
ಮೋಪವಾರಣಿ ಕಾಲೋನಿ



OTHER BANDOBAST ARRANGEMENTS

Other Bandobast Security Arrangements

- Collection of **ground level Intelligence**.
- **Intensive and visible large scale preventive action against anti-social elements.**
- **CCTV coverage** at the place of Function and the procession route.
- **Border Checkposts** with CCTV coverage.
- **Deployment of men at all places of worship** to ensure that no damage is caused to places of worship.
- **Use of Drone** during procession (Shobayatra)

Bandobast Security Arrangements made

- **Police and private Videography** during procession and public function.
- **Peace committee meeting** with all community leaders
- During procession **only the District BJP president was allowed to use mike for raising slogans subject to the noise level condition 75db.**
- **Night rounds on the previous day** at all Communally sensitive areas.
- **Postings of men at all places of worships** in the district.
- **Deployment of sufficient men in Mufti (Civil dress)** wherever required.

Bandobast Security Arrangements made

- **Officers & men drawn from the Southern Range** Consisting Five Districts.
- Deployment of **men in Mufti (Civil dress) to collect advance intelligence.**
- **Security cases against all communal goondas.**
- **Liaison with Central Intelligence Officers (IB)** for advance information.
- **Use of Maximum force to deter the potential trouble makers**
- **Liquor ban on the Siddapur Police station limit.**

Vishwa Hindu Parishad Kodagu's post



Vishwa Hindu Parishad Kodagu

23 Jul 2017 · 🌐

More pics of the Hindu Samajotsava organised by us at Sidapur-Nelhudikere on June 5 2017.I was the convener of the event.About 7000+ Hindu brothers and sisters joined us for the procession and samavesha.Sri Surendra Kumar Jain national Gen.Secretary of Vishwa Hindu Parishad was the guest speaker.Sri.Puranik of state VHP,Sri.Suryanarayana State Bajarangdal,Raghu Sakleshpur,Sri.Tata Bopaiah,Sri.Narasimhan,Sri Ajith all of Kodagu district VHP and Bajarangdal addressed the gathering.

👍 4

👍 Like 💬 Comment ➦ Share



📧 Message Vishwa Hindu Parishad Kodagu



ವಿಶ್ವ ಹಿಂದು ಪರಿಷತ್ - ಬಜರಂಗದಳ
ಕೊಡಗು



ಹಿಂದೂ ಸಮಾಜೋತ್ಥವ

ರಾಜಗೊಳ್ಳಲ ರಾಮ ಮಂದಿರ, ರಾಮ ವೈಭವ

ಸಿದ್ಧಾಪುರ

ರಕ್ತೇ ರಕ್ತೇ







CHAPTER 9 – (125 -143 BNSS)

CHAPTER 8 – (106 – 124 CRPC)

Agenda

- To understand the
 - **Provisions** of the Chapter 9 of BNSS (Chapter VIII of CrPC)
 - **Procedure** to be followed in these proceedings
 - **Common mistakes** by the Police & Executive Magistrates
 - **Effective implementation** of the provisions

The preventive powers of Police & Executive Magistrate...

➤ Powers under BNSS (CrPC)

- **Chapter 9 BNSS (Chapter 8 CrPC)** – Security for keeping peace & good behavior
- **Chapter 11 BNSS (Chapter 10 CrPC)** – Maintenance of Public Order and Tranquility (Dispersal of Unlawful Assembly, Removal of Public Nuisances, Urgent cases of apprehended danger & Nuisance, Dispute as to immovable property)

The preventive powers of police & Executive Magistrate.... ..

- **Powers under the Police Act** – regulation, licensing and controlling.
- Other preventive measures under various legislations like **Goonda Act**, **PITNDPS Act**, National Security Act, ESMA, Prevention of Black Marketing etc. (**Numerous legal formalities** which police officers have to strictly observe and that **slightest omission** in the procedure results in the **release of the detenu** without any security)

Importance of Chapter 9 of BNSS

- **Lack of clarity of procedure at ground level – both Police and EM**
- **A major stake holder for upholding peace in the area.**
- **Misuse of the section results in critical judicial review**

([Aldanish Rein vs State Of Nct Of Delhi & Anr. on 1 November, 2018, Delhi High Court](#))

A word of caution with regard to Preventive Action...

Article 21 of Indian Constitution

Protection of life and personal liberty No person shall be **deprived** of his life or personal liberty **except according to procedure established by law**

Article 22 of Indian Constitution

Protection against arrest and detention in certain cases

HENCE

Procedure provided in the Chapter must be strictly followed

But, how are these provisions effective in preventing crime or law and order incidents....

What is the objective of this chapter????

Preventive Detention???

Security???

Nature and Objective

- They are **Preventive and not Punitive in nature**
- In the cases falling under sections 127 to 129 BNSS (108 to 110 CrPC), the proceedings are **not for punishment of the offences already committed** but are in the nature of **preventing any offences being committed further**, and also for enabling the persons to improve and keep good behaviour.

[**Mohmad Yasin vs State Of Gujarat on 7 March, 1968, Gujarat High Court**]

Nature of Proceedings

**What is the nature of proceedings under 126
BNSS (s.107 of CrPC)**

What is the nature of these proceedings?

Nature of Proceedings

What is the nature of proceedings u/s 126 of BNSS (sec 107 of CrPC)

- It is **not a trial** to find out whether the person has committed any offence.
- **It is an inquiry** to reach a conclusion that whether the person against whom the proceedings have been initiated **IS LIKELY** to commit a breach of the peace or disturb the public tranquility or to do any other wrongful act that may probably occasion a breach of the peace or disturb the public tranquility.
- For this reason, **at every step the law requires the Magistrate to state his reasons in writing**. It would make his action purely administrative if he were to pass the order for an interim bond without entering upon the inquiry and at least prima facie inquiring into the truth of the information on which the order calling upon the person to show cause is based.
 - [Madhu Limaye and Ors. vs. Sub-Divisional Magistrate, Monghyr and Ors. \(28.10.1970 - SC\): MANU/SC/0147/1970](#)

Nature of Proceedings

(Madhu Limaye v. Ved Murti, AIR 1971 Sc 2481 1970 (3) SCC 739 = 1971 Cr.LJ 1715).

- No sooner than Mr. Madhu Limaye **landed at Varanasi airport**, the Police **arrested him without warrant under Section 151 Cr.P.C (170 BNSS)**. for apprehension of breach of peace and produced him before the Magistrate under Section **107 Cr.P.C.**(126 BNSS) The Magistrate **without starting enquiry** ordered him to execute **interim bond** which he could not do. The **Magistrate detained him in custody and kept on adjourning the hearing in the enquiry.**
- Supreme Court quashed the detention on the ground that **without starting the inquiry** under Section 116 Cr.P.C.(135 BNSS), the **Magistrate illegally ordered for interim bond.**

Section 170 BNSS (151 CrPC)

Arrest to prevent commission of cognizable offences.

BNSS 170:

170(1) A police officer **knowing of a design to commit any cognizable offence may arrest**, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer **that the commission of the offence cannot be otherwise prevented.**

170(2) No person arrested under sub-section (1) **shall be detained in custody for a period exceeding twenty-four hours** from the time of his arrest **unless his further detention is required or authorised under any other provisions of this Sanhita or of any other law** for the time being in force.

Difference between regular trial and security proceedings:-

Regular trial	Security proceedings
1. There is commission of an offence.	1. There is no offence at all.
2. There is an accused charged with an offence.	2. There is no accused.
3. The court adjudicates upon the guilt of an accused.	3. There is no adjudication upon guilt.
4. The evidence must be direct and not hearsay.	4. The evidence may be hearsay.
5. The accused is either convicted or acquitted.	5. There is no conviction or acquittal. The person is only bound down to keep peace.
6. It is conducted by the judicial Magistrate or Judge.	6. It is conducted by an Executive Magistrate.

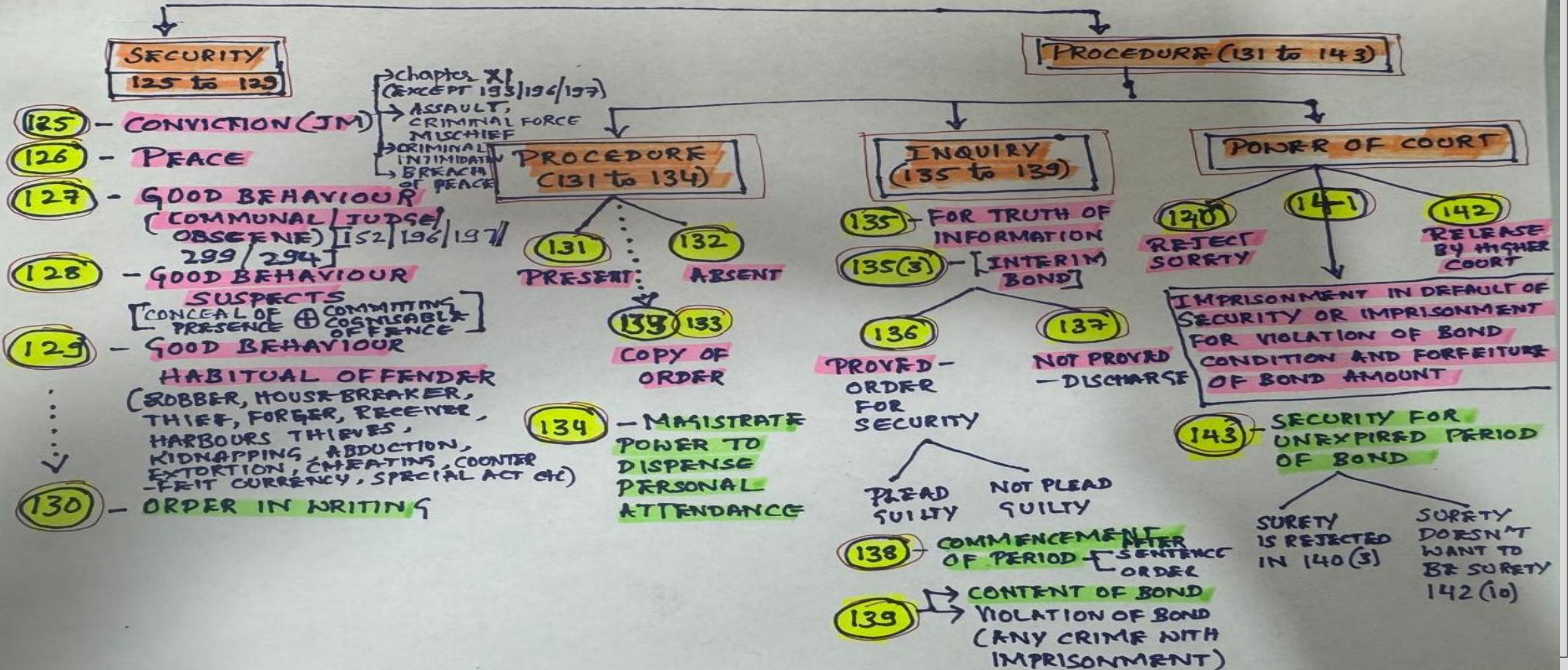
Chapter 9 of BNSS (VIII of CrPC)

Security for keeping peace and good behaviour

Sections	Subject Matter of BNSS (CrPC)
Section 125 (Section - 106)	Security for keeping the peace on conviction.
Section - 126 (Section - 107)	Security for keeping peace in other cases
Section - 127 (Section - 108)	Security for good behaviour from persons disseminating seditious matter
Section - 128 (Section - 109)	Security for good behaviour from suspected persons
Section - 129 (Section - 110)	Security for good behaviour from habitual offenders
Section - 130 (Section - 111)	Order to be made when Magistrate acting under section 126, 127, 128, 129 BNSS (section 107, 108, 109 & 110 CrPC)
Sec 131 to 143 (Section - 112 to 124)	Procedure for implementation of Section 126 to 129 BNSS (sec 107 to 110 CrPC)

Chapter IX of BNSS - Summary Sheet

PREVENTIVE SECTION (125 to 143 BNSS)





WHO SHOULD BE THE
PETITIONER/
COMPLAINANT

COMPLAINANT

➤ **Who all can give the complaint**

1. General Public
2. Police officer/Police sibbandi
3. Executive Magistrate himself

➤ **Against whom the complaint can be registered**

- 1.126 BNSS(107CrPC) – Whether the person who causes breach of peace is within or without the jurisdiction of Executive Magistrate, but if the **person's action causes breach in the jurisdiction of Executive Magistrate**, then EM can bound him over
- 2.127, 128, 129 BNSS (108, 109 & 110 CrPC)- The opponent should be present **within the jurisdiction** of the Executive Magistrate



SHOULD FIR BE
REGISTERED UNDER
PREVENTIVE SECTION??

Registration of FIR?

As contemplated under Sec 126 BNSS (107 CrPC), for the submission of information to the Executive Magistrate, does the Police need to register the FIR ???

True/ False??



Government of Karnataka
(Police Department)

No : CRM-2/154/WP/2017

Office of the
Director General and
Inspector General of Police,
Karnataka State, Bengaluru.
Dated: 27-06-2018

Standing Order No.1020/2018

Sub : Registering the security cases under "Preventive Action Report" (PAR) instead of FIRs-reg.

Ref : The Order dated: 25/02/2013 of Hon'ble High Court of Karnataka in Criminal Petition No. 3253/2012.

** ** *


The Hon'ble High Court of Karnataka while hearing the criminal petition No. 3253/2012 has observed and expressed its doubt and displeasure about the registration of FIRs for the offences under sections 107 and 151 of Cr.P.C. which does not deal with criminal offence but are used as preventive measures. It also stated that registering an FIR under these sections is without any authority and contrary to the law with no jurisdiction. Due to these reasons the Hon'ble High Court of Karnataka in its order dated 25/02/2013, has quashed the FIR registered under the section 107 and 151 of Cr.P.C. in WP No. 3253/2012.

In view of the order of the Hon'ble High Court of Karnataka, a format is developed to register the security cases on the preventive sections such as 107,108,109,110 & 151 of Cr.P.C. under "Preventive Action Report" (PAR) instead of FIRs : (Annexure-1)

All the Unit Officers are directed to sensitize the investigating officers and all police officers on the above and issue necessary directions/instructions to register the security cases in the above format. Lapses found in this regard, will be viewed seriously.

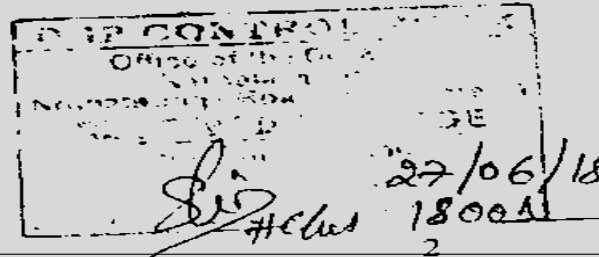
Addl. Director General of Police, Police Computer Wing, shall incorporate the new Preventive Action Report (PAR) in CCTNS portal, MIS and all reporting systems.

Receipt of this SO should be acknowledged without fail.


(NEELMANI N. RAJU)
Director General and
Inspector General of Police,
Karnataka State, Bengaluru.

To,

- 1) The Director General of Police, CID/ISD/State Intelligence, Bengaluru.
- 2) The Director General of Police, Training, Bengaluru.
- 3) The Addl. Director General of Police, PCW, Bengaluru.
- 4) The Addl. Director General of Police, Law & Order, Bengaluru.
- 5) The Commissioners of Police, Bengaluru City/Mysuru City/Belagavi City/Hubli- Dharwad City/Mangaluru City.
- 6) All Range Inspectors General of Police.
- 7) All Superintendents of Police in charge of Districts including KGF and Railways.



ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪೊಲೀಸ್

KARNATAKA STATE POLICE

ಮುಂಜಾಗ್ರತಾ ಕ್ರಮದ ವರದಿ

PREVENTIVE ACTION REPORT

ಘನ ನ್ಯಾಯಾಲಯ:

Before the Honorable Court of:

1. ಜಿಲ್ಲೆ :District: ನ್ಯಾತ್ರ/ಉಪ ವಿಭಾಗ: Circle/Sub Division :ಪೊಲೀಸ್ ಠಾಣೆ:PS:

ಮು.ಕ್ರ.ವರದಿ.ಸಂಖ್ಯೆ:PAR No: ಮು.ಕ್ರ.ವ. ದಿನಾಂಕ:PAR Date:

2. ಕಾಯ್ದೆ & ಕಲಂಗಳು :Act & Section:

(ಅ) ಜನರಲ್ ಡೈರಿ ಉಲ್ಲೇಖ ಸಂಖ್ಯೆ ಮತ್ತು ಸಮಯ :

(a) General Diary reference Entry No. & Time:

3.(ಎ) ಕೃತ್ಯ ನಡೆದ ಸ್ಥಳ/ಶಾಂತಿಭಂಗ ಉಂಟುಮಾಡಿದ ಸ್ಥಳ ಪೂರ್ಣ ವಿಳಾಸದೊಂದಿಗೆ:

(a) Place of occurrence /Apprehension of "Breach of Peace with full address :

(ಬಿ) ಪೊಲೀಸ್ ಠಾಣೆಯಿಂದ ಇರುವ ದೂರ: (b) Distance from PS :

(ಸಿ) ಗ್ರಾಮ : (C) Village : ಗಸ್ತಿನ ಹೆಸರು:Beat Name:

4. ಪಿರ್ಯಾದಿದಾರ/ಬಾಕ್ಸಿದಾರ : Complainant/Informant:

(ಎ) ಹೆಸರು:(a) Name: (ಸಿ) ವಯಸ್ಸು: (C) Age:

(ಬಿ) ಹುದ್ದೆ:(b) Designation:

5. ಅನುಮಾನಿತ / ಪ್ರತಿವಾದಿಗಳಪೂರ್ತಿ ವಿವರಗಳು:

Details of persons suspected/ Respondents with full particulars:

ಕ್ರ.ಸಂ.	ಹೆಸರು/ತಂದೆಯ ಹೆಸರು/ ವಿಳಾಸ	ವಿಧ/ರೀತಿ	ಲಿಂಗ	ವಯಸ್ಸು	ವೃತ್ತಿ

SI No.	Name/Father's Name/Address	Type	Gender	Age	Occupation

6. ಸಂಶಯಾಸ್ಪತ ವ್ಯಕ್ತಿ/ಪ್ರತಿವಾದಿಯ ಹಿಂದಿನ ಪ್ರಕರಣಗಳ ವಿವರಗಳು:

Previous Cases Details of Suspect/Respondent :

7. ಸಂಶಯಾಸ್ಪತ ವ್ಯಕ್ತಿ/ಪ್ರತಿವಾದಿಗಳ ಹಿಸ್ಟರಿ ಶೀಟ್ /ರೌಡಿ ಶೀಟ್/ಎಂಟಿಬಿ. ಕಾರ್ಡ್‌ದಾರರುಗಳ ವಿವರಗಳು:

History Sheet/Rowdy Sheets/MOB Card Details of Suspect/Respondent :

8. ಮು.ಕ್ರ.ಮವರದಿಯ ಸಂಕ್ಷಿಪ್ತ ವಿವರಣೆ :

PAR contents/ Brief description:

9. ತೆಗೆದುಕೊಂಡ ಕ್ರಮ. :

Action taken :

10. ಕಾರ್ಯನಿರ್ವಾಹಕ ದಂಧಾಧಿಕಾರಿ ರವರಿಗೆ ಕಳುಹಿಸಿದ ದಿನಾಂಕ ಮತ್ತು ಸಮಯ:

Date and time of dispatch to the Executive Magistrate:

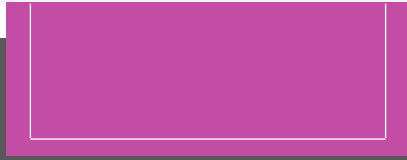
11. ಕಾರ್ಯನಿರ್ವಾಹಕ ದಂಧಾಧಿಕಾರಿ ರವರಿಗೆ ಮು.ಕ್ರ.ವರದಿಯನ್ನು ತೆಗೆದುಕೊಂಡು ಹೋದ ಹೆಚ್.ಸಿ/ಪಿ.ಸಿ. ರವರ ಹೆಸರು:

Name of HC/PC who carried the PAR to the Executive Magistrate:

ವಾದಿ ಪೊಲೀಸ್ ಅಧಿಕಾರಿಯ ಸಹಿ/
Signature of the applicant Police officer

ಹೆಸರು:Name:

ಹುದ್ದೆ:Rank:



SECTION 126 BNSS
SECTION 107 CRPC

Section 126 BNSS (Section 107 CrPC)

Security for keeping the peace in other cases

◦ When an **Executive Magistrate** receives **information** that any person is **likely to** commit a **breach of the peace or disturb the public tranquility**

or

◦ **to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility**

and

◦ is of **opinion** that there is sufficient ground for proceeding,

he may,

◦ **in the manner hereinafter provided,**

◦ **require such person to show cause why he should not be ordered to execute a bond or a bail bond for keeping the peace** for such period, **not exceeding one year**, as the Magistrate thinks fit.

Understanding Sec 126 BNSS (107 CrPC) – DRAFT NOTE SHEET

1. **Upon Information:** *Merely on the presentation of a petition with vague allegations, proceedings cannot be initiated under section 107.*
2. **Likely to** commit breach of peace or Disturb public tranquility: ***The Magistrate should verify whether there is really an apprehension of breach of peace.***
3. **Magistrate's opinion there is sufficient ground for proceeding:** *The Magistrate is under a duty to **conduct some enquiry to be satisfied** of the materials existing regarding the necessity of the proceeding under section 107.*
4. He **may order** such person to **show cause why he should be ordered to execute a bond** for a period **not exceeding one year.**

**Example
Scenarios – 126
BNSS (107 CrPC)**

Community Dispute - There is a dispute between two neighboring communities over a religious procession route.

Political Rally - During a political campaign, there are reports of potential clashes between supporters of rival political parties.

Family Feud - A longstanding family feud over property is causing frequent violent altercations in the neighborhood.

Labour Dispute - Workers at a factory are planning a protest due to unresolved wage disputes, and there is a risk of violent confrontation with the management.

**Example
Scenarios – 126
BNSS (107 CrPC)**

Festival Celebrations - During a festival, there are concerns about potential communal tensions and clashes in a sensitive area.

Sports Events - A local sports event between rival teams has a history of post-match violence among spectators.

Neighborhood Disputes - Residents of a neighborhood frequently engage in heated arguments and physical fights over parking spaces.

Illustration...

- X and Y, live as neighbors in a residential area.
- They have a dispute with regard to the path leading to their homes and have often fought with each other.
- Quite often, they resorted into loud shouting, quarrels and assaulted each other, causing disturbance to public peace in the area.

Can you proceed against them u/s 126 BNSS (107 CrPC)???

Section 126(2) BNSS (107(2) CrPC)

Security for keeping the peace in other cases

Proceedings under this section may be taken before any Executive Magistrate when

- either the **place where the breach of the peace or disturbance is apprehended** is **within his local jurisdiction**

or

- **there is within such jurisdiction a person** who
is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid **beyond such jurisdiction**

Scenario

- You are working as DCP, Shamshabad near Hyderabad.
- X, a political leader who is a resident of Shamshabad, is planning to hold a protest along with his followers at Jantar Mantar in Delhi. The Delhi Police has not given permission for the same and has intimated you about the possible apprehension of breach of peace with specific intelligence inputs.
- Can you, as DCP Shamshabad, being in Hyderabad, proceed against him, for a likely breach of peace in Delhi, under section 126 BNSS (107 CrPC)?

Yes or No??

Scenario

- You are the ASP of a sub-division
- X, a resident of neighboring district, regularly is involved in delivery of hate speeches against a particular religion. His speeches have caused disturbance to peace on earlier occasions.
- Now, he delivered a speech couple of days back, elsewhere, and this has created a stir in your jurisdiction.
- You are apprehending a law and order incident and breach of peace.
- **Can you proceed under Section 126 BNSS (107 of CrPC) against this person???**

Yes/ No???



FORMAT OF REPORT SUBMITTED
TO MAGISTRATE UNDER
SECTION 126 BNSS (107 CRPC)

DRAFT NOTE SHEET



SECTION 127 BNSS (108 CRPC)

Section 127 BNSS (108 CrPC)

Security for good behaviour from persons disseminating certain matters.

When an Executive Magistrate receives information that **there is within his jurisdiction any person** who, **within or without such jurisdiction**, -

(i) either **orally** or in **writing** or in any **other manner**, intentionally **disseminates** or attempts to disseminate or abets the dissemination of -

(a) any matter the publication of which is punishable under **section 152 BNS** (*Act endangering sovereignty, unity and integrity of India*) {section 124-A (sedition) IPC} or **section 196 BNS** {section 153-A (*Promoting enmity on grounds of religion, race etc*) IPC} or **section 197 BNS** {section 153-B (*National Integration*) IPC} or **section 299 BNS** {section 295-A (*outraging religious feelings*) IPC}, or

(b) any matter concerning a **Judge acting** or purporting to act **in the discharge of his official duties** which amounts to **criminal intimidation or defamation** under the BNS; or

Section 127 BNSS (108 CrPC)

Security for good behaviour from persons disseminating seditious matters.

(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into **circulation any obscene matter such as is referred to in section 294 of BNS** (section 292 of the IPC), and the **Magistrate is of opinion that there is sufficient ground for proceeding**, the Magistrate may, in the manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

Example
Scenarios - 127
BNSS (108 CrPC)

Seditious Speech or Writing - A person is distributing pamphlets that incite rebellion against the government.

Obscene Publications - An individual is caught distributing obscene magazines and videos in a community.

Hate Speech - A person is making public speeches that promote enmity and hatred between different religious communities.

Provocative Social Media Posts - A person is using social media to post content that incites violence against a particular community.

Example
Scenarios - 127
BNSS (108 CrPC)

Distribution of Extremist Literature - A person is found distributing literature that glorifies extremist ideologies and calls for violence.

Inciting Communal Violence - An individual is making statements and distributing materials that incite communal violence in a sensitive area

Defamatory Publications - A person is publishing defamatory articles against a particular group, causing tension and potential violence.

Scenario

- Z is a college student residing in your jurisdiction.
- He is an active member of an organization known to be caustic against a particular religion.
- He posts a photograph on Facebook which is objectionable in nature against the feelings of a particular religion. The photograph depicts a revered object of that religion in a derogatory and contemptuous manner.
- There is an **FIR** registered against him for this offence.
- Can you proceed against him under 127 BNSS (108 CrPC) **also?**

Yes/No????

Scenario

- X, a resident of neighboring district, is a known communal goonda, who regularly delivers hate speeches against a particular religion.
- His speeches have often resulted in communal clashes in many places.
- You are the ASP of a sub-division where he is scheduled to visit and hold a public event during upcoming week.
- **Can you proceed under Section 127 of BNSS (108 of CrPC) against this person???**

Yes/ No???

- **Who can proceed u/s 127 of BNSS (108 CrPC)?**

Scenario

- An association **ABC** is involved in propaganda of seditious feelings.
- **X**, as an active member of **ABC**, was involved in preparation of the seditious matter which is being disseminated by **ABC**.
- 3 months later, the association **ABC** was banned by the Government owing to their activities.
- Can you proceed u/s 127 BNSS (108 CrPC) against **X** after the closure of **ABC**???

Yes/No???

Points to note about section 127 BNSS (108 CrPC)...

- Very effective tool in controlling known people who have history of inciting communal and sectarian violence.
- Dissemination is critical to application of the section
- The presence of the person should be established in the jurisdiction of the EM



FORMAT OF REPORT SUBMITTED
TO MAGISTRATE UNDER
SECTION 127 BNSS (108 CRPC)



SECTION 128 BNSS (SECTION 109 CRPC)

Section 128 BNSS (109 CrPC)

Security for good behaviour from suspected persons.

When an Executive Magistrate receives information that

- **there is within his local jurisdiction** a person
- taking **precautions to conceal his presence**

and

- that there is **reason** to believe that he **is doing so with a view to committing a cognizable offence,**

the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

Scenarios

Consider the conduct of the suspected person in the following **three different scenarios**:

1. During patrolling in the night, the suspect is found hiding himself behind a tree
2. During patrolling in the night, the suspect is found concealing his face with a towel or mask
3. During patrolling in the night, the suspect, upon seeing police, starts running away.

In which of the above scenarios, can you initiate proceedings u/s 128 BNSS (109 CrPC)?

Options:

Only 1; Only 2; Only 3; 1 & 2; 1 & 3; 2 & 3; All of the above; None of the above

Illustration

A person

- **concealing** himself at night with his companions
- in **hedges** near a village,
- Upon being questioned by police, gives **wrong name and address and**
- being **unable to explain** his presence in hedges at night
- with **house-breaking implements** and
- **refusing to disclose the identity** of his companions who had escaped into jungle.

Points to note about Section 128 BNSS (109 CrPC)

- The **residence** of the persons against whom information is received is absolutely **irrelevant** but temporary presence within jurisdiction is essential
- Concealment can be –
 - **Concealment of his presence/appearance**
 - **Concealment of his identity**
- **Concealment of his presence must be to commit cognizable offence** and not to avoid observation.
- Magistrate can order confiscation of property found with person ordered to give security

**Example
Scenarios – 128
BNSS (109 CrPC)**

Loitering near Residential Areas : A person with no fixed residence is seen loitering around residential areas at odd hours, causing concern among the residents.

Unemployed Persons in High- Crime Areas : A person with no apparent source of income is regularly seen in a high-crime neighborhood, associating with known criminals.

**Example
Scenarios – 128
BNSS (109 CrPC)**

Presence in Public Places without

Explanation : A person is found sitting in public parks or near schools without any clear purpose, raising concerns among the public.

Unidentified Person near Commercial

Establishments - An unknown individual is regularly seen loitering around commercial establishments, raising suspicions of potential theft.

Suspicious Activity near Transportation Hubs

- A person with no apparent means of livelihood is frequently seen near bus stops or railway stations, acting suspiciously.



FORMAT OF REPORT SUBMITTED
TO MAGISTRATE UNDER
SECTION 128 BNSS (109 CRPC)



SECTION 129 BNSS (110 CRPC)

Section 129 BNSS (110 CrPC)

Security for good behaviour from habitual offenders

When an Executive Magistrate receives information **that there is within his local jurisdiction a person who -**

(a) is by habit a **robber, house-breaker, thief or forger**, or

(b) is by habit a **receiver of stolen property** knowing the same to have been stolen, or

(c) habitually **protects or harbors thieves**, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of **kidnapping, abduction, extortion, cheating or mischief**, or any offence punishable under Chapter X of the Bharatiya Nyaya Sanhita, 2023, or under section 178, section 179, section 180 or section 181 of that Sanhita (any offence

punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489-A, section 489-B, section 489-C or section 489-D of that Code,); **OR**

Section 129 BNSS (110 CrPC)

Security for good behaviour from habitual offenders

e) habitually commits, or attempts to commit, or abets the commission of offences, involving a breach of the peace, or

f) habitually commits, or attempts to commit, or abets the commission of -

(i) any offence under one or more of the following Acts, namely:-

(a) the Drugs and Cosmetics Act, 1940;

(b) the Foreigners Act, 1946;

(c) the Employees' Provident Fund and Miscellaneous Provisions Act, 1952;

(d) the Essential Commodities Act, 1955;

(e) the Protection of Civil Rights Act, 1955;

(f) the Customs Act, 1962;

(g) the Food Safety and Standards Act, 2006; or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption; or

Section 129 BNSS (110 CrPC)

Security for good behaviour from habitual offenders (Contd...)

(g) **is so desperate and dangerous as to render his being at large without security hazardous to the community, -**

such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a **bail bond**, for his good behaviour for such period, **not exceeding three years**, as the Magistrate thinks fit. (Illustration - If a person keeps threatening and beating the people, then he is a desperate and dangerous character and would be taken up under Section 110 Cr.P.C.)

Note:

1. The period of security can be up to **3 years**
2. The **security is always with Surety**
3. Sub-sections **a to f** involve habitual offences. **“g” does not involve habitual commission** of the said offence

Example
Scenarios – 129
BNSS (110 CrPC)

Habitual Thief - An individual has been convicted multiple times for theft and burglary and continues to be involved in similar activities.

Known Gang Member - A person known to be a member of a criminal gang has been involved in multiple criminal activities, including extortion and robbery.

Habitual Threat Maker - A person regularly makes threats against others in the community, causing fear and tension among residents.

Example
Scenarios for
Section 129 (g)
BNSS {110(g)
CrPC }

Persistent Harasser - A person is known for persistently harassing shopkeepers and customers in a local market, leading to frequent complaints.

Frequent Disturber at Public Events - An individual often causes disruptions at public events such as fairs, concerts, and rallies, leading to disturbances and potential violence.

Regular Offender in Residential Areas - A person frequently engages in loud and violent arguments with neighbors, creating a hostile environment in the residential area.

Section 129 BNSS (110 CrPC)

List of offences in Drugs and Cosmetics Act, 1940

1. Manufacture or Sale of Misbranded Drugs (Section 17)
2. Manufacture or Sale of Adulterated Drugs (Section 17)
3. Importing or Selling Spurious Drugs (Section 17-B)
4. Manufacture or Sale of Drugs Containing Harmful Substances (Section 17)
5. Failure to Comply with Licensing Requirements (Section 18)
6. Failure to Comply with Good Manufacturing Practices (Section 18)
7. Selling Drugs Without Required Labeling (Section 18-A)
8. Contravention of Provisions Related to Cosmetics (Section 17-C)
9. Refusing Inspection (Section 22)
10. Failure to Keep Records (Section 22)
11. Unlawful Advertisement of Drugs (Section 30)
12. Manufacture or Sale of Drugs Without Authorization (Section 17)
13. Contravention of Provisions Regarding Scheduled Drugs (Section 18-B)
14. Failure to Provide Samples (Section 23)
15. Sale of Drugs or Cosmetics After Expiry Date (Section 18)
16. Unlawful Import of Drugs (Section 10)

Section 129 BNSS (110 CrPC)

List of offences in Foreigners Act, 1946

1. Overstaying the Period of Stay (Section 3)
2. Contravention of Visa Conditions (Section 3)
3. Entering India Without a Valid Passport or Visa (Section 3)
4. Failure to Report to Authorities (Section 3)
5. Entering or Remaining in India Without Government Approval (Section 3)
6. Providing False Information to Obtain Visa (Section 5)
7. Harboring a Foreigner Without Proper Authorization (Section 14)
8. Failure to Abide by Orders of Authorities (Section 6)
9. Remaining in India After Deportation Order (Section 14)
10. Illegal Entry or Re-Entry into India (Section 14)

Section 129 BNSS (110 CrPC)

List of offences in Employees' Provident Fund and Miscellaneous Provisions Act, 1952

1. Failure to Pay Contributions (Section 6)
2. Failure to Maintain Records (Section 7A)
3. Failure to Furnish Information (Section 7A)
4. Failure to Deduct Contributions (Section 6)
5. Non-payment of Contributions to the Fund (Section 7A)
6. Non-submission of Returns (Section 7A)
7. False Statement or Representation (Section 14)
8. Failure to Register under the Act (Section 1(3))
9. Failure to Comply with Directions of the Employees' Provident Fund Authority (Section 14)
10. Obstruction of Inspection (Section 10)

Section 129 BNSS (110 CrPC)

List of offences in Essential Commodities Act, 1955

1. Hoarding of Essential Commodities (Section 3)
2. Black-marketing of Essential Commodities (Section 3)
3. Violation of Orders for Distribution or Price Control (Section 3)
4. Manufacturing or Selling Substandard Essential Commodities (Section 7)
5. Failure to Maintain Records (Section 6)
6. Unauthorized Possession of Essential Commodities (Section 3)
7. Falsification of Documents or Misrepresentation (Section 8)
8. Altering or Destroying Essential Commodities (Section 3)
9. Unlawful Trade in Essential Commodities (Section 3)
10. Misuse of Licenses (Section 7)

Section 129 BNSS (110 CrPC)

List of offences in Protection of Civil Rights Act, 1955

- 1. Untouchability Offenses (Section 4)**
- 2. Refusal to Serve or Discriminate in Public Places (Section 7)**
- 3. Discrimination in Educational Institutions (Section 8)**
- 4. Forcing a Person to Practice Untouchability (Section 9)**
- 5. Insult or Harm to Persons Due to Untouchability (Section 10)**
- 6. Pollution of Public Places (Section 11)**
- 7. Preventing Access to Public Water Sources (Section 12)**
- 8. Forcible Removal from Places of Worship (Section 13)**
- 9. Discrimination in Burial Grounds (Section 14)**
- 10. Penalties for Violation of Rights (Section 15)**

Section 129 BNSS (110 CrPC)

List of offences in Customs Act, 1962

1. Smuggling (Section 2)
2. Fraudulent Importation or Exportation (Section 111)
3. Import/Export of Prohibited Goods (Section 11)
4. Concealment of Goods (Section 111)
5. Failure to Declare Goods (Section 77)
6. Incorrect Classification of Goods (Section 111)
7. Evasion of Duties (Section 111)
8. Failure to Pay Duty (Section 28)
9. Unlawful Removal of Goods from Customs Control (Section 142)
10. Possession of Smuggled Goods (Section 123)
11. Misdeclaration of Goods (Section 111)
12. Destruction of Goods (Section 113)
13. Alteration of Documents (Section 112)
14. Contravention of Prohibited Imports or Exports (Section 113)
15. Tampering with Containers (Section 115)
16. Attempt to Export Goods Contrary to Provisions (Section 113)
17. Fraudulent Export or Import under False Documents (Section 113)
18. Failure to Maintain Accounts (Section 12)
19. Wilful Negligence or Misstatement (Section 111)
20. Customs Officers' Misconduct (Section 133)

Section 129 BNSS (110 CrPC)

List of offences in Food Safety and Standards Act, 2006

- 1. Manufacture, Distribution, or Sale of Unsafe Food (Section 26)**
- 2. Sale of Misbranded Food (Section 24)**
- 3. Sale of Adulterated Food (Section 23)**
- 4. Failure to Obtain License or Registration (Section 31)**
- 5. Contravention of Food Safety Standards (Section 32)**
- 6. Failure to Maintain Records (Section 39)**
- 7. Sale of Food Containing Harmful Substances (Section 24)**
- 8. Non-Compliance with Food Safety Orders (Section 34)**
- 9. Food Fraud and Deceptive Practices (Section 33)**
- 10. Failure to Label Food Correctly (Section 23)**
- 11. Import of Substandard Food (Section 22)**
- 12. Manufacturing or Selling Non-Compliant Food Additives (Section 22)**
- 13. Refusal of Inspection or Seizure (Section 38)**
- 14. Tampering with Food Products (Section 33)**
- 15. Contravention of Hygiene and Sanitation Standards (Section 27)**
- 16. Unapproved Food Product Claims (Section 22)**

What is Habit and how to establish it???

Sense of depravity of character as evident from **repetition or frequent commission of offences** u/s 110.

Section 135(4) BNSS {116(4) IPC} - may be proved by evidence of **general repute** or otherwise.

The **general reputation** of a man is that

- **which he bears amongst the people in the place in which he lives.**
- **vague and general statements** that a man is a habitual offender are not sufficient
- **evidence of bad repute should be reliable.**
- **witnesses should be able to give intelligent reasons** for their believing the respondent to be a bad character.

There is a mention of Habitual offender in The Karnataka Habitual Offenders Act, 1961 - in Section 2 as

(e) “**habitual offender**” means a person who, during **any continuous period of five years**, whether before or after the commencement of this Act, or partly before and partly after such commencement, has been **sentenced on conviction on not less than three occasions**, since he attained the age of eighteen years, to a substantive term of imprisonment, for any one or more of the scheduled offences, committed on different occasions and not so connected together as to form part of the same transaction, **such sentence not having been reversed in appeal or on revision:**

Provided that in computing the continuous period of five years referred to above, **any period spent in jail** either under sentence of imprisonment or under detention **shall not be taken into account;**



FORMAT OF REPORT SUBMITTED
TO MAGISTRATE UNDER
SECTION 129 BNSS (110 CRPC)

Ch-9 Security for keeping the peace and for good behavior-BNSS 125-143(CrPC 106-124)

Security

(Sec BNSS 125-130)
(Sec CrPC 106-111)

Procedure

(Sec BNSS 131-134)
(Sec CrPC 106-111)

Inquiry

(Sec BNSS 135-139)
(Sec CrPC 116-120)

Power of Court

(Sec BNSS 140-143)
(Sec CrPC 121-124)

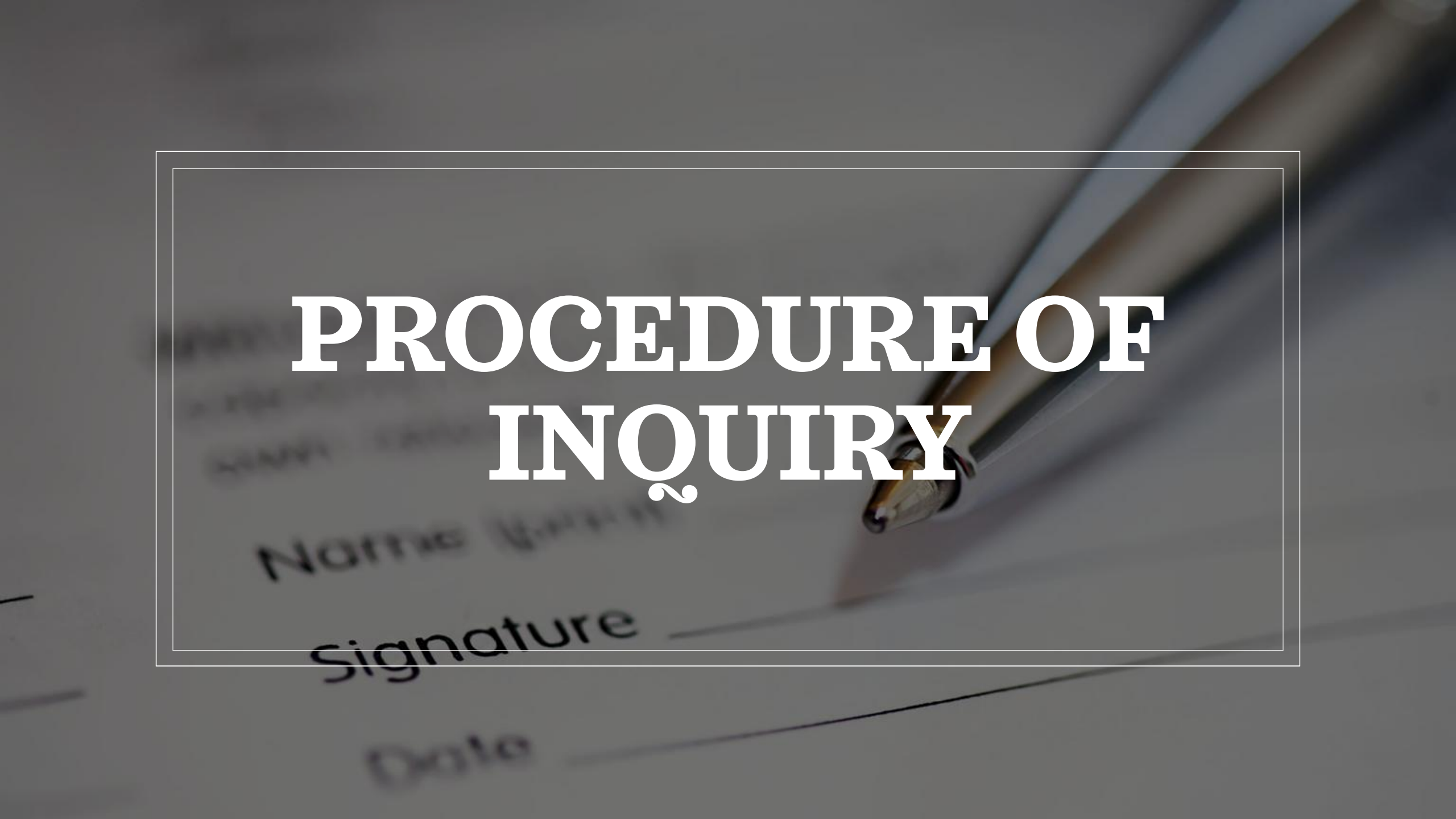
Sec 130 – order u/s 126-129 to be in writing

Sec	Security for	When security given	Order by	Time
125 (106 crpc)	For Persons on conviction	<ul style="list-style-type: none"> ➤ At the time of passing sentence ➤ For Conviction u/s 125 (2) <ol style="list-style-type: none"> 1. Offence Under Chapter 11 BNS (except-193 (1), 196, 197) 2. Offence consists of assault /criminal force/mischief 3. Criminal intimidation; 4. Offence caused /intended/likely to cause breach of the peace. ➤ If conviction is set aside, order VOID 	COS JMFC App./Rev. court	3 Years
126 (107 crpc)	For Persons in other cases	<ol style="list-style-type: none"> 1. Person likely to commit a breach of the peace 2. Disturb the public tranquility 3. To do any wrongful act 	EM	1Year
127 (108 crpc)	For Good Behavior from persons disseminating certain matter	<ol style="list-style-type: none"> 1. Matter- Publication- Punishable u/s 152, 196, 197, 299 BNS 2. Matter concerning a Judge-amounting to Criminal Intimidation / Defamation 3. Obscene matter u/s 294 	EM	1 Year
128 (109 crpc)	For Good Behavior from suspected person	Person taking precautions to conceal his presence + Reason to Believe that it is done to commit a Cognizable offence	EM	1Year
129 (110 crpc)	For Good Behavior from Habitual offenders	List	EM	3 Year

At a glance...

9. Security for keeping peace and for good behaviour bond:

Sec. Of Law	Purpose of taking bond	Authority to pass order	Jurisdiction	Maximum period of bond needed	Sureties	Consequences for failure to execute bond
106	Security for keeping peace on conviction	Court of Sessions, JM (1 st Class) & Courts of Appeal & Revision	Jurisdiction to try the case	3 years	With or without	Simple imprisonment
107	Security for keeping peace in other cases	Executive Magistrate	Place of breach of peace or person committing breach of peace required to be within jurisdiction	1 year	With or without	Simple imprisonment
108	Security for good behaviour for persons disseminating seditious matters	Executive Magistrate	Presence of person being bound down required within jurisdiction of Magistrate	1 year	With or without	Simple imprisonment
109	Security for good behaviour from suspected persons	Executive Magistrate	Presence of person being bound down required within jurisdiction of Magistrate	1 year	With or without	Simple imprisonment or Rigorous imprisonment (Sec. 122 (8) Cr.P.C.)
110	Security for good behaviour from habitual offenders	Executive Magistrate	Presence of person being bound down required within jurisdiction of Magistrate	3 years	Always with sureties	Imprisonment or Rigorous imprisonment (Sec. 122 (8) Cr.P.C.)

A close-up, slightly blurred photograph of a fountain pen with a gold-colored barrel and a silver nib, resting on a document. The document has a line for a signature and the word "Signature" printed below it. The background is a dark, muted grey. The title "PROCEDURE OF INQUIRY" is overlaid in the center in a white, bold, serif font.

PROCEDURE OF INQUIRY

Judgements – Which highlights the importance of following proper procedure:

1. Sri Rustom Kerawala Vs. State of Karnataka, (CRL.P 6520/2014) High court of Karnataka, decided on 27/10/2014

2. Sri Nithyananda Swamiji vs District Magistrate on 25 February, 2013, Karnataka High court

3. M. Krishnamurthy vs SDM on 24 January, 2017, Madras High Court

Preventive Procedure at a Glance

Section 130 (Section 111)- Order to be made

Section 131 (Section 112)- Procedure in respect of persons present in court

Section 132 (Section 113)- Summons or warrant in case of person not so present

Section 133 (Section 114)- Copy of order to accompany summons or warrant

Section 134 (Section 115)- Power to dispense with personal attendance

Section 135 (Section 116)- Inquiry as to the truth of the information and interim bond

Preventive Procedure at a Glance

Section 136 (Section 117)- Order to give security

Section 137 (Section 118)- Discharge of person informed against

Section 138 (Section 119)- Commencement of the period for which security is required.

Section 139 (Section 120)- Contents of bond

Section 140 (Section 121)- Powers to reject sureties

Section 141 (Section 122)- Imprisonment in default of security or for breach of the condition of bond

Section 142 (Section 123)- Power to release persons imprisoned or failure to give security

Section 143 (Section 124)- Security for unexpired period of bond

Section 130 BNSS (111 CrPC)

Order to **Show Cause**

OBJECTIVE OF SHOW CAUSE ORDER

- To **inform the person** asked to show cause what allegations he has to answer.
- Also to inform the person that in case the allegations are proved, then **what order may be passed against him.**

Section 130 BNSS (111 CrPC)

Order to **Show Cause**

When a Magistrate acting under

section 126, section 127, section 128 or section 129 (section 107 /108/109/ 110 CrPC), deems it necessary to require any person to show cause under such section, he **shall** make an **order in writing**, setting forth the

- **substance of the information** received
- the **amount** of the bond to be executed
- the **term** for which it is to be in force, and
- the **number, after considering the sufficiency and fitness of sureties** {character and class of sureties (if any), required}

Format for Order under section 130 (section 111)

The applicant has mentioned in his application that the opponent may be using social media, whatsapp and trying to incite religious hatredness and hurting the religious sentiment of certain communities and may spread it in such a way which may affect the peace and harmony in the society, Hence the applicant has submitted a petition u/s 108 . In view of this it is ordered that why a bond for Rs----- with -----(one/two) surety for the period from ----- to----- to be taken from you for ensuring peace and harmony in the society for not indulging into such activities.

Is the order to Show Cause issued under Sec 111 open for **Judicial Review ????**

It is **interlocutory** in nature. Neither determines the rights of parties nor the matter in dispute is finally disposed of. **Not open for Revision- Sec 438 (2) BNSS {397 (2) CrPC}**

However,.....

if the order **does not contain** the **substance** of the information received, the **amount** of the bond to be executed, the **term** for which it is to be in force, and the **number, character and class** of sureties (if any) required, only then, can the High Court interfere and not otherwise.

[M. Krishnamurthy vs SDM on 24 January, 2017, Madras High Court]

*Where a Show Cause notice is issued **either without jurisdiction or in an abuse of process of law**, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice.*

Section 131 BNSS (112 CrPC)

Procedure in respect of person present in Court

If the person in respect of whom such order is made **is present in Court**, it shall be

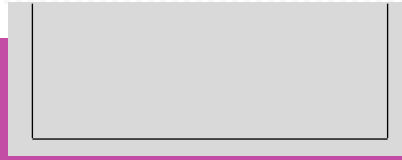
- **read over to him, or,**
- **if he so desires, the substance thereof shall be explained to him.**

Section 132 BNSS (113 CrPC)

Summons or warrant in case of person not so present.

If such person is **not present** in Court, the Magistrate shall

- issue in a **summons** requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:
- Provided that whenever **it appears to such Magistrate**, upon the report of a police officer or upon other information *(the substance of which report or information shall be recorded by the Magistrate)*, that **there is reason to fear the commission of a breach of the peace**, and that **such breach of the peace cannot be prevented otherwise than by the immediate arrest** of such person, the Magistrate **may at any time issue a warrant for his arrest.**



FORM NO.15
SUMMONS ON INFORMATION OF A PROBABLE
BREACH OF THE PEACE
[SEE SECTION 132 BNSS (CRPC 113)]

FORM NO. 15
SUMMONS ON INFORMATION OF A
PROBABLE BREACH OF THE PEACE

(See section 132)

To of

WHEREAS it has been made to appear to me by credible information that
..... (state the substance of the information), and that you are
likely to commit a breach of the peace (or by which act a breach of the peace
will probably be occasioned), you are hereby required to attend in person
(or by a duly authorised agent) at the office of the Magistrate of
..... on the day of
20, at ten o'clock in the forenoon, to show cause why you should
not be required to enter into a bond for rupees [when
sureties are required, add, and also to give security by the bond of one (or two,
as the case may be) surety (or sureties) in the sum of rupees
..... (each if more than one)], that you will keep the peace for the term of
.....

Dated, this day of, 20

(Signature)

(Seal of the Court)

Copy of the Order passed under Section 130 BNSS (111 CrPC) is annexed herewith

FORM No. 14

SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE

(See section 113)

To

of

WHEREAS it has been made to appear to me by credible information that _____ (*state the substance of the information*), and that you are likely to commit a breach of the peace (*or by which act a breach of the peace will probably be occasioned*), you are hereby required to attend in person (*or by a duly authorised agent*) at the office of the Magistrate of _____ on the _____ day of _____ 19____, at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees _____ [*when sureties are required, add, and also to give security by the bond of one (or two, as the case may be) surety (or sureties) in the sum of rupees _____ (each if more than one)*], that you will keep the peace for the term of _____

Dated, this _____ day of _____, 19____.

(Seal of the Court)

(Signature)

Copy of the Order passed under Section 111 CrPC is annexed herewith

Section 133 BNSS (114 CrPC)

Copy of order to accompany summons or warrant.

Every summons or warrant issued under **section 132 BNSS (Section 113) shall** be

- **accompanied by a copy** of the order made under section 130 BNSS(111 CrPC), and
- **such copy shall be delivered by the officer** serving or executing such summons or warrant to the person served with, or arrested under, the same.

Section 134 BNSS (115 CrPC)

Power to dispense with personal attendance

The Magistrate may, **if he sees sufficient cause, dispense with the personal attendance** of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behaviour and **may permit him to appear by a Advocate** {pleader}

PROCEDURE

When person for whom order is to be passed (4)

112

Person is present

Const will - read over "substance of order" & explain him

113

Person is not present

- Mag shall issue "summon"
- if he is in custody - issue "warrant" to officer

- if reason to fear of commission of breach (+) NOT in custody

↓
Mag may issue "warrant" for arrest

114

copy of order

- be accompanied with summon/warrant

115

Mag's power to dispense personal attendance

DRAFT NOTE SHEET

Section 135 BNSS (116 CrPC): Inquiry as to truth of information.

Section 135 (1) BNSS (116 (1) CrPC): Initiation of Inquiry

When an order under section 130(section 111) has

- been read or explained under section 131(section 112) to a **person present** in Court,

or

- when any **person appears** or is brought before a Magistrate in compliance with, or in execution of, **a summons or warrant, issued under section 132 (section 113),**

the Magistrate **shall proceed to inquire into the truth of the information** upon which action has been taken,

and

to **take such further evidence as may appear necessary.**

Section 135(2) {116 (2)}

Recording evidence as in Summons Case.

Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in **summons- cases.**

The procedure to deal with such matter provided in **section 274 to 282 BNSS** (251 to 259 of Cr.P.C). That too in this Section **277** (254)(Procedure when not convicted is important.)

Procedure in Summons Case

Accused appear or brought before the court



Explanation of the particulars of the offence



Conviction on the plea of guilty



procedure when not convicted on a plea



Prosecution hearing and record of evidence



Defence hearing and record of evidence



Submission of argument under section 314



Acquittal/conviction

Procedure in Summons Case

Section 277 BNSS (254 CrPC)

277 BNSS (254 CrPC). Procedure when not convicted -

- (1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to **hear the prosecution** and **take all such evidence** as may be produced in support of the prosecution, and also to **hear the accused** and **take all such evidence** as he produces in his defence.
- (2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.
- (3) A Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

Section 135(3) BNSS (116(3) CrPC)

Interim Bond Pending Inquiry

After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate,

- if he **considers that immediate measures are necessary** for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for **reasons to be recorded in writing**, direct the person in respect of whom the order under section 111 has been made
- **to execute a bond or a bail bond**, for keeping the peace or maintaining good behaviour **until the conclusion of the inquiry**, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Points to note about seeking Interim Bond

- The **emergency conditions** necessitating the requirement of interim bond **should be clearly brought out to the satisfaction of EM**
- Conditions of bond **shall not be more onerous** than those under section 130 BNSS (111 CrPC)
- **Only after** the summons and the notice as required by sections 130 BNSS (111CrPC) and 132 BNSS(113CrPC) have been served and the **enquiry has commenced.**
- **Ex-Parte** in cases of Emergencies only after commencement of Inquiry under 135(1) BNSS (CrPC 116(1))

Points to note about seeking Interim Bond

In an application seeking interim bond, the applicant shall request the following relief:

" Under Section 116(3) CrPC {135(3) BNSS}, it is requested to obtain from the opponent, a personal interim bond for Rs.and a surety for the same sum till the conclusion of the inquiry. If the opponent **fails to furnish** a personal bond or a surety in compliance with the order directing him to give the interim bond, it is requested that the opponent may be **remanded in judicial custody until he gives the bond/surety/till the inquiry is completed, whichever is earlier**"

Points to note about seeking Interim Bond

The applicant has to submit following documents to the Executive Magistrate.

- 1) **Main application** in BNSS Sections 126 to 129 (CrPC Sections 107 to 110) (as applicable).
- 2) Documents, statements and judgments as mentioned in the application.
- 3) **Interim application** seeking interim bond u/s 135(3) BNSS (116(3) CrPC)
- 4) **Copies** of main application and documents and interim application (to be supplied to opponent).
- 5) If opponent is **arrested under section 170 BNSS (151 CrPC)**, all the documents to show the **legality of the arrest** made and **Medical examination certificate** to be enclosed.

Points to note about seeking Interim Bond

- Application copy under section 135(3) BNSS {116(3) CrPC} submitted by the Police officer seeking interim bond

Points to note about seeking Interim Bond-

Format of order passed under section 135(3) BNSS {116(3) CrPC}

Order

On perusal of the facts of the case (the facts should be briefly stated), it is found that the respondent till the enquiry is completed is required to sign a bond for Rs _____ along with _____ surety. **A prima facie case appears to be necessary to order the grant of interim relief.** The contentions of the responded are not competent to refute the petitioner's claim. Moreover by ordering the interim bond to respondent till the completion of the enquiry no interest of him would be prejudiced and on the other hand it would help in preventing the disturbance of public peace and harmony which may be caused by him. Hence the petitioner prayer is allowed. Respondent is required to sign an interim bond for Rs----- and give surety of ----- respectable person for the same amount till the completion of enquiry.

Date

Signature

Points to note about seeking Interim Bond

- Order for Custody under Section 135(3) BNSS {116(3) CrPC} in case of not signing the bond or failing to present the security.

Question

Whether two **contending** parties about to bring a breach of peace, can be inquired into, **jointly**?

YES / NO???

Section 135(5) BNSS {CrPC 116 (5)}

Joint Inquiry

*Where two or more persons have been **associated** together **in the matter under inquiry**, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.*

Note:

- In order to permit a joint inquiry the persons must be **associated together, like a gang.**
- There **cannot** be a joint inquiry where there are **no accusation of joint activity** at the beginning of the inquiry.

Section 135(6) BNSS {Section 116 (6)}

Default Termination of Inquiry

The inquiry under this section shall be completed **within a period of six months** from the date of its commencement,

and

◦ if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, **stand terminated**

unless

◦ for **special reasons** to be recorded in writing, the Magistrate otherwise directs:

So, when does the Inquiry Commence???

*Practically, the date of filing of police report **is suggested** be taken as the commencement of inquiry while reviewing such cases.*

Extension of Inquiry

➤ **What are the Special Reasons for extension**

- Something of **extraordinary circumstance**, quite distinguishable from the fact that there has been no co-operation by the parties or there has been lack of promptness on the part of the Magistrate in disposal of the case, for example **like a stay order**.

➤ **Cannot extend for infinite period**

- If the special reasons are not recorded for extension of the period, the enquiry beyond six months will be quashed.

Physically, where can the Magistrate hold the inquiry???

Cannot hold in places beyond his jurisdiction

Section 136 BNSS {Section 117 CrPC}

Order to give security

If, upon such inquiry, it is **proved that it is necessary** for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made **should execute a bond or bail bond**, the Magistrate **shall make an order** accordingly:

Provided that -

- (a) **no person** shall be ordered to give **security of a nature different from**, or of an amount larger than, or for a period longer than, that specified in the **order made under Section 130 BNSS (section 111 CrPC)**
- (b) **the amount** of every bond **shall be fixed with due regard to the circumstances of the case and shall not be excessive**;
- (c) when the person in respect of whom the inquiry is made is a **child**, the bond shall be executed only by his **sureties**.

Section 136 BNSS {Section 117 CrPC}

Order to give security

BNSS section - 393 –Language and contents of judgement

(6) Every order under section 136 or sub-section (2) of section 157 and every final order made under section 144, section 164 or section 166 **shall contain the point or points for determination, the decision thereon and the reasons for the decision.**

Section 136 BNSS {Section 117 CrPC}

Order to give security

- Order under Section 136 BNSS (117 CrPC) when pleaded guilty
- Order under Section 136 BNSS (117 CrPC) when not pleaded guilty

DRAFT NOTE SHEET

FORM NO. 13

BOND TO KEEP THE PEACE

(See sections 125 and 126)

WHEREAS I, (*name*), inhabitant of
..... (*place*), have been called upon to enter into a bond to keep the
peace for the term of or until the completion of the
inquiry in the matter of now pending in the Court
of, I hereby bind myself not to commit
a breach of the peace, or do any act that may probably occasion a breach of
the peace, during the said term or until the completion of the said inquiry
and, in case of my making default therein, I hereby bind myself to forfeit, to
Government, the sum of rupees.....

Dated, this day of, 20

(*Signature*)

Form 14 - Schedule II BNSS

Sch. II

BHARAT

FORM NO. 14

BOND FOR GOOD BEHAVIOUR

(See sections 127, 128 and 129)

WHEREAS I, (name), inhabitant of
..... (place), have been called upon to enter into a bond to be of good
behaviour to Government and all the Citizens of India for the term of
..... (state the period) or until the completion of the inquiry in
the matter of now pending in the Court of
....., I hereby bind myself to be of good behaviour to Government
and all the citizens of India during the said term or until the completion of the
said inquiry; and, in case of my making default therein, I hereby bind myself
to forfeit to Government the sum of rupees.....

Dated, this day of, 20

(Seal of the Court)

(Signature)

(Where a bond with sureties is to be executed, add)

We do hereby declare ourselves sureties for the above-named
..... that he will be of good behaviour to Government and all the citizens
of India during the said term or until the completion of the said inquiry; and,
in case of his making default therein, we bind ourselves, jointly and severally,
to forfeit to Government the sum of rupees

Dated, this day of, 20

(Seal of the Court)

(Signature)

Bail

Whether person present before Magistrate or detained in proceedings under section 107 Cr.P.C can be released on bail?

YES/NO???

*“There is also **no question of bail** to the person because if instead of an interim bond, bail for appearance was admissible Chapter VIII would undoubtedly have said so. Further **bail is only for the continued appearance** of a person and **not to prevent him from committing certain acts**. To release a person being proceeded against under Sections 107/112 of the Code is to **frustrate the very purpose of the proceedings** unless his good behaviour is ensured by taking a bond in that behalf.”*

[Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486]

Section 137 BNSS (Section 118)

Discharge of person informed against

If, on an inquiry under section 116, it is

- **not proved**
- that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond,
- the Magistrate shall make an entry on the record to that effect,
- and **if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.**

Section 137 BNSS (Section 118 CrPC)

Discharge of person informed against

- Order under Section 137 BNSS (Section 118 CrPC) when the allegations are not proved

Section 138 BNSS (Section 119 CrPC)

Commencement of period for which security is required

1) If any person, in respect of whom an order requiring security is made under section 125 BNSS(106 CrPC) or section 136 BNSS(117 CrPC), is, at the time such order is made, sentenced to, or undergoing a sentence of, **imprisonment**, the period for which such security is required **shall commence on the expiration of such sentence.**

2) In other cases such period shall commence **on the date of such order** unless the Magistrate, for sufficient reason, fixes a later date.

Section 139 BNSS (Section CrPC 120)

Contents of bond – What Construes a breach of bond???

The bond to be executed by any such person **shall bind him** to keep the

- *peace* or

- *to be of good behaviour*, as the case may be,

and

- in the **latter case** the
 - commission or
 - attempt to commit, or
 - the abetment,
- Of **any offence** punishable with imprisonment,
- *wherever it may be committed*

is a breach of the bond.

What Constitutes Breach of Bond???

◦ **Breach of bond for Keeping Peace:**

- To do any act that **may possibly** occasion such breach of peace.
- **Instigation** of an act which may probably occasion breach of peace
- A bond to keep the peace will **not be forfeited** by the commission of **any** offence, but only offences which affect peace/ public tranquility
- **Conviction unnecessary** to entail forfeiture

◦ **Breach of Bond for Good Behaviour**

- Mere **commission(attempt to commit/abetment) of offence enough** - Conviction not necessary
- **Offence committed need not be of the same kind** to the circumstances under which the security was demanded
- Offence **wherever** committed.

Section 140 BNSS (Section 121 CrPC)

Power to reject sureties

1) A Magistrate **may refuse to accept any surety** offered, or **may reject** any surety previously accepted by him or his predecessor under this Chapter on the ground that such **surety is an unfit person** for the purposes of the bond:

Provided that, before so refusing to accept or rejecting any such surety, he **shall either himself hold an inquiry** on oath into the fitness of the surety, or **cause such inquiry to be held** and a report to be made thereon **by a Magistrate subordinate to him.**

2) Such Magistrate shall, before holding the inquiry, **give reasonable notice to the surety and to the person by whom the surety was offered** and shall, in making the inquiry, record the substance of the evidence adduced before him.

Section 140 BNSS (Section 121 CrPC)

Power to reject sureties

3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any), that the surety is an unfit person for the purposes of the bond, he **shall make an order refusing to accept or rejecting**, as the case may be, such surety and recording his reasons for so doing:

Provided that, before making an order rejecting any surety who has **previously been accepted**, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

Section 140 BNSS (Section 121 CrPC)

Power to reject sureties – Illustrations

- According to the Allahabad High Court, the primary test is whether the Surety **can exercise proper control over** the other person and mere pecuniary fitness is not the only test, (Sheikh Zikri, 8 A.L.J. 785)
- However, according to the Bombay High Court, it is **sufficient if the sureties are solvent and respectable**; it is **wrong to attach a condition to a surety that he should be able to control the accused**. (Jiva Natha, 16 B.C.R. 138)
- The fact that the **sureties are related to the accused is not a disqualification**. Rather, **it is an additional qualification** because a relative is more likely to keep an eye on the accused than any other person. (Shib Singh, 25 All. 131)

Section 140 BNSS (Section 121 CrPC)

Power to reject sureties - Illustrations

- Similarly, a surety should not be refused on the ground that **he has already surety for another person**. (Ghisa, 24 Cr.L.J. 517)
- So also, **as long as the security is ample**, the Court is bound to accept the same, **without inquiring into the political background of the person** standing security. (Maung Tun, 27 Cr. L.J. 318)
- The Allahabad High Court has also held that a proposed surety **should not be considered unfit only because he was convicted of an offence in the past**. (Raghunath, 26 All. 189)

Section BNSS 141 (Section 122 CrPC)

Imprisonment in default of security & for violation of Bond condition

Section BNSS 141(1)(a) { Section 122 (1) (a) CrPC}

If any person ordered to give security under section 125 (106 CrPC) or section 136 (117 CrPC) **does not give such security** on or before the date on which the period for which such security is to be given commences, he shall,

except in the case next hereinafter mentioned,

be committed to prison,

or

if he is already in prison, be detained in prison **until such period expires or until within such period- he gives the security** to the Court or Magistrate who made the order requiring it.

Section BNSS 141(1)(b) { Section 122 (1)(b) CrPC }

Imprisonment in default of security & **for violation of Bond condition**

If any person after **having executed a bond** with or without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117,

- **is proved,**
 - to the **satisfaction of such Magistrate** or his successor- in- office,
 - to **have committed breach of the bond,**
- such Magistrate or successor- in--office
 - **May order that the person**
 - **after recording the grounds of such proof,**

Section BNSS 141(1)(b) { Section 122 (1)(b) CrPC }

Imprisonment in default of security & **for violation of Bond condition**

- **be arrested and detained in prison until the expiry of the period of the bond**
- and**
- such order ***shall be without prejudice to any other punishment or forfeiture*** to which the said person may be liable in accordance with law.

Section 141(2) BNSS { Section 122 (2) CrPC }

Failure to give security in proceedings when ordered for a period exceeding one year

If the respondent fails to provide security in cases where he/she is ordered to give security for a **period exceeding one year**, in such cases

- The Executive Magistrate orders for detention of respondent pending order of Sessions court
- Refers the case to Sessions Judge as soon as possible

Where the period for which security is required exceeds one year, it is the Sessions Judge, and not the Magistrate, who is the authority competent to issue final order of imprisonment in default of furnishing security.

Section 141(7) and (8) BNSS { Section 122(7) and (8) CrPC }

Nature of Imprisonment – SI or RI???

Imprisonment for failure to give security for

- under **section 126 BNSS (107 CrPC) for keeping the peace shall be simple.**
- for **good behaviour shall**
 - under **section 127 BNSS (108 CrPC), be simple, and,**
 - under **section 128 BNSS (109 CrPC) or section 129 BNSS (110 CrPC)- be rigorous or simple**

Section BNSS 141 (Section 122 CrPC)

- Format of the application submitted for forfeiting the bond
- Format of the order passed for forfeiting the bond

DRAFT NOTE SHEET

Section BNSS 142 (Section 123 CrPC)

Power to release **persons imprisoned for failing to give security**

1. DM or CJM **may release** (in case without hazard to the community)
2. High court or Court of Session or CJM or DM may **reduce amount of security, number of surities, Time period**
3. Such order may or may not be a **Conditional Order**
4. **State Government may prescribe by rules** the condition for conditional order
5. If non-compliance of Conditional order, **cancellation of order of discharge**

Section BNSS 142 (Section 123 CrPC)

Power to release **persons imprisoned for failing to give security**

6. **Arrest (without warrant)** And Produce before DM/CJM
7. **“Remand” until security given** as per the original order
8. **Release** from Remand - If **security is given**
9. High Court or Court of Session **may cancel the bond of Keeping the Peace or Good behaviour** if there are sufficient reasons.
10. **Surety** may **apply** for **cancellation of security**

POWER OF THE COURT

121

Reject sureties

- unfit
- Before rejection
Mag - inquiry on fitness of surety
 - reasonable notice to surety & opponent
 - second evidences

122

Imprisonment on default of security

v/s 106, 117

123

Release of person imprisoned on failure to give security

Nature of Imprisonment

Keeping peace

106, 107
Simple

Good Behaviour

108
Simple

109, 110
Simple or rigorous

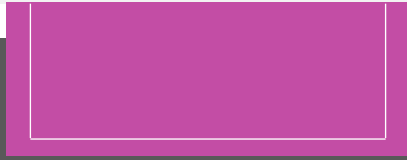
Section BNSS 143 (Section 124 CrPC)

Security for unexpired period of bond

- When a person for whose appearance a summons or warrant has been issued
- under the proviso to sub-section (3) of section 140 BNSS(121 CrPC)(**Surety was rejected by EM**) or under sub-section (10) of section 142 BNSS(123 CrPC)(**Surety himself has applied for cancellation**),
- appears or is brought before the Magistrate or Court,
- the Magistrate or Court **shall cancel the bond executed** by such person and shall order such person to give, for the **unexpired portion of the term** of such bond, **fresh security** of the **same description as the original security**.
- Every such order shall, for the purposes of section 139 to 142 BNSS {120 to 123 CrPC} (both inclusive), be deemed to be an order made under section 125 BNSS (106) or section 136 BNSS (117), as the case may be.

NOTE SHEET DRAFT

- DRAFT COPY OF THE NOTE SHEET
- Consolidated Various reports Format



FLOW CHART

Flow chart

Police Report

Police report under Sec 126/127/128/129 BNSS (107/108/109/110 CrPC)

Show cause

**Show cause Notice - 130 BNSS (111 CrPC)
Conditions of executing 130 (131 - 134) BNSS {111 (112- 115) CrPC}**

Inquiry

135 BNSS (116 CrPC)

Interim Bond

Arrested till the supply of the Interim Bond

Flow chart

**Order for
Security**

136 BNSS or 137 BNSS (117 CrPC or 118 CrPC)



**Voilation
of Bond**

**139 BNSS (120 CrPC)
(140 BNSS(121 CrPC) - Rejection of
Sureties)**



**141 BNSS
(122 CrPC)**

**Imprisonment in default of security
or Imprisonment and forfeiture in
violation of Bond condition**

Scenario

- A and B were arrested by the police u/s 170 BNSS (151 CrPC) and are produced before the Executive Magistrate along with a police report u/s 126 BNSS (107 CrPC).
- The EM issues an order under 130 BNSS(111 CrPC) and read it out to them to show cause for furnishing security. The EM also called upon them to furnish interim bond immediately. The case was adjourned to the next day and the respondents were placed in custody.
- Next day, the EM took the statements of the petitioners (police) and not of any witnesses and interim bond was asked for from respondents without taking their statements.

What is your opinion on the action of Executive Magistrate - Right / Wrong???

The Supreme Court disapproved the procedure adopted by the Magistrate and declared the proceedings for interim bond clearly illegal.

[Madhu Limaye vs Sub-Divisional Magistrate, SC, 1971 AIR 2486, 1971 SCR (2) 711, 28 October, 1970]

Scenario

X is known as habitual receiver of stolen property. He patronizes the miscreants of the locality. On the basis of report of police u/s 129 BNSS (110CrPC), the S.D.M., has issued summons to X calling upon him to appear before S.D.M. on a specified date and show cause in writing why he will not execute the bond of Rs.10,000/- for maintaining good behaviour with two sureties for a period of one year.

X wants to know the reasons for execution of such bond and refuses to execute the bond. He is sent to jail to undergo rigorous imprisonment for one year.

Questions:

- i) What S.D.M should have sent to X along with the summons ?
- ii) Is X justified in refusing to execute the bond, if so, how, if not reasons there of?
- iii) Is S.D.M. justified in his action, if so, how, and if not, reasons there of?



CHANGES IN NEW LAW

OLD (111 CrPC)

When a Magistrate acting under section 107, section 108, section 109, or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, **and the number, character and class of sureties (if any), required**

New (130 BNSS)

When a Magistrate acting under section 126, section 127, section 128 or section 129, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force **and the number of sureties, after considering the fitness for payment of sureties.**

CHANGES IN NEW LAW

- With or without surety is replaced by bail or bail bond
 - ➔ **Bail bond** - is defined as “**BAIL BOND MEANS AN UNDERTAKING FOR RELEASE WITH SURETY**”
 - ➔ **Bond** - is defined as “**BOND MEANS A PERSONAL BOND OR AN UNDERTAKING FOR RELEASE WITHOUT SURETY**”
- **129(a)(f) BNSS**(110 CrPC) - the acts mentioned are changed



PRACTICAL SUPERVISION AND COMMON MISTAKES

Common Mistakes

- **Frequent use of 170 BNSS (151CrPC)** without application of mind
- **Improper drafting of reports** in hasty manner
- **Detention of the respondent without application of mind** by EM
- **Delaying inquiry and frequent adjournments by fixing different locations for inquiry**
- **Printed proformas** used for issuance of orders under section 130 BNSS(111 CrPC)

Police Report : What is wrong???

334 25
IN THE HON'BLE COURT OF SPECIAL EXECUTIVE MAGISTRATE,
OUTER DISTT. DELHI

DD No. 36A dt. 29.05.2019 u/s 107/151 CrPC, PS Paschim Vihar West,
Delhi

S/T- SI Chandra Shekhar No.D-3153 PS- PS Paschim Vihar West, New Delhi

S/V- 1.Vicky @ Lindi S/o Suresh R/o W-116/A-556, Jwalapuri, New Delhi Age-30
years
2. Ajay @ Deepu S/o Kartik R/o B-118 Camp No. 4 Jwalapuri New Delhi Age 33 Years

_____ kalandra u/s 107/151 CrPC

Hon'ble Sir,

संक्षिप्त हालात कलन्द्रा हजा इस तौर पर हैं की आज दिनांक 29.05.2020 को मन SI बाद करके attend PCR calls हाज़िर थाना आ रहा था जो समय करीब मन SI मय Ct Ravi No. 1660/OD जैसे ही Camp No.-4 Jwalapuri, New Delhi से होते हुए थाने की तरफ आ रहा थे तो 80 फुटा रोड, नजद दुर्बलम नाथ मन्दिर Jwalapuri, New Delhi के बाहर काफी लौंगों की भीड़ इकट्ठा हो रखी थी व भीड़ में से ऊँची-ऊँची आवाज में गालिया सुनाई दे रही थी। जो मन SI ने हमराही Ct की मदद से भीड़ को हटा कर देखा की दो शख्स ऊँची-ऊँची आवाज में आपस में गालिया दे रहा थे और मरने मारने पर उताव्र रहे। जो मन SI ने उपरोक्त शकशो को काफी समझाने की कोशिश की, पर वह अपनी हरकतों से बाज नहीं आये और मरने-मारने पर उताव्र रहे। जो मन SI ने हमराह Ct उपरोक्त की मदद से उपरोक्त शकशो को काबू किया जिनका नाम पता बाद दरियाफ्त 1. Vicky @ Lindi S/o Suresh R/o W-116/A-556, Jwalapuri, New Delhi Age-30 years (2) Ajay @ Deepu S/o Kartik R/o B-118 Camp No. 4 Jwalapuri New Delhi Age 33 Year पता चला। जो मन SI ने उपरोक्त शकशो को काफी समझाने की कोशिश की, पर वह अपनी हरकतों से बाज नहीं आये बल्कि तेश में आकर कहने लगे की " या तो आज ये रहेगा या फिर मैं रहूँगा हम दोनो इस इलाके के बदमाश हैं और इस इलाके में एक ही बदमाश रहेगा " जो मन SI ने शकशो उपरोक्त को काफी समझाने की कोशिश की पर वे नहीं माने व मरने मारने पर उताव्र रहे। जो मन SI ने तमाम हालात जनाब SHO साहब को बतलाये। जो SHO साहब ने बाद लेकर permission senior officers से कार्यवाही U/S 107/151 CrPC अमल में लाने के आदेश फरमाए। मन SI ने उपरोक्त शकशो को U/S 107/151 CrPC में लौके पर ही गिरफ्तार किया-व जाना तलाशी अमल में साथी जो मुताबिक फर्द है अगर मन SI ऐसा ना करता तो उपरोक्त शकशो की हरकतों से नुक्से अमन का फोरी खतरा था व यह दोनो शकश कोई

54
न कोई जुर्म कबिले दस्तंदाजी को अंजाम दे सकते थे। दौराने गिरफ्तारी मन SI ने Hon'ble Court के तमाम आदेशो का पालन किया। मुलजिमो उपरोक्त को संजय गांधी हॉस्पिटल मंगोलपुरी में मेडिकल करवाया गया मुलजिमो को बाद खाना खिलाकर थाना पश्चिम विहार ईस्ट लोकअप में भिजवाया जावेगा। जो मुलजिम उपरोक्तो को बजरिये कलन्द्रा पेश अदालत किया समायत फरमायी जावे।

Kalandara u/s 107/151 CrPC is submitted please

Enclosures

Sr. No.	Document	Pages
1.	Kalandra u/s 107/151 CrPC	21P
2.	Statement recorded	21P
3.	MLC	21P
4.	Arrest Memo + Personal Search	2+21P
5.	Conviction Slip	1P
6.	Previous Involment	21P

Witnesses

1. CT Ravi 1660/ od PS Paschim Vihar West, NEW DELHI

SI Chandra shekhar
PS- P Vihar West , DELHI

Forwarded/Please

SHO/P Vihar West

4 Jwalapuri, New Delhi से होते हुए थाने की तरफ आ रहा थे तो 80 फुटा रोड, नज्द दुर्बलभ नाथ मन्दिर Jwalapuri, New Delhi के बाहर काफी लोगों की भीड़ इकट्ठा हो रखी थी व भीड़ में से ऊँची-ऊँची आवाज में गालिया सुनाई दे रही थी। जो मन SI ने हमराही Ct की मदद से भीड़ को हटा कर देखा की दो शख्स ऊँची-ऊँची आवाज में आपस में गालिया दे रहा थे और मरने मारने पर उतारू थे। जो मन SI ने उपरोक्त शकशो को काफी समझाने की कोशिश की, पर वह अपनी हरकतों से बाज नहीं आये और मरने-मारने पर उतारू रहे। जो मन SI ने हमराह Ct उपरोक्त की मदद से उपरोक्त शकशो को काबू किया जिनका नाम पता बाद दरियाफ्त 1. Vicky @ Lindi S/o Suresh R/o W-116/A-556, Jwalapuri, New Delhi Age-30 years (2) Ajay @ Deepu S/o Kartik R/o B-118 Camp No. 4 Jwalapuri New Delhi Age 33 Year पता चला। जो मन SI ने उपरोक्त शकशो को काफी समझाने की कोशिश की, पर वह अपनी हरकतों से बाज नहीं आये बल्कि तेश में आकर कहने लगे की " या तो आज ये रहेगा या फिर मैं रहूँगा हम दोनो इस इलाके के बदमाश हैं और इस इलाके में एक ही बदमाश रहेगा " जो मन SI ने शकशो उपरोक्त को काफी समझाने की कोशिश की पर वे नहीं माने व मरने मारने पर उतारू रहे। जो मन SI ने तमाम हालत जनाब SHO साहब को बतलाये। जो SHO साहब ने बाद लेकर

न कोई जुर्म काबिले दस्तंदाजी को अंजाम दे सकते थे। दौराने गिरफ्तारी मन SI ने Hon'ble Court के तमाम आदेशो का पालन किया। मुलजिमो उपरोक्त को संजय गांधी हॉस्पिटल मंगोलपुरी मे मेडिकल करवाया गया मुल्लिमो को बाद खाना खिलाकर थाना पश्चिम विहार ईस्ट लोकअप मे भिजवाया जायेगा। जो मुलजिम उपरोक्तो को बजरिये कलन्दरा पेश अदालत किया समायत फरमायी जावे।

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Witnesses

1. CT Ravi 1660/ od PS Paschim Vihar West, NEW DELHI

**Police
Report:**

**Conclusion
Paragraph**

Incorrect 130
BNSS (111 CrPC)
Order
As a printed
proforma.

IN THE COURT OF SH. RAKESH SANGWAN S.E.M OUTER DISTT, DELHI

Kalandra NO. 334 D.D NO. 36A Date: 29/05/20 U/S 107/151 Cr.P.C

E.O: SI - chander shekhars: p.v. west

S/Vs vicky @ hindi s/o Suresh

R/O:- 10-116/A - 556, Jwalapuri, New Delhi

NOTICE U/S 107/111 Cr.P.C.

Whereas from the report of SHO/ p.v. west it appears that you (vicky @ hindi) are abusing, quarrelling & threatening to with dire consequences during dispute and also create a scene over there. There was an imminent danger of breach of peace. Despite the intervention by the I.O you did not stop the threatening and abuse which may result in occurrence to commit a cognizable offence and breach of peace and disturbing the public tranquility and whereas you are likely to do a wrongful act which may result in the breach of peace within the legal limit of my jurisdiction and I am satisfied from police report that there are sufficient grounds for taking proceedings against you U/S 107/151 Cr.P.C.

Therefore, I, RAKESH SANGWAN S.E.M. Outer Distt, hereby required you to show cause why you should not be ordered to execute a personal bond in the sum of Rs10,000/-with one surety each for keeping peace for causing no disturbance in the public tranquility for a period of the conclusion of the enquiry proceedings. The character and class of the surety is as mentioned below:

Class: Should have capacity to pay the amount of bond if forfeited.

Given under my hand and seal today 30 day of May 2020 case to come upon at 2 P.M



V VM

R
Special Executive Magistrate
Outer Distt New Delhi.
30/05/20

Notice read over and explained to the respondent in vernacular who denied/admitted the content of the Police.



V VM

R
Special Executive Magistrate
Outer Distt New Delhi.
30/05/20



EFFECTIVE IMPLEMENTATION

Effective Implementation

- **Collect intelligence** but with a plan and clear focus
- **Collect financial status** and property details
- **Segregate cases** based on importance of the person/ case
- Proper **channels of communication between Police and EMs** and also Judicial officers
- The vulnerabilities /pressures on EMs and your officers
- Have a **separate cell** to monitor such cases
- **Regular training** to Staff and EMs
- **Regular updation of station registers** especially Rowdy Sheets, Village Crime Histories and History Sheets

Effective Implementation

- **Regular review and expeditious conclusion of inquiries**
- Review to **focus also on forfeiture of security** in case of violations
- **To press for interim bonds** wherever applicable and possible
- **Should raise objections with regard to the sureties** tendered in pursuance of order of 106 or 117 as and when applicable.



PREVENTIVE DETENTION
VRS SECURITY
PROCEEDINGS

Preventive Detentions - 2021

Total no. of Dententions	1,10,683
---------------------------------	-----------------

Persons Released by board

In 1 month	80,014
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In 1 to 3 Months	3030
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In 3 to 6 months	3,114
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Total Released by Board	86158
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Persons in custody or in Detention at the end of the year	24,525
--	---------------

Difference between preventive detention and security proceedings:-

- **Preventive detention** under Article of the Constitution means **detention of a person without trial** by Executive Authority for a fixed period so as to prevent him from committing any offence or breaking public order.
- The **security proceedings** under Sections 126-129 BNSS (107-110 Cr.P.C.) are **judicial in nature though they look administrative**. The purpose of **it is not to detain a person but to get a bond executed** by him for future. Such **person has a right of trial and the Magistrate is enjoined to enter into the enquiry** at once. His orders may be challenged in the higher courts.

Difference between preventive detention and security proceedings:-

Security proceedings which if properly utilized, shall **produce better results** than preventive detention. **All the benefits of preventive detention plus more are present in it.**

- (1) There can be **immediate arrest** to prevent the apprehended crime.
- (2) **No bail** is permissible under it.
- (3) The **Executive Magistrate conducts** the proceedings **who is himself responsible for control of crime.**
- (4) Procedure is very **simple.**
- (5) **Hearsay evidence** is admissible.

Difference between preventive detention and security proceedings:-

(6) **Confession to Police** is admissible.

(7) A wrongdoer is bound down by a bond and given under the responsibility of two sureties to prevent offences in future, should **he break the bond, he is arrested without warrant and imprisoned.**

(8) Even if a **person has been acquitted on some charge**, he may be **bound over on the same charge to prevent apprehended offence.**

With these and other advantages already discussed, the **Police may prevent many crimes if not all.**



IMPORTANT LEGAL SPECIALITIES OF PREVENTIVE SECTIONS

- 12 POINTS

Legal Specialities of Preventive Sections – 1(PAST ACTS)

On credible information of a Sub-Inspector of Police about the wrongful acts of a person between July 21, 1971 to July 7, 1972, the Magistrate issued show cause notice to him. Such person **contended that the past acts were no guide to the future apprehensions of breach of peace and the notice was illegal.**

Legal Specialities of Preventive Sections – 1

(C. Subba Reddy v. Andhra Pradesh, 1973 Cr.L.J. 1713); K.N. Joglekar v. Commissioner of Police, AIR 1957 SC 28 = 1957 Cr.LJ.

➤ It was held by the Court:

(1) Proceedings under **Section 107 are not penal but only precautionary, hence notice was legal.**

(2) The **past acts show the tendency** of the person to break peace in future. **But the past acts should not be too remote and disjointed** to common thread connecting them.

(3) **It is not necessary that all persons who are reported against, must be involved in all the past wrongful acts.** But all of them **should belong to the same group.**

(4) **What a person is likely to do in future can be inferred from his past record.**

Legal Specialities of Preventive Sections – 1 (PAST ACTS)

The Executive Magistrate **needs only information** from any source and that **he should be satisfied about the apprehension of breach of peace.** The information may not be about the future acts but **the past wrongful act.**

Legal Specialities of Preventive Sections - 2

Action even after acquittal: (Even if Criminal Case gets acquitted)— when there have been **series of litigations between parties**, a reasonable apprehension of breach of peace exists **even though, the criminal cases, ended in acquittal**, Hence **Section 107 is applicable as it is precautionary action for future.** (U. Pradhan v. state, 1974 SC 40 CLT 148).

Legal Specialities of Preventive Sections - 3

- The inspector of **Police round up 96 persons under Section 107** on various incidents collectively; and **against 3 of such persons registered serious cognizable offences under Sections 323 and 324 I.P.C.** for which **trial was also pending with the Judicial Magistrate.**
- The **Executive Magistrate discharged these 3 persons under Section 107 by disbelieving the evidence against them.** The Police tried to produce the disbelieved evidence against these 3 persons in their trial under Sections 323 and 324 I.P.C. **The accused persons took the plea of issue estoppel under Article 20 contending that such evidence was already disbelieved against them under Section 107 Cr.P.C. hence it could not be used against them in their trial under Sections 323 and 324 I.P.C.**

Legal Specialities of Preventive Sections - 3

The Supreme Court rejected the plea and held:

(1) That under **Section 107** the evidence was reviewed from a different point of view of apprehension of breach of peace and not from the angle of **Sections 323 and 324 I.P.C.**

(2) That **under Section 107 Cr.P.C.** there is no offence, no conviction or acquittal and no trial.

(3) The **evidence disbelieved under Section 107** could be again used against the same persons in their trial under **Sections 323 and 324 I.P.C.** (State of A.P. v. Kokkiliagada Meerayya, AIR 1970 SC 771 1969 (1) SCC 161 1970 Cr.LJ 759).

Legal Specialities of Preventive Sections - 3

Article 20 of the constitution inapplicable - The protection under article 20 on the issue of estoppel is that once, **in a criminal trial certain evidence against the accused is disbelieved, the same evidence cannot be used against the same accused in any subsequent trial.**

But **this principle does not apply in proceedings under sections 107** because under this section **there is no accused, no trial and no conviction or acquittal.** Thus, **same evidence which had been disbelieved and rejected in earlier trial may subsequently be used against the same person in another case..**

Legal Specialities of Preventive Sections - 4

Notice under Section 107 not challengeable – A notice to show cause issued by a Magistrate on the apprehension of breach of peace is **only an interlocutory order** which **neither determines the rights of the parties nor the matter in dispute is finally disposed off**. Hence the person called upon to show cause, **cannot challenge** his notice in Higher Court (Bindbasni vrs UP, 1976 Cr LJ 1660).

Legal Specialities of Preventive Sections - 5

Confession to police admissible – Section 25 of the **Evidence act** makes the confession of an accused to the police **inadmissible** in evidence. But a confession to Police by a wrongdoer **under section 107 CrPC is admissible in evidence** because he is **not an accused of an offence** (Ramlal v Emperor AIR1942 Oudh 246).

Legal Specialities of Preventive Sections - 6

- **Subjective Satisfaction of Police** – Under this section, the subjective satisfaction of the Police about the **apprehension of breach of peace by some person and his arrest on that account cannot ordinarily be scrutinized by the court.**
- The **court should not substitute its opinion in that of Police and hold that breach of peace could be prevented by some means other than his arrest. The court should examine whether the grounds really exist on which the Police formed its opinion. If they exist, then Police action of preventive arrest would not be interfered with by the court.** (Chakkapant Kerala, 1960 Cr.L.J. 1212).

Legal Specialities of Preventive Sections - 7

No bail permissible – Under this section, person is arrested for prevention of breach of peace. The bail is allowed to a person for **his continued appearance in court**. It has **no guarantee that the person released on bail would not commit breach of peace**. In fact, **the bail would frustrate the very purpose of the security proceedings**. What is legally permissible is to **release the culprit on interim bond with the undertaking that he would not disturb tranquility**. (Madhu Limaye v Ved Murti, AIR 1971).

Legal Specialities of Preventive Sections - 8

Admission of the culprit is sufficient – When a person is **summoned** under section 107, and **he appears before the Magistrate and admits his guilt, the Magistrate need not hold an enquiry.** He may bound down the culprit on the basis of his admission (Emperor V Ghariba and others, AIR 1924)

But if there is **no admission by the culprit, the Magistrate should hold full enquiry and then pass orders.** If enquiry is not properly held, the proceedings would be illegal.

Legal Specialities of Preventive Sections - 8

- On July 19, 1984 at 9.45 a.m. **some persons made inciting speeches** promoting communal disharmony at Gurudwara Imil Saheb Indore against Operation Blue Star. The **Police made a preventive arrest under Section 151 Cr.P.C. and produced the culprits before Magistrate under Section 107.** The Magistrate on the same day **completed the inquiry and without giving proper opportunity to the culprits lodged them in jail.** It was held that the **proceedings were illegal and the culprits were released by the High Court.** (Arun Singh v. State of M.P., 1984 Cr.L.J. 1616).

Legal Specialities of Preventive Sections - 9

Indirect cause of breach of peace – Section 107 CrPC shall be applicable

under both the situations; when a person is directly breaking the peace or when a person becomes indirect cause of breach of peace. But if neither

is the case, Section 107 shall not apply. An example will explain this point.

Legal Specialities of Preventive Sections - 9

➤ Police apprehended breach of peace when it suspected that **A and B two Muslims abducted a Hindu female and a big crowd armed with weapons was surrounding the house of A and B.** The female was however, **found in C's house where she had come on her free will.** A and B **were arrested under Section 107 Cr.P.C.**

It was **held that A and B were responsible neither directly nor indirectly for the apprehension of breach of peace.** They were released.

Legal Specialities of Preventive Sections - 10

Equitable balance - While passing an order under section 107 against a person the Magistrate should also **examine whether the opposite party is gaining any undue advantage over such person.** In that case, it is desirable that the opposite party should also be bound down.

Legal Specialities of Preventive Sections - 10

- If breach of **peace is apprehended on a dispute of possession of land-between A and B**, the Magistrate **takes up A who has legal right to possession and lodges him in jail**. Now, **B shall be free and in advantageous position to take the possession** of that. Thus, **it would be equitably necessary for the Magistrate to take up B also in a cross case**. (Bepin's case II CWN 176).
- It may be noted **that principle of law is that a party who has clear legal right, should be allowed to exercise that right without opposition**. **The party offering opposition to the exercise of legal right should be bound down**. (Dindyal Majumdar v. State, (1907) 34 Cal. 935).

Legal Specialities of Preventive Sections - 10

- It may be generally noticed that the **people perform religious ceremonies in a place not set apart for that purpose with one deliberate intention of wounding the religious feelings of the neighbors**. This is wrongful act and such person may be taken up under Section 107 Cr.P.C. (Murali Singh v. State, (1911) 33 All. 775).

Legal Specialities of Preventive Sections -11

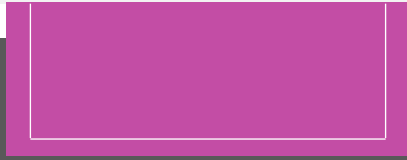
- **No preventive detention needed, section 107 CrPC must be used - The jurists have time and again compared section 107 CrPC with preventive detention and have advised that before resorting the preventive detention of an accused, **one should first try section 107 CrPC, which is more effective with easy formalities of law under the constitution.****
- Various High courts too have observed likewise. One of such cases may be cited as an example.

Legal Specialities of Preventive Sections -11

- In a Kerala High Court case, the husband **was detained under Kerala Anti Social Activities (Prevention) Act, 2007** on the ground that **he was known rowdy and anti-social**. His wife brought an action under writ of Habeas corpus. The High Court of Kerala allowed the writ and laid down that:
 - All the **material produced for detention under Article 22 of the constitution were not sufficient** to detain the Husband, as all materials were not supplied to him
 - **When section 107 CrPC is sufficient** to prevent a person from anti- social activities, the Kerala **Anti-Social Activities (Prevention) act 2007 was not required** (Rekja(Dr) V State of Kerala 2013 CrLJ 1650)

Legal Specialities of Preventive Sections - 12

Modification - However, Kerala High Court modified the rule laid down under section 107 CrPC. It was held that **if the accused has committed four other crimes**, then he **should not be bound down u/s 107 CrPC but proper way is to detain him under Kerala Anti-Social Activities (Prevention) Act, 2007** (Hidayath K V State of Kerala, 2014 CrLJ 1727).



MISCELLANEOUS

Miscellaneous

- [Various Forms](#)
- Sample Proceedings Done –
 1. [Delhi](#)
 2. [Hyderabad - 1](#)
 3. [Hyderabad -2](#)

SUMMARY SHEET

Ch-9 Security for keeping the peace and for good behavior-BNSS 125-143(CrPC 106-124)

Security

(Sec BNSS 125-130)
(Sec CrPC 106-111)

Procedure

(Sec BNSS 131-134)
(Sec CrPC 106-111)

Inquiry

(Sec BNSS 135-139)
(Sec CrPC 116-120)

Power of Court

(Sec BNSS 140-143)
(Sec CrPC 121-124)

Sec 130 – order u/s 126-129 to be in writing

Sec	Security for	When security given	Order by	Time
125 (106 crpc)	For Persons on conviction	<ul style="list-style-type: none"> ➤ At the time of passing sentence ➤ For Conviction u/s 125 (2) <ol style="list-style-type: none"> 1. Offence Under Chapter 11 BNS (except-193 (1), 196, 197) 2. Offence consists of assault /criminal force/mischief 3. Criminal intimidation; 4. Offence caused /intended/likely to cause breach of the peace. ➤ If conviction is set aside, order VOID 	COS JMFC App./Rev. court	3 Years
126 (107 crpc)	For Persons in other cases	<ol style="list-style-type: none"> 1. Person likely to commit a breach of the peace 2. Disturb the public tranquility 3. To do any wrongful act 	EM	1Year
127 (108 crpc)	For Good Behavior from persons disseminating certain matter	<ol style="list-style-type: none"> 1. Matter- Publication- Punishable u/s 152, 196, 197, 299 BNS 2. Matter concerning a Judge-amounting to Criminal Intimidation / Defamation 3. Obscene matter u/s 294 	EM	1 Year
128 (109 crpc)	For Good Behavior from suspected person	Person taking precautions to conceal his presence + Reason to Believe that it is done to commit a Cognizable offence	EM	1Year
129 (110 crpc)	For Good Behavior from Habitual offenders	List	EM	3 Year

Ch-9 Security for keeping the peace and for good behavior-BNSS 125-143(CrPC 106-124)

Procedure

(Sec BNSS 131-134)
(Sec CrPC 106-111)

Section

131 (112 crpc)	When Accused Present	Order shall be read over to him + substance be explained to him
132 (113 crpc)	When Accused Absent	<ul style="list-style-type: none"> ➤ Magistrate shall issue a summon requiring him to appear ➤ When such person is in custody – a warrant directing the officer to bring him before the court
133 (114 crpc)	Copy of Order	To accompany summons or warrant u/s 132
134 (115 crpc)	Power to dispense with personal attendance	If he sees sufficient cause - then appearance by Advocate

Inquiry

(Sec BNSS 135-139)
(Sec CrPC 116-120)

Section

135 (116 crpc)	Inquiry as to truth of information	<ul style="list-style-type: none"> ➤ After 131/132 ➤ By- Magistrate ➤ Manner – trial and recording evidence in summons cases ➤ After the commencement and before the completion of the inquiry- <ol style="list-style-type: none"> 1. direct to execute –bond or bail bond for Peace/Good Behaviour until conclusion of the inquiry, and 2. may detain him in custody until such bond or bail bond is executed or, 3. in default of execution, until the inquiry is concluded ➤ If inquiry not completed in 6 months - terminate
136 (117 crpc)	Order for security	It is proved- necessary for keeping Peace /Good Behaviour
137 (118 crpc)	Discharge	If not proved – necessary for keeping Peace /Good Behaviour
138 (119 crpc)	Commencement of period	For which security is required:- <ul style="list-style-type: none"> ➤ When order u/s 125/136 + person sentenced to , or undergoing a sentence of, imprisonment = then period begin on expiry of sentence ➤ Other cases = period begin on date of such order
139 (120 crpc)	Contents of bond	shall bind him to keep the P/GB If later Com/abet/ Attempt - breach of bond

Power of Court - sec 140-143 BNSS (121 to 124 CrPC)

Section		
140 (121 CrPC)	Power to reject sureties	If surety is an unfit person
141 (122 CrPC)	Imprisonment in default of security	If do not give security u/s 125/136 BNSS
142 (123 CrPC)	Power to release persons imprisoned for falling to give security	DM/EM if order passed under 136 Other cases-CJM -may be released w/o hazard to community or to any other person, he may order such person to be discharged.
143 (124 CrPC)	Security for unexpired period of bond.	When summon issued u/s 140(3) / 142(10) - appears/ brought before Mag/C ➤ Magistrate/ Court shall ➤ Cancel the bond or bail bond + ➤ Order to give fresh security, for the unexpired portion of the term of such bond



VARIOUS JUDGEMENTS

Aldanish Rein vs State Of NCT Of Delhi

Delhi High Court – 1.11.2018

Training

71. Nevertheless, it finds it necessary to issue series of directions to ensure that the provisions are not abused or misused by the SEMs as under:

...

(a) Not later than from two months from today, the DSLSA in association with Delhi Judicial Academy will conduct a three- day training workshop for a batch of at least 20 SEMs who are currently holding those positions and train them on the constitutional requirements of their role. The background reading material prepared will comprise the aforementioned decisions of the Court with the reports of the LCI, NHRC as well as this decision and a detailed set of instructions as to how the SEMs should exercise the powers under Sections 107 and 151 Cr PC and even the model orders that they could follow.

(b) The training, apart from lectures, should involve engaging the participants in role play so that there is a practical hands-on experience of how to deal with a real-life situation.



Aldanish Rein vs State Of NCT Of Delhi

Delhi High Court – 1.11.2018

Special Executive Magistrates or Special Executive Officers

71. Nevertheless, it finds it necessary to issue series of directions to ensure that the provisions are not abused or misused by the SEMs as under:

(i) As far as the NCT of Delhi is concerned, the Lieutenant Governor (LG) will consider setting up an oversight mechanism to periodically review the exercise of powers by the SEMs under Sections 107 and 151 Cr PC. Such mechanism can consist of retired District Judges. Corrective action requires to be taken to check the abuse of powers. The LG will also consider calling these public officials as Special Executive Officers rather than SEMs as the appellation Magistrate is likely to be mistaken for a Judicial Magistrate which SEMs clearly are not. They are, at present, invariably police officers who simultaneously function as ACPs.



Aldanish Rein vs State Of NCT Of Delhi

Delhi High Court – 1.11.2018

Monitoring by Principal Secretary, Home.

71. Nevertheless, it finds it necessary to issue series of directions to ensure that the provisions are not abused or misused by the SEMs as under:

.....

(vii) The Principal Secretary, Home will periodically visit the Courts of SEMs on a spot checking on a surprised check basis accompanied by the Secretary, DSLSA to ensure that the misuse of the powers of the SEMs is curbed. This should happen at least once or twice in every month.



Sanjeev Kumar Singh vs State Of NCT Of Delhi

Delhi High Court – 25.02.2008

Case to be registered by CBI against Special Executive Magistrate

“11. Accordingly, the writ petition is allowed with the following directions:

(i) CBI is directed to register a case in respect of the allegations made by the petitioners in the writ petition. A copy of the writ petition Along with a copy of this order be sent to the CBI, who shall investigate the matter within a period of 120 days and submit its report to the Court of concerned Metropolitan Magistrate.

(ii) Petitioners are granted compensation of Rs. 25,000/- each to be paid by the State for their wrongful confinement by the State between 4.2.2007 and 5.2.2007, when no bail order was passed by the Special Executive Magistrate and their bail bonds were not accepted.

(iii) The proceedings under Sections 107/151 Cr.P.C. initiated against the petitioners are hereby quashed.”



Rajender Singh Pathania & Ors vs State Of NCT Of Delhi

Supreme Court - 12.08.2011

“11. The judgment and order impugned herein shocked our judicial conscience as under what circumstances such a petty incident was considered by the High Court to be a fit case to be referred to the CBI for investigation.

12..... for directing the CBI to hold the investigation the court must be satisfied that the opposite parties are very powerful and influential persons or the State authorities like top police officials are involved and the investigation has not proceeded with in proper direction or it has been biased. In such an eventuality, in order to do complete justice a direction to the CBI to investigate the case can be issued.

13. It was not a case where it could be held that the State authorities were interested or involved in the incident. Thus, in our opinion, it was not a fit case where investigation could be handed over to the CBI.”



Constitutional Validity of s. 107 & 151 of Code of Criminal Procedure.



Why?

Why constitutional validity challenged?

**Why constitutional validity of section 107 Cr.P.C
challenged?**

AND

**What could be the grounds to challenge validity of section 107
Cr.P.C?**



Why?

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

In **Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486 (SEVEN JUDGES BENCH)**, the constitutional validity of section 107 Code of Criminal Procedure, 1898 was upheld.



Why?

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

In Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486 judgment is dated 28.10.1970 in Writ Petition No.307 of 1970.

Why the provisions challenged after 20 years?



Why?

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

→ **Section 107 Code of Criminal Procedure, 1898**

"107. (1) Whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the Magistrate, if in his opinion there is sufficient ground for proceeding, may, in manner herein after provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix".



Response to said challenges? - Fundamental Rights

Madhu Limaye Vs Sub Divisional Magistrate AIR 1971 SC 2486

- **“19. (1) All citizens shall have the right—**
- (a) to freedom of speech and expression**
 - (b) to assemble peaceably and without arms;**
 - (c) to form associations or unions; and**
 - (d) to move freely throughout the territory of India”**



Grounds of challenge?

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

The provisions are destructive of Article 19:

“The argument is that these sections (more particularly Section 107) are destructive of freedom of the individual guaranteed by Article 19 (1)(a),(b),(c) and (d) and are not saved by the restrictions contemplated by clauses (2) to (5) of the Article.” (para 34)



Grounds of challenge?

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

The provisions lack proper procedural safeguards:

“It is also contended that there are no proper procedural safeguards in the sections that follow.”

(para 34)



Grounds of challenge?

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

→ **There is likelihood of misuse:**

“In my opinion, the validity of a provision of this nature is not to be judged from the likelihood of the abuse of the power by the Magistrate.” (para 59, the said challenge can be inferred from the observation)



Grounds of challenge?

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

→ **Procedure not followed:**

“We accordingly, hold in the case of Madhu Limaye (Writ Petition 307 of 1970 — Madhu Limaye v. Ved Murti that as the case was simply adjourned from time to time and there was no inquiry before remanding him to custody his detention was illegal.” (para 43)



Response to said challenges? - Fundamental Rights

Madhu Limaye Vs Sub Divisional Magistrate AIR 1971 SC 2486

- **Art 19 (2):** Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
- **Art 19 (3):** Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any laws imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
- **Contd**



Response to said challenges? - Fundamental Rights

Madhu Limaye Vs Sub Divisional Magistrate AIR 1971 SC 2486

Art 19 (4): Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and

→ **Art 19 (5):** Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.



Response to said challenges? - Fundamental Rights

Madhu Limaye Vs Sub Divisional Magistrate AIR 1971 SC 2486

“In our judgment the expression **“in the interest of public order” in the Constitution is capable of taking within itself not only those acts which disturb the security of the State or act within ordre publique as described but also certain acts which disturb public tranquillity or are breaches of the peace.”**



Response to said challenges? - Procedure

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

→ **“35. We have seen the provisions of Section 107. That section says that action is to be taken ‘**in the manner hereinafter provided**’ and this clearly indicates that **it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent.** This is very salutary because the liberty of the person is involved and the law is rightly solicitous, **that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. ...”****



Response to said challenges?

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

→ Final Order:-

"46. The gist of the Chapter is the prevention of crimes and disturbance of public tranquillity and breaches of the peace. There is no need to prove overt acts although if overt acts have taken place they will have to be considered. The action being preventive is not based on overt act but on the potential danger to be averted. These provisions are thus essentially conceived in the interest of public order in the sense defined by us. They are also in the interest of the general public. If prevention of crimes, and breaches of peace and disturbance of public tranquillity are directed to the maintenance of the even tempo of community life, there can be no doubt that they are in the interest of public order.



Response to said challenges?

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

→ Contd.....

As we have shown above **'public order' is an elastic expression which takes within its various meanings according to the context of the law and the existence of special circumstances.** This power was used in England for over 400 years and is not something which is needed only for administration of colonial empires. Its need in our society today is as great as it was before the British left. We find nothing contrary to Article 19(1)(a), (b), (c) and (d) because the limits of the restrictions are well within clauses (2), (3), (4) and (5). We accordingly hold the Chapter as explained by us to be constitutionally valid.



Chapter VIII and Art 22.

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

→ **43. The power which is conferred under this Chapter is distinguished from the power of detention by executive action under Article 22 of the Constitution. Although the order to execute a bond, issued before an offence is committed, has the appearance of an administrative order, in reality it is judicial in character. Primarily the provision enables the Magistrate to require the execution of a bond and not to detain the person. Detention results only on default of execution of such bond. It is, therefore, not opposite to characterise the provision as a law for detention contemplated by Article 22.**

Contd...



Chapter VIII and Art 22.

Madhu Limay Vs Sub Divisional Magistrate AIR 1971 SC 2486

→ Contd.....

→ **“The safeguards are therefore different. The person sought to be bound over has rights which the trial of summons case confers on an accused. The order is also capable of being questioned in superior courts. For this reason, at every step the law requires the Magistrate to state his reasons in writing. It would make his action purely administrative if he were to pass the order for an in-terim bond without entering upon the inquiry and atleast prima facie inquiring into the truth of the information on which the order calling upon the person to show cause is based.**



Why?

Why constitutional validity challenged?

**Why constitutional validity of section 151 Cr.P.C
challenged?**

AND

**What could be the grounds to challenge validity of section 151
Cr.P.C?**



Constitutional Validity

Ahmed Noormohmed Bhatti v. State of Gujarat, (2005) 3 SCC 647

→ **Ahmed Noormohmed Bhatti v. State of Gujarat, (2005) 3 SCC 647
(Full Bench-3)**

Para 10. ... As we have noticed earlier, Section 151 of the Code of Criminal Procedure itself makes provision for the circumstances in which an arrest can be made under that section and also places a limitation on the period for which a person so arrested may be detained. The guidelines are inbuilt in the provision itself. Those statutory guidelines read with the requirements laid down by this Court in Joginder Kumar [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] and D.K. Basu [(1997) 1 SCC 416 : 1997 SCC (Cri) 92] provide an assurance that the power shall not be abused and in case of abuse, the authority concerned shall be adequately punished.



Best Practices

Aldanish Rein vs State Of NCT Of Delhi & Anr. Dated 1.11.2018 in W.P. CrI 2039/2018

- **The period of judicial custody under Sections 107/151 Cr PC at any one given point in time, will never exceed more than seven (7) days. There must be a weekly review by the SEMs exercising the powers concerned, of the need to continue detention.**
- **In particular, after directing the release of a person upon furnishing a personal bond and not insisting on surety where such a person is not in a position to furnish surety, the SEM's task will not end. The SEM will keep the matter pending for follow-up on whether the person has actually been released on having furnishing a personal bond and / or surety. If within two days of the order of release, if a person has actually not come out of the jail, the SEM should inquire into the situation and pass further orders to ensure the release of such persons by either accepting a personal bond of such person and/or surety of a lesser sum, if at all, that can be afforded by such person.**



Best Practices

Aldanish Rein vs State Of NCT Of Delhi & Anr. Dated 1.11.2018 in W.P. CrI 2039/2018

No order of remanding a person to a judicial custody can be passed by the SEM without satisfying himself:

- **(a) That the person arrested has been informed of his constitutional rights under Articles 20, 21 and 22 of the Constitution. The SEM should himself explain or have it explained to the person in his presence in a language understood by that person of the aforementioned constitutional rights.**
- **(b) The SEM must ask the person arrested whether he has been informed, in the language understood by him, of the grounds of his arrest and this record this in the order that he is going to pass.**
- **(c) The SEM will ask the person whether he wishes to engage a lawyer of his choice and also inform him that he can avail the services of a remand advocate who will remain present when these proceedings are being conducted.**



Best Practices

Aldanish Rein vs State Of NCT Of Delhi & Anr. Dated 1.11.2018 in W.P. CrI 2039/2018

No order of remanding a person to a judicial custody can be passed by the SEM without satisfying himself:

- **(d) The SEM will allow the remand advocate to interact with the person arrested outside the hearing distance of the police officers who have got the person arrested in order to enable the remand advocate to obtain the necessary instructions.**
- **(e) The SEM will ensure that the remand advocate is performing his functions as required under the LSAA i.e. he is also a person aware of the constitutional rights of a person arrested and will act accordingly.**
- **(f) The SEM will record in his proceedings that all of the above provisions have been effectively complied with.**



Best Practices

Aldanish Rein vs State Of NCT Of Delhi & Anr. Dated 1.11.2018 in W.P. CrI 2039/2018

- **When a person is booked under Chapter-8 proceedings and asked to furnish surety bonds, the practice at present is to send the surety bonds to the concerned SHO for verification. The person is not released till such a verification is complete. Instead, it is directed that the person arrested should be released on his personal bond till such time the verification is complete instead of sending him to judicial custody.**
- **A board should be placed outside the office of the SEM not only in English and Hindi but also in other languages spoken by a sizeable population in the area concerned which would display the requirements under law i.e. the Constitution, the Cr PC and the LSAA. It will caution the person arrested to beware of touts. The board will also display the name of the remand advocate along with his/her contacts and details. The board will inform the person arrested that the amount to be filled in a bail bond is not to given in cash to anyone and that the SEM is not a Judicial Magistrate.**



Challenges and Best Practices

- **Detailed order to be passed under s.111.**
- **Plea of guilt/admission of person not to be solely relied upon specially in absence of corroboratory evidence.**
- **Reasoned Order to be passed stating as to how the allegations have been proved.**
- **Evidence taken during enquiry (as per procedure in summons case) to be discussed while coming to the conclusion under s.117 or 118 of Cr.P.C.**
- **Pending inquiry the person to be sent in custody only in exceptional circumstances, where the likelihood of breach of peace is imminent.**



**AN OUNCE OF
PREVENTION IS WORTH A
POUND IN CURE**

Benjamin Franklin



**THE MORE YOU SWEAT
IN PEACE, THE LESS YOU
BLEED IN WAR.**

Norman Schwarzkopf

**IT'S NOT A ONE DAY AFFAIR,
BUT
IS A CONSTANT
ENDEAVOUR**





Thank You