

**DR. MGR HUMAN RESOURCE DEVELOPMENT
INSTITUTE OF ANDHRA PRADESH : HYDERABAD**



FUNCTIONS OF EXECUTIVE MAGISTRATES



Dear Participant ,

The State Government of Andhra Pradesh has launched a major Training and Human Resource Development initiative. For effective and efficient implementation of various programmes taken up by the Government, well trained and well informed official machinery is a must. The Government had been introducing a large number of new programmes and launched a series of measures aimed at Administrative Reforms with the sole objective of providing SMART (Simple, Moral, Accessible, Responsive, Transparent) Government and for providing satisfaction to the citizen.

No initiative or programme of any organization can be successfully implemented if the functionaries are not fully involved in the programme. The best way to involve would be to make each functionary aware of his/her role-functions and responsibilities and making him/her fully conscious of what is expected of him/her.

After separation of Executive Magistracy from the Judiciary, the Executive Magistrates have been discharging onerous responsibilities. Accuracy and propriety being the hall mark of the functioning of Executive Magistrate, the Executive Magistrates need a thorough knowledge of various provisions, rulings etc. connected with the discharge of their functions.

Training of Executive Magistrates is therefore assumes greater significance. To meet their requirement an attempt has been made to compile all relevant provisions & rules at one place with necessary explanations at appropriate places in this volume.

The Institute acknowledges the contributions of Sri.B.S.Prakasa Rao, retired Revenue official and former Senior faculty, Sri. D.Siva Prasad, Faculty Member who coordinated and Sri. A.Chengappa, IAS (Retd) Additional Director General (Training Coordination) under whose overall direction and guidance the material was prepared.

The information given in these series are for training and guidance purpose only and not to be cited as an authority in any official matters and cannot be the basis for any litigation or legal action.

Please go through the material. If you have any suggestions, please send them directly to the Director General, Dr. MCR HRD Institute of Andhra Pradesh, Road No.25, Jubilee Hills, Hyderabad - 500 033. Please quote the series number and the title of the booklet while sending suggestions.

We propose to update and revise these booklets periodically incorporating the suggestions made by the participants.

Hyderabad

P.V.R.K. PRASAD IAS (Retd)

Date : 1-03-2004

FUNCTIONS OF EXECUTIVE MAGISTRATES

FUNCTIONS OF
EXECUTIVE MAGISTRATES

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CHAPTER - I

General

1.0. The following words, which are frequently used in the Criminal Law, convey the meaning noted against each according to Cr.P.C

- (a) Bailable offence : An offence which is shown as bailable in the first schedule to code of Criminal Porcedure.
- (b) Non-Bailable offence : Any other offence shown as non - bailable.
- (c) Cognizable offence : An offence for which the police officer may, in accordance with the first schedule to the code of Criminal Procedure or under any other law for the time being in force, arrest without warrant.
- (d) Non-Cognizable offence : An offence for which a police officer has no authority to arrest without a warrant.
- (e) Complaint : Any allegation made orally or in writing to a magistrate with a view to his taking action under the Criminal Procedure code, that some person, whether known or unknown, has committed an offence, but does not include police report
- (f) Investigation : All Proceedings under the code of Criminal Procedure for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.
- (g) Inquiry : Every inquiry other than a trial conducted under the code of Criminal Procedure by a Magistrate or Court of Law.
- (h) Judicial Proceedings : Any Proceedings during the course of which evidence is or may be legally taken on oath.
- (i) Offence : Any act or omission made punishable by any

- law for the time being in force and includes any act in respect of which a complaint may be made U/s.20 of the Cattle Trespass Act. (1871)
- (j) Police report : A report forwarded by a police officer to a Magistrate under Sub-section(2) of Section 173.
- (k) Summons case : A case relating to an offence and not being a warrant case.
- (l) Warrant case : A case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.
- (m) Magistrate of the District : The Chief officer charged with the executive administration of a district and exercising the powers of a Magistrate by whatever designation the chief officer charged with such executive administration is styled.
- (n) Magistrate : Under sec. 3(32) of General Clauses Act, 1897 'Magistrate' shall include every person exercising all or any of the powers of a Magistrate under Criminal Procedure Code.
- The Concise Oxford Dictionary gives the meaning of 'Magistrate' as Civil Officer administering law or Person conducting court of summary jurisdiction.
- (o) Magistracy : A Magisterial office.

CONSTITUTION OF COURTS

2.1. Art. 50 of the Constitution of India envisages that judiciary is to be separated from Executive. Section 6 of the code of Criminal Procedure provides for constitution of :

- i) Courts of Sessions
- ii) Judicial Magistrates of the first class and in any metropolitan area, Metropolitan Magistrate.

- iii) Judicial Magistrates of second class, and
- iv) Executive Magistrates.

in every State besides the High Courts and the courts constituted under the law.

Note : Thus there is allocation of magisterial functions between two categories of Magistrates 'Judicial' under the control of the High Court and 'Executive' under the control of the State Government. This sort of categorization, which is not found in the Code of Criminal Procedure, 1898 has been introduced in the new Code of Criminal Procedure, 1973 (Act no. 2 of 1974) which repealed the Code of 1898. Though Judicial Magistrates have been Classified into first and second class, the Executive Magistrates are not so classified.

2.2. According to Sec. 3(4) of the Cr.P.C

- a) functions which involve the appreciation or shifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any court, they shall, subject to the provisions of this code, be exercisable by a Judicial Magistrate, and
- b) functions which are administrative or executive in nature, such as the granting of a licence, sanctioning of a prosecution or withdrawing from a prosecution, shall, subject as aforesaid, be exercisable by an Executive Magistrate.

Note : The functions exercisable by the Executive Magistrates under the Cr.P.C. may be executive, administrative or judicial. But, when acting under any law, other than Cr.P.C., they can exercise only executive or administrative functions.

EXECUTIVE MAGISTRATES

2.3. Under section 20 of the code of Criminal Procedure

- i) The State Government may appoint in every district and in every metropolitan areas as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.
- ii) The State Government may also appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have such of the powers of the District Magistrate under the Code or under any other law for the time being in force, as may be directed by the State Government.

- iii) Wherever the office of a District Magistrate becoming vacant, any officer who succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by the Code on the District Magistrate.
- iv) The State Government may place an Executive Magistrate in-charge of a sub-division and may relieve him of the charge as occasion requires and the Magistrate so placed in-charge of the sub-division is called the Sub-Divisional Magistrate.
- v) The State Government may confer under any law for the time being in force, on a Commissioner of Police all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

Note:(a) Additional District Magistrate is appointed by the Government to relieve the District Magistrate of some of his duties.

- (b) In A.P., in the cities of Hyderabad and Secunderabad, Vijayawada and Visakhapatnam, the Commissioners of Police have been conferred the powers of Executive Magistrate.

2.4. (i) Under Sec. 21 of the code of Criminal Procedure the State Government may appoint for such term as it may think fit, Executive Magistrate to be known as Special Executive Magistrate for particular areas or for performing particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under the code on Executive Magistrates, as it may deem fit.

Note : For the cities of Hyderabad and Secunderabad, a Special Executive Magistrate is appointed. A Deputy Collector, who happens to be a Law Graduate, is generally posted.

(ii) Local Jurisdiction of the Executive Magistrate

Under Sec. 22 of the Cr.P.C. the local jurisdiction of the Executive Magistrate is determined by the District Magistrate, subject to the control of the State Government, within which the Executive Magistrate may exercise all or any of the powers invested under the code. Unless so determined, the jurisdiction

and powers of every such Magistrate shall extend throughout the district.

(iii) Subordination of Executive Magistrates

The Executive Magistrates, other than the Addl. District Magistrates, shall be Subordinate to the District Magistrate and every Ex. Magistrate (other than the Sub Divisional Magistrate) exercising powers in a Sub Division shall also be subordinate to the sub Divisional Magistrate, subject to the general control of the District Magistrate. The Dist. Magistrate may make rules or give orders, from time to time, as to the distribution of business among the Ex. Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate (Sec. 23 of Cr.P.C.)

2.5. Conferring Powers and withdrawal

- (i) The High Court or the State Government, as the case may be, may, by an order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles. Such order takes effect from the date on which it is communicated to the persons so empowered (Sec. 32 Cr.P.C)
- (ii) Powers so conferred, whether all or any may be withdrawn by the same authority (Sec. 34 of Cr.P.C). In order to ensure continuity, it is provided in Sec. 35 that powers and duties of a magistrate can be performed by the successor in office.

2.6. Withdrawal and making over of cases

The District Magistrate or Sub-Divisional Magistrate may, for the reasons recorded, make over for disposal any proceedings started before him to any Magistrate subordinate to him and also withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him and dispose of such proceedings himself or refer it for disposal to any other Magistrate (Sec. 411 & 412 of Cr.P.C)

2.7. Executive Magistracy mainly deals with the following important aspects

- (a) Security for keeping good behaviour (Sec. 107 to 124)
- (b) Maintenance of public order and tranquility

- (i) Unlawful assemblies (Sec. 129 to 132)
- (ii) Public nuisance (Sec. 133, 135 to 143)
- (iii) Urgent cases of nuisance or apprehended danger (Sec .144)
- (iv) Dispute as to immovable property (Sec. 145 to 148)
- (c) Inquests and inquiries into Unnatural deaths (Sec. 174 to 176)
- (d) Dying Declarations (Sec. 32(1) of Indian Evidence Act.

The Government or the Collector may entrust any other work also : like Magisterial inquiries, and the like.

CHAPTER -II

Arrest By Magistrate Or Police

ARREST BY POLICE :

- 3.1 Sec. 41 of Cr.P.C. empowers the police officer to arrest any person, in the cases mentioned therein, without the orders of the Magistrate or without warrant. Sec.42 deals with arrest of any person, who, in the presence of a police officer, has committed or was accused of having committed a non-cognizable offence and who refused to give his name and residence or gives a name or residence which the police officer believes to be false. Thus, wide powers were given to the police officers with an intention, that they should act swiftly to prevent the commission of offence or if committed, its detection. Care should be taken to see that such power is not misused.

ARREST BY MAGISTRATE :

3.2. Under Sec. 44 of Cr.P.C.

- (1) "Where any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody."
- (2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances, to issue a warrant.

Note : *Under sub-section(1), the Magistrate can arrest without complaint a person committing an offence in his presence, but in doing so he does not take cognizance of the case and he should not try the case.

A Magistrate so arresting a person does not act as a court. His detention beyond 24 hours would be illegal if a remand order to custody is not obtained U/s. 167(1) by producing him before another Magistrate.

Sub-section(2) proceeds on the principle that an officer empowered to authorize another to do an act can do the same act himself.

* Based on commentary Under the Section in 'Sarkar on Criminal Procedure - sixth edition 1991'

It has been held that a Magistrate may issue a warrant even at the stage where Sec. 4(l) applies. Therefore, sec. 44(2), clearly authorizes the Magistrate to arrest the person also.

3.3 Qualified protection from arrest is provided for members of Armed Forces in Sec.45.

3.4. Search (sec. 47)

(1) "If any person acting under a warrant of arrest or any police officer having authority to arrest has reason to believe that the person to be arrested has entered into or is within any place, any person residing in or being in charge of such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto and afford all reasonable facilities for search therein.

(2) If ingress of such place cannot be obtained under sub-section (i), it shall be lawful in any case, for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot, otherwise obtain admittance :

Provided that, if any of such place is an apartment in the actual occupancy of female (not being the person to be arrested) who, according to custom, does not appear in public such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open the inner or outer door or window of any house or place in order to liberate himself or any other person who having lawfully entered for the purpose of making an arrest is detained therein".

Note : This provision enables the police to compel the householders to afford facilities in carrying out their duties and that in cases of difficulty, force can be used to obtain ingress. If any Police officer, in order to arrest a suspected person, enters a building his action is justified.

- 3.5 Section 48 enables a police officer to pursue any person, whom he is authorised to arrest, into any place in the country for arrest without warrant.
- 3.6 Every police officer or other person arresting any person without warrant shall forthwith communicate to him with full particulars of the offence for which he is arrested or other grounds for his arrest. When any other person, other than the accused, is arrested without warrant of a non-bailable offence, the police officer who arrested him shall inform him that he is entitled to be released on bail and that he may arrange for surety on his behalf (Sec. 50 Cr.P.C)
- 3.7 No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not in the absence of a special order of a Magistrate under Sec. 167, exceed twenty four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court (Sec. 57 Cr.P.C)
- 3.8 According to sub-Sec.2-A of Sec. 167 of Cr.P.C. the officer-in-charge of the police station or making the investigation, if he is not below the rank of Sub-Inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of judicial or Metropolitan Magistrate were conferred, a copy of the entry in the diary relating to the case, forwarding at the same time the accused to such Ex.Magistrate. Thereupon the Ex.Magistrate, for the reasons to be recorded in writing, may authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate and on the expiry of such extended period of detention the accused shall be released on bail, except where an order for further detention of the accused has been made by a Magistrate Competent to make such order ; and where an order for such further extension is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this Sub-section, shall be taken into account in computing the period U/s 167(2). Before the expiry of the said period the Executive Magistrate shall transmit the records of the case together with the copies of the entries in the diary relating to the case sent by the police officer making the investigation, to the nearest Judicial Magistrate.

Note:(a) The object of this provision is to see that a person arrested by the police is brought before a Magistrate with the least possible delay in order to enable the magistrate to judge if such person has to be kept further in custody and also to enable such person to make representation, if he may wish to make, in the matter. It is also intended to prevent the possible abuse by the police of their power to make discoveries of crime by means of a duress, terror and wrongful confinement. If investigation into a case is not completed and the charge sheet

is not filed before the expiry of the period of detention of the accused, the accused is entitled to be released on bail. No discretion, whatsoever, is left to the Magistrate and it is obligatory on his part to release the accused on bail, provided the accused furnishes bail

- (b) Transmission of copy of diary is mandatory. It enables the Magistrate to decide whether further detention is necessary. Failure to send copy leads to the inference that the diary has not then come into existence. The Magistrate is to decide judicially on the materials in the diary whether or not detention of the accused is necessary. It would be a dereliction of duty if the Magistrate did not peruse the case diary before authorising any type of custody.
- (c) No Magistrate shall authorise detention in any custody U/s 167 unless the accused is produced before him. It is not only a requirement when the first remand is given, but each time when the Magistrate remands a person to custody.

AID TO MAGISTRATES AND POLICE

- 4.1 Under Sec. 37 of the Cr.P.C., every person of the Public is bound to assist the Magistrate or police officer, reasonably demanding his aid :
 - (a) in the taking or preventing the escape of any person when such Magistrate or Police officer is authorised to arrest, or
 - (b) in the prevention or suppression of a breach of peace, or
 - (c) in the prevention of an injury attempted to be committed to any railway, canal, telegraph, or public property.
- 4.2 Further, sec. 38 envisages, that when a warrant is directed to a person other than a police officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.
- 4.3 Section 39 provides that every person aware of the Commission of or of the intention of any other person to commit any offence relating to offences against the State - (Sec.121-125 and 130 of I.P.C.), public tranquility (Sec. 143 to 148 of I.P.C.), adulteration of food and drugs (Sec.272 to 278 of I.P.C.), affecting life (Sec. 302-304 of I.P.C.), kidnapping for ransom (Sec. 364 I.P.C.), theft after preparation made for causing death, hurt or restraint in order to committing theft (Sec. 362, I.P.C.), robbery and dacoity (Sec. 392 - 399 and 402, I.P.C.), Criminal breach of trust by public servant (Sec. 409, I.P.C.), mischief against

property (sec. 431-439, I.P.C.), house trespass (Sec. 449-450, I.P.C.) lurking house - trespass (Sec. 456-460, I.P.C.) and offences relating to currency notes and bank notes (Sec. 489-A to E, I.P.C.), shall, in the absence of any reasonable cause, forthwith give information to the nearest Magistrate or Police Officer of such Commission or intention.

- 4.4 Duty to intimate the commission or of intention to commit offences also rests with the Village Officer under Sec. 40 of Cr.P.C.

PROCESS TO COMPEL APPEARANCE

- 5.1 Chapter VI of Cr.P.C. (sec. 61 to 90) deals with this aspect. The process to compel appearance are :-

- (a) Summons
- (b) warrant and
- (c) Proclamation and attachment

Form No. 1, 2 and 4 prescribed for use may be seen in Appendix -I

5.2. (a) Summons

- i) The form of summons (Sec. 61 - See Form NO. 1 and 33 in Appendix-I)
- ii) Service of summons (sec. 62 - by service on the person concerned and obtaining his signature on the back side of the duplicate copy of summons.)
- iii) Service of summons on corporate bodies and societies (sec. 63 - by service on the secretary or local manager or principal officer or by Registered Post)
- iv) Service of summons when persons cannot be found (sec. 64 - by service on the adult member of the family)
- v) The procedure when service cannot be effected U/s. 62 to 64 (sec. 65 - by affixture on a conspicuous part of the house or homestead)
- vi) Service on Government servants (sec. 66 - through the head of the office, who has to return the served copy with his endorsement thereon.)
- vii) Service of summons outside the local limits (sec. 67-through the Magistrate having the local jurisdiction)
- viii) Proof of service in case of service of summons outside local limits and in case when the serving officer is not present at the hearing of the case (sec. 68 - an

affidavit made before a Magistrate, that summons was served, to accompany the served duplicate copy of summons)

- ix) Service of summons on witnesses by post (Sec. 69 - acknowledgement of receipt of registered post is proof of service.) Postal endorsement of refusal to receive amounts to proof of service.

A Magistrate will not be justified in issuing a warrant unless he is satisfied about the service of the summons and its disobedience.

5.3. (b) Warrant :

The warrant of arrest shall be issued in the Form No. 2 in Appendix - I. It Shall be in writing, signed by the presiding officer of the court and should bear its seal. It may be directed against any person (sec. 73), and shall remain in force until it is cancelled by the court which issued it or until executed (Sec.70). The court issuing the warrant of arrest shall be directed to one or more police officers for its execution by all or by any of them (sec. 72). A warrant directed to a police officer can be executed by any other police officer whose name has been endorsed on the warrant by the officer to whom it is directed (sec. 74)

Note: (It will be of importance to note that Sec. 19 (1) (a) of A.P. (T.A.) District Police Act, 1329F, Sec. 29 (1)(a) of Hyderabad city Police Act, 1348F and Sec. 21 of A.P. (AA) District Police Act, 1889 prescribe that it is the duty of every police officer to promptly serve every summons and execute every warrant of arrest or order, lawfully issued to him by the competent authority.)

- 5.4 Section 75 to 79 describe as to how the arrest has to be affected, how the person arrested has to be brought before the court and produced, and the procedure for execution of a warrant outside the jurisdiction of the Court. According to Sec.80 Cr.P.C., if the court is not within 30 K.M. of the place of arrest (if executed outside the district) the person arrested nearer to the Executive Magistrate or District Superintendent of Police or Commissioner of police within local limits or whose jurisdiction the arrest was made or unless security is taken U/s. 71, should be taken before such Magistrate or District Superintendent or Commissioner and they (U/s. 81) have power to direct the removal of the arrested person in custody to such Court. If the offence is bailable and the person arrested is ready and willing to give bail to the satisfaction of the Magistrate, District Superintendent of Police or Commissioner of police, he may be released on bail. Form for bond and bail U/s. 81 of Cr.P.C. is at Form No. 3 of Annexure - I)

5.5 (c) Proclamation and attachment

If any court has reason to believe that the person against whom warrant has been issued is absconding or is concealing, the court can publish a proclamation (in form No.4 of Annexure - I) requiring him to appear at the specified place and time, not less than 30 days of the date of proclamation (Sec.82(1) . The method of publication is mentioned in Sec. 82(2). When it is published in the manner prescribed and a statement in writing was made to that effect by the Court, it is a conclusive evidence that the requirements of the section have been complied with and that the proclamation was published on that day.

5.6 At any time, after the issue of proclamation, the court (under Sec. 83) can also order attachment of any property, movable or immovable or both, belonging to the proclaimed person. Sec. 84 deals with claims and objection to attachment. Sec. 85 deals with release, sale and restoration of the attached property.

(d) Other rules regarding process :

Sec.87 deals with the circumstances under which a warrant may be issued in lieu of or in addition to summons.

Sec. 88 mentions the power to take bond for appearance and Sec.89 relates to arrest on breach of bond for appearance .

CHAPTER - III

Security For Keeping Peace And Good Behaviour

6.1 Sections 107 to 124 of the code of Criminal Procedure contained in Chapter VIII deals with this matter. These provisions if invoked at right time will be very effective in the prevention of crime. (Chapter 36 and 37 of A.P. Police Standing Orders (P.S.Os. 866 to 876 with "Security for good behaviour and keeping of the Peace" and PS.Os. 877 to 890 with " Preservation of the Peace")

6.2. Security for keeping the peace (Sec.107)

- (1) "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 public tranquility and 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, with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.
- (2) 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 peace or disturb public tranquillity or to do any wrongful act as aforesaid, beyond such jurisdiction".

Note:(a) *This section is aimed at persons who cause a reasonable apprehension of conduct likely to lead to a breach of peace or a disturbance or public tranquility. If the Executive Magistrate, on information, is of opinion that unless prevented from so acting a person is likely to act to the detriment of public peace and public tranquility, then he is authorised to take proceedings against such person. This contemplates preventive action.

(b) Taking into account the recital in Sec. 107 and the above, the following aspects have to be kept in mind for action under the section :

(i) An Executive Magistrate receives information

*Based on Commentary U/s.107 in ' Sarkar on Criminal Procedure' - Sixth Edition, 1991

- (ii) That a person is likely to commit a breach of peace or disturb the public tranquility, or
- (iii) That a person is likely to commit any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility, and
- (iv) The Executive Magistrate forms an opinion that there is sufficient ground to proceed.
- (v) Then the Executive Magistrate may 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 he thinks fit.

Further U/s. 107(2) an Executive Magistrate can initiate proceedings when either :

- (i) The place (when the breach of the peace or disturbance of public tranquility is apprehended) is within his local jurisdiction, or
- (ii) The person who is likely to commit the breach of the peace beyond such jurisdiction is residing within his jurisdiction.

The factors which constitute or fulfill the requirements prove that a person is likely to commit breach of peace or disturb the public tranquility, depend upon the facts and circumstances of the case.

- (c) The procedure is that of a summons case (sec. 116(2)). Proceedings U/s. 107 should contain definite particulars and not vague recital of words of the section.
- (d) The Magistrate cannot initiate proceedings merely on receipt of certain information. He must be satisfied from the information and he should be of the opinion that there is sufficient ground for the proceedings. If he concludes that the apprehension of breach of peace is not well founded, he may drop further action. When once the proceedings have commenced U/s. 107 and Executive Magistrate issued orders and the party appears before him he should hold the inquiry and cannot drop further proceedings without such inquiry. The proceedings cannot be brought to an end by the Government withdrawing from the inquiry. Likewise, the proceedings cannot be dropped for the reason the police did not produce any witness.
- (e) The section is not intended to afford the police a means of getting hold of a person against whom they cannot prove an offence or to enable the police to detain him until they can work out a case against him. It is merely intended for persons who are desperate characters and virtually disturb the public peace or

who in spite of orders of civil or criminal courts persist in their unlawful conduct of disturbing peace of others by taking law into their hands. It is also to be remembered that where a trial for an offence failed, the court will not permit that object to be achieved by proceeding under Sec. 107.

- (f) Action to be taken in pursuance of the provisions in the section is indicated in section 111 onwards. (see paras 10 onwards).
- (g) The police cannot arrest the person without a warrant U/s 113, which is resorted to only if it is not possible to prevent breach of peace except by the immediate arrest of the person, after the information is filed and proceeding U/s. 107 commenced for obtaining bond from such person by way of security for keeping peace.
- (h) Form of bond can be seen in Appendix - I, form No. 12
- (i) Appeal lies to the Sessions Judge (Sec. 373). Revision lies to the High Court and the sessions Judge (Sec. 397)

7. Security For Good Behaviour From Persons Disseminating Seditious Matters (Section 108)

"An Executive Magistrate can demand a Bond against good behaviour from a person in the following circumstances :

- (i) When he receives information that there is within his local jurisdiction any person who, within or without such jurisdiction, either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets dissemination of :
 - (a) Any matter of publication of which is punishable U/s. 124 - A(sedition), or Sec. 153 -A(promoting enmity on grounds of religious, etc.), Sec. 153 -B (imputations and assertion against national interest) or Sec. 295 - A(outraging religious feelings) of I.P.C. 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 I.P.C.
- (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 Sec. 292 of I.P.C., and
- (iii) The Magistrate is of opinion that there is sufficient ground for Proceeding.

- (iv) 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 a period not exceeding one year, as he thinks fit.
- (v) No such proceedings can be taken against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with the rules laid down in the Press and Registration of Books Act, 1867 with reference to any matter contained in such publication, except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf ”.

- Note:(a) Ordinary residence within jurisdiction is enough although the person may be beyond it when an order is made. The object of the section is preventive and not punishment. It contemplates dissemination of the matter (Spoken or written) which is seditious as to commit an offence.
- (b) *Though the Magistrate acts primarily on the information received, he must apply his mind to the antecedents of the person as to whether there has been 'intentional' dissemination of the offending matter and whether there is apprehension of repetition of the offence.
 - (c) 'Seditious' means the publication of which is punishable U/s.124-A of I.P.C.
 - (d) * Any matter, the publication of which is punishable U/s. 153-A of I.P.C. means 'matter which is vehicle of an attempt to promote enmity'. Publishing words that have a tendency to promote class hatred, is considered to be not falling within Section 153-A. Intention to promote ill-feeling is necessary and the real intention of the accused is the test.
 - (e) The words 'or in any other manner' may be construed as to provide for dissemination by other means than either orally or in writing - like through newspaper, radio, television or by any other audio-visual media.
 - (f) For action under this provision it should be proved that the charged person is presently acting and would continue to act the way alleged in the information. It is enough if the Magistrate is satisfied that there exist grounds to proceed. On receipt of information, notice U/s. 111 Cr.P.C. has to be issued by the Magistrate and serve it along with summons. Bond should be obtained in Form No. 13 of Annexure - I. The procedure for security proceedings i.e. that of summons cases, has to be followed - Appeal and revision is the same as that of Sec. 107.

*Based on Commentary U/s.108 in ' Sarkar on Criminal Procedure' - Sixth Edition, 1991

8. Security For Good Behaviour From Suspected Person

(Section 109)

“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”

- Note:(a) *{ This section deals with a person who, being or coming within the limits of the Executive Magistrate's jurisdiction, takes precautions to conceal his presence with a view to committing a cognizable offence. The object is to enable the Magistrate to proceed against suspected strangers lurking within his jurisdiction. Credible information is the foundation of a Magistrate's jurisdiction }. Concealment is a question of fact in each case. ' Concealing presence' is wide enough to cover concealment of appearance by mask, disguise, etc. Mere concealment is not enough to justify an order under the section, unless it is resorted to with the object of committing a cognizable offence. The fact of a person trying to run away to avoid observance by the police and other people would not mean that he is trying to conceal his presence, with a view to committing an offence.
- (b) While invoking section 109 against a suspected person it must be shown that he has taken precautions to conceal his presence and the concealment must be with a view to commit a cognizable offence.
- (c) The Executive Magistrate is to issue show-cause notice to the person concerned to appear in person for offering explanation as to why he should not be asked to execute a bond (with or without sureties) undertaking to be of good behaviour for a period not exceeding one year. Bond to be obtained in Form 13 of Annexure - I. Appeal lies to the Sessions Judge (sec. 373) and revision to the High Court and Sessions Judge (Sec.397).

9. Security For Good Behaviour From Habitual Offenders

(Section 110)

“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

*Based on Commentary U/s. 109 in ' Sarkar on Criminal Procedure' - Sixth Edition, 1991

- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or
- (c) habitually protects or harbours thieves or aids in the concealment of or disposal of stolen property, or
- (d) habitually commits or attempts to commit or abets commission of the offence of kidnapping, abduction, extortion, cheating or mischief or any offence punishable under chapter XII of the I.P.C. (ie, Offences relating to coins and government stamps) or U/s 489-A, 489-B, 489-C or 489-D of I.P.C. (ie counterfeiting currency notes or bank - notes, etc.,) or
- (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 commission of :
 - (i) any offence under one or more of the following acts, namely -
 - a) The Drugs and Cosmetics Act, 1940
 - b) The Foreign Exchange Regulations act, 1973
 - c) The Employees' Provident Funds (and Family Pension Fund) Act, 1952
 - d) The Prevention of Food Adultration Act, 1954
 - e) The Essential Commodities Act, 1955
 - f) The Untouchability (offences) Act, 1955, and
 - g) The Customs Act, 1962
 - (ii) any offence punishable under any law providing for the prevention of hoarding or profiteering or of adultration of food or drugs, or of corruption, or
- (g) if so desparate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may in the manner here after provided, require such person to show-cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding three years as the Magistrate thinks fit "

- Note:(a) *The intention of this section is to afford protection to the public against hardened and habitual criminals or dangerous or desparate class of persons who threaten the security of person or property. The section is preventive and not punitive. Its sole purpose is to secure future good behaviour and not to punish for past offences
- (b) * The section provides a powerful means and it should be used very sparingly in very clear cases. If not used with caution and discretion, it might easily be a means for oppression. It is not intended to secure indirectly a conviction in cases where prosecution for a substantive offence is likely to fail. This provision is also not intended to afford the police a means for keeping a suspected person under detention until they are able to work out a case against him, nor should it be availed to secure punishment of person merely suspected.
- (c) * There is no legal bar to a proceeding U/s. 110 after acquittal of a person of a substantive offence, but a strong case should be made out and the Executive Magistrate should be satisfied that the police is not actuated by the motive to get hold of the person after their failure to secure his conviction. The section is mostly intended to deal with ex-convicts, or habitual criminals and dangerous and desperate out-laws who are so incorrigible that the ordinary provisions of penal law and moral fear of punishment for crime are not sufficient deterrants.
- (d) For proceeding under section 110 there have to be proof of previous convictions. The Executive Magistrate should hold an inquiry as to the truth or otherwise of the information received by him or securing the presence of the person concerned through a summons or warrant.
- (e) * The word 'habit' used in the section should be taken to mean that the person is an offender repeatedly in respect of offences in clauses (a) to (g) of the section and would commit them again wherever there is opportunity. Besides proof of number of convictions or course of conduct by evidence of general reputation or prior acts, there must be some additional facts or resumed avocation indicating an intention to return to the former course of life and pursuing a career prejudicially affecting the community interests. Habit is proved by an aggregate of acts viz: Previous conditions, but not by one instance and one conviction only.
- (f) In order to bring a person under the clause 'desperate and dangerous persons hazardous to community' it must be shown that he has such reckless disregard for safety of persons and property of his neighbours and that his being at large would be detrimental to their safety. It is not dependent on the number of

*Based on Commentary U/s. 110 in 'Sarkar on Criminal Procedure' - Sixth Edition, 1991

convictions but on the nature of his conduct, like - attacking persons indiscriminately on slightest provocation or the like.

- (g) The fact that a man, by his nature and temperament is quarrelsome and he occasionally threatens, does not make him a desperate or dangerous character to the community. Likewise a gambler or the person arrested on suspicion of commission of robbery or dacoity and released, a person of litigious disposition or indisciplined local dictator cannot be branded as 'desperate and dangerous' characters.
- (h) Bond with surety is to be obtained in form No.13 of Annexure - I. It is obligatory and not optional as in sections 107 to 109. The procedure to be followed (ie. meaning of - " in the manner hereinafter provided)", is the procedure prescribed in sections 111 to 124 of the Cr.P.C. (see para 10 onwards)
- (i) Appeal and revision are the same as in the cases of Sec.107 to 109.

10. Order To Be Made Under Section 107 To 110 (Section 111)

"When a Magistrate acting U/s. 107, 108, 109, or 110 deems it necessary to require any person to show cause under such sections he shall make an order in writing, setting forth the substance of the information received, the amount of 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".

Note:(a) When the Magistrate is satisfied that there is sufficient ground for proceeding further (U/s. 107 to 110) the first thing he has to do is to pass preliminary order in writing under the section, mentioning clearly therein :

- i) The substance of the information received
 - ii) The amount of bond
 - iii) Period of the bond (i.e. term it will be in force), and
 - iv) Number, character and class of surety, if any, required.
- (b) *Specimen order U/s. 111 of Cr.P.C. may be seen at annexure - IV. This is only in the nature of a notice (a preliminary order). Notice is not different from order U/s-111. Such an order is a condition precedent to take further action. The provisions of section 111 are mandatory and the non compliance vitiates the entire proceedings. Summons should accompany the order under the section. The order must state the acts complained of or the definite information received

by the Magistrate. Recording order on the back of police report is considered as an irregularity. Information should be clear and definite and disclose tangible facts and details so that the person concerned may know definitely which he has to meet. Magistrate acting U/s. 111 is a court. The Magistrate can also call for a report from the police before issuing such order. Issue of the notice is a judicial act, the object being to enable the person concerned to prepare for defence and to summon witnesses.

- (c) * After the order is served, inquiry is held U/s. 116 in which the person concerned may show 'cause' by producing such evidence as he may have and the Magistrate then passes a final order U/s. 117 or 118. If the person does not appear after notice, the Magistrate cannot pass an order for 'security' straight away, but must still proceed U/s. 116 and take evidence. When there are more persons, there should be separate notices for each of them. The accused are not entitled for a copy of the police information basing on which order is based.
- (d) *{An order served U/s. 111 can be amended, if found expedient, subsequently a fresh or supplementary served. However, the period or raising the amount of security stated already should not be altered }.

11. Procedure in respect of persons present in the court and not so present

- (a) U/s. 112 Cr.P.C. if the person proceeded against is present in the court, the order shall be read over and explained to him. If he is not present in the court, the Magistrate shall issue him summons requiring him to appear and if he is in custody, a warrant may be issued directing the officer in whose custody he is, to bring him before the court (as required under section 113). Such summons is issued in Form No. 14 of Annexure - I.
- (b) Further, according to provision U/s. 113 - whenever it appears to the Magistrate upon a report of the 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 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. The need for such action should be impressed by the police officer, before the Magistrate.
- (c) In order that the satisfaction of the Magistrate is judicious the Magistrate has to record the evidence of the police officer making the complaint praying for such action.

- (d) *{Action U/s. 113 is contemplated to a stage prior to the serving of an order U/s. 111 and not after appearance to show cause, i.e., in respect of those who are not present in court. It is taken as a measure to prevent breach of peace, only when a Magistrate is so satisfied. If speedy remedy is required after appearance action may be taken U/s. 116(3) (see para 14). The person summoned shall be given reasonable time to meet the charge. Ordinarily, a person arrested is entitled to bail, unless the court thinks that refusal is the only way of preventing breach of peace.}

12. Copy of the order to accompany summons or warrant

U/s. 114, 'every summon or order issued U/s. 113 shall be accompanied by a copy of order made U/s. 111 and such copy shall be delivered by the officer serving or executing such summon or warrant to the person served with, or arrested under the same.'

Note : The copy is intended to inform the person what case he has to meet.

13. Power to dispense with personal attendace

Sec. 115 provides that 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 pleader.'

14. Inquiry as to truth of information (Sec. 116)

- (1) "When an order under Sec. 111 has been read over or explained U/s. 112 to a person present in the court, or when a person appears or is brought before a Magistrate, in compliance with, or in execution of a summons or warrant issued U/s. 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take further evidence as may appear necessary.
- (2) Such inquiry may be made as nearly as may be practicable in the manner prescribed for conducting trial or recording evidence in summons cases.

Note : "Sec. 274 of the Cr. P.C. which deals with recording of evidence in summons cases and inquiries, prescribes that as the examination of each witness

*Based on Commentary U/s. 113 in 'Sarkar on Criminal Procedure' - Sixth Edition, 1991

proceeds, the Magistrate shall make a memorandum of the substance of his evidence in the language of the court. When the Magistrate is unable to make such memorandum himself, he shall, after recording reasons for his inability cause such memorandum to be made in writing or from his dictation in open court. The memorandum shall be signed by him and it will form part of the record."

- (3) "After the commencement and before completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for prevention of the breach of peace or disturbance of the public tranquility or commission of any offence or for public safety, may, for the reasons to be recorded in writing, direct the person, in respect of whom order U/s. 111 has been made, to execute a bond with or without sureties for keeping of 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; Provided that -
 - (a) No person against whom proceedings are not being taken under Sec. 108, 109 or 110 shall be directed to execute a bond for maintaining good behaviour.
 - (b) The condition of such bond whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.
- (4) For the purpose of this section, the fact that the person is a habitual offender, or is so desperate and dangerous as to render his being at large without security hazardous to the community, may be proved by evidence of general repute or otherwise.
- (5) Where two or more persons have been associated together under inquiry, they may be dealt with under the same or separate inquiries as the Magistrate shall think fit.
- (6) 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 completed, the proceeding under this chapter (VIII) shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs ; provided that where a person has been kept in detention pending such inquiry the proceedings against that person, unless terminated earlier, shall stand terminated on the expiry of the period of six months of such detention.

- (7) Where any direction is made under sub section (6) permitting the continuance of the proceedings the Sessions Judge may, on the application made to him by aggrieved party, vacate such direction, if he is satisfied that it is not based on any special reason or was perverse "

- Note:(a) *An order U/s. 111 must precede any step taken under section 116. It is mandatory. This is the inquiry stage, on appearance, consequent to service of notice. The person must come ready with evidence, but if it has not been possible to do so for any convincing reason, he should apply at once to summons to witnesses. Sufficient time shall be given to produce evidence. Ordinarily, the persons proceeded against for good behaviour are entitled to have their witnesses summoned at state expense. The magistrate then proceeds to make a full inquiry in accordance with the procedure prescribed for conducting trials and recording evidence as in summons cases (chapter XX) of Cr.P.C.
- (b) *{ A proceeding U/s. 107 commences with the reading over of the substance of accusation as commencement of summons trial. It is not necessary actually to record any evidence before passing an order where the Magistrate reads over the order to the accused as to the allegations contained in the police report calling upon to show cause why he should not be directed to execute a bond, provisions U/s. 116(3) were sufficiently complied with }
- (c) * { Sub section (1) and (2) of section 116 envisage that the Magistrate must proceed to inquire into the truth of the information and only after prima - facie satisfying himself about the truth and only after recording his reason in writing can the interim bond be asked for. Consideration of police report or hearing the advocates is a stage in the inquiry even before evidence is recorded. Order passed by the Magistrate after examination of the appellant and subinspector of police is a valid order. Magistrate cannot adjourn a case and in the interval send the person to jail if he fails to furnish a bond U/s. 116(3)}
- (d) *{An order passed U/s. 116(3) on complaint U/s. 107 does not amount to interim bond within provision to sec. 116(3). The interim order should be resorted to in emergent cases where immediate measure is necessary and not as a matter of routine. Careful consideration should be given to the emergency contemplated and order should not be passed on police suspicion or a mere statement that report of the police officer indicates likelihood of breach of peace. The Magistrate must himself be satisfied that there is apprehension of breach of peace. No order can be passed only after the parties have appeared as required U/s. 111 and the magistrate proceeding with the inquiry finds any necessity to do so. In order to invoke section 116(3) it is necessary that an inquiry U/s. 116(1) has commenced. An interim order on the ground of the person being 'A danger to the witnesses against him' is held to be justified' }

- (e) *{As regards 'evidence of repute' occurring in sec.116(4) it must be seen carefully that in the grab of reputation evidence anything that a witness may choose to say against a person based on rumour, suspicion, gossip or private grudge or any opinion of a police officer that a person is of evil repute, collected from such hearsay materials, is not passed of as 'evidence of repute. 'Reputation evidence' must be strong and almost universal. The Magistrate must test the evidence and consider its value and weight against the defence evidence }
- (f) *{ Sub-section(5) of Sec.116 relates to persons who have been 'associated together'. Persons are said to be 'associated together' when they act in concert or in conspiracy whether due to mutual agreement or in obedience to the orders of a common Master or act as confederates or partners. It cannot take within its fold members of two hostile parties. In a joint trial the prosecution must establish what each individual has done. It is only fair that in joint trial, the case of each individual accused must be considered separately and individually on its own merits and separate findings against each individual is made}
- (g) *{ The provision in sub section (6) of Sec. 116 is mandatory. It prescribes a time limit for inquiry. The inquiry has to be completed within a period of six months from its commencement. Otherwise, it shall automatically stand terminated on the expiry of that period, unless for special reasons to be recorded in writing, the Magistrate otherwise directs to continue the proceedings. Inquiry commences from the date when the show cause is filed. If a person is detained pending inquiry the proceedings against him stand terminated on the expiry of six months of such detention. When proceedings U/s.107 and 116 stand so terminated no new proceedings shall be commenced on the ground}. It is open to the aggrieved party to go in appeal to the Sessions Judge against any direction passed by the Magistrate U/s. 116(6), permitting continuation of proceedings beyond the period of six months and the Sessions Judge can vacate the direction, if he is satisfied that it was not based on any special reason or was perverse (sec. 116(7)).
- (h) An order sec.116(3) is not an interlocutory order and hence revisable U/s.379(2)

15. Order To Give Security (Sec. 117)

"if up on 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, with or without sureties, the Magistrate may 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 Sec. 111,
- (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 a person in respect of whom inquiry is made is a minor the bond shall be executed only by his sureties."

Note:(a) This section applies equally to an order under Sec. 107 to 110. The bond to be executed will be in form 13 of Annexure - I. When the result of the inquiry goes against the accused, the court passes final order under this section. It contains three directions mentioned therein(i.e) those mentioned in (a), (b), and (c) under provision to the section.

- (b) *{ The final order is to contain a direction to furnish security for good behaviour which cannot in any case exceed one year, [except U/s. 111 where it cannot extend beyond three years]. It is illegal to specify any period of imprisonment in default. Every order made U/s. 117 shall contain the points for determination, decision therein and reasons therefore . The order should be self contained and show that the case of each accused has considered individually and separately.}
- (c) *{ It should be remembered that the security required is bond, but not movable property. The order should specify the date by which the surety is to be furnished. Sufficient time should be given for furnishing security. Surety can be accepted even after the accused has been sent to jail. For determining the sufficiency or fitness of sureties the court may accept affidavits or may hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to it as provided for in Sec 441(4). Securities cannot be asked for if they were not mentioned in the notice already issued, or bond for good behaviour cannot be required when the notice was in regard to keeping the peace.}
- (d) *(The object being not to punish, it would be prudent if the amount is reasonable otherwise the person has to court imprisonment for inability to furnish security. The amount should be fixed with due regard to the circumstances of the case and the persons means and station in life, which should ordinarily be such so as to enable the accused to secure it.) Previous convictions if any, need not generally be taken into account.
- (e) Appeal from an order lies to the Sessions Judge (Sec. 373) Revision lies to both the High Court and the Sessions Judge (Sec.397)

16. Discharge of person informed against (Sec.118)

"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 a person in respect of whom the inquiry has been 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 inquiry, shall release him ; or if such a person is not in custody shall discharge him ".

Note: The word "DISCHARGED" is used in the sense of " PERMISSION TO DEPART". The Magistrate may however institute further Proceedings on fresh information or fresh police report.

17. Commencement of the period for which security is required (section 119)

- (1) "If any person in respect of whom an order requiring security is made under section 106 or section 117, is ,at the time of such order is made, sentenced to, or undergoing sentence of imprisonment, the period for which 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 reasons fixes a later date".

18. Contents of the Bond (Sec.120)

"The bond to be executed by any such person will 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 breach of the bond"

Note: *This section 120 refers to bonds executed both for keeping peace and to be of good behaviour. (ie forms 12 and 13 in Annexure - I). The actual commission of some punishable offences need not be established. All that is necessary to show is that some act was done, which is likely, in its consequences, to provoke the breach of peace. Bonds for keeping peace of persons who are convicted of offence within the period and their sureties, could be forfeited but not those who are acquitted. To make the surety liable, evidence as to forfeiture should be taken in the presence of the surety who should be given an opportunity to cross examine the witnesses., Surety should not be made liable unless the principal commits an offence similar to that for which security was given.

19. Power of the Magistrate to reject the Sureties (section 121)

- (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 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 the person by whom the surety was offered and shall, in making the inquiry record the substance of the evidence adduced before him.
- (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 him summons or warrant, as he thinks fit and cause the person for whom the surety is bound to appear or be brought before him".

- Note:(a) *Fitness or unfitness is a matter for discretion of the Magistrate, but the discretion must be exercised in accordance with law on valid and reasonable grounds and not arbitrarily or unreasonably.
- (b) *Surety cannot be refused without an inquiry by the Magistrate. The inquiry is judicial and on oath or affirmation and should be in accordance with Sec. 441(4) of the Cr.P.C. In order that independent judgment may be exercised it is required that grounds of refusal must be recorded ; otherwise the order is liable to be set aside. Refusal to accept on the report of the police officer only, without any inquiry, is unjustified. Surety shall not be rejected on the personal knowledge of the Magistrate or on hearsay evidence. A relation, if offered, is considered more suitable.
- (c) Appeal lies against acceptance or refusal of surety to the Sessions Court under section 373 of the code.

20. Imprisonment in default of security (Sec. 122)

- 1(a) "if any person ordered to give security under section 106 or section 117 does not give security on or before the date on which the period for which such security is to be given commences, he shall 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 such period he gives the security to the court or Magistrate who made the order requiring it.

- (b) If any person after having executed a bond without sureties for keeping peace in pursuance of an order of a Magistrate under section 117, is proved to the satisfaction of the magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor-in-office may after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of bond and such order shall be without prejudice to any other punishment or forfeiture to which such person may be liable in accordance with law.
- (2) When such a person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such a person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such court.
- (3) Such court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary and after giving the accused person a reasonable opportunity of being heard, may pass such orders on the case as it thinks fit provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.
- (4) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub section (2), upon such reference, shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned, shall not exceed the period for which he was ordered to give security.
- (5) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub section (2) or sub-section (4) to an Additional Sessions Judge or Asst. Sessions Judge and upon such transfer, such Addl. Sessions Judge or Asst. Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.
- (6) If the security is tendered to the officer-in-charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

- (7) Imprisonment for failure to give security for keeping the peace shall be simple.
- (8) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple and where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the court or Magistrate in such case directs”.

Note (a) *{To pass an order under section 122 there must be actual failure to give security. In the same order for furnishing security an order cannot be passed that in default for furnishing security the accused shall be imprisoned. Such direction if any, in the order only will be invalid and not the whole order. Detention U/s. 122 does not contravene Art. 22(4) of the Constitution of India} (Which deals with protection against arrest and detention in certain cases).

- (b) Detention order is issued in form Nos. 15 & 16 in Annexure - I
- (c) * { If a person is already undergoing imprisonment, no order under this section can be passed until the expiry of that term. If a person convicted under section 122 is subsequently convicted of an offence, the sentence for that offence commences at once. }
- (d) * { ‘Until such period expires’ mentioned in sub section (1) indicates that the period for which security was ordered. The order should state a definite period and not ‘until security is given’ , viz ‘for one year or until such date within that year as the required is furnished’ . }
- (e) * Sub - section (2) of section 122 is invoked when the period is more than a year and no security has been given. If security is given no reference to the Sessions Judge is necessary. On failure to give security the magistrate cannot order (as in sub section (1), imprisonment absolutely or conditionally subject to confirmation, but he can only detain the person pending the order of the sessions court to which proceedings are submitted. Notice must be given to the person or his pleader and the judge is bound to hear the pleader).
- (f) *The Sessions Judge has power to consider the evidence and dispose off the case on merits. He must come to an independent findings as to the propriety of the order and the period for security, without merely confirming the order of the Magistrate, and can, if necessary, require from the Magistrate further evidence.

The order of the Sessions Court is an original order and it has to pass a definite order binding over and not confirm merely the order of the Magistrate. The order should show that the case of each accused has been considered on its own merits and separately. The period of 'detention in prison' pending order of the sessions Judge is equivalent to imprisonment, though the Sessions Judge can direct that it should run from his order. There is nothing in sub section (3) to restrict the Sessions Judge to give bail pending the hearing, if he so desires.

21. Release of persons imprisoned for failure to give security

(Section 123)

- (i) Whenever a District Magistrate, in the case of an order passed by the Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case, is of opinion that any person imprisoned for failing to give security may be released without hazard to the community or any other person, he may order such person to be discharged under section 123(1) or reduce the amount of security or the number of sureties or the time for which security is required (section 123(2)).
- (ii) An order of discharge so made may be without conditions or on any condition which such person accepts (sec. 123(3)). The state Government may prescribe the conditions upon which a conditional discharge may be made (sec. 123(4)). In case, the conditions are prescribed, they cease to be operative on the expiry of the term for which such person was ordered to give security. If any of the conditions, on which the person was discharged, are not fulfilled, the District Magistrate may cancel the order of discharge (sec. 123(5)).
- (iii) On such cancellation, the person may be rearrested by any Police Officer without warrant and there upon produce him before the District Magistrate (Sec. 123(6)).
- (iv) Where an order has been passed by an Executive Magistrate U/s. 117, unless such person gives security in accordance with the terms of the original order, for the unexpired portion of the term, the District Magistrate may remand him to undergo imprisonment for such unexpired portion (sec. 123(7)). A person so remanded under this provision may be released at any time on giving security in accordance with the terms of original order before the District Magistrate (Sec. 123(8)).
- (v) The District Magistrate may also cancel the bond for keeping peace or good

behaviour at any time, for sufficient reasons to be recorded in writing (sec.123(9)).

- (vi) Any surety for the peaceful conduct or good behaviour of other person ordered to execute a bond may, at any time, apply to the court making such order to cancel the bond and on such application being made the court shall issue a summons or warrant, as it thinks fit, requiring the person for whom such surety is bound to appear or is to be brought before it. (section 123(10)). (such order of discharge is issued in form No17 of Annexure - I)

Note:(a) *Section 123 deals with discharge of persons jailed for failure to give security and modification of the original order in respect of them by reducing the amount or number of sureties or shortening the period according to the discretion and the circumstances. Order of discharge can be passed only when it is considered safe to release without hazard to the community. The discharge may be on any conditions or without conditions. If there is breach of the condition the discharge may be cancelled and the person may be called upon to furnish securities for the unexpired term.

- (b) * { It is the District Magistrate as the case may be, who is to decide when it would be safe to act under the section. }
- (c) * { Sub section 10 enables a surety to apply for discharge at any time and has vested the power of discharge in the very court which has ordered the bond to be taken. }

22. Security for unexpired period of Bond (Sec.124)

- (1) "When a person for whose appearance a summon or warrant has been issued under provision to sub-section(3) of section121 or under sub-section (10) of section 123 appears or is brought before the Magistrate or Court ; the Magistrate or Court shall cancel the bond executed by such person and order such person to give, for the unexpired portion of term of such bond, fresh security of the same description as the original security.
- (2) Every such order shall, for purposes of section 120 to 123 (both inclusive), be deemed to be an order made under section 106 or section 117, as the case may be" (section124).

Note: *{ Section 124 deals with the procedure when a surety applies for his discharge U/s. 123(10) and when the Magistrate rejects a surety previously accepted under provision to section 121(13). As a person has right to discontinue as surety the Magistrate is bound to cancel his bond. If no fresh security is given, the Principal will be imprisoned U/s. 122(1). If the period exceeds one year, it has to be referred to the Sessions Judge. Order under this section is appealable, under section 373 Cr.P.C. to a Sessions Court.

*Based on Commentary Under the Section in 'Sarkar on Criminal Procedure' - Sixth Edition, 1991

CHAPTER - IV

Maintenance Of Public Order And Tranquility

(Sections 129 to 148)

23.1 The following four aspects are dealt with in this chapter :

- (A) Unlawful Assemblies (sec.129 to 132)
- (B) Public nuisance (sec. 133 to 143)
- (C) Urgent cases of Nuisance or apprehended danger (sec.144)
- (D) Dispute as to immovable property (sec.145 to 148)

23.2 For information, extract of AP Police Standing Orders 877 to 890 dealing with 'Preservation of Peace' is furnished in Appendix - I

24. (A) Unlawful Assemblies

An unlawful assembly as defined under section 141 of I.P.C is "an assembly of five or more persons, if the common object of the persons composing that assembly is to over - awe by criminal force, or show of criminal force, the Central Government or State Government or Parliament or the Legislature of any State or any Public Servant in the exercise of the lawful power of such public servant, or to resist the execution of any law, or of any legal process, or to commit any mischief or criminal trespass or other offence, or by means of criminal force or show of criminal force to any person to take or obtain possession of any property or to deprive any person of the right of way, or the use of water or other incorporeal right of which he is in possession or enjoyment, or to force any right or supposed right, or by means of criminal force, or show of criminal force to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do". Further, under explanation to section 141, an assembly which was not unlawful when it assembled might subsequently become an unlawful assembly.

Note: Tumultuous assemblage of men shall be discouraged since prevention of offences involving the presence of a plurality of offenders becomes a difficult task.

25. Dispersal of unlawful Assembly

Section 129 of Cr.P.C. deals with dispersal of assembly by use of civil force. According to it :

- (1) "Any Executive Magistrate or the officer in charge of Police Station or in the absence of such officer-in-charge, any Police Officer, not below the rank of a Sub-Inspector, may command any unlawful assembly or an assembly of five or more persons likely to cause a disturbance of public peace, to disperse, and it shall thereupon be the duty of members of such assembly to disperse accordingly".
- (2) If, upon so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or Police Officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law."

Note:(a) There is a fundamental right under Art. 19(i) (b) of the Constitution of India to all citizens to assemble peacefully and without arms. But, the question that arises and calls for action under this section is when the assembly becomes unlawful. The power to command rests with the Executive Magistrate or officer-in-charge of the Police Station or in his absence, by any officer, not below the rank of a sub-inspector. For proceeding to take action under the section the unlawful character of the assembly requires to be decided in the first instance. It can be done by applying the ingredients of sections 141 of I.P.C alone (mentioned above).

- (b) When there exists an unlawful assembly or a peaceful assembly of persons of five or more which has the potential, by its behaviour, of becoming unlawful or provoke others to the disturbance of public peace, action to disperse becomes essential for preserving public peace. There must be sufficient evidence establishing the fact of unlawful nature of the congregation at a trial, if any, subsequently. In such a case there should be no difficulty for the Executive Magistrate to command it to disperse. To arrive at a conclusion, whether the assembly is likely to cause disturbance of public peace, the conduct and

behaviour of the assembly shall have to be considered objectively and there upon only an order should follow commanding the same to disperse.

- (c) If the assembly commanded to disperse exhibits a determination not to disperse, the Executive Magistrate or Police Officer concerned may employ force to disperse it for disobeying the command to disperse. The offenders are punishable U/s. 145 of I.P.C. (in case of unlawful assembly), or U/s. 151 of I.P.C. (in case of any other assembly), for disobeying the command to disperse. However, it may be considered whether the arrest of the important persons (ring leaders) would be desirable to see if the situation can be effectively dealt with, before resorting to force. Further, if the said unlawful assembly persists in holding together and appears determined not to disperse, the next proper step would be to give a stern warning to disperse and if it is not heeded to and has no effect, then it would be appropriate to use force.
- (d) It is also to be noticed U/s. 129(2) that even if the assembly is not commanded to disperse, the Magistrate may proceed to disperse such assembly, if it conducts itself in such a manner as to show determination not to disperse.
- (e) The degree of force which may be lawfully used in suppression of the unlawful assembly depends on the circumstances. It should be proportionate to the need to achieve the result. The police have to inform the Executive Magistrate to secure his presence whenever situation demands and once the Executive Magistrate is on the scene, the police officer should seek and respect his decision and act as advised by him. However, depending on the ground realities, if it is not possible to defer action till the Executive Magistrate arrives, the police, in its judgment and as the situation warrants, may have to initiate action. Police acting initially and obtaining approval of the Executive Magistrate subsequently is against the spirit of the section.

26. Some of the provisions in the Police Acts also deal with this aspect.

- (a) Under section 24(1) of the A.P. (Telangana Area) District Police Act, 1329F-
- (1) "Every Magistrate or District Superintendent of Police or Asst. Superintendent of Police or Sub-Inspector of Police or an Officer-in-charge of a Police Station may stop any procession which violates the conditions of the licence granted (under section 23 of the Act) and he may order any such procession or assembly which violates the conditions of the licence granted..... to disperse.

(2) Every procession or assembly, which neglects or refuses to obey an order given under sub section (1) shall be deemed to be an unlawful assembly.”

- (b) Also Sec. 26 of the Hyderabad City Police Act, 1348F provides for dispersal of gangs or assembly of persons by the Commissioner of City Police, Hyderabad.

27. Use Of Armed Forces To Disperse Assembly (Section 130)

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

Note:(a) There is a caution in the section to the armed force deployed to disperse the unlawful assembly , - to use minimum force and to cause minimum injury to the person or property, consistant with the circumstances. Arrest and detention is also provided.

- (b) While requisitioning the help of the armed forces, the Magistrate in command should be clear as to the intensity of the situation and ineffectiveness of the police force deployed in controlling and dispersing the mob.

28. Power Of Certain Armed Force Officers To Disperse Assembly (Section 131)

1. “ When the public security is manifestly endangered by any such assembly and no Executive Officer can be communicated with, any commissioned or gazetted officer can be communicated with, any commissioned or gazetted officer of the

armed forces may disperse such assembly with the help of the armed forces under his command and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they be punished according to law, but if while he is acting under this section it becomes practicable for him to communicate with an Executive Magistrate, he shall do so, and shall henceforth obey the instructions of the Magistrate, as to whether he shall or shall not continue such action."

- Note:(a) The officer of the armed forces is competent to take action under the section when exigencies of the circumstances so demand and in the cases where it is not possible to communicate with the Executive Magistrate. When communication could be established with the Executive Magistrate, he shall act in accordance with the advice and direction of the Executive Magistrate.
- (b) With regard to the deployment of armed forces to disperse an unlawful assembly or to quell a riot, the following similar provisions of the Hyderabad City Police Act, 1348F may also be seen :
- (i) Section 33 (Requisitioning military aid to disperse assembly) :
- "If on an emergency the available Police Force is not sufficient to disperse an unlawful assembly or quell a riot or any disturbance likely to disturb public peace, the Commissioner of City Police, Hyderabad or Magistrate of the highest rank who is present at the time, may apply to the officer of the highest rank of Regular Force who may be on the spot for military aid for such purpose."
- ii) Section 34 (Duty of officer commanding military required to disperse assembly by Magistrate or Commissioner of City Police, Hyderabad) :
- (1) " When the Commissioner of City Police, Hyderabad or a Magistrate determines to disperse any unlawful assembly by military aid, he may require any commissioned or non-commissioned officer commanding a batalion of the Regular Force, or the Volunteer Corps to disperse such assembly by military force and to arrest and confine such persons taking part in the said assembly as the Commissioner of City Police Hyderabad or the Magistrate may direct or it may be necessary to arrest and confine for the purpose of dispersing the assembly to have them punished according to law.
- (2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing shall use a little force and do as little injury to the life and property of persons as may be possible and as may

be consistent with dispersing the assembly and arresting and detaining the persons taking part in it.”

(iii) Section 35 (Power of commissioned officer to disperse unlawful assembly) :

“ When the public peace is manifestly endangered by any such assembly and when it is impracticable to take instructions from the Commissioner of City Police, Hyderabad or a Magistrate, any Commissioned Officer may disperse such assembly by military and may arrest and confine any person or persons taking part in it in order to disperse the assembly or that they may be punished according to law; but, if while he is acting under this section, it becomes practicable to inform the Commissioner of City Police, Hyderabad or a Magistrate, he shall do so and shall henceforward obey the instructions of the Commissioner of City Police, Hyderabad or Magistrate as to whether he shall or shall not continue such action.”

29. Protection Against Prosecution For Acts Done Under Preceding Sections (Sec. 132)

For any act done in good faith under section 129 and 130 by the Magistrate or Police Officer, protection is provided in section 132. In order to prosecute them in a criminal court previous sanction of the State Government is required. Similarly, for acts done by the armed forces no prosecution can be instituted except with the sanction of the Central Government. (Similar protection is also provided to the police in section 36 of the Hyderabad city Police Act, 1348F.)

30. Important Guidelines For Dispersal Of Unlawful Assembly

Important instructions as to dispersal of mob and mob firing may be seen in the A.P. Police Standing Order 885. These instructions are very useful to both the Executive Magistrates and Police Officers dealing with dispersal of unlawful assemblies, in order to be conversant with stage by stage action required to be taken. However, some of these important instructions are mentioned below; which should be remembered :

- (a) The police should secure the presence of the Executive Magistrate, where a breach of peace is anticipated.
- (b) The Executive Magistrate is empowered to give order to the police to assist

him in handling the situation. He should be in complete charge of the situation.

- (c) The senior most police officer shall assist the Magistrate by mobilising the available force.
- (d) The Police shall act as directed by the Magistrate.
- (e) The Magistrate is responsible to take a decision as to when the unlawful assembly has to be dispersed and should have a definite opinion in this regard.
- (f) The Magistrate shall wear an armed band in red colour 4" wide with letter 'M' inscribed on it boldly in blue.
- (g) First of all, it is necessary to arrest some important persons and issue a stern warning to disperse. If that is not heeded to but defiant, other methods are to be used, like use of tear gas, lathi charge and if both fail, resort may be had to the use of fire arms. The Magistrate in command is responsible to the kind of force to be used for dispersal.
- (h) Lathi charge is not advisable if the strength of the force is not adequate to create an effect on the crowd. There is a possibility of the Police being over powered by the crowd in such circumstances.
- (i) Firing shall be ordered only as a last resort; when it is impossible to disperse the mob by any other means.
- (j) After the Magistrate has decided on the kind of force to be used, the police officer in charge is solely responsible for deciding the exact amount of force to be used, the manner of using it and setting of the details of operations connected with the use of force.
- (k) When the order is given, the firing shall at once be effective and sufficient, with the minimum of injury, to convince the crowd of the necessity of immediate dispersing.
- (l) When the police party is formed it should be numbered and told off into two or more sections. Bayonets must be fixed as soon as possible. Clear warning over loud speakers of use of fire should be given, before actual firing. All commands are to be given by the officer in command of the party and police are not of any account to fire except by word of command of their officer, who is to exercise a humane discretion respecting the extent of the line of fire.
- (m) Firing aim should be kept low and directed against the most threatening part of the crowd.

- (n) Files ordered to fire must unload immediately after firing. Firing should cease the moment the mob disperse from the scene.
- (o) Firing should be carried out from a distance sufficient to obviate the risk of being rushed on and to enable strict fire control to be maintained.
- (p) Station House Officer has no power to disperse the unlawful assembly, but he may arrest any person.
- (q) Permission of the Magistrate is necessary, if police are compelled to disperse mob in different places of the same village.
- (r) The Magistrate or police shall make adequate arrangements to shift the wounded persons to the hospitals for medical aid. Dead persons should be sent to the mortuary.
- (s) Riot flags should be taken when armed reserved police are called out in apprehension of disturbance and before firing or any other means of dispersal is resorted to. They should be hoisted before the mob in a position in which the inscriptions on them are clearly visible.
- (t) The police must be trained to exercise strict restraint and self control even under gravest provocation and must under no circumstances take action in retaliatory or revengeful spirit.
- (u) Superintendent of police should ensure that the Sub-Divisional Officers, Inspectors and station House Officers see demonstrations of mob dispersal by the armed reserve from time to time during their visits to district head quarters. Such demonstrations should invariably be given when meetings of inspectors are held.

Magisterial Enquiry

- 31.1 When police open fire in defence of life and property or to suppress riots and other disturbances, it is generally followed by a Magisterial inquiry. It is an inquiry to find out whether any excesses are committed by the police. Each incident of police firing has to be reported to the Superintendent of Police.
- 31.2 When a Magisterial inquiry is ordered, the inquiry is ordinarily intended to ascertain the following :
- (a) How the trouble started.
 - (b) Details of the incidents and the circumstances under which fire was opened

with an account of the agitation preceeding it.

- (c) The strength and kind of mob and the weapons with which it was armed.
- (d) The strength of the police on the spot.
- (e) The extent of damage caused to public and private property.
- (f) The number of police officers and others injured by the unlawful acts of the mob.
- (g) Whether the firing was individual or volley firing
- (h) Whether due warnings were conveyed to the mob :
 - (i) before the lathi charge was ordered
 - (ii) before tear gas shells were burst
 - (iii) before fire was opened
 - (iv) the means by which warnings were conveyed, i.e., megaphones, loud speakers, etc.
 - (v) whether the warnings conveyed heard by the mob,
 - (vi) How did the mob respond to the warnings each time it was conveyed, whether they showed sings of dispersal or continued to be defiant, jeering, hooting and yelling,
 - (vii) Whether, before fire was opened, were warnings conveyed
 - (a) fire would be opened if the mob did not at once disperse
 - (b) that live ammunition would be used, and
 - (c) that firing would be effective,
- (i) type of ammunition used,
- (j) number of rounds fired,
- (k) whether the number of rounds fired, were fired at a stretch, or one after another, after watching the reaction of the mob.
- (l) was the firing ordered to be stopped the moment the mob showed signs of dispersal
- (m) Whether the number of rounds fired and the bullet injuries reconcile.

- (n) Who gave orders for fire i.e., the Magistrate or the senior most police officer on the spot,
- (o) If the senior most police officer gave orders to open fire, was there time to secure the Magistrate to the spot.
- (p) why in anticipation, a Magistrate was not secured to the spot.
- (q) Did goonda elements mingle in the mob
- (r) Were any goondas been rounded up earlier, and
- (s) Other inter-related matters.

31.3 In order to ascertain these facts and for adjudicating whether firing was justified and if justified whether or not it was excessive, the officer inquiring, may examine the following officers and others :

- (i) Police Officers who were on the spot.
- (ii) Police Officers or Magistrate who gave orders for :
 - (a) lathi charge
 - (b) bursting tear gas shells and
 - (c) for opening of fire.
- (iii) Police Officers who actually opened fire.
- (iv) Doctors who treated the injured (police and others).
- (v) Spectators, if any.
- (vi) Residents of the locality where the fire was opened.
- (vii) Private persons whose property was damaged by the mob.
- (viii) Officials of the Electricity Department, Municipality, and other institutions the property of which was damaged, and
- (ix) Other relevant witnesses.

31.4 In order to secure presence or attendance of all such witnesses the Magistrate will give public notice fixing dates and timings and place of inquiry, calling upon

the public that if any one desires to appear before him and give evidence touching the incidents he may do so.

31.5 When, in response to such notices witnesses appear before him, the Magistrate may administer oath to them in accordance with the provisions of the oaths Act and in the forms prescribed under the said Act and record their evidence.

31.6 The Magistrate may put such questions as he may consider necessary for -

- (a) obtaining any clarification on any matters referred to by witnesses, and
- (b) testing the truth of their evidence and their credibility.

Further, the Magistrate conducting the inquiry may go round and inspect the places of the incidents and prepare a record of his observations with regard to the damages caused to the public and private property and all other relevant matters.

31.7 The inquiry, so conducted, is only a fact finding inquiry and not contemplated under Cr.P.C. or any other Act. It is mainly confined to the ascertainment of :

- (a) Whether the opening of fire by the police was necessary and justified, and
- (b) Whether the firing was excessive or only the minimum force was employed.

31.8 The inquiry is not directed to give findings whether the accused committed offences for which charge sheets were presented or being presented in the jurisdictional courts.

(B) PUBLIC NUISANCE

32. Conditional order for removal of nuisance (sec.133)

According to section 133 of Cr.P.C:

(1) When the District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government, on receiving the report of the Police Officer or other information and on taking such evidence (if any), as he thinks fit, considers :

- (a) That an unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public ; or

- (b) That the conduct of any trade or occupation or the keeping of any goods merchandise is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping there of regulated : or
- (c) That the construction of any building or disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or
- (d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in the consequence of the removal, repair or support of such building tent or structure, or the removal or support of such tree, is necessary; or
- (e) that any tank, well or excavation adjacent to such way or public place fenced in such a manner as to prevent danger arising to the public; or
- (f) that any dangerous animal should be destroyed, confined or otherwise disposed of ;

Such Magistrate may make conditional order, requiring the person causing such obstruction or nuisance or carrying on such trade or occupation or keeping any such goods or merchandise or owning, possessing or controlling such building, tent structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order :

- (i) To remove such obstruction or nuisance, or
- (ii) To desist from carrying on or to remove or regulate in such manner as may be directed, such trade or occupation or to remove such goods or merchandise, or to regulate the keeping there of in such manner as may be directed; or
- (iii) To prevent or stop the construction of such building or to alter the disposal of such substance ; or
- (iv) To remove, repair or support such building , tent or structure or to remove or support such trees; or
- (v) Fence such tank, well or excavation; or
- (vi) To destroy, confine or dispose of such dangerous animal, in the manner provided in the said order; or if he objects so to do, to appear before

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

- (2) No order duly made by a Magistrate under this section should be called in question in any civil court.

Explanation:- A 'Public Place' includes also property belonging to the state, camping grounds and grounds left unoccupied for sanitary or recreative purpose

Note:(a) Though no definition of 'Public nuisance' is given, the definition given in sec.268 of I.P.C will be applicable for the purpose of this section. According to it ' a person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.' A common nuisance is not excused on the ground that it causes convenience or advantage.

- (b) * {Nuisances are either public or private. The remedy for private is a civil suit, although what constitutes nuisance may be common to both classes. A public nuisance is which is offensive - an inconvenience, discomfort or hurt annoying or endangering the safety of community in general. A private nuisance may amount to public nuisance if it effects the public generally}. The section contemplates speedy and summary remedy where danger to public interest or public health etc. is concerned. The purpose is that if immediate steps are not taken there is an imminent danger. The Magistrate should be satisfied with the information received that speedy and immediate prevention or remedy is necessary and this make a conditional order for removal of such nuisance in such emergent cases.

- (c) The order issued by a Magistrate is a conditional order and not a notice to show cause why action should not be taken, nor does it amount to injunction. Settling private disputes between different members of the public is not the intention of the section. It is intended to protect the public against the inconvenience. The section applies only when unlawful obstruction or nuisance is actually existing and not to potential nuisance in future.

- (d) The form in which conditional order has to be issued U/s. 133 is Form No.20 Annexure - I

- (e) * { The procedure to be followed will be :
- (i) Magistrate may issue notice to show cause or conditional order. Before issuing the conditional order on report of police officer or other information, the Magistrate may or may not take evidence; but it must be taken subsequently U/s. 138 before making the order absolute. If the person appears and shows cause, the Magistrate is required to take evidence as in a summons case. Magistrate cannot cancel conditional order without taking evidence. If Magistrate makes inspection U/s. 310 he cannot base judgment on it but must take evidence.
 - (ii) On appearance of the person, before inquiry the Magistrate must ask him whether he denies the existence of any public right (sec.137). If he denies, it is for him to adduce evidence in support of it and a finding is to be recorded whether reliable evidence has been produced or not. If there is no denial, or if there is no reliable evidence in support of denial, the Magistrate proceeds to make an inquiry and the prosecution has to lead evidence}.
- (f) After passing the order the Magistrate in his discretion, may direct the person against whom order is passed and who objects to comply with the order, to appear before him or before some other Magistrate subordinate to him, at a time and place to be fixed by the order and show cause in the manner provided as to why the order should not be made absolute *{The death of a party to an order abates the proceedings If any action is contemplated against successors in interest, separate proceedings will have to be drawn up }.
- (g) The following cases can be brought within the purview of the section. Noise injurious to physical comfort of a community, discharge into river of effluent from a factory injurious to health, keeping a gaming house drawing disorderly crowds causing annoyance, obstruction to public way by act done on private land, a mill or factory nearby emitting obnoxious smell, etc.
- (h) * {High Court or Sessions Judge can entertain revision when there is no reasonable evidence or when substantial injustice has been done.}

33. SERVICE OF ORDER

Sec.134 provides that :

- (1) An order made under section 133 shall be served on the person against whom it is made, as far possible in the manner provided for service of summons.

- (2) If an order cannot be so served as a summons, it shall be notified by proclamation, published in such manner as the State Government may by rule direct and a copy thereof shall be stuck up at such place may be fittest for conveying information to such a person.

Note : * If service as provided U/s. 62,64 (i.e., the manner provided for service of summons) cannot be affected by due diligence, it may then be affixed to the house. Sub-section (2) can be resorted to only when the order cannot be served in the manner Provided for summons. Irregularity in service of the order does not affect the validity of the order when it comes to the actual knowledge of the person affected. " Person" includes also any company, association or body of persons.

34. Person To Whom The Order Is Addressed To Obey Or Show Cause (Sec. 135)

"The person against whom such order is made shall :

- (a) perform, within the time and in the manner specified in the order, the act directed there by; or
- (b) appear in accordance with such order and show cause against the same.

35. CONSEQUENCES OF HIS FAILING TO DO SO (Sec. 136)

"If such person does not perform such act or appear and show cause, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code (45 of 1860) and the order shall be made absolute."

Note: *If the person does not appear, the order will be made absolute and he is liable U/s. 188 I.P.C. for penalty (i.e., disobedience to order duly promulgated by public servant). If he appears and shows cause against the order, first the Magistrate shall ask him whether the existence of the public right in question is denied, (as contemplated in sec. 137) and if he denies the existence of public right, it is for him to adduce evidence. A finding is to be recorded on the point and if there is no reliable evidence in support of the right, the Magistrate has to proceed to make inquiry U/s. 138.

*Based on Commentary U/s.107 in ' Sarkar on Criminal Procedure' - Sixth Edition, 1991

The following is the extract of sec.188 of I.P.C

“Disobedience to order duly promulgated by public servant” : “whoever, knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take a certain order with certain property in his possession or under his management, disobeys such direction:

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both, and

if such disobedience causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation : It is not necessary that the offender should intend to produce harm or contemplate his disobedience as likely to produce harm, it is sufficient that he knows of the order which he disobeys and that his disobedience produces, or is likely to produce harm.”

36. Procedure where public right is denied (Sec.137)

- (1) When, the person against whom conditional order U/s. 133 is made, appears before the Magistrate he is questioned as to whether he denies the existence of any public right in respect of the way, river, channel, or place and if so, the Magistrate shall before proceeding under sec. 138, inquire into the matter.
- (2) If, in such inquiry, the Magistrate finds that there is any reliable evidence in support of the denial made by the concerned person, he shall stay the proceedings until the matter of existence of such right is decided by a competent court ; and if he finds that there is no such evidence the Magistrate proceeds to take action as laid down in section 138.
- (3) A person on being questioned by the Magistrate under sub- section (1) failed to deny existence of public right of the nature referred to therein, or who having made the denial, failed to adduce reliable evidence in support thereof shall not in the subsequent proceedings, be permitted to make any such denial.

- Note: (a) * {The section requires that when a person served with an order U/s. 133 appears before the magistrate and when questioned denies the existence of a public right in question, it is essential for the Magistrate first of all to conduct an enquiry U/s. 137, before holding the inquiry contemplated U/s. 138. If reliable evidence in support of denial of public right is adduced the Magistrate has to stay the proceedings until the matter is decided by the Civil Court. He can proceed to inquire U/s. 138 only when the existence of private right instead of public right is not raised or if no reliable evidence could be produced in support of a right claimed. It is not correct to pass a final order merely upon an inquiry U/s. 137 without thereafter proceedings U/s. 138}.
- (b) Thus, sec.137 (i) provides for a preliminary inquiry which is confined to the question, the person who has appeared in response to a show cause notice, denies a public right and he has 'Prima -facie' evidence to support his denial.
- (c) * { The inquiry need not be elaborate . The Magistrate has only to see whether some reliable evidence has been produced in support of the claim and all the witness need not be examined. The Magistrate is to be merely satisfied that there is or is not some 'prima-facie' reliable evidence to support the denial or the denial of the public right is frivolous. If after taking evidence of both the parties the Magistrate decides whether any party has succeeded in establishing his claim, the order is wholly wrong. The Magistrate may himself call for such evidence as may be necessary. A base for reliability is whether the evidence in such that if unrebutted it will prove the non existence of the public right. }
- (d) The High Court or Sessions Judge can review when an order states that there is no reliable evidence.

37. Procedure Where The Person Appears To Show-cause

(Section 138)

- (1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons case.
- (2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the

order shall be made absolute without modification or as the case may be, with such modification.

- (3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.

Note: (a) *{The inquiry U/s. 138 has a limited scope. The inquiry is held only when the existence of the public right is either not denied or if denied no reliable evidence exists in support on such denial. The burden of proof in an inquiry U/s. 138 without an inquiry U/s. 137 is vitiated. The procedure between the initiation of the proceedings U/s. 133 and final order U/s. 138 is mandatory, the failure whereof will make the final order U/s. 138 an illegal one}.

- (b) *{The Magistrate is bound to take evidence in the presence of the parties. Attendance of witness can be compelled, if required. The Magistrate shall have to record a decision on the evidence recorded. The question regarding the existence of a public right which was the subject matter U/s. 137 will not be allowed to be re agitated in the inquiry U/s. 138, if the parties so decide. But the inquiry U/s 138 is separate and Magistrate is not entitled to pass final order on the result of inquiry U/s 137.}

- (c) *{Absolute order U/s. 138 may be questioned in a civil court. The High Court or Session Judge has power to modify the order to such extent as may seem fit.}

38. Power Of Magistrate To Direct Local Investigation And Examination Of An Expert (Sec 139)

Section 139 empowers the Magistrate to direct local investigation to be made by such person as he thinks fit: or summon and examine an expert for the purposes of an inquiry u/s. 137 or u/s. 138.

Local investigation does not merely mean ones own observation of the things, but even ascertainment of facts by recording the statements of witnesses.

39. Power of Magistrate to Furnish Written Instruction, Etc. (Section 140)

Section 140 also empowers the Magistrate to furnish written instructions to the person who is directed to make local investigation U/s. 139, as he thinks

*Based on Commentary U/s.107 in ' Sarkar on Criminal Procedure' - Sixth Edition, 1991

necessary for his guidance, and declare by whom the whole or any part of the necessary expenses of local investigation be paid. The report of such person may be read as evidence in the case. The section also states that where the Magistrate summons and examines an expert U/s. 139, he may direct by whom the expenses of such summoning and examination shall be paid.

Note:(a) The evidence admissible U/s. 139 and 140 shall have to be considered by the Magistrate holding an inquiry U/s. 138. Even if the party against whom conditional order U/s. 133 is made, does not produce evidence, it is still incumbent on the Magistrate to record evidence of the person who complained and of others and then pass the order. A conditional order cannot be made absolute merely on account of :

- (i) as a result of his local inspection
- (ii) personal opinion,
- (iii) the report of the M.R.O. or Panchayatdars
- (iv) arbitration, and
- (v) the evidence or information or report received at the time the conditional order was passed U/s. 133. or on the basis of the evidence taken under the inquiry U/s. 137.

(b) As stated earlier, the procedure to be followed is as in a summons case, which is available in chapter XX of the Cr P.C.

According to that - first, the complainant, if any, and all the witnesses, if any, should be examined and thereafter the objector shall be heard and his witnesses examined. Any inquiry should be held in the presence of the parties, the Magistrate has power to Modify the conditional order on the basis of the inquiry made by him and make such modified order absolute (sec. 138. (2)).

(c) If a person against whom an order U/s. 133 is passed appears and submits that he has no objection to the removal of obstruction, it would not be sufficient to record his willingness and close the matter, but a substantive order directing him to remove the obstruction within a specified time requires to be passed if the nuisance ceases to exist after the conditional order is issued there is no need to make such conditional order absolute. The Magistrate can also drop the proceedings if on recording evidence and receiving such other material, he is satisfied that the preliminary order is not proper or justified.

40. Procedure on order being absolute and consequences of disobedience (Section 141)

- (1) "When an order has been made absolute U/s. 136 or section 138, the Magistrate shall give notice of the same to the person against whom the order was made and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform that, in case of disobedience, he will be liable to the penalty provided by section 188 of Indian Penal Code (45 of 1860)
- (2) If such an act is not performed within the time fixed, the Magistrate may cause it to be performed and may recover the cost of performing it, either by sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without such Magistrate's local jurisdiction and that if such other property is without jurisdiction, the order shall authorise its attachment and sale when endorsed by the Magistrate within whose local jurisdiction the property to be attached is found.
- (3) No suit shall be in respect of anything done in good faith under the section."

Note: Notice to be issued U/s. 141 in form No. 21 of Appendix I.

*{Costs should not be recovered from a party who was not served with notice of the proceedings. On the death of a party against whom order has been made it ceases to have further effect. The validity of a final order cannot be questioned at the trial under section 188 of I.P.C.}

41. Injunction pending Inquiry (Sec. 142)

- (1) "If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury pending determination of the matter.
- (2) In default of such person forthwith obeying such injunction the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate or

*Based on Commentary U/s.107 in 'Sarkar on Criminal Procedure' - Sixth Edition, 1991

prevent such danger or injury pending the determination of the matter.

- (3) No suit shall be in respect of any thing done in good faith by Magistrate under the section”.

Note:(a) The section can be invoked only when there is imminent danger or injury of serious kind to public interest which should be prevented by issuing an injunction. *{The imminent danger or injury must emanate only from the things specified in sec. 133. An order under this section does not preclude the Magistrate from making a final order U/s. 138. Interim order of injunction can be made at any stage of inquiry ie. even when it is also u/s. 137 or 138 and not necessarily at the time of passing the conditional order made U./s. 133., but this interim order should confine itself to preventing the particular nuisance contemplated by the conditional order U/s. 133. Notice before injunction should ordinarily be issued, except in very extreme cases and where delay would result in dangerous consequences by way of injury to the public.}

- (b) Injunction order is issued in form No. 22 of Annexure . I.

42. Magistrate may prohibit repetition or continuance of Public nuisance (Sec 143)

"A District Magistrate or sub-Divisional Magistrate or any other Executive Magistrate empowered by the state Government or the district Magistrate in this behalf may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860) or any special or local law".

Note:(a) Order under this section is issued in form No. 23 of Annexure . I.

- (b) *{The order under this section prevents the repetition or continuance of a public nuisance while the order U/s. 142 prevents it for the first time. Section 143, therefore applies only after an order prohibiting public nuisance has already been passed against a person. An order U/s. 143 cannot bind one who was not a party in the earlier proceeding in which the original order was passed. The order under the section should be passed only after giving an opportunity to the person against whom the order is made to show-cause as to why the order should not be made.}

(c) Urgent cases of nuisance or apprehended danger

43. Power to issue order in urgent cases of nuisance or apprehended danger (Sec 144)

Sec. 144 Confers very wide powers to pass orders on emergency occasions, thus:

- (1) "In cases, where in the opinion of the District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction or annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of public tranquility, or a riot, or an affray.
- (2) An order under this section may, in cases of emergency or in cases where circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex-parte.
- (3) An order under this section may be directed to a particular individual or to persons residing in a particular place or area or to the public generally when frequenting or visiting a particular place or area.
- (4) No order under this section shall remain in force for more than two months from the making thereof provided that if the State Government considers it necessary so as to do for preventing danger to human life, health or safety or for preventing a riot or an affray, it may, by notification direct that an order made by Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired as, it may specify in the said notification.
- (5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any magistrate subordinate to him, or by predecessor - in - office.
- (6) The State Government may, either on its motion or on the application of any person aggrieved, rescind or alter any order made by it under the provision to

sub-section (4).

- (7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing."

Note: (a) Order under the section has to be issued in the form No. 24 available in Appendix - I.

- (b) *An order under this section is in the interest of maintenance of "Public order" and the object for securing it being "to prevent obstruction", "annoyance", "injury", etc. The power conferred by this section is neither arbitrary nor is it unlimited. The section can be invoked only in an emergency.

- (c) The order under the section must mention the material facts on which it is based and must direct any person.

(i) to abstain from a certain act, or

(ii) to take certain order with respect to certain property in his possession or under his management. Such direction can be given in the cases specified only, viz. to prevent.

(aa) Obstruction, annoyance or injury to any person lawfully employed, or

(bb) danger to human life, health or safety, or

(cc) disturbance of the public tranquility or a riot or any affray.

- (d) It is a temporary order in case of grave emergency and is directed against those who attempt to prevent exercise of legal rights by others or imperil the public safety and health,

- (e) Executive Magistrate can take action to prevent apprehension of breach of peace in spite of pendency of civil suit, in respect of the same matter. An order passed under this section is only an administrative order. Sec 144 does not confer any power on the Executive Magistrate to adjudicate or decide disputes of civil nature.

- (f) An order U/s 144 can be passed only in serious and urgent cases where, on the material available, the magistrate is satisfied that there are sufficient grounds for proceedings under the section and immediate prevention or speedy remedy is desirable. Order is intended to meet the emergency and hence it cannot be permanent or semi-permanent. The Magistrate should make an inquiry and only after being satisfied that the situation calls for such an order should issue the order U/s. 144. He should be careful against passing an arbitrary order.
- (g) The powers conferred under the section cannot be exercised to interfere with the execution of a Civil Court decree. Delivery of possession of certain property cannot be directed under the cover of an order passed under this section. In case of conflict between the public interest and private right, the public interest shall have to prevail and the Magistrate can override temporarily the private rights by passing an order under the section.
- (h) The section cannot be invoked when a civil suit is the proper remedy or when the dispute is of a civil nature between individuals or between such persons and Government.
- (i) The duration of the order must be co-existence with the emergency. The order must be served in the manner provided in section 134. Under sub-section (2) of sec. 144 an ex-parte order can be passed only in cases of emergency or when there is no time to serve the notice. Ordinarily, an order under the section should not be made without an opportunity being afforded to the person against whom it is directed.
- (j) No order under this section shall remain in force for more than two months, unless the State Government extends for such period not exceeding six months from the date of expiry of the order when it is considered necessary.
- (k) Sub section (7) provides that where an application under sub section (5) or sub section (6) is received by the Magistrate or the State Government they shall have to give an early opportunity to any person or persons aggrieved by the order and hold an inquiry into the circumstances of the case, to see if the order requires to be rescinded or altered. The Magistrate or the State Government shall have to consider in such inquiry whether the claims advanced by one or either of the parties are within their legal and natural rights or whether any recession or alteration of the order is called for to obviate undue hardship to one or either of the parties. The provisions of sub-section (7) are mandatory

and an application filed under sub-section (5) cannot be summarily dismissed. The inquiry under this sub-section being a judicial inquiry the Magistrate is bound to take evidence in the usual way of examination and cross-examination of the witness. He is bound to consider the evidence and arguments submitted on behalf of the parties. The person proceeded against is entitled to a copy of the information to enable him to rebut the same.

- (l) The punishment for disobedience of order U/s. 144 is provided in sec. 188 of I.P.C.; but a mere disobedience of the order is not enough, but in addition, the disobedience must cause or tend to cause obstruction, annoyance or injury to any person lawfully employed or danger to human health or society etc. as aforesaid. A Magistrate cannot himself take a cognizance when the offence is disobedience of an order of his own court. He must make a complaint u/s. 195 of Cr. P.C.

*{In short, the guiding principles for invoking section 144 are :-

- (i) It is intended to be invoked in cases of grave emergency, where immediate prevention or speedy remedy is in the interest of the public.
- (ii) It is to be resorted to only when the Magistrate is satisfied that the use of other power he has would not be effective. (When a dispute relates to land, ordinarily sec 145 is the proper remedy, or in the case of a nuisance without any immediate danger, sec. 133 should be applied.)
- (iii) Legal rights will be regulated and not prohibited altogether for avoiding breach of peace or disturbance to public tranquility, unless in an extremely extraordinary situation, when other measures are bound to fail, that a total prohibition or suspension of their rights may be resorted to as last measure.
- (iv) In a given situation the power can be exercised temporarily to override private rights and restrain individuals from doing perfectly lawful acts, since in a conflict between public interest and private rights the former must prevail.
- (v) No order under the section shall remain in force for more than two months unless the State Government extends for further period not exceeding six months from the date of expiry of the order.

- (vi) No order can be issued in normal course without any "Prima facie" evidence (which is based as material facts), which should be served on the persons in a proper way.)
- (m) Revisional Power is exercisable by the Sessions Judge who has been given concurrent power along with the High Court - U/s. 397.

(D) DISPUTE AS TO IMMOVABLE PROPERTY

44. Procedure where dispute concerning land or water is likely to cause breach of peace (sec. 145)

- (1) Wherever an Executive Magistrate is satisfied from a report of the police officer or upon other information that a dispute likely to cause breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such a dispute to attend his court in person or by pleader on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.
- (2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.
- (3) A copy of the order shall be served in the manner provided by this code for the service of a summons upon such person or persons as the Magistrate may direct and atleast one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.
- (4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible decide whether any and which of the parties at the date of the order made by him under sub-section (1), in possession of the subject of dispute;

provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the

report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

- (5) Nothing in this section will preclude any party so required to attend or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order; and all proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.
- (6)(a) If the Magistrate decides that one of the parties was, or should under the provision to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be in possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the provisions to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.
- (b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).
- (7) Whenever any party in such proceedings dies, the Magistrate may cause the legal representatives of the deceased party to be made a party to the proceedings and thereupon continue the inquiry, and if any question arises as to who the legal representative of the deceased party for the purposes of such proceedings is, all persons claiming to be representatives of the deceased party shall be made parties thereon.
- (8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under the section pending before him, is subject to speedy and natural decay, he may make an order for proper custody or sale of such property and upon the completion of the inquiry shall make such order for the disposal of such property or the sale proceeds thereof, as he thinks fit.
- (9) The Magistrate may, if he thinks fit, at any stage of the proceedings under the section, on the application of either party, issue a summons to any witness, directing him to attend or to produce any document or thing.

- (10) Nothing in this section shall be deemed to be the derogation of power of the Magistrate to proceed under section 107".

Note:(a) Form to be used for passing an order under this section is form No. 25 available in Appendix - I. The proceedings U/s. 145 are of a summary nature. The main object of this section is to prevent breach of peace. The Magistrate should be satisfied from the report of the police officer and other information that a dispute exists relating to possession of the land which is likely to cause breach of peace. Then he has to pass a preliminary order under sub-section (1) against all the parties concerned to the dispute directing them to appear on a specified date and time and put in written statements in support of their respective claims as to actual possession. Then after going through the written statements submitted and hearing the parties and their evidence, the Magistrate has to pass a final order under sub-section (6) declaring and maintaining the possession as on the date of his order U/s. 145 (1) or who was dispossessed from such possession, within two months prior to the date of the report of the police officer or other information about the dispute was received by him or after the date and before his order under sub-section (1). When possession of a party is declared, any further disturbance is forbidden and possession may be restored to that party forcibly, if wrongly dispossessed earlier. If the Magistrate after passing order under sub-section (1), at any time considers the case to be one of emergency or if upon inquiry he decides that none of the parties was then in possession or if he is unable to decide who was in actual possession, due to the evidence equally balanced, he may U/s. 146 attach the property until a competent court has determined the rights of the parties with regard to the person entitled to possession.

(b) The jurisdiction of the Magistrate is not concerned with the determination as to the right to the title, which is exclusively a matter to be decided by the Civil Courts. The jurisdiction of the Magistrate is a very limited one, relating only to prevention of the apprehended breach of the peace. This is achieved by maintaining provisionally in possession the party who is, found on a summary inquiry, to be in actual possession. Thus, proceedings U/s. 145 is mostly to maintain status quo, until the right of the parties is determined by a competent civil court.

(c) It is important for the Magistrate to observe that the criminal court is not misused for settlement of a civil dispute between the parties or to gain an advantageous position by securing possession of the land by one party and thereby force the

other party to seek redress in a civil court in establishing his title. The proceedings U/s. 145 do not affect the right of the parties to the title of the property in dispute. The inquiry U/s. 145 is mainly intended to prevent the apprehended breach of peace in an attempt to secure possession.

- (d) If the dispute relating to the possession of the property in the matter is pending before the civil court, action U/s. 145 is not maintainable.
- (e) The Magistrate should take into consideration all documents and allow both the parties to lead evidence as to their respective claims before the final order under sub-section (6) regarding possession is passed. When preliminary order U/s. 145 (1) is made, the proceedings have to be continued until final orders under sub section (6), even if peace is restored.
- (f) Instituting proceedings U/s. 107 would not be proper against both the parties if dispute relates to land. Proceedings U/s. 145 will be proper when breach of peace is apprehended by any party to the dispute. However, in view of sub-section (10) to sec. 145 the Magistrate will use his discretion and determine which will be the most effective in the circumstances of the case. Where breach of peace is imminent on the question of possession sec. 107 would be appropriate.
- (g) While proceedings U/s. 145 are pending an emergency as contemplated U/s. 144 arises, an order U/s. 144 will be justified. However, Proceedings U/s. 107, 144 and 145 at the same time is not advocated.
- (h) At any stage of the proceedings, if he thinks fit, the Magistrate can summon any witness, on the application of either party. Therefore, the Magistrate cannot pass order under sub-section (6) until all the witnesses intended to be examined on either side are examined, and parties are heard i.e. hearing arguments on either side even if written statements are filed. He may also take any further evidence, if any, as he thinks necessary in addition to that produced by the parties, before orders are passed. The Magistrate should record the evidence of the witness himself and cannot entrust this duty to others, like subordinate Magistrate. As per Sec. 148 where the Magistrate, If he thinks that a local inquiry is necessary he may make such inquiry or direct subordinate Magistrate to make such inquiry and submit his report to him. The inquiry should be short and summary should be concluded quickly, by avoiding unnecessary adjournments.

- (i) The Magistrate's duty is to find out U/s. 145 the person in actual possession, on the date of the order under sub-section (1). If he finds that a person in possession on the date of the preliminary order U/s. 145 (1) had obtained possession forcibly or wrongfully dispossessing another within two months to the date of the order U/s. 145 (1) (see provision under section (4), the Magistrate should treat the person so dispossessed as if he had been in actual possession on such date and restore his position. The dispossession under the provision to sub-section (4) should be both forcible and wrongful. If the forcible entry is rightful, provision to sub-section (4) will not come into operation. (if a person, issued with a warrant of delivery of possession makes a forcible entry into the property, it cannot be treated a wrongful possession. But, if a person having only a right to possession forcibly takes possession by taking law into own hands, it would amount to wrongful and forcible dispossession.)
- (j) If one party is absent, the Magistrate has to proceed ex-parte and hear the other party and take evidence. If the order U/s. 145 is violated, the Magistrate who passed that order cannot take cognizance of it, but a complaint U/s. 188 of I.P.C. has to be made.
- (k) If the report of the police officer, referred to in sub-section (1) does not contain sufficient material for the Magistrate to be satisfied that there is likelihood of breach of peace, he may refuse to take action. It is not on the report of the police alone, but taking into consideration other information which is material, the Magistrate should be satisfied that a dispute as to possession exists, which is likely to cause breach of peace, for initiation of proceedings U/s. 145 (1).
- (l) Even if the Civil Court delivers possession symbolically to a party, if there is likelihood of breach of peace at the time of application to the criminal Court, the Magistrate has jurisdiction to initiate proceedings U/s. 145 to declare the possession of a party found in actual possession. The grounds of satisfaction by the Magistrate should be mentioned in the order.
- (m) *{No prohibitory orders restraining both the parties to the dispute from entering into the land can be issued by the Magistrate without determining actual possession of a party. When property is in joint possession of two parties and one of them tries to evict the other, the section does not apply. However if one party claims joint possession and the other exclusive possession, the Magistrate should give a finding whether possession was joint or exclusive before passing an order U/s. 145.}

- (n) *{In case if both the parties file a compromise, the order U/s. 145 (1) should be cancelled by the Magistrate as provided for U/s. 145 (5), as no more dispute exists and there is no apprehension of breach of peace.}
- (o) In the following cases the Magistrate may drop proceedings :
- (i) when parties file a compromise,
 - (ii) when one party gives up his right voluntarily,
 - (iii) when Civil Court appoints a receiver to manage the property.
 - (iv) when the Civil Court restrains one party from interfering with the possession of the other party during pendency of a suit before it, and.
 - (v) when the civil court decrees awarding possession to one of the parties and the decree is executed.
- (p) The final order U/s 145 (6) should contain :
- (a) under provision (4) to sec. 145 the party declared to be in possession;
 - (b) the grounds leading to such conclusion (ie. information before the Magistrate, appreciation of evidence recorded in the proceedings, etc.);
 - (c) forbidding disturbance of possession of such party, until evicted under due course of law.
 - (d) restoration of possession, if the party is dispossessed (Sec. 145 (4).
- The order U/s. 145 (6) should be pronounced in the open court. Such order will be effective until the competent court passes an order for delivery of possession to the successful party.
- (q) There is no provision in sec. 145 to obtain security from either party as provided for in sec. 107.
- (r) Sec. 326 of Cr. P.C. prohibits the magistrate from reviewing or altering the final orders once passed. However, it can correct any clerical or arithmetical error only. However, revision to court Session Judge and the High Court U/s. 397 Cr. P.C.

45. Power to attach subject of dispute and to appoint receiver

(Sec. 146)

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

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

- (2) When a Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property, or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all powers of receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908)., provided that in the event of a receiver being subsequently appointed in relation to the subject of the dispute by any Civil Court, the Magistrate.
- (a) shall order the receiver appointed by him to handover the possession of the subject matter of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;
- (b) May make such other incidental or consequential orders as may be just."

Note:(a) Form for warrant of attachment U/s. 146 is available in Appendix - I form no. 26.

- (b) This section is an extension of the previous section 145 or a corollary to it, which empowers the Magistrate to attach the subject matter of the dispute in the circumstances mentioned hereunder:
- (i) after making an order U/s. 145 at any time if he considers the case to be one of emergency;
- (ii) On inquiry made, he decides that none of the party was in actual possession

*Based on Commentary U/s.107 in ' Sarkar on Criminal Procedure' - Sixth Edition, 1991

or basing on the weight of evidence adduced by both the parties, he could not decide himself which of the parties was in such possession.

- (c) Order under this section, attachment order can be issued only after proceeding U/s. 145(1). Therefore, its validity depends on the compliance with the requirements under sec 145. when the findings of the Magistrate are that both the parties are in possession sec. 146 cannot be invoked.
- (d) Under sub - section 2, when attachment of the property was ordered, the management and control of the property rest with the Magistrate and for that purpose he may appoint a receiver on his behalf (who functions as his agent). The receiver will have all the powers of a receiver appointed under the C.P.C. However, if the Civil Court appoints any receiver subsequently the receiver appointed by the Magistrate should handover possession of the subject matter of dispute to such person and thereby gets discharged. (Provisio (a) U/s.146 (2).)
- (e) The order of attachment by the Magistrate remains in force until a competent court decides the rights of the parties or until the Magistrate, on being satisfied, that there is no longer any likelihood of breach of peace, withdraws it.
- (f) persons trespassing into the attached property are liable for punishment U/s. 447 of I.P.C. (punishment for criminal trespass).
- (g) *A case for emergency contemplated in sec. 146 has to be distinguished from a mere case of apprehension of breach of peace. The Magistrate must indicate in the order as to why he concluded it to be a case of emergency (i.e the reasons therefor); otherwise the order cannot sustain. There must, therefore be, enough material on record (i.e. documents produced, statements recorded from parties and evidence adduced) leading the Magistrate to such a conclusion.
- (h) *An order of attachment U/s. 146, after drawing up proceedings U/s. 145 without taking evidence or because the parties did not appear or on the allegation in the written statement alone, is invalid. Attachment before starting proceedings U/s. 145 is without jurisdiction. When attachment order is made actual possession of the property must be taken or make the order explicit prohibiting the parties from going upon the property.
- (i) Revision Lies both to the Sessions Judge and High Court, having concurrent full powers of revision U/s. 397.

46. Dispute concerning right of use of land or water (section 147)

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

Explanation :- The expression "land or water" has meaning given to it in sub section(2) of section 145.

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

provided that no such order be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

- (4) When In any proceedings commenced under sub-section (1) of sec. 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they have been commenced under sub section (1) and, when in any proceedings commenced under sub-section (1) the Magistrate finds that the dispute shall be dealt with under sec. 145, he may after recording his reasons, continue with the proceedings as if they had been commenced under Sub-section (1) of section 145. "

*Based on Commentary U/s.107 in 'Sarkar on Criminal Procedure' - Sixth Edition, 1991

- Note:(a) Section 147 deals with regard to 'use' rather than 'possession' of property as in the case of section 145. The right under this section must be a legal right. As in the case of section 145, this section can be invoked when there is likelihood of breach of peace. Under this section the Magistrate cannot decide the disputes of civil nature. If the Civil Court Issues an interim order, the Magistrate cannot initiate action U/s. 147.
- (b) *{If the Magistrate finds that the right of the parties are previously determined judicially, he has no jurisdiction in the matter. Merely because a suit is pending before a civil court the Magistrate should not drop the proceedings, unless he is satisfied that there is no apprehension of the breach of peace, after filing of the Civil Suit.}
- (c) An order can be passed U/s. 147 when notice was issued U/s. 145 and vice versa as can be seen from sub-section (4). Notice U/s. 145 may be treated as notice U/s. 147(I). A proceeding commenced U/s. 145 or 133 may be converted into one U/s. 147, if that is more appropriate by drawing up necessary proceedings with reasons therefore.
- (d) * {When in case U/s. 147 a fight is apprehended the parties should be bound over U/s. 107. Dispute with a present danger of breach of peace and not in the future is the cause for action under the section. Where proceedings U/s 107 is pending, there is no bar for proceeding U/s. 147.}
- (e) Under sub-section (2) the Magistrate shall hold an inquiry in order to be satisfied for passing necessary order under the section. It would not be sufficient if there was mere loud exchange of words or a hot verbal altercation between persons claiming rights of the kind described in the section. There must be acute dispute. The Magistrate should be satisfied from the reports of the police or other material that an imminent danger to a breach of peace, resulting from the dispute, is already there present.
- (f) The proceedings under the section being of an emergency nature, elaborate inquiry into the rights of the parties is not required. After the parties file the written statements, the Magistrate should hear the parties, receive all the evidence adduced by them, take such further evidence as is considered necessary and decide the question of existence of such right of user as claimed by parties. If such right exists he may make an order prohibiting any interference with the exercise of such right and also order removal of obstruction if any.
- (g) Procedure contained in sub section (5), (7) and (9) of sec.145 would be

applicable to the proceedings U/s. 147 also. The Magistrate should not pass an order merely on the ground of convenience of the parties or the basis of any private information furnished to him. In case of Imminent danger to the public peace calling for immediate action, the Magistrate shall have to proceed U/s. 144 and not U/s. 147. The dispute to be dealt with U/s. 147 being a right of using land or water, the Magistrate cannot pass an order of attachment or appointment of receiver as contemplated U/s. 146.

- (h) The words 'land and water carry the same meaning as in sec. 145(2). They are not confined to private property only, but wide enough to include even public properties, such as public roads, streets, pathways and channels. The meaning of the word 'right' existing in the section means legal right. For instance, the right to fish in a sea, cannot be treated as a legal right. Right to bury the dead in a burial ground, right to enter temple or other public place of worship in order to worship therein, a right use the water of a well, right to ply lorries, etc. can be treated as legal rights.
- (i) Provision to sub-section (3) of sec. 147 specially lays down that the order under this section cannot be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt of the report of the police under sub-sec. (1) or other information leading to the Institution of the inquiry. In such cases, where the right exercisable only at a particular season or on particular occasion, it should be found out whether such right has been exercised during the last such seasons or occasions.
- (j) Magistrate's order should be issued in form No. 27 of Annexure - I
- (k) Revision lies to both Session Judge and High Court U/s. 397 Cr. P.C.

47. Local inquiry (sec. 148)

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

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

Note:(a) Local inquiry which the Magistrate thinks necessary under sections 145 to 147 is ancillary to the main inquiry. * [It is ordered only when it is considered necessary. It is restricted to some question to the feature of the property, identification, measurement, etc. to understand the topography of the land], in order to aid the Magistrate in appreciating the evidence on record. It cannot be with regard to determination of issue, viz. question of possession. [The Magistrate may himself make the inquiry or depute a Magistrate sub-ordinate to him, but a subordinate Magistrate who was deputed cannot delegate it to another].

- (b) * [The written instructions to the delegated Magistrate are for guidance as to on what points inquiry report is required, the nature of inquiry, the examination of witnesses, time for report, etc. Such a delegated Magistrate may record evidence in the course of the inquiry]. No pleader or any other, except a Magistrate who is subordinate, should be directed to so inquire. *(A local inspection is generally ordered before evidence is gone into. The result of the local inquiry is also made known to the parties to enable them to rebut), if necessary since it forms part of the proceedings. During the course of the local inquiry, the Magistrate deputed may also record evidence, but such evidence cannot be acted upon by the district or Sub-Divisional Magistrate during regular inquiries U/s. 145, 146 or 147, unless the persons are again heard, i.e. he cannot base his order merely on such report, without taking evidence before him.)

- (c) The costs to be awarded under the section must commensurate with the witnesses examined, number of hearings, pleaders fees and declare who should pay i.e. the party to the proceedings.

*Based on Commentary Under the Section in 'Sarkar on Criminal Procedure' - Sixth Edition, 1991

CHAPTER - V

Preventive action of police

48. Under section 149, every police officer may interpose for the purpose of preventing and shall, to the best of his ability, prevent the commission of cognizable offence.

48.1 The power under this section can be exercised in many ways, e.g. arrest, dispersal of unlawful assembly, etc. (interpose may be interpreted as active intervention).

48.2 Section 150 directs that every Police Officer receiving Information of a design to commit any cognizable offence shall communicate such information to his superior officer or to any other officer whose duty is to prevent or to take cognizance of any such offence. ('any other officer' is meant to be an officer in charge of the police station).

48.3 Section 151 gives power of arrest to prevent the commission of cognizable offence. According to it :

- (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.
- (2) No such person arrested shall be detained in custody for a period exceeding 24 hours from the time of the arrest, unless his further detention is required or authorised under any other provisions of the Cr.P.C. or of any other law for the time being in force.

Note: There is a scope for misuse of power under this section under a misconception, that the power is unlimited. The police must be sure that the person is designing (i.e.) planning to commit a cognizable offence. However, an apprehension is not sufficient. Arrest on a mere general information would be illegal. It is necessary to know the plan for commission of a particular offence and the association of the particular person with it. Then, if the police officer is convinced

that without immediate arrest it will not be possible to prevent the commission of such offence, he will be justified in arresting that person even without warrant or orders of a Magistrate.

48.4 Further, under sec. 152, a Police officer may of his own authority interpose to prevent any inquiry attempted to be committed, in his view, to any public property, movable or immovable, or the removal or injury of any public land mark or buoy or other marks used for navigation.

Note: If such preventive action is taken by the police, commission of even some serious offences can be prevented. For this purpose collection of information through intelligence by police is essential. Action as desired U/s.150 Cr.P.C. (information of design to commit cognizable offence) is possible by collecting information through intelligence and communicating it. This is an important function of the police in the police laws.

*Based on Commentary Under the Section in 'Sarkar on Criminal Procedure' - Sixth Edition, 1991

CHAPTER - VI

Inquests And Inquiries Into Unnatural Deaths

(Sections 174 to 178 of Cr.P.C.)

49. Police to Inquire and report on suicide, etc, (sec.174)

- (1) "When a Police Officer in charge of a Police Station or some other Police Officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-Divisional Magistrate, shall proceed to a place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation and draw up a report of apparent cause of death describing such wounds, features, bruises and other marks of injury as may be found on the body and stating in what manner or by what weapon or instrument (if any), such marks appear to have been inflicted.
- (2) Report shall be signed by such Police Officer and other persons or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.
- (3) When :
 - (i) the case involves suicide by a woman within seven years of her marriage, or
 - (ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person has committed an offence in relation to such woman, or
 - (iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made request in that behalf, or

- (iv) there is any doubt regarding the cause of death, or
 - (v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined to the nearest civil surgeon, or other qualified medical man appointed in this behalf by the State Government, if the State of the weather and distance admit of its being forwarded without risk of putrefaction on the road on the road as would render such examination useless.
- (4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate".

Note: The scope of proceedings U/S. 174 is very limited, the object being merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so, what is the apparent cause of death.

Power To Summon Persons (Sec. 175)

50. (1) "A Police Officer proceeding under section 174, may by an order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
- (2) If the facts do not disclose a cognizable offence to which section 170 applies, such person shall not be required by the police officer to attend a Magistrate's Court".

Note:(a) 'Inquest' means, legal or judicial inquiry to ascertain the matter of fact. Another meaning given in the concise Oxford Dictionary is 'inquiry by corner's court into cause of death'. Section 174 of Cr.P.C. empowers the District Magistrate, or Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government to hold inquests.

- (b) The object of the section is to establish the cause of death of a person, which has come to the notice of the police, was unnatural or under suspicious circumstances, requiring investigation. Thus, the scope of proceedings being limited, there is no need to ascertain who is responsible and in what manner the death was caused or in what manner suicide was committed, etc. Only apparent cause of death depending on the physical features like injuries on the body, etc, is to be established.
- (c) A.P Police Standing Orders 630 to 645 provide detailed instructions regarding the procedure to be followed by the Police on receipt of information regarding unnatural and sudden deaths and during the course of the investigation, drawing up of investigation report, conduct of post-mortem examination by medical officer and points for inquiry. These A.P. Police Standing Orders also contain salient points to be remembered about inquests, inquest reports and post-mortem examination. It would be useful if these instructions are gone through thoroughly by the Police and the Magistrates empowered to hold inquests.
- (d) * If the dead body is not in existence or cannot be found because of its being burnt or care having been taken to its disappearance in spite of intensive search, the inquiry U/s. 174 is not possible; but If the death is suspicious the police investigates in the ordinary manner and a diary has to be kept U/s 172.
- (e) * [During inquest by the Magistrate empowered it is not necessary to record the statements of the witnesses, as the inquest is made just to indicate the injuries found on the body by observation which are recorded]. The signatures required under sub-section (2) refer to the respectable inhabitants of the neighbourhood in whose presence investigation is made. They have to sign the report along with the police officer, as required under sub-section (2).
- (f) The cases which call for post-mortem examination by a medical officer are mentioned in sub rule (3) of Sec. 174.
- (g) *(Inquest reports and post-mortem reports are not public documents entitling the accused to have copies or inspection during investigation, but he will be entitled to them during the trial). Under section 175 it is the police officer who is competent to summon the witnesses at the inquest and not the Magistrate.

51. INQUIRY BY THE MAGISTRATE INTO CAUSE OF DEATH

(Section 176)

- (1) When any person, while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub section (3) of section 174, the nearest Magistrate empowered to hold inquest shall, and in any other case mentioned in sub- section (1) of section 174 any Magistrate so empowered may hold an inquiry into the cause of death either instead of or in addition to, the investigation held by the Police Officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.
- (2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereafter prescribed according to the circumstances of the case.
- (3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.
- (4) Where an inquiry has to be held under this section, the Magistrate shall, wherever possible, inform the relations of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

Explanation : In this section the expression "relative" means parents, children, brothers, sisters and spouse.

Note: *(in the case of death in police custody, inquest is obligatory and in other cases it may be instead of or in addition to the investigation by police), since inquiry into suspicious death should not depend merely upon the opinion of the police, but its veracity should be checked further. If necessary the corpse can be disinterred (exhumed). As already mentioned earlier, no inquiry is possible if the corpse is burnt or could not be traced by any means.

- (b) The proceedings U/s.176 are an inquiry. *(The Magistrate holding such inquiry is not a court.) Such inquiry report and statements of witnesses recorded there in have no evidentiary value in future proceedings, when the Magistrate considers it essential to examine the dead body of a person already interred,

to find out the cause of death, he may under the section, cause the body to be disinterred and get it examined by the qualified medical officer..

- (c) According to A.P. Police Standing Order 640 - death of any person in Police custody should always be inquired into by a Magistrate. When a person dies in Police custody, an immediate report should be made to nearest Magistrate empowered to make inquests detailing the facts and circumstances so far known and the body should be preserved for inspection by the Magistrate. Statements made by the accused to the Magistrate holding an inquest U/s.176 of the Code of Criminal Procedure, 1973 and recorded are admissible as evidence against the accused.
- (d) Regarding death in Jail, the A.P. Police Standing Orders 641 indicates - that on occurrence of sudden or violent death or whenever there is doubt or complaint or question concerning the cause of death of any prisoner in jail, the inquest which the Magistrate has to hold under rule 567 of the Jail Manual should be preceded by an investigation by the Police U/s.174 of Cr. P.C. No Jail official or servant should be chosen a member of the panchayat. The presence of village headman should, if possible, be secured.
- (e) Salient points to be remembered about inquest, inquest reports, exhumation and post-mortem examination have been given in A.P. Police Standing Orders 645 -
- (f) The important points which require to be remembered at the time of exhumation and post-mortem examination are :
 - (i) Before commencing the investigation the Magistrate should make it a point to examine the witnesses to prove the identity of the disinterred body.
 - (ii) Exhumation of the dead body should be during day time only, not after Sun set.
 - (iii) Exhumation of the dead body should be done before two or more inhabitants of the locality and in the presence of a doctor.
 - (iv) As mentioned in Sub-section (4) of sec, 176, wherever practicable, relations of the deceased whose names and addresses are known should

be informed about the Exhumation and they may be allowed to remain present at the examination.

- (v) Crowding around the body and outside interference should be avoided.
 - (vi) After post-mortem, the body may be handed over to the relatives of the deceased, depending on the circumstances of the case.
- (g) The District Magistrate and Sub-Divisional Magistrate is also empowered to pass an order authorising any officer in charge of a Police Station or any Senior Police Officer lawfully making an investigation into the unnatural or sudden death of a person, whose body has been buried, to exhume it and get it examined by the nearest civil surgeon or any other qualified medical officer.
- (h) After conducting the inquest and seeing the post-mortem report and taking into consideration the circumstantial evidence collected, if the Magistrate is satisfied that there is no foul play regarding the death of the person in question he may close the case and send a report to the District Magistrate. If he suspects any foul play he should send a detailed report to the jurisdictional Chief Judicial Magistrate as the case may be U/s. 190 Cr. P.C. for further inquiry into the cause of the death of the deceased person. (sec 190 of Cr. P.C. deals with cognizance of offences by Magistrate.
- (i) For specimen forms to be used in this regard please see Annexure - V.

*Based on Commentary Under the Section in 'Sarkar on Criminal Procedure' - Sixth Edition, 1991

CHAPTER - VII

Evidence in inquiries and Trials Mode of Taking and Recording Evidence

(Sections 272 to 282 and 291)

- 52.1 The State Government may determine what shall be the language of each court within the state, other than the High Court (Sec. 272)
- 52.2 All evidence should be taken in the presence of the accused, in the course of a trial or other proceedings and when his personal attendance is dispensed within the presence of his pleader (sec. 273).
- 52.3 Under sec. 274 that in all summons cases and in all inquiries U/s. 145 to 148 (disputes as to immovable property) and sec. 446 (procedure when bond is forfeited) the Magistrate, as the examination of each witness proceeds, shall make a memorandum of the substance of the evidence in the language of the Court. If the Magistrate is unable to make such memorandum himself, he shall, after recording the reasons for such inability cause such memorandum to be made in writing or from his dictation in the open court. Such Memorandum shall be signed by the Magistrate, which shall form part of the record. Under this section evidence of the witness need not be recorded verbatim. It is sufficient if the full substance of the evidence is recorded as the examination of each witness progresses.
- 52.4 (i) If evidence is given in a language other than the language of the court it may be recorded in that language, if possible and as soon as practicable a true translation of it shall be prepared in the language of the court, as provided for in Sec. 277. Further, under Sec. 278, when the recording of evidence is completed it shall be read over to the witness from whom it is recorded, in his presence or his pleader and correction of any part of evidence recorded is necessary, when denied by the witness, a memorandum of the objection made by the witness be made and the Magistrate may add his remarks, which he thinks necessary.
- (ii) Whenever, any evidence is given in a language not understood by the accused and he is present in the court, such evidence has to be interpreted to him in open court in the language understood by him. However, if the accused appears through pleader and the language of the evidence given is not understood by the pleader (not being the language of the court) it shall be interpreted to the pleader in that language. When documents are put for the purpose of formal proof it shall be in the discretion of the court to interpret as much thereof as

appears necessary. (Sec. 279).

- 52.6 Under sec. 280 the Magistrate who has recorded the evidence of the witness, shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness while under examination (remarks about evasive, unfrank, suppressive or other demeanour may be recorded, as also courts' opinion that the bearing or the manner of speech was such as not to inspire confidence).
- 52.7 According to section 281(2) and (3) whenever the accused is examined by any Magistrate other than the Metropolitan Magistrate or by a Court of Sessions, the whole of such examination, including every question put to him and every answer given by him shall be recorded in full by the Magistrate himself or where he is unable to do so owing to physical disability or other incapacity, it shall have to be recorded under his dictation and superintendence by an officer of the Court appointed by him in this behalf. The record should be in the language in which the accused is examined or if that is not practicable in the language of the court. U/s. 281 (4) the record shall be shown or read over to the accused or if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers. U/s. 281 (5) it shall have to certify under his own hand, that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused. This section does not apply to summary trials (sec. 281 (6)).
- 52.8 Sec 282 directs that the interpreter of any evidence or statement shall be bound to state the true interpretation of such evidence or statement.
- 52.9 The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused may be given in evidence in any inquiry, trial or other proceedings under Cr.P.C although the deponent is not called as witness. The court may, if it thinks fit, on the application of prosecution or accused, summon and examine any such deponent as to the subject matter of his deposition (sec. 291).

CHAPTER – VIII

General provisions as to enquiries and trials

- 53.1 Any person accused of an offence before a criminal court or against whom proceedings are instituted under Cr. P.C. has got a right to be defended by a pleader of his choice (Sec. 303). Reasonable time must be given to engage a pleader. Right to be defended by a pleader implies right to previous consultation and advice and right to advance arguments. The accused has a right that his pleader must be heard. Refusal to hear the pleader is an illegality vitiating the trial. Communication between an accused and his legal advisers are privileged and confidential (sec. 126 of Evidence Act).
- 53.2 In every inquiry or trial the proceedings shall be held as expeditiously as possible and in particular when the examination of witness has begun, the same shall be continued from day to day until all the witnesses in attendance have been examined unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. Further, when the witness are in attendance no adjournment or postponement shall be granted without examining them, except for special reasons to be recorded in writing (sec. 309 of Cr. P.C.)
- 53.3 Under section 310, the Magistrate may at any stage of the inquiry or trial or other proceedings, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any place in which, it is, in his opinion, necessary to view for the purpose of properly appreciating the evidence given during the inquiry or trial, and shall immediately, without any delay, record a memorandum of any relevant facts observed at such inspection. Such memorandum shall form part of the record of the case and copy of it shall be furnished free of cost by either party to the proceeding.
- 53.4 Sec. 311 empowers the court to summon any person as a witness or examine any person in attendance through not summoned as a witness or recall and examine any person already examined or summon him at any stage of any inquiry, trial or proceeding, if such person's evidence appears to the court essential to the just decision of the case.
- 53.5 Sec. 312 provides for payment of expenses of complainants and witnesses attending the court, as the Criminal Court has got power to order for payment of the reasonable expenses.

- 53.6 Any party to the proceedings may soon after the close of evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum to the court setting forth concisely and under distinct heading, the arguments in support of his case. Every such memorandum shall form part of the record and a copy of it should, simultaneously, be furnished to the opposite party. (Sec 314)
- 53.7 (a) Under section 311 (5) the accused person can be a competent witness for the defence and he may give evidence on oath in disproof of the charges made against him. He shall be so called as a witness only when he makes a request in writing and failure to give evidence cannot be allowed to give rise to a presumption against him.
- (b) Any person against whom proceedings are instituted in any Criminal Court U/s. 107 or section 108 or section 109 or section 110 or U/s. 133 to 148 may offer himself as a witness in such proceedings. However, in the proceedings U/s. 108 to 110, the failure of such a person to give evidence shall not be made the subject of any comment by any of the parties or the court or give rise to any presumption against him or any other person proceeded against together with him in the same inquiry.
- 53.8 Under section 327 (1) of the Cr. P.C. the place in which any Criminal Court is held for the purpose of an inquiry is deemed to an open court, is held for the purpose of an inquiry is deemed to an open court, to which public generally have access so far as the same can conveniently contain them. However, under provision to this section the Magistrate may in a particular case, order the public generally or any particular person shall not have access.

54. Language and contents of the orders / Judgments pronounced.

- (i) Every order under section 117, or section 138 (2) and every final order made under sections 145 or section 147 shall contain point or points for determination, the decision thereon and the reasons for the decision (sec. 354 (6)) and shall be written in the language of the court (sec. 354 (1)(a).
- (ii) The Court must base its conclusion only on the evidence recorded in the case. The reasons for conclusion should be substantial. Careful analysis and appraisal of evidence is absolutely necessary. The order should be self contained and should show that the Magistrate has applied his mind to the facts and evidence justifying the conclusion (Sec. 354 (1)(b).

- (iii) The language used be temperate and sober.
- (iv) It should ordinarily be pronounced in an open court soon after the conclusion of the proceedings. If it could not be so pronounced due notice shall be given to the parties or their pleaders of the date of final orders. (sec. 353 (1))
- (v) The whole of the final order shall have to be delivered by reading as far as possible or the operative part shall be read out and explained in the language understood by the parties or the pleader. (sec. 353(1))
- (vi) The final order must be dated and signed by the Magistrate at the time of pronouncing it in the open court and each page requires to be initiated and dated. (Sec. 353 (2) & (3).
- (vii) The order once pronounced can never be altered or reviewed by the same court, except to correct a clerical or arithmetical error as already mentioned earlier (sec. 362).
- (viii) An order dropping the proceedings U/s. 107 on the ground that danger to breach of peace no longer exists, is a final order and it cannot be reviewed or reconsidered by the same Magistrate.
- (ix) A copy of the order should be furnished to the accused immediately after its pronouncement, free of cost. (Sec. 353 (4). When a final order is made U/s. 117 and if the respondent is sent to jail for non production of surety, copy of the final order shall be given to him free of cost. However, in case, where the respondent is not sent to jail and if he makes an application, he should be given a certified copy of the final order and if he so desires, translation in his own language, if practicable or the language of the Court. (Sec. 363)
- (x) Under sec. 365 of Cr. P.C. the Courts of the Sessions Judge and the Chief Judicial Magistrate shall have to send copies of its findings and sentences, if any, passed in the trials conducted by them to the District Magistrate within whose local jurisdiction the trial was, held. The purpose is to enable the District Magistrate to be posted with information about serious offences committed within his jurisdiction.

CHAPTER - IX

Appeals And Revisions

55.1 Sec. 373 of Cr.P.C. provides that any person who has been ordered under Sec. 117 to give security for keeping peace or for good behaviour, or who aggrieved by any order refusing to accept or rejecting a surety under sec. 121, may appeal against such order to the court of sessions ;

Provided nothing in this section shall apply to persons, the proceedings against whom are laid before Sessions Judge in accordance with the provisions of sub-section(2) or sub-section(4) of sec. 122.

55.2 Every appeal made should be in the form of a petition in writing presented by the appellant or his pleader and it should be accompanied by a copy of the order judgment applied against (sec. 382). As per sec. 383, if the appellant is in jail, he may submit his appeal to the officer-in- charge of the jail, who shall thereupon forward it to the proper appellate court. Sec. 384, 385 and 391 deal with as to how appeals are dealt with and sec. 386 deals with the powers of the appellate courts.

55.3 According to explanation under sec.397(1) Cr.P.C. all the Executive Magistrates are deemed to be inferior to the Sessions Judge for the purpose of sections 397 and 398; providing for revision of cases disposed by the Executive Magistrate.

55.4 Sec.399 and 400 deal with the powers of revision by the Sessions Judge and the Additional Sessions Judge and sec.401 that of the High Court.

55.5 Under sec. 411 any District Magistrate or sub-Divisional Magistrate may-

- (a) make over, for disposal, any proceedings which has been started before him, to any Magistrate subordinate to him;
- (b) withdraw any case from or recall any case which he has made over to any Magistrate subordinate to him and dispose of such proceeding himself or refer it for disposal to any other Magistrate; and

Section 412 requires the Magistrate to record reasons for his action U/s. 411.

56 TABLE SHOWING ORIGINAL AND APPELLATE / REVISIONAL JURISDICTION

Section No. of Cr.P.C	Original Jurisdiction	Appellate / Revisional Jurisdiction
107 - Security for keeping peace	Executive Magistrate	Sessions Judge U/s.373 (Appellate) and High Court and Sessions Judge U/s.397 (Revisional)
108 ot 111- Security for good behaviour	-do-	-do-
116 (6) - Permitting continuation of proceedings after the time limit of six months prescribed for automatic termination of proceedings from its commencement.	-do-	-do-
117 - Order to give security	-do-	-do-
121 - Refusal to accept security offered.	-do-	-do-
124 - Security for unexpired period of bond	-do-	-do-
133 - Conditional order for removal of nuisance.	-do-	-do-
138 - When a conditional order U/s. 133 is made absolute	-do-	-do-
144 - Prohibitory order in cases of apprehended danger.	-do-	-do-
145-Order as to actual possession of immovable property	-do-	-do-
146 - Order of attachment of the property in dispute.	-do-	-do-
147 - Prohibitory order concerning right of use of land or water.	-do-	-do-

CHAPTER X

Miscellaneous

57. Power to alter functions allocated to Executive Magistrates

Under sec.478, if the Legislative Assembly of a State by resolution so permits, the State Government may, after consultaion with the High Court, by notification, direct that references in sections 108,109 and 110,145 an 147 to an Executive Magistrate, shall be construed as references to a Judicial Magistrate of the First Class.

58. Death or insolvency of surety or forfeiture of Bond

Sec. 447 permits - that when any surety becomes 'insolvent' or 'dies' or when a Bond is forfeited U/s. 446 the Court or the Magistrate may order the person from whom security was demanded, to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, the court or Magistrate may proceed as if there had been a default in complying with such original order.

59. Bond required from minor (sec.448)

When the person required by a Court, or officer to execute a bond is a minor, such court or officer may accept in lieu there of, bond executed by a surety or surieties only.

60. Imprisonment or committal of person refusing to answer or produce document

Sec. 349 provides that if any witness or person called to produce a ducument or thing before a criminal court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power, which the court requires him to produce, and does not, after reasonable opportunity has been given to him to do so, offer any reasonable excuse for such refusal, such court may, for reasons to be recorded in writing, sentence him to a simple imprisonment, or by warrant commit him to custody of an officer of the court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document, or thing

and in the event of his persisting in his refusal, he may be dealt with according to section 345 (procedure in certain cases of contempt) or section 346 (procedure where court considers that the case should not be dealt with U/s. 345)

61. According to Section 346

If the court in any case considers that a person accused of an offence referred in sec. 345 (certain cases of contempt) should be imprisoned or that he should be fined to an amount exceeding rupees two hundred, it may record the facts constituting the offence and also record the statement of the accused before proceeding under this section and may forward the same to a Magistrate having jurisdiction to try the same. Further, the court may require the security to be given for the appearance of such person before such Magistrate, or if such security is not given shall forward such person in custody of such Magistrate. The Magistrate to whom any case is forwarded under this section, shall proceed to deal with, as if it was instituted on a Police Report.

When a court chooses to take action U/s. 346, instead of U/s. 345, it must give reasons for not taking cognizance of the offender U/s. 345.

62. Sec. 350 provides for summary procedure for punishment for non-attendance by a witness in obedience to summons

63. Section 351 provides for appeals for convictions U/s. 349 and 350.

Swearing of affidavits

64. Under section 297(1) (a) affidavits to be used before any court under the Cr.P.C may be sworn or affirmed before an Executive Magistrate also, besides other authorities mentioned in the section.

65. Forfeiture of Bond (sec.446 of Cr.P.C)

- 1) When it is proved to the satisfaction of the Court that the bond obtained has been forfeited, the Court shall record the grounds of such proof and may call upon any person bound by such bond to pay the panalty thereof or show cause why it should not be paid. (sub-section(1)).

- 2) If sufficient cause is not shown and the penalty is not paid and cannot be recovered in the manner provided, the person so bound as surety shall be liable to imprisonment in civil jail for a term which may be extended to six months; by an order of the court ordering the recovery of the penalty. (sub sec.(2))
- 3) Under sub section (3) the court may, at its discretion remit any portion of the penalty mentioned and enforce payment in part only.
- 4) Where a surety to a bond dies before the bond is forfeited, sub section (4) provides for his discharge from all liabilities in respect of the bond.
- 5) Under sub section 446(5) of Cr.P.C. where any person has furnished security under sec. 106 (security for keeping peace on conviction), or sec. 117 (order to give security) or sec. 360 (order to release on probation of good conduct or after admonition) is convicted of an offence the commission of which constitutes a breach of the condition of his bond, or of a bond executed in lieu of a bond under sec. 448 (bond required from a minor), a certified copy of the judgment of the court by which he was convicted of such offence may be used as evidence in proceedings under this section (i.e., sec. 446 dealing with procedure when bond has been forfeited) against his surety or sureties, and if such certified copy is so used, the court shall presume that such offence was committed by him unless the contrary is proved.

Note: Form Nos. 47, 48 and 49 of Annexure - I are to be used under this section.

Cancellation of bond (sec. 446-A)

- 66.1 Without prejudice to the provisions of sec. 446, where a bond is for appearance of a person in a case and it is forfeited for breach of condition-
- (a) the bond executed by such person, as well as the bonds executed by the sureties shall stand cancelled and
 - (b) there after, no such person shall be released only on his own bond unless the police officer or the court before whom bond was executed as the case may be, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with the condition, provided that subject to any other provision of the Cr.P.C, he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or Court, as the case may be, thinks sufficient.

66.2 Insolvency or death of surety or when bond is forfeited (sec.447) :

when any surety to a bond becomes insolvent or dies, or when any bond is forfeited under sec. 446 the court or Magistrate by whose order such bond was taken, may order the person from whom such security was demanded to furnish fresh security in accordance with the direction of the original order, and if such Court or Magistrate may proceed as if there had been a default in complying with the original order.

66.3 Appeal

Under sec. 448 appeal lies to the Sessions Court against the order of a Magistrate and to the competent court in case of an order made by Sessions Court.

67. Mode of communication between judicial and Executive Magistrates

The following Rules of Criminal Rules of Practice and Circular Orders, 1990- deal with this aspect.

R.267 : All proceedings of Court of Sessions addressed to any Executive Magistrates shall, except in cases of urgency or when the law sanctions a different course, be sent to the Executive Magistrate concerned through the District Magistrate.

R. 268 : In urgent cases, the Court of Sessions shall send the proceedings to the Executive Magistrate concerned and the District Magistrate simultaneously.

R.269 : In calling for records from an Executive Magistrate U/s.385 (2) or 397 of the code (i.e.code of Criminal Procedure) Sessions Judges may address the Executive Magistrates, in whose custody the records are, without the intervention of the District Magistrate. The records so called for may, likewise, be transmitted directly to the concerned courts after the disposal of case.

CHAPTER - XI

Dying Declarations

68.1 Section 32(1) of the Indian Evidence Act provides that

“ When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question-

such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

Note: The statement referred to in the section is popularly known as 'DYING DECLARATION'. There is a belief that a person on the verge of death will not lie or in other words, 'truth sits on the lips of the dying person'. It forms part of the record of investigation.

68.2 Rule 33 of Criminal Rules of Practice and Circular orders, 1990 dealing with Dying Declaration, States as follows:

- (1) “While recording a Dying Declaration, the Magistrate shall keep in view the fact, that the object of such declaration is to get from the declarant the cause of death or circumstances of transaction which resulted in death.
- (2) Before taking down the declaration, the Magistrate shall disclose his identity and ask the declarant whether he is mentally capable of making a declaration. He should also put simple question to elicit answers from the declarant with a view to knowing the state of mind and should record the questions and answers signs and gestures together with his own conclusion in the matter. He should also obtain whenever possible a certificate from the medical officer as to the mental condition of the declarant.
- (3) The declaration should be taken down in the words of the declarant as far as possible. The Magistrate should try to obtain from the declarant particulars necessary for identification of the accused. Every question put to the declarant and every answer or sign or gesture made by him in reply shall be recorded.

- (4) After the statement is recorded, it shall be read over to the declarant and his signature obtained thereon, if possible, and then the Magistrate shall sign the statement"

Note: The Magistrate or if he could not be procured, the Medical Officer or even Police Officer, in special circumstances, may record it. It is very essential and proper that the dying declaration is recorded in the very words of the victim's stated above. If it is recorded in a language other the one in which the victim gave the declaration i.e., not known or understood by the victim, it should be read over to him properly interpreting in the language known to him or could understand and it should be certified to that effect at the foot of the declaration.

68.3 A.P. Police Standing Order No.526 states as follows :-

"S.O. 526 Dying declaration :- (1) the statement made by a person as to the causes of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question is admissible in evidence clause (1) of Section 32 of the Indian Evidence Act. Such Statement is relevant whether the person who made it was not, at the time when it was made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

- (2) The declaration may be recorded by any person. But the declaration should preferably be recorded by a Magistrate, if readily available. Where this is not practicable, the investigating officer may record it, preferably in the presence of a witness. Even if the declaration is made to a Police Officer, it is admissible in evidence and its use is not barred by Section 162 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974). Even if it has been made orally in the presence of any person, it may be proved in court by the oral evidence of that person. The declaration becomes admissible, if the declarant subsequently dies. If he survives, it will be useful, if made before a Magistrate, or any one other than a Police Officer, to corroborate his oral evidence as witness in court. If it was made before a police officer, it will be treated as a statement under Section 162 of the Code of Criminal Procedure, 1973 (Act. No.2 of 1974).

- (3) The declaration must, as far as possible, be complete by itself. The person making the declaration must be speaking from personal knowledge of the facts. If reduced to writing by the police, the declaration should, as far as

possible, be in form of questions and answers and in the very words of the declarant. The signature of the declarant should invariably be taken on the dying declaration. But, if the declarant is an illiterate or is incapacitated from signing for any reason, such as his hand being maimed, his thumb impression should be taken. A note should be made in the dying declaration giving reasons why the signature of the declarant was not taken.

- (4) When the declarant, being in a serious condition and unable to speak, makes signs by hand or head, the person recording the dying declaration must record the precise nature of the signs which the declarant made.
- (5) Incomplete dying declarations are not by themselves inadmissible in law. Though a dying declaration is incomplete by reason of the deceased not being able to answer further questions in his then condition, yet the statement, so far as it goes to implicate the accused, could be relied upon by the prosecution, provided it is quite categorical in character and complete by itself so far as the implication of the accused is concerned. If there is corroboration for the dying declaration, it is so much the better, as the incomplete dying declaration would then be invested with the stamp of truth."

Note:(a) Even if the injured person (declarant) is in senses but not in a position to speak coherently by mouth, it is desirable to put short questions and answers given by his gestures should be recorded faithfully. In such circumstances the gestures as answers should be properly interpreted and same leading questions are permissible to elicit proper answers but not as to tutor the deponent. It is essential for the person recording the declaration to be sure that the injured person is able to understand what is being asked by him and his gestures as answers correspond to the information required of him. This should also be recorded.

- (b) One important aspect which should be made sure at the time of recording the declaration is, that the place should be cleared of his relatives and all others so as to avoid prompting by such persons. The declarant should give out the information being recorded out of free will and without the influence of anybody.
- (c) The person should record on the declaration taken by him that the injured person giving the declaration is in a fit condition to speak coherently or in his senses and able to comprehend the questions put to him and respond properly by gestures if he is unable to speak.

- (d) A dying declaration being a statement made by a victim as to the cause of death or as to the circumstances which resulted in his death, the questions put to him should be limited to these aspects, as far as possible.

68-4 A specimen form for recording the dying declaration is given in Annexure - II.

CHAPTER XII

Identification of the accused

(Identification Parade)

69.1 Whenever a witness says that he can identify the accused persons or others connected with crime under investigation, the investigating officer will generally arrange for an identification parade to be conducted by a Magistrate. Rule 34 of Criminal Rules of Practice and Circular Orders, 1990 directs as below:

“Identification Parades:

In conducting identification parades of suspects, the Magistrate shall observe the following rules :

- (i) (a) The police should send a requisition for holding identification parade by the Magistrate as nominated by Sessions Judge. On such requisition the Magistrate shall conduct the identification parades as expeditiously as possible.
- (b) when bail application is pending for the release of the accused and on being informed so by police officer, the Magistrate shall, as far as possible fix date earlier to the date of arguments on the bail application and hold the identification parade.
- (ii) (a) As far as possible, non suspects selected for the parade shall be of same age, height, general appearance and position in life as that of the accused. Where a suspect wears any conspicuous garments, the Magistrate conducting the parade shall, if possible, either arrange for similar wear to others or induce the suspect to remove such garment.
- (b) The accused shall be allowed to select his own position and should be expressly asked if he has any objection to the person present with him or the arrangements made. It is desirable to change the order in which the suspects have been placed at the parade during the interval between the departure of one witness and the arrival of another.
- (iii) (a) The witnesses who have been summoned for the parade shall be kept out of the view of the parade and shall be prevented from seeing the prisoner before he is paraded with others.

- (b) Before the witness is called upon to identify the suspect, he should be asked whether he admits poor acquaintance with the suspect when he proposes to identify. He shall also be asked to state the marks of identification by which he can identify the suspect.
- (c) Each witness will be fetched by a peon separately. The witness will be introduced one by one and on leaving shall not be allowed to communicate with witnesses still waiting allowed to see the persons paraded."

69.2 The following instructions in the A.P. Police Standing Orders should be taken into account besides the above, in conducting such identification parade, if any Executive Magistrate has been entrusted with such duty. (S.Os. 590 to 598).

S.O. 590:- When a witness says that he can identify accused persons or others connected with the case under investigation, the investigating officer shall record their description in detail.

S.O. 591:- When a parade has to be held for the identification of a person or persons by a witness, such person or persons shall be carefully kept out of the view of the witness, and mingled with considerable number of other persons of a like class.

S.O. 592:- Identification parade shall as far as possible, be conducted by a Magistrate. If the services of a Magistrate are not easily procurable, the identification may be conducted by independent persons of the Locality, not in any way connected with or concerned in the case. After making all arrangements for the parade, the police officers should completely efface themselves, leaving it to the Magistrate or the Panchayatdars to conduct the actual identification proceedings.

S.O. 593 :-

- (1) The accused should as far as possible be mingled with persons of similar description, status, build and age in the proportion of a minimum 1 : 5 and a maximum of 1 : 10 and they must be made to take their positions along with the persons with whom they are mingle up, in a line. They should not be made to stand together. The Magistrate or other persons conducting the parade should satisfy himself or themselves that no police officer takes part in the actual identification proceedings; that witnesses are kept out of view from the premises where parade is taking place and that it is not possible to communicate through

signals or other communications. Witnesses should then be called in, one by one, and that they should be asked to go round the persons assembled for the parade and point out the accused, if any. If a witness identified any of the accused, it should be verified whether his description tallies with that recorded already in the case diary and proceedings regarding identification should be drawn up. If the identification is held by a Magistrate, the proceedings should be drawn up and signed by him. If the identification is held by Panchayatdars in the absence of Magistrate, the proceedings should be draw up by one of the Panchayatdars and attested by all of them. Statements made by the identifying witness to the Panchayatdars at the time of the identification should be recorded in the proceedings. Even if a witness makes a mistake, it should be recorded. In short, the proceedings must contain a complete record of all that takes place in the identification parade. After identification by one witness is over, care should be taken to see that witness does not mingle or communicate with the other witness for whom identification parade is yet to be conducted or other outside persons and the whole parade will be reshuffled and the accused made to take different positions. If the accused so desire, they should be allowed to change their dress also. The same procedure will be repeated in the case of other witnesses also. Any well founded objection by any accused during the identification parade should be recorded. After the completion of the identification parade and drawing up of the proceedings, a certificate must be appended as follows and signed by the Magistrate or Panchayatdars conducting the parade :

- (i) "I/We, the undersigned, took all necessary precautions and am/are satisfied that no police officer is present at any time of the proceedings when the parade was held.
 - (ii) No opportunity was given to the witnesses to see or know about the proceedings of the parade."
- (2) The proceedings of an identification parade cannot be used as evidence against accused persons, unless the Magistrate or Panchayatdar who recorded it, has been called as a witness.

S.O. 594: When the identification parade is held in jail ;

- (1) The jailor on admission of the suspect should be informed of the coming identification;

- (2) The jailor should prohibit any change in the appearance of the prisoner from that in which he was admitted to jail, eg; beard not to be shaven or grown and the same clothes to be worn as at the time of entry ; and
- (3) The conducting officer should keep a detailed record of the proceedings.

S.O. 595: The following are the salient points to be borne in mind by police officers arranging identification parades :-

- (1) Secure the services of a Magistrate for holding the identification parade.
- (2) If this is not possible, secure two or more respectable and independent persons of the locality to hold the parade.
- (3) Do not select persons already known to the identifying witnesses to stand along with the suspects in the parade.
- (4) Others participating in the parade should be of the same build, age, dress and appearance as the suspects.
- (5) Maintain a minimum proportion of 1:5 and a maximum proportion of 1:10.
- (6) Distribute the accused among others. They should not be made to stand together.
- (7) Keep the accused out of the view of the witnesses and take precautions to prevent their being seen by others from the time of their arrest, if they are to be put up for identification parade subsequently.
- (8) Shuffle the persons in the parade after identification by each witness and make a record of having done so in the proceedings.

S.O. 596:

- (1) Photographs of certain classes of criminals, for instance, professional prisoners, are maintained in the District Crime Bureau. Photographs exist also for dossier criminals. Witnesses may be shown the photographs and asked to satisfy. In cases where criminals are identified through the photographs a regular identification parade should also be held after the apprehensions of the accused.
- (2) When identification is sought to be made through photographs, single and individual photographs should not be shown to witnesses. Photographs of as many persons as possible, among which should be the suspects photograph,

should be shown to the witness, who should be asked to pick out from among them the suspect's photograph, if it is there.

S.O. 597: Identification can also be established from finger impressions left on the scene. Finger impressions found on the scene can be developed and tested to find out whether they tally with those of the suspected persons or not. Foot impressions left on the scene can also be lifted and compared later with foot impressions of the suspects.

S.O. 598: As prescribed by Sec. 298 of the Cr.P.C. a previous acquittal can be proved by a certified extract from the court record and the previous conviction either by such extract or by a certificate from the jailor or the warrant of commitment together with, each of such cases, evidence as to the identity of the accused person with the person so acquitted or convicted.

A specimen form which will be of useful guidance in drawing up the proceedings of the identification Parade is given in Annexure – III.

CHAPTER – XIII

Police and Magistracy

(inter relations and interaction)

7.0 The following provision of the A.P. Police Standing orders highlight the interrelationship and interaction between the police and the magistracy.

S.O. 36(1) (a): “The District Magistrate as the Chief Executive authority in the district is primarily responsible for the maintenance of law and order and criminal administration- that is to say, control of crime and matters touching the prosecution and conduct of criminal cases in the courts, but does not include administration of justice or performance of criminal courts. It is, therefore, the duty of the Superintendent of Police to keep him fully informed both by personal conference and special reports of all matters of importance concerning peace of the district and the state of crime. For the purpose of control of frame and maintenance of law and order, the police force in the district will be under the control and direction of the District Magistrate. In the important matters of the above nature, the superintendent of Police should obtain the orders of the District Magistrate.”

S.O. 46 (1) In Cases of a specially grave nature, the Gazetted Officers of the Police Department shall inform the District Magistrate, besides other high police officials and the government, by telegram or by wireless message, as soon as they come to know the occurrence of grave crime, viz; Dacoity, Murder of sensational nature, Highway robbery, communal rioting, possession and manufacture of bombs, abduction or kidnapping of women and children, assault on police, death alleged to have been caused by police officer, fast hartal satyagraha or strike of any kind and agrarian trouble, serious accident or natural calamity in which human lives are involved, railway accident, except where it is trivial, serious fire accident involving loss of properties worth Rs. 50,000/- and above or loss of human life etc.

S.O. 34 (3) Every Deputy Inspector General of Police should send copies of his tour programme to the D.G.P. and to the Collectors concerned.

S.O. 34 (4)(c)

A copy of the notes of inspection of the offices conducted by the Deputy Inspector General of Police, on the district as a whole, should be sent to the Collector of the District. Even though copies of notes of inspection on individual stations, circles etc. need not be sent to the Collector, but if they contain matters of interest to him or which in the interests of the Police department, the Collector should necessarily be informed about them.

S.O. 55 (1)(a) Cases of death or grievous hurt alleged to have been caused by a Police Officer whether in his public or private capacity or to have occurred to any person while in police custody, and

(b) Torture, i.e., all cases of hurt or more serious injury inflicted by a police officer for the purpose of extracting a confession or information, should always be inquired into by a Magistrate.

(2) When a person dies in police custody, an immediate report should be made to the nearest Magistrate to hold inquests detailing the facts and circumstances so far as known, and the body should be preserved for inspection by the Magistrate.

S.O. 56 In this standing order procedure is prescribed in dealing with charges against the police for torture or of causing death or grievous hurt. The sub-divisional Magistrate will conduct the preliminary inquiry, on receipt of information as to commission of the offence or on a direction by the District Magistrate.

S.O. 58 The highest executive Magistrate present is entitled to take the salute at the ceremonial police parades, eg. those held on Republic Day or Independence Day.

S.O. 155 (21) All Police Officers and men will salute the court (the Magistrate or Judge) on entering the Court Room.

(Under Indian Arms Act) S.O. 346

(a) Any person arrested by Police for having been found carrying or conveying any arms or ammunition covered by licence or not...., should be taken, without unnecessary delay (with arms and ammunition) before the Magistrate. A charge

sheet is laid before the Magistrate having the jurisdiction.

- (b) The District Magistrate's sanction is necessary U/s.39 of the Act for prosecution U/s.25(1) (a), 25 (i) & (ii) and 27 of the Act. Under S.O. 615 the S.H.O. may himself apply to the Collector and District Magistrate through the C.I. to sanction initiation of such proceeding.

S.O. 349 If, on inspection, the police find that arms and ammunition are supplied to persons whose exemption (from licence to possess and to bear arms) seems to be doubtful, steps should be taken by the Police to ascertain the fact of exemption from the provisions of the Arms Act, and if not, report the matter to the District Magistrate.

S.O. 351 (1) Applications for new licences are made to the District Magistrate in the Districts and the Commissioner of Police in the City, who are the authorities empowered to grant licences, for the possession of weapons other than revolvers and pistols. The District Magistrate, after getting a report from the Police, issues or refuses to issue license.

(2) About the end of September, each year, the Superintendent of Police will supply the District Magistrate confidentially, with any information which would appear to render the renewal of any existing licence inexpedient.

(3) When a District Magistrate grants, cancels or refuses to renew a licence he will intimate to the Station House Officer concerned. The S.H.O. in turn reports promptly to the District Magistrate through the Superintendent of Police, the action taken in case of a licence cancelled or refused renewal.

S.O. 352 If the licence or order of the District Magistrate sent by post is returned through the dead letter office, it should be sent out for delivery to the addressee through the local Revenue Mandal Officer or the Officer in Charge of the nearest Police Station.

S.O. 355 (1) All the District Magistrates, Tahsildars (M.R.O.'s) and SHO's will keep in Form – A, decennial registers of licence issued under the Arms Act in Form III-A to persons residing in the areas with which they are respectively concerned.

(2) In the second fortnight of February and August of every year each SHO will take or send his register to the MRO Office, have it checked with the

register maintained in that office, corrected and brought up to date and obtain the initials of the clerk concerned in the MRO office.

- (3) At the end of each month, the District Magistrate will forward to the Tahsildar (MRO) and SHO concerned, the lists of the licence granted, renewed and cancelled.
- (4) Not later than 15th January of each year, the District Magistrate will forward to the Superintendent of Police lists of licences who have not applied for renewal before 1st January of their licences, with a request that he will ascertain and report the causes of the omission, whether the arms have been deposited in the Police Station or whether prosecution has been instituted. The lists have to returned to the District Magistrates' office not later than 15th March by the Superintendent of Police with his report and recommendation.
- (5) The Superintendent of Police will report not later than 1st February, annually, to the District Magistrate on the maintenance of registers by SHO's during the previous year, for compiling his annual report.

S.O. 356 (1) If any changes occur in the register of fire arms forming part of arms equipment of police in each district (Form 50 under Indian Arms Act) due to transfer of officers or disposal of weapons owned by them or purchase of new arms, such changes should be reported quarterly to the District Magistrate or the Commissioner of Police, as the case may be, indicating briefly the nature of change.

- (2) The police officers possessing fire arms should produce their fire arms once a year, preferably in December, before the nearest Deputy Commissioner of Police or the Revenue Divisional Officer, as the case may be.

S.O. 357 (1) The result of annual inspection of shops and premises licenced under the Arms and Explosives Acts by Sub Divisional Police Officers, should be forwarded to the District Magistrate, through the Superintendent of Police, who will then take such steps which are needed with regard to the irregularities brought to his notice.

- (2) Any SHO who receives a report of the loss of any fire arm, should communicate the particulars of the case, through the proper channel, to the District Magistrate of the District in which such license resides.

- S.O. 358 The result of reports of inspection of shops, premises and stocks of fire arms etc., by the Sub Inspector quarterly and by the Circle Inspectors half yearly and their surprise inspection should be reported to the District Magistrate, through the Superintendent of Police.
- S.O. 359 An extract from the 'Register of Arms Forfeited' has to be sent to the District Collector in duplicate, for his orders declaring the arms forfeited to the Government. Where the duplicate is returned by the District Collector with extract of his order, the arms shall be sent to the District Collector's office under proper acknowledgment.
- S.O. 361 In respect of arms and ammunition confiscated, which can be utilised by the Police or any other Government Department may be retained and brought to use with the sanction of the District Magistrate in respect of his district and by the D.G.P. for the whole State.
- S.O. 363 Confiscated and forfeited fire arms and ammunition can be sold in public auction by the District Collector in each district and by the Deputy Commissioner, Armed Reserve in the city of Hyderabad subject to the upset price fixed.

Miscellaneous

- S.O. 367 Whenever the SHO finds that any pandal put up for celebrating a festival does not satisfy the specifications prescribed for precautions against fire, he should, in the interests public safety, at once move to the Magistrate having jurisdiction over the area to issue an order U/s. 144 of the Cr. P.C. to stop the festival and take steps to see that such orders are obeyed and no breach of peace is committed.
- S.O. 372 (1) In the case of temple cars which are dragged in procession in certain festivals, if in the opinion of the SHO, on his inspection (at atleast a month before the date fixed for the festival) that the temple car is unsafe, he should send a report to the District Magistrate concerned, at least 21 days before the date of such festival with a copy to the nearest P.W.D. The sub divisional officer of such PWD shall inspect the car and report to the result of his inspection to the District Magistrate.
- (2) In respect of rafts used for such festive occasions the Police should send a report at least 21 days before the date of the festival, besides making a

request to the nearest PWD officer to examine the raft. If the car or raft is found unsafe and not certified, the S.H.O. should immediately obtain an order from the Magistrate preventing the car or raft being used. The circle Inspector should also pay attention in the matter.

S.O. 374 (Places of Public Resorts)

- (i) In Municipal towns and Places to which the provisions of the Places of Public Resorts Act has been extended, a licence from the Chairman, Municipal Council or a Magistrate having jurisdiction over the local area, has to be obtained before using the place or building with an area of 500sq. Ft. or upwards, for public resort. (See further, in this chapter the matter under the heading 'A.P. Places of Public Resort Act, 1880').

S.O. 375 (Dead destitutes)

Destitute persons found dying of disease or starvation, in towns must be taken to the nearest hospital or dispensary, by the Police. If refused admission, the orders of the Magistrate should be obtained.

S.O. 381 (Under Indian Cinematograph Act and the Indian Electricity Act)

- (1) Offences under the Cinematograph Act, arising out of non-compliance with the orders of the Electrical Inspector to Government will have to be reported by Electrical Inspector to the licensing authority (Commissioner in the City of Hyderabad and the District Collector in the mufasal) and his sanction obtained for prosecution of the accused. When sanction is received, the Electrical Inspector may lodge a complaint, with the Magistrate having jurisdiction on such complaint, the magistrate may issue an order for the investigation of the case by the police, under sub-section (2) of section 155 of Cr. P.C.
- (2) In case of non-cognizable offences under the Indian Electricity Act, the Electrical Inspector or any other person aggrieved may make a complaint to the Magistrate having jurisdiction. On receipt of such complaint, the Magistrate may issue an order for investigation by Police U/s. 155(2) of Cr.P.C.

S.O. 388 (Natural Calamities)

- (1) In the situations of natural calamities, the police should render all possible assistance to the Revenue, Public Works and other departments engaged with

rescue, relief and rehabilitation work, so that the counter and remedial measures taken may be expeditious and effective.

- (2) Whenever the local police get timely intimation of danger from floods, they should pass it on as soon as possible to the concerned district authorities like Revenue, Public Works, Medical and Health Departments. They should also warn the inhabitants of the low lying areas of the impending danger and render all possible assistance to the officers of other departments without detriment to their essential duties.
- (3) The Superintendent of Police, on receipt of information should proceed to the scene with as much force he can mobilise, Collect information as to the extent and seriousness of the situation and inform the D.G.P., the range C.I.D., D.I.G. and the District collector by the quickest possible means. He may also, if necessary, request the Collector to call for assistance from the army, or other service units. He should report all important developments to the D.G.P., the range C.I.D., D.I.G. and the District Collector by Radio, followed by detailed reports as soon as possible.

S.O. 390 (Tours of Ministers)

- (1) When a Cabinet Minister, Minister of State of the Government of India or the Chief Minister of other State arrives in Hyderabad City, the Collector, Hyderabad District and the Commissioner of Police will meet him on arrival and also see him off at the Air Port or at the Railway Station. The Gazetted Assistant to the Collector and the Deputy or Assistant Commissioner of Police will meet the Chief Minister of another State on arrival at the State Head Quarters and see him off at the Air Port or Railway Station as the case may be.
- (2) Like wise, certain other protocol duties have to be performed by both the Police officers and Revenue officers during the visits of high personages (as mentioned in detail in this S.O.).

S.O. (392) (Aircraft accidents)

On the occurrence of an aircraft accident, the village magistrate of the village in which the aircraft lands should at once report the matter to the nearest Magistrate and also the Police Station, further action will be taken as directed by the District Magistrate, under the guide lines issued in dealing with such accidents.

S.O. (393) (Road accidents)

Quarterly returns in respect of motor vehicle accidents and non-motor vehicle accidents are prepared by the Superintendent of Police in the prescribed forms and sent to the District Collector and the D.G.P.

S.O. 411 (Extension of stay of certain foreigners) and S.O. 412

The Commissioner of Police, Hyderabad and all Collectors who are designated as "Civil Authorities" under Foreigners Order, 1948, will exercise the powers conferred on the State Government to extend the period of stay specified in a permit granted under Para 7 of the Foreigners Order. Further, these officers are also authorised to grant, without reference to Government, "No Objection to Return to India" endorsement to foreigners of certain categories.

S.O. 455 (Receipt into jail on Sundays of Prisoners)

No prisoner shall be admitted to any jail on any of the recognized holidays for prisoners, except with the written orders of a District Magistrate or a Chief City Magistrate according to the Prison and Reformatory Manual.

S.O. 488 (Cases of specially grave nature) S.O. 490, and S.O. 491

In certain cases of grave nature, like dacoity, highway robbery, murder of sensational nature, riot or affray of grave nature, disturbance involving use of fire arms assault on police, fast, hartal, satyagraha, natural calamity, etc, an immediate report should be sent by quickest means possible to the D.G.P, D.I.G. and the Collector and District Magistrate. (There is a similar Provision in S.O. 46 (1)-mentioned above.)

S.O.491-A The Police Officers and staff should ensure that these reports are sent to the Collector and District Magistrate promptly and without fail. As the Collector and District Secretary is required to send special reports to the Chief Secretary about crime of a specially grave nature and or of a particularly revolting character, any additional information, the Collector may call for in respect of such cases (including investigation reports), should be supplied to promptly.

S.O. 492 In every case, in which Police use fire arms in suppression of a riot or in self defence, an express report or radiogram or telegram, whichever is the quickest, shall be sent to the concerned Revenue Divisional Officer. In this report the number of persons killed or or injured, if any, shall be stated.

S.O. 521 (2) (Admission of Police Officers into jails)

Any Police Officer of not lower in rank than of Circle Inspector, when permitted to enter the jail shall not be permitted to interview and interrogate a prisoner without a letter of authority from the Superintendent of Police or Collector addressed to the Superintendent of the Jail.

S.O. 616 (Sanction to prosecute a Government Servant).

- (1) The Police should obtain the prior concurrence of the Collector in the mofussil and that of the Head of the Department to which the Government servant belongs in the Hyderabad City before charge sheeting any Government servant for offence alleged to have been committed by him during the discharge of the official duties. Collectors and Heads of Departments in the Hyderabad City should render their replies to the police within ten days of the receipt of such proposal from police. In the event of difference of opinion between the police and the Collector / Head of Department, Police should obtain the orders of the Government.
- (2) The Collector to whom the report is to be sent is the Collector of the district in which the prosecution is to be launched.

S.O. 717 (General)

The Assistant Public Prosecutors (who conduct prosecutions in the magistrate's Courts) are under the administrative control of the District Collector.

S.O. 724 (1) and (3)

The Government consider it desirable that, in all grave cases in Magisterial courts, the Public Prosecutor should consult the District Collector before withdrawing from the prosecution of an accused.

The Government have directed that District Collectors should obtain the approval of the Government before authorising or directing the Public Prosecutor to withdraw from the prosecution.

- (a) for reason of State
- (b) on grounds of public policy, and
- (c) in cases where sanction has been accorded for the prosecution either by the

Government or by the Board of Revenue (now Chief Commissioner, Land Administration), or by an authority in the concerned department of the Government other than the Revenue Department, and also cases where prosecution has been launched in pursuance of any order of the Government in the Secretariat.

S.O. 725 (Appeal against acquittal)

Whenever the Superintendent of Police consider that there are grounds for a successful appeal against an acquittal, he should address the District Collector in detail with a request to take action. The District Collector should send his remarks on the proposals direct to the Government, with a copy to the Public Prosecutor, A.P.

S.O. 726 In criminal revision cases notices are sent by the Public Prosecutor to the District Collector, who, in some cases, forwards them to the Superintendent of Police.

S.O. 1062 The Collector can use the Police Radio Network to send messages relating to law and order category.

National Security Act. 1980

As per Sec. (2) and (3) of the Act the District Collector or the Commissioner of Police either on direction of the Government or if they are satisfied, they can take action, within their local limits, to prevent any person from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community.

A.P. Prevention of Dangerous Activities of Boot Leggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

Sec. 7 of the Act provides that where a detention order is made by the Government, an officer not below the rank of District Collector or Commissioner of Police, authorized by the Government, will be deemed to be empowered to exercise all the powers of the competent court U/s. 82 to 85 of the Cr.P.C. for issuing a proclamation for such person (ie. in respect of whom detention order has been made, has absconded or is concealing himself to escape service of

such order) and attachment and sale of his property situated in any part of the state.

Criminal Law Amendment Act, 1908

- (a) Under explanation to Sec. 17-A, the District Magistrate or in a Presidency town the Commissioner of Police or any officer authorised in this behalf in writing by these officers, may after notification by the Government in the official gazette, take possession of the notified place used for purposes of unlawful association, and evict there from any person found therein and shall make a report forthwith of taking possession to Government.
- (b) They also take action U/s. 17-B with regard to movable property found in the notified place.

The Immoral Traffic (Prevention) Act, 1956

- (i) Sec. 7 provides that when prostitution is carried out in or in the vicinity of a public place as may be notified by the Commissioner of Police or District Magistrate, the person who carries on prostitution and the person with whom prostitution is carried on are punishable with imprisonment upto three months.
- (ii) Under sec. 15 (5) of the Act a Special Police Officer or the trafficking Police officer as the case may be, after removing the person under sub section (4), shall forthwith produce her before the appropriate Magistrate (according to the schedule appended to the Act, appropriate Magistrate under sec. 15(5) means Metropolitan Magistrate, Judicial Magistrate of 1st Class, District Magistrate or sub - Divisional Magistrate).
- (iii) Further rules (3), (4) and (5) of the A.P. Suppression of Immoral Traffic in Women and Girls Rules, 1958 provide for the Commissioner of Police/District Magistrate to notify public places, to place the girls for safe custody and detention of women or girls in protective homes.

The Public Gambling Act, 1867

Sec. 5 provides that if the Magistrate of a district or other officer invested with the full powers of a Magistrate or the District Superintendent of Police, upon credible information and after such enquiry as he may think necessary, has

reason to believe that any house, walled enclosure, room or place, is used as a common gaming house he may either himself enter or by his warrant authorise any officer of Police to enter by night or by day, and by force, if necessary, such house or walled enclosure, room or the place for search, take into custody all persons therein whether or not actually gambling and seize all instruments of gambling and all money found therein.

S.C. & S.T. (Prevention of Atrocities) Act, 1989

- (i) Sec. 17(1) provides for taking preventive action by the District or Sub Divisional Magistrate or any other Executive Magistrate or any Police Officer not below the rank of Deputy Superintendent of Police.
- (ii) Under rule 3(ii) of S.C. & S.T. (Prevention of Atrocities) Rules, 1995, the State Government may order the District Magistrate and the Superintendent of Police or any other officer, to visit the identified area and review the law and order situation. Further, under rule 6 of these rules, these officers should immediately visit the place of occurrence of an atrocity to assess the extent of atrocity, loss of life, damage to the property and submit a report to the State Government, provide intensive Police patrolling in the area and protection to the witnesses and other sympathisers of the victims and also provide immediate relief to the victims.
- (iii) Rule 4 of the Rules directs that the State Government on the recommendation of the District Magistrate shall prepare for each district a panel of eminent senior advocates for conducting cases in special courts.
- (iv) Rules 9 and 10 provide for appointment of a Nodal officer and special officer for co-ordinating the functions of the District Magistrate and Superintendent of Police.
- (v) Rule 12 casts responsibility on the District Magistrate or sub Divisional Magistrate and the Superintendent of Police for providing relief and rehabilitation facilities to the victims of atrocity and review of the measures adopted in this regard.
- (vi) Rule 17 provides for constitution of district level vigilance and monitoring committee by the District Magistrate to review the implementation of the provisions of the Act, relief and rehabilitation facilities provided to victims and other matters connected therewith, prosecution of cases etc.

The Unlawful Activities (Prevention) Act, 1967

- (i) Sec. 6 of the Act gives powers to the Police Officer not below the rank of a Sub-Inspector or any person authorised to search and detain any person seeking to enter the place notified by the District Magistrate and the District Magistrate to make an inventory of all movable properties (except those exempted) found in the notified place which may be used for unlawful association and prohibit their use.
- (ii) Under sec. 16 of the Act proceedings taken by the District Magistrate or any officer authorised are barred from the jurisdiction of the Court.

Criminal Rules of Practice & Circular Orders, 1990

As per Sec. 100, copies of judgment of the Sessions Court are to be sent to the Collector of the District and the Superintendent of Police, Commissioner of Police and Superintendent of Police, Crime Branch, C.I.D.

The A.P. Excise Act, 1968

- (i) Sec. 52 of the Act empowers the Collector or any Police Officer duly empowered to enter and inspect places of manufacture and sale of intoxicants besides the Prohibition and Excise officials.
- (ii) Sec. 53 empowers the officers employed in the Prohibition and Excise Department, Police or Revenue Department of the State, subject to restrictions as may be prescribed, to arrest without warrant, to seize articles liable for confiscation and make searches.
- (iii) Sec. 53-A legally binds the Police and Revenue Officers to assist the Prohibition and Excise Officials in carrying out the provisions of the Act.
- (iv) Sec. 55 empowers the Collector and Police Officers in addition to the Prohibition & Excise Officials to search without warrant, in the circumstances mentioned therein.

Note: Please see the next chapter, for some other powers exercisable by Collector and District Magistrate under this Act.

A.P. Gaming Act, 1974

- (i) Sec. 5 of the Act empowers the Judicial or Executive Magistrate or any Police Officer not below the rank of Assistant Commissioner of Police, Hyderabad or Deputy Superintendent of Police elsewhere, to give, by his warrant, any Police Officer not below the rank of Sub-Inspector the authority to enter, even by force if necessary, any common gaming house, arrest all persons found therein, search all such persons and parts of such place and seize all monies found with such persons and also all instruments of gaming and articles of value found there, which are reasonably suspected to have been used or intended to be used for purposes of gaming.

Any Police Officer having such a power to issue such a warrant may himself exercise all or any powers exercisable under such warrant.

- (ii) Sec. 11 provides that if any thing is seized as mentioned above, and if the Magistrate is satisfied that the Police Officer who seized it has reasonable grounds for suspecting that the thing used was an instrument of gaming, it shall be presumed that such thing was an instrument of gaming.

A.P. Prevention of Anti Social & Hazardous Activities Act, 1980

Sec. 3 of the Act empowers the Commissioner of Police, Hyderabad or the District Magistrate elsewhere, externment of goondas in the circumstances mentioned therein. Further, under sec. 4 permission can be granted to such a person to return temporarily, into the area from which he was directed to remove himself. As per sec. 5, the period of return can be extended, subject to the conditions stated therein not exceeding two years in the aggregate. Sec. 7 of the Act deals with recognizance for certain purposes and sec. 9 provides for recession of the order by the Commissioner/District Magistrate. Under Sec. 11 of the Act the externed goonda can be ordered to be forcibly removed by the Commissioner / District Magistrate, on re-entering, etc. in contravention of the order. The Dist. Magistrate can convict such externed goonda for rigorous imprisonment not exceeding three years, but not less than six months and with fine upto Rs. 3000/- but not less than Rs. 1000/- (Sec. 10). Sec. 13 bars jurisdiction of the Courts with regard to any power exercised under the Act.

A.P. Prevention of Dangerous Activities Of Communal Offenders Act, 1984

- (i) Under Sec. 3 the Commissioner of Police, Hyderabad or District Magistrate in other places, has power to order detention of communal offenders, within their territorial jurisdiction; subject to the observance of the procedure in sec. 8.
- (ii) The closure of a press, which is printing and publishing any matter which is likely to promote dishormany or feeling of enimity or hatred or ill will between different religious or racial groups of castes or communities or cause fear in the public, can be ordered by the Commissioner of Police/District Magistrate.
- (iii) If such a person is absconding or concealing himself to escape execution of the order, provisions of sec. 82 to 86 of Cr. P.C. apply i.e. proclamation and attachment of his property and its sale by the District Magistrate or Commissioner of Police.

A.P. Prevention of Dangerous activities of Boot Leggers, Dacoits, Drug offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

Under Sec. 3 of the Act, the Government may direct the Commissioner of Police / District Magistrate to order detention, within their local limits, boot leggers, dacoits, goondas, etc. Sec. 7 empowers these authorities to exercise all the powers of the competent court U/s. 82 to 86 of Cr. P.C. of issuing proclamation of such absconded persons and attachment and sale of their properties.

A.P. Prevention of Disfigurment of Open Places and Places and Prohibition of obscene and objectionable Posters and Advertisements Act, 1997.

Sec. 11 empowers the Commissioners of Police in the twin cities of Hyderabad & Secunderabad, Visakhapatnam and Vijayawada and District Collectors elsewhere to enter and search any place in which the offence is being committed, sieze and detain any material contravening the provisions of the Act and also

examine records & registers, etc. and seize them. The power can be delegated by the Collector or Commissioner of Police to any M.R.O. or Inspector of Police, respectively.

A.P. Public Security Act, 1992

Under Sec. 9 the Commissioner of Police, in places where they are appointed and elsewhere the District Magistrate may notify the competent authority, under the Act.

The A.P. Suppression of Disturbances Act, 1948

Sec. 5 empowers any Magistrate and any Police Officer not below the rank of a Sub Inspector, in order to restore peace and maintain law and order, it is necessary, in his opinion, to order fire to be opened or otherwise use force even to the causing of death, against any person, who in an area declared as disturbed, is acting in contravention of any law or order for the time being in force, prohibiting assembly of five or more persons or carrying of weapons or of things capable of being used as weapons.

The Police Act, 1861

- (i) As provided for in Sec. 4 of the Act, the administration of the Police through out the local jurisdiction of the Magistrate of the District shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant Superintendent as the State Government shall consider necessary.
- (ii) Under Sec. 15(4) the Magistrate of the District, after such enquiry as he may deem necessary, shall apportion the cost of the Police force employed in the area declared as disturbed area, among the inhabitants who should bear such cost.
- (iii) Sec. 15-A empowers the Magistrate of the District to award compensation to the sufferers in such disturbed area, due to the misconduct of certain inhabitants. (Similar provisions are there in sec. 13 of the A.P. (Telangana Area) Police Act, 1329 F.).

- (iv) Sec. 17 empowers the Magistrate, to whom an application is made by the concerned Police Officer, to appoint the required number of residents of the neighbourhood as special police officers for preservation of peace, when the existing police force is not sufficient.
- (v) Sec. 25 directs, that it shall be the duty of every police officer to take charge of all unclaimed property and to furnish an inventory thereof to the Magistrate of the District and to be guided by the orders of such Magistrate as to the disposal of such property.
- (vi) Sec. 26 empowers the Magistrate of the district to detain such property and issue proclamation for establishing rights to it by any person. If no claimants are there the Magistrate, under sec. 26, may order sale of the property and credit the sale proceeds to Government.
- (vii) Under Sec. 30, if in the judgment of the Magistrate of the District or sub-division of a district, if uncontrolled, the assemblies and processions on public roads or thorough fares are likely to cause breach of peace, they may require by general or special notice, that the persons convening or collecting such assembly or directing or promoting such procession, shall apply for a licence.
- (viii) Sec. 30-A empowers any Magistrate or District Superintendent of Police or Assistant District Superintendent of Police or Inspector of Police or any Police Officer in-charge of a Police station to stop any procession which violates the conditions of a licence granted and may order it or any assembly which violates any such conditions to disperse. (Similar provision is there in sec. 23 of the A.P. (Telangana Area) Police Act, 1329 F).
- (ix) Authority of District Superintendent of Police Over village Police.

According to Sec. 47, it shall be lawful for the State Government in carrying this Act (i.e. The Police Act, 1861) into effect in any part of the territories, subject to such State Government to declare that any authority which now is or may be, exercised by Magistrate of the District over any village whatchman or other village police officer for purpose of police, shall be exercised subject to the General control of the Magistrate of the district, by the Superintendent of Police.

The Police (Incitement to Disaffection) Act, 1922

Sec. 5 states that no court shall proceed to the trial of any offence under the Act except with the previous sanction, or on the complaint, of the District Magistrate or, in the case of Presidency town, of the Commissioner of Police.

Indian Criminal Law Amendment Act, 1908

- (i) The State Government may U/s. 17-A(1) notify any place, which in its opinion, is used for the purposes of an unlawful association. The District Magistrate or the Commissioner of Police in the Presidency towns, or any officer authorised in this behalf by the District Magistrate or the Commissioner of Police, as the case may be U/s. 17-(A) (2) take possession of the notified place and evict therefrom any person.
- (ii) U/s. 17-B the District Magistrate/Commissioner of Police are empowered to take possession of movable property found on the notified area and order its disposal.

Criminal Law Amendment Act, 1961

Under Sec. 4 when the State Government notify any News Paper or other Private document punishable U/s. 2 or 3(2) forfeiting to Government, the Police Officer may seize the same wherever found and the District Magistrate may by warrant authorise any police officer not below the rank of sub inspector to enter upon and search for the same in any premises.

A.P. Habitual Offenders Act, 1962

- (i) Under Sec. 3, the Government direct the District Collectors to make a register of habitual offenders within his district and for carrying out the direction of the Government. The District Collector or any officer authorised by him in this behalf can call upon the habitual offender U/s. 4 to appear before him to furnish the information as may be necessary to enable him to enter his name and other particulars and to allow his finger and palm impressions, foot prints and photograph to be taken. Under provision of sec. 4 these particulars can be entered only after affording him a reasonable opportunity to show cause why such entries need not be made.

- (ii) Under sec. 5 the register shall be placed in the custody of the Superintendent of Police, who shall from time to time report to the Collector any alterations to be made, which can be made by him only under the orders of the Collector.
- (iii) Sec. 6 empowers the Collector or any officer authorised by him, to order the finger and palm impressions, foot prints, and photograph of any registered offender to be taken, at any time.
- (iv) Any change or intended change of his residence (within the State or not) by the registered offender, shall be notified in the manner prescribed, and the Collector may thereon direct such registered offender to report for reasons to be specified, once a month or more frequently, in the manner specified in the order and also to notify any absence or intended absence from his ordinary residence to the authority specified in the order, as provided for in sec. 7. However, if it appears reasonable to him, the Collector can exempt such registered offender from notifying any absence or intended absence from his ordinary residence, under the provisions to sec. 7.
- (v) Sec. 8 provides for registration of the registered offenders name with residential and other particulars in the district within the state to which residence is changed on receipt of information from the Collector and cancellation of his name in the register of the previous district, after information of such registration in the other district.

If residence is changed to any district outside the State, the Collector of the district in which his name was previously registered shall, while furnishing the Collector of the concerned other district the required information, request him to inform him of the steps, if any which may have been taken in relation to the offender under any law for the time being in force in that district, and on receipt of such information the Collector of the previous district shall cancel the entry relating to the offender in the register of the district.

- (vi) Rule 21(2) of the Rules framed under the Act empowers the Collector to exempt the registered offender from notifying the change of residence and to report himself as ordered U/s. 7 or cancel his registration, if it is reported by the Superintendent of Police that he is sick or infirm or otherwise incapacitated from committing crime and if he is continued to be of satisfactory conduct for a period of three years after his last release from jail. Rule 21(3) empowers the Collector to reimpose on him the obligations so exempted if it was reported by the Superintendent of Police that he has reverted to crime or is suspected to aid or abet commission of cognizable offence.

- (vii) Under Rule 22 the movements of a registered offender can be restricted by the Collector on receipt of proposals from the superintendent of Police, after issuing a show cause notice and then issue him a permit under Rule 24 specifying the special conditions to be observed. Alterations in such conditions can be done by the Collector under Rule 25, on the recommendation of the Superintendent of Police.
- (viii) Rule 26(2) empowers the Collector to suspend, modify or cancel any order issued by the Superintendent of Police under this rule i.e. with regard to his absence from corrective settlement.
- (ix) Rule 27 states that all orders passed by the Superintendent of Police will be subject to revision by the Collector concerned. The Collector may, without assigning reasons revoke a pass granted by the Superintendent of Police under this rule, to the registered offender in the corrective settlement (i.e. permitting him to reside outside the corrective settlement, for purposes of earning livelihood) and require the registered offender to re-enter the settlement. Further, the pass granted to an offender suffering from leprosy to enable him to be sent to a leper asylum, under rule 28, is also subject to revision by the Collector.
- (x) Under Rule 35(2), no prosecution U/s. 17 of the Act shall be instituted by the Manager of the corrective settlement against the settler without the sanction of the Collector and as per Rule 38 all orders of punishment passed by the Manager of corrective Settlement are subject to revision by the Collector.
- (xi) Rule 40(1) provides that the Superintendent of Police after reviewing all cases of registered offenders whose movements were restricted, to send every half year, his recommendations to the Collector in the prescribed form, in duplicate, for continuance or alteration or cancellation of the order of restriction of movements and after considering the matter the Collector shall return the original list with his orders against each registered offender, retaining the duplicate in his office.
- (xii) The Collector or the Revenue Divisional Officer and the Superintendent of Police may inspect the corrective settlement at any time (Rule 41(1)).

CHAPTER XIV

Powers of the Collector and District Magistrate and other Executive Magistrates under various other Acts

In addition to the powers exercisable by the Collector and District Magistrate under various Acts mentioned in the previous chapter the Collector and District Magistrate and other Executive Magistrates are competent to exercise certain powers under the provisions of some other Acts mentioned below :

ESSENTIAL COMMODITIES ACT, 1955

- (i) Where an essential commodity is seized U/s.3, a report of such seizure shall be made to the Collector urgently and the Collector, if he thinks expedient to do so, direct the seized commodity to be produced for inspection before him and may further order its confiscation together with any receptacle or package in which it is found and the conveyance used, as provided for in sec. 6-A. If the commodity seized is subject to speedy decay or otherwise expedient in public interest he can order its sale.
- (ii) Under sec. 12-AA of the Act where a person accused or suspected of the Commission of an offence under the Act is forwarded to a Magistrate under sub section (2) of sub section 2-A of sec. 167 of Cr. P.C. Such Magistrate may authorise the detention of the person in custody, as he thinks fit for a period not exceeding 15 days, in the whole, where such Magistrate is a Judicial Magistrate and 7 days in the whole where such Magistrate is an Executive Magistrate.

THE INDIAN FOREST ACT, 1927

Sec. 67 of the Act empowers the District Magistrate or any Magistrate of First Class specially empowered by the State Government to try summarily under the Cr.P.C. any forest offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding Rs. 500/- or both.

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

- (i) According Sec. 36-A sub section (1) (b) where a person accused of or suspected of the commission of an offence under the Act is forwarded to a Magistrate under sub-section (2) or sub section (2-a) of Sec. 167 of Cr.P.C. (sec. 167 of

Cr.P.C. deals with the procedure when investigation cannot be completed in 24 hours), such Magistrate may authorise the detention of such person in such custody as he thinks fit or a period not exceeding 15 days in the whole when the Magistrate is a Judicial Magistrate or 7 days in the whole when the Magistrate is an executive Magistrate. Further where such Magistrate considers at any time before the expiry of the period of detention authorised by him that detention of such person is unnecessary he shall order such person to be forwarded to the special court having jurisdiction.

- (ii) Sec. 50 provides that when an officer duly authorised U/s. 42 is about to search any person, he shall, if he so requires, take such a person to the nearest Gazetted officer of any of the departments mentioned in sec. 42, or to the nearest Magistrate. The gazetted officer or the Magistrate before whom such person is brought shall, if he sees no reasonable ground for search, forthwith discharge him or otherwise direct such search be made.

THE PRESS AND REGISTRATION OF BOOKS ACT, 1867

Sec. 4 and 5 provide for a declaration to be made by the keeper of printing press before the District Magistrate or the Sub divisional Magistrate or the Presidency Magistrate and under sec. 6 authentication of declaration to be done by the Magistrate before whom declaration was made under his signature and official seal. On receipt of such authenticated declaration, certificate of registration will be issued by Press Registrar U/s. 19. D. Further, a printer who made such declaration subsequently ceased to be a printer or publisher should again make a declaration to that effect, u/s-8, before such Magistrate. Sec. 8-B empowers such Magistrate to cancel the declaration on an application made by the Press Registrar or any other person, or otherwise, following the procedure indicated therein.

THE PREVENTION OF BLACK MARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, 1980

Sec. 3(2) empowers the District Magistrates and Commissioners of Police, wherever they have been appointed, to make an order of detention of any person in order to prevent him from acting in any manner pre judicial to the maintenance of supplies of essential commodities to the community. When such an order of detention was issued, he should forthwith report the fact to the State Government together with the grounds on which the order has been made, as provided for in sec. 3(3).

THE PRISONS ACT, 1894

Under Sec. 52, if any prisoner is guilty of offence against prison discipline, is not adequately punishable by infliction of any punishment which he has power under the Act to award, the Superintendent of the Prison may forward such prisoner to the Court of the District Magistrate or of any Magistrate of first class or Presidency Magistrate together with the statement of the circumstances and such Magistrate thereupon inquire into and try the charge so brought against the prisoner, and upon conviction, may sentence to imprisonment which may extend to one year in addition to any term for which he is undergoing imprisonment or to any punishment enumerated in Sec. 46. Such inquiry may be transferred by such Magistrate to any other presidential Magistrate.

THE A.P. (ANDHRA AREA) BETTING TAX RULES, 1935

Under, Rule 6, the Director of the race meeting shall, within seven days of each racing day, forward to the Collector a return in form - X, duly audited by the auditor. Further, as provided for in rule - 7, within 10 days of the close of each month in which race meetings have taken place, the Director shall pay the amount of totalizator tax due by him, to the Collector by cheque drawn in his favour or if so authorised by the Collector into the Reserve Bank of India, to the credit of the local government. Similarly, under Rule 8, the Secretary to the Racing club has to pay betting tax collected from book-makers to the Collector.

THE A.P. BROSTAL SCHOOLS ACT, 1925

- (i) Sec. 6 provides that the powers conferred on courts by this Act shall be exercised only by (a) The High Court, (b) A court of Session, (c) A District Magistrate, (d) A Sub-Divisional Magistrate.
- (ii) Sec. 7 states that when a Magistrate not empowered to pass a sentence under this Act is of opinion that an adolescent offender is a proper person to be detained in a Brostal School he may, without passing sentence, record such opinion and submit his proceedings and forward the adolescent offender to the District Magistrate or sub-Divisional Magistrate to whom he is subordinate. The Magistrate to whom the proceedings are submitted may make such further enquiry, if any, as he may think fit and may pass such sentence or order dealing with the case as he might have passed if such adolescent offender has originally been tried by him.

THE A.P. DEVADASIS (PROHIBITION OF DEDICATION) ACT, 1988

The following duties were imposed and powers were conferred on Collectors and Executive Magistrates.

Sec. 7 : The Government may confer such powers and impose such duties, on the Collector or any other officer of the Revenue Department not below the rank of M.R.O. as may be necessary to ensure that the provisions of this Act, are properly carried and may specify the local limits within which such powers or duties shall be carried out by such officers.

Sec. 8 : It shall be the duty of every Collector and other officers specified under Sec. 7 to inquire whether, after the commencement of this Act, the system of Devadasis is being practiced and if as a result of such enquiry, any such practice is found to exist, he shall forthwith take such action as may be necessary to put an end to such practice.

Sec. 9 : The Government may confer on an Executive Magistrate power for the trial of offences under this Act and on such conferment of powers, the Executive Magistrate on whom the powers are so conferred, shall be deemed for the purposes of Code of Criminal Procedure, 1973 to be a Judicial Magistrate of the First Class or Second Class to put an end to such practice.

THE DOWRY PROHIBITION RULES, 1998 (ANDHRA PRADESH)

Rule 11 empowers the Government to appoint either the Revenue Divisional Officer or Sub-Collector as Dowry Prohibition Officer and confer the following powers :

- (a) Power to register cases.
- (b) Power to examine the witnesses.
- (c) Power to investigate cognizable offences.
- (d) Power to arrest, if prima-facie case is made out.
- (e) Power to send the accused to remand within 24 hours.
- (f) Power to search and seize, if any, incriminating material concerning the offence is forthcoming.

THE A.P. EXCISE ACT, 1968

- (i) Under sec. 4 of the Act the Collector can exercise the powers and perform the functions assigned by or under the Act, subject to the general control of the Commissioner.
- (ii) Sec. 8 provides for delegation, by the Commissioner, the Collector or the Prohibition and Excise Superintendent, to any of his subordinate officer, any of the powers conferred on or functions entrusted to them by or under the Act, subject to such restrictions and control as may be prescribed and also subject to such limitations and conditions if any, as may be specified in the order of delegation.
- (iii) Sec. 20 (i) empowers the District Magistrate to require by notice to the licensee, closure of any shop in which any intoxicant is sold, at such times or for such period as he may think necessary for preservation of public peace. Under explanation to the section, the expression 'District Magistrate' includes Additional District Magistrate or any other person empowered to exercise the powers of District Magistrate.
- (iv) Sec. 47 of the Act gives powers to the Collector of compounding of offences, besides the prohibition and Excise Officers specially empowered.
- (v) When a lease has been taken U-s 17 under management by Collector, or has been resold by him, sec. 65(2) empowers the Collector to recover (in the manner authorised by subsection (1) of Sec. 65) any money due to the defaulter by any lessee or assignee.

Note : These powers are in addition to those as mentioned in this Act elsewhere in the previous chapter).

THE A.P. FOREST ACT, 1967

- (i) According to sec. 28-B(1) (a) owner of any private forest shall, without the previous sanction of the District Collector sell, mortgage, lease or otherwise alienate the whole or any portion of the forest or the forest produce.
- (ii) Under Sec. 28-B(2) no owner of any private forest shall, without the previous permission of the District Collector, cut trees or do any act likely to denude the forest or diminish its utility as forest. No such permission will be granted in a

year to cut trees of the value exceeding Rs. 5000/- unless the District Collector is satisfied that the value of the trees proposed to be cut exceeding such limit is necessary to meet urgent expenses of such owner.

- (iii) Sec. 28-F bars suits in a court on the orders of the Government or the District Collector under Chapter - III - A, and the notification issued by Government U/s. 28-D.
- (iv) Sec. 28-E(2) states that no prosecution shall be instituted against any person without the sanction of the District Collector.

IDENTIFICATION OF PRISONERS ACT, 1920

Sec. 7 provides that photographs and record of measurements taken of a person, who, not having been previously convicted of an offence punishable with R.I. for a term of one year or upwards, is released without trial or discharged or acquitted by any court, shall, unless the court or the District Magistrate, or Sub Divisional Officer, for reasons to be recorded in writing otherwise directs, be destroyed or made over to him.

A.P. (ANDHRA AREA) PAWN BROKERS ACT, 1943

Under Sec. 4 of the Act the Revenue Divisional Officer is the competent authority to grant or refuse pawn broker's licence.

THE A.P. PLACES OF PUBLIC RESORT ACT, 1888

- (i) Under sec. 5 to 7 of the Act the Chairman of the Municipal Council in Municipal towns and in every other case any Magistrate having jurisdiction over the local area in which the place or building is situated, is empowered to grant or refuse licence, after observing the procedure to grant or refuse licence, after observing the procedure indicated there in. Sec. 9 empowers the same authority either to revoke or suspend the licence granted, for the reasons mentioned therein. Appeal against such order will lie either to the Municipal Council in a Municipal town and in every other local area to the Sub-Divisional Magistrate or if the original order was made by him to the District Magistrate, U/s. 10.
- (ii) Sec. 11 empowers any Magistrate or police officer above the rank of the Head Constable to enter and inspect such places and prevent further use. The District

Magistrate, in view of sec. 12, may revise any proceedings under the Act.

THE A.P. PROBATION OF OFFENDERS ACT, 1936

Sec. 9(3) provides that a Probation Officer, in the exercise of his duties under any supervision order, shall be subject to the control of the District Magistrate of the district in which the offender, for the time being resides. Under explanation to the section, the cities of Hyderabad and Secunderabad shall be deemed to be a district and the Commissioner of city Police shall be deemed to be the District Magistrate of that district.

THE JUVENILE JUSTICE ACT, 1988

Sec. 7(2) states that where no Juvenile Welfare Board or Juvenile Court has been constituted for any area, the powers conferred by or under the Act, on the Board or the Juvenile Court, shall be exercised in that area, only by the following:

- (a) The District Magistrate, or
- (b) The Sub-Divisional Magistrate, or
- (c) Any Metropolitan Magistrate or Judicial Magistrate of First Class, as the case may be.

THE EXPLOSIVES ACT, 1884 (As amended by Act No. 32 of 1978)

- (1) The word "Explosive" means gun powder, nitroglycerine, nitro-glycol, guncotton, di-nitroluene tri-nitro-lune, picric acid, di-nitro phenol, tri-nitro resorcinol (stynic acid) cycle trimethylene, trinitramine, pentarery thritoltera nitrate tetry, nitroguavidive lead azide, lead styphynate falminate of mercury or any other metal, dizo-di-nitrophenol coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect and includes fogisignals, fire-works-fuses, rockets, percussion caps, detenators,catridges, ammunition of all description and every adoptation or preparation of an explosive. (Sec. 3 (d))
- 2) A licence obtained from the licence granting authority (District Magistrate/ Commissioner of Police wherever such post exists) is essential for manufacture, possession, sale or transport export or import of any explosive, when an application in the prescribed form is made by any person for grant of licence, the licencing authority after making inquiry as it may consider necessary, either

grant the licence or refuse to grant it by an order in writing. Licence is granted -

- (a) Where it is required for the purpose of manufacture of explosives if the licencing authority is satisfied that the applicant :
 - (i) posses technical know-how and experience in the manufacture of explosives; or
 - (ii) has in his employment or undertaken to employ a person or persons possessing such technical know-how and experience; or
- (b) Where it is required for any other purpose if the licensing authority is satisfied that the person by whom the licence is required has good reason for obtaining the same. (sec. 6-B)

3) The licencing authority may refuse to grant licence -

- (a) where such licence is required in respect of any prohibited explosive; or
- (b) where such licence is required by a person whom the licencing authority has reason to believe-
 - (i) to be prohibited by the Act or any other law for the time being in force to manufacture, possess, sell, transport, import or export any explosive; or
 - (ii) to be of unsound mind, or
 - (iii) to be for any other reason unfit for licence under the Act, or
- (c) Where the licencing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.
- (d) Where the grant of licence is refused the licencing authority should record the reasons for such refusal and furnish that person, on demand, a brief statement of the reasons for refusal recorded, unless, in his opinion, it will not be in public interest to furnish such statement (Rule 6-C).

4) The following persons are not eligible for grant of licence :

- (i) who has not completed eighteen years of age ;
- (ii) who is sentenced on conviction of any offence involving violence of moral turpitude for a term not less than six months at any time during a period of five years after the expiration of the sentence, or

- (iii) who has been ordered to execute under Chapter VIII of the Cr.P.C. a bond for keeping peace or for good behaviour, at any time during the term of the bond, or
 - (iv) whose licence under the Act has been cancelled for contravention of the provisions of the Act at any time during a period of five years from the date of cancellation of such licence, shall manufacture, sell, transport, import or export any explosive, or possess any such explosive, by notification in the official gazette, and
 - (v) who is of unsound mind. (sec. 6-A)
- 5) (i) The licensing authority may prescribe any conditions while granting the licence or any time or during the validity of the licence vary the conditions subject to which it was granted or impose additional conditions (sec. 6-D and E)
- (ii) The licensing authority may either suspended for such period or revoke the licence
- (a) if the holder of the licence is prohibited by this Act or by some other law for the time being in force to manufacture, possess, sell, transport import or export any explosive, or is of unsound mind or for any reason unfit to hold licence, or
 - (b) if it is necessary for the Security of public place or public safety to suspend or revoke the licence ;
 - (c) if the licence was obtained by suppression of material information or on the basis of wrong information at the time of applying for the licence, or
 - (d) if any of the conditions are contravened, or
 - (e) if the holder of the licence failed to comply with a notice requiring him to deliver up the licence; or
 - (f) if the holder of the licence applies for revocation
- (iii) A court convicting the holder of a licence of any offence under the Act or Rules made there under may also suspend or revoke a licence. When such conviction is set aside suspension or revocation becomes void.
- (iv) Suspension or revocation may also be ordered by an appellate court or High Court while exercising the powers of revision.
- (v) On suspension or revocation of a licence the holder, without delay, should

surrender the licence to the authority by whom it was suspended or revoked or to such authority as directed by it.

- (vi) No appeal lies against an order made by or under the direction of the Central Government
 - (vii) Any appeal shall be preferred within the time prescribed, which is computed according to the provisions of the Limitation Act. The order appealed against will be in force pending the disposal of the appeal against such order.
 - (viii) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final. (sec. 6-E and F)
- 6) The Central Government may make rules conferring powers of inspection, search, seizure, detention and removal of any explosive or ingredient thereof. The provisions of Cr.P.C. relating to searches shall apply for searches by the officers authorized (sec. 7). The Central Government has delegated this power to the District Magistrate.
- 7) Where any accident occurs (as referred to in sec. 8 of the Act) in or about in connection with any place, aircraft, carriage or vessel under the control of any armed forces of the Union, an inquiry into the causes of the accident shall be held by Naval, Military or Air Force authority concerned. Where such accident occurs in any other circumstances the District Magistrate shall (in cases attended by loss of human life, or may in any other cases) hold or direct a Magistrate subordinate to him to hold, such inquiry. Any person holding such inquiry shall have all the powers of a Magistrate under the Cr.P.C. and may exercise such of the powers conferred on any officer by the rules U/s. 7 of the Act. Any person holding an inquiry shall make a report to the Central Government stating the causes of the accident and its circumstances and adding his observation, if any, (sec. 9 and 9-A)
- 8) Any contravention of the provisions of the Act as punishable U/s. 9-B of the Act.
- 9) Whoever is found committing any act for which he is punishable may be apprehended, without a warrant by a Police Officer (sec. 13)

ANNEXURE. I

**CODE OF CRIMINAL PROCEDURE, 1973-
THE SECOND SCHEDULE**

(See Section 476)

FORM No. 1

SUMMONS TO AN ACCUSED PERSON

(See Section 61)

To (name of accused) of
..... (address).

Whereas your attendance is necessary to answer to a charge of *(state shortly the offence charged)*. you are hereby required to appear in person *(or by pleader, as the case may be)* before the *(Magistrate)* of, on the day of, Herein fail not.

Dated, this day of 20

(Seal of the Court)

(Signature)

FORM NO. 2

WARRANT OF ARREST

(See section 70)

To *(name and designation of the person or persons who is or are to execute the warrant)*.

Whereas *(name of accused)*

of *(address)*

stands charged with the offence of *(state the offence)*, you are hereby directed to arrest the said, and to produce him before me. Herein fail not

Dated, this day of, 20.....

(Seal of the Court)

(Signature)

(See section 71)

This warrant may be endorsed as follows :-

If the said shall give bail himself in the sum of rupees with one surety in the sum of rupees..... (or two sureties each in the sum of rupees.....) to attend before me on the day of and to continue so to attend until otherwise directed by me, he may be released.

Dated, thisday of....., 20

(Seal of the Court)

(Signature)

FORM NO. 3

BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT

(See section 81)

I, (name), of....., being brought before the District Magistrate of.....(or as the case may be) under a warrant issued to compel my appearance to answer to the charge of....., do hereby bind myself to attend in the Court of..... on the..... day ofnext, to answer to the said charge, and to continue so to attend until otherwise directed by the Court, and, in case of my making default herein, I bind myself to forfeit, to Government, the sum of rupees

Dated, this..... day of....., 20

(Signature)

I do hereby declare myself surety for the above-named

that he shall attend before..... in the Court of on the day ofnext, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case fo his making default therein, I bind myself to forfeit, to Government, the sum of rupees

Dated, this day of , 20

(Siganture)

FORM No. 4

PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED

(See section 82)

Whereas complaint has been made before me that
..... *(name, description and address)* has committed (or is suspected to have committed.....) the offence of , punishable under section..... of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said *(name)* cannot be found, and whereas it has been shown to my satisfaction that the said *(name)* has absconded (or is concealing himself to avoid the service of the said warrant)

Proclamation is hereby made that the said..... of..... is required to appear at *(place)* before this Court (or before me) to answer the said complaint on the..... day of

Dated, this..... day of, 20.....,

(Seal of the Court)

(Signature)

FORM No. 12

BOND TO KEEP THE PEACE

(See sections 106 and 107)

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, on 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 No. 13

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 himself 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 bind myself to forfeit to Government the sum of rupees.

Dated, this day of, 20

(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

(Signature)

FORM No. 14

Summons on information of a probable breach of the peace

(See section 113)

To

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

(seal of the Court)

(Signature)

FORM No. 15

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE

(see section 122)

To the Officer in charge of the Jail at

Whereas
.....(name and address) appeared before me in person (or by his authorised agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (or a bond with two sureties each in rupees), the he, the said (name), would keep the peace for the period of months ; and whereas an order was then made requiring the said (name) to enter into and find such security (state the security ordered when it differe from that mentioned in the summons), and he has failed to comply with the said order :

This is to authorise and require you to receive the said (name) into your custody by, together with this warrant, and him safely to keep in the said jail for the said period of (term of imprisonment)unless he shall in the meantime be law fully ordered to be released, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this day of....., 20

(Seal of the Court)

(Signature)

FORM No. 16

**WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY
FOR GOOD BEHAVEOUR**

(See section 122)

To the Officer in charge of the Jail at

Whereas it has been made to appear to me that
.....(name and
description) has been concealing his presence within the district of
and that there is reason to believe that he is doing so with a view to committing a cognizable
office ;

or

Whereas evidence of the general character of
..... (name and description)
has been added before me and recorded, from which it appears that he is an habitual
robber (or house-breaker, etc., as the case may be) ;

And whereas an order has been recorded stating the same and requiring the said
name) to furnish security for his good behaviour for the term of (state the period) by entering
into a bond with one surety (or two or more sureties, (as the case may be), himself for
rupees....., and the said surety (or each of the said
sureties) for rupees , and the said, (name)
has failed to comply with the said order and for such default has been adjudged imprisonment
for (state the term) unless the said security be sooner furnished. This is to authorise and
require you to receive the said (name) into your custody, together with this warrant and him
safely to keep in the Jail, of if he is already in prison, be detained therein, for the said
period of (term of imprisonment) unless he shall in the meantime be lawfully ordered to be
released, and to return this warrant with an endorsement certifying the manner of its
execution.

Dated, this..... day of, 20

(Seal of the Court)

(Signature)

FORM No. 17

WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY

(See sections 122 and 123)

To the Officer in charge of the Jail at(or other officer in whose custody the person is).

Whereas(name and description of prisoner) was committed to your custody under warrant of the Court ; dated the day of, 20 ; and has since duly given security under section..... of the Code of Criminal Procedure 1973.

or

Whereas(name and description of prisoner) was committed to your custody under warrant of the Court, dated the day of..... 20 ; and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community,

This is to authorise and require you forthwith to discharge the said (name) from your custody unless he is liable to be detained for some other cause.

Dated, this.....day of....., 20

(Seal of the Court)

(Signature)

FORM No. 20

ORDER FOR THE REMOVAL OF NUISANCES

(See section 133)

To
.....(name,
description and address).

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

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

or

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

or

Whereas, etc. (as the case may be) ;

I do hereby direct and require you with (state the time allowed) to cease carrying required to be done to abate the nuisance) or to appear at in the Court of on the day of next, and to show cause why this order should not be enforced ;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc.;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*); or to appear, etc. ;

or

I do hereby direct and require you, etc., etc., (*as the case may be*).

Dated, this..... day of, 20

(Seal of the Court)

(Signature)

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THE CODE OF CRIMINAL PROCEDURE, 1973

FORM No. 21

MAGISTRATE'S NOTICE AND PEREMPTORY ORDER

(See section 141)

To
.....
.....
(name, description and address)

I hereby give you notice that it has been found that the order issued on the day of requiring you *(state substantially the requisition in the order)* is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within *(state the time allowed)*, on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Dated, this day of, 20

(Seal of the Court)

(Signature)

FORM No. 22

INJUNCTION TO PROVE AGAINST IMMINENT DANGER PENDING INQUIRY

(See section 142)

To
.....
.....
(name, description and address).

Whereas the inquiry into the conditional order issued by me on the day of, 19....., is pending it has been made to appear to me that the nuisance mentioned in the said order is attended with such imminent danger or injury of a serious kind to the public as to render necessary immediate measures to prevent such danger or inquiry. I do hereby, under the provision of Section 142 of the Code of Criminal Procedure/1973, direct and enjoin you forthwith to *(state plainly what is required to be done as a temporary safeguard)* pending the result of the inquiry.

Dated, this day of, 20

(Seal of the Court)

(Signature)

FORM No. 23

MAGISTRATE'S ORDER PROHIBITING, ETC., OF A NUISANCE

(See section 143)

To
.....(name,
description and addresses).

Whereas it has been made to appear to me that, etc., (state the proper recital, guided by Form No. 20 or Form No. 24, as the case may be);

I do hereby strictly order and enjoin you not to repeat or continue, the said nuisance.

Dated, this..... day of, 20

(Seal of the Court)

(Signature)

FORM No. 24

MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, ETC.

(See section 144)

To.....
.....(name, description and address).

Whereas it has been made to appear to me that you are in possession (or have the management) of (describe clearly the property), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug-up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road, so as to occasion risk of obstruction to persons using the road ;

or

Whereas it has been made to appear to me that you had a number of other persons (mention the class of persons) are about to meet and proceed in a procession along the public street, etc., (as the case may be) and that such procession is likely to lead to a

or

Whereas, etc., etc., (as the case may be);

I do hereby order you not, to place or permit to be placed any of the earth or stones dug from land on any part of the said road ;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (or as the case recited may require).

Dated, this..... day or, 20

(Seal of the Court)

(Signature)

FORM No. 25

**MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN
POSSESSION OF LAND, ETC., IN DISPUTE**

(See section 145)

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

Dated, this day of, 20

(Seal of the Court)

(Signature)

FORM No. 26

WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, ETC.

(See section 146)

To the Officer in charge of the police station at

(or, To the Collector of).

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

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

Dated, this..... day of, 20

(Seal of the Court)

(Signature)

FORM No. 27

**MAGISTRATE'S ORDER PROHIBITING THE DOING OF
ANYTHING ON LAND OR WATER**

(See section 147)

A dispute having arisen concerning the right of use of *(state concisely the subject of dispute)* situate within my local jurisdiction, the possession of which land *(or water)* is claimed exclusively by *(describe the person or persons)*, and it appears to me, on due inquiry into the same, that the said land *(or water)* has been open to the enjoyment of such use by the public *(or if by an individual or a class of persons, describe him or them)* and *(if the use can be enjoyed throughout the year)* that the said use has been enjoyed within three months of the institution of the said inquiry *(or if the use is enjoyable only a particular season, say, "during the last of the seasons at which the same is capable of being enjoyed")*;

I do order that the said *(the claimant or claimants of possessions or any one in their interest)* shall not take *(or retain)* possession of the said lands *(or water)* to the exclusion of the enjoyment of the right of use aforesaid, until he *(or they)* shall obtain the decree or order of a competent Court adjudging him *(or them)* to be entitled to exclusive possession.

Dated, this.....day of, 20

(Seal of the Court)

(Signature)

FORM No. 33

SUMMONS TO WITNESS

(See section 61 and 244)

To _____ of _____

Whereas complaint has been made before me that
..... *(name of the accused)* of
..... *(address)*
has *(of is suspected to have)* committed the offence of *(state the offence concisely with time and place)*, and it appears to me that you are likely to give material evidence or to produce any document or other thing for the prosecution ;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to produce such document or thing or to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court ; and you are hereby warned, that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Dated, this day of, 20

(Seal of the Court)

(Signature)

FORM No. 45

BOND AND BAIL - BOND FOR ATTENDANCE BEFORE OFFICER IN CHARGE OF POLICE STATION OR COURT

(See section 436, 437 438 (3) and 441)

I, *(name)*
of *(place)*,
having been arrested or detained without warrant by the Officer in charge of
police station (or having been brought before the Court of), charged with
the offence of, and required to give security for my attendance before such
Officer or Court on condition that I shall attend such Officer or Court, on every day on which
any investigation or trial is held with regard to such charge, and in case of my making
default herein, I bind myself to forfeit to Government the sum of rupees.

Dated, this day of, 20

(Signature)

I hereby declare myself (or we jointly and severally declare ourselves and each of us)
surety (or sureties) for the above said
(name) that he shall attend the Officer in charge of police station or
the Court of..... on every day on which any investigation into the charge
is made or any trial on such charge is held, that he shall be, and appear, before such
Officer or Court for the purpose of such investigation or to answer the charge against him
(as the case may be), and, in case of his making default herein. I hereby bind myself (or
We, hereby bind ourselves) to forfeit to Government the sum of rupees.

Dated, this day of, 20

(Signature)

"FORM No. 47'

WARRANT OF ATTACHMENT TO ENFORCE A BOND

(See section 446)

To the Police Officer in charge of the police station at

Whereas
.....(name, description and address of person) has failed to appear on (mention the occasion) pursuant to his recognizance, and has by default forfeited to Government the sum of rupees (the penalty in the bond) ; and whereas the said (name of person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him ;

This is to authorise and require you to attach any movable property of the said (name) that you may find within the district of by seizure and detention, and, if the said amount be not paid within.. days, to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under the warrant immediately upon its execution.

Dated, this day of , 20

(Seal of the Court)

(Signature)

FORM No. 48'

NOTICE TO SURETY ON BREACH OF A BOND

(See section 446)

To Of

Whereas on the day of , 20, you became surety for (name) of (place) that he should appear before this Court on the day of and bound yourself in default thereof to forfeit the sum of ruppies to Government; and whereas the said (name) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty to show cause, within days from this date, why payment of the said sum should not be enforced against you.

Dated, this day of , 20

(Seal of the Court)

(Signature)

FORM No. 49¹

NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See Section 446)

To of

Whereas on the day of ,20, you became surety by a bond for (name) of (place) that he would be of good behaviour for the period of and bound yourself in default thereof to forfeit the sum of rupees to Government ; and whereas and said (name) has been convicted of the offence of (mention the offence concisely) committed since you became such surety, whereby your security bond has become forfeited ;

You are hereby required to pay the said penalty of rupees or to show cause within days why it should not be paid

Dated, this day of ,20

(Seal of the Court)

(Signature)

ANNEXURE - II

SPECIMEN FORM FOR RECORDING OF DYING DECLARATION

FORM

Dying declaration of Sri/Smt. recorded by (name & designation) on (date)..... on the requisition made by (name & designation of Police officer) through his Letter No. dated

Name of the declarant :

Name of the father / husband :

Age : Occupation : Religion :

Residential address :

Qs. 1 : Are you conscious and in a fit state to understand what I am saying and to answer to my questions ?

Ans :

Qs. 2 : Are you in a position to speak

Ans :

Qs. 3 : Can you recognise where are you at present ?

Ans :

Qs. 4 : Who brought you here, when and by what means ?

Ans :

Qs. 5 : Can you recognise who the assailants were ?

Ans :

Qs. 6 : Who else was there at the time of attack on you and how did they behave ?

Ans :

Qs. 7 : Can you tell their names and their addresses also, if possible ?

Ans :

Qs. 8 : How do you identify them ?

Ans :

Qs. 9 : How you were injured and in what manner ?

Ans :

Qs. 10 : What were the weapons used ? Can you point out their nature and size ?

Ans :

Qs. 11 : Which is the place of assault ?

Ans :

Qs. 12 : Are you in a position to locate injuries on your body ? If so, locate them.

Ans :

Qs. 13 : What is the motive for assault ?

Ans :

Qs. 14 : Anything more relating to the incident.

Ans :

Signature (or)

left hand thumb impression of the declarant.

Note : If the declarant is not in his senses and not in a position to speak, the statement cannot be recorded. A note to this effect should be recorded.

Certificates to be appended to during declaration

(FORMS)

(i) Certificate :

I certify that the declaration is read over and explained to the maker in his language and admitted by him to be correct.

Signature of the person recording the declaration.

Note : If it is necessary to remove the injured immediately for operation or other medical attendance and the reading over the statement and explaining it would cause delay, the reading over of the statement and explaining it be dispensed with, and an endorsement be made on the statement recorded and signed.

(ii) Certificate :

I certify that the above declaration was recorded by me in the presence of the Medical Officer who has signed the statement.

Signature of the person recording the declaration.

(iii) Certificate :

The above declaration was recorded by (name and address of the person recording the statement).... in my presence at (place.....) on (date) at (time)

Signature of the Medical Officer present

Note : If the person recording the statement is a Medical Officer himself this certificate can be dispensed with.

(iv) Certificate :

I certify, that the declarant was conscious, but as he was not in a position to speak, he answered the questions by gestures and their significance is ascertained and recorded faithfully.

Signature of the person recording the declaration.

Note : This certificate is to be appended only in a case of dumb persons or when the person is unable to speak and if the significance of the gesture is commonly understandable.

(v) Certificate :

I certify that the answers given to questions by gestures were interpreted by the person (name and address of the interpreter) who understood them.

Signature of the person recording the declaration

Note : This certificate should be appended only in case of dumb persons and if the significance of the gesture is not commonly understandable.

(vi) Certificate :

I further certify that I have taken the following precautions :

1. I have satisfied that the declarant is in a fit state of mind and is conscious.
2. The declarant is in a position to speak coherently.
3. The unauthorised persons are not allowed to crowd around the declarant.
4. That no outside influence is brought to bear on the declarant. He gave the declaration out of his free will.
5. Friends and relatives of the declarant are not allowed to influence the declarant by prompting or otherwise ; and
6. That the declaration is recorded faithfully.

Signature of the person recording the declaration.

ANNEXURE - III

SPECIMEN FORM

Proceedings of the Identification Parade conducted by

(name and designation) at the request of..... (Police Officer's designation) as per his letter No., dated in the premises of (place on (date) during (from, to)

Through his letter quoted above the, Inspector of Police (designation with Station) requested me to conduct an identification Parade of the suspected accused, proposing the following witnesses for identification :

- i) (Name and full address of each)
- ii)
- iii) (and so on)

Identification parade has been fixed for (date), at (time.....), (Place)....., and accordingly summons were issued to (all) the proposed witness/witnesses. The suspected accused was (were) produced by, (Police Officer) and he/they was/were mixed with the following persons produced

- (i) 1. (names and full address together with their age, occupation etc, Their serial number in the row, each time)
- 2.
- 3. (and so on)
- (ii) Serial number of the suspected person (name and full particulars), each time.

Questions to the proposed witnesses :

Q1. : Your name and other particulars ?

Ans :

Q2. : Were you present at the time when the officer was committed ?

Ans :

Q3. : Have you seen the persons committing the offence.

Ans :

Q4. : Can you now identify him / them from the row of persons ? Who is he / she ? point out him / her ?

Ans :

Q5. : If you identify the accused, mention the reasons for pointing him / her ?

Ans :

Certificate

Certified that the answers to the questions put to the witness during the identification parade were read over to (him) Sri.....
by me and admitted by him to be correct.

Station

(signature of the Officer designation, conducting the
identification parade, who Recorded the above statement).

Date

(signature of the identifying witness with date)

- Note :
1. the Proceedings have to be drawn separately for each suspected accused.
 2. If the witness identifies a wrong person a note has to be made to that effect in the proceedings.
 3. Keeping in view the instruction elsewhere in chapter xiii the precautions taken in conducting the identification parade, should be noted precisely one by one, and signed by the above officer.

ANNEXURE - IV

SPECIMEN ORDER UNDER SEE. III OF CR.P.C.

IN THE COURT OF THE MANDAL EXECUTIVE MAGTISTRATE,
PRESENT :

M.C.NO.

(U/s 107 Cr.P.C)

DATED :

Compliant :_ Person incharge,

The Kurnool Dist. Govt. Class IV Employees Coop. House Building
Society, Kurnool

Vs

Respondents :- 1. Narayana Reddy

2. J. Parameswardu, S/o Pedda Ayyanna	35	years
3. J. Pulla Reddy -do-	32	" "
4. J. Rajasekhar -do-	28	" "
5. J. Sreenivasulu, S/o Nagi Reddy	38	" "
6. J. Venkateswarlu, -do-	32	" "
7. J. Siva Reddy, -do-	33	" "
8. J. Mallikarjuna S/o Chinna Ayyanna	"	" "
9. J. Maheswar -do-	"	" "
10. J. Eswaraiah -do-	"	" "
11. J. Galenna, S/o Rosanna	74	" "
12. K. Ramudu, k S/o Yellaiah	"	" "

(All are residents of Kurnool)

Order Under Section III Cr.P.C.

Where as information has been laid before me by the person-in-charge of the Kurnool Dist. Govt. Class IV Employees Co-operative House Building Society Limited, Kurnool that an extent of 80.21 acres of private land in S.No. 692/A1 etc., of Kallur Village situated within the local jurisdiction of this Court was acquired by the R.D.O/L.A.O/Kurnool on the requisition of Kurnool Dist. Govt. Class IV Employees Co-operative House Building Society Limited, Kurnool in Award No. 1/84, dt. 2.3.84 for the purpose of providing House sites to the members of the said Class - IV Employees, that the possession of the land in-question was also taken on 12-9-86 and the same was handed over to the said Society, that subsequently some of the Ex-land owners i.e., J. Parameswardu and 12 others filed Writ Petitions, appeal and suit in the High Court of A.P. Hyderabad and in Dist. Munsif Court, Kurnool respectively and obtained Interim Injunction which was vacated on 29-7-88 in 1/A No. 860/88 in O.S. 501/88 on the file of District Munsif Court, Kurnool and that even the writ petitions and Writ appeal filed by them before the orders of the High Court were also dismissed (Vide W.P.No. 94/88 Dt. 30-6-88), that, pursuant to the order of the High Court and District Munsif Court, the Kurnool Dist. Govt. Class - IV Employees Coop. House Building Society Limited, Kurnool entered in the said acquired lands and tried to lay roads by engaging labourers and private surveyor through contractor, by name T. Sreenivasulu, but it could not do so, due to unlawful assembly illegal trespassing and obstruction from the said exland owners. It has further been reported that, the said Ex-land owners (Respondents) forcibly seized the material from the labourers and detained them in their custody preventing them from proceeding ahead with their proposed work. The following incident in which the respondents noted above shows that they have clearly indulged in acts of violence endangering breach of peace and public tranquility in and around the acquired area in S.N. 92/A1 etc., of Kallur Village.

Incident :- On 12-10-88, when the Kurnool District Govt. Class IV Employees Coop house Building Society Limited, Kurnool tempted to lay roads etc., in the acquired land of at 80.21 acres in S.No. 692/A1 etc., of Kallur Village for the purpose of providing house sites to the Class IV Employees, the respondents shown above (Ex. owners of some of the acquired lands) un-lawfully assembled, trespassed into the acquired lands, obstructed the laborers and private surveyor engaged by the Contractor (T. Sreenivasulu) of the said House - Building Society and also seized the material from the labourers and detained them in the fields under their custody.

Whereas I, Mandal Executive Magistrate, Kallur satisfied from the above incident, that there is likely hood of imminent breach of peace and Public Tranquility in the area and initiation of proceedings against you all respondents U/s 107 Cr.P.C. to prevent the breach of peace and public tranquility is quite essential. I therefore do hereby require you all the Respondents to appear before me on 14-11-88 at 10.30 a.m. in the Court of Mandal Executive Magistrate, Kallur and to show cause as to why you should not be ordered to execute bonds for Rs. 50,000/- (Rupees fifty thousand only) with two sureties each for a like sum each for keeping the peace for a period of one year.

Given under my hand and seal of this court on this 8th day of November, 1988.

Sd -

Mandal Executive Magistrate,

To

All Respondents (in duplicate) through S.H.O Kurnool III Town P.S for service & return of served copy.

Copy to the Station House Officer III Town P.S. Kurnool.

Copy to the Inspector of Police, Kurnool (Rural)

Copy to the S.D.P.U Kurnool.

Copy to S.P. Kurnool.

Copy submitted to the sub Divisional Magistrate, Kurnool

Copy submitted to Collector & District Magistrate, Kurnool

IN THE COURT OF THE MANDAL EXECUTIVE MAGISTRATE

Miscellaneous Case No. of 199 Cr. No. of 199)

Statement of the

Name : Village : :

Father's Name : Taluk & Mandal : :

Calling : Religion : :

Age : Date : :

QUESTION : Preliminary order under Section 111 Cr.P.C. is passed against you read over and explained to you to show Cause as to why you should not be directed to execute a personal bond for Rs. to maintain good behaviour for a period of What you have to say ?

Answer :

ANNEXURE - V

SPECIMEN FORMS FOR USE UNDER SEC. 174 CR.P.C.

GOVERNMENT OF ANDHRA PRADESH

No. _____

Date _____

Form _____

To _____

Sri _____

You are requested to hold a post-mortem Examination on the body of _____ sent herewith through H.C./P.C.No. _____

Please furnish your report on the prescribed form

It is to particularly noted that the examination should extend to every part of the body.

Mandal Executive Magistrate

Place :

Date :

174 Cr.P.C.

**REPORT TO BE FORWARDED WITH THE BODY SENT FOR
POSTMORTEM EXAMINATION**

@@@

1. Preliminary particulars :

Name _____

Aged about _____ Years

Male/Female _____

Approximate Height _____ Feet _____ inches

Colour of eyes _____ Colour of hair _____

Cast marks _____ Length _____ inches

Other mark of identification _____

Village _____ Caste _____

Found / Died at (hour) _____ -AM / P.M. on _____

At (Place) _____ sent by _____

Incharge of _____ grade Head Constable No. _____

On _____ at _____ A.M./P.M.

2. The following wounds and injuries are found on the body :
3. The manner in which and the weapon or instrument (if any) with which the wound and injuries mentioned in item No. 3 appear to have been inflicted.
4. The following articles are sent with the corpse.

Clothes : _____ Jewellery : _____

Excreta : _____ Vomit : _____

Weapons : _____

Mandal Executive Magistrate

Station :

Date :

Note : In cases where death _____ is suspected to have been caused by poisoning From 87 should also be sent to Medical Officer

Copy submitted to the Sub Divn. Magistrate & Dist. Magistrate.

DOCKET

ANDHRA PRADESH POLICE

DISTRICT CIRCLE STATION

CRIME No.

Report of Investigation on the dead body of
held At on the of 19

Dated Dispatches Received

ANDHRA PRADESH POLICE

DISTRICT CIRCLE STATION

CRIME No.

Report of investigation under Sec. 174, Cr.P.C., on the body of Person found

Dead at on the of 19

- N.B. :- i) In framing this report the questions below should be carefully answered
- ii) The word 'nil' should be written against the number of any question which requires no answer
 - iii) Questions 19 to 25 apply to the Railway Police
 - iv) Case dairy forms should be used as inter sheets for answering these questions.

QUESTIONS

1. a) Names Caste, Calling and residence of persons composing the panchayat.
b) Names of Blood relations and witnesses
2. Deceased's name sex age caste, calling, father's name and residence
3. By whom first found dead when and where ?
4. By whom last seen alive, where and when and in whose company ?
5. Hight, colour and description marks
6. Married or singal, if a female, was she the only wife ?
7. State of corpse ; if any wounds, particulars thereof and list of all property found on the corpse.
8. Minute description of exact spot where corpse was found ; if in water, depth thereof if in a well
 - (a) Is the well public or private property if the latter to whom does it belong ?
 - (b) Is it near a public road or pathway ?
 - (c) Has it a parapet wall and float ?
9. Apparent cause of death,
10. If by violence, apparently by what weapon
11. (a) If any persons suspected who and why ?
(b) Was deceased insured in any Company ?
12. If corpse is not sent for medical examination, why ?
13. If corpse is sent for what purpose and by whose order, and number of constable who went with it ? (The date and hour when the body is sent should also be given here.)

14. By whose orders corpse was buried or burnt ?
15. Opinion of the Panchayatdars as to cause and manner of death
16. Signatures of such of the panchayatdars in the above opinion.
17. Station House Officer's signature
18. a) If name and residence of deceased by unknown, state what steps have been taken to ascertain the same and secure identification? To what stations have proclamations been sent ?
b) Have finger prints of deceased been taken and sent to Finger Print Bureau, Andhra Pradesh ?
19. Was body warm or cold when first found ?
20. If appearance shows that body has been dragged was it by up or down train ?
21. Were suspected engines and carriages, examined if so by whom and with what result
22. Circumstances under which deceased met with accident ?
23. Reasons for supposing that body was run over by any particular train ?
24. Statements of driver and firemen of suspected train
25. Any reason to suspect foul play
26. Duration of investigation
Investigation commenced at
Investigation closed at

**PROCEEDINGS OF THE MANDAL REVENUE OFFICER &
MANDAL EXECUTIVE MAGISTRATE,**

PRESENT :: Sri

M.C.No.

Dt :

Sub :- Exhumation - Exhumation of body of Sri

Aged about years - of

Village of Mandal - Conduct

of Post Mortem - Regarding.

Ref :- Requisition of Sub-Inspector of Police,

Police

Station Dt :

in Cr.No.

under section 174

Cr.P.C.

The Sub-Inspector of Police, Police Station has given a requisition to exhume the body of Sri S/o. Resident of Village of this Mandal who died on and buried by his wife and other relatives on stating that the wife of the deceased has now given a written complaint on that her husbands death is suspicious. Accordingly he has booked as case Under section - 174 Cr.P.C. in Cr.No. The F.I.R. was sent to this office along the requisition letter.

I have enquired the complainant i.e., the wife of the deceased, on She has stated that her husband was called by one Sri on at and took him with them. Later after one hour it was brought to her notice that her husband was found dead near The dead body was brought to their house and body was buried on in the presence of Villagers and her relatives. Now she is suspecting the death of her husband. Hence requested to exhume the body and conduct Post Mortem to know the cause of the death. Duly satisfied I have given requisition to the Professor, Forensic De-

partment, Kurnool Medical College to send team of Doctors to the spot to conduct autopsy over the dead body of. Then proceeded to the spot where the body was buried along with Smt. Wife of the deceased, Sri brother of the Village Sarpanch Ex. Village Administrative Officer, Village Elders and the thoties who buried the body i.e., Sub-Inspector of Police, Police Station and Doctors of Forensic Department. The spot where the body was buried was identified by the relatives and thoties. Then it was ordered to exhume the body. The process started at on The spot where the body. was buried in Sy. No. Village. The boundaries of the spot are as follow :

NORTH	:-	Sy.No.	Village
South	:-	Sy. No.	Village
East	:-	Sy. No.	Village
West	:-	Sy. No.	Village

After digging pit for ft in depth one dead body was found in the pit in deteriorated stage. The Wife of the deceased and have identified the body as that of Later the body was handed over to the Sub-Inspector of Police, Police Station at to conduct inquest and to assist the forensic doctors for conduct of Post Mortem. The inquest was completed by The Post Mortem was conducted for from to (time) After completion of Post-Mortem, the Sub-Inspector of Police, Police Station was directed to bury the body again in the same pit. All the above process was conducted under Panchanama.

MANDAL EXECUTIVE MAGISTRATE &
MANDAL REVENUE OFFICER,

KURNOOL (Dt).

To

The Sub-Inspector of Police.

Police Station.

Copy to all Concerned.

ANNEXURE - VI

FORMATS FOR MAINTAINING CERTAIN REGISTERS ETC.

Criminal Register No. 6/6-A

Form No. 5

Register of Miscellaneous and Maintenance cases Received

Number	Name and residence of petitioner, if any or designation of officer by whom reported	Name and residence of respondent	Section and Chapter of the Code under which proceedings are instituted	Remarks	Receipt of Commencement Petition or of inquiry Report	Order	Date of delivery of record into record room with Record-keeper's Initials	Remarks	
1	2	3	4	5	6	7	8	9	10

Instructions

1. This register should be maintained in two sections in all Courts. The first section should be called "Criminal Register No. 6". This section should be restricted to cases under Section 108 to 110 and 125 of the Code of Criminal Procedure and the cases entered in this section should be shown as Miscellaneous cases.
The second section called "Criminal Register No. 6-A" with the same heading as in criminal Register No. 7, should be opened and maintained for all proceedings other than those entered in the first section. The cases entered in this section should be marked as Miscellaneous Petitions.
2. The despatch seal should be obtained in the last column of the register in taken of transmission to the District and Sessions Judge of copies of judgements and orders. In cases required to be included in the monthly statement prescribed in rule 262 of their inclusion should also be noted in the last column.
3. The register should be checked by the Presiding Magistrate every month and omission rectified.

Dr. M.C.R.H.R.D. Institute of Andhra Pradesh _____

(Criminal Register No. 12)

Form No. 12

Register of Court Fees and Process Fees received.

Date	Sl.No.in the register	Nature of document and reference to connected case.	Court fees in Stamps		Non- Judicial Stamps	Remarks
			Process Fees	Other Fees		
1	2	3	4	5	6	7
			Rs. P.		Rs. P.	

- ◆ column (3) - If there are enclosures, the number and nature of those documents also to be specified in this column.
- ◆ Column (7) - Return of documents which is exceptional may be shown in the column of remarks.

Note :- This register should be reserved for papers other than those received by post.

Form No. 13

For the month of _____ year

Date	Camp	Cases posted	Remarks	Date	Camp	Case Posted	Remarks
1	2	3	4	1	2	3	4

Note :- 1) When cases are adjourned the date and place of the adjourned hearing should be shown in column (4)

2) Cases disposed of on the date of hearing should be marked thus.

Register showing the disposal of property produced in inquiries and trials

Number of case Or date and number of charge sheet, name of station	Description of property		Initials of the Judge or Magis- trate	Particulars of order for disposal & Section of Law with date	If returned to party Producing it, or his Agent the signature & date	Initials of the Judge or Magistrate	if sold by auc tion the date of auction & amount realized	Date of remitt the sale proceeds to treasury	Initials of the Judge or Magistrate	Remarks of Inspecting Officers if any
	Sl. No	Valuable Property Other Property								
1	2	3 4	5	6	7	8	9	10	11	12

Years

Instructions

1. This register shall be inspected atleast one in three months by the presiding judge or Magistrate who will check the valuables and record the result of this inspecting in the column for remarks.
2. A fresh register shall be opened every year and the outstanding items shall be brought forward from the register of the previous year.
3. When valuables are sent to the Chief judicial Magistrate for disposal, a triplicate forward form of receipt shall be used, one part of which will be the office copy, the other two will be sent to Magistrate of which one will be checked and signed by him and pasted in this register on receipt in the Sessions Court.
4. Along with its quarterly returns each Criminal Court will send a certificate of having checked the valuables with their register.
5. Deposits and such other items, being case properties should properly be accounted for being brought to this register. The challan and the numbers and dates of the deposit may also be noted in the register, so that deposit adjustment, vouchers column may readily be prepared and sent to the connected Sub- Treasuries for adjustment, and the fact noted in the last column relating to the remarks.

REGISTER OF FINES IMPOSED, LEVIED AND REFUNDED

Court

years-

Date of imposition of fine	No. of case of accused	Name of accused	Amount of the fines to be credited to Government	Demand, i.e. Balance uncollected (in cases of previous months or Fines imposed in case of current month)			Amount credited in Sub-Treasury				Irrecoverable amount			Balance		Refunds		Remarks					
				Fine to be credited eventually to Local Funds, Municipal Funds etc	Compensation awarded under Sec. 250 246 or 352. Code of Criminal Procedure, and other compensation and all other sums recoverable like fines which cannot be entered in column (4) or (5)	Amount Collected	Initials of Judge or Magistrate	Date of Collection	To be credited eventually to Local Funds Municipal Funds etc.,	Compensation and other amounts described in column (7)	Date of credit in Sub Treasury or Magistrate	Initials of Judge or Magistrate	Amount written off	Number and date of sanction written off	Uncollected	Amount Re-funded	Number and Date or refund order						
																			Amount	Name of the fund, body or association concerned and the provision of law under which fine is imposed.			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	
									Rs. P.		Rs. P.	Rs. P.	Rs. P.	Rs. P.									

Note.-1) The word "fine" includes any amount recoverable as a fine or Expenses of prosecution.

- 2) If a fine is collected while the person on whom it has been imposed is in jail intimation of its collection must be sent at once to the Superintendent of the jail and the fact noted in column (23) See rule of the Criminal Rules of practice.
- 3) In the case of a remission entered in columns (18) and (19) note "Remitted on appeal should be made against the entry in column (23).
- 4) The attention of Judges and Magistrates initiating under columns (8), (11) and 17 is invited to the fact that such initials show that they have satisfied themselves that the fines imposed are taken to demand, collected and credited to the treasury. No entry shall be expunged from the register without attestation by the Judge or Magistrate.

Form No. 21
 (Criminal Register No. 21)
 Register of Witness's Batta Collected from Parties
 (Magistrate's Court)

Date	Name of the Case	Name of the party	Opening balance	Amount of deposit	Total of columns 4&5	Amount paid to witness	Amount refunded to parties	Signature of mark of witness or party	Total of Columns (7) and (8)	Colsing balance, i.e. difference between columns (6) and (10)	Initials of the head of the office	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13

Instructions

1. This register should be maintained in the ledger form, with a daily abstract being recorded in the register itself. For this purpose separate page or pages according to the needs of the particular case should be allotted for each case and for entering the daily abstract, some pages should be allotted at the end.
2. The amount of unspent witness batta and batta collected for witness whose evidence is dispensed with, should be entered in this register. The register must be checked at regular intervals every month, one by the Head Ministerial Officer and another time by the presiding Magistrate during the scrutiny of registers.

Form No. 22

(Criminal Register No. 22)

Register of orders of Judge or Magistrate on witness's batta and Travelling Allowance

(Rule 236 Criminal Rules of Practice)

No. of Cases	Name of Witness	Signature of witness on the first day of his appearance	Whether the witness was presented on					Judge's order fixing the			Initial's of the Judge	Remarks
			2nd day	3rd day	4th day	5th day	Class of the witness	No. days for which batta is payable	Distance for which mileage is payable with the name of the village and the nearest Rail-way Station			
1			4	5	6	7	8	9	10	11	12	

Note :- The signature of an official witness should be taken in this register just as in the case of any other witness and the fact and the date of issue of the court attendance certificate should be noted against the entry.

Form No. 23

(Criminal Register No. 22. A)

**Batta and travelling Allowance to Witness Criminal Case No. of the Court for
2002 (Rule 236 Criminal Rules of Practice)**

Name of the Witness	What Case	Travelling Allowance					Actual cost of carriage hire to and from the Court witness on days of attendance	Batta		Total batta and travelling allowance	Certificate of Head Clerk or Magistrate and comparison with Register No. 22	Receipt of party to whom payable	Remarks
		Number of class by rail or road	Number of miles by road	Amount of Railway fare mileage by road or actual expenses by sea or canal	Amount of actual expenses of carriage by road not exceeding 50 paise a mile	No. of Days		Rate per Diem					
									8				
1	2	3	4	5	6	7	8	9	10	11	12	13	

Form No. 24
(Criminal Register No. 22-D)

Cash account of the office of the _____ Magistrate of _____ for the month
of _____ 19____

Date	No. of item or folio in ledger	Particulars	Receipts		Head of account or heading of item
			Cash	Bank or Treasury	
1	2	3	4	5	6
					Rs. P. Rs. P.
Brought forward					
Carried over					

Date	Number		Folio in ledger	Particulars	Disbursements		Head of account or heading of Item
	Item	Voucher			Cash	Bank or Treasury	
1	2	3	4	5	6	7	8
						Rs. P.	Rs. P.
Brought forward							
Carried over							
Carried over							

Form No. 26
(Criminal Register No. 214)

Record Destruction Register

Year	Num- Ber	Date of disposal revision petition if any	Date of disposal	Date up of which to be Retained		Date of destruction		Remar ks
				Part-I	Part-II	Part-I	Part-II	
1	2	3	4	5	6	7	8	9

Instructions :

1. The entries in Columns (1) to (3) and (5) and (6) of this register should be made as soon as the cases are received in the record room.
2. The entry in column (4) should be posted when the appeals or revision petition, if any, is disposed of and the papers are received in the record room.
3. Columns (7) and (8) should be filled in only after the records actually destroyed.

Form No. 51
(Criminal Register No. 51A)

Form No. 51					
Refund ORDER :-					
Case..... of 20 on the file of the Judge/Magistrate					

I, hereby certify that accused in the above case is entitled to a refund of rupees..... being the amount of fine imposed by the sentence of the Court of the Class Magistrate.

Reversed On appeal by this Court/In reference to the High Court/By the High Court or court of Sessions or Court of Revision

20.....

Judge/Magistrate

यदैव विद्यया करोति श्रद्धयोपनिषदा
तदैव वीर्यवत्तरं भवति

**Duty performed
with Knowledge, Faith and Devotion,
becomes really effective**