

For official use only

HANDBOOK

FOR

**TRAINING OF EXECUTIVE
MAGISTRATES**



Administrative Training Institute

Government of West Bengal

FC-Block, Sector-III,

Salt Lake City

Kolkata – 700106

Website : <http://www.atiwb.gov.in>

ADMINISTRATIVE TRAINING INSTITUTE
GOVERNMENT OF WEST BENGAL

TRAINING MODULE FOR “POWERS & FUNCTIONS OF EXECUTIVE MAGISTRATES”

Day	Session	Time	Topic
One	I	10.00 a.m.-11.00 a.m.	Inauguration, Ice-breaking & Course briefing
	II	11.15 a.m.-12.15 p.m.	Court Matters (Judiciary / Concept / Natural Justice / Criminal, Civil matters)
	III	12.15 p.m.- 1.15 p.m.	Overview on Powers & Functions of Executive Magistrates
	IV	2.15 p.m.–3.15 p.m.	Security for keeping peace and good behavior (Sections 107 – 116)
	V	3.15 p.m.–4.15 p.m.	Security for keeping peace and good behavior (Sections 117 – 123)
	VI	4.30 p.m.-5.30 p.m.	Model proceedings and exercises
Two	I	10.00 a.m.-11.00 a.m.	Tackling Law & Order and Dispersal of unlawful assemblies (Sections 129 – 132)
	II	11.15 a.m.-12.15 p.m.	Relationship between the police and the magistrate
	III	12.15 p.m.- 1.15 p.m.	Maintenance of Public Order & Tranquility (Sections 133 - 143)
	IV	2.15 p.m.–3.15 p.m.	Maintenance of Public Order & Tranquility (Section 144)
	V	3.15 p.m.–4.15 p.m.	Maintenance of Public Order & Tranquility (Sections 145 - 148)
	VI	4.30 p.m.-5.30 p.m.	Model Proceedings & Exercises
Three	I	10.00 a.m.-11.00 a.m.	Inquest, disinter and dying declaration
	II	11.15 a.m.-12.15 p.m.	Executive enquiry into police firing with case-study
	III	12.15 p.m.- 1.15 p.m.	Writing of S. F, Contempt of Court, Management of Courts and Search warrant (Sections 94, 97 & 98)
	IV	2.15 p.m.–3.15 p.m.	Miscellaneous Acts — Arms & Explosive Substances with Rules
	V	3.15 p.m.–4.15 p.m.	Questions & Answers / Panel Discussion
	VI	4.30 p.m.-5.30 p.m.	Feedback, Evaluation & Distribution of Certificates

Interludes :

11.00 a.m. - 11.15 a.m. : TEA BREAK

1.15 p.m. - 2.15 p.m. : LUNCH BREAK

4.15 p.m. - 4.30 p.m. : TEA/COFFEE BREAK

M A T E R I A L S

FOR

TRAINING OF EXECUTIVE MAGISTRATES

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ACKNOWLEDGMENTS

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COURT MATTERS

COURT -- WHAT IS?

THOUGH NOT DEFINED IN CR.P.C. THE CASES OF CRIMINAL COURTS HAVE BEEN ENUMERATED IN SEC. 6 OF CR.P.C.

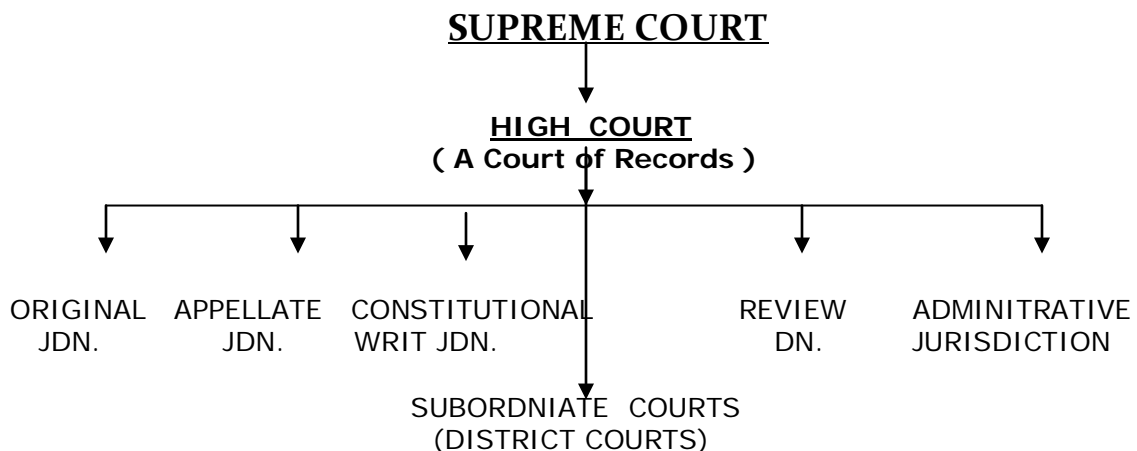
CONCEPT –

IN ORDER TO CONSTITUTE A COURT IN THE STRICT SENSE OF THE TERM, AN ESSENTIAL CONDITION IS THAT THE COURT SHOULD HAVE, APART FROM HAVING SOME OF THE TRAPPINGS OF A JUDICIAL TRIBUNAL, POWER TO GIVE A DECISION OR A DEFINITIVE JUDGMENT WHICH HAS FINALITY AND ADMINISTRATIVE AUTHORITY WHICH ARE THE ESSENTIAL TESTS OF A JUDICIAL PRONOUNCEMENT.

“A MAGISTRATE IS NOT A COURT UNLESS HE IS ACTING IN A JUDICIAL CAPACITY”.

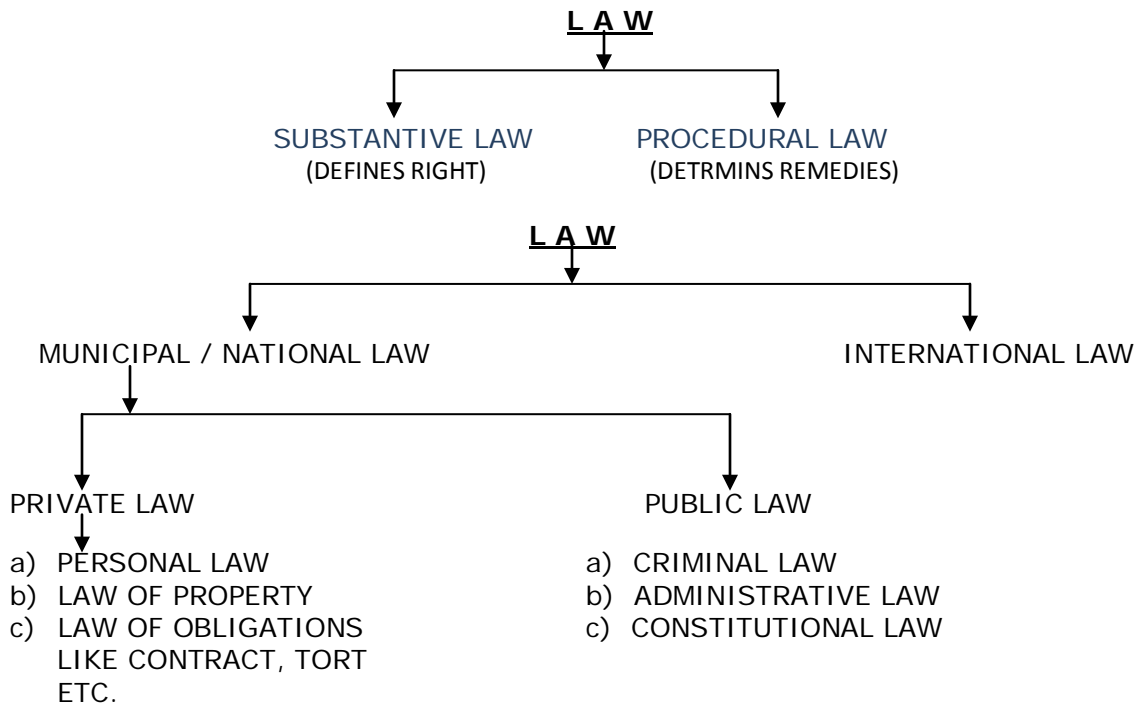
JUDICIAL -- MEANING OF :

IT MAY REFER TO THE DISCHARGE OF DUTIES EXERCISED BY A JUDGE OR BY JUSTICES IN COURT OR TO ADMINISTRATIVE DUTIES WHICH NEED TO BE PERFORMED IN COURT AND IN RESPECT OF WHICH IT IS NECESSARY TO BEAR A JUDICIAL MIND -- THAT IS A MIND TO DETERMINE WHAT IS FAIR AND JUST IN RESPECT OF MATTERS UNDER CONSIDERATION.



L A W :

SALMOND : LAW MAY BE DEFINED AS THE BODY OF PRINCIPLES RECOGNISED AND APPLIED BY THE STATE IN THE ADMINISTRATION OF JUSTICE. IN OTHER WORDS THE LAW CONSISTS OF RULES RECOGNISED AND ACTED ON BY COURTS OF JUSTICE.



NATURAL JUSTICE

THE TERM NATURAL JUSTICE MAY BE EQUATED WITH "PROCEDURAL FAIRNESS" OR "FAIR PLAY IN ACTION"

TWO FUNDAMENTAL PRINCIPLES OF NATUARL JUSTICE :

- I. NEMO JUDEX IN RE SUA
NONE SHOULD BE A JUDGE IN HIS OWN CAUSE
BIAS – A STATE OF MIND WHICH TENDS TO INFLUENCE THE DECISION

- II. AUDI ALTERAM PARTEM
HERE THE OTHER SIDE
HERE BOTH SIDES
NO PERSON SHOULD BE CODEMNED UNHEARD

EVEN GOD HIMSELF DID NOT PASS SENTENCE UPON ADAM BEFORE HE WAS CALLED UPON TO MAKE HIS DEFENCE.

THE OPPORTUNITY SHOULD BE FAIR AND ADEQUATE AND NOT FORMAL AND SHAM.

NATURAL JUSTICE NOT ONLY FOR JUDICIAL PROCEEDINGS BUT ALSO IN QUASI-JUDICIAL AND ADMINISTRATIVE PROCEEDINGS.

SUBSIDIARY PRINCIPLES OF NATURAL JUSTICE :

1. JUSTICE SHOULD NOT ONLY BE DONE BUT MANIFESTLY AND UNDOUBTEDLY BE SEEN TO BE DONE

2. BIAS NEED NOT BE PROVED -- REASONABLE DOUBUT OR SUSPECION OF BIAS IS SUFFICIENT

3. THE ORDERS SHOULD BE SPEAKING ORDERS
4. ONE WHO DECIDES MUST ALSO HERE.

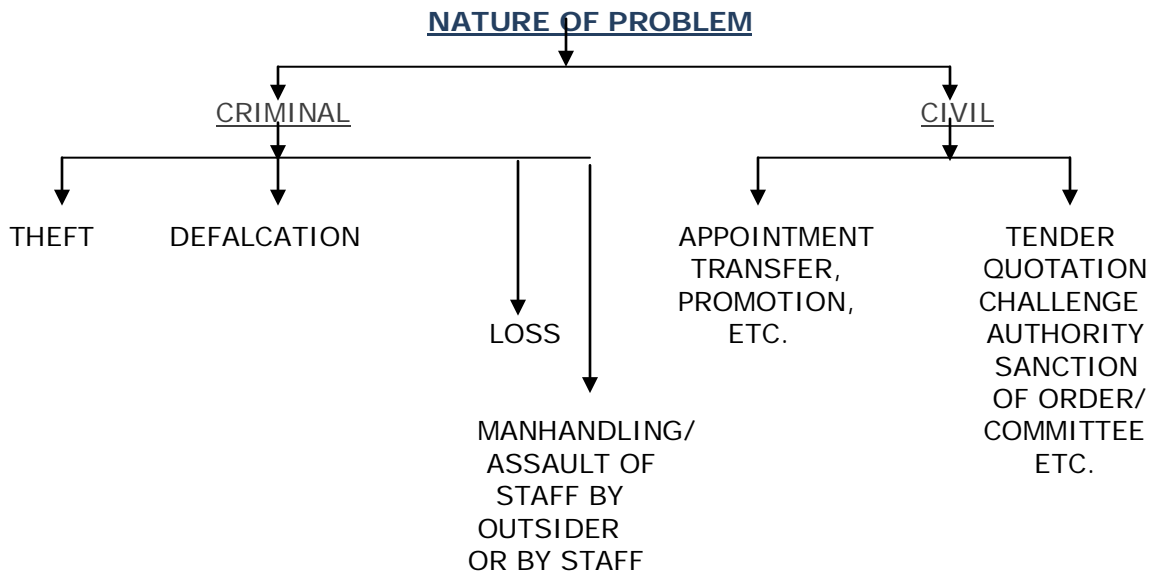
LAW AND NATURAL JUSTICE :

1. LAW IS THE MEANS, JUSTICE IS THE END
2. NATURAL JUSTICE ALSO AIMS AT JUSTICE
3. NATURAL JUSTICE HUMANISES THE LAW
4. NATURAL JUSTICE SUPPLEMENTS THE LAW BUT NOT SUPPLANTS THE LAW.

GENERAL RULES ABOUT NATURAL JUSTICE AND ITS PRINCIPLE :

1. PRINCIPLES OF NATURAL JUSTICE ARE NEITHER CODIFIED NOR EMBODIED
2. IT HAS NO UNIVERSAL APPLICATION AND SHOULD NOT BE INDISCRIMINATELY PROJECTED OVER EACH AND EVERY CASE
3. UNNATURAL EXPANSION OF NATURAL JUSTICE WITHOUT REGARD TO REALITIES IS NOT WARRANTED
4. PRINCIPLES OF NATURAL JUSTICE ARE FLEXIBLE AND AMENABLE TO SITUATIONAL MODIFICATIONS
5. EVEN A POST-DECISIONAL HEARING IN EMERGENT CASES REQUIRING PROMPT ACTION OF A PREVENTIVE AND REMEDIAL NATURE, MAY SATISFY THE REQUIREMENT OF NATURAL JUSTICE.

COMMON PROBLEMS WE FACE :



THEFT / ROBBERY / DACOITY -- LODGE F.I.R
 DEFALCATION -- ENQUIRE AND LODGE F.I.R
 LOSS -- G.D.

MANHANDLE / ASSULT -- LODGE F.I.R./FORWARD THE F.I.R.
CRIME AGAINST WOMEN -- LODGE F.I.R.

F.I.R :

- i) DRAFT F.I.R. CAREFULLY
- ii) YOU WILL BE DE-FACTO COMPLAINANT
- iii) HELP POLICE DURING ENQUIRY AND SEIZURE, IF ANY
- iv) YOU WILL BE MOST LIKELY PROSECUTION WITNESS NO. – 1

CIVIL MATTERS :

1. YOU WILL RECEIVE NOTICE/CAVEATE UNDER PROVISION OF C.P.C. -- IT DOES NOT AFFECT PROCESSING/PROCEEDING FURTHER
2. ADVOCATE'S LETTER COMMUNICATING COURTS ORDER :
 - i) COGNIZENCE OF ADVOCATE'S LETTER IS A MUST
 - ii) ADVOCATE'S LETTER SHOULD ACCOMPANY THE CERTIFIED COPY OF THE ORDER/INTERIM ORDER OR SHALL BEAR THE OPERATIVE PART OF THE ORDER IN VERBATIM, IF NOT YOU MAY ASK FOR THE SAME
 - iii) TAKE UP OFR ENGAGEMENT OF STATE ADVOCATE WITH THE L.R. THROUGH YOUR DEPARTMENT FOR HIGH COURT CASES (FOR OTHER COURTS CONTACT G.P.) FOR VACATION OF INTERIM ORDER / FOR CONTESTING THE SUIT / OR FOR APPEAL OR REVISION.
 - iv) NEVER MAKE DIRECT ADDRESS TO ANY JUDGE FOR COMMUNICATION, PLEASE GO THROUGH REGISTRAR, S.A. OR G.P. / A.G.P. AS THE CASE MAY BE.
 - v) IF YOU HAVE ANY DIRECTION FROM THE COURT, YOU NEED NOT ASK FOR PERMISSION FROM YOUR HIGHER AUTHORITY FOR COMPLIANCE. HOWEVER, YOU MAY PREFER SUBMISSION FOR VACATION / REVISION / APPEAL AGAINST THE ORDERS SO PASSED IN PROPER WAY THROUGH YOUR AUTHORITY AND WITHIN THE STIPULATED DATE.
 - vi) YOU ARE TO PREPARE STATEMENT OF FACTS AGAINST EACH PARA OF THE WRIT PETITION.
 - vii) AFFIDAVIT-IN-OPPOSITION IS PREPARED ON THE BASIS OF THE S.F. GO THROUGH IT VERY CAREFULLY BEFORE SWEARING.
 - viii) ONE OF THE CO-RESPONDENTS MAY FILE A-IN-O ON BEHALF OF THE OTHER REPENDENT / RESPONDENTS IF AUTHORISED BY HIM / THEM.
 - ix) ALWAYS KEEP IN TOUCH WITH CO-RESPONDENTS AND S.A. FOR PROPER STEPS OF THE CASE.

**OVERVIEW ON POWERS AND FUNCTIONS OF
EXECUTIVE MAGISTRATES**

Functioning of an Executive Magistrate begins as soon as he is empowered as such under Section 20(1) of the Code of Criminal Procedure. The emphasis on the word “empowerment” needs to be noted carefully. In this connection this has to be borne in mind that an officer merely by joining West Bengal Civil Service or similarly in the case of an officer joining Indian Administrative Service does not entitle him to exercise powers and functions as Executive Magistrate. On joining West Bengal Civil Service an officer is posted as Deputy Magistrate and Deputy Collector and an officer joining Indian Administrative Service during his tenure on probation in the District is posted as Assistant Magistrate with additional power of Collector. It is noteworthy that, as the nomenclature Deputy Magistrate and Deputy Collector or in the case of District Magistrate and Collector indicates, officers holding such posts are required to discharge dual functions i.e. the function of a magistrate which means the responsibility to maintain law and order within his given jurisdiction and the functioning of a Collector, thereby meaning the responsibility for organizing revenue collection on behalf of the Government. Ordinarily an officer getting posted to the District as Deputy Magistrate and Deputy Collector is not empowered in all cases as Executive Magistrate. Section 20(1) provides that in every District and in every metropolitan area the State Government may appoint as many persons as it thinks fit to be Executive Magistrate and shall appoint one of them to be the Executive Magistrate in charge of the District or the metropolitan area. So, it is obvious from this expression that an officer getting posted as District Magistrate, joins a District in the said capacity simultaneously being empowered as the Executive Magistrate in charge of the District. Similarly an officer getting posted in charge of a Sub-Division also joins with the power of Executive Magistrate simultaneously and is known as the SDM or Sub-Divisional Magistrate. To assist the District Magistrate there may be several Additional District Magistrates who under Section 20(2) are vested with all the powers of a District

Magistrate. It will not be out of place to mention here that contrary to a popular belief there is no post as SDEM or Sub-Divisional Executive Magistrate. Appropriately speaking, as provided in the Code (Cr.P.C.), the Magistrate posted in charge of a Sub-Division is known and earmarked as SDM or Sub-Divisional Magistrate. Similarly, the post though conventionally known as Sub-Divisional Officer, his only official designation is Sub-Divisional Magistrate. In this connection further one point which may be added is that to be empowered as Executive Magistrate it does not require an officer to join either WBCS Cadre or Indian Administrative Service as Section 21 of Cr.P.C. provides scope for appointment of Special Executive Magistrates in case of emergency or otherwise as per decision and necessity of the State Government and the said section i.e. Section 21 of Cr.P.C. has not specified any particular qualification for empowerment of a person as Special Executive Magistrate. In metropolitan areas the Commissioner of Police is vested with the power of Executive Magistrate for his respective jurisdiction.

The power and functions of an Executive Magistrate may be ordinarily divided in two categories, one of which and the very important one being the necessity to preside over the Court of Executive Magistrate to try cases under certain sections of Cr. P. C. which will be discussed hereafter. Another important function for him is to maintain law and order at spot as and when occasion arises under assistance from the police. The Executive Magistrate most importantly is also required to discharge the powers and functions in case of a police firing where as per provision of Police Regulation of Bengal, 1943, it is stipulated that there should be an enquiry in every instance of police firing by an Executive Magistrate to determine and ascertain whether there was appropriate necessity for the police to open fire and whether the firing was justified. Similarly an Executive Magistrate also requires to hold inquest in case of unnatural death including custodial death, to take dying declaration under provision of Indian Evidence Act and/or to exhume dead bodies as and when necessary.

The sections which are relevant for an Executive Magistrate for presiding over the Court of an Executive Magistrate for trial of cases are Sections 94, 97, 107,

109, 110, 133 145 and 147 of the Code of Criminal Procedure and out of the said sections it is pertinent to mention here that to try cases under Sections 133 and 144 an Executive Magistrate needs to be specially empowered by the State Government and for Sections 94 and 97 the power remains vested only with the Sub-Divisional Magistrate or the District Magistrate as the case may be.

The next important thing to bear in mind for an Executive Magistrate presiding over a Court is that all the sections of the Cr.P.C. under which the cases are to be tried by him are essentially “preventive section” with the only exception of Section 133 which may be justifiably termed as a “corrective sections” which will be explained later on while discussing scope and provision of each section mentioned earlier, one by one.

SECURITY FOR KEEPING PEACE AND GOOD BEHAVIOR

(Sections 107 – 116)

Section 107 Cr.P.C is a very vital and potential tool for an Executive Magistrate to take cognizance of complaints by police report or on information otherwise as the case may be of any probable incidence or apprehension of “breach of the peace” or “disturbance of public tranquility”. This is essentially and exclusively a preventive section which requires and empowers an Executive Magistrate to exercise power requiring a person or group of persons to execute a bond for keeping the peace for a period not exceeding one year or for a shorter period as the Magistrate thinks fit. The Executive Magistrate trying cases under this section may invoke provisions and can exercise powers either on his own motion or on receipt of a complaint whereupon on being primarily satisfied that there is possibility of a breach of the peace and the public tranquility in an area falling within his jurisdiction may issue notice to the person or to a group of persons complained against asking him or them to show cause as to why he or they should not be ordered to execute a bond for keeping the peace for a given period not exceeding one year. Here the most important point to be taken note of is that a Magistrate who exercises powers under this section should take cognizance of a complaint only when there is immediate apprehension of a breach of the peace and tranquility and should refrain from doing so when it is made known to him or when he has sufficient knowledge to rely upon that an incident of breach of the peace and public tranquility has already occurred, in which case the matter goes over to the jurisdiction of a Judicial Magistrate under the appropriate and relevant sections of either Criminal Procedure Code or Indian Penal Code or other provisions of law as would the situation necessitate. This point is further emphasized for the fact that in many cases Executive Magistrates take cognizance wrongly after the actual occurrence of a breach of the peace and public tranquility either through oversight or not by proper application of mind or at the instance of a lawyer who also acts either out of ignorance of the actual provision of the Section or with a clear clandestine motive to confuse the Learned Court unscrupulously.

Section 109 empowers an Executive Magistrate to take cognizance when there is reason for him to believe that there is within his jurisdiction a person who by taking precaution to conceal his presence is likely to indulge in a wrongful act with a view to committing a cognizable offence. The Magistrate in such case may direct such person to

show case why he should not be ordered to execute a bond with or without sureties for his good behaviour for any length of time not exceeding one year as the court would deem necessary and fit. A point to be noted in this connection is that the person to be proceeded against is prima-facie believed to be trying to conceal his actual identity with an ulterior motive leading to the commission of a cognizable offence. So in a given case if the identity of the person appears to be known or disclosed to the Magistrate contemplating to take cognizance under this section either on information on his own or on a complaint made by the Police or otherwise, it fails to be a fit case to proceed under this Section. So, the main ingredients for taking cognizance in connection of a complaint under this Section are (i) Concealment of identity of the person complained against and sufficient necessity to require him to show cause as to the execution of a bond for good behaviour for a period not exceeding one year. The last but not the least it may be mentioned here that the powers under this section are often and in most cases, compared to other sections, are wrongly exercised either out of misconception or at the instance of the Police authority leading to unnecessary harassment of innocent members of the public. So an Executive Magistrate trying cases or taking cognizance under this section has to remain very particularly alert as to the right application of mind while a complaint of a similar nature is put forward before him.

Section 110 of Cr.P.C. empowers an Executive Magistrate to exercise power and to take cognizance of a complaint when there is sufficient information before him that there is within his local jurisdiction a person who is a habitual offender i.e. a robber, house breaker, thief or a forger or a person who habitually protects or harbour thieves or renders help in storage or disposal of stolen property, commits or attempt to commit or abets the commission of the offence of kidnapping, abduction, extortion, cheating etc. It is provided under this section that the Executive Magistrate may proceed to require such a person or group of persons to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for a period not exceeding three years at the maximum. Compared to Section 109 the points to be noted here with particular emphasise is that the person required to execute a bond under this section is also required to furnish sureties simultaneously and mandatorily and the period for keeping good behaviour for execution of the bond in question is three years at the maximum as against one year in case of Section 109. This is also a very important and powerful tool lying placed at the disposal of an Executive Magistrate and has to be exercised with caution ensuring that no harassment is

meted out to any innocent member of the public at the instance of the police or any unscrupulous legal counsel having personal grudge against a person or a group of persons which possibility always exists and it becomes incumbent upon the trying Magistrate in a similar situation to be careful about the administration of equitable justice and no harassment to any person for wrong application of mind.

The manner in which order under Sections 107, 109 and 110 is to be made, remains detailed under Sections 111, 112, 113, 114 and 115 of Cr. P.C. Section 116(3) provides a very potential scope for an Executive Magistrate in case of necessity where he believes that the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence is necessary as an immediate measure he may direct a person complained against to execute an ad-interim bond with or without surety for keeping the peace or maintaining good behaviour until the completion of the enquiry. If such necessity arises at the time of issuing such direction he has to record in writing the reasons for his satisfaction for resorting to such action which should be very carefully and selectively taken recourse to for avoidance of misuse of the scope and power vested under this Section.

SECURITY FOR KEEPING PEACE AND GOOD BEHAVIOR

(Sections 117 – 123)

Section 117 provides order to give security. If the result of the inquiry is unfavourable to the person, he is called upon to execute the bond and furnish sureties. There are three safeguards : (1) The terms and conditions cannot be more onerous than those fixed in the notice; (2) Amount of the bond should be reasonable and (3) If the person is a minor, the bond is to be executed by his sureties. Section 118 makes provisions for discharge of person informed against. The term “discharge” is not used in its technical sense, for there is no “charge” framed in security proceedings. It is used in the sense of a permission to depart, if he is in custody. Section 119 specifies the commencement of period for which security is required and Section 120 specifies the contents of the bond. When the bond is taken for keeping the peace, it is a breach when the person does some act which is likely in its consequences to provoke a breach of the peace. A bond for good behaviour is broken if the person is, during its term, convicted either of abetment or attempt or commission of an offence, punishable with imprisonment, wherever committed. Under Section 121 the Magistrate has power to refuse to accept a surety or to reject a surety already accepted by him or his predecessor. Under Section 122 where a person fails to give security, he is detained in prison and Section 123 empowers District Magistrate under Section 117 or the Chief Judicial Magistrate in any other case to release persons imprisoned for failing to give security.

MODEL PROCEEDINGS & EXERCISES

(Sections 107 – 123)

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 matterof.....now pending in the court of..... I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term or until the completion of the said inquiry and, in case of my making default therein; I hereby bind myself to forfeit to Government the sum of Rupees.....

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

(Seal of the Court) (Signature) s

Model Proceeding (Section 107)

1. 20 09 2009 u/s 107 Cr.P.C.

Seen the petition filed by the petitioner (first party) alleging against the opposite party for his commitment of certain acts that are likely to cause breach of the peace or to disturb public tranquility and praying for taking action u/s 107 Cr.P.C. Considered. Send the petition to the O/C.....P.S. for a report

To 04.10.2009.

Sd/-

2. 04.10.09

The First Party files hazira through his Ld. Advocate and is also present in person. No report received from the P.S. Issue reminder.

To
19 10 2009 for report.

Sd/-

3. 19.10.09 U/S 111, 113 & 114 Cr.P.C.

The present Report intentionally whereas appears the O P

The First Party is present. Seen the Police Report. Whereas it appears from the report of the O/CP.S. that the O.P. is making constant threats with dire consequences to the petitioner intentionally. And it that O.P. could not be restrained despite cautions made to him by the O/C of the P.S. And whereas it appears that unless any action is taken against the O.P. there is likelihood of disturbances of public tranquility. Hence, on being satisfied about the existence of sufficient ground for proceeding against the O.P., I, hereby, order for issuing a show cause notice through Summon upon the O.P. as to why he should not be asked to execute a Bond of Rs 1,000/-only with one Surety of like amount for maintaining peace in the locality for a period of one year. Copy of this order be also sent along with the Summon to the O/C ... P.S. for service upon the O.P. and to submit S.R. by the next date fixed.

To
02.11.2009.

Sd/-

4. 02 11 09

The petitioner is present. S.R. received. The O.P. appears in person and files hazira through his Ld. Advocate. The O.P. is asked as to whether he admits the allegations made against him or wants to defend the case. The O.P. wants to defend the case. Hence, he is directed to file written objection.

To
17.11.2009 for W/O by the O.P.

Sd/-

5. 17.11.09 u/s 116 Cr.P.C.

Both the parties are present. The O.P. files written objection. Copy of the same is served upon the petitioner (F.P.). The petitioner wants to put evidence from his side. Allowed.

To
30.11.2009 for oral evidence by the F.P. & cross examination.

Sd/-

6. 30 11 09

Both the parties are present. F.P. produces two witnesses. Evidence in chief as well as cross examination is concluded. The O.P. wants to adduce evidences from his side. Allowed.

To
10.12.2009 for evidence from O.P.'s side.

Sd/-

7. 10.12.09

Both the parties are present. The O.P. is present with one witness. Evidence from the O.P.'s side as well as cross-examination is concluded.

To
28.12.2009 for hearing on argument.

Sd/-

8. 28 12 09

Both the parties are present. Heard both the sides.

To
15.01.2010 for order.

Sd/-

9. 15.01.10 u/s117 Cr.P.C.

ORDER

Case of the First Party:-In brief including the evidences given from his side.

Case of the Opposite Party:-In brief including the evidences given from his side.

Issue to be decided:-In the aforesaid circumstances, it is to be decided whether the O.P. is required to execute a Bond for keeping the peace in the locality. In the aforesaid analysis I am satisfied that there is every likelihood from the end of the O.P. to commit breach of the peace or disturb public tranquility and that it can be prevented if the O.P. is directed to execute a Bond for keeping peace. Hence it is ordered that: Let the O.P. execute a Bond of Rs 1,000/- (rupees one thousand) only with one surety of like amount for maintaining peace in the locality for a period of one year, in failure to judicial custody.

To 22.01.2010 for furnishing Bond by the O.P.

Sd/-

10. 22.01. 10

Both the parties are present. O.P. furnishes Bond as per order. Perused the Bond.

Satisfied. Accepted the Bond. O.P. is released. The petition of the First Party is disposed of.

To 23.01.11

Sd/-

11. 23.01. 11

Both parties present. There is no report from any corner about breach of bond executed by OP. Hence the OP is discharged and instant case is filed.

Sd/-

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 ofnow pending in the court of I hereby bind myself to be of good behaviour to Government and all the citizens of India during the said term or until the completion of the said inquiry; and, in case of my making default therein, I hereby, myself to forfeit to Government the sum of rupees.....

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

(Seal of the court)

(Signature)

(Where a bond with sureties 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 tile 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..... 19.....

(Seal of the court)

(Signature)

FORM NO. 14
Summons of Information of a Probably Breach of the Peace
(See section 113)

To **of.....**

WHEREAS it has 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 authorized 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 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) that be, 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 differs 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, 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 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. 16

**Warrant of Commitment on Failure to find Security for Good Behaviour
(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.....that there is to believe that he is doing so with a view to committing a cognizable offence.

or

Whereas evidence of the general character of (name and description) has been adduced 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), him self for rupeesand the said surety (or each of the said sureties) or 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 by 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, or of he already in prison, he detained there in for the aid period of(term of imprisonment) unless he shall in the meantime be lawfully ordered to be released And to return this warrant endorsement certifying its released. with an the manner of execution

Dated, this..... day of..... 19.....

(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 incharge 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 theday 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..... 20and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorised 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 of20.....

(Seal of court)

(Signature)

LAW AND ORDER

Law is defined as the body of indicated or customary rules recognized by a community as binding. It is the sum of the rules of justice administered in a State by its authority. Order is defined as prevalence of constituted authority, a law-abiding State, absence of riots and turbulence of violent crime. Order is the end-product of law. It does not refer to a phenomenon; it refers to a state of phenomenon. Order in a society lies in faithful and peaceful observance of the given laws by its citizens.

Order has to be maintained in accordance with the laws of the land. Although there can be no law to prevail unless there is order, and no order can prevail which is not of a law-abiding nature, there can be sometimes short-term conflict between the dual responsibility of enforcing law and maintaining order.

The Supreme Court has distinguished between Public Order and Law & Order. Public Order is the even tempo of the life of the community taking the country as a whole or even a specified locality. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order or to a breach of Public Order. The contravention of law always affects order, but before it can be set to affect Public Order, it must affect the community or the public at large. Legality apart, whenever we talk of problems of law and order we always have public disorder in mind. As Magistrates, we are more concerned with wholesale or mass defiance of public law rather than with individual designs of law breaking.

Public disorder has an impact on the functioning and structure of administration in many ways. Popular Governments are forced into taking decisions imposed upon them by violent groups in order to avoid stigma of using force. Continued disorder leads to steady erosion in faith in democracy and to a dangerous weakening of respect to authority. If denied normalcy for long, people may prefer and welcome authoritarian forms of Government.

Causes and Repercussions of Disorder:

One theory regarding disorder is that human beings are by and large rational and peace loving, and except a few criminals and mal-adjusted people, they would not like to use violent means. Therefore, the subject of violence is more fit for admonition and condemnation rather than for serious study. A corollary of this theory is whenever violence occurs, there must a conspiracy behind it. And, therefore, once the plotters have been traced, violence can be eliminated from the society.

This theory ignores the factor that protests cannot be inflamed unless a grievance, real or imaginary, exists already. Peter Evans in his book "The Protest Virus" has traced violence to evil effects of high technology and economic growth, remote and impersonal bureaucracy and to a process of dehumanisation. If a large number of people feel deprived or alienate it will result in discontent and

anger, which may lead to violence. However, relative deprivation, which is the difference between legitimate expectations and value capabilities, alone will not either lead to aggression or determine the quantum of aggression. There are other dimensions also. Legitimacy of deprivation will reduce tensions or anger. If the beliefs and traditions of society sanction violence and if the law enforcing agency is weak or too repressive, violence is more likely.

What are the long term repercussions of mild disorder? One view is that there are several positive aspects of mild disorder. It conveys the depth of public sentiments on certain issues - leads to better people's participations, creates more awareness, and it is a part of educating people about their rights. It allows interest groups to let off steam, breaches of law and order serve as a safety valve. Defiance of authority in a limited sense does not mean weakening of respect, for all authority - it shows protest against injustice and authoritarianism. Many cases of high-handedness on the part of the authorities would have never come to light but for law & order incidents that they provoked. Participation in public protest gives the man in the street and local leaders a much needed sense of participation in the political process. It serves to bring Government closer to him. Change in status quo can be brought about only by protest.

The other view is that tolerance of mild disorder in Indian society has produced several evil consequences. It has meant conceding of unreasonable demands and appeasing unreasonable interests in order to maintain peace at any cost. An organized and an aggressive group is more likely to be able to pressurize the popular Government. The interests of silent majority get sacrificed in order to appease a vocal minority.

Whatever view one may hold stands for reason that public demonstrations in a democratic country cannot be called too often or over used. There is a point of diminishing returns. Demonstrations must be held in reserve for more important issues.

Broadly speaking, the troubles over law & order can be divided into political, agrarian, sectarian, student, labour and miscellaneous problems. David H. Bayley distinguishes three forms of violence which occur in India:

- (i) the violence of remonstrance
- (ii) the violence of confrontation and
- (iii) the violence of frustration.

The violence of remonstrance refers to the riots and public clashes, which are organized in advance and have as their target the government authority. They are generally promoted in urban areas by modern associations, such as political parties, students and labour unions. The violence of confrontation subsumes antagonisms among private groups in which the public authorities are not directly the target, such as communal riots. The violence of confrontation does not have a definable target; it is not an attack upon government or upon a specific private group. It is abrupt and spontaneous (like the Rabindra Sarobar incident in Calcutta, April, 1969).

Political protest may be legal like strikes, organising meetings, keeping fasts, etc. or illegal. The latter category can be further divided into violence and non-violence protests. Examples for non-violent illegal protests could be by courting arrest or causing obstruction or gherao.

In the two decades preceding declaration of the emergency, agitational politics in India and become a substitute for institutional means of exercising influence and of seeking redress of grievances. They have not only supplanted and rendered them irrelevant. Protests were used not when other avenues of accommodation had been exhausted, they had become "a court of first resort". And public tolerance of mob violence not only inhabited government

initiative in handling agitations, but it also made police action, however, justified it may be, thoroughly unpopular.

We, as administrators, are not so much concerned with the philosophical or legal aspect of protest, but are more concerned with the social and cultural conditions which give rise to and sustain political protest actions. Thus:

- ❑ What conditions give rise to different forms of political protest? Are these conditions economic, political, social or psychological in nature?
- ❑ What are the channels of protest action?
- ❑ What is the social composition of protest groups?
- ❑ What ideologies do these groups adopt?
- ❑ What are the major direction and targets of their action?
- ❑ What is the pattern of leadership?
- ❑ What changes occur in the tactics and strategies of their action during their period of existence? And finally
- ❑ what factors determine the success or lack of success of protest action?

Principles of crowd control

Types of crowd:

- (1) The occasional crowd – short lived, loosely organized and motivated by the attraction of the movement, for example, crowd watching a magician on the road.
- (2) The conventional crowd – for example, the spectators at a cricket match or men attending a religious ceremony. They have common interest and purpose and are directed by well established traditions.
- (3) The expressive group which wishes to attract the attention of government or local authorities e.g. procession of pension holders demanding increase in their pensions.
- (4) Agitational or acting group which has a definite goal under positive leadership and is engaged in some kind of aggressive action. There is an element of threat or blackmail in this crowd, which is absent in the third type of crowd.

Mob is a highly excited form of the group. It shows considerable homogeneity in its thought and action, whatever be its composition. It loses all sense of individual responsibility.

The principles of crowd control can be discussed under the following heads:

- (i) Collection of intelligence;
- (ii) Assessment of decision-making process;
- (iii) Preparation for action;
- (iv) Use of force, and
- (v) Winding up operations.

Intelligence organisations are broadly entrusted with collection, analysis and dissemination of factual information in confidence for appraisal of developments in respect of political

movements, religious-communal movements, socio-economic reforms likely to cause tension, prejudicial activities and security interests for VIPs. A case study of any Law & Order situation will focus attention on two points for appreciating the role of intelligence:

- (a) how far intelligence anticipated events, and
- (b) how useful intelligence proved for continuing the situation after actual eruption of violence.

While the district civil police is also responsible for gathering intelligence, it is the specific responsibility of the Special or Intelligence Branches at district, State and All-India level to collect, collate and disseminate all information of this nature, which may have a bearing on public disorder. A study of the previous history, the background to the current problems being agitated, the ideologies and past activities of the parties concerned and the possibilities of local rowdies taking advantage of the agitation should be analysed by the local intelligence units and presented to the concerned decision-making authority promptly and properly.

Assessment or decision-making: Each law enforcing agency is faced with the imponderable question, whether to prevent an agitation or to allow its full course. If a crowd is likely to gather, should it be allowed to blow off steam so that it gets tired and goes home, or should strong preventive action be taken right in the beginning so that agitation does not grow out of hand. There are two contrary views held by experts on this subject. One group feels that democratic protests should not be stifled on the apprehension of possible violence and it is necessary to give them a legitimate chance of demonstrating their dissatisfaction till such time as it generates into illegal acts and open violence. This view holds that arrests made by themselves precipitate the trouble which is designed to be averted. After the arrest of the leaders the followers may become more violent as they are likely to be far less responsible in their behaviour than their leaders. Thirdly, call for agitation may be given on an issue which is not likely to catch public fancy. The agitation may not be thus capable of creating any real trouble. Advance arrests tend to give them the sort of importance that they do not deserve. Fourthly, the government may decide to fight an agitation or bundh on a political level and your strong action may not be backed by the government.

Advantages of making preventive or advanced arrests are many:

- Firstly, public confidence in the administration is built up. It is made clear to every one that agitation is unlawful and the administration suffers from no confusion of thinking in this respect.

- Secondly, firm posture on the part of administration will deter many by-standers from joining the procession who will otherwise do so as a diversion from the boredom of daily routine or from a motive of gaining materially by looting shops etc. when order collapses.

Thirdly, Sec. 151 Cr.P.C., clause 1, reads as follows: -

- “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”.
- A plain reading of this Section indicates that it is not only desirable to make advance arrests but it is legally incumbent on the police to do so. Whenever an agitation is announced, the authorities promulgate prohibitory order under Section 144 Cr. P.C. and as the taking out of procession will be a breach of the prohibitory order, law would be broken and, therefore, arrests under Section 151 Cr.P.C. become mandatory.
- Fourthly, by refraining from taking advance action, administration is not really averting the trouble. All that it succeeds in doing is to postpone the trouble to a time chosen by the agitators.
- Fifthly, no leader can retain control over the mob once it is collected in the street. All that the leaders do is not to prevent trouble, but find justification for the behaviour of the masses later.

Thus, it appears that no general principle can be laid down regarding preventive arrests. There are probably as many stories of successful instances of giving an unruly crowd its head and letting it run out of steam as there are successful instances of applying overwhelmed force early and nipping violence in the bud. Much will depend on the type of crowd, nature of leadership, degree of motivation, attitude of government, and availability of force. However, the past record of Indian agitations shows that very little action has been taken in the beginning which is followed by excessive action towards the end when the agitation was almost to peter out. Advance arrest of leaders, nevertheless, remains a double-edged weapon.

Preparation for Action: In case it has been decided to take action, the following legal powers are available to the Magistrates and the Police:

- (i) Section 144 Cr. P.C.
- (ii) Section 151 Cr.P.C.
- (iii) MISA
- (iv) Civil Criminal Law Amendment Act
- (v) Police Act

- (vi) Local Acts like Bombay Police Act, Madras Police Act, West Bengal Maintenance of Public Order Act, UP Goonda Act etc.

The following administrative action is also suggested: -

- (i) Rounding up of anti-social elements.
- (ii) Combating rumours and panic.
- (iii) Combing up operations for unearthing arms and ammunition.
- (iv) Setting up of control room.
- (v) Up-dating internal security scheme.
- (vi) Cultivating favourable public opinion.
- (vii) Thorough knowledge of localities and lanes likely to be affected.
- (viii) Proper briefing and training of force.
- (ix) Discreet contact of responsible officers with leaders of agitation.

Use of force and firing: No specific law governs firing, but Sections 46 and 50 Cr. P.C. permit use of force for arrest of person or for conducting search or Sections 129 and 130 Cr. P.C. which provide for use of force for dispersing unlawful assembly. Section 100 IPC permits use of force in right of private defence.

Legally it is not necessary for Magistrates to order firing and even SHO or Police Officer above this rank can order firing if Magistrate not present, but rules provide that if Magistrate is present or can be communicated with, no order shall be given by the police officer.

If gazetted police officer is absent then at least First Class Magistrate should be available to pass orders.

Section 132 Cr.P.C. is the protection clause for government servants.

Main principles governing use of force:

- (i) Firing to be resorted to only in last resort.
- (ii) Use all possible means of finding solution before use of force.
- (iii) The examination of situation should relate to present, but must also look back to causes, and forward to repercussions.
- (iv) Maintenance of Law & Order is a must and therefore there should be no hesitation for use of force.
- (v) When force has to be used, it should be as little as possible consistent with objectives of dispersal of unlawful assembly.
- (vi) Use of force should stop as soon as the objective is attained and repercussions are not likely to aggravate situation.

- (vii) Before firing is ordered, the senior-most officer should be contacted if time and situation permit, but where a subordinate takes bonafide decision, no interference should be there. Complete collaboration is essential between police and magistrates in assessment of situation, ordering of firing, cease-fire, post-fire arrangements.

Executive Instructions relating to firing: -

1. Declaring assembly unlawful.
2. Warning and exhortations before order of dispersal.
3. Force to be used if order defined.
4. Tear-gas.
5. Lathi charge.
6. Responsibility for use of force will rest with Magistrates if present, otherwise with senior-most police officer who must immediately contact Magistrates.
7. Stop fire by Magistrate in consultation with police officer.
8. Stop use of force as soon as objectives attained. Magistrates to decide when sufficient force used.
9. The time and duration of force to be used to be decided by senior-most police officer. Least deadly weapons according to circumstances to be used. Firing in volleys, aim low, directed at most threatening part of crowd. No blanks. No firing in the air

Post –firing arrangements:

1. Post pickets for maintenance or order.
2. Remove dead for post-mortem and injured for treatment.
3. Immediate information of facts to superior officers/Government.

Requisition of Army:

1. Situations where military only stands by.
2. When police unable to restore law and order, army aid can be requisitioned after giving adequate notice to army authorities through proper channels.

Enquiries:

1. After every firing, Magisterial enquiry is necessary to determine:
 - (a) whether justified
 - (b) whether force used was excessive.

In view of separate judicial enquiries, it is necessary--

- 1) to decide to fire only in last resort.
- 2) To keep proof in support of bonafide firing ready in black and white.
- 3) Give complete co-operation to Enquiry authorities.

- 4) Where officer exceeded his legal limits, no hesitation in taking action, but in all cases of bonafide and justified firing to everything to protect subordinates.

General principles:

Never order firing unless all other avenues have been explored, when danger life and property is such that only use of force is the final resort, it should be used without hesitation, but always starting from least deadly type of force. Spirit of vengeance should never guide course of action and nothing should be done under provocation.

Winding up operations:

After the operation, it is necessary to render first-aid to the injured and to see that the injured and the dead-bodies are not carried away by the agitators, as the funeral processions organized may inflame the situation further. It has to be ensured that the crowd once dispersed does not form again at the same place or at some other place. Arrests of ringleaders and offenders guilty of overt action should be made immediately. A police photographer should be with the team throughout the operation of dispersal, in any case services assembly, so that evidence of stone throwing or damage to public property etc, can be collected. If necessary, peace committees should be formed. Detailed report to the government should be sent. Case under proper sections should be registered.

MAGISTRATE’S ORDER TO DISPERSE

An unlawful assembly (Section 129 Cr.P.C.)

I(name of Magistrate) of (District) acting under Section 129 Cr.P.C. require (name and designation of Police Officer in command to disperse and unlawful assembly at (name the place) by force atO’clock on.....

Countersignature of

Police officer in command

Magistrate

(Duplicate copy to be retained by the Magistrate)

CARD

COPY TO BE RETAINED BY MILITARY OFFICER

IDistrict Magistrate/Sub-Divisional Magistrate /Executive Magistrate, acting under Section 130 of the code of Criminal Procedure, require No.Rank
.....Name..... of the unit..... do disperse an unlawful assembly atO’clock (approximately) on theday of19

Countersigned

Military Officer

Signed

Magistrate

RELATIONSHIP BETWEEN THE POLICE AND THE MAGISTRATE

Relations of police officers with other servants of the Crown, local authorities and the public

13. Position of Commissioners.— (a) Any Commissioner, as the local head of the administration, shall exercise supervision and control over the action of the District Magistrate in police matters.

(b) The order received from the Commissioner either direct through the District Magistrate shall be promptly executed by the Superintendent, who shall, however, report it through the Deputy Inspector-General if it is of an unusual nature.

COMMENTARY

Position of the Commissioner.—The Commissioner is the local head of the administration who shall exercise supervision and control over the action of the District Magistrate in police matters. When any order is received from the Commissioner through the District Magistrate shall be promptly executed by the Superintendent who shall immediately report it through the D.I.G. of the range to the Inspector General provided if it is of an unusual nature.

14. Relations between Range Deputy Inspector General and Commissioners and District Magistrates. [12. Act V, 1861] – (a) The Deputy Inspector-General of a Range shall keep in close touch with Commissioners and District Magistrates in regard to the maintenance of peace and the prevention and detection of crime in their respective charges, and shall do all in his power to establish harmonious co-operation between the police and the magistracy.

(b) He shall ordinarily communicate with the Commissioner by demy-official or unofficial notes and with District Magistrates through Superintendent but he shall make a point of having personal discussions with them at intervals, e.g., when he visits their headquarters.

COMMENTARY

Duty of the D. I. G.—The District Inspector General of a range shall also keep in touch with the Commissioner and the District Magistrate for the purpose of

maintenance of peace and the prevention and detection of crime in their respective charges and in doing so a harmonious co-operation should be kept alive between the police and the magistracy. While communicating with the Commissioner Regulation 14 (b) says that he shall ordinarily communicate to him by demi-official or unofficial notes and with District Magistrates through Superintendent but he shall make a point of having personal discussions with them at intervals during when he visits the Head Quarter.

15. Relations between Superintendent & District Magistrate.—

(a) The Superintendent is the immediate head of the police force of the district and is responsible for all matters concerning its internal economy and management and for its efficiency and discipline. He is also responsible, subject to the general control of the District Magistrate, for the criminal administration of the district, and for the power performance by officers subordinate to him of all preventive and executive duties.

(b) The District Magistrate has no authority to interfere in the internal organisation and discipline of the police force. But it his duty to bring to the notice of the Superintendent all cases in which the conduct and qualifications of a police officer affect the general administration of his district.

(c) The District Magistrate may call for the papers relating to the conduct or character of any police officer of his district and may send them on to the Deputy Inspector-General of the Range for the information of the Inspector General and Commissioner. He may direct an enquiry to be made into any case of misconduct of a police officer. The Superintendent shall submit to the District Magistrate the papers regarding all serious cases of misconduct and the cases likely to affect the relations of the police with the public.

(d) All orders of the District Magistrate relating to the police except those passed in his Judicial Capacity, shall be addressed to the Superintendent, or in the event of his absence from headquarters to the officer-in-charge during his absence. The Superintendent, as the local head of the police under the District Magistrate, is bound to carry out his orders except in regard to the internal economy, organisation and discipline of the force, and matters of a purely departmental nature.

(e) Should any difference of opinion on any question relating to the police administration arise between the Superintendent and the District Magistrate, it is the duty of the Superintendent to carry out the Magistrate's instructions. The Magistrate shall in such cases forthwith refer the matter to the Commissioner and the Superintendent shall similarly make a reference to his Deputy Inspector-General. The Commissioner and the Deputy-Inspector-General shall consult together and, if possible, arrive at an agreed decision. If they are unable to agree, the matter shall be referred to the Provincial Government through the Inspector-General.

(f) The District Magistrate, in the exercise of his power of control, shall abstain from any action likely to weaken the authority of the Superintendent or to deprive him of responsibility. For this reason he shall avoid, as far as possible, the issue of executive orders until he has consulted the Superintendent.

(g) No circular or general order dealing with questions of law or procedure other than purely departmental matters may be issued by a Superintendent until it has been approved by the District Magistrate.

COMMENTARY

Duties of Superintendent or Police.—Regulation 15(a) provides for the responsibility of the Superintendent of Police, as the immediate head of the police force of the District, for the efficiency and discipline of the police force and for criminal administration of the district and for doing performance of all preventive and executive duties by the subordinate *officers*—*Haripada Mondal v. State of West Bengal*, 1972 Cal LJ 303.

District Magistrate—meaning of.—In the old Code of 1861 the word Magistrate of the district would refer to the Chief Officer charged with the executive administration of a district in criminal matters by whatever designation such officer may be called.

According to old Code of 1898 the State Govt. had to appoint in a district outside the presidency towns a Magistrate who should be called the District Magistrate. A

presidency Magistrate can never become a District Magistrate by reason of his appointment – Emperor v. A. M. Jeewanjee, 6 Cr LJ 240 : 31 Bom 611.

The expression “ District Magistrate” includes an officer who is designated as an officiating District Magistrate in the order of his appointment – Shiv Dayal v. State of U.P., AIR 1953 All 664.

Position of the D.M. and administration. - The object of appointment of *D.M.* in a district is primarily viewed with the sole purpose of administration who shall along with his other duties exercise constant supervision over the prevention and detection of crime and for the proper conduct of which he is responsible.

But the object of appointment of an Additional District Magistrate is distinct whose appointment is aimed at relieving some of the duties of the District Magistrate. He cannot be placed on the footing of the D.M.- Prabhulal v. Emperor, AIR 1944 Nag 84: 45 Cr LJ 296.

Power of the District Magistrate.-The District Magistrate is primarily responsible for the peace of the district – Loftus Otway Clarke v. Brojendra Kishore Ray, 13 Cr LJ 693.

The District Magistrate is the principle representative of the law for most purposes in the eyes of the people and occupies a position of great power and responsibility- Gopinath Paryah & Ors. v. *The Empress*, 10 Cal WN 82 : 3 Cr LJ 169.

A District Magistrate while appointed as such under section 10 of the old Code is possessed of many powers not contemplated by the Code. He is not only the Collector of the District but also a district officer. Accordingly, he is required to discharge various duties and function which are extraneous to the Code of Criminal duties and function which are extraneous to the Code of Criminal Procedure – Chowdhury Bejoy Krishna Deb v. Thakur Shyam Narain Singh, AIR 1940 Cal 30 : 41 Cr LJ 442.

There are cases where District Magistrates have been appointed for more than one district. But under no circumstance any District Magistrate could be appointed in respect of a district which is non-existent- Aruwgha Solagam v. *Emperor*, AIR 1931 Mad 697.

A case came up for consideration before the Hon'ble Court whether by an executive instruction a District Magistrate could be deprived of his power as provided under section 10 of the Cr. P. C by executive instructions issued by the Government requiring the Executive Magistrates to do work of administrative nature only. The Hon'ble Court after having considered the scope of section 10 of the Cr. P. C. reached the conclusion that power of the District Magistrate could not be cut down by executive instructions on the strength of a notification—*State of MP. V. S. P. Mathur*, 1970 Cr LJ 922 : 1970 MP LJ 171.

Under the old Code of 1898 when the State Criminal Judicial Service was introduced there included the District Magistrate and the appointment of subordinate Judges in that posts in accordance with the rules governing that service cannot be challenged for being ultravires to the Constitution and beyond the power of the Governor- *N. Devasahayam v. State*, AIR 1958 Mad 53.

The District Magistrate on being appointed exercises jurisdiction over the district which is in existence—*In re : A.R.M. Manickam Chettair*, 1968 Cr LJ 256 : 1967 Mad LW (Cr) 35.

District Magistrate's responsibility over police.- The District Magistrate is solely vested with power in regard to general control and direction over the police throughout his local jurisdiction which empowers him to accord sanction in respect of a prosecution of a false complaint against a police officer under sec 195 (1)(a). Cr P. C. which is in *pari materia* with the language of the present Code of 1973—*Shibu v. Crown*, 6 PR 1910: 5 IC 629 : 11 Cr LJ 252 : 170 PLR 1910 ; *Crown v. Budh Singh*, 47 PLR 1867.

Section 4 of the Police Act. 1861 is the fountain of powers for the police force of the regulations which lays down that the administration of the police all over the district is with the Magistrate which shall vest under the General Control and direction of that Magistrate in a District Superintendent. But it should be well remembered that the District Magistrate must not interfere with the internal organisation and discipline of the police force Save his power to bring to the notice of the Superintendent of about the conduct and the qualification of a police officer affecting the general administration of the district. It is the sacred duty of the Magistrate to enquire into in all cases to the Superintendent of Police in regard to conduct of the police, if impugned by any judicial authority. The S. P. in his turn is

to report to the District Magistrate after making a full fledged enquiry in respect, of the conduct when impugned by any judicial authority.

The District Magistrate is also vested with power to make an enquiry or to direct an enquiry when misconduct alleged warranting the S. P. to put in all papers regarding the misconduct appearing to be grave that may tend to affect the relations of police with the public.

Undoubtedly, the District Magistrate is the superior authority to that of a Deputy Superintendent of Police empowered to initiate any preliminary enquiry—*Krishna Lai Godara v. State of Rajasthan*, 1969 Raj LW 379 (588): 1969 Serv LR 666.

Police, if subordinate to S.D.M.—It is no doubt a fact that the police is the subordinate to the District Magistrate which cannot be extended to any other Magistrate within the meaning of section 195 of the old Cr. P.C. and the new Cr. P.C.

This issue came up for consideration before the Judicial Commissioner who came to the conclusion. "It is often assumed that the police are subordinate" within the meaning of section 195 of the Cr. P. C. to the Sub-Divisional Magistrate; but in our opinion the only Magistrate to whom the district police are subordinate within the meaning of section 195 of the Cr. P.C is the District Magistrate. It has been held by one of the Judges of this court following the decision in the case of *Ramosraylal v. Queen-Empress*, ILR 27 Cal : 4 Cal WN 594 that the police are not subordinate to the District Magistrate, but in practice the District Magistrate is the head of the police of the district, and section 4 of the Police Act provides that the administration of the police throughout 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 as the local Government shall consider necessary. The Allahabad High Court has at least in two reported cases held that the district police are subordinate to the District Magistrate – *Queen-Empress v. Ram Khilawan*, 1890 AWN 167; *Queen Empress v. Boldeo Prasad*, 1895 AWN 152.

This is the view which has generally prevailed and which should in our opinion be adopted by this court – *Mokhan Singh v. King-Emperor*, (1902) 6 OC 1(7 & 8).

The above view of the Allahabad and Oudh High Court was not approved of by Calcutta and other High Courts among which the Lahore High Court was one.

According to Calcutta and Lahore High Court, the Police Officers in a district are generally subordinate to the District Magistrate but the subordination as contemplated by section 195 of the Cr. P. C. is not that subordination. It refers to some superior officer of police—*Khazan Singh v. Kirpa Singh*, AIR 1923 Lah 341: ILR 4 Lah 130 : 21 Cr LJ 683: 73 IC 779 : 5 LLJ 372.

16. Superintendent to be in close touch with District Magistrate.- (a) The superintendent shall remain in constant personal communication with the District Magistrate whenever possible, and consult

Him on all important matters. It is incumbent on him to afford the District Magistrate all possible assistance in the criminal administration of the district, and in such matters he shall, as far as possible, accede to his wishes. Should any question arise on which they do not agree the District Magistrate shall give the Superintendent written orders and the Superintendent will carry them out; but the District Magistrate shall refer the point under dispute, if the Superintendent so desires, to the Deputy Inspector-General when the matter will be settled as laid down in regulation 15(e).

(b) The Superintendent shall keep the District Magistrate fully informed of all matters coming to his knowledge affecting the peace of the district, and when he is on tour the police officer in charge of headquarters shall send direct to the District Magistrate all important information which would not reach him soon enough through the Superintendent.

(c) Whenever he is about to leave the station, the Superintendent shall report his intention to the Magistrate, specifying, as far as possible, the places at which he may be found from day to day; and the Magistrate for reasons to be recorded by him may require the Superintendent to remain at headquarters.

17. Correspondence between Superintendent and District Magistrate. -- Correspondence between District Magistrates and Superintendents shall be carried on by means of unofficial notes or memoranda. The original file shall be sent for action when possible, and formal letters shall on no account be written.

18. Magistrate's orders to pass through Superintendent.— All orders on the police, except judicial orders, issued by the office of the District Magistrate shall ordinarily be sent through the Superintendent. This includes orders' relating to tours by the District Magistrate and other officers and the provision of supplies by the police. Similarly, orders issued by the Subdivisional Magistrate shall be sent through the Subdivision Police Officer or if there be no Subdivisional Police Officer, through the circle Inspector.

19. Inspection by District Magistrate.- The District Magistrate shall exercise constant supervision over the prevention and detection of crime, for the proper conduct of which he is ultimately responsible. An important part of his duty is to inspect the police stations of his district at regular intervals. It is not necessary for him to examine the details of the working of the department, but he should give special attention to –

- (i) the general diary and the manner in which it is written up;
- (ii) the recording of vital statistics;
- (iii) the proper working of the Arms Act ;
- (iv) the methods of collecting crop statistics ;
- (v) the working of the rural police;
- (vi) the general state of crime in the police-station and any reasons for its increase or decrease ;
- (vii) whether the Sub-Inspector appears to have a proper knowledge of his duties, whether he is in touch with the respectable inhabitants of his charge, has acquired local knowledge, and takes an interest in his work ;
- (viii) Whether the police-station officials appear to be working properly and have a proper knowledge of their duties and the neighbourhood;
- (ix) whether the police-station has been regularly and properly inspected:

20. District Magistrate and transfers of police officers.— (a) If the District Magistrate observes in any police officer of or below the rank of inspector marked incompetence or unfitness for the locality in which he is stationed, or unfitness for his particular duties, he may draw the attention of the Superintendent to the fact and request him to consider the advisability of transferring him to another locality or to other duties. He shall, however, bear in mind that not only are transfers detrimental to police work, but the officer transferred may do as badly or even worse in another place. Unsatisfactory work is as a rule met by punishment

and a transfer should not be recommended unless it is likely to improve the criminal administration of the district as a whole.

(b) If the Magistrate observes in any police officer above the rank of Inspector incompetence or unfitness he may communicate with the Inspector-General, who after paying careful attention to the views of the District Magistrate, shall determine what measures should be taken and shall inform the Magistrate of the action which he takes in the matter.

21) Relations between subordinate Magistrate and the police.—(a) Except as provided in the Code of Criminal Procedure or any other Act, or in any rules made or approved by the Provincial Government, for the time being in force, subordinate Magistrates have no power to interfere in police work. But Magistrates having jurisdiction and empowered to take cognizance of police cases are reminded of their responsibility for watching the course of police investigations in the manner laid down in Chapter XIV of the Code of Criminal Procedure.

(b) The District Magistrate should take care that his subordinate Magistrates do not abuse the power given to them by sections 155 and 202 of the Code of Criminal Procedure of ordering a police investigation in non-cognizable cases. Such orders should be made only in exceptional cases, and when the Magistrate requires information of specific matter of fact, and not, as is often the custom, as a routine preliminary to the granting of a summons. The subordinate police may often not be averse from this abuse of procedure, and it is incumbent on the Superintendent to watch the working of these sections, so far as they affect the police, and to bring to the notice of the District Magistrate any tendency on the part of Magistrates to misuse them.

22) Relations between Subdivisional Magistrate and the - (a) except where it is provided otherwise in these Regulations or by any law for the time being in force. Subdivisional Magistrates shall have only the same powers in respect of the police as other subordinate Magistrates ; but it is the duty of every Subdivisional Magistrate to inspect all police-stations within his jurisdiction _once annually. At such inspections Subdivisional Magistrates shall follow the instruction laid down for District Magistrates in regulation 19 and may give orders affecting the preparation and trial of cases ; but they are not empowered to issue

executive orders to the police, and shall themselves to bringing to the notice of the District Magistrate any matter which appears to call for intervention.

(b) A Magistrate in charge of a subdivision can only nominate the officer in charge of a police-station to investigate a case within the limits of such officer's police-station; but should such Magistrate intimate his opinion that for particular reasons a special officer should conduct the investigation, the Subdivisional Police Officer or the Circle Inspector shall, if possible, comply with his wishes.

(c) The Subdivisional Police Officer shall remain in constant personal communication with the Subdivisional Magistrate regarding matters of general police administration and should discuss with him all important matters. In subdivisions (other than the sadar subdivision) where there is no Subdivisional Police Officer, the Circle Inspector shall similarly remain in constant personal touch with the Subdivisional Magistrate wherever possible and keep him informed of all important matters concerning the criminal administration of his circle. A Circle Inspector whose circle headquarters are not situated at the subdivisional headquarters, shall take every opportunity of keeping the Subdivisional Magistrate informed of such matters whenever he visits the subdivisional headquarters or when the Subdivisional Magistrate visits his headquarters. Each officer (Subdivisional Magistrate and Subdivisional Police Officer or Subdivisional Magistrate and Circle Inspector) shall arrange to have a copy of his tour, programme sent to the other and to keep him informed of any subsequent modification made in it.

23) Relations between Subdivisional Police Officer and Sub-divisional Magistrate. [12, Act V, 1861].—The Subdivisional Police Officer shall consult the Subdivisional Magistrate in all matters affecting the criminal administration and the maintenance of peace in the subdivision. His relations with the Subdivisional Magistrate shall generally be similar to those between the Superintendent and the District Magistrate.

24) Procedure when an allegation, is made against a *police* officer in a complaint or first information.—(a) When an allegation of misconduct is made against a police officer—

(i) in a complaint before a Magistrate, or

(ii) in an information lodged with a police officer and forwarded by him to the District or Subdivisional Magistrate under regulation 244(c), the Magistrate

concerned should decide whether there will be an inquiry under the appropriate section (159 or 202) of the Code of Criminal Procedure.

(b) If he decides that an inquiry is necessary, he should direct it to be made by a Magistrate or by a Police Officer.

(c) If the alleged occurrence appears to be obviously trivial though cognizable, it should be sufficient to order a local investigation by a police officer of superior rank. The Superintendent should be asked to arrange for such investigation to be held at once.

(d) If there is no apparent reason to doubt the truth of the complaint and no preliminary inquiry is thought necessary, the Magistrate should fix the earliest possible date for the trial.

COMMENTARY

Transfer of police officers by D.M.—circumstances.—The District Magistrate is possessed of power to exercise general control and direction over the police, within the district where he has been appointed as such.

He may sanction a prosecution for a false complaint to a police officer under section 195 (1)(a) of the Cr. P.C. which despite amendment of the Code did not undergo any change—*Shibu v. Crown*, 11 Cr LJ 252 ; *Crown v. Budh Singh*, 47 PLR 1867.

According to Regulation 20 of the P.R.B. which occupies an important place in the regulation that the D.M. has power to transfer police officers as the police is always subject to the control of the D.M. The S. P. is subject to general control of D.M. who is responsible for the criminal administration of the District. As a general rule he is not required to interfere with the internal police administration but he is expected to bring to the notice of the S. P.

Relations with Police

Maintenance of law and order in a district depends on the mutual confidence and trust that should underlie the relationship between the District Magistrate and the Superintendent of Police. The role of the DM and other Executive Magistrates in the administration of district police is legally governed by the Cr. P. C. and the Police Act, and administrative sanction is derived from various Police regulations and government orders issued from time to time.

Section 4 of the Police Act 1861 reads as follows:-

“The administration of the police throughout a general police district shall be vested in an officer to be styled as the Inspector-General of Police, and in such Deputy-Inspector-General of Police, and Assistant Inspector-General, as the provincial government shall deem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the District, shall, under the general control and direction of such Magistrates, be vested in a

District Superintendent and such Assistant District Superintendents as the provincial government shall consider necessary.”

The operating clause in the above section is “general control and direction”. The interpretation of this clause has, unfortunately, often given rise to great differences between the two most important functionaries at the district level and adversely affected the good governance in the district. With the increasing preoccupation of the DM with the Development, Revenue, and other duties, the general control and direction of the DM is now confined to important matters like maintenance of public order, prevention of any large scale carrying out of crime and other matters of police nature. It should be noted that the Commissioner has no authority or control over the Deputy Inspector General, as the Collector has over the SP.

According to UP Police Regulations the DM and the Sub-Divisional Magistrates can inspect Police Stations, and appoint Chowkidars in the villages. It is also mentioned that the DM should avoid doing anything which may weaken the influence and authority of SP. Extracts from various Police Manuals are enclosed as Annexure to this note.

The present position is generally neither found satisfactory by the police officers nor by the Magistrates. Whereas Police Officers generally favour complete separation of their duties from the Magistrates, the latter would like to have more control over the Police. The Police case for separation can be summarized as follows:--

1. DM has no time to supervise crime, he hardly visits the scene of a dacoity.
2. DM has no responsibility towards police, he is hardly held responsible for increase in crime or decrease in discipline among the staff, but he has rights and powers. He is like a Supervisor, but does not have a feeling of belonging to the group.
3. The belief that magisterial powers are too sacred to be vested in Police Officers is not true. In several big towns like Mumbai, Kolkata, Ahmedabad, Chennai, etc. Police Commissioners and Police Deputy Commissioners exercise such powers.
4. The SP has generally more experience of district life than the DM. Therefore, it is not correct to say that the DM is senior and more experienced and as such really competent to control, advise and guide the SP.
5. The argument that one coordinator is necessary at district level, is also not true. Judicial powers have now been completely separated from the Executive powers in most of the States. DM is now no longer head of criminal administration. In Maharashtra and Gujarat even development functions have been separated without any loss of administrative efficiency. This system is based on the rejection of the philosophy that all powers at the district level should be concentrated in one man. The belief that if Police is left to itself, it will become

oppressive and tyrannical, is not correct, as they also function under the control of judiciary, executive, legislature, and politicians etc.

6. Giving powers of revenue and police in one man is more likely to make DM tyrannical.
7. The source of recruitment being the same, the dual system is indicative of want of confidence in the Police machinery.
8. Maintenance of order requires firmness and sternness. The Collector of today is a Development Officer who cannot be so firm.
9. If the Collector is capable of taking broader view and is the custodian of the general interests of his area – why not give the powers of DM to the Chairman of Zilla Parishad?
10. In actual practice, Magistrates play an insignificant role in crowd control. They fail to assert themselves and take no initiative in handling the crowd.
11. The Police would do much better if they were to feel that they alone were responsible for law and order. They would not be able to avoid taking hard decisions by failing back on the easy expedient of consulting the DM.

Magistrates' case for better control over the Police:-

1. The existing arrangement has stood the test and has functioned satisfactorily.
2. The DM has control over jail, prosecuting agencies, and executive magistrates. His control over the Police will bring better coordination between the prosecution and the Police and between the Police and the Jail.
3. The DM is the representative of the government in the District. Only he can correspond directly with the government. It may not be expedient to take him out from a crucial sector.
4. Every other officer in the district is administratively responsible to the DM and organizationally or technically responsible to his superior in the same department. It promotes an integrated system of field administration.
5. The right of peaceful agitation is guaranteed by the Constitution. If left to Police, there would be a tendency to look upon every agitation solely from the angle of preserving public order, the exercise of civil rights will take a secondary position.
6. By virtue of his broad ranging responsibility and regulatory functions touching upon the authority of interests, his Collector is exposed to more cross currents of opinion than the SP. He is able to get a true feel for potential adverse developments and to sense nuances of change in the atmosphere and thereby to provide valuable advice and guidance to the SP.

The balance of advantage appears to lie in the retention of the status quo in so far as law & order administration is concerned. Extent and nature of control may be debatable, but the basic soundness of the principle cannot be questioned.

MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY

(Sections 133 – 143)

Section 133 of Cr. P. C. has vested ample power and responsibilities with an Executive Magistrate specially empowered to try cases under this section as already mentioned to proceed to take cognizance and exercise power for removal of nuisance liable to affect the right and interest of the members of the public. The nuisance as mentioned may be of the nature of an unlawful construction on a river or channel lawfully used by the public or conduct of any trade or occupation by a particular person or a company dealing in goods or merchandise which is injurious to the health or physical comfort of the community. The nuisance may also be in the nature of any item or commodity stored in a building which is likely to occasion conflagration or explosion or may be in the nature of hazardous construction of a building itself or tank, well or excavation in progress adjacent to a public place or a public thoroughfare or it may be in the shape of a dangerous animal kept custody of by a person, a family or a group of persons which is likely to be a nuisance for the peaceful living of the public. Information being received on the occasion of any such nuisance by an Executive Magistrate either on his own motion or by a complaint being filed before him, the Magistrate taking cognizance under this section may make an additional order requiring the person indulging in commission of any of such nuisance to remove the same or if he objects to do so to appear before himself or any other Executive Magistrate subordinate to him asking him to show cause why the order should not be made absolute.

Section 134 provides manner of service or notification of order, while Section 135 gives two alternatives to a person who is served with a notice. First, he may carry out the order and secondly, he may show cause against the order. It is desirable that reasonable opportunity should be given to the party to show cause.

Section 136 mentions the consequences of failing to perform while Section 137 lays down the procedure where existence of public right is denied. This section requires, first, that the party against whom a provisional order has been made shall appear before the Magistrate and deny the existence of public right in question; secondly that he shall produce some reliable evidence, e.g., record of rights or settlement officer's receipt and thirdly that such evidence shall be legal evidence and shall support the denial. If these three conditions are satisfied then the Magistrate's jurisdiction to continue the proceeding ceases. Section 138 lays procedure to take the evidence as in a summons case. Section 139 empowers the Magistrate to direct local investigation and examine experts. Section 140 gives Magistrate the power to furnish written instructions and Section 141 lays procedure to make the order absolute. A conditional order made under Section 133 cannot be questioned by a civil suit but there is no such bar to an absolute order under this section being questioned in a Civil Court. Section 142 empowers Magistrate to issue injunction pending inquiry but the pre-requisites of an order of injunction are (i) a conditional order under Section 133 and (ii) satisfaction by competent authority that there is imminent danger or serious injury to the public threatened by public nuisance. Section 143 empowers Magistrate to prohibit repetition or continuance of public nuisance.

MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY

(Section 144)

Under Section 144 of Cr.P.C. an Executive Magistrate is empowered to direct any person or a group of persons to abstain from certain acts or to take certain order with respect to certain property in his possession or under his management on appropriate satisfaction that a direction is necessary to prevent a likely danger to human life, health or safety or to prevent disturbance of the public tranquility, a riot or an affray. An order under this Section in case of emergency may be passed ex-parte. So, In the instant provision of the Code of Criminal Procedure the emphasis is on “urgency”, public nuisance, apprehended danger and over & above maintenance of the public peace and tranquility as an imminent necessity. While taking cognizance under this section, what is expected or required of an Executive Magistrate is to be alert that the complaint filed before him is not of the nature of a civil suit, which is not within the power and jurisdiction of an Executive Magistrate and is liable to be tried in the court of a Junior or Senior Civil Judge. This section as in the case of Sections 109 and 107 is also quite often misused either out of oversight by the trying Magistrate or at the instance of unscrupulous lawyers who are likely to use the court of an Executive Magistrate as a short-cut route for an immediate remedy by-passing a Civil Court. The one more point very important to be cautious about in this connection is that no order under this section shall remain in force for more than two months from the date of issue of the same unless the State Government by a special order extends it by a further period not exceeding six months.

MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY

(Sections 145 – 148)

Section 145 vests power with the Executive Magistrate to determine and if the situation so requires restore possession of the subject of dispute before him which means a dispute regarding a piece of land or water or the boundaries thereof information of which may reach the Magistrate having jurisdiction. The Magistrate has to be satisfied from a report of a Police officer or upon information otherwise that a dispute of the instant nature is likely to cause a breach of the peace within his local jurisdiction. On receiving such report or information as the case may be he has to make an order in writing stating the grounds of his satisfaction and requiring the parties concerned in such dispute to attend his Court in person or through pleader on a particular date and time and to put in writing their respective claims regarding the actual possession of the land or water or boundaries thereof. The point to be noted very carefully in this connection is that the dispute has to be related to the “possession” of a piece of land or water or boundaries thereof and for the purpose of this section land or water includes also building, markets, fisheries, crops or other produce of land, the rents or profits of any such property. The scope and power vested under this section i.e. Section 145 of Cr.P.C. is often confused with that of Section 147 of the Code which clearly deals with the right of the user and should not be invoked in a matter of dispute which involves the question of possession arising out of a dispute between the parties occasioning apprehension of breach of the peace. It is unfortunate that in most cases proceedings under this section becomes too lengthy and is inordinately delayed rarely ending in contested hearing and in a final order for determination or restoration of possession. Since this section also empowers the Magistrate hearing complaint as to the dispute of possession to attach the subject of the dispute in cases of emergency and for appointment of a receiver under Section 146 Cr. P. C. till the disposal of the suit unnecessary delay in determination of the possession or

restoration of the possession as is necessary causes immense harassment, loss of time and in many cases monetary loss also for the reason of the receiver not discharging his duty properly in storage or disposal or maintenance of the subject of dispute, particularly standing crops or other produce stored in a market or a building or fishes of a tank necessary to be taken care of or disposed of timely. Frequent change of receivers in case of inordinate delay of disposal of cases under this Section also leads to immense harassment of the parties involved in the dispute. Lastly the Magistrate trying cases under this Section should bear in mind that it is incumbent upon him to dispose of the matter before him within the earliest possible period of time as deferment of a judgment or order without sufficient cause for doing so may defeat the very purpose of taking cognizance of a complaint under this section and the delay caused may itself occasion breach of the peace which is apprehended. So it should be a point of very important concern for the Magistrate to determine the actual possession of the dispute as speedily as possible and restoration of the same to either of the parties rightfully deserving the same. Also the power to attach property under Section 146 Cr. P. C. should be very selectively and sparingly used and only in such cases or at such juncture of time when the same is unavoidably necessitated.

As already said earlier while discussing the provision of Section 145 Cr.P. C. Section 147 empowers an Executive Magistrate to determine a right of use of any land or water and a dispute likely to cause a breach of the peace concerning any such alleged right of use is a pre-requisite for taking cognizance of any complaint under this section. While proceeding under this section an Executive Magistrate may be satisfied from the report of a Police officer or he may act upon information received by him otherwise. The scope and provision of this Section are often confused with that of Section 145 Cr.P.C. which deals with a dispute regarding possession of land or water as we have already discussed. So, the point to be noted in this connection is that while the dispute involves a question of apprehension of breach of the peace concerning any alleged right of user of any land or water, it is mandatory for the Magistrate to invoke provision of Section 147 and simultaneously

it may be noted that a proceedings drawn up under Section 145 may be found necessary for conversion for trial under Section 147 Cr.P.C. when it becomes clear to the Magistrate in the middle of the proceedings that though the dispute was prima-facie considered to relate to a dispute for possession, ultimately it turns out to be an allegation or dispute regarding right of user of any land or water. Similarly a proceedings primarily drawn up under Section 147 Cr.P.C. may be necessary to be converted into a proceeding under Section 145 if it appears to the Magistrate in the middle of such proceedings that the dispute relates to possession of land and water and not to right of user of any such subject property. The meaning of land and water remains the same as defined under Section 145 (2) of Cr.P.C. Most importantly determination of easement right comes under scope and necessity of the Section 147 Cr.P.C. Section 148 declares District Magistrate or Sub-Divisional Magistrate to depute any Magistrate subordinate to him to make local inquiry, to issue instructions for the purpose, and to provide for costs.

MODEL PROCEEDINGS & EXERCISES

(Sections 133 – 148)

FORM NO. 21

**Magistrate's Notice and Peremptory Order
(See section 141)**

To (name, description and address).

I WHEREBY 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 court)

(Signature)

FORM NO. 22

**Injunction to Provide Against Imminent Danger Pending Inquiry
(See section 142)**

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

WHEREAS the inquiry into the conditional order issued by me on theday of.....19....., is pending,, and 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 injury, I do hereby, under the provisions 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 of19.....

(Seal of the court)

(Signature)

FORM NO. 23

**Magistrate's Order Prohibiting the Repetition, etc., of a Nuisance
(See section 143)**

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

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 of20.....

(Seal of court)

Signature

Model Proceeding U/s. 133

1. 12.2.06

Seen the petition filed by the petitioner (first party) alleging against opposite
party that a kanchan tree lying to east of his premise owned by XYZ of
..... village in leaning badly towards the road, thereby may cause injury
to the public passing by the road.

Considered. Send the petition to O/C P.S. for a report.

To
2.3.06

Sd/-

2. 02.03.06.

Seen the report of the O/CP.S. appears from the report that a kanchan tree owned by XYZ of village is situated on the eastern part of his premises thereby leaning towards the public road. It also appears from the report that the said tree is likely to fall any time, thereby, causing injury to the public passing by the road. Despite several requests made to the owner of the said tree from the local people as well as local Panchayat Members, the owner did not pay any heed. Hence the O/C P.S. prayed for initiating a proceeding u/s 133 Cr.P.C. against XYZ, the owner of the subject tree.

Considered the report with open mind on its merit. I am satisfied that the subject tree is likely to cause public injury and that its removal is badly necessary. Hence, I consider it to be prudent to start proceeding u/s 133 Cr.P.C. against XYZ and it is accordingly drawn herein. In view of this, I hereby, direct XYZ to immediately remove the questioned tree in order to avoid public injury, or, if he objects to do so, he is directed to appear on the date fixed hereunder and to why the order should absolute against him 134 show cause as to not be made him. Issue notice accordingly alongwith a copy of this order and send it to the O/C P.S. for service and submit service return.

To
17.03.06 for S.R., appearance of the O.P. and
to report compliance or to show cause.

Sd/-

3. 17.03.06

S.R. received. The O.P. also appears in person as well as through his Ld Advocate and files hazira & Vokalatnama He also prays for time for showing causes denying public right. He also prays for producing witnesses. Heard the O P. Questioned him in regard to his denial. Considered. I am prima-facie satisfied the there is no such evidence in support of his denial, because he failed to adduce reliable evidence.

To
29.03.06 for evidence by the parties.

Sd/-

4. 29.03.06

The O.P. is present with witness. The O/C P.S. also wants to adduce oral evidence. Evidence-in-chief and cross-examination of the First Party by the O.P. is concluded. Evidence of O.P. and his cross-examination is 138 also over.

To
12.04.06 for hearing of argument
of both the parties.

Sd/-

5. 12.04.06

Parties are present and file hazira. Heard both the parties.

To
28.04.06 for order.

Sd/-

7. 28.04.06

To-day is fixed for passing order. The case of the first party is that the O.P.To owns a Kanchan tree lying to the east of his premises. It is also situated by the road-side where public pass through regularly. The tree has leaned towards the road causing thereby danger to the public life; because it may fall down any moment. The O.P. was asked to remove the tree; but he did not do so. Hence the present case is filed. In support of the case, evidence of the neighbor was given by the petitioner. After evidence from FP following findings came out.

- i.
- ii.
- iii..... and so on

On the other hand, the O.P. while admitting the ownership of the subject tree denied the complaints of its likelihood of causing injury to the public. He also adduced oral evidence. After evidence from OP following findings came out.

- i.
- ii.
- iii. and so on

6. 28.04.06

Point of Concern-- In the instant case the point of concern is that whether the kanchan tree owned by the FP and situated within his premise may cause imminent danger or not to the people passing by the public road. Whether the tree in question is required to be removed to save the people from imminent danger.

Reasons to believe- On considering the cases of both the parties with reference to the evidences given by the parties and also on weighing them with open mind, I am of the opinion that the O.P. has failed to establish his case. His witness has miserably failed to prove that from the subject tree there is no likelihood of imminent danger to public life. In fact, it appears that they had not visited the road whereby the tree situates in recent times. Hence, their evidence has no merit at all. On the other hand, the witnesses of the first party are the neighbours.

6. 28.04.06

They are the regular users of the road in question and that they are well aware of the condition of the tree. They unequivocally stated that the tree is very much leaning towards the road and that it may cause danger to human lives any moment. I am inclined to give weightage to these evidences for its being reliable. Hence, I am satisfied that the subject tree owned by the O.P. is likely to fall any moment, thereby causing danger to the lives of the passersby using the road. I am further satisfied that immediate removal of the tree is badly required for saving human lives.

ORDER

Hence I, hereby, make the order No. 1 passed on 02.03.06 absolute against the O.P. I also, hereby, direct him to remove the said tree immediately and positively within 3(three) days hereof and to report compliance, or in default he will be liable for prosecution U/S 188 I.P.C. Let a copy of this order be served upon both the parties free of cost.

To
02.05.06 for report compliance.

Sd/-

7. 02 05 06

O.P. is present by filing hazira and also 02.05.06 submits a petition stating therein that he has complied with the order no. 6 dated 28.04.06. Hence, the case is disposed of on satisfaction.

Sd/-

Model Proceeding (U/s. 144)

1. 10.09.05

The petitioner is present and files a petition u/s 144(2) Cr.P.C. Perused the petition. Considered. O/C P.S. is directed to enquire into the petition and to submit a report by the next date fixed hereunder. BL&LRO Block is directed to enquire into the petition and to submit a report by next date.

To

25.09.05 for report.

Sd/-....

2. 25.09.05

Petitioner (First Party) files hazira. Report received from the O/C ... P.S. & BL&LRO Block. Perused the report. Considered. Whereas it appears from the report of BL&LRO Block that the petitioner having possession over the land under Plot/Holding No., Dag No., Khatrian No. in Mouja, J.L. No., P.S., District And he has cultivated the land. And whereas it also appears from the report that the O.P. is illegally and forcefully attempting to enter into the land to harvest the standing crops grown by the petitioner. And whereas the O/C in his report has pointed out that the O.P. is of desperate nature and may cause breach of the peace at any time unless restricted. I am satisfied from the said reports that the petitioner is in possession upon the land in question and unless the O.P. is prevented, there is every likelihood of breach of the peace to be caused by the O.P. I am further satisfied that in the present case speedy remedy is desirable for prevention of injury to the said first

party. Hence, I draw up proceedings u/s 144(1) Cr.P.C. against the O.P. i.e. Sri....., S/O..... of village..... of P.S. and directing him to abstain from entering into the following land in question of the petitioner and / or from cutting the crops standing thereon. Land in question

Mouza-	J.L. No.-	Plot No.-	Area-
Boundary, East-	West-	North-	South-

Police Station-Let a copy of this order be served through the O/C P.S. upon the O.P. along with a summon directing the O.P. therein to appear by next date to put up show cause as to why the order will not be made absolute or rescind, if aggrieved.

To 04.10.05.

Sd/-

.....3..... 04.10.05 u/s144(5)

The petitioner is present and files hazira. The Cr.O.P. appears through his Ld. Advocate by filing hazira as well as Vokatnama and also shows causes. Let a copy of the petition showing causes be served upon the first party.

To
14.10.05 for hearing of the parties.

Sd/-

.....4..... 14.10.05 u/s144(7) Cr.P.C.

Both parties are present. Heard both the parties. Hearing concluded.

To
27.10.05 for order.

Sd/-

5..... 27.10.05 u/s144(7) Cr.P.C.

Order

The case of the petitioner in brief:-.....
The case of the O.P. in brief:-.....

He prayed for rescinding the order made u/s 144(1) Cr.P.C.

Decision- Perused the petition of the petitioner as well as the causes shown by the O.P. and carefully considered. Also considered the documents produced by the parties. Considered the police report also. On considering those and after analyzing

the matters very carefully, I am satisfied that the land whereupon the standing crops are there, is owned and possessed by the petitioner. I am also satisfied that the O.P. being armed with men and lethal weapons is forcibly attempting to enter the land of the petitioner and to cut away the standing crops not being cultivated by him. I am further satisfied that such act of the O.P. is likely to cause serious breach of the peace leading to disturb public tranquility in the area and that its prevention is urgently necessary. Hence, I order that: Let the order passed u/s 144(1) Cr.P.C. on 25.09.05 be made absolute against the O.P. up to 60 days from the date of issuance of order dated 25.09.05. Let a copy of this order be served upon the O.P. through the O/C ... P.S. The present petition filed u/s 144(2) Cr.P.C. is thus disposed of.

To 25.11.09

Sd/-

5. 25.11.05

Both parties remain present. There is no report from any party of contravention of order dated 25.09.05 by the O.P. The statutory period of 60 days from the date of issuance of order is over. Hence it is ordered that the instant case is filed.

Sd/-

Model Proceeding (U/s. 145)

1. 5.02.06

Seen the petition filed by 'X' along with copies of documents whereby he prays for declaring him to be in possession of the land as in the schedule of the petition over which the O.P. 'Y' unnecessarily raises disputes and thus causes a breach of the peace in the locality. Send the copy of petition to O/C P.S. and BL&LRO for a report about apprehension of breach of peace and possession status of the petitioner as claimed in petition.

To
15 02 06 for submission of

Sd/

2. 15.02.06

Seen the reports submitted by O/C P.S. and BL&LRO Block. As per report of BL&LRO Block, the petitioner, is under possession of the land noted in petition and as per report of O/C P.S. there is every possibility of breach of peace concerning the land in question. The petition is examined with reference to the documents viz. Parcha, receipt of Khajna of the said land, Certificate from the G.P. Pradhan regarding possession of the said land by the petitioner, etc. Also heard the petitioner, First Party. Considered all these carefully. After perusal and consideration of the petition along with the documents produced and also after hearing the petitioner, I am satisfied that the petitioner is prima facie in possession of the subject land. I am further satisfied that the O.P. 'Y' is disputing the petitioner's possession over the land and this dispute is likely to cause breach of the peace in the locality concerning the land. I am further satisfied that for prevention of the likelihood of the breach of the peace, it is expedient to draw up a proceeding u/s 145(1) Cr.P.C. Hence, I draw up proceeding u/s 145(1) Cr.P.C. and hereby direct both the parties to appear either in person or through their Ld. Advocates on the date fixed hereunder and to submit Written Statements regarding their respective claims for actual possession of the subject land. Issue summons accordingly alongwith a copy of this order and send it to the O/C P.S. for its service. A copy of the order also be published by affixing it in some conspicuous place at or near the disputed land.

To

22.02.06 for Service Returns, appearance of the parties and filing Written Statement (W/S).

Sd/-

3. 22.02.06

Seen Service Returns. Also seen the report of the O/CP.S. stating therein that a copy of the order No. 2 dtd. 15/02/06 has been duly published by affixing the same at a conspicuous place of the subject land. Both the parties are present through Ld. Advocates by filing hazira. O.P.'s Advocate files Vokatnama and prays for time for filing Written Statement. Time allowed.

To
09.03.06 for W/S.

Sd/-

4. 09.03.06

Both the parties are present and file hazira. The O.P. files W/S with a copy being served upon the petitioner first party. The petitioner prays for adducing oral evidence. The O.P. also prays for crossexamining the witnesses. Considered. Allowed.

To
27.03.06 for evidence of the first party &
cross-examination.

Sd/-

5. 27.03.06

Both parties are present by filing hazira. Evidence of the First Party and Cross-Examination is concluded. O.P. prays for adducing evidence from his side. Allowed.

To
14.04.06 for evidence of the O.P. & crossexam.,
if any.

Sd/-

6. 14.04.06

Parties are present. Evidence of the O.P. & cross-exam. are taken and concluded.

To
30.04.06 for hearing of arguments of both the parties.

Sd/-

7. 30.04.06

First party is present. O.P. is also present. Hearing of arguments from both the parties taken up and concluded.

To
18.05.06 for order.

Sd/-

8. 18.05.06

Today is fixed for passing Order on the petition filed by the First Party.

The case of the petitioner, First Party in brief is that he is the owner of the subject land as mentioned in the schedule of the petition and also he is in possession of the land. But the O.P. is claiming the ownership of the subject land as well as its possession and is thus causing disputes in relation to possession. In support of his case he produced necessary oral and documentary evidences. So he prayed for declaring him to be in possession of the subject land. On the other hand, the O.P. claimed his ownership and possession on the land in question. Oral evidences in support of his claim were also adduced by him.

In the aforesaid circumstances the main issue is to be decided as to who was in actual possession of the subject land on the day of filing the petition of complaint.

9. 18.05.06

On perusal of the papers placed before me by both the parties and on careful consideration of the same it is observed that the first party in support of his ownership produced Parcha (Record of Right) and also a certificate issued by the G.P. Pradhan in support of his having possession over the land. He also adduced oral evidence of the persons having lands adjoining to his land. His witnesses stated that they had been seeing the first party to cultivate the land in question and to reap its product and to take it to his home since long years back. On the other hand the O.P. failed to substantiate his claim by producing documentary evidence. The witnesses he produced could not unequivocally state about the O P land factpossession of the O.P. over the land. In fact, they do not have any land adjacent to or nearby the subject land.

They are casual visitors of the field where the land is situated situated.

This fact is revealed during their cross-exam. Hence, their evidences are not at all reliable. Therefore the O.P. has miserably failed to establish his claim. From the aforesaid analysis I am inclined to accept the evidence of the first party. I am satisfied that :-

The First Party (the petitioner) was in possession of the subject land being Dag / Plot No. R.S. Khatian No. in Mouza J.L. No.....in East.....West..... North.....South..... under P.S. in District on the day of filing of the instant petition on 05.02.06 and also that he is entitled to continue to remain in possession of the said land until legally dispossessed and I declare it hereby accordingly.

Let a copy of this order be served upon both the parties and also a copy be published by displaying at a conspicuous place of the land.

The present case is thus disposed of

Sd/-

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.....19.....
(Seal of the court)

(Signature)

Model Proceeding (U/s. 147)

1. 05.01.06

Seen the petition filed by 'X' (First Party) u/s 147 Cr.P.C. In his petition the first party alleged against 'B' (the O.P.) that the O.P. is not allowing the petitioner X to use the subject land as his passage and for this act there is likelihood of breach of the peace. He also prays for declaring his right to use over the land. Send the petition to the O/C/.....P.S. and BL&LRO..... Block for enquiry into the case and report by the date fixed hereunder.

To
22.01.06 for police report & report of BL&LRO.

Sd/-

2. 22.01.06

The First Party is present and files hazira through his Advocate. Seen the police report & report from BL&LRO. Considered. It appears from the report that the first party has been using the land as passage and such use has been an easement right. But the O.P. is causing obstructions to the first party's use and for such act of the O.P. there is every likelihood of breach of the peace. Heard the first party also. I am satisfied from all the reports as well as hearing of the first party that in the present case for prevention of likely breach of the peace, it is prudent to draw up a proceeding u/s 147(1) Cr.P.C. against the O.P. Hence, a proceeding u/s 147(1) Cr.P.C. is hereby drawn up against the O.P. with a direction to both the parties to appear in person or through Advocate and to file Written Statement in regard to the respective claim and counter claim over the land. Issue summons to both the parties along with a copy of this order and send it to the O/C P.S. for its service and submit service return.

To
08.02.06 for S.R., appearance of the parties and filing W/S.

Sd/-

3. 08.02.06

Seen the S.R. Both the parties appear in person and file hazira through their Ld. Advocates alongwith Vokatnamas. Accepted the Vokatnamas. Both the parties pray for time for filing Written Statements supported with documents. Allowed.

To
28.02.06 for W/S.

Sd/-

4. 28 02 06

Both the parties appear and file hazira. The 28.02.06 First Party files W/S with documents through Firisti. The O.P. prays for time for filing W/S on the lawyer's ground. Allowed.

To

15.03.06 for W/S by the O.P.

Sd/-

5. 15.03.06

The First Party is present and files hazira. The O.P. is present and files W/S along with documents through Firisti. Copy of the W/S of the respective party is served upon the other side along with copy of documents. On interrogation, both the parties wanted to adduce oral evidences. Considered. Allowed.

To

30.03.06 for evidence of the parties.

Sd/-

6. 30.03.06

Both the parties appear and produced witnesses. Evidence-in-chief of the first party & cross-examination by the O.P. are taken and concluded today. Proceeding is adjourned today.

To

Sd/-

7. 12.04.06

First party is present. O.P. is also present along with his witnesses. The Witnesses are examined-in-chief & cross-examined. Thus the evidence of both the parties is closed today.

To

27.04.06 for hearing argument from both sides

Sd/-

8. 27.04.06

Both the parties are present. Hearing of argument of both the parties is taken up and completed.

To
16.05.06 for order.

Sd/-

9. 16.05.06

Today is fixed for passing Order on the petition filed by the First Party praying therein for a declaration that he has the easement right on the subject land as in the Schedule of the petition for his prolong use of the said land as his passage. The case of the petitioner First Party in brief is that he has his residential house adjacent to Plot No. 102 under R.S. Khatian No.652 in Mouja Kapasdanga, J.L. No. 134 being the subject land and that he along with his all family members use the land for their passage regularly. The said land is also used by other neighbors viz. A, B, C, D, etc. who also do have their adjacent houses. In support of their claim the first party produced two witnesses who deposed in the same line both in chief and in cross-examination. They categorically stated during their evidence in chief and cross examination that they had been seeing to the petitioner, First Party along with his family members to have been using the subject land as their passage and also that they used the land during the last three months next prior to January, 2006.

9. 16.05.06-

The witnesses are respectable persons, - one of whom is a teacher, while the other is a member of the local Gram Panchyat. And I attach importance to their evidence. The O.P. admitted his ownership of the land in question; but he denied the claim of the first party about their regular use of the land vis-à-vis first party's claim of easement right. In support of his denial he also produced two witnesses. On analyzing the evidence it is noticed that they are neither neighbors nor they visit the area regularly. Further, one of them Sri..... gave hearsay evidence which, however, has no evidential value. After weighing the evidences of both the

parties and also on due consideration of the fact in issue, I am inclined to accept the evidence of the First Party and I am of the opinion that the case goes in favour of the First Part

9. 16.05. 06-

Hence I am satisfied that the First Party has been using the subject land Hence, since a long time back and that too, continuously and regularly also during the last three months next prior to the order made u/s 147(1) Cr.P.C. on contd. 22.01.2006. Therefore, I am of the opinion that he has developed the easement right on the land and that he is entitled to have the declaration to that effect from the court. In view of the aforesaid analysis of the case, I hold that the First Party had been able beyond any doubt to prove his case, while the O.P. has miserably failed to substantiate his case. Hence, I hereby declare u/s 147(3) Cr.P.C. that the First Party does have the right of easement on the land in question. I, hereby, prohibit any interference with the exercise of the right of the First Party and his family members on the land by the O.P. and in case of any obstruction caused by the O.P., the First Party is hereby entitled to get the said obstruction removed for exercising his right. This order is to operate until the person denying the right obtains the decision of a competent court adjudging him to be entitled to do such thing. Let a copy of this order be served upon both the parties free cost served to the O/C of cost. Let another copy be also

P.S. for information. The present case is thus disposed of.

Sd/-

ANNEXURE - I
ORDER UNDER SECTION 144 Cr.P.C.

(Directing a particular individual or individual

Prohibiting entry into certain area/

Areas of abstain from certain acts)

To (Name, description and address)

Whereas it has been made to appear to me that you are frequently visitingplace within the limits ofPolice Station and during your visits inciting the public through your speeches, statements, rumours and secret conversations to commit offences against the public tranquillity in the aforesaid area.

And whereas an emergency has arisen which necessitates immediate action for the maintenance of public order and tranquillity.

I do hereby under Section 144 Cr.P.C. order and enjoin you not to take part in public meetings or processions in (mention the areas) within the limits ofPolice Station until further orders.

OR

I do hereby under section 144 Cr.P.C. order and direct you not to visit (mention the area) within the limits ofPolice station until further orders.

Given under my hand and seal of the court thisday of..... 19.....

Seal

Magistrate

(To be served on the person concerned)

Annexure II

CURFEW ORDER
(Issued under Section 144 Cr.P.C.)

Whereas I am of the opinion that there exist very strained relations between communities.and in view of the recent events there is apprehension of grave risk and danger to human life and property if persons are allowed to move about freely.

And whereas an emergency has arisen which necessitates immediate action and speedy remedy for the maintenance of public tranquillity.

I do hereby under section 144 Cr.P.C. order that no one who has not got a special permit from the will go about in public or leave his house within the limits ofbetween the hours until further orders.

Given under my hand and seal of the court this Day of 19.....

Seal

Magistrate

Commissioner of Police

INQUEST

Meaning – Literally it means a legal inquiry U/s 176 Cr. P.C. by a competent Executive Magistrate into the cause of an unnatural or suspicious death.

“Death” means permanent cessation of life–irreversible stoppage of functions of heart, brain and lungs.

Death – somatic – bodily / corporal :

- Natural death – unassisted operation of natural causes
- Unnatural death – not natural – violence; accidental, suicidal or homicidal

Unnatural death – Calls for probe to find foul play if any behind it.

Two agencies – both Magistracy and Police for such probe.

Situations where post mortem (in unnatural death) are compulsory –

- Suicide by a woman within 7 yrs. of her marriage.
- Death of a woman within 7 yrs. of marriage with reasonable suspicion
- Death of a woman within 7 yrs. of marriage and any of her relatives makes a request to that effect.
- Doubt regarding the cause of death.
- The police officers consider it expedient to have it done.

Inquest by magistrate-mandatory :

- When death in police custody.
- Suicide by a woman within 7yrs. of marriage.
- Case relates to death of a woman within 7yrs. of marriage with suspicion.

Purpose of Section 176 of Cr. P.C :

- Based on the assumption that it is not safe to depend entirely upon the option of police.
- Magisterial inquiry inspires greater public confidence.

- Intention is to discover the cause of death.
- With commission of offence a criminal case may be started.
- Informing nearest Executive Magistrate as empowered – obligation lies on the police.

Duty of Executive Magistrate on receipt of information :

- Check the written order of D.M./S.D.M. U/s 174(i) Cr. P.C.
- Inquest – on the spot
- Relatives (parents, children, brothers, sisters, spouse) – to be informed to remain present at the time of inquest.
- Surroundings to be examined.
- All relevant features to be noted down.
- Identification of the deceased at least by two persons.
- Examination of persons.
- Evidence of death to be recorded.
- Eye-witnesses including other persons may be examined.

Powers of Executive Magistrates :--

- May issue process.
- May compel appearance of witness.
- May administer oath.
- May record evidence.
- whether a court – different school of opinion.
- May record confessions.
- Contempt of the lawful authority is punishable.
- Even D.M. cannot interfere in an inquiry U/s 176 Cr. P.C.
- Magistrate holding inquest U/s 176 Cr. P.C.

Admissibility :--

Part – based on observation or spot admissible U/s 60 of I.E.A.

Part – based on information or statement recorded by police is inadmissible U/s 162 Cr. P.C.

Does not contain substantive evidence. May be used as confession. May be used to contradict / corroborate / refresh memory.

CUSTODIAL DEATH

- Videography is compulsory
- Guidelines framed by NHRC for videography for postmortem examination.
- Prompt communication of incident of custodial deaths /rapes in Juvenile Homes / Institutions to NHRC & WBHRC – within 24 hrs.
- Special comment on whether there has been any medical negligency.
- Copy of FIR, P.M. report to be sent.
- If initial inquest indicates foul play magisterial inquiry to be done
- The general diary, connected case diary, Lock-up Register, all other relevant records and documents to be inspected.
- Sentry in duty during the period and the co-prisoners to be examined.
- Deposition to be taken in a separate room (in absence of police).
- List of inmates of Correctional Home if prepared well ahead – not to be taken.
- Don't over-write or make correction in deposition.
- M.O. of the Home to be interrogated
- Medikit Register to be inspected.
- Special look for scalp scrutiny.

Ref. : Section 176(1A)

Latest amendment of Cr.P.C. Sec. 176(1A) states that --

“ where,--

- (a) Any person dies or disappears ,or

(b) Rape is alleged to have been committed on any woman, while such person or woman is in custody of the police or in any other custody authorized by the Magistrate or the Court, under this code in addition to the inquiry or investigation held by the police, and inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be within whose local jurisdiction the offence has been committed.

Again Sec.176(5) state that the judicial magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be under Sub-sec.(1A) shall, within twenty-four hours of the death of a person, 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, unless it is not possible to do so for reasons to be recorded in writing.

The Executive Magistrates are often asked to make inquests, although this provision does not provide the basis. However, a guideline has been issued from NHRC which states that “In our opinion the correct position of law is that an enquiry by Judicial Magistrate or Metropolitan Magistrate is mandatory in only those cases of custodial death where there is reasonable suspicion of foul play or well founded allegation of commission of an offence. All other cases of custodial death where the death is natural or caused by disease may be enquired into by an Executive Magistrate.”

The problem lies as to ascertain the nature of death whether it is natural or probability of foul play is there, since police initiates as an UD case against custodial death.

DYING DECLARATION

What it is ?

It is the statement of a person relating to his or her death or the circumstances leading to death when that person dies subsequent to the making of such statement.

REFERENCE

- Section 164 of Cr.P.C. , 1973
- Section 32 of I.E.A. , 1872
- Regulation 266 of Police Regulations Bengal , 1943

What it is ?

- It is the statement of a person since deceased
- It is a kind of hearsay evidence – meaning derivative or second-hand or unoriginal evidence
- Veracity cannot be tested by cross examination
- Exception to the rule that hearsay evidence is inadmissible. (Section 60 m of I.E.A.)

Why it is admitted in Evidence ?

- Principle of “necessity”
- Circumstantial guarantee of trustworthiness

Conditions for reception of Dying Declaration in evidence :

- Must relate to the cause of death
- Death means death of declarant
- Declarant must have died after the declaration
- Cause of death must be a question involved in the case
- Death may be homicidal or suicidal or even accidental
- Case may be criminal or civil

Apprehension of death

It is not a pre-requisite that the person should have been under expectation of death.

Proximity of time between declaration and death

- Distance of time alone cannot render a Dying Declaration irrelevant
- Depends upon the circumstances of each case

Who may record “Dying Declaration” ?

- Generally speaking, anybody, including a Police officer or a private individual may record Dying Declaration
- Exemption from restriction to a statement recorded by a Police officer in course of investigation (Section 162 Cr.P.C.)
- It may be made before or during investigation

Procedure for recording

- Be satisfied that the declarant is in a fit condition to make a statement
- Ask for doctor’s opinion, if available.
- Recording in question-answer form
- There should be no leading question
- There should be simple questions
- Verbatim reproduction
- After recording, read over and explain
- Take signature / thumb impression
- Affix signature with designation, date & time
- Obtain a certificate from doctor as to the fitness of the declarant
- Write the detailed particulars of the declarant at the top of the Dying Declaration
- If name of assailant is told, then take particulars to establish the identity of the assailant.

There is no prescribed form for Dying Declaration.

Dying Declaration

It may be oral or written

When the Victim Survives

- Statement cannot be used as a Dying Declaration
- It may be used for the purpose of contradiction or corroboration (Section 145/155 & 157 of I.E.A.) .

Strategic points to be followed

- Request from the end of the Police
- Reach the spot as fast as possible
- Obtain certificate from doctor
- Record the declaration verbatim
- No leading question
- None other than doctor/nurse is allowed to witness the recording
- Keep a copy of the Dying Declaration

EXECUTIVE INQUIRY INTO POLICE FIRING

EXECUTIVE INQUIRY INTO POLICE FIRING

156 PRB:: Action to be taken after the police have used firearms.

When the police have used firearms, whether against an unlawful assembly or against a small group or against individuals the following action shall be taken-

- (a) The police officer in command shall as soon as possible have the dead, if any, sent to a mortuary and the wounded to hospital;
- (b) He shall cause the empty cartridge cases to be picked up and checked with the number of rounds issued; and
- (c) As soon as action has been taken under clause (a), the Magistrate, if one is present, and the police officer in command shall each draw up, first –
 - (i) a concise but accurate report of the occurrence, and subsequently;
 - (ii) an accurate account in minute detail of all the relevant facts with a note of the number of rounds issued and expended;
- (d) Copies of the concise report shall be sent by *express* telegram and of the detailed account by the quickest possible means other than a telegram-
 - (i) by the Magistrate, if one is present, to the District Magistrate, Superintendent, Commissioner and Chief Secretary, and
 - (ii) by the police officer in command to the District Magistrate, Superintendent, Deputy Inspector-General and Inspector-General.

157 PRB:: Executive enquiry regarding use of firearms by police:

(a) Whenever the police have used firearms, a full executive enquiry to ascertain whether the firing was justified and whether these regulations were obeyed, shall be held as soon as it can possibly be arranged-

- (i) by the Commissioner, if a District Magistrate, an Additional District Magistrate, a Superintendent, an Additional Superintendent or the Commandant, Eastern Frontier Rifles was concerned in firing;

(ii) by the District Magistrate or an Additional District Magistrate, if a Sub divisional Magistrate, an Assistant Superintendent or Deputy Superintendent or an Assistant Commandant, Eastern Frontier Rifles, was so concerned; and otherwise;

(iii) by the District Magistrate, Additional District Magistrate, Sub Divisional Magistrate or Magistrate selected by the District Magistrate.

(b) If a District Magistrate or a Commissioner so directs or if a Range Deputy Inspector-General or the Superintendent of the district concerned so desires a police officer of rank superior to that of the police officer concerned in the occurrence and not below the rank of Inspector shall be associated with the enquiry. Such officer shall have the right to examine witnesses and his opinion on the case shall be submitted together with the Magistrate's or Commissioner's report. The police officer attending the enquiry should write out his report immediately after the enquiry is over.

(c) The executive enquiry shall be independent of any enquires made by the police or by a Magistrate under the Code of Criminal Procedure but evidence recorded in such enquires may be used.

(d) The report prescribed in regulation 156 shall be laid before the officer holding the enquiry.

(e) The representation of parties by legal practitioners shall not be allowed at the enquiry; but any police officer whose conduct is at issue shall be allowed to examine and cross-examine witnesses and to make statements orally or in writing.

(f) On completion of the enquiry, the officer who has held it shall at once send a report to the Provincial Government through the usual channel and make over a copy to the Superintendent or the Deputy Inspector-General of the Range, as the case may be, for submission to the Inspector-General.

PROCEDEURE TO BE FOLLOWED

- Obtain copy of the report u/s 156 of P.R.B., list of witnesses, list of documents/materials, copy of the F.I.R./ G.D., copy of the seizure list, copy of the P.M./ injury report.
- Obtain the latest status of the police case and counter police case, if any.
- Visit the place of occurrence & draw the rough sketch map, if possible.
- Fix up the date, place & time of hearing.
- Issue notice to the witnesses (received from the police) to appear at the time of hearing and verify the service returns.
- Also issue public notice (mentioning the particulars of the case, date, place & time of hearing) requesting general public having the knowledge of the case to come forward for giving deposition at the time of hearing.
- Record the deposition of all the persons present for the purpose of hearing and examine all the documents / materials.
- Representation by the legal practitioner is strictly prohibited.
- Draw the conclusion; whether justified and the provisions of P.R.B are followed.
- Allow associated police officer, if any, to examine the witnessed, documents & materials.

The following documents should be obtained, duly examined and forwarded with the report:

- a) Copy of the FIR and the seizure list (if any).
- b) Copy of the preliminary police report drawn up u/r 156 PRB immediately after the firing and the sketch map of the place of occurrence (if any).
- c) Copy of the report of medical examination of injuries sustained by any member of the police involved in the incident of the firing, any member of the public, miscreants targeted by the police.
- d) Copy of post-mortem examination report of dead bodies, if casualty has occurred as a consequence of the police firing.

e) Copy of inquest report by the Executive Magistrate u/s 176 Cr.P.C. on the dead body of victim of such police firing, if any.

f) Copy of the report of the Associate Police Officer, if submitted.

g) Copy of the notice published in newspapers for wide publicity and copy of the declaration made by DICO, Panchayats or the Police informing publication of public notice.

Use of firearms is permitted

- *In exercise of right of private defence of person or property.*
- *For the dispersal of unlawful assembly.*
- *To effect an arrest in certain circumstances.*

Ref: Rule 153(a) of police Regulation of Bengal 1943

For Private Defence:

- All ranks of police are entitled to protect themselves & the property of the Government against attack.
- Every member of the police force has the right & also the duty to protect other persons & their property.

Ref: Rule 153(a) of police Regulation of Bengal 1943

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

(Ref: Sec 99 of I.P.C.)

The right of private defence of the body extends to causing death on the following occasions:

1. If there is a reasonable apprehension that the consequence of the assault is death/grievous hurt.
2. Assault with the intention of committing rape.
3. Assault with the intention of kidnapping / abducting.
4. An assault with the intention of gratifying unnatural lust.

5. An assault with the intention of wrongful confinement

(Ref: Sec 100 of I.P.C.)

In all other cases the right of private defence of the body may extend to the voluntary causing to the assailant of any harm other than death.

(Ref. Sec 101 of I.P.C.)

The right of private defence of the property extends to causing death on the following occasions:

1. Robbery / House-breaking by night.
2. Mischief by fire committed on any building / tent / vessel used as a human dwelling or as a place for the custody of property.
3. Theft, mischief or house-trespass under such circumstances which may reasonably cause apprehension of death / grievous hurt.

(Ref: Sec 103 of I.P.C.)

In all other cases the right of private defence of the property may extend to the voluntary causing to the assailant of any harm other than death.

(Ref. Sec 104 of I.P.C.)

Right of private defence against a deadly assault when there is a risk to harm to innocent person:

If the assault which reasonably cause the apprehension of death, the defender, if he is so situated that he cannot effectively exercise the right of private defence without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

(Ref: Sec 106 of I.P.C.)

For the dispersal of unlawful assembly:

- When it is absolutely necessary for the defence of life / property.

Or

- When a Magistrate or O/C of P.S. or a Police Officer superior to him considers it impossible to disperse a mob by any other means.

- An order to fire upon a crowd should be regarded as an extreme measure & as a last resort.
- Full & sufficient warning should be given before giving an order to fire upon a crowd.

Ref: Rule 153 (c) of Police Regulation of Bengal 1943

Unlawful Assembly :

Case 1: Sec 141 of I.P.C.

- Five or more persons if assembled with any of the following common object:
 1. To overawe by criminal force / show of criminal force to the Central / State / Parliament / Legislature or to the public servant in the exercise of the lawful power of such public servant.
 2. To commit mischief / criminal trespass or other offence.
 3. To resist the execution of any law / any legal process.
 4. By means of criminal force / show of criminal force to any person to take / obtain possession of any property or to deprive any persons of the enjoyment of a right of way / of the use of water / other incorporeal right.
 5. To compel any person by means of criminal force / show of criminal force to do what he is not legally bound to do or to omit to do what he is legally entitled to do.

Case 2: FOR DISOBEDIENCE OF ORDER u/s 30 A(1) OF POLICE ACT' 1861

- An order to disperse may be given u/s 30A(1) of police Act' 1861 if an assembly violated the conditions of a license issued u/s 30(1) of Police Act' 1861.
- An assembly or procession which disobeys the above order will become at once an unlawful assembly.

Ref: Rule 142 of Police Regulation of Bengal 1943

All unlawful assembly should be dealt with under the provision of 129 Cr. P.C. which states that the Exe. Magistrate or O/C of a P.S. or in his absence a police officer not below the rank of S.I. may command any unlawful assembly to disperse and upon being so commanded, such assembly does not disperse or if without being so commanded the assembly shows the determination not to disperse; the assembly will be dispersed with the use of force.

Order U/s 30A(1) of police Act' 1861 is not a substitute for an order U/s 129 Cr. P.C.

For Effecting an arrest :

A Police Officer may use all means necessary including the opening of fire if:-

1. A person forcibly resist arrest Or A person attempts to evade arrest

If the person is not accused of an offence punishable with death or with transportation for life then the use of force will be applied in such a manner that use of force will not cause the death of the accused.

Ref: Rule 153(d) of Police Regulation of Bengal 1943

General rules relating to the use of firearms :

- I. Sufficient warning to be given before firing.
- II. Firing should always be controlled and directed at a specific target.
- III. No greater hurt than is unavoidable should be inflicted.
- IV. Firing should be ceased as soon as its object is achieved.

Ref: Rule 154 of Police Regulation of Bengal 1943

Orders to fire & control of firing :

- The Magistrate and if no Magistrate is present the police officer in command shall give the order to use force or to fire and also gives the order to cease fire.
- Direction of firing should be given in such a way as to secure immediate effect with a minimum of injury.
- Firing over the heads of the crowd or in any direction except on members of the crowd is strictly forbidden.
- Before giving the actual order of firing; range, target and number of rounds to be fired should be specifically mentioned.
- No greater volume of fire should be used than the circumstances demand.
- The order to cease fire should be given as soon as the mob shows the slightest inclination to retire or disperse.

Rule 155 of Police Regulation of Bengal 1943

Action to be taken after the use of firearms :

1. The police officer in command, as soon as possible shall have to send the dead bodies, if any, to a mortuary and wounded to hospital.
2. The empty cartridge case should be picked up & checked with the number of round issued.
3. The Magistrate will send the report to the D.M., S.P., Commissioner & Chief Secretary.
4. The Police Officer will send the report to the D.M., S.P., D.I.G. & I.G.
5. A concise but accurate report with minute detail of all relevant facts, note of the number of rounds issued & expended should be prepared by the Magistrate (if present) and by the Police Officer in command immediately and should be sent to the authorities by the quickest possible means.

Ref: Rule 156 of Police Regulation of Bengal 1943

Executive enquiry regarding use of firearms by police :

Whenever the police have used firearms, a full executive enquiry to ascertain whether the firing was justified and whether the relevant regulations of P.R.B. 1943 were obeyed, shall be held as soon as it can possibly be arranged:-

- ❖ By the Commissioner:- if D.M., A.D.M., S.P., Addl. S.P. or the Commandant E.F.R. was concerned in firing.
- ❖ By the D.M. or A.D.M.:- if a S.D.M., Asst. S.P., Dy. S.P. or the Asst. Commandant E.F.R. was concerned in firing.
- ❖ By the D.M. or A.D.M., S.D.M. or Magistrate selected by the D.M. in other cases.
- ❖ The executive enquiry is independent of any enquiry made by police or magistrate under the Cr.P.C. but evidence recorded in such enquiry can be used.
- ❖ The report prescribed in regulation 156 of P.R.B. should be made available during enquiry.
- ❖ Representation of parties by legal practitioners is not allowed.
- ❖ If the conduct of police officer is at issue, he shall be allowed to examine or cross examine the witness & to make statements.
- ❖ The report should be sent to the Govt. through the usual channel along with a copy to the S.P. or D.I.G. of the Range as the case may be.

Associated Police Officer:

1. If D.M. or Commissioner so directs or S.P. Range D.I.G. so desires a police officer superior to the rank of the police officer involved and not below the rank of inspector shall be associated with the enquiry.
2. Associated police officer has the right to examine witness. His report should be submitted together with the Magistrate's / Commissioner's report.

Ref: Rule 157 of Police Regulation of Bengal' 1943

The following documents should be obtained, duly examined and forwarded with the report:

- a) Copy of the FIR and the seizure list (if any).
- b) Copy of the preliminary police report drawn up u/r 156 PRB immediately after the firing and the sketch map of the place of occurrence (if any).
- c) Copy of the report of medical examination of injuries sustained by any member of the police involved in the incident of the firing, any member of the public, miscreants targeted by the police.
- d) Copy of post-mortem examination report of dead bodies, if casualty has occurred as a consequence of the police firing.
- e) Copy of inquest report by the Executive Magistrate u/s 174 Cr.P.C. on the dead body of victim of such police firing, if any.
- f) Copy of the report of the Associate Police Officer, if submitted.
- g) Copy of the notice published in newspapers for wide publicity and copy of the declaration made by DICO, Panchayats or the Police informing publication of public notice.

EXECUTIVE ENQUIRY - CHECK LIST

APOINTMENT OF ASSOCIATE POLICE OFFICER

DELAY BY A.P.O TO TAKE UP AND COMPLETE ENQUIRY

LIST OF WITNESSES TO DEPOSE ON BEHALF OF THE POLICE

LIST OF INDEPENDENT WITNESSES

NOTICE INVITING EVIDENCE

FROM WILLING MEMBERS OF THE PUBLIC

EXECUTIVE ENQUIRY TO BE CONDUCTED IN A QUASI-JUDICIAL MANNER

MAGISTRATE HAS NO INCUMBENCY TO JUSTIFY

THE INFERENCE OF THE EXECUTIVE MAGISTRATE SHOULD BE FIRM &
DECISIVE

NO NOTICE TO ANY INDEPENDENT / IMPARTIAL WITNESS TO BE ISSUED

THROUGH THE POLICE

THE VENUE FOR HEARING THE WITNESSES TO BE A PUBLIC PLACE

NO WITNESS TO BE DISCARDED FOR THE REASON OF NOT HAVING HIS NAME
REGISTERED IN ADVANCE

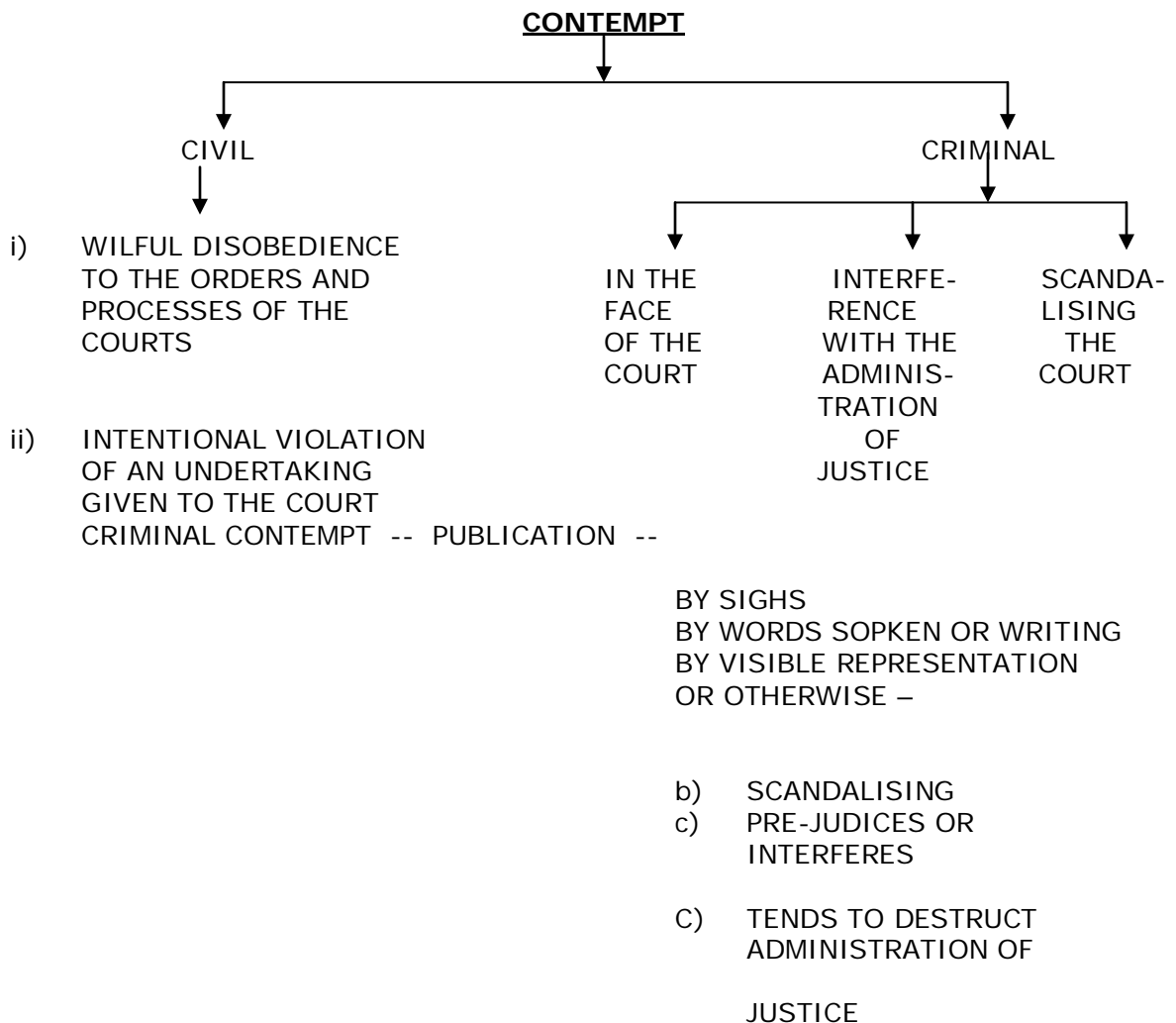
DISTRICT MAGISTRATE ENSURES THAT ALL NECESSARY HELP AND CO-
OPERATION ARE MADE AVAILABLE TO THE EXECUTIVE MAGISTRATE

CONTEMPT OF COURT

CONTEMPT OF COURT ACT, 1971

CIVIL, CRIMINAL AND REVENUE COURTS ARE COURTS WITHIN THE MEANING OF CONTEMPT OF COURT ACT.

SUPREME COURT AND HIGH COURTS ARE COURT OF RECORDS. IT CAN PUNISH FOR ITS OWN CONTEMPT.



A JUDGE OR MAGISTRATE MAY CONTEMPT HIS OWN COURT :

- 1) CALLING A POLICE GUARD FOR TURNING OUT A LAWYER WITHOUT JUSTIFICATION

- 2) A COMMENT BEFORE MEDIA ABOUT A CASE WHEN APPEAL IS PENDING IN JUSTIFYING HIS ORDERS
- 3) EXECUTIVE MAGISTRATE DELIVERED JUDGMENT IN CASE UNDER SECTION 145 CR. P. C. AFTER 8 MONTHS AND 13 ADJOURNMENTS.

NOTINGS IN OFFICE FILE EVEN IF DEROGATORY TO COURT'S ORDER -- DO NOT CONSTITUTE CONTEMPT

MEDIA AND COURT -- RIGHT TO MAKE FAIR CRITICISM OF SUBORDINATE JUDICIARY.

LIMITATIONS -- ONE YEAR
(SECTION 20 OF CONTEMPT OF COURTS ACT)

SEARCH WARRANT

(Sections 94, 97 & 98)

Complaint under Sections 94 and 97 can be heard and determined only by an Executive Magistrate put into the charge of a District or a Sub-Division, so to mean, the District Magistrate or a Sub-Divisional Magistrate. Section 94 empowers one of such Magistrate to authorize any Police Officer by warrant to enter into any place within his jurisdiction and search for any property or article which he reasonably suspects to be a stolen property or objectionable articles like counterfeit coin, counterfeit currency note, counterfeit stamps, forged documents, false seals, obscene objects etc. By issue of search warrant the Police officer may be simultaneously authorized to carry before the Magistrate every person found in such place who appears to be a custodian of any such objectionable or stolen property, as the case may be, knowing or having reasonable cause to suspect it to be stolen property and so and so.

In the similar manner an Executive Magistrate functioning as a District Magistrate or a Sub-Divisional Magistrate is empowered under Section 97 to issue a search warrant for search of a person who is believed to be wrongfully confined in a place either within or beyond his jurisdiction with the direction to the person to whom such search warrant is issued for immediate production before him on a given date and at a given time of the person behind to be thus confined.

Section 98 empowers District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class to restore where a woman or a female child under 18 years has been abducted or unlawfully detained for an unlawful purpose.

MANAGEMENT OF COURT

- Organising – who is there
- Notify days and hours
- Personal supervision – Bench clerk/dates
- If sub-judice.

MISCELLANEOUS ACTs

EXTRACTS FROM ARMS ACTS & RULES

2. Definitions and interpretation - .—(1) In this Act, unless the context otherwise requires,—

(a) "acquisition" with its grammatical variations and cognate expressions includes hiring, borrowing or accepting as a gift;

(b) "ammunition" means ammunition for any fire-arm, and includes,—

- i. rockets, bombs, grenades, shells [and other missiles],
- ii. articles designed for torpedo service and submarine mining,
- iii. other articles containing or designed or adapted to contain explosive, fulminating or fissionable material or noxious liquid, gas or other such thing, whether capable of use with fire-arms or not,
- iv. charges for fire-arms and accessories for such charges,
- v. fuses and friction tubes,
- vi. parts of, and machinery for, manufacturing ammunition, and
- vii. such ingredients of ammunition as the Central Government may, by notification in the official Gazette, specify in this behalf;

(c) "arms" means articles of any description designed or adapted as weapons for offence or defence, and includes fire-arms, sharp-edged and other deadly weapons, and part of, and machinery for, manufacturing arms, but does not include articles designed solely for domestic or agricultural uses, such as, *lathi* or an ordinary walking stick and weapons incapable of being used otherwise than as toys or of being converted into serviceable weapons;

(d) "District Magistrate" in relation to any area for which a Commissioner of Police has been appointed means the Commissioner of Police thereof and includes any such Deputy Commissioner of Police exercising jurisdiction over the whole or any part of such area, as may be specified by the State Government in this behalf in relation to such area or part;

(e) "fire-arms" means arms of any description designed or adapted to discharge a projectile or projectiles of any kinds by the action of explosive or other forms of energy, and includes,—

- i. artillery, hand grenades, riot-pistols, or weapons of any kind designed or adapted

for the discharge of any noxious liquid, gas or other such things. ;

- ii. accessories for any such fire-arms designed or adapted to diminish the noise or flash caused by the firing thereof,
- iii. parts of, and machinery for, manufacturing fire-arms, and
- iv. carriage, platforms and appliances for mounting, transporting and serving artillery;

(f) "licensing authority", means an officer or authority empowered to grant or renew licences under rules made under this Act, and includes the Government;

(ff) "Magistrate" means an Executive Magistrate under the Code of Criminal Procedure, 1973 (2 of 1974);]

(g) "prescribed" means prescribed by rules made under this Act;

(h) "prohibited ammunition" means any ammunition containing or designed or adapted to contain, any noxious liquid, gas or other such thing, and includes rockets, bombs, grenades, shells, [missiles,] articles designed for torpedo service and submarine mining and such other articles as the Central Government may, by notification in the official Gazette specify to be prohibited ammunition;

(i) "prohibited arms" means –

- i. "Fire-arms" so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missile is empty, or
- ii. weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such things and includes artillery, anti-aircraft and anti-tank fire-arms and such other arms as the Central Government may, by notification in the official Gazette, specify to be prohibited arms;

(j) "public servant" has the same meaning as in Sec. 12 of the Indian Penal Code (45 of 1860);

(k) "transfer" with its grammatical variations and cognate expressions, includes letting on hire, lending, giving and parting with possession.

(2) For the purposes of this Act, the length of the barrel of a fire-arm shall be measured from the muzzle to the point at which the charge is exploded on firing.

(3) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

(4) Any reference in this Act to any officer or authority shall, in relation to any area in which

there is no officer or authority with the same designation, be construed as a reference to such officer or authority as may be specified by the Central Government by notification in the official Gazette.

3. Licence for acquisition and possession of fire-arms and ammunition.—(1) No person shall acquire, have in his possession, or carry any fire-arm or ammunition unless he holds in this behalf a licence issued in accordance with the provision of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any fire-arm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

(2) Notwithstanding anything contained in sub-section (1) no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than three fire-arms.

Provided that a person who has in his possession more fire-arms than three at the commencement of the Arms (Amendment) Act, 1983, may retain with him any three of such fire-arms and shall deposit, within ninety days from such commencement the remaining fire-arms with the officer-in-charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of Sec. 21, with a licensed dealer or, where such person is member of the armed forces of the Union, in a unit armoury referred to in that sub-section.

(3) Nothing contained in sub-section (2) shall apply to any dealer in fire-arms or to any member of rifle club or rifle association licensed or recognized by the Central Government using a point 22 bore rifle or an air rifle for target practice.

(4) The provisions of sub-sections (2) to (6) (both inclusive) of Sec. 21 shall apply in relation to any deposit of fire-arms under the proviso to sub-section (2) as they apply in relation to the deposit of any arm or ammunition under sub-section (1) of that section.

9 Prohibition of acquisition or possession by or of sale or transfer to young persons and certain other persons of fire-arms etc – (1) Notwithstanding anything in the foregoing provisions of this Act –

(a) *no* person—

i. who has not completed the age of 3[twenty-one years], or

- ii. who has been sentenced on conviction of any offence involving violence or moral turpitude to imprisonment for 4[any term] 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 5[Code of Criminal Procedure, 1973 (2 of 1974)], a bond for keeping the peace or for good behaviour, at any time during the term of the bond, shall acquire, have in his possession or carry any fire-arms or ammunition;

(b) no person shall sell or transfer any fire-arms or ammunition to, or convert, repair, test or prove any fire-arm or ammunition of, any other person whom he knows, or has reasons to believe –

- (i) to be prohibited under Cl, (a) from acquiring, having in his possession or carrying any fire-arm or ammunition, or
- (ii) to be of unsound mind at the time of such sale or transfer for such conversion, repair, test or proof.

(2) Notwithstanding anything in the sub-clause (i) of Cl (a) of sub-section (1) a person who has attained the prescribed age-limit may use under prescribed conditions such fire-arms as may be prescribed in the course of his training in the use of such fire-arms.

Provided that different age-limits may be prescribed in relation to different types of fire-arms.

Provisions Relating to Licences

13. Grant of licences.— (1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer-in-charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2-A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), subject to the other provisions of this chapter, by order in writing either granting the licence or refuse to grant the same:

Provided that where the officer-in-charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order after the expiry of the prescribed time, without further waiting for that

report.]

(3) The licensing authority shall grant—

(a) licence under Sec. 3 where the licence is required—

(i) by a citizen of India in respect of a smooth-bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle-loading gun to be used for *bona fide* crop protection :

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle-loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth-bore gun as aforesaid for such protection, or

(ii) in respect of a point 22 bore rifle or an air-rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognized by the Central Government;

(b) a licence under Sec. 3 in any other case or a licence under Sec, 4, Sec. 5, Sec. 6, Sec. 11 or Sec. 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.

14. Refusal of licences – Notwithstanding anything in Sec. 13 the licensing authority shall refused to grant –

(a) a licence under Sec. 3, Sec. 4 or Sec. 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II, -

(i) where such licence is required by a person whom the licensing authority has reason to believe –

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition; or

(2) to be of unsound mind; or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) the licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) where the licensing authority refuses to grant a licence to any person it shall record in

writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

15 Duration and renewal of licence – (1) A licence under Sec. 3 shall, unless revoked earlier, continue in force for a period of three years from the date on which it is granted:

Provided that such a licence may be granted for a shorter period if the person by whom the licence is required so desires or if the licensing authority for reasons to be recorded in writing considers in any case that the licence should be granted for a shorter period.

(2) A licence under any other provision of Chapter II shall, unless revoked earlier, continue in force for such period from the date on which it is granted as the licensing authority may in each case determine

(3) Every licence shall, unless the licensing authority for reasons to be recorded in writing otherwise decides in any case, be renewable for the same period for which the licence was originally granted and shall be so renewable from time to time, and the provisions of Secs. 13 and 14 shall apply to the renewal of a licence as they apply to the grant thereof.

16. Fees, etc. for licence – The fees on payment of which, the conditions subject to which and the form in which a licence shall be granted or renewed shall be such as may be prescribed:-

Provided that different fees, different conditions and different forms may be prescribed for different types of licences;

Provided further that a licence may contain in addition to prescribed conditions such other conditions as may be considered necessary by the licensing authority in any particular case.

17. Variations, suspension and revocation licences – (1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence – holder by notice in writing to deliver up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence, -

- (a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or
 - (b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence ; or
 - (c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or
 - (d) if any of the conditions of the licence has been contravened; or
 - (e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver up the licence.
- (4) The licensing authority may also revoke a licence on the application of the holder thereof.
- (5) Where the licensing authority makes an order varying a licence under section (1) or an order suspending or revoking a licence under sub-section (1) shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.
- (6) The authority to whom the licensing authority is subordinate may by order in writing suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority, and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.
- (7) A Court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence;
- Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.
- (8) An order of suspension or revocation under sub-section (7) may also be made by an Appellate Court or by the High Court when exercising its powers of revision.
- (9) The Central Government may, by order in the official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licence granted under this Act throughout India or any part thereof.
- (10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or

revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

21. Deposit of arms etc. on possession ceasing to be lawful – (1) Any person having in his possession any arms or ammunition the possession whereof has the consequence of the expiration of the duration of a licence, or of the suspension or revocation of a licence or by the issue of a notification under Sec. 4 or by any reason whatever ceased to be lawful shall without unnecessary delay deposit the same either with the officer in charge of the nearest police station or subject to such conditions as may be prescribed with a licensed dealer or where such person is a member of the armed forces of the Union, in a unit armoury.

Explanation.—In this sub-section “unit-armoury” includes an armoury in a ship or establishment of the Indian Navy.

(2) Where arms or ammunition have or has been deposited under sub-section (1) the depositor or in the case of his death, his legal representative shall at any time before the expiry of such period as may be prescribed, be entitled—

(a) to receive back anything so deposited on his becoming entitled by virtue of this Act or any other law for the time being in force to have the same in his possession, or

(b) to dispose, or authorize the disposal of anything so deposited by sale or otherwise to any person entitled by virtue of this Act or any other law for the time being in force to have, or not prohibited by this Act or such other law from having, the same in his possession and to receive the proceeds of any such disposal:

Provided that nothing in this sub-section shall be deemed to authorize the return or disposal of anything of which confiscation has been directed under Sec 32.

(3) All things deposited and not received back or disposed of under sub-section (2) within the period therein referred to shall be forfeited to Government by order of the District Magistrate:

Provided that in the case of suspension of a licence no such forfeiture shall be ordered in respect of a thing covered by the licence during the period of suspension

(4) Before making an order under sub-section (3) the District Magistrate shall, by notice in writing to be served upon the depositor or in the case of his death, upon his legal representative, in the prescribed manner, require him to show cause within thirty days from the service of the notice why the things specified in the notice should not be forfeited.

(5) After considering the cause, if any, shown by the depositor or as the case may be his legal

representative the District Magistrate shall pass such order as he thinks fit.

(6) The Government may at any time return to the depositor or his legal representative things forfeited to it or the proceeds of disposal thereof wholly or in part.

22. Search and Seizure by Magistrate – (1) Whenever any Magistrate has reason to believe,—

(a) that any person residing within the local limits of his jurisdiction has in his possession any arms or ammunition for any unlawful purpose ; or

(b) that such person cannot be left in the possession of any arms or ammunition without danger to the public peace or safety.

The Magistrate may, after having recorded the reasons for his belief, cause a search to be made of the house or premises occupied by such person or in which the Magistrate has reason to believe that such arms or ammunition are or is to be found and may have such arms or ammunition, if any, seized and detain the same in safe custody for such period, as he thinks necessary, although that person may be entitled by virtue of this Art or any other law for the time being in force to have the same in his possession.

(2) Every search under this section shall be conducted by or in the presence of a Magistrate or by or in the presence of some officer specially empowered in this behalf by the Central Government.

RULES

13. Of retainers.— (1) When the owner of any arms or ammunition licensed in Form III applies for permitting his agent, relative or employee to possess or carry any of the arms or ammunition covered by the licence for protection or display, on his behalf, whether in attendance on him or not and in circumstances different from those mentioned in the proviso to Sec. 3 such agent, relative or employee may, if the licensing authority considers it fit, be shown as a retainer by entering his name and other particulars in Col. 6 of owner's licence in Form III.

(2) A licence in Form III granted to A for the protection of its premises or property shall be in the name of member, agent or other representative of the company, who shall be responsible for the custody of the weapon. The name of a servant or any other employee entrusted with the weapon for guarding the premises or property of the company shall be entered as a retainer in the appropriate column of the licence. The licensing authority shall

issue to the licensee a permit in Form III-B for each of such retainers shown in the licence. The permit shall remain in the personal custody of the representative of the company and shall be made over to the retainers when they are entrusted with the weapon covered by the licence.

[Provided that the licensing authority shall obtain a report from the police about the antecedents of the retainer and take into consideration such report before admitting him as a retainer.]

(3) A licence in Form III-A for possession and carrying of arms or ammunition may be granted to a person nominated to be his retainer by a person exempted from licensing requirements:

Provided that the retainer shall have no right, independent of the person so exempted, to use the arms or ammunition covered by the licence, and the licence shall cease to be in force on the day on which the person so exempted has ceased to be an exemptee, or the retainer has ceased to be in the service of the exemptee:

[Provided further that the licensing authority shall obtain a report from the police about the antecedents of the retainer and take into consideration such report before admitting him as a retainer.]

21. Conversion, repair, test, sale, etc. – (1) Where a licence is granted in Form IX or Form XI for conversion or repair, but not manufacture, of any category of fire-arms or ammunition, it entitles the licensee to fabricate components or parts for the purpose of conversion or repair of such fire-arms or ammunition but not to manufacture such components or parts to be utilized for assembling into complete fire-arms or ammunition of any category which he is not allowed to manufacture.

(2) (a) A licence in Form XI shall not entitle the dealer to shorten a fire-arm or to convert an imitation fire-arm into a fire-arm, unless he has a licence in Form IX showing specifically that he is permitted to shorten a fire-arm or convert an imitation fire-arm into a fire-arm.

(b) Under no circumstances shall a dealer shorten the barrel of a rifle or smooth bore gun so that the resultant length becomes less than 20 inches.

(c) The details of the cases in which barrels are shortened and imitation fire-arms are converted into fire-arms shall be reported every month to the District Magistrate, in such form, if any, as may be required.

(3) A dealer having a licence in Form XI, Form XII or Form XIII to repair or test or to sell

fire-arms or ammunition shall not take the fire-arms or ammunition for testing to a testing range or other place, unless specifically permitted to do so by his licence, and he shall carry out tests only in such manner and subject to such conditions as are laid down therein.

(4) Where a licence is granted in Form IX or Form XI for conversion of ammunition, it shall not entitle the licensee to convert blank cartridges or any ammunition having no projectile into single multiple project ammunition or to load any ammunition.

25. Identification marks on fire-arms – (1) A manufacturer of fire-arms shall get every fire-arm manufactured by him stamped so as to show distinctly –

- (a) the maker's name and registered trade mark, if any;
- (b) the serial number of the weapon as entered in his register and the year of stamping; and
- (c) proof-marks;

as shown in the following table:

Weapons	Manufacturer's name	Serial number (Register No)	Proof-mark
1. DBBL Weapons	(i) On the rib at the top near the breach (ii) on the side of the action body	(i) on the fastner (ii) on the flats of barrels (iii) on the flat of the action body	(i) on the flats of the barrels (ii) on the side of the action body
2. SBBL Weapons	(i) on the barrel near the breach (ii) on the side of the action body	(i) on the fastner (ii) on the flat of the barrel (iii) on the flat of the action body	(i) on the flat of the barrel (ii) on the side of the action body
3. ML Weapons	(i) on the barrel or on the rib near the nozzle (ii) on the side plates	(i) on the barrel near the nozzle (ii) on the action body	(i) on the barrel
4. Revolvers	On the barrel	(i) on the barrel (ii) on chamber (iii) on the body	(i) on the barrel (ii) on the body (iii) on the cylinder
5. Pistols	On the frame	On the frame	(i) on the barrel (ii) on the body

(2) When an imported fire-arm kept for sale by a dealer does not bear the manufacturer's name, such distinguishing mark of the importer as allotted by the State Government shall be engraved on the barrel (adjacent to the number, if any, existing thereon) and on other parts as

shown in Col. 2 of the Table under sub-rule (1); if a barrel bears more than one number, the distinguishing mark shall be affixed to the number appearing on the original invoice. When the manufacturer's number appears only on the trigger-guard or other replaceable part that number shall be engraved on the parts shown in Col. 3 of that Table.

(3) A person, who has in his possession any fire-arm which does not bear distinctly a manufacturer's name, number or other identification mark as mentioned in sub-rule (1), shall get the identification mark stamped on the firearm consisting of—

(a) such distinct letters as may be prescribed for the purpose by the State Government-

(b) serial number of the possession of licence in the Arms Register of the licensing authority concerned or, in respect of the fire-arms in possession of a person exempt from the obligation to take out licence for their possession, the letters "Ex", and

(c) the year of stamping,

In that order and in the following manner:

- | | |
|---------------------|----------------------------|
| 1. Rifles | On the barrel and breech |
| 2. Guns and pistols | On the barrel |
| 3. Revolvers | On the breech and cylinder |

49. Inspections – (1) Arms and ammunition deposited in a police station or with a dealer and those transferred to the district *malkhana* and the register maintained for the purpose shall be inspected periodically by the District Magistrate or other officer appointed by the State Government in this behalf in accordance with such procedure as may be prescribed by the State Government.

(2) The arms or ammunition deposited in a unit armoury and the register maintained for this purpose shall be inspected periodically by the officer commanding the unit or any other officer empowered by him in accordance with the procedure prescribed by the Government of the State, where the unit is for the time being located.

51. Application for licence – Every application for the grant of a licence under these rules –

(a) shall be submitted in Form A;

(b) may be presented by the applicant in person or sent through the medium of post office or otherwise, to the licensing authority, as far as possible, having jurisdiction in respect of the place where he ordinarily resides or has his occupation;

(c) shall contain all such information as is necessary for the consideration of the application; and in particular –

- (i) where the application is for a licence for the acquisition, possession and carrying of arms or ammunition for crop protection, shall specify details of the land and cultivation requiring protection and area within which the arms or ammunition are required to be carried;
- (ii) where the application is for a licence for import by land or river or for export or for transport or for export and re-import, or for import, transport and re-export of arms or ammunition, shall specify the place of destination, the route, the time likely to be occupied in the journey, and the quantity, description and price of each kind of arms or ammunition in respect of which the licence is required and the purpose for which they are intended;
- (d) where the grant of licence requires a certificate of no objection from some other authority as provided in rule 50, shall state whether such certificate has been obtained and, if so, shall be supported by evidence thereof;
- [(e) where an application is for the grant of licence in Form II, Form III, Form III-A, Form IV, Form V or Form VI, from a person other than a *bonafide* tourist as defined in Sec. 10 (1) (b) of the Act, it shall be accompanied t, two passport size copies of the latest photograph of the applicant]:

Provided that –

- (i) an application by a member of the armed forces of the Union shall be made through his Commanding Officer to the licensing authority having jurisdiction in respect of the place to which he is for the time being posted; and
- (ii) the licensing authority may in accordance with any instructions issued by the State Government in respect of all or any class of firearms, require the personal attendance of the applicant before granting or renewing the licence applied for.

[51A - The applicant shall not suppress any factual information or it any false or wrong information in the application form.]

52. Form of licences - (1) A licence in Form II, Form III, Form III-A, Form IV, Form V or Form VI, if granted for more than a year, to a person other than a bona fide tourist as defined in Sec 10 (1) (b) of the Act, shall be in a book form and shall contain the latest photograph of the licensee.]

(2) When a licence is granted in Form II, Form III, Form IV, Form V, or Form V1 for the possession of arms to be acquired by the licensee subsequent the grant of the licence, the authority granting the licence shall at the time granting the same direct that within a period specified by him in this behalf which he may from time to time extend, the arms covered by the licence shall be acquired and that the licence or the arms or both shall be produced for his

acquire the arms and to produce the licence, or the arms, as the case may be, the licence shall cease to be in force:

Provided that, if during the period so specified or extended the licensee wishes to acquire and possess any weapon or weapons of a different description and the licensing authority has no objection to allow the acquisition and possession of such weapon or weapons, he may amend the licence accordingly:

Provided further that –

(i) where the licensing authority is the State Government the licensee residing at any place within the State in which the licence was issued shall produce the licence or the arms or both for inspection before the State Government or any authority which the State Government may by a general or special order specify in this behalf;

(ii) where the licensing authority is the State Government, the licensee may, if he changes his place of residence from one State to another State, produce the licence or arms or both for inspection before the Government of the second-mentioned State or any authority which that Government may by a general or special order specify in this behalf;

(iii) where the licensing authority is other than the State Government; the licensee may, if he changes his place of residence, produce the licence or arms or both for inspection before the licensing authority of the place of his new residence to which the licence may have shifted after the grant of licence;

Within the period so specified or extended and the authority other than the licensing authority who inspected the arms as well as the licensee shall intimate the fact of such inspection to the authority who issued the licence.

53. Variation of conditions of licences – (1) On application from a licence-holder, a licensing authority may extend the area of validity specified in his licence, if he is satisfied about the need of such extension, subject to the condition that the licensing authority has the power to grant a licence in relation to the area to which extension is sought.

(2) On application from a company holding a licence in Form II or Form III for a change in the name of the member, agent or other representative of the company in whose name the licence has been granted or of a retainer included in the licence, the necessary amendments may be made in the licence by the licensing authority.

54. Renewal of licence – (1) Every licence may, at its expiration and subject to the same conditions (if any) as to the grant thereof, be renewed by the authority mentioned in Sch. II as renewing authority.

Provided that the licence so renewed may be signed in the appropriate column of the licence by such officer as may be specially empowered in this behalf by the State Government under rule 4.

(2) The authority issuing a licence shall ordinarily be responsible for watching all future renewals of the licence. Where a licence is renewed by an authority other than the authority who granted it, the former shall forthwith inform the latter of the fact of renewal and the period for which such renewal is valid. The applicant for the renewal of a licence under this rule shall always be required to state his permanent residence, and, if he notifies a change in his permanent residence to the district in which the renewal is sought, the licensing authority of such district shall hence-forward become responsible for watching all future renewals of his licence and shall inform the original issuing authority accordingly. The procedure shall be repeated on each subsequent occasion of renewal of the licence, the necessary intimation being sent by the renewing authority to the original issuing authority or to the authority who last renewed the licence on a permanent change of residence, as the case may be.

(3) An application for renewal of a licence for arms or ammunition deposited under sub-rule (1) of rule 47 may be made by the depositor, or where it is not practicable to make the application direct, through the dealer or any other person authorized by him in this behalf, while the arms or ammunition continue to be so deposited.

(4) The licensing authority may consider an application for renewal of a licence, if the period between the date of its expiry and the date of application is not, in his opinion, unduly long with due regard to the circumstances of the case, and all renewal fees for the intervening period are paid; otherwise the application may be treated as one for grant of a fresh licence.

Note – This rule provides for the renewal of licences. See Sec. 15(3) of the Arms Act, 1959.

55. Appeal against the order of a licensing authority or an authority suspending or revoking a licence under Sec. 17(6). – In any case in which an authority issues an order –

(a) refusing to grant or renew a licence or to give a no-objection certificate for such grant or renewal, or

(b) varying any condition of a licence or suspending or revoking a licence under sub-section (1) or sub-section (3) or sub-section (6) of Sec. 17, the person aggrieved by such order may, within thirty days from the date of issue of the order, and subject to the proviso to sub-section (2) of Sec. 18 prefer an appeal against that order, to the concerned appellate authority.

EXTRACTS FROM EXPLOSIVES ACT, 1884

6-B. Grant of licences – (1) Where a person makes an application for licence under Sec. 5, the authority prescribed in the rules made under that section for grant of licences (hereinafter referred to in this Act as the licensing authority), after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing either grant the licence or refuse to grant the same.

(2) The licensing authority shall grant a licence, -

(a) where it is required for the purpose of manufacture of explosives if the licensing authority is satisfied that the person by whom licence is required –

(i) possesses technical know-how and experience in the manufacture of explosives; or

(ii) has in his employment or undertakes 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 persons by whom licence is required as a good reason for obtaining the same.

6-C – Refusal of licences– (1) Notwithstanding anything contained in Sec. 6-B, the licensing authority shall refuse to grant a licence—

(a) where such licence is required in respect of any prohibited explosives ;or

(b) where such licence is required by a person whom the licensing authority has reason to believe—

(i) to be prohibited by this Act or by 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 reason until for a licence under this Act; or

(c) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of opinion that it will not be in the public interest to furnish such statement.

6-D. Licensing authority competent to impose conditions in addition to prescribed

conditions.—A licence granted under Sec. 6-B may contain in addition to prescribed conditions such other conditions as may be considered necessary by the licensing authority in any particular case.

6-E Variation, suspension and revocation of licences.—(1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the holder of licence by notice in writing to deliver up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may, by order in writing, suspend a licence for such period as it thinks fit or revoke a licence,—

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force to manufacture, possess, sell, transport, import or export any explosive, or is of unsound mind, or is for any reason unfit for a licence under this Act ; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence ; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for the licence ; or

(d) if any of the conditions of the licence has been contravened ; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver up the licence.

(4) The licensing authority may also revoke a licence on the application of the holder thereof

(5) Where the licensing authority makes an order varying the conditions of a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reason therefor and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke a licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(7) An order of suspension or revocation under sub-section (6) may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(8) The Central Government may, by order in the official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke, all or any licences granted under this Act throughout India or any part thereof.

(9) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

9. Inquiry into accidents – (1) Where any accident, such as, is referred to in Sec. 8 occurs in or about or in connection with [any place, aircraft, carriage or vessel] under the control of any [Armed Forces of the Union] an enquiry into the causes of the accident shall be held by the naval, military or air force authority concerned, and where any such accident occurs in any other circumstances, the District Magistrate [* * *] shall, in cases attended by loss of human life, or may, in any other case, hold or direct a Magistrate subordinate to him to hold, such an inquiry.

(2) Any person holding an inquiry under this section shall have all the powers of a Magistrate in holding an inquiry into an offence under the "[Code of Criminal Procedure, 1973 (2 of 1974)], and may exercise each of the powers conferred on any officer by rules under Sec. 7 as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(3) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstance.

(4) The Central Government may make rules,—

(a) to regulate the procedure at inquiries under this section;

(b) to enable the [Chief Controller of Explosives] to be present or represented at any such inquiry

(c) to permit the [Chief Controller of Explosives] or his representative to examine any witnesses at the inquiry

(d) to provide that where the 6[Chief Controller of Explosives] is not present or represented at any such inquiry, a report of the proceedings thereof shall be sent to him;

(e) to prescribe the manner in which and the time which notices referred to in Sec. 8 shall be given.

9-B. Punishment for certain offences – (1) Punishment for certain offences.—(1)

Whoever, in contravention of rules made under Sec. 5 of the conditions of a licence granted under the said rules—

(a) manufactures, imports or exports any explosive shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees or with both;

(b) possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both ; and

(c) in any other case with fine which may extend to one thousand rupees.

(2) Whoever in contravention of a notification issued under Sec. 6 manufactures, possesses or imports any explosive shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both ; and in the case of importation by water, the owner and master of the vessel or in the case of importation by air, the owner and the master of the aircraft, in which the explosive is imported shall, in the absence of reasonable excuse, each be punishable with fine which may extend to five thousand rupees.

(3) Whoever , -

(a) manufactures, sells, transports, imports, exports or possesses any explosive in contravention of the provisions of Cl. (a) of Sec. 6-A ; or

(b) sells, delivers or despatches any explosives in contravention of the provisions of Cl. (b) of that section, shall be punishable with imprisonment for a term which may extend to three years or with the fine or with both ; or

(c) in contravention of provisions of Sec. 8 fails to give notice of any accident shall be punishable –

(i) with fine which may extend to five hundred rupees, or

(ii) if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months or with fine or with both.

17-A Power to delegate - The Central Government may, by notification in the official Gazette, direct that any power or function which may be exercised or performed by it under this Act other than the power under Secs. 5, 6, 6-A, 14 and 17 may, in relation to such matters and subject to such conditions, if any, as it may specify in the notification, be exercised or performed also by—

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to the State Government.

THE EXPLOSIVE RULES 1983

3. Classification of explosives.—(1) For the purpose of these rules explosives shall be classified in the manner specified in Sch. I.

(2) If any explosive falls "within the limits of more than one class as defined in Sch. I", it shall be deemed to belong exclusively to the last in number of such classes.

87. Licence for manufacture. – (1) No person shall manufacture any explosive at any place except in a factory or premises licensed under these rules.

(2) The licensee shall be responsible for all operations in connection with the manufacture of explosives which may be conducted in the licensed premises.

88. No licence needed for manufacture in certain cases.—Notwithstanding anything contained in rule 87, no licence to manufacture shall be necessary for manufacture at a Government or industrial laboratory or a Laboratory of an educational institution and under the supervision of a qualified person of a quantity of explosive not exceeding an amount reasonably necessary for the purpose of chemical experiment and test and not intended for practical use or sale, subject to the following conditions, namely:

(a) The Chief Controller shall be given prior intimation of the nature of the explosives and the quantity of explosives proposed to be manufactured in the laboratory together with the name and address of the institution and the particulars and experience of the person conducting the experiment.

(b) If the Chief Controller on receipt of the information under Cl. (a) above is of the opinion that it would not be safe to conduct such experiment he may, in writing, prohibit conducting the experiment.

(c) All precautions shall be taken to prevent injury to persons or damage to property and all provisions of the Act and these rules shall be observed as far as they are otherwise applicable

(d) No experiment shall be conducted to make any explosive which is specifically prohibited under Sec. 6 of the Act.

113. Licence for possession, sale and use. – (1) No person shall possess, sell or use any explosive except under and in accordance with a licence granted under these rules.

(2) The licensee shall be responsible for all operations in connection with re possession, sale or use of explosives which may be conducted in the premises covered by the licence.

114. No licence needed for possession and sale in certain cases. – (1) Notwithstanding anything contained in rule 113, no licence shall be necessary for the possession –

(a) of any explosive by a carrier or other person for the purpose of transport, when the same is being kept or transported in accordance with the provisions of Chapter IV regulating transport of such explosives; or

(b) by any person of manufactured fireworks in any quantity not exceeding 25 kg. provided that the fireworks—

(i) are obtained and intended by such person for immediate use and not for sale and are possessed by him for a period not exceeding 14 days; and

(ii) are kept in a substantial receptacle which is exclusively appropriated to the keeping of explosives and is closed and secured so as to prevent unauthorized persons from having access to the explosives; or

(c) by any person for his own private use and not for sale of gunpowder not exceeding 5 kgs. in any State, other than Bihar, Kerala and West Bengal, and of small arm nitro-compound not exceeding 5 kgs. except in the State of Kerala, or *[50] metres of safety fuses for blasting or of soaked liquid oxygen explosives in blast holds.

(d) by Railway Administration of flare lights or other explosives for its own use and not for sale to any other person by transfer or otherwise for maintaining railways, tracks, tunnels provided that the provisions of the Act and these rules are otherwise complied with;

(e) of any explosive, which is not for sale, and is required solely for the navigation of aircraft when kept in an aircraft for use therein or for distribution to other aircraft or to aerodromes or at an aerodrome for use there or for distribution to aircraft or to other aerodromes, provided that the maximum quantity so possessed shall not exceed 25 kgs. when carried in an aircraft and 50 kgs. when kept at an aerodrome;

(f) and sale from a shop of amorces (an explosive of Class 7 and division 2) in quantity not exceeding 12.5 kgs]

Provided that in respect of Cls. (b) and (c), the Central Government may prohibit the possession of any explosive or prescribe any conditions under which the

explosives can be possessed without a licence when considered necessary for the security of public peace.

(2) Notwithstanding anything contained in rule 113, no licence shall be necessary for the sale of such explosives manufactured by the Armed Forces of Union and Ordinance Factories or other establishment of such Forces as are sold or delivered to any person who is in possession of a valid licence issued under these rules for the class and quantity of explosives so sold or delivered.

115. Possession in the licensed premises only.— A person holding licence for possession of explosives granted under these rules shall store the explosives only in premises specified in the licence.

118. Building to be kept clean.— (1) The interior of every building or room used for storage of explosives and the benches, shelves and the fittings in such building or room shall be so constructed or so lined or covered as to prevent the exposure of any iron or steel and the detachment of any grit, iron steel or similar substance so as to come into contact with the explosive in such building and such interior benches, shelves and fittings shall, so far as is reasonable, practicably, be kept clean and free from grit.

(2) A cemented trough at least 15 centimeters deep shall be provided near each entrance of a magazine or store-house. Such trough shall be kept filled with clean water and no person shall enter the magazine or store-house without dipping overshoes or feet in such a trough so as to remove any grit or dust.

(3) Oiled cotton, oiled rags or oiled waste or any articles liable to spontaneous ignition shall not be taken into any magazine or store-house used for storage of explosives.

119. Maintenance of records.— Every person holding a licence granted under these rules for possession, sale or use of explosives shall maintain records in the prescribed forms and shall produce such records on demand to an inspecting officer.

126. Storage of explosives in excess of the licensed quantity – (1) The quantity of any kind of explosives kept in any licensed magazine or storehouse shall not exceed the quantity entered in the licence against such kind of explosives.

(2) Notwithstanding anything contained in sub-rule (1), the Chief Controller may

issue a permit, on payment of the prescribed fee to a holder of licence in Form 22 and such holders of licence in Form 21 who also have licence in Form 20 (for the class of explosives) for keeping of explosive in excess of the licensed quantity entered in the licence when he is satisfied that such excess storage is essential and unavoidable due to circumstances beyond the control of the licensee. The validity of such permit shall not exceed 30 days,—

(i) the licensing authority shall not issue any permit for excess storage of explosives if the magazine or store-house cannot observe the requisite safety distances for the total quantity entered in the licence plus the additional quantity of explosives so permitted.

(ii) No permit for storage of explosives in excess of the licensed capacity shall be granted if the specified distances on the licence around the magazine or store-house or the floor space in the specified rooms for storage of each kind of explosives is not adequate for keeping of the total quantity of explosives, including the excess quantity applied for.

(3) The licensing authority may refuse to grant a permit for excess storage of explosives if such excess storage is of a repeated nature.

(4) No explosive in excess of the licensed quantity shall be stored in the magazine or store-house unless a permit in this behalf is obtained from the licensing authority by a letter or telegram.

133.Restrictions on storage.—No explosives, other than fireworks and safety fuse, shall be stored in any store-house.

134.Construction of store-house.— (1) A store-house shall be well and substantially built of brick, stone or concrete and shall be so made and closed as to prevent unauthorised persons having access thereto and to secure it from danger of fire from without. Store-house shall be well ventilated.

(2) Where a store-house forms part of a building, the other parts of which are used for any other purpose, it shall be separated therefrom by suitable fireproof partitions and the walls, floor, roof and doors shall be of fire-proof materials. Such store-house shall not be used for storage of more than 150 kgs. of fireworks or fifty thousand metres of safety fuse and shall be provided with independent entrance and such other measures as may in the opinion of the licensing authority, be deemed necessary in the interest of prevention of fire or accident. Such store-house shall be at a minimum distance of 15 metres from any other premises used

for storage of explosive, flammable substances or other hazardous materials, and shall not be used for sale of explosives;

Provided that such store-house may be used for sale of explosives --manufactured within a licensed factory for manufacture of Class 1 and/or Class 7 explosives not exceeding 15 kgs.at a time, if such store-house is situated within such a factory.

135. Construction of premises.— (1) All explosives on the premises shall be kept in a brick, stone or concrete building which is closed and secured so as to prevent unauthorised person from having access thereto.

(2) The premises shall have a floor area of minimum nine square meters.

(3) The premises shall have independent entrance and exit.

(4) If the premises are situated in a building used for other purposes also, such premises shall not be situated under a staircase and shall be so located as not to obstruct any passage in form or to the building in case of fire or accident.

(5) The premises shall be situated at ground level.

136. Special precautions to be observed for fireworks – (1) Subject to other provisions of this rule, fireworks shall be not placed or kept in a shop window used for display of goods.

(2) Fireworks in the shop shall be kept in a spark-proof receptacle, or the original outer packet in which they were received if that package is effectively sealed and in good order and condition.

(3) A receptacle or package containing fireworks shall be kept in a position away from and clear of shop traffic and to be separated from all articles of a flammable or combustible nature.

(4) Where a package containing fireworks is opened for sale, the fireworks- shall immediately be placed in a clean, dust free and spark-proof receptacle.

(5) A receptacle that contains fireworks shall –

(a) not to be used otherwise than as a container for fireworks;

(b) not to be opened except when fireworks are being placed in or taken from it;

(c) at all times to be kept clean and free from dust and grit;

(d) not have in it any matches including Bengal Matches; and

(e) not have in it any means of artificial lighting.

137.Safety distances to be maintained.— The premises licensed in Form 24 for storage and sale of small arms nitro-compound, fireworks or [gunpowder and]

safety fuse shall be at a distance of minimum 15 meters from any such premises or any other, premises used for storage of similar explosives, flammable or hazardous materials.

138. Sale of other articles prohibited.— The premises in which small arm nitro-compound fireworks or [gun-powder and] safety fuse is kept shall be used only for possession and sale of such explosives and for no other purposes.

139. Explosives to be sold from licensed premises.— No person shall sell explosives from any premises other than those licensed under these rules.

140. Defacing of marking- prohibited.—No person who sells any explosives shall alter or deface any printing or marking on the explosives or the packages thereof.

141. Restriction on sale of explosives.—(1) No person shall sell any explosive to any person who is not authorised to possess such explosive under these rules.

(2) No person shall sell, deliver or cause to be delivered to any person any explosive that has deteriorated or is defective.

(3) A licensee selling explosives to a holder of licence in Form 23 shall endorse the transactions on such licence form.

142. Explosives not to be exposed for sale.—An explosive shall not be hawked, sold or exposed for sale upon any highway, street, public thoroughfare or public place.

143. Small packages to be clearly marked.—An explosive shall, as far as practicable, be sold in original packages. If the quantity sold to any person is less than the quantity of explosives packed in the original packing, such quantity shall be packed in a safe and proper manner in a substantial package which shall be clearly marked with following markings:

1. name of the explosives;
2. class and division according to Schedule I;
3. quantity of explosives packed;
4. licence number of the magazine from where the explosives were supplied and packed;
5. name of the person who packed the explosives;

6. date of packing;
7. name of the consignee.

155. Grant of licence,- (I) (a) A licence may be granted by the authorities specified in Col. (4) of Sch. IV in the Form specified in Col. (2) for the purpose specified in Col. (3) thereof on payment of fees specified under these rules:

Provided that no new licence in Forms 20, 21 and 22, shall be granted unless the provisions of rule 156 have been complied with :

Provided further that the licensing authority may waive all or any of the provisions of rule 156, if –

(i) the premises proposed to be licensed is within the factory licensed under these rules for manufacture of explosives and the required safety distances are under the control of applicant :

(ii) the premises for which the new licence is required are situated within the same survey number, in which the applicant has an existing premises and a current valid licence for the same and the required safety distances are available within the safety distance of such existing premises.

(b) No licence for manufacture of explosives 1[* * *] shall be granted or renewed to a person for his factory not registered under the Factories Act, 1948 (63 of 1948), unless he executes a bond in Form 19 in favour of the President of India indemnifying persons injured for dependents of deceased workers in the event of an accident in the factory 2[an amount of Rs. 10,000/- for factories manufacturing upto 15 kg. of gunpowder for fireworks at any one time] an amount of Rs. 25,000/- for factories manufacturing up to 200 kgs. Of gunpowder for fireworks at any one time and Rs. 50,000 in every other case;

(2) (a) Licensing authority may grant a licence for the period deemed necessary but not exceeding –

(i) six months to import explosives in Form 27 and to export explosives in Form 28;

(ii) 1[3months] to possess explosives in Form 23 as specified therein;

(iii) one month for public display of fireworks in Form 29.

(b) Every other licence granted or renewed under these rules shall remain in force until the expiry of the financial year immediately following the financial year in which it was issued.

(c) Notwithstanding any contained in Cl. (b), the licensing authority where it

is satisfied that a licence is required for a specified work or festival which is not likely to last upto expiry of the financial year for which the licence is granted or renewed may grant or renew a licence for such period as is actually necessary :

Provided that the date so specified does not extend beyond the expiry of the financial year following the year in which the licence is granted or renewed.

(3) An application for grant of a new licence in Form 24 or Form 29 may apply to the district authority for a certified to the effect that there is no objection to the applicant received licence for the site proposed and the district authority shall, if he sees no objection, grant such certificate to appellant who shall forward that certificate to licensing authority with his application.

(4) The licensing authority, may refer an application not accompanied by a certificate granted under sub-rule (3) to district authority for his observations.

(5) If the district authority, either on reference being made to him or otherwise, intimates to the Chief Controller, as the case may be, that any licence which has been applied for should not in his opinion be granted such licence shall not be issued without the sanction of the Central Government.

(6) No licence to import explosives shall be necessary in cases where the explosives imported –

(i) is not intended to be stored on the port of import but is intended to the transported direct to a territory not being part of India;

(ii) can be possessed without a licence under rule 114.

(7) An application for a licence to use explosive shall, if the operation are to be carried on within 100 metres of a railway line obtain from the railway authority concerned a certificate to the effect that there is no objection to the applicant receiving a licence for the site proposed and forward a certificate to the licensing authority with his application.

(8) (1) A cultivator applying for a licence in Form 23, shall obtain a certificate from agricultural fieldman or a Gram Sewak or any other local authority to the effect that –

(a) the certifying authority has inspected the side and is satisfied that the leveling of ground is necessary or removal of tree stumps is necessary or sinking of wells is necessary or sinking of wells has been partly completed, as the case may be; and

(b) further work which is necessary is not possible without blasting and forward the certificate to the licensing authority with his application.

(2) A person other than cultivator shall obtain a certificate from local

authority having jurisdiction to the effect that the certifying authority has inspected the site and is satisfied that the work for which explosives are required is not possible without blasting.

(9) An application for grant of a licence to manufacture Ammonium Nitrate Fuel Oil explosives (ANFO) for own immediate use or to possess for own use liquid oxygen explosives (ANFO) for own immediate use or possess for own use or to possess for own use liquid oxygen explosives at sites coming under the purview of the Mines Act 1952, shall be accompanied by a certificate from the chief Inspector of Mines that the site where such explosives, are to be manufactured, possessed and used is under the control of the applicant and come under the purview of the Mines Act 1952, and the applicant is authorized to use liquid oxygen explosives to ANFO explosives and conduct mining operations in the area proposed to be covered by the licence.

156. Procedure to be observed before a licence in Forms 20, 21 or 22 is granted, -

(1) A licensing authority on receipt of application and the particulars as provided under sub-rule (3) or (4) of rule 154 shall scrutinize the documents and forward to the applicant a statement showing the distances in Form 17 which should in his opinion be kept clear in and around the factory or magazine premises or any part thereof and from other building and works. On receipt of the statement the applicant shall enter the exact distance which can actually be so kept clear shall sign the statement and shall return it together with any representation which he may desire to make to the licensing authority.

(2) After considering any representation made by the applicant under sub-rule (1) and after making such enquiries as deemed necessary, the licensing authority may further scrutinize the application and ask the applicant to make changes considered necessary.

(3) After receiving correct documents as per requirements of these rules, the licensing authority shall refer the application to -

(i) the district authority concerned together with a description of enquiries to be carried out, a draft licence and a statement in Form 18 showing the distances which he considers should be kept clear in and around the factory magazine or store-house ;

(ii) any other authority for such enquiry as deemed necessary.

(4) Upon receipt of the said application the district authority shall forthwith cause notice to be published of such application and of the time and place at which he will be prepared to hear it, and calling upon any person objecting to the

establishment of the factory of magazine or store-house on the proposed site to give notice of such objection to him and to the applicant of not less than seven clear days before the day fixed for hearing the application together with his name, address and calling and a short statement of the grounds of his objections. The day of hearing the application shall be a day following as soon as practicable, after the expiration of the period of one month referred to in sub-rule (6).

(5) Where the side of the proposed factory or magazine lies within 1.5 km. of the limits of the jurisdiction of town planning municipal authority or port authority, the applicant shall prepare, for service for such authority, a notice of the application and of the said day of hearing.

(6) The notice under sub-rule (4) shall be published and the notice under sub-rule (5) served, at the expense of the applicant by the district authority not less than one month before the said day of hearing.

(7) On the day fixed for the hearing or any day to which such hearing may be adjourned from time to time, the district authority shall hear an objection preferred in accordance with sub-rule (4) and by any authority referred to in sub-rule (5) and shall make such enquiry as he may deem necessary.

(8) On completion of the enquiry the district authority shall forward the application, statement and plans to the licensing authority together with a report of the procedure followed by him and whether he has any objection to the applicant receiving a licence at the site proposed.

(9) The district authority shall complete his enquiry under sub0-rules (4) to (7) and forward the report to the licensing authority as expeditiously as possible but not later than six months of the date of the reference made by the licensing authority.

(10) If the district authority objects to the grant of the licence on any of the grounds specified in sub-rule (3), no licence shall be granted by the licensing authority except with the sanction of the Central Government.

(11) Notwithstanding anything contained in this rule, provision of sub-rule (3) to (10) except rule 3 (ii) shall not apply in case of an application for grant of a licence to manufacture, possess and sale liquid oxygen explosives or to the manufacture of Ammonium Nitrate Fuel Oil explosives (ANFO) at side of use coming under the purview of the Mines Act, 1952.

157- Procedure to be followed for grant of licence in Form 22 to possess small quantity of explosives for own use. – Notwithstanding anything contained in sub-rules (3) to (7) of rule 156, where the licensing authority is the Chief Controller or

a controller and where the quantity of explosive proposed to be possessed for own use under licence in Form 22 does not exceed 100 kgs. , the applicant may apply to the district authority together with an application in Form 5, statement in Form 17 and the necessary plans for the grant of the certificate to the effect that there is no objection to the applicant receiving a licence for the site proposed and district authority shall, if he sees no objection after conducting enquiries as required under this rules, grants such certificates to the applicant who may forward it to the licensing authority together with his application.

158.- Procedure to be observed for grant of a short-firer's permit. –

(1) The Chief Controller or any authority authorized by him in this behalf shall conduct such examination and requires as deemed necessary before granting permit to any shot-firer :

Provided that no examination shot-firer may be necessary if the Chief Controller is satisfied that applicant possesses requisite qualifications and experience.

(2) The applicant shall pay prescribed fees for the examination, if any, under sub-rule (1)

159.- Procedure on grant of no objection certificate by the District Authority. – The licensing authority on receipt of no objection certificate from the District authority for grant of a licence may make such other enquiries as deemed necessary and take further action for grant of licence

Provided that if the licensing authority does not receipt the no objection certificate under rule 156 [8] within the time limit for any extension thereof, such authority may advise the applicant accordingly and take further action as deemed necessary.

160.- Refusal of no objection certificate.- the authority refusing to grant no objection as required under the rule 156, shall in writing its reasons for such refusal and communicate such reasons and facts of the case to the licensing authority. The reasons for issuing no objection certificate may be communicated to the applicant if demanded, unless in the opinion of the licensing authority such reasons cannot be divulged in the public interest.

161.- Procedure on grant of a licence for a magazine, store-house or to manufacture explosives.- (1) two copies of every licence granted by the Chief Controller or the controller shall be forwarded to the district authority and in case the licensing authority is the Chief Controller, the original licence shall be forwarded to the Controller in whose jurisdiction the premises are situated.

(2) if the Controller after inspection, is satisfied that all the requirements of these

rules and the conditions of the licence has been complied with, he shall forthwith endorse the licence, but unless and until show endorsed , the licence shall not come into force :

Provided that when a licence cannot be endorsed forthwith it shall come into force from such date as licensing authority may order in writing.

(3) in the Controller of explosives decides not to endorse licence, he shall immediately return the licence to the licensing authority together with a statement of his reasons for not endorsing it.

(4) On receipt of statement refer in the sub-rule (3), the licensing authority after making such enquiry, if any, as he may consider necessary communicate his decision to the applicant and the district authority.

162.- Procedure on grant of a licence to possess and shall explosives to transport explosives or to possess explosives for own use by cultivators or other persons. – (1) a copy of every licence granted to possess and shall explosives for Form 24 or to Transport explosive in form 26 shall be forwarded to the district authority concerned.

(2) The district authority shall forward a copy of every licence granted by him in form 23 or form 24 to the collection having jurisdiction over the area.

163.- Particular of licence. – Every licence granted under this rules shall be held subject to the observance of this rules and the conditions endorsed on it and shall contain all particulars which are contained in the form prescribed for it by this rules.

164.- Amendment of licence. – (1) Any licence granted under this rules may be amended by the authority empowered to grant the licence provided that amendment shall not be inconsistent with the provisions of this rules.

(2) A licensee who desires to have his licence amended shall submit the following particulars to the licensing authority, namely –

(a) An application stating nature of the amendment and the reasons therefor ;

(b) Original licence together with enclosures to it ;

(c) Plans showing the details of the proposed amendment if such plans are required by the licensing authority for the purpose of amendment ;

(d) Prescribed scrutiny fee;

(e) Prescribed amendment fee

(3) The licensing authority after scrutiny of the documents submitted under rule (2) and after making such further enquiries and taking such action as deemed necessary may take suitable action to amend the licence.

165.- (1) A licence may be renewed by the authority empowered to such licence provided that a licence which has been granted by the Chief Controller may be renewed without any alteration by a controller duly authorized by the Chief Controller in this behalf :

Provided that a licence which has been granted by the granted district authority may be renewed without any alteration by a sub-divisional magistrate or an Executive Magistrate or a Taluka Magistrate duly authorized by the district authority in this behalf.

(2) The Controller authorized by the Chief Controller under sub-rule (1) may, and when so required by the Chief Controller, shall require the licensee to follow the procedure let down under sub-rule (1) of rule 156 before renewing licence in form 20 or form 21 or form 22.

(3) Every application for the renewal of a licence shall be made so as to reach the licensing authority or the authority empower to renew the licence at least 30 days before the date on which licence expire, and if the application is so made, the licence shall be deemed to be in force until such date as the licensing authority renews the licence or until and intimation that the renewal of the licence is refused has been communicated to the applicant.

(4) Every application under sub-rule (3) for renewal of the licence shall be accompanied by the following documents :

(i) application in form 13;

(ii) the original licence together with its enclosures and approved plans, schedules and forms;

(iii) prescribed renewal fee

(5) The same fee shall be charged for the renewal of a licence for each year as for grant thereof :

Provided that if the application for renewal is not received within the time specified sub-rule (3) , the licence shall be renewed only on payment of double fee as ordinarily payable for the licence :

Provided further that if the renewal application together with complete documents specified under sub-rule (4) is received by the licensing authority after the date of expiry but not later than 30 days from the date of expiry, and if the licensing authority is satisfied that such delay is beyond the control of the licensee, the licence, may, without prejudice to any other action that may be taken in this behalf, be renewed on payment of double the fee ordinarily payable for the licence.

(6) In case of an application for the renewal of the licence for a period of more than one year at a time, the fee prescribed under proviso of sub-rule (5), if payable, shall be paid only for the first financial year of renewal.

(7) Every licence granted under this rule other than a licence granted for a specified period shall be renewable for two years where there has been no contraventions of the act or the rules framed there under or of any condition of the licence so renewed,

(8) Where a licence renewed for more than one financial year is surrendered before its expiry, the renewal fee paid for the unexpired portion of the licence shall be refunded to the licensee provided that no refund of renewal fee shall be made for any financial year during which,-

(a) the licensing authority received the renewed licence for surrender ;

(b) any explosive is received or stored on the authority of the licence.

(9) No licence shall be renewed if the application or renewal is received by the licensing authority after 30 days of the date of its expiry.

(10) When a licence is renewed by the Chief Controller or a Controller an intimation to the effect shall be sent to the district authority concerned and when a licence is renewed by the district authority, an intimation to the effect shall be sent to the controller having jurisdiction.

166. Refusal to amend or renew a licence. (1) The licensing authority refusing to amend or renew licence shall record its reasons for such refusal in writing.

(2) The licensing authority shall refuse to renew a licence if such licence can be revoked in accordance with the act or rules framed thereunder.

(3) A brief statement of reasons for refusal to renew a licence shall be given to the holder of the licence on demand unless in any case the licensing authority is of the opinion that it will not be in public interest to furnish such statement.

(4) Where the renewal of the licence is refused, the fee paid for the renewal shall be refunded to the licensee after deducting proportionate fee for the period beginning from the date from which the licence was to be renewed upto the date from which renewal thereof is refused.

167.- Suspension and revocation of licence.- (1) An order of suspension or revocation of a licence shall take effect from the date specified therein and shall be deemed to have been served if sent by post to the address of the licensee entered in the licence.

(2) The suspension of a licence shall not debar the holder of the licence from applying for its renewal in accordance with the provisions of rule 165.

168.- Procedure on expiration, suspension or revocation of licence,- (1) A licensee on the expiration, suspension or revocation of his licence forthwith give notice to the licensing authority of the description and quantity of explosive in his possession and shall comply with any directions which the licensing authority may give in regard to their disposal.

(2) The licensing authority may grant for a term not exceeding three months from the date of expiration, suspension or revocation, as the case may be, a temporary licence for the procession and sale of the explosives actually held at the time of the issue of the temporary licence.

(3) The fee chargeable for a licence granted undersub-rule (2) shall bear the same proportion to the fee charged on expire or revoked licence as the period cover by the temporary licence bears to a full year.

169.- Appeals. – (1) An appeal against an order of licensing authority refusing to grant or a renew of a licence or suspending or revoking a licence or varying the conditions of a licence shall lie-

- (i) if the order is passed by the Chief Controller to the Central Government, and
- (ii) if the order is passed by the Controller to the Chief Controller.

(2) Every appeal shall be preferred in accordance with provisions of the act and shall presented within 30 days of the date of communication of such order.

(3) Every appeal shall accompanied by fees specified in rules 176 & 177 and the fees shall be refunded to the appellant if the appeal is upheld by the appellate authority.

(4) Appeal against the order of the district authority refusing grant of no objection certificate shall lie with the authority immediately superior to such authority. Such an appeal shall be failed in accordance with the procedure laid down by such appellate authority.

[Ref.: The Explosives Act, 1884, The Explosive Substances Act, 1908 and The Explosives Rules, 1983]