

BNSS 2023 – LECTURE 21

Notes - Maintenance of public order and tranquility

Today we will discuss **Chapter XI**, which extends from Section 148 to 167 of BNSS 2023. It corresponds to Chapter X (Section 129-148) under Cr.P.C. and has the same title - 'Maintenance of Public order and Tranquility'. This chapter has important portions for both mains and preliminary examinations.

Meaning

Public order is the state of the community when people obey law, rules and regulations. The general peace, safety and well-being of the public is guaranteed. Tranquility involves a state of calmness and quiet. There is no disturbance to the tempo of the community and things go on peacefully.

When some individual or a group of persons commits a wrongful act which has the potential to disrupt this order and cause inconvenience, cause obstructions, annoyance, risk or danger to the public, this chapter prescribes the steps to be taken to remove such instances and how the state can take steps through its various organs to restore public order.

It is the fundamental duty of the state to preserve public peace and tranquility and maintain order as these forms the basis of a peaceful and progressive society. Apart from maintaining law and order, this is also one of the duties of the State. The presence of public order is a sine qua non for the community and thus the country to lead a decent and healthy life. It is the duty of the state to ensure that and the BNSS provides ways to do that through its executive magistrates and the police.

Chapter XI of BNSS deals with disposal of unlawful assemblies and such other assemblies that might cause a breach of peace. Action under these sections is taken by the executive magistrates and if it becomes necessary, physical force might be used and how. The BNSS tells us about four ways in which this public order and tranquility are affected. They are:-

- I. **Unlawful Assemblies (Section 148-151)**
- II. **Public Nuisances (Section 152- 162)**
- III. **Urgent cases of nuisance or apprehended danger (Section 163)**
- IV. **Disputes as to immovable property (Section 164- 167)**

A. Unlawful Assemblies

Section 148: Dispersal of assembly by use of civil force

Primarily, this section gives powers to authorities to disperse an unlawful assembly.

Parties involved

- I. Any unlawful assembly or
- II. Assembly of five or more persons who are likely to cause disturbance of public peace

Any unlawful assembly is as has been defined in Section 189 of the BNS as a group of persons having a common object of committing the offences mentioned in Section 189. The second party, 'assembly of five or more persons' is an extension of the 'unlawful assemblies' and aims to cover all other assemblies who might disturb public peace.

The authorities who can order them to disperse them are any executive magistrate or any police officer in charge of a police station. If there are none of the above, another police officer not below the rank of sub-inspector shall command the assembly to disperse.

On the magistrate's command to disperse, it will be the duty of each member of such assembly to disperse.

Subsection (2) of 148 talks about assistance and arrest in cases when the command is not obeyed. If the assembly does not disperse or shows a tendency to not disperse, the magistrate or police officer may use force to do so.

They are also enabled through this section to seek assistance from any person (who might not be a police officer or from armed forces) to help with dispersing the assembly and do it by force.

The magistrate or the police is empowered even to arrest or confine someone who is a part of that assembly if it is needed to disperse or punish such a person

Section 149 and 150 talk about the use of armed forces to disperse such assemblies.

Section 149: Use of armed forces to disperse assembly

This section corresponds to Section 130 of Cr.P.C. Under this section, armed forces are used on the request of the executive magistrate.

When it becomes necessary or public security that the the assembly be dispersed , the District magistrate or an executive magistrate authorised by him, he shall requisition the officer in command of the armed forces to disperse the assembly with the help of his forces or to arrest and confine persons from that assembly to punish them according to the law.

The force used by the armed forces shall be as much as required to disperse the assembly or arrest the persons without causing much injury to either persons or property.

Section 150: Power of certain armed force officer to disperse assembly

Sometimes, situations may be created where the magistrates cannot be contacted by the armed forces and there is a clear danger or harm to public security. Section 150, corresponding to Section 131 of Cr.P.C. gives the power to the officer in charge of the armed forces to carry out actions to prevent danger to public security on their own.

Any commissioned or gazetted officer of the armed forces may disperse with such assembly with his forces. To do so, he may confine and arrest persons forming part of the assembly to either disperse them or to hold them for action under law.

But the officer can only work without instruction for as long as it is impossible to connect withh an executive magistrate. As soon as it becomes possible and practical for him to establish communication with an Executive magistrate, he shall do so and follow the instructions of the magistrate from that time.

The actions by the police and the magistrates are protected by Section 151.

Section 151: Protection against prosecution for acts done under section 148, 149 and 150

It says that no executive magistrate or police officer acting in an action under section 148, 149 or 150 with good faith can be prosecuted. Also, no person doing an act in good faith under Section 148 or 149 or any officer or member of armed forces acting under Section 150 in good faith will not be deemed to have committed an offence.

Also if there arises a need to be prosecuted, prior sanction of the central government is required to prosecute any officer or member of the armed forces whereas sanction of the state government is required to prosecute any other authority or person acting under any orders with respect to Sections 148, 149 or 150.

B. Public Nuisances

Part B of this chapter deals with public nuisances and extends from Section 152-162 of BNSS. This corresponds to Part B of Chapter X of Cr.P.C. extending from Section 133 to Section 143.

Section 152 talks about the circumstances of urgent nuisances and summary procedure for their removal and the later sections discuss the procedure with respect to removal of such nuisances. In this case, the nuisances are not serious enough to require security proceedings nor urgent enough like unlawful assemblies. These nuisances are circumstances where potential danger exists so they require conditional order for their removal.

Powers under this are exercised on receipt of a police report or other information. There are six circumstances when the Magistrate may exercise his power. He will make a conditional order requiring the person to resolve the situation within a fixed time mentioned in the order. They are :-

I. Unlawful obstruction or nuisance

Any unlawful obstruction or nuisance on any public place, way, river or channel for public use should be removed by the person causing such nuisance.

II. Conduct of trade or occupation harmful to the community

If any person is conducting any trade or keeps any kind of goods or merchandise which can be injurious to the health or physical comfort of the community, the person should either stop, remove or regulate the trade or keeping of such items in any manner directed by the Magistrate.

III. Constructing any building or disposal of waste

Any owner, possessor or controller of a building or the disposal of waste where the circumstances are such as to likely cause an accident involving extensive fire would have to prevent or stop the construction of that building or alter the disposal of that substance.

IV. Removal or repair of building/ tree

Any owner or the one who possesses a building or owns a tree which is likely to fall and cause injuries to people passing by and the community should either remove or repair or support such building or remove or support the tree.

V. Fencing of structures

The owner of any tank, well or place of excavation near a way or a public place should be fenced in a manner so as to prevent danger to the public.

VI. Dangerous animal

The owner or possessor of the dangerous animal can be directed to destroy, confine or otherwise dispose off the animal in a manner provided in the order.

Now that the conditional order has been given to the person to remove the nuisance, the person has two ways to go.

Firstly, he may follow the conditional order given to him and remove, repair, support, fence or dispose of, etc. in the time fixed to do it.

Remedy against the conditional order

But if the person ordered does not want to remove the nuisance he shall follow the procedure enumerated now.

According to Section 152(1), he will appear before the Executive magistrate or someone subordinate to him at a time and place fixed in the order. When he appears, he shall show cause as to why the order should not be made absolute against him.

This is the only way to have a remedy against the conditional order at this stage. Section 152(2) says that any conditional order made for removal of nuisance shall not be called into question in any Civil Court.

Serving of conditional order

Section 153: Service or notification of order, which corresponds to Section 134 of Cr.P.C. talks about how the conditional order under Section 152(1) is to be served.

The order shall be served in the way summons are served under section 64-71. If the person cannot be served the order, the notification shall be done by a proclamation in the manner directed by the State government. Also, a copy of the order shall be stuck to the place/s which is fittest for conveying information to that person.

Duty of the person receiving such order

Section 154: Person to whom order is addressed to obey or show cause, corresponding to Section 135 of Cr.P.C. says that when a notice is made against an individual, he can :-

- I. Perform the removal of the nuisance within the specified time and in the manner provided in the order, or

II. Appear before the magistrate in accordance with the order and show cause against it.

This appearance can also be done audio-visual conferencing.

In the first case, when the person performs the removal of nuisance, the order becomes absolute as it is followed and the proceedings end. In the second case, when the person appears before the magistrate to show cause, the proceedings continue in the manner provided forthwith.

But the person also might choose to ignore the order and neither perform the removal of nuisance, nor appear for a show cause against the order.

Section 155: Penalty for failure to comply with Section 154, corresponding to Section 136 of Cr.PC., tells us about what happens when someone chooses to ignore the order against him.

The order against him shall be made absolute and he will not get a chance for show cause after non-appearance.

Apart from that, he can be prosecuted and made to pay a penalty and punishment under Section 223 (Disobedience to order duly promulgated by public servant) of Bharatiya Nyay Sanhita 2023 (BNS).

When a person appears for show cause and says that the way that he is suspected of obstructing is not a public way, place, river or channel, he will undergo the procedure enumerated under Section 156.

Section 156: Procedure when existence of public right is denied

This section, corresponding to Section 137 of Cr.P.C., says that a person ordered can appear and deny the existence of any public right over the place that he is said to obstruct. The Magistrate shall make an inquiry into such denial. For such denial, he has to produce some reliable evidence and if the Magistrate is satisfied that there is no public right in that place, he will stay his order until the existence or non-existence of such right is decided by a competent Court.

But if the evidence that the person produces is unreliable or the Magistrate finds in his inquiry that a public right exists, he will not be allowed in subsequent proceedings to make such a denial.

He also cannot deny the existence of a public right later in the proceedings if he has not denied it when he first appears at the show cause.

Section 157 talks about the third way in which the conditional order will be made absolute. Before this the conditional order becomes absolute when the person either follows it or fails to either comply with the order or show cause against him.

Section 157: Procedure where person against whom order is made under Section 152 appears for show cause

When the person appears and shows cause against the order, the magistrate shall mandatorily take his evidence as in a summons-case.

After taking the evidence, if the Magistrate feels that the order needs to be modified or changed to make it reasonable and proper, he will do such modification and make the order absolute. The original order can also be made absolute if the magistrate thinks that no change is necessary.

If the Magistrate is not satisfied with the order after show cause is done, he can end the proceedings.

All of the above shall take place within 90 days which can be extended to 120 days if necessary for reasons to be recorded in writing.

Kranti Parcel Service v. State of Andhra Pradesh (1997)

In this case, the SDM without recording any evidence converted the preliminary conditional order to absolute. The High Court quashed that order and said that if a person shows cause, the magistrate must take evidence before making the preliminary order absolute.

Section 158: Power of Magistrate to direct local investigation and examination of an expert

For an inquiry to be made, the Magistrate can direct local investigation to be made by someone he considers fit for it or summon and examine a witness.

Section 159: Power of magistrates to furnish written instructions, etc. (not important)

This section says that when the magistrate can furnish instructions necessary for the guidance of the person chosen by him to conduct a local investigation and that person's report shall be looked at as evidence.

The magistrate may also direct who will pay the cost of the investigation and hiring the expert.

Section 160: Procedure on an order being made absolute and consequences of disobedience

When the order becomes absolute either after its ignorance or after show cause, a notice shall be given to the person directing him to perform the act given in the order within a fixed period of time.

If the act is not performed within the time fixed, the person against whom the order is made is liable under Section 223 of BNS, 2023. The magistrate can also cause the act to be performed and recover the cost of performing the act by sale or distress and sale or attachment of the property, movable or immovable, within or without his jurisdiction.

Section 161: Injunction pending inquiry (Important for prelims)

This section corresponds to Section 142 of Cr.P.C. Here if the danger to the public is very imminent, the magistrate can issue an injunction to the person to prevent such danger. This injunction shall last until the matter is inquired into and determined.

If the person fails to obey such an injunction, the magistrate may himself cause such measures to be used to prevent such immediate danger.

No civil action shall lie against such action done in good faith.

Section 162: Magistrate may prohibit repetition or continuance of public nuisance

This section corresponds to Section 143 of Cr.P.C. This section empowers District Magistrate, Sub-divisional Magistrate, or any Executive Magistrate or Deputy Commissioner of Police authorised by the State government to order any person to not repeat or continue a public nuisance.

Public nuisance shall have the same meaning as Section 270 of Bharatiya Nyay Sanhita 2023.