

# Executive Magistrates' Power to Maintain Law and Order

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## Abstract

*The constitution recognises that the judiciary has to be separated from the executive; based on the principle that an autonomous judiciary may better administer justice. This separation is also recognised in the Code of Criminal Procedure, which provides for two types of magistrates. The Executive Magistrate, as the name suggests is not concerned with judicial functions per se, but police and administrative functions. The focus of this article is powers of the Executive Magistrate in discharging the function of maintaining law and order. Maintaining of law and order is wide term encompassing a multitude of facts and circumstances. Therefore, to deal with such a multitude of facts and circumstances, vesting of wide powers may be a necessary evil. However, inherent limitations on such powers have been incorporated, as exercise of such powers can have severe effects on personal liberty and affect the rights of persons. In this context, this article systematically analyses the powers – of safe keeping for preserving peace, dispersal of unlawful assemblies, removing nuisance and apprehended threat; under the overarching umbrella of maintaining law and order. Relevant criminal law and constitutional principles have been highlighted at appropriate sections as well.*

**Keywords:** Executive Magistrate; Law and Order; Maintenance of Peace; Judicial powers of the Executive; Code of Criminal Procedure

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## INTRODUCTION

An impartial and independent judiciary is the bedrock on which the structure of the administration of the criminal justice system is built on. Our legal system has time and again been altered to safeguard the independence of the judiciary and ensure a very high degree of impartiality in the discharge of judicial functions.

The directive principles of State policy enshrined in Part IV of the Constitution mandates the State to “take steps to separate the judiciary from the executive in the public services of State” [1]. The rationale being, the independent working of the judiciary is ensured and is free of all suspicion of direct or indirect executive influence or control [2]. In such a context, it must be noted that in some States, district Judges are appointed as Law secretaries on deputation. At the same time, they may be elevated to the bench or reverted to their parent post. One can ponder whether such a practice runs contrary to the spirit of Article 50 of the Constitution. In a typical criminal trial, the state is a given party and

thus this separation automatically is of practical significance.

This general principle involves two consequences: (i) that a judge or a magistrate who tries a case must not be in any manner related to the prosecution or interested in the prosecution's case; and (ii) that the judge must not be in direct administrative subordination to anyone connected with the prosecution [3]. The Constitutional directive is also given effect by the Code of Criminal Procedure (hereinafter “**the Code**”). Two classes of magistrates are provided for - Executive Magistrates and Judicial Magistrates. The former is appointed by and under the direct control of the State Government, while the latter is appointed by the State Government in consultation with the High Court; but, once appointed they come under the administrative and regulatory control of the High Court [4].

In broad terms, the functions which are in essence judicial in nature have been assigned by the Code to Judicial Magistrates; on the other hand, functions which are “police” or administrative in nature have been entrusted to

Executive Magistrates. The Code nonetheless, empowers the State Governments to direct, if so allowed by the Legislative assembly of the State, that the function to be discharged by the Executive Magistrates in certain cases shall instead be discharged by the Judicial Magistrate [4].

In most of the districts and metropolitan areas, the State Government has the discretion to appoint the required number of Executive magistrates; and one of them is the District Magistrate [5]. Any Executive magistrate maybe appointed as an Additional District Magistrate, with such powers of a District Magistrate, as prescribed - by the State Government [6]. Additionally, an executive magistrate maybe placed in charge of a subdivision, known as the sub-divisional magistrate [7]. As a consequence of subsection 4-A being incorporated, the State government is not empowered to deploy Executive Magistrates as in charge of subdivisions to be delegated to District Magistrates; in order to facilitate quick deployment of magistrates at the local level [8].

In some states, especially in a few metropolitan areas, the practice of conferring magisterial functions of an executive nature to a Commissioner of Police has come into practice. The Supreme Court had occasion to examine the powers of the State Governments, to appoint District magistrate for the purposes of the Immoral Traffic (Prevention) Act, 1956. On the reading of subsections (1), (2) and (3) in conjunction, the Supreme Court had held in the case of *A.N. Roy v. Suresh Sham Singh* that, the state had the power to appoint the Commissioner of Police of Birhan, Mumbai, which was a metropolitan area as an Executive Magistrate and to further appoint him as an Additional District Magistrate having the same powers of a District Magistrate. This well-structure and effectively functioning framework, if authorized by the any local law, has been allowed to continue by virtue of Section 20(5). However, where this is not done, and also for discharging other functions of the Executive District Magistrate, each metropolitan area shall have an Executive District Magistrate as provided by the section 20 (1). Following parts of this paper will detail

the powers of the executive magistrate to maintain law and order in various circumstances.

## **METHODOLOGY**

### **Aims and Objectives**

The researcher aims to study the Executive magistrates' power to maintain law and order in paper. The objective of this study to critically analyse the jurisprudence and case laws with respect to the executive magistrates' power to maintain law and order and gain a better understanding of criminal procedural law.

### **Scope and Limitations**

The scope of this study extends to analysis of general provisions relating to Executive Magistrates and specifically to Sections 107, 129, 133 and 144. The limitation of this study is that it does not cover section disputes as to immovable property; and the list of case law is not exhaustive.

### **Research Questions**

- Who is an executive magistrate and how does he function under the Code of Criminal Procedure?
- What are the various provisions related to maintenance of law and order?
- How does the Executive magistrate exercise his powers in maintenance of law and order?

### **Structure**

The study deals with maintenance of law and order through 4 parts: The first part discusses with the power of safe keeping for maintenance of peace under section 107; the second part deals with power to disperse unlawful or potentially unlawful assemblies under section 129; the third part details as to the power to pass conditional orders to remove nuisance; and the last throws lights on the power to pass orders in dire cases of nuisance or apprehended threat.

### **References**

The Vancouver style of referencing has been followed.

## **DISCUSSION**

### **Power of Safe Keeping for Maintenance of Peace**

Section 107 of the Code; deals with security for keeping peace under certain circumstances. For the purpose of being effective, proceedings under this section is of an urgent nature, and since they are concerned with the maintenance of peace and order; the functions under this section have been entrusted to the executive magistrate [9]. This is an instance of preventive justice that the courts are envisioned to oversee. Section 107 is similar to section 106, seeking to 'nip in the bud' of comportment with potential to destabilize peace and public tranquillity [10].

The rationale of the section is preventive and not punitive. This section is formulated in a manner to empower the Magistrate to take steps to prevent the commission of offences involving breach of peace and disruption of public order [11]. It can be invoked in emergency scenarios when prompt action is required to quell threatened apprehension of breach of peace [12]. Executive magistrates have been conferred wide powers and it becomes pertinent that such powers are exercised strictly according to the law, as it affects the liberty of the person who has been found be guilty [13].

The courts have taken an attitude of vigilance in dealing with actions of the executive under these provisions. This is confirmed by decisions such as *Medha Patkar v. State of M.P.* [14] in which the High Court of Madhya Pradesh awarded compensation to the accused, as the government had sent them to prison for failure of furnishing bond in a case, where there was naught on record to reveal the apprehension of breach of peace [14]. In the case of *Singh Pathania v. State* [15], the accused were merely squatting on record, yelling slogans; the court came to a finding that the orders under Section 107 and 151 were justified. Nevertheless, the High Court of Delhi in case of *Keshar Kumar v. State* [16] found the arrest and detention of the petitioner using Section 107 in a civil dispute illegal and awarded compensation to the petitioner. The *sine qua non* for institution of proceeding under this section is that the Magistrate should be of the view that there is adequate ground for proceeding against the person informed against [17]. Further, the Magistrate is

mandated to record his view as provided by section 107 and subsequently prepare the notice under section 111 [18].

Since the Magistrate is responsible for maintaining peace in his division, he has the discretion to decide whether or not it is imperative for maintaining peace to institute proceeding under section 107 [19]. The decision as to what provisions must be utilised under a particular circumstance must be taken by him, i.e., a discretionary power. The direction of the High Court to initiate disciplinary proceeding against the authorities was quashed by the Supreme Court, as it found there was no illegality [20]. In the process of forming an opinion with regard to sufficient grounds for proceeding under Section 107, the Executive magistrate must be guided by the information received by him. Nonetheless, it is required that the information envisioned under the provision must be gathered from legal evidence; and can be from any private or public source [21]. No limitation exists as to the manner in which the Magistrate becomes cognizant of the breach of peace.

The information maybe of past comportment and wrongful acts; however, it must not be remote or isolated but must have relevance to the present apprehension of likelihood of breach of law and order. An empirical rather an esoteric approach has to be adopted by the magistrate on a case to case basis. Having regard to the scope and spirit of the provision, a positivist construction as to nature and source of information on which the Magistrate must act on is not desirable. The reasonable satisfaction of the Magistrate should be subject to the particular circumstances [22]. But, it has been held that the information provided for under section 107, should be of a lucid and certain type, as it directly affects the person against whom the proceedings maybe initiated against; and must also disclose the material facts and particulars, so that that notice is comprised of such information; and that person can come prepared [23].

The phrase "*in the manner hereinafter provided*" given in section 107(1) is indispensable and the Magistrate cannot devise his own method. Section 111 lays down the

manner provided for; thus, issue of preliminary notice to show cause, beyond what is given in Section 111, would be unjustified [24]. The preliminary order and the subsequent proceedings would be vitiated if the requirements under section 111 are not complied [25]. In the possibility of breach of law and order with respect to dispute over land, the procedure given under Section 145 must be followed and not the procedure under Section 107 [26].

Section 107(2) makes it clear that the Executive magistrate has jurisdiction to take proceedings under section 107 when - (i) the place where the breach of peace or disruption is within the territorial jurisdiction, or (ii) the delinquent person who is likely to disrupt peace is within the territorial jurisdiction. The manner in which the Executive Magistrate proceeds to execute a bond for keeping peace under Section 107 and the consequence of failure to execute a bond is dealt under sections 111 and 124 of the Code.

The proceedings under Section 107 are no doubt barred by virtue of Section 300 [27] on the basis that a person has been previously convicted or acquitted of a specific set of facts constituting an offence for which such a person was tried before; however, the proceeding being judicial, on general principles of justice, it may not be expedient to launch police investigation for the same act in a normal criminal court to obtain punishment and another proceeding for security in another court simultaneously [28]. Generally, Section 107 proceedings must not be used as parallel proceedings. But, proceedings under Section 107 maybe required due to emergency circumstances; and further, such proceedings may also form the material basis for criminal prosecution [29].

To reiterate, the emphasis under this provision is the possibility of impending breach of peace. In a case, where a person was directed to furnish security for good behaviour for two years preferred an appeal to the apex court; it held that since there was no breach of peace, there was no need to insist on security [30].

### **Power to Disperse Unlawful or Potentially Unlawful Assemblies**

Section 129 of the Code empowers the Executive Magistrate to disperse certain categories of assemblies by using civil force. Primarily, the power of the Executive magistrate under section 129 is to disperse an "unlawful assembly." The power to disperse other assemblies prospective of causing disruption of the peace etc. is only an extension of the first power. Such an extension is considered essential as such assemblies are *potential* unlawful assemblies [31]. Section 144 of the Indian Penal Code, 1860 defines "Unlawful assembly".

Magistrates or officer in charge of a police station are empowered for the purposes of dispersal of unlawful assemblies. At times, it may occur that an officer in charge of a police station may not be freely available at the area where there is an unlawful assembly; therefore, to order the dispersal of such an assembly there must be other officers of equal rank. The rationale being that, any delay in getting an order from such an officer can lead to the situation becoming unmanageable [32]. Police officers not below the rank of sub-inspector are statutorily empowered. By and large, prior to any use of force to disperse an unlawful assembly as mentioned before, three preconditions have to be satisfied: (i) there must be an unlawful assembly with the object of committing violence or an assembly of five or more individuals probable of causing a disruption of public peace; (ii) such an assembly must be ordered to be dispersed; (iii) despite such an order, the assembly does not disperse [33]. In a scenario which did not validate firing of rounds, the firing occurred and also without authorisation by the appropriate officer and resulted in the injury of members; the State was directed by the court to compensate their dependants [34].

The executive magistrate is also empowered to disperse unlawful or potentially unlawful assemblies by utilising the armed forces under Section 130 of the Code. All actions taken by the executive magistrate under sections 129 and 131 are good faith, are statutorily protected under section 132.

### **Power to Pass Conditional Orders to Remove Nuisance**

Under Section 133, the executive magistrate is empowered to give conditional orders for removing nuisance. The section has been formulated in a manner so as to provide a ready process for eliminating public nuisances; and must be utilised in urgent cases [35]. Public nuisances are without doubt not as threatening or grave a circumstance necessitating the utilisation of security proceedings, nor are their removal as dire as the dispersal of unlawful assemblies; nonetheless they have the potential of becoming dangerous, necessitating summary action for their removal.

The Punjab and Haryana High Court made some important observations with respect to the order made under sections 144 and 147. The court had observed:

*“The proceedings are just to maintain peace and tranquillity and the orders rendered under these sections are merely temporary orders. The orders of the Courts are conterminous with the judgment or decree of the Civil court. No sooner the Civil court declares the right of the parties the temporary orders rendered by the courts u/ss.133, 145 and 147 of the Code come to an end”* [36].

On receiving information from the police office or from any other source, the appropriate Executive Magistrate can exercise the powers granted to him under this section, in six different circumstances enunciated under sub-section (1). Certain specific public nuisances are dealt under section 133; it also gives a summary remedy for their removal. In some cases, the opinion adopted is that the section has been designed to deal with *emergency* evils which are either extant or impending [37]. One has to note that the section does not justify an action being taken with respect to anticipated obstruction or nuisance [38]. An impending danger to property and substantial nuisance to public are a must [39]. Nonetheless, it is in the same way true that no period is recommended within which the court could be moved under this provision for the removal of an evil in existence, [40] and each case must be tackled on a case-specific basis.

The nuisance must be of a public nature and disturb the members of public in order to invoke section 133(1)(a), and therefore, provide the ground to be eliminated from that space. Section 268 of the Indian Penal Code defines the term “public nuisance” and the same can be exported for the purposes of Section 133. As per that provision, public nuisance is constituted when – the injury, annoyance or danger should affect the public, or to persons in the proximity, or to persons who may have had the opportunity to use any public right [41].

The prevention of public nuisance was the objective and the legislative intent behind section 133 i.e., on failure of the Magistrate to act under Section 133, the public may be irreversibly damaged. Nonetheless, if the nuisance has existed for a prolonged time-frame, no action under Section 133 will be conceivable [42]. In such a scenario, the sole redressal mechanism available to affected party would be to file a suit in the civil court [43].

The term “public” is inclusive any class of the public or community as per section 12 of the Indian Penal Code; however, that class should be mathematically adequate to qualify as “the public”. The term community must not be conceived as the residents of a specific home; just like in common parlance community has a much wider ambit. Thus, if a specific individual or his family is only affected by a nuisance, it cannot be taken as public nuisance and therefore, removal of the same cannot be directed under Section 133 [44].

The phrase “public place” present in the Section 133(1)(a) has neither been defined in the Code nor in the Indian Penal Code; although the explanation to Section 133 mentions that a “public place” is inclusive of property belonging to the State camping ground and unoccupied grounds left for sanitation or recreation. Further, courts have held that a space to qualify as public should be free for the public, i.e., the public has access by right, permission, usage or otherwise [45].

One must without any doubt discern that Section 133 is not to be utilised as a substitute

for civil litigation, for the purpose of securing a settlement of a private dispute. Action under Section 133(1)(a) can only be taken in instance of an infringement of public rights [46]. The first threshold to be cleared is whether bereft of any action taken by the Magistrate and leaves the public with no choice but to find a redressal in the ordinary court would result in irreversible damage; and the second threshold being, the nuisance or obstruction must be an infringement of a public right and not an individual's.

It was posited by the Allahabad High Court that air pollution can not only be prevented under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 but also under Section 133 of the code. In the case of *Ramesh Chandra v. U.P. Pollution Control Board* [47], the Court stressed that a magistrate acting under Section 133 can prevent an industry from air pollution by passing an order and making it absolute under section 136 or 138 of the Code.

Although on a literal reading, Section 133 appears to be discretionary it is categorical and has an obligatory weight. It allows enforcement of civic rights under municipal law where neglect has led to a public nuisance. Thus, when a Magistrate receives information along with evidence of existence of a public nuisance, on the materials placed, he obligated to act under Section 133 and order the removal of such nuisance or unlawful obstruction of place which maybe lawfully used by the public [48]. A preliminary order is required to be drawn by the Magistrate before exercising the powers under section 133. In the case of *Avarachan v. Srinivasan* [49], it was held that the omission by the Sub-divisional magistrate to draw up a primary order, which is the "*sine qua non*" for initialling proceedings under Section 133; and non-compliance with the procedure mentioned in section 138, the order of the Sub-divisional magistrate would be rendered invalid. Non-compliance of direction is punishable under section 188 of the IPC [50]. The Madhya Pradesh High Court has held that Section 133 can be used along with the provisions of Water (Prevention and Control of Pollution) Act, 1974 as well [51].

The Supreme Court has dealt with question of applicability of pollution laws vis-à-vis criminal procedure. The Court expounded that both laws are different with different objectives although they seek to lessen nuisance, they are not identical laws; and further opined that there is no impairment for their simultaneous existence [52].

Clause (b) of Section 133 comes in application in cases where the comportment of any trade or occupation etc. is detrimental to the well-being of the community. An order under section 133, restraining the trade of vegetables by auction carried on in a private home, on the ground that the noise caused by the auction disturbed the comfort of the residents of the locality, was held to be unjustified by the apex court [53]. As per the Supreme Court, such comportment was not harmful to the well-being of the community [54]. It was held that any noise which can materially interfere with conventional comforts from a reasonable man's perspective would be nuisance and actionable under Section 133 [55].

The term "regulated" in clause (b) of Section 133(1) points that the court instead of prohibiting the trade etc. starkly, can regulate the same in manner to render it not a nuisance [56]. A least number of individuals that should be living or doing business in the neighbourhood etc. is not mention in Clause (d) of Section 133(1); thus, more than one-person living would amount to persons and the provisions of section 133 maybe attracted [57]. Nonetheless the proceedings are summary, and more of a civil nature [58]. It has been posited that taking of evidence is not mandatory before passing an order under Section 133. A conditional order under section 133, gives the defaulting party two options – either to obey the conditional order or visit the magistrate and show cause, provided for under section 135. It has been held that the magistrate cannot substitute "or" with "and" as it would go against the very spirit of the provision [59].

#### **Power to Pass Order in Dire Cases of Nuisance or Apprehended Threat**

Section 144 is renowned and a frequently used provision. It confers omnipotence to Executive magistrate to issue orders in dire cases of



nuisance or apprehended danger. The wide range of situations in which a Magistrate can resort to this issue is effectively conveyed by a perusal of the section itself [60]. The order under this section by me issued by specified classes of Magistrates, when in their opinion there is adequate grounds for acting under the section and instantaneous prevention or immediate relief is desirable. The order must be in 'writing' stating the material facts of the case and the order is to be served in the manner provided under Section 134. It may direct: (a) an individual to refrain from certain acts; or (b) to take certain order regarding certain property in his possession or under his management. The grounds are – in the opinion of Magistrate; an order would (i) likely prevent or (ii) tend to prevent: obstruction; annoyance; injury, to any person, lawfully employed; danger to human life, health or safety; a disturbance of the public tranquillity; a riot; or an affray. In brief terms, prohibitory or mandatory orders are provided by the section [61].

The essence of action under Section 144 is the direness of the circumstances and efficient use of the provision in prevention of harmful occurrences [62]. The absolute power and the option of even acting *ex parte* reflect the suddenness and graveness of the situation. Normal, an order under section 144 must not be made without affording an opportunity to the person against to show cause; and in case of *ex parte*, the magistrate is required to record his reasons for doing so, failing which the order would be unsustainable. The order must also reveal that the Magistrate has applied his mind and must not be bald or arbitrary [63]. It is not an ordinary administrative power, but a power utilised in a judicial manner and can thus be subjected to further judicial scrutiny on basis of its need, its efficiency and its extent of application. There is no suggestion that an order under Section 144 cannot be passed without taking evidence [64]. The provision is intended to be used against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. Normally, the order would be specific in nature; nevertheless, general orders may be necessary in case of a large crowd rendering distinction impossible, of course in the context

of an emergency [65]. However, if an order is too generic, it may be questioned through appropriate remedies available under the law [64].

The power entrusted to Magistrates under Section 144 is neither absolute nor supreme, but subject to the supervision and revision of the higher courts; thus, it becomes imperative that it must be a speaking ordering indicating all the material grounds in full to be a valid action, if found otherwise such actions maybe vitiated and found to be illegal [66]. The Constitution being the supreme law of the land, Section 144 must be construed in that context, especially Part III; as opined the Supreme Court in case of *Madhu Limaye v. SDM, Monghyr* [67] – the annoyance, obstruction or injury or any other danger sought to be prevented “*must assume sufficiently grave proportions to bring the matter within the interests of public order or general public or any other manner specified in clauses (2) to (6) of Article 19*” [66].

An order issued under Section 144 is basically an executive order passed in carrying out executive function where no *lis* as to claims between parties is adjudicated upon, but only an order preserving peace; and as such is subject to writ jurisdiction under Articles 32 and 226, if there's a violation of any fundamental right [68]. The phrase “abstain from a certain act” is subsection (1) do not authorise the Magistrate to order a person to do certain acts, and the Magistrate cannot assume such power even in the light of making a negative order [71]. Since an order under Section 144 should be of a transitory nature, implying that it must not be irrevocable or partake of the character of a perpetual injunction [70].

In case of a dispute as to the possession of any property coming under coming under this section, the right course of action for the Magistrate is to confirm which party is wrong and is infringing on the exercise of the legal rights of the other party. Following which, the Magistrate must instruct the party to refrain from certain acts to take certain order with respect to the property in his possession if the Magistrate considers that such an instruction is

likely to prevent or tends to prevent danger to human life etc.

The Supreme Court has made a detailed observation on the use of the power under section 144 in the case of *Bilay Kumar Dalmia v. Sanwarmal Jalal*. The Court had an occasion to reiterate the importance of Section 144 in *re Ramilila Maidan Incident* [71] - it had opined that Section 144 enunciates the principles of and declares the situation where exercise of legal rights, by one or few may conflict with other rights of the public or tend threaten public peace, tranquillity and harmony. Ultimately the actions of State Government were held to be *ultra vires* Section 144 of the Code, Section 188 of the IPC, Articles 20 and 21 of the Constitution and therefore, was void and of no consequence [73].

On scrutiny of Sections 144(1), (2), (3) and (4) along with the proviso would make it evident that the period of 60 days has to be calculated from the date on which the injunctive order had been issued at the time of initialling of proceedings [74]. Under Section 144(5) and (7) any Magistrate may quash or change his own order or an order passed by his predecessor or of any subordinate Magistrate. This provision is salutary, so that the party, who has not been given a chance to be heard while passing an ex parte order under clause (2) and thus feel aggrieved, can either approach the same Magistrate or a subordinate Magistrate. This remedy is available along the revisional jurisdiction of superior courts [75]. Where the order under Section 144 purports to infringe future rights of the parties, the High Court can in a suitable case quash the order, even though its time had expired or had extinguished its force [76].

The specific question of whether the High Court (or the Court of Session) is competent to go into the propriety of the State Government's order of extension under the proviso to Section 144(4) has not been decided in clear terms yet [77]; despite the High Court's revisional powers being wide. Section 144-A and 153-AA were inserted to the Code in 2005, by way of amendment. Section 144-A enhances the security proceedings – as it possible to prohibit a person or group of persons who comport aggressively by show of

arms. The District Magistrate can ban such activities and the period of such notice, primarily of 3 months' validity, can be extended to 6 months by court. Section 153-AA makes it an offence to carry arms in any procession.

## CONCLUSION

Article 50, a Directive Principle of State policy enshrined in Part IV of the Constitution mandates the State to take effective steps to separate the executive from the judiciary. This is based on the rationale that an independent judiciary, free from the influence or control of the executive can meet the ends of justice in a better manner. This principle is of sound significance especially in criminal justice administration. In consonance with constitutional mandate, the Code also provides for two classes of magistrates – Executive and Judicial. The Executive Magistrate performs the functions which are police or administrative in nature - maintenance of law and order falls under this as well.

The rationale of the powers under section 107 is prevention of breach of peace and maintenance of law and order. The proceeding under this section is of an urgent nature; it is invoked in dire circumstances prompting action to quell threatened apprehension of breach of peace. Powers under this provision are discretionary in nature; and the Executive Magistrate has to form a subjective opinion on whether proceedings must be initiated. In the formation of opinion with regard to existence of sufficient grounds, the Executive magistrate must be guided by the information be gathered from legal evidence. Further the preliminary orders and the subsequent proceedings can be vitiated if there is non-compliance of procedure.

Executive Magistrates are empowered under Section 129 to disperse unlawful assembly by using civil force. Prior to any use of force to disperse an unlawful assembly, three preconditions have to be satisfied: an unlawful assembly must exist with the object of committing violence or an assembly of five or more individuals, probable of causing a disruption of public peace must exist; there must be an order directing such an assembly to



be dispersed; the assembly does not disperse despite such an order.

Section 133 empowers the executive magistrate give conditional orders for eliminating public nuisances. Public nuisances have the potential of becoming dangerous as well, necessitating summary action for their removal. Object of section 133 to prevent irreparable damage to the public as a result of such a nuisance. An appropriate Executive Magistrate, on being informed by a police office or from any other source, can exercise the powers granted to him under this provision in six different circumstances. It is imperative to note that this section does not justify an action being taken with respect to anticipated obstruction or nuisance. An impending and substantial danger to the public is a must to necessitate action; and must be utilised in urgent cases only. Lastly, Section 133 cannot be used as substitute proceeding for civil litigation and for settling private disputes.

Section 144 is a repeatedly used provision. Executive magistrate is empowered to issue orders in dire cases of nuisance or apprehended danger. The wide range of situations in which a Magistrate can resort to this issue is conveyed by the provision. There must be subjective opinion the existence of adequate grounds for acting under the section; and where instantaneous prevention or relief is required. Emergency circumstances and efficient use of powers under this the provision to prevent harmful occurrences is the essence of action under Section 144. Since the power under this provision is of an extraordinary and judicial in nature, its efficiency and its extent of application is subject to judicial scrutiny. The Constitution being the fundamental law Section 144 must be construed as subservient to it.

Executive magistrates have been conferred wide powers under all these provisions, and it becomes pertinent that such powers are exercised with great caution and with strict adherence to procedural law. As the order passed under these provisions, though temporary in nature, can seriously infringe the fundamental rights of the citizens and trample their liberty and freedoms. Therefore, Executive magistrate must not, through misuse

of their power, destroy the rights of the public in the name of protecting.

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## CONFLICT OF INTEREST

The author declares no conflict of interest.

## REFERENCES

1. Art. 50, *Constitution of India*, 1950.
2. Law Commission of India. *on Reforms of the Judicial Administration*. India: Ministry of Law and Justice; 1948. Vol II, 850p. Report No. 14.
3. Law Commission of India. *The Code of Criminal Procedure, 1889*. India: Ministry of Law and Justice; 1967. 13p. Report No. 37.
4. K.N. Chandrasekharan Pillai, editor. *R.V. Kelkar's Criminal Procedure*. Lucknow: Eastern Book Company; 2015.
5. Sec. 20(1), Code of Criminal Procedure, 1973.
6. Sec. 20(2), Code of Criminal Procedure, 1973.
7. Sec. 20(4), Code of Criminal Procedure, 1973.
8. Sec. 20(4-A), Code of Criminal Procedure, 1973.
9. Law Commission of India, *The Code of Criminal Procedure, 1898*. India: Ministry of Law and Justice; 1969. Vol I, 13p. Report No. 41.
10. Madhu Limaye v. Sub-Divisional Magistrate, Monghyr, 3 SCC 746.
11. Sudipto Sarkar and V R Manohar, editors. *S.C. Sarkar's The Code of Criminal Procedure, Vol I*. Nagpur: Lexis Nexis Butterworths Wadhwa; 2012.

12. Rajendra Singh Pathania v. State (NCT of Delhi, 2011 13 SCC 329.
13. Ram Narain Singh v. State of Bihar, 1972 2 SCC 532; Deoballam Singh v. Gorakhnath Singh, 1947 Cri LJ 703.
14. Medha Patkar v. State of M.P., 2008 Cri LJ 47 (MP).
15. Singh Pathania v. State (NCT of Delhi), 2011 13 SCC 329.
16. Keshar Kumar v. State, 2008 Cri LJ 233 (Del).
17. Rama Chandra Jena v. Muralidar Onjha, 1988 Cri LK 218 (Ori); M.C.S Rao v. State of Mysore, 1972 Cri LJ 405, 406 (Mys).
18. Tavinder Kumar v. State, 1990 Cri LJ 40 (Del).
19. C.S. Reddy v. State of A.P., 1973 Cri LJ 1713, 1715 (AP).
20. Ram Mehar Singh v. State (NCT of Delhi), 2011 14 SCC 732.
21. Babaji Sahoo v State of Orissa, 1989 Cri LJ 1872 (Ori).
22. Muthuswami Cehittiar, re, 1940 41 Cri LJ 238, 241; Tulisibala Rakhit v. N.N. Khosal, 1953 Cri LJ 344, 346.
23. Reddy Channabasavanna v. State of Mysore; 1973 Cri LJ 1049, 1050; R. Ramaswamy v. B. Subramanian, 1983 Cri LJ 761, 762 (AP).
24. Amit Pal v Anil Kumar, 1978 Cri LJ 1066 1068 (Pat).
25. Mahadevaswamy v. State of Karnataka, 1989 Cri LJ 765 (Kant).
26. Kadir Ali v. Wahab Ali, 1980 Cri LJ 507, 509 (Gau).
27. Sec. 300, Code of Criminal Procedure, 1973.
28. A.B. Chandra Reddy v. Revenue Inspector, 1980 Cri LJ 1169m 1170 (AP).
29. Noidu v. State of Kerala, 1982 Cri LJ 2293 2298 (Ker) (FB).
30. Brij Gopal Chaturvedi v State of M.P., 1997 SCC 569.
31. Law Commission of India. *supra* note 3; 327.
32. Joint Committee Report. XIV. 2004.
33. Karam Shingh v. Hardayal Singh, 1079 Cri LJ 1211, 1214 (P&H).
34. State of Karnataka v. B. Padmanabha Beliya, 1992 Cri LJ 634 (Kant).
35. Law Commission of India. *supra* note 3; 330.
36. Bhaba Kanta v. Ramchandra, 1987 Cri LJ 1155, 1157 (P&H).
37. Rameshwar Prasad v. State of Bihar, 1958 59 Cri LJ 551, 552; Kalyansundaram v. Kalyani Ammal, 1975 Cri LJ 1717, 1718.
38. Sohan Lal v/ Mohan Lal, 1976 Cri LJ 1354, 1355, (HP).
39. Kachrualal Bhagirath Agarwal v. State of Maharashtra, 2005 9 SCC 36.
40. Chhitar v Chhoga, 1974 Cri LJ 1230, 1233 (Raj); State of MP v. Manji Raghu, 1964 2 Cri LJ 94, 96 (MP).
41. Hiralal v. Jogesgwar Ram, 1973 Cri LJ 1375, 1577 (HP).
42. Makhan Lal v. buta Singh, 2003 Cri LL 4147 (P&H).
43. Vasant Manga Nikumba v. Baburao Bhikanna Naidu, 1995 4 SCC 54.
44. Jatindra Nath v. Maindra Nath, 1950 Cri LJ 1241; Dwarika Prasad v B.K. Roy Choudhury, 1950 51 Cri LJ 1315.
45. Ram Kishore v. State, 1973 Cri LJ 1527, 1528 (HP); State of Kerala v. Cherian Secariah, 1967 Cri LJ 634, 635.
46. State of Mysore v. V.M. Hegde, 1973 Cri LJ 359 (Mys); Shaukat Hussain v Sheodyal Saksaina. 1958 59 Cri Lj 1319, 1320 (MP).
47. Ramesh Chandra v. U.P. Pollution Control Board, 2000 Cri LJ 2771 (All).
48. Executive Officer v. Dadda Satyavath, 1999 Cri LJ 1424 (AP).
49. C.A. Avarachan v. C.V. Sreenivasan, 1996 7 SCC 71.
50. Municipal Council v. Vardichan, 1980 4 SCC 162.
51. Abdul Hamid v. Gwalior Rayons Silk Mfg. Co. Ltd., 1989 Cri LJ 2013; Nagarjuna Paper Mills Ltd. v SD Mand RD officer, Sangareddy, 1987 Cri LJ 2071 (AP).
52. State of M.P. v. Kedia Leather & Liquor, 2003 7 SCC 389.
53. Ratanlal and Dhirajlal, COMMENTARY ON THE CODE OF CRIMINAL PROCEDURE, 251, (Justice Chandramauli Kumar Prasad and Namit Saxena eds., 22<sup>nd</sup> edn, 2017).
54. Ram Autar v. State of U.P., 1963 1 Cri LJ 14, 15016; Himmat Singh v. Bhagwana Ram, 1988 Cri LJ 614 (Raj).
55. Noise Pollution (5), re, 2005 5 SCC 733.
56. Gobind Singh v. Shanti Sarup, 1979 3 SCC 267, 269; Madhavi v. Thilakan, 1989 Cri LJ 499 (Ker).

57. Somnath v. State, 1974 Cri JL 52 (Goa JCC); Vayale Veettil Balakrishna Nambiar v. R. Madhavan Nambiar, 1986 Cri LJ 109 (Ker).
58. Kachrulal Bhagirath Agarwal v. State of Maharashtra, 2005 9 SCC 36.
59. Rohan Vaman Savaiker v. State, 2010 Cri LJ 2719 (Bom).
60. Law Commission of India. *supra* note 9; 59.
61. Madhu Limaye v. SDM, Monghyr, 1970 3 SCC 746; Pradyot Kumar v. Bank of India, 1973 Cri LJ 1361 (Cal).
62. Jagdishwaranand v. Police Commissioner, 1983 Cri LJ 1872 (Cal).
63. B. Linga Murthy v. B/ Hussain Saheb, 1979 Cri LJ 1147, 1149 (AP); Gopalji Prasad v. State of Sikkim, 1981 Cri LJ 60, 63 (Sikk).
64. Jagrupa Kumari v. Chotay Narain Singh, 1970 3 SCC 746.
65. Justice K.D. Shahi, editor. *Princep's Commentary on The Code of Criminal Procedure*, Vol. I. Lucknow: Eastern Book Company; 2000.
66. Gopalji Prasad v. State of Sikkim, 1981 Cri LJ 60, 62 (Sikk).
67. Madhu Limaye v. SDM, Monghyr, 1971 AIR 2486.
68. Akhil Bhartiya Sarkari Lottery Vyapari Mahasangh v. Commr. of Police, 1999 Cri LJ 3600 (Del).
69. Bimla Kanta Bagchi v. Sanat Kumar Ghose, 1939 40 Cri LJ 144, 145.
70. M.E. Supply Co. v. State of Bihar, 1973 Cri LJ 143, 144 (Pat).
71. Bijay Kumar Dalmia v. Sanwermal Jalal, 1988 Cri Lj 712 (Gau).
72. Jayantilal v. Eric RENison, 1975 Cri LJ 661, 669 (Guj).
73. Manual Bux v. Ram Rup Sah, 1983 Cri LJ 1215, 1216 (Pat).
74. Pitachi v. Mognatham, 1931 33 Cri Lj 826, 827; Zila Parishad, Etawah v. K.C. Saxena, 1977 Cri LJ 1747, 1750 (All).
75. Fateh Singh v. State of Bihar, 1972 Cri LJ 1655, 1658 (Pat).
76. Law Commission of India, *supra* note 3; 217-218.
77. Law Commission of India, *supra* note 9; 61.

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