

# ***EXECUTIVE MAGISTRATE***

## **EXECUTIVE MAGISTRATES**

The Executive Magistrates are appointed under section 20 of the code of criminal procedure, 1973 (central Act No.2 of 1974). The special Executive Magistrates are appointed as per section 21 of the code of criminal procedure, 1973. section 21 reads as follows:-

**“21. Special Executive Magistrates:** The State Government may appoint, for such term as it may think fit, Executive Magistrates, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this code on Executive Magistrates, as it may deem fit.”.

### **2. Special Executive Magistrate-Purpose of Appointment:-**

The purpose of empowering the State Government to appoint special Executive Magistrates was evidently to meet the special needs of a particular area or to perform particular functions in a given area. Such appointments without adequate powers would be futile and the legislation without providing such powers would be pointless.

### **3. The conferment of powers are dealt under section 32 of the code of criminal procedure, 1973 which reads as follows:-**

**“32. Mode of conferring powers:-** (1) In conferring powers under this code, the High court or the state Government, as the case may be, may, by order, empower persons especially by name or in virtue of their offices or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.”.

#### **4. Local Jurisdiction of special Executive Magistrate:-**

Unless the jurisdiction of a special Executive Magistrate has been restricted by the District Magistrate to a local area, his jurisdiction extends over the whole district.

#### **5. Subordination of the Special Executive Magistrates:-**

The special Executive Magistrate is subordinate to District Magistrate.

#### **6. The powers exercisable by the Special Executive Magistrates:-**

The Special Executive Magistrates are also Executive Magistrates. They are given a different appellation perhaps to distinguish them from the category of other Magistrates appointed under section 20. Their area of operation may be limited and the terms of appointment may be different. But nevertheless basically they remain as Executive Magistrates and they do not cease to be so by being called with different designation. Since they are appointed as Executive Magistrates, they are entitled to exercise the powers conferred by the code much the same way as other Executive Magistrates and it was therefore, unnecessary for the State Government to confer the powers under section 107 on the Special Executive Magistrates.

#### **7. Powers of the Executive Magistrates-divide between powers conferred and conferrable:-**

There is a broad divide between the powers conferred and powers conferrable by or under the code on the Executive Magistrate. The powers conferred by the code on the Executive Magistrate are the powers which are attached to the post of Executive Magistrate. Any person appointed as Executive Magistrate is entitled to exercise such powers. The powers located under sections 107, 108, 109, 110, 129, 145 and 147 etc. are the instances of such powers. These are

not the powers conferrable on the Executive Magistrate though they may be conferred on others like the Commissioner of Police under section 20 sub-section (5). There are other provisions in the code such as sections 133, 143 and 144, which may be said to be conferrable powers under the code. The Executive Magistrate cannot exercise such powers unless they are empowered in this behalf.

#### **8. Ordinary powers of Special Executive Magistrate:-**

- (1) Power to endorse his name on the warrant. (section 78(1) Cr.P.C.)**
- (2) Power to order removal of an accused person arrested under the warrant. (Section 81(1) Cr.P.C.)**
- (3) Power to command unlawful assembly to disperse, and to use civil force to disperse unlawful assembly. (Section 129 Cr.P.C.)**
- (4) Power to require armed forces to be used to disperse unlawful assembly. (Section 130 Cr.P.C.)**
- (5) Power to hold inquest. (Section 174 Cr.P.C.)**
- (6) Power to require security for keeping the peace in cases other than on conviction (Section 107 Cr.P.C.)**
- (7) Power to make order for removal of nuisance, when specially empowered in this behalf. (Section 133 Cr.P.C.)**
- (8) Power to make orders under section 144 when specially empowered in this behalf.(Section 144 Cr.P.C.)**

- (9) **Power to make order where dispute concerning land or water is likely to cause breach of peace.(Section 145 Cr.P.C.)**
- (10) **Power to attach the subject of dispute and to appoint receiver. (Section 146 Cr.P.C.)**
- (11) **Power to make order where dispute concerning right of use of land or water is likely to cause breach of peace. (Section 147 Cr.P.C.)**

**9. Other ordinary powers of Executive or Judicial Magistrate:-**

- (1) **Power to arrest, order any person to arrest, the offender and to commit to custody a person committing an offence in his presence. (Section 44(1) Cr.P.C.)**
- (2) **Power to arrest or direct the arrest, in his presence, of any person. (Section 44 (2) Cr.P.C.)**
- (3) **Power to require the postal or telegraph authority to cause search to be made for letters and telegrams. (Section 92(2) Cr. P.C.)**

**10. Addition Powers:-**

Besides the “Ordinary Powers” possessed by the various categories of Magistrates under the statute, additional powers may be conferred upon the Executive Magistrate or upon any Judicial Magistrate of first or second class. Such powers may be invested either by State Government or by the District Magistrate. Under section 32 of the code, the High court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles.

## **11. Some relevant sections of the code of criminal procedure, 1973**

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### **107. Security for keeping the peace in other cases:-**

- (1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without securities for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.**
  
- (2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.**

**Section 108. Security for good behavior from persons disseminating seditious matters:- (1) when an Executive Magistrate receives information that there is within his local jurisdiction any person who, within or without such jurisdiction:-**

- (i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of-**
  - (a) any matter the publication of which is punishable under section 124-A or section 153-A or section 153-B or section 295-A of the Indian Penal Code (45 of 1860), or**

**(b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimation or defamation under the Indian Penal Code (45 of 1860),**

**(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code (45 of 1860), and the Magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behavior for such period, not exceeding one year, as the magistrate thinks fit.**

**(2) No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration or Books Act, 1867 (25 of 1867), with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf.**

**Section 109. Security for good behavior from suspected persons:- When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behavior for such period, not exceeding one year, as the Magistrate thinks fit.**

**Section 110. Security for good behavior from habitual information that there is within his local jurisdiction a person who-**

- (a) is by habit a robber, house breaker, thief, or forger, or,**
- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or**
- (c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or**
- (d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489-A, section 489-B, section 489-C or section 489-D of that code, of**
- (e) habitually commits, or attempts to commit, or abets the commission of offences, involving a breach of the peace, to**
- (f) habitually commits, or attempts to commit, or abets the commission of-**
  - (i) any offence under one or more of the following Acts, namely-**
    - (a) the Drugs and Cosmetics Act, 1940 (23 of 1940);**
    - (b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);**
    - (c) the Employees Provident Funds and Family Pension Fund Act, 1952 (19 of 1952);**
    - (d) the Prevention of Food Adulteration Act, 1954 (37 of 1954)**
    - (e) the Essential Commodities Act, 1955 (10 of 1955);**
    - (f) the ‘Untouchability (Offences)m Act, 1955 (22 of 1955);**



**(g) the Customs Act, 1962 (52 of 1962); or**

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

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

**such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the magistrate thinks fit.**

**Section 129. Dispersal of assembly by use of civil force:-**

**(1) Any Executive Magistrate or officer in charge of a Police Station or, in the absence of such officer in charge, any Police Officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.**

**(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or Police officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and action as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the**

persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

**Section 133, Conditional order for removal of nuisance:-**

**(1) Whenever a District Magistrate or a sub-divisional Magistrate or any other Executive Magistrate especially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-**

**(a) that any un lawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or**

**(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or**

**(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or**

**(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal support of such tree, is necessary; or**

**(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or**

**(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,**

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

**(i) to remove such obstruction or nuisance; or**

**(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or**

**(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or**

**(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or**

**(v) to fence such tank, well or excavation; or**

**(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order,**

**or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.**

**(2) No other duty made by a Magistrate under this section shall be called in question in any Civil Court.**

**Explanation:- A “Public place” includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.**

**Section 143. Magistrate may prohibit repetition or continuance or public nuisance:-**  
**A District Magistrate or sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not repeat or continue a public nuisance, as defined in the Indian Penal code (45 of 1860) or any special or local law.**

**Section 144. Power to issue order in urgent cases of nuisance or apprehended danger:-** (1) **In cases where, in the opinion of a District Magistrate, a sub-divisional Magistrate, or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.**

**(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed exparte.**

**(3) An order under this section may be directed to a particular individual, or to persons residing in particular place or area, or to the public generally when frequenting or visiting a particular place or area.**

**(4) No order under this section shall remain in force for more than two months from the making thereof:**

**Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.**

**(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.**

**(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).**

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

**Section 145. Procedure where dispute concerning land or water is likely to cause breach of peace:- (1) Whenever an Executive Magistrate is satisfied from a report of a Police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his court**

**in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute**

**(2) For the purposes of this section, the expression “land or water” includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.**

**(3) A copy of the order shall be served in the manner provided by this code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.**

**(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute;**

**Provided that, if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).**

**(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all**

further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under his sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

**(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.**

**Section 147. dispute concerning right of use of land or water:- (1) Whenever an Executive Magistrate is satisfied, from the report of a Police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his court in person or by pleader on a specified date and time and to put in written statements of their respective claims.**

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

**(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such further evidence, if any, as he thinks necessary and, if possible, decide whether such rights exists; and the provisions of section 145 shall, as far as may be, apply in the case of such inquiry.**

**(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right; provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a Police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been**



**exercised during the last of such seasons or on the last of such occasions before such receipt.**

**(4) When in any proceedings commenced under sub-section (1) of section 145 the Magistrate finds that the dispute is an regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1);**

**And when in any proceedings commenced under sub-section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) of section 145.**