

## CHAPTER – 13

### PREVENTIVE ROLE OF POLICE

- 288-1.** Law empowers the Police and the Executive Magistracy to prevent offences, breach of peace, and maintain public order. These powers inter alia include preventive arrests, security proceedings, removal of public nuisances, prohibitory orders and also deal with disputes that threaten peace. The powers are meant to provide a sense of safety, security and confidence in all sections of society. Prevention is as important as punitive action.
2. Section 132 Cr.P.C provides protection for certain acts done in good faith. This is a shield for bold and proactive initiatives in the best interests of preventing offences and breach of peace.

### **Unlawful Assemblies**

- 289-1** Section 129 empowers any SHO or police officer not below the rank of SI to command any unlawful assembly to disperse and if it does not disperse, may use such force as may be necessary and also effect arrest. The power conferred on the Police in this section is both preventive and punitive.

### **Prevention of cognizable offences**

2. Every police officer should take steps to prevent cognizable offences and for this purpose, he is empowered to arrest any person as a preventive measure (151 Cr.P.C) but a person who was arrested shall not be in custody (either Police or Judicial) for more than 24 hours unless a specific offence is made out in the meanwhile.
3. Section 41 Cr.P.C empowers a police officer to arrest any person without warrant in certain cases.

### **Preventive Action by Seizure**

4. As per section 95 CrPC, a police officer is empowered to seize any news paper, book or document, the publication of which is prohibited by a notification of the government on the ground that such publication is punishable under section 124A, or 153A, or 292, or 293, or 295A of IPC.

### **Urgent cases of nuisance or apprehended danger (Section 144 CrPC, 144 A)**

- 290-1.** According to Section 144 of CrPC a District Magistrate, Sub-Divisional Magistrate or any other Magistrate especially empowered by the State Government may, where immediate prevention and speedy remedy is desirable, by an order in writing direct any person to obtain from certain act or to take certain order with respect to property in his possession or management. The ground for making such an order is that it is likely to prevent obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety or a disturbance of public tranquility or a riot or an affray. The order is either prohibitory or mandatory. Urgency of the situation is the essence of this provision as otherwise the exercise of power will have no justification. The orders issued under the section are to remain in force for not more than two months and with State Government notification for not exceeding six months.

2. Under Sec 144 A CrPC the District Magistrate may, whenever he considers it necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by public notice or by order, prohibit any area within the local limits of his jurisdiction, the carrying of arms in any procession or the organizing or holding of, or taking part in, any mass drill

or mass training with arms in any public place. The orders issued under the section are to remain in force for not more than three months and with State Government notification for not exceeding six months.

3. The order can be issued ex-parte and can be directed against a person or persons residing in a locality or public generally when visiting frequently a particular area. The order under section 144 & 144A CrPC is an executive order. 'Curfew' orders are issued under section 144 CrPC only.

**Breach of Peace due to disputes over to immovable property - Action to be taken**

- 4-A. Section 145 arises when there is a genuine dispute between two parties relating to immovable property and there is an imminent threat to peace. The main feature of Section 145 CrPC is that when there is a bonafide dispute regarding land or water or boundaries and there is likelihood of breach of peace, the Executive Magistrate may pass an order directing the parties to appear and after having heard them and perusing the respective records pass final orders.
- B. The magistracy will keep the person in possession whoever is in possession at the time of dispute or whoever is disposed with-in two months prior to the dispute. The order will be in force till the matter is finally settled in the civil court. Land or water referred includes buildings, markets, fisheries, crops or other produce or land and the rents or profits of any such property. The Magistrate will not go into merits or claims of any of the parties or persons to possess the subject of dispute.
- C. Section 146 contains power of attachment and to appoint a

receiver under certain circumstances.

D. Section 147 relates to disputes that cause breach of peace relating to use of land or water.

E. Police must initiate action under this section under the following circumstances,

- The dispute must be genuine and there is equal claim by both the parties.
- There is imminent threat to peace.

### **Security for Good Behavior and Keeping the Peace**

**291-1.** Section 106 of the CrPC provides that a Court of Session or Court of a Magistrate of a first class may, at the time of passing sentence on a person convicted of certain specified offences or abetting any such offences as laid down under that section, order him to execute a bond for keeping the peace for any period not exceeding three years. Since the Judicial Magistrate after due trial and conviction orders the security, no separate enquiry is necessary. If the conviction is set-aside on appeal or otherwise, the bond executed shall become void.

2. An order under this section may also be made by an Appellate Court or by a Court, which exercises powers of revision.

3. In appropriate cases the SHO with the help of a prosecutor should file a memo in the court immediately after pronouncing the Judgment and before passing the sentence mentioning the reasons for taking security. If satisfied the court may take security up to 3 years commencing from the date of release from imprisonment.

### **Security for breach of peace – 107 CrPC**

**292-1.** Preventive action can be taken U/s 107 CrPC by an Executive Magistrate, if he has information through police or otherwise that any person is likely to commit breach of peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of peace or disturb the public tranquility and is of the opinion that there is sufficient ground for proceeding. He may thereafter require such person to show cause why he should not be ordered to execute a bond for keeping the peace for such period, not exceeding 1 year as he thinks fit. The Magistrate can take action whether such person(s) is residing in his jurisdiction or committing breach in his jurisdiction residing elsewhere.

2. Section 107 is an effective means for preventing breaches or disturbances of public tranquility in connection with religious processions, communal tensions, festivals, fairs, elections, caste conflicts, political movements or other disputes between factions. It is not essential in every case there should be two parties fighting against each other. It must however, be clear that a breach of the peace is imminent, unless averted by proceedings under the section. Courts have held that breach of peace does not mean only breach of public peace or that public should have assembled. Even if an individual is assaulted in his house it is relevant provided imminent breach of peace is anticipated as a result.

3. Before launching proceedings the police shall gather evidence, oral and documentary, of persons (including police officers) acquainted with the circumstances of the case regarding,

A. the specific occasion on which the breach of the peace is anticipated.

B. the existence of a cause, quarrel or other circumstance which is likely

to lead to the breach and the period of its duration,

C. the declaration of the parties indicating their determination to carry out, or to prevent, certain things in connection with the subject matter of quarrel,

D. the strength and following of the party or parties, and

E. attempts made for conciliation, with their results.

4. The statements recorded as above are not the statements U/s 161 or 162 CrPC and therefore it is not necessary to record them elaborately, short notes being sufficient. The witnesses can also sign them.

5. The object of this section is not to punish any person for what he has done in the past or to compensate the victim of an offence, but to prevent him from committing breach of peace. The main requirement is the apprehension or threatened breach of peace.

6. Arrests cannot be made u/s 107 CrPC. Only a Magistrate can issue a warrant u/s 113 CrPC if breach of peace cannot be otherwise prevented. Where the Police Officer feels that arrest is necessary he should report the circumstances to the Magistrate and obtain a warrant for arrest. However arrests may be made in urgent cases under section 151 CrPC, in the circumstances provided therein.

**293.** Section 108 of CrPC is intended to demand security bonds for keeping good behavior for a period not exceeding one year from persons who commit or about to commit offences under sections 124-A, 153-A, 153-B, or 295-A of IPC or criminal intimidation or defamation of a judge or an offence under

section 292 IPC. The main test is whether the person has been disseminating the offending matter and whether there is any apprehension of the offence being repeated. The matters referred to in the Section 108 (1) (i) (a), relate to such matter which is the vehicle of an attempt to promote enmity. Extremists or their active sympathizers may be bound over u/s 108 CrPC.

- 294-1.** Section 109 CrPC applies to such class of persons who are found taking precautions to conceal their presence with a view to commit cognizable offences. Both ingredients of concealment and with a view to commit cognizable offence should be present, before a person can be proceeded against u/s 109 CrPC The object of the section is to frustrate the criminal designs before they are carried out. It is purely preventive and not punitive. The security bond for good behavior can be taken under the section for a period not exceeding one year.
2. Concealment of presence is different from concealment of identity. The police officer must also be able to distinguish between a guilty person and a timid person. The following are some illustrations of cases where 109 CrPC will apply.
    - A. A person concealing himself at night with his companions in hedges near a village, giving wrong name and address and being unable to explain his presence, in hedges at night with house-breaking implement and refusing to disclose identity of his companions who had escaped into the jungle. As regards concealment, it has been held that it need not be continuous; even a single attempt of concealment may be enough.
    - B. Concealment of bodily presence in a house, or grove or hedge.
    - C. Concealing appearance by wearing a mask or covering his face or disguising himself by a uniform or some other manner.

## **Section 110 of the CrPC**

- 295-1.** The object of this section also is preventive, and not punitive, and the action is not intended as a punishment for past offences. It is aimed at protecting society from habitual offenders, desperate, dangerous characters and anti-social elements against the perpetration of crimes. It is intended to curb the dangerous activities of hardened criminals and secure the interests of community from injury at their hands. This section deals with habitual offenders in the cases under clauses (a) to (f) and desperate and dangerous characters under clause (g).
2. Clauses (a) to (f) deals with different types of habitual offenders. For the purpose of this section habit can be proved by evidence of general repute or otherwise.
3. Clause (g) deals with desperate and dangerous characters. He is a person who has disregard for the safety of persons and properties. Rowdies and goondas come under this category.
4. Sub-section (2) of section 41 empowers the SHO to arrest without warrant any person belonging to one or more categories described in sections 109 and 110 CrPC. The arrest may be followed by action under these sections.
5. The evidence of general repute relating to the habit of a person can be gathered from the local witnesses, from the aggrieved as well as from the entries of the incidents recorded by the police officer in the G.D. Though previous conviction is not necessary to prove the habit, such convictions will help the prosecution in strengthening their case. Security cases u/s 110 of the CrPC against local habitual criminals should be built up on details recorded in the Village Crime Notebook as well as the result of



careful surveillance and enquiries by the Police. It should be exceptional for a local criminal, for whom a history sheet has not been opened, to be put up under these sections.

6. The history sheet is a privileged document and is not generally produced in evidence. The evidence of persons who have direct and first-hand knowledge of them should prove information contained in it.
7. When evidence of suspicion against the respondent in certain crimes is spoken to by a Police Officer, he must substantiate his suspicion by giving cogent and convincing reasons. A vague suspicion is not enough to warrant the respondent being bound over under section 110 CrPC. Evidence of misconduct should relate to recent incidents and not acts committed by the respondent years ago.
8. Where several persons are jointly put up under section 110 CrPC, evidence of the offences by each of them should not be admitted as against others unless concert between them is shown.
9. The clause, which is applicable to each case, should be specifically stated in the information to be laid before the Magistrate.

**Note:** (1). Once information is laid before the Magistrate, under Chapter VIII CrPC it cannot be withdrawn. Section 321 CrPC (withdrawal from prosecution) has no application to security proceedings.

(2). Copies of the statements of witnesses recorded by the police officer need not be provided to the respondent, as the information laid before a Magistrate under Chapter VIII CrPC is not a police report within the purview of Section 173 CrPC.

(3). For all the enquiries contemplated in Chapter VIII of CrPC i.e. for obtaining security bonds u/s 106 to 110, Section 116 (3) provides for detention in custody of the respondents in certain circumstances. Similarly u/s 122 CrPC, the respondent(s) can be committed to prison by the Magistrate, if he has been ordered to give security u/s 106 or u/s 117 CrPC, but fails to give security on or before the date on which the period for which such security is to be given commences, or having executed a bond for keeping the peace in pursuance of an order of a Magistrate u/s 117 CrPC, commits breach of the bond. Police Officers shall use these provisions for effective maintenance of law and order and prevention of crime.

1. The Immoral Traffic Prevention Act 1956 empowers the Court while convicting a person who has been earlier convicted under this Act as well as under sections 363, 365, 366, 366-A, 366-B, 367, 368, 370, 371, 372, or 373 IPC for two years or more to notify his residence or change of residence for a period of 5 years. The Police should invoke this section by filing an application in the Court on the date of judgment; bring to the notice of the Court the records to prove the previous conviction. Such an application should be filed after conviction but before the accused is questioned about the sentence.
2. The Immoral Traffic Prevention Act 1956 also empowers the Police to rescue a person and to order closure of a brothel and eviction of offenders from the premises. The Police are required to file the information before the Sub-Divisional Magistrate to obtain an order under section 18 of the Act.
3. The Indecent Representation of Women (Prohibition) Act 1986 is intended to prohibit advertisements and wall posters depicting women in indecent postures.
5. The Juvenile Justice (Protection and care of children) Act 2000

empowers the Police to rescue neglected juveniles both boys and girls and produce them to the custody of the designated Juvenile Homes. Under no circumstances juveniles should be taken to the Police Stations.

### **Removal of Public Nuisances**

**296-1.** Section 133 CrPC empowers Executive Magistrate to deal with public nuisances either on receipt of report of a Police Officer or other information. The public nuisances that can be redressed and unlawful obstructions that can be removed from any public place etc. are indicated below.

- A. Obstructions or nuisance to any public place, or way or channel lawfully used by the public.
  - B. The conduct of any trade or occupation or the keeping of any goods or merchandise injurious to the health or physical comfort of the community including blaring of loudspeakers beyond the prescribed decibels of noise and prescribed time.
  - C. Construction of any building or disposal of any substance as is likely to occasion conflagration or explosion.
  - D. A building tent or structure or a tree as is likely to fall and cause injury to persons.
  - E. An unfenced tank, well or excavation near public way or place and
  - F. A dangerous animal requiring destruction, confinement or disposal
2. The duties of police in this regard are to inform the concerned Executive Magistrate promptly, all the matters falling in the purview of section 133 CrPC, on the lines as indicated below.
- A. The beat and patrol men are responsible for reporting such

instances without any loss of time.

- B. If any representation is made or information is received, it should be verified by a visit to the place by the Police Officers of the beat.
  - C. If they come across such nuisances, the details should be collected including photographs or sketch of the place and submitted to the SHO.
  - D. Private litigation or private interest should not be the basis for action by the Police.
  - E. It is not necessary that there should be danger or inconvenience already existing to the public at large, but it is sufficient if there is likelihood of such a thing, being caused.
  - F. The term public nuisance is defined in section 268 of IPC, which can be adopted for the purpose of this section. Section 12 of IPC states that the term public includes a class or community residing in a particular area but that class must be numerically sufficient to be designated as such. They should have a right vested in them irrespective of numbers. Public place includes also property belonging to State, camping grounds and grounds left unoccupied for sanitary or recreation purposes. A place in order to be public must be open to them where they have access by right, permission, usage or otherwise.
  - G. Action under this section is not barred by Environmental Protection Acts.
  - H. Untreated pollutants, dumping of solid wastes, letting out chemical substances, gases, vapor or this section besides specific provisions of law attracts dust, husk etc. The concerned agencies also have powers and responsibility. There should be mutual liaison between police and concerned departments and agencies.
- 3-A. Entries should be made in the Register kept for regarding the

brief details of all cases in which action is taken on report of police including the result. Separate entry should be made in respect of assistance rendered in cases taken up by Magistrate on his own or on information from other sources.

- B. Specific attention should be bestowed on cases that pollute air, water and earth, and cases where life of public is in danger. It should be remembered that action under this section is preventive, while punitive action may be under relevant law or laws.
  
- C. Evidence of experts should be collected and enclosed to the report particularly that of Engineers, Pollution Control Board, FSL etc.