

---

## THE ILLEGALITIES IN PEACE COMMITTEE MEETING

---

Parkkavi E, SASTRA Deemed to be University, Thanjavur

A **Peace Committee Meeting** is a formal or semi-formal gathering convened to address and resolve issues that could potentially lead to unrest or disturbances in the community. These meetings are rooted in the principles of dialogue, conflict resolution, and maintaining public order, often organized by local authorities or law enforcement agencies.

This article discusses executive magistrates, their jurisdiction, appointment, and their powers. A broad description of sections 107,133,145 is enlisted below. There is nowhere listed that executive magistrates can conduct peace committee meetings and no procedures are followed in peace committee meetings. The illegalities in peace committee meetings are huge because of political power and money. Certain Judgments by Justice. C. Swaminathan is quoted below stating that orders given in peace committee meetings do not have any legal statutory force.

### **Jurisdiction of Executive Magistrate:**

Under the control of state government, the local jurisdiction of Executive Magistrates to exercise their powers shall be determined by the District Magistrate. Unless so determined, the local Jurisdiction and powers of every magistrate shall extend throughout the district, which is said in **Section 21** of the Code of Criminal Procedure,1973 (Hereinafter Code) or **Section 16** of Bharatiya Nagarik Suraksha Sanhita,2023 (Hereinafter Sanhita)

### **Appointment of Executive Magistrate:**

The State Government is authorized to designate as many executive magistrates as it deems appropriate, with one of those appointments serving as the district magistrate in each district and metropolitan region under **sections 20** of the Code of Criminal Procedure, 1973, and **section 14** of Bharatiya Nagarik Suraksha Sanhita, 2023.

Any executive magistrate may be appointed by the state government to serve as an additional district magistrate. Under the Code, 1973 and Sanhita 2023, this magistrate will have the same authority as a district magistrate.

When a District Magistrate's office becomes vacant and another officer temporarily assumes control of the district's executive administration, that officer shall, until directed otherwise by the State Government, exercise all the authority granted to the District Magistrate and carry out all the responsibilities assigned under this Code and Sanhita.

The state government may appoint an Executive Magistrate to look after a subdivision and remove them from their position if necessary. The Magistrate assigned to oversee a subdivision is known as the **Sub-divisional Magistrate**. Nothing in this section will prevent the state government from granting a commissioner of police all or any portion of the authority of an executive magistrate concerning a metropolitan area, under any state legislation.

The Government appoints the following Officers as Executive Magistrates in each District.

Designation of the Officer and their Position

1. Collector Appointed as District Magistrate
2. Additional Collector Appointed as Addl. District Magistrate
3. District Revenue Officer Appointed as District Magistrate
4. Revenue Divisional Officer Appointed as Sub Divisional Magistrate
5. Tahsildar Appointed as Mandal Executive Magistrate

The Commissioners of Police in the Andhra Pradesh cities of Hyderabad, Secunderabad, Vijayawada, and Visakhapatnam have been given the authority of Executive Magistrates.

The State Government can designate Executive Magistrates, also known as Special Executive Magistrates, for certain areas or for the execution of specified tasks for any duration it deems appropriate in accordance with **Section 21 of the Code and Section 15 of the Sanhita**. Additionally, it may provide these Special Executive Magistrates any authority that this Code grants to Executive Magistrates.

Under the **Government Order. Ms.No.1487 dated 29.7.1989**, the Tamil Nadu government appoints all the regular taluk Tahsildars and deputy Tahsildars including special deputy

Tahsildars of all districts as special executive magistrates for an indefinite period, conferring all the powers as executive magistrates and specially empowering them to exercise the power under sections 133,143 and 144 of the code of criminal procedure,1973.

<b>Serial No</b>	<b>Sections in Code of Criminal Procedure,1973</b>	<b>Sections in Bharatiya Nagarik Suraksha, 2023</b>	<b>Powers of Executive Magistrate</b>
1	107	126	Security for keeping peace in other cases.
2	121	140	Power to reject sureties
3	133	152	conditional order for removal of nuisance
4	138	157	Procedure where he appears to show cause
5	139	158	Power to magistrate to direct local investigation and examination of an expert
6	140	159	Power of magistrate to furnish written instructions.
7	143	162	Magistrate may prohibit repetition of public nuisance.
8	144	163	Power to impose orders in situations of immediate disturbance or suspected danger.
9	145	164	Procedure in cases when a disagreement over land or water might lead to a breach of peace.
10	146	165	Power to designate a receiver and attach the unsettling matter.

11	174	194	Police should inquire with and report suicide and other incidents to the closest Executive Magistrate.
12	175	195	The ability to summon people.
13	176(1)	196(1)	Magistrate's enquiry into the cause of death.
14	411	451	Cases taken up by Executive Magistrates or withdrawn

**Purpose of Section 107 of the Code of Criminal Procedure:**

"Preventive and not Penal" is a key objective of this section. The objective of this section is to give the Executive Magistrate the authority to take proceedings to maintain peace involving violations of public peace or tranquillity.

**The Procedure under Section 107:**

An Executive Magistrate ought to look over the First Information Report (FIR) and any relevant material presented to him if he believes there are sufficient grounds to initiate action under Section 107 of the Code of Criminal Procedure that someone will violate the law, disturb public tranquillity, or commit any wrongdoing that could lead to a breach of the law, he should pass orders and record the same.

Following the Executive Magistrate's satisfaction, they will issue a **written order** under **Section 111** of the Code of Criminal Procedure outlining the information received, the amount of the bond to be executed, and a directive to the Respondents to justify why they shouldn't be ordered to execute a bond with or without sureties for a period not exceeding one year.

The contents of Section 111 are read over or explained under **Section 112** of the Code of Criminal Procedure on the scheduled date and time when all Respondents are present in court.

Summons are to be served by magistrates calling them to appear before the court if they are not present or if the person is already in custody, a warrant is to be issued to the officer who holds him under his custody to bring him before the court under **Section 113** of Code of

Criminal Procedure. The Magistrate may at any time issue a warrant for the arrest of the person if it appears to him, either through the report of a police officer or other information, that there is cause to fear that a breach of the peace will be committed and that the only way to stop it is to arrest the person right away.

Under **Section 114** of the Code of Criminal Procedure, Summons and warrants under Section 113 of the Code of Criminal Procedure accompanied by a copy of an order under Section 111 of the Code of Criminal Procedure should be got served through the concerned officer.

Each Respondent is then questioned about whether he admits to having committed the offense or wrongful act that is being brought against him; if he denies, the information should be recorded in writing using the prescribed form, with the Executive Magistrate duly attesting to his signature. Subsequently, summonses will be delivered to the Petitioner witness.

The inquiry under **Section 116 (1)** of the Code of Criminal Procedure will then begin as soon as all respondents appear, and they will be questioned to determine whether or not the allegations are true by taking evidence.

Under **Section 116(2)** of the Code of Criminal Procedure, the procedure for inquiry shall be made as prescribed for conducting trial and recording reasons in summons cases.

When the Executive Magistrate determines that urgent action is required to prevent a breach of peace or disturbance of public tranquillity, for reasons to be documented in writing, they may issue an order under **Section 116(3)** of Code of Criminal Procedure directing the Respondents to execute bonds for the amounts and with sureties specified in Section 111 of Code of Criminal Procedure to maintain peace until the inquiry is finished. If the Respondents fail to execute the bond, they may be detained in custody until the investigation is finished. Before an inquiry begins, it is not possible to order the execution of the interim Bonds.

The investigation required by **Section 116(6)** must be finished within six months of its commencement. If it is not, the proceedings under this Chapter will end when the six months have passed unless the Magistrate orders an alternate plan of action in writing. If an individual has been detained while the investigation is ongoing, the case against that individual will end after six months, unless it is resolved sooner.

A breach of the bond may be committed when an offense, whether it may be committed, is committed, attempted or abetment punished with imprisonment under **Section 120** of the Code of Criminal Procedure. Not all the information has to come from the police. The public could also be the source of the information.

Only recent instances of public disturbances or breaches of peace should be investigated. The existence of animosity between the opposing parties can be shown by past incidents.

***Rajender Singh Pathania & Others vs State of NCT of Delhi & Ors on 12 August, 2011(CrI.A. No-1582 / 2011)***

Preventive justice, not punitive justice, is the objective of Section 107 of the 1973 Code of Criminal Procedure or Section 151 of the Bharatiya Nagarik Suraksha Sanhita, 2023. According to Section 107 of the Code of Criminal Procedure, Section 151 ought to only be utilized in cases where there is an immediate threat to the peace or a possibility that it will be violated. A magistrate's authority under Section 107 to take action must be employed during an emergency.

**Farhan Nasir Khan Vs. State of Maharashtra ((2019) 09 BOM CK 0013)**

After considering all the evidence, the Honourable Full Bench concluded that the Magistrate must write an opinion following Section 111 of the Code of Criminal Procedure before proceeding to issue the show cause notice under Section 107 of the Code of Criminal Procedure. The opinion must also be annexed to the show cause notice.

### **Section 133 of the Code of Criminal Procedure**

According to Section 133 of the Code of Criminal Procedure, public nuisances may be handled by a District Magistrate, Sub Divisional Magistrate, or any other Executive Magistrate that the State Government has expressly authorized. A police report or other type of information can be obtained using this authority.

There are six categories in which public nuisances can be addressed under this clause.

1. Any unlawful obstacle or disturbance from a public area, path, river, or channel that the public uses or may use rightfully is classified as a public nuisance.

2. How any business or occupation operates, or how any goods or merchandise is stored, is hazardous to the community's physical well-being.
3. The construction of any structure or the removal of any material that could cause an explosion or fire.
4. Any structure, tent, building, or tree that has the potential to collapse and injure people.
5. Every excavation, well, or tank next to a public pathway.
6. Any dangerous animal that needs to be confined or disposed of in a certain manner.

Under **Section 133(1)** of the Criminal Procedure Code, the Executive Magistrate may issue a conditional order requiring the individual obstructing or bothering others, engaging in trade or occupations, maintaining any such property or merchandise, or owning or holding or in charge of any building, tent, structure, material, tank well, excavation, or owning or possessing any animal or tree, within the time frame specified in the order to remove any obstruction, nuisance, etc., or to destroy, confine, or get rid of any dangerous animal as stated above. If he objects, he must appear before him or another Subordinate Executive Magistrate to him at the time and location specified in the order and justify why the order shouldn't be made absolute.

No order properly issued by an Executive Magistrate pursuant to this Section may be contested in a civil court. (**Section 133(2)** of Code of Criminal Procedure)

If it is feasible, the order issued under Section 133(1) of Code of Criminal Procedure is served to the person it is made against by summons service. If it is not able to be served in this manner, a proclamation will be made, and a copy will be displayed conspicuously (**Section 134** of the Code of Criminal Procedure)

Person to whom an order is directed to comply or provide justification. The person against whom the order is made must either (a) carry out the act instructed by it within the time frame and in the way described in the order, or (b) appear in compliance with the order and provide justification for it. (**Section 135** of Code of Criminal Procedure)

Under **Section 135** of Bharatiya Nagarik Suraksha Sanhita, 2023

The appearance can be done in audio-video conferencing.

Under 57 of **Section 136** of Code of Criminal Procedure, following the issuance of a

conditional order, if the Executive Magistrate determines that there has been no justification or obeying the order, the order will become absolute, and he will be subject to the penalty outlined in Section 188 IPC. (Section 188 penalty of simple one-month prison imprisonment, a 200 rupee fine, or both).

Under **Section 223** of Bharatiya Nyaya Sanhita, 2023, the penalty amount has been increased to 2500 rupee fine and 6-month imprisonment.

Under **Section 137**, Where an order is made under section 133 to prevent obstruction, nuisance, or danger to the public in the use of any way, river, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, or place, and if he does, the Magistrate shall, before proceeding under section 138, inquire into the matter.

If the Magistrate finds reliable evidence to support the denial, the proceedings will be stayed until a competent Court decides on the existence of the right. Otherwise, the Magistrate will proceed as outlined in section 138.

If a person fails to deny the existence of a public right when questioned by the Magistrate under sub-section (1) or fails to provide reliable evidence to support their denial, they will not be allowed to deny it again in subsequent proceedings.

Under **section 138** of the code, if the person against whom an order under section 133 is made appears and show cause, the Magistrate will take evidence as if it were a summons case. If the Magistrate deems the order reasonable and proper, it may be made absolute without or with necessary modifications. If the Magistrate is not satisfied, no further action will be taken in the case.

Under **Section 157** of Bharatiya Nagarik Suraksha Sanhita, 2023. The proceedings under section 152 must be completed within 90 days which can be extended for the reason of writing to 120 days.

*M/s. Nagarjuna Paper Mills Ltd. v. Sub-Divisional Magistrate and Revenue Divisional Officer(1987 Cri LJ 2071)*, the Supreme Court held that a Magistrate could not make an order to remove pollutants from water discharged due to industrial waste on account of preventing

water pollution. This is because other laws, such as the Water (Prevention and Control of Pollution) Act, 1974, are exhaustive and were enacted to specifically deal with such issues. Further, while the remedies provided under Section 133 of Code of Criminal Procedure are remedial, the remedies given under the Act are preventive. The powers of a Sub Divisional Magistrate to make an order under Section 133 of Code of Criminal Procedure are taken away.

**Kachrual Bhagirath Agarwal and others vs. state of Maharashtra (2005 (9) SCC 36),**

The Executive Magistrate should undertake an inquiry and determine if there was trustworthy evidence before acting under Section 133 of the Criminal Procedure Code. The Supreme Court believes that before ending procedure under Section 133 of Criminal Procedure Code, the Executive Magistrate must undertake an inquiry. Section 133 of Criminal Procedure Code expressly contemplates the procedure for enquiry, namely, passing a conditional order and asking the respondent to show cause why the conditional decision should not be declared absolute.

**In Vasant Manga Nikumba and Ors. v. Baburao Bhikanna Naidu and Anr (1979CRILJ526),**

There is sometimes confusion between the Code's Sections 133 and 144. The former is more specific, whereas the latter is a more general rule. The Section 133 order is conditional, but the latter is absolute. The proceedings are more civil than criminal.

**DISPUTE TO IMMOVABLE PROPERTY: (SECTION 145 OF CODE OF CRIMINAL PROCEDURE).**

(Procedure when a disagreement over territory or water could result in a breach of peace.)

When two parties or groups disagree over who owns land, water, or its boundaries and the dispute is likely to disrupt the public peace, the Executive Magistrate with jurisdiction over the matter should act in accordance with Section 145 of the Criminal Procedure Code after receiving a report from a police officer or other information.

The nature of the disagreement, the description of the property, the people involved, and the nature of the threat to the public's peace should all be included in the police report or information. After being satisfied with this information, the Executive Magistrate issues a

**written order** pursuant to **Section 145 (1)** of the Code of Criminal Procedure, outlining the reasons for his satisfaction and mandating that the parties or the pleader involved to appear before him at an appointed day and time and **submit written statements** substantiating their respective claims regarding the fact that the subject of dispute is actually in their possession.

The parties receive this order in the same way that a summons is served and at least one copy thereof to be furnished at the conspicuous place (**Section 145 (3)** of the Code of Criminal Procedure).

The Executive Magistrate hears the parties, receives any evidence they may produce, takes any further evidence he deems necessary, and, if possible, determines which party was in possession of the subject of dispute on the date of the order made by him under sub-section (I). This determination is made without reference to who is the owner or who had the right to possession. The parties appear, and the written statements and other documents are filed on their behalf. (**Section 145 (4)** of Code of Criminal Procedure)

If a standing crop or other produce on the contested property is quickly decomposing due to natural causes, the Executive Magistrate may issue an order for the property's proper custody or sale. Following the conclusion of the investigation, the Executive Magistrate shall make any decision regarding the property's disposition or the sale proceeds that he deems appropriate. (**Section 145(8)** of Code of Criminal Procedure)

Under **Section 145(9)** of Code of Criminal Procedure, the Magistrate may summon witnesses to attend or provide documents during proceedings under this section, upon request from any party.

This section does not limit the magistrate's ability to act under section 107.

(under **Section 145(10)** of Code of criminal procedure)

The Executive Magistrate's authority to act under Section 145 of Code of Criminal Procedure will not be limited by the mere fact that a civil suit pertaining to the subject matter of the dispute is pending. Concurrent legal actions under Sections 107 and 145 of the Code of Criminal Procedure between the same parties are admissible.

Judgement **U. Ramanjaneyulu vs The State of Andhra Pradesh (Writ petition No.18610**

of 2019), the high court of Andhra Pradesh held that actions under Section 145 are not maintainable if the civil court has already solved the issue with the same subject. If the civil court has already resolved the matter, then the sub-divisional magistrate must advise the party to abide by its orders.

In **Mohd Shakir Vs State of Uttar Pradesh (2022 Livelaw (SC) 727)**, the question arises when the magistrate gives interim orders and observation in favour of one party when the proceeding is pending in civil court. The court held that the magistrate cannot make conclusions based on findings.

### **Peace Committee Meeting or Law-breaking Meeting: Understanding the legal challenges**

The orders given by executive magistrates in Peace committee meetings cannot be legally challenged in a court of law. What legal defence does a person have if their rights are violated?

The Code of Criminal Procedure, 1973 does not specifically disclose executive magistrates' ability to conduct peace proceedings, thus what authority do they have to pass an order by calling a peace committee meeting? who possesses the authority to challenge executive magistrates?

Certain **Judgments of Justice G.R. Swaminathan** quoting that orders given by executive magistrates in peace committee meetings do not have statutory value or force.

### **M. Mahesh Raja vs. The district collector on 6<sup>th</sup> July 2022 (W.P(MD)No.14354 of 2022)**

Decisions taken in peace committee meetings do not have any statutory force. They cannot be legally enforced. They are steps taken by the revenue authority to maintain peace in the locality. The power of authority to conduct peace committee meetings is not traceable in any particular provisions in the Code of Criminal Procedure.

### **Narayan vs. The district collector on 26<sup>th</sup> march 2024 (W.P(MD)No.7545 of 2024)**

The decision made at a peace committee meeting is being contested by the petitioner.

The peace committee meeting is not convened under any statutory provision and the decision taken therein has no legal value. The person breaching the same will not have legal

consequences and penalty. The petitioner can ignore the Peace Committee meeting also.

**V. Senthil Kumaran vs. the district collector on 6<sup>th</sup> December 2022(W.P(MD)No.27621 of 2022)** Decision taken in the peace committee meeting is not amenable to legal challenge because it does not have statutory value. The statutory authorities cannot enforce the decision taken in a peace committee meeting.

**Murugavel vs. State Representatives on 11<sup>th</sup> August 2022 (W.P(MD)No.18232 of 2022)** The petitioner challenges the decision taken in the peace committee meeting convened by Tahsildar. Since the Tahsildar's decisions lack any statutory value, they cannot be challenged in court.

Peace committees do not have legal authority to make binding decisions. They serve as platforms for mediation and negotiation, and their decisions are often based on consensus rather than legal mandates. The peace committee meeting is not legally done by following proper procedures. They simply call upon the parties to conduct meetings and pass orders. The role of political power by politicians or the majority is huge in peace committee meetings. Misusing of power and money is also there, and proper legal proceedings are not followed. Minority members are subjugated by the majority community. Orders given by an Executive Magistrate cannot be legally challenged in court then how a right infringed person seeks justice.

Section 145 deals with a specific situation that is likely to result in a breach of peace involving immovable property. Section 107 deals with the prevention of peace but in a general manner. Legal adjudication of land and water rights is to be done in civil courts.

Manage urgent situations that pose a threat to public peace which is to be done by the Executive Magistrate. The orders given by an Executive Magistrate under section 145 are generally temporary. The temporary measure allows for an immediate solution to the conflict leaving a permanent solution to the civil courts.

Executive magistrates can provide quicker, temporary relief compared to civil courts. They are involved mainly to immediately de-escalate tensions. The orders given by an executive magistrate under Section 145 are temporary.

In the case of **Dhaveethu vs. the District Collector**, a full bench of Justices V.

Ramasubramanian, N. Kirubakaran, and S. Vaidhyanathan answered four key questions. Those are,

The questions raised before them were,

1. Whether the jurisdiction of the Executive Magistrate affect if they pass the final order under section 145 without passing the preliminary order?
2. Is the magistrate's jurisdiction affected by the mere irregularity or illegality of not issuing a preliminary order?
3. If the failure to pass a preliminary order is deemed an irregularity, whether such irregularity automatically invalidate the final order even if there is no prejudice or miscarriage of justice?
4. If the absence of a preliminary order is considered an irregularity, whether the aggrieved party must raise the objection at the earliest possible time, or can be raised at any stage later?

Though the executive magistrate is obligated to issue a preliminary order under section 145(1), his absence will not affect his final order under section 154(4) of the code.

The failure of an Executive Magistrate to give a preliminary order under section 145(1) of the code is a simple formality, and it will not harm his jurisdiction.

Given the power of the executive magistrate, no prejudice will be given to parties.

The aggrieved parties have the right to appeal the decision made by the same body or, in the absence of that, to file a civil suit in the appropriate court.

In exceptional situations, they can seek judicial review under Section 397 of the Code or Articles 226 or 227 of the Constitution.

When a magistrate passes a preliminary order, they must satisfy

1. The arrival of subjective satisfaction

2. Recording of grounds for arriving at such satisfaction
3. Issuing the order in writing.

The final order should be vitiated because all executive magistrates are entitled to pass a preliminary order before a final order but in this full bench judgment, it is contradictory.

### **The Activities of Peace Committee Meetings should align with constitutional principles:**

#### **1. Fundamental Rights**

- ***Equality before Law (Article 14):*** Everyone who takes part in peace committee meetings must be treated equally, without differences based on gender, caste, religion, or place of birth. Article 14 would be violated if these meetings' actions result in discrimination of any kind.
- ***Article 19(1) (a): Freedom of Speech and Expression:*** *Everyone* in these meetings ought to be able to voice their ideas openly. Nonetheless, this freedom is subject to reasonable restrictions under Article 19(2), such as ethical standards and public order.
- ***Right to Life and Personal Liberty (Article 21):*** It is illegal to engage in any actions or make any decisions that endanger the lives or liberties of individuals.

#### **2. Article 51A, "Directive Principles of State Policy-Promotion of Harmony":**

Meetings of peace committees ought to be in line with the constitutional obligation to uphold peace and the spirit of fraternity among all people, despite differences in religion, language, and geography.

- 3. Rule of Law-** Peace committee meetings should operate within the framework of the law, ensuring that no activity undermines the rule of law. If the meetings involve or endorse any illegal activities, they would be unconstitutional.
- 4. Public Order and Security-** While maintaining public order is a legitimate objective, any action taken by a peace committee that undermines the democratic process or violates constitutional rights in the name of public order could be challenged as unconstitutional.