

**THE  
POLICE  
ACT,  
1861**

# **Police Manual**

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Form

# **THE POLICE ACT, 1861**

## **(Act V of 1861)**

Received the assent of the Governor-General on 22<sup>nd</sup> March, 1861

### **An Act for the regulation of police**

#### **Preamble: -**

Whereas it is expedient to re-organise the police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:

#### **1. Interpretation clause, -**

The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say, -

The words 'Magistrate of the district' shall mean the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled;

The word “Magistrate “ shall include all persons within the general police-district, exercising all or any of the powers of Magistrate;

The word “police” shall include all persons who shall be enrolled under this Act;

The words “general police district” shall embrace any I residency, State or place, or any part of any Presidency, State or place in which this Act shall be ordered to take effect.

The words “District Superintendent” and “District Superintendent of Police” shall include any assistant District superintendent or other person appointed by general or special order of the State Government to perform all or any district;

The word “property” shall include any movable property, money or valuable security;

The word “person” shall include a company or corporation;

The word “month” shall mean a calendar month;

The word “cattle” shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine.



Reference to the subordinate ranks of a police force shall be construed as references, to members of that force below the rank of Deputy Superintendent.

## **Comments**

## **SYNOPSIS**

1. Power of President and Governor.
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### **1. Power of President and Governor, -**

In our country every person who is a member of a public service, described in Article 310 of the Constitution, holds office during the pleasure of the President or the Governor. This power cannot be delegated by them to a subordinate officer being outside the scope of Article 154 and this tenure at pleasure is subject to the limitations, rather qualifications mentioned in Article 311. The Parliament or Legislature cannot abrogate or modify this tenure so as to infringe upon the overriding powers conferred upon the President/Governor and

they can only make a law regulating the conditions of service of the member and lay down and regulate the scope and extent of the doctrine of reasonable opportunity embodied in Article 311. But such law would be subject to judicial review.

## **2. Police Act preserved, -**

The Police Act, which was preserve of Section 243 of the Government of India Act, 1935, and the Police Regulation made in exercise of the powers conferred on the Government under that Act, continue to be in force under the Constitution so far as they are consistent with its provisions.

All laws which were in force in the territory of India upon the commencement of the Constitution, continued to remain in force under Article 372 (I) and Article 246 does not apply to any Act which was already in existence. The Police Act which was passed in 1861, at the time when no representative Government existed in our country, remained in force at the commencement of the Constitution and its constitutionality cannot be challenged regarding its applicability in the States.

**3. When validity challenged, -**

In case when the validity of an Act challenged the court will examine: (1) Whether the Act is a law with respect to the subject assigned to the particular Legislature (State) which enacted it; (2) Whether the State has passed the law only for its territories or any part thereof; and (3) Whether there is anything in any part of the Constitutions which place any fetter on the legislative powers of such State.

The Court is concerned to interpret the law, and if it is valid, to apply the law as it finds it.

The expression “subordinate police officers” has to be interpreted officers below the rank of the Deputy Superintendent of Police, after Government of India (Adaptation of Indian (Laws) Order, 1947.

**4. Duties to be exercised by, -**

Government Notification no. 1801/VIII. E-1070-62, dated 20-4-68 lays down as follows;

In pursuance of the provisions of Section I of the Police Act, 1861, read with Section 21 of the General Clauses Act, 1897, and in super session of Government Notification no. 205/VIII-E-1070-62, dated 2-3-1967, the Governor is pleased to order that all Additional

Superintendent of Police, Superintendents of Police, Rural Areas and Superintendents of Police City posted in various Districts of the State shall perform all the duties of a District Superintendent of Police under the said Act, within the limits of their local jurisdiction.

District Superintendent of Police empowered to issue search warrant Superintendents of Police (City), Kanpur, deemed District Superintendent of Police by virtue of notification no 1801/VIII-E-1070-62, dated 20-4-1968 and held empowered to issue search warrant. Ramesh v. State, 1978 ALJ 157.

## **2. Constitution of force, -**

The entire police establishment under a State Government shall for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled, and shall consist of such number of officers, and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.

Subject to the provisions of this Act the pay and all other condition of service of members of the subordinate ranks of police force shall be such as may be determined by the State Government.

## **Comments**

## **SYNOPSIS**

1. Powers of State Government
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8. Compulsory retirement.
9. Retirements held justified.

## **1. Powers of State Government.**

This section authorizes to State Government to formulate rules relating to the conditions of service of members of subordinate rank in the police force, provided they are not inconsistent with the provisions of Police Act. The rules are, therefore supplementary to the Act.

But the Government cannot amend or supersede statutory rules by administrative instructions. Where rules are silent, the Government can fill up the gaps supplement the rules by issuing consistent instructions. Where the rule does not warrant, the order of S.P. cannot impose or add any conditions on employee (1969 SLR 845).

## **2. Superintendent of Police meaning of –**

District Superintendent of Police and Superintendent of Police mean the same thing (AIR 1970 SC 122). But the Additional Superintendent of Police is not equal in rank with Superintendent of Police. The dismissal, of a person appointed by the Superintendent of Police, by the Additional Superintendent of Police is illegal under Article 311, Constitution, and *State of Bengal v. Jitendra Nath Pande*. 978 SLJ 256; 1978 Lab. IC 378.

### **3. Ministerial Staff, -**

The ministerial staff in the Police department has been given the rank of Assistant Sub-Inspector (M) and are members of the disciplined force, enrolled under Section 2 of the Police Act. Where in the claim petition cases (no. 475/T-5/80 no. V. Anand Bahari Saxena v. State decided on 27-3-81 and no V. 755/T-5/80 no V. Suresh Chandra Sharma v. State decided on 22-5-81) question of the appointing authority of the Assistant Sub-Inspector (M) and not the Superintendent of Police, on the analogy that the D.I.G., Police is the appointing authority of the Assistant Sub-Inspector (M) and not the Superintendent of Police, on the analogy that the D.I.G. is the appointing authority of the Assistant Sub-Inspector and Sub-Inspector of Police, holding the same rank.

The entire ministerial staff of Police Headquarters, Police Organisation and its units have been recruited to the new cadre and are subject to the various rules, regulations and orders made under the Police Act in respect of restrictions, liabilities and orders made under the Police Act in respect of restrictions, liabilities penal ties, privileges and facilities by G.O. no 7252/VIII-A-94-1966, dated September 6, 1966.

#### **4. Creation of temporary posts, -**

Temporary posts can be created in Police Force. Section 2 is wide enough to permit such creation, and it appears that it is now the general rule in the State that all new recruits are appointed at first in a temporary capacity. As such the persons appointed (recruited) on temporary basis, remained temporary employees throughout their service and were liable to termination on one month's notice. Nanakchand v. State 1971. All CrL. Reports (FB) 360

#### **5. Termination –Considerations, -**

In matter of termination of service of a temporary Government servant the main question is whether the order of termination is founded on misconduct or the misconduct was merely a motive for the order of termination. Where the order is based on the misconduct, it amounts to punishment and is violative of Article 311(2) otherwise the order is of termination simplicities, State of U.P. v. Bhoop Singh (AIR 1979 sc 684). The distinction between the motive and foundation is thin but clear. Notwithstanding the fact that the termination order purported to be in accordance with the terms of employment, the termination order of service was held arbitrary, not being on the ground of unsuitability unsatisfactory conduct or the like (Government Press v. D.B.



Balligappa, AIR 1979 sc 429). The executive is also expected to act fairly, founded on reason, which is the essence of the guarantee epitomized in Articles 14 and 16. Where the Government, instead of taking the view that it had lost confidence in the employee and considered him unsuitable for the job of trust and confidence, with abdurate persistency, stuck to the position that the services were terminated without assigning any reason, it amounted to the fact that the discretion was exercised arbitrarily. The reason was exercised arbitrarily. The reason showing the motive for the said reason showing the motive for the said order should be on the file to satisfy the Court that the service was terminated on account of unsuitability. In case where a temporary Government servant was caught red-handed while accepting bribe, there is no hard and last rule that his service cannot be terminated on the ground of unsuitability, provided the termination order should not be founded on misconduct. But such a view, as projected in G.O., dated 18-6-77, stands the risk of being viewed as a punishment in the back ground of the alleged criminal case. The refer side may be to suspend the employee. The G.O. no 43/1/71-Appoint-3, dated 14-9-1942 also explains this very view.

## **6. Determination of suitability, -**

Summary enquiry to determine such ability to continue held sufficient for order of termination. Full fledged departmental enquiry not necessary and Article 311 not attracted [1978 (I) SLR 404 SC], where the termination order, passed without stigma, was due to undisciplined behavior, it did not attract Article 311[1978(I) SLR 427]. Where the termination order was passed after reviewing performance of all ad hoc employees and juniors were retained, held it did not violate Articles 14 and 16[1978 (I) SLR 312]. Where the termination orders were innocuous and without stigma though on basis of complaint about irregularity it did not attract Article 311 [1978(I) SLR 60 Ali] While temporary or permanent posts have great relevancy in regard to the career of a Government servant keeping posts temporary for long, sometimes by annual renewals for several years and denying claims of incumbents on this score makes no sense and strikes as arbitrary, specially when both temporary and permanent appointees are functionally identified. *Baleshwardas v. State of U.P* (AIR 1981 SC 41).

**7. Where proceedings dropped. -**

Where the initiation of the disciplinary proceeding was dropped abruptly and simplicitor order of termination was passed, it was held a presence for getting rid of the employee and it exposed the authority to be charge *mala fide* in facts as well as in law. The order of termination was passed for unsatisfactory record which was found baseless, the order was found arbitrary and became capricious, 1980 (I) SLR 144 Bom SC cases also referred). Where the termination/reversion order was quashed on technical ground, there is no bar to holding of second enquiry on the same charges after reinstatement. U.O.I. v. P. N. L Dass, [1981 (I) SLR SC].

**8. Compulsory retirement, -**

Government's right to compulsorily retire an officer is derived from the Rules made by the State Government in exercise of the powers conferred by Section 2. The power conferred is incorporated in Article 465. [AIR 1965 All 142; 1964 ALI 791 (FB)].

Sections 2 and 7 of the Police Act does not debar the framing of premature retirement rules. The rules do not become invalid in absence of specific provisions of the Act, if source of power can be traced. Rules also do not partake of the nature of law made by the

Legislature. For all purposes of construction or obligation, they become statutory but not the Statute itself. Object of administrative instructions are to serve as a safety valve for the appropriate authority to decide according to the guidelines. *Gurdayal v. State* [1976(I) SLR 78 Punjab].

**9. Retirement's hold justified. -**

The order of compulsory retirement was held justified where it was plain and without stigma and burden to prove public interest was discharged by production of relevant materials to court [1978 (2) SLR 739]. The stigma must stem from the order itself and not be drawn out by a speculative process by reading into the order [1978 (2) SLR 781]. The tests which are applicable for determining the nature of order of termination would equally be applicable to determine nature of order compulsory retirement [1978 (2) SLR 471]. An order of compulsory retirement did not involve any evil consequence. [AIR 1971 SC 40]. Since compulsory retirement is not a stigma, the uncommunicated entries can be taken into account while making such order. *Union of India v. M. E. Reddy*. (AIR 1980 SC 63).

### **3. Superintendence in the State Government, -**

The Superintendence of the police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate, and except as authorized under the provisions of this act, no person, officer of court shall be empowered by the State Government to supersede or control any police functionary.

### **Comments**

Section 3, Police Act confers powers on the State Government; of superintendence over the entire police force of the State hence the Government is competent to direct I.G. Vigilance to take over the investigation of cognizable offence registered at P.S. There is no conflict between Section 3, Police Act and Section 173 (8), Cr. P. C. and I.G. Vigilance can exercise power of an officer in charge of a police station. State v. J. A. C. , Saldana [1980 Cr. LJ 98 SC).

The use of the word “rank” in Section, 36 Cr. P.C. Comprehends the hierarchy of police officers. Division of work, but not demarcating any local area indicated the jurisdiction extending over the whole of the State. The word “superintendence” in Section 3 of Police Act would imply administrative control enabling the authority enjoying such power to give directions to the subordinate to discharge its administrative duties and functions in the manner indicated

in the order. Where the subordinate, subject to such power of superintendence of the superior in discharging administrative and executive functions, obligations and duties, the power of superintendence would comprehend the authority to give directions to perform the duty in a certain manner, to refrain from performing one or the other duty, to direct some one else to perform the duty and no inhibition or limitation can be read in this power unless the section conferring such power prescribe one. This is the scope and ambit of power conferred by Section 3 of the Police Act on the State Government of superintendence over the entire police force of the State.

#### **4. Inspector General of Police etc,**

The administration of the police throughout a general police district shall be vested in an officer to be styled Inspector-General of Police, and in such Deputy Inspector-General and Assistant Inspector-General as the State Government shall deem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District superintendents, as the State government shall consider necessary.

#### **5. Powers of Inspector General – Exercise of, -**

The Inspector-General of Police shall have the full powers of a Magistrate throughout the general police district but shall exercise those powers subject to such limitation as may from time be imposed by the State Government.

**6** [Magisterial powers of police-officers.] [rep. By the code of Criminal Procedure, 18 2 (Act X of 1882).<sup>1</sup>

**7. Appointment, dismissal, etc., of inferior officers, -**

Subject to provision of Article 311 of the Constitution and to such rules as the State Government may from time to time make under this Act, the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks whom they shall think fit, remiss or negligent in the discharge of his duty or unfit for the same;

or may award any one or more of the following punishments to any police-officer of the subordinate ranks who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof namely;

- (a) fine to any amount not exceeding one month's pay;
- (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment- drill, extra guard, fatigue or other duty;
- (c) deprivation of good conduct pay;
- (d) removal from any office of distinction or special emolument.
- <sup>2</sup>[(e) withholding of increments or promotion including stoppage at an efficiency bar.

1. See now section 459 of the code of Criminal Procedure, 1973 (Act 2 of 1974).
2. Added by the Police (U.P. Amendment Act no II of 1944 and with retrospective effect from 1-4-19944, It extends to the whole of U.P. except Jaunsar-Bawar Pargana of Dehra dun and the portion of Mirzapur district south of Kaimur Range.



## **Comments**

### **SYNOPSIS**

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#### **1. Scope of the section, -**

Section 7 deals with disciplinary proceedings and Section 29 makes certain breaches in criminal offence where breach is covered by both provisions, it is not necessary that delinquent be prosecuted under section 29 first before Section 7 proceedings are taken (AIR 1969 SC 1020).

The section deals with powers of superior officers in regard to the control of their subordinated and they are empowered to punish the acts of negligence and not the offences. The departmental proceeding is not dependent upon the magisterial finding in an inquiry that the guilt has been made out and there may be cases where, despite the magisterial finding that no prima facie case is made out, Section 7 proceeding can be taken, because the standard of proof required before the court is more onerous than that required at the departmental trial, *Rajeshwar Prasad v. D. I. G., Police*, 1961 A Cr R 135.

The section does not make any distinction between an order of dismissal and removal except in case of removal from any office of distinction or special emolument. The word 'dismiss' used in Section 7 includes removal also. Every case of dismissal would not be one where the dismissed employee would be debarred from being re-employed. *Sarfaraz Ahmad, v. Election Tribunal*, 1973 ALJ 420.

Section 561-A Cr. P.C. (now section 482) has no application in an enquiry under Section 7 for the expunction of remarks passed in the inquiry (1972 All Cr R 83).

Rules regarding termination of service of temporary servant is not in conflict with Section 7, unless termination is by way of punishment. (AIR 1966 All 92).

**2. Section 7, 28 and 29 of the Act, -**

Section 7 and Sections 28 and 29 deals with different subjects. Section 7 provides dismissal removal or reduction in rank whereas Sections 28 and 29 related to judicial trial, which ends in employee's conviction and punishment according to penal law. The powers of punishment vested in a police officer by Section 7 are dependent upon the observance of the provisions (paras 489 to 494) of the regulation. The departmental proceedings are quasi-judicial as Rules I and 3 of Para 490 make it clear that hearsay evidence is inadmissible and the documents, which are to public record, or of formal nature or are not admitted, must be proved.

**3. Think-Meaning of, -**

In Section 7 the word ‘think ‘ has been used and not “found” or established, and it has its own purposeful meaning Think means “ to form or hold an opinion, to consider” which requires a lesser degree of positive certainty as regards the fact in controversy, Ahan those words and the process of thinking by the police officer has been given in the regulation.

The officer is liable to punishment on three charges, i.e. remissness, negligence in the discharge of duty or unfitness for the same. The right of action for damages must be based on contract or be conferred by the statute. There being no such provision a S.I. cannot claim damages for his wrongful dismissal from service by the I. G. Police and no action in tort lies against the Government.

#### **4. Misconduct defined, -**

Misconduct is not lack of efficiency, or failure to attain the highest standard of administrative ability while holding the high post. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would constitute misconduct. Lack of efficiency, lack of foresight and indecisiveness are deficiencies in personal character or personal ability, which would not constitute misconduct. The conduct which is blameworthy in the context of Conduct Rules

or are inconsistent with due and faithful discharge of duty is misconduct. Misconduct in the context of disciplinary proceeding means misbehavior involving some form of guilty mind or mens rea. Through gross or habitual negligence in performance of duty may not involve mens rea, but may still constitute misconduct, which would indicate lack of devotion to duty. The devotion to duty is opposed to indifference to duty or easy going or light-hearted approach to duty. U. O. I. V.J. Ahmad, (1979) 2SLR 840 (SC).

#### **5. Punishment-Not Court's jurisdiction, -**

It is not the correctness of the finding arrived at but the breach of the statutory duty or obligation on the part of the authorities dealing with the employee that can give him a cause of action before the Court (AIR 1954 All 487).

Holding of a departmental proceeding on the charge of negligence, after the employee's acquittal from court of a charge of corruption is maintainable (AIR 1955 Punjab 106).

Where the D.I.G. Police in appeal against reversion, considering the past record, the serious charge and that the behaviour showed that the indisciplined mentality was lingering in his mind with no improvement, dismissed the appeal and the employee,

it was held that the court would not interfere with the quantum of punishment as the was a matter which could best be decided by the officers themselves. Mohd. Sharif v. Onkar Singh (AIR 1957 All 217; 1960 ALJ 310).

## **6. Rules-Their validity, -**

Rules can be framed under Section 2 and 7 of the Police Act and under Article 309 of the constitution but not under Section 443 of the Government of India Act, 1935 (1976) SLR 78.

“Subject to such rules as the State Government may from time to time make under the Act” clearly indicates that the rules applicable to the police personnel are to be framed under this Act. (19959 ALI 96: AIR 1959 All 567). Thus the standing order issued by the I.G. Police would not be considered as a rule.

Section 7, Police Act and Rules there under are statutory rules and not administrative directions. Procedure must conform the provisions. Babu Ram Upadhya v. State AIR 1961 SC 751, The Rules framed under the Police Act have statutory effect and any violation is subject to challenge under Article 226. (1964 ALJ 432).

## **7. Removal from special emolument, -**

Para 478 read with para 478-A, Police Regulation indicate the procedure to be followed before imposing various punishments mentioned therein or in the Act. It is noticeable that neither of these two provisions prescribes any statutory procedure for imposing punishment mentioned in clause 7(d), i.e., removal from any office of special emolument, following thereby that the procedure prescribed by para 490, P. R. is not attracted. Thus neither the Act nor the regulation prescribes statutory procedure for imposing this punishment and the matter is left to general law.

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A person holding office as an In charge of Police station is entitled to a special emolument as a matter of right and the removal from such office is characterized by the Act as a punishment, showing inevitably that the in-charge officer has a right to the special emolument under his service conditions. The imposition of punishment would therefore amount to the taking away of a vested right. In this situation the principles of natural justice are traced and punishment could not be imposed except in consistency with such principles. So where the S.I, I. /e was removed from his office of special emolument without being given any opportunity, whatsoever, it violated the principles of natural justice and cannot be sustained. *Ram Iqbal Tewari v. D.I.G., Special Appeal No. 206/74*, decided on 1-8-74.

**8. Limitation of State Government,-**

Section 7 and 46 (2)- Government suo motto could not revise the order against which no appeal was filed. The delinquent official was exonerated of the charges but reverted on account of adverse confidential reports. The appeal against the reversion was accepted and the Government instead passed order of dismissal agreeing with the Enquiry Officer who had held the official guilty. *Maheshwarnath v. State*. (1971) 2 SLR 317 (SC).

**9. Limitation of Section 42 not applicable, -**

The period of 3 months prescribed for commencing prosecution under Section 42 is only with respect to prosecution for some thing done by him under the provisions of Police Act and not to prosecution for anything done under any other Act, by reason of Section 36 of the Police Act. *Ajab Singh v. Joginder Singh*, AIR 1968 SC 1422. This also does not apply to departmental enquiries taken under Section 7 of the Act *Kanhaiyalal v. state* 1958 Cr LJ 983.

**10. Disciplinary authority to be fair, -**



If the authority holding the departmental trial, offered himself as a witness and he himself granted the employee, it was in gross violation of natural justice. (AIR 1958 SC 86).

But a prosecutor cannot be a judge in his own case does not apply in departmental trials. It is in the fitness of things that the person who made appointment of the employee should himself decide whether the employee is fit to continue in the employment or not. (AIR 1961 Cal 179).

#### **11. Guiding Court decisions, -**

Transfer on equal post carrying same rank cannot be challenged for loss of emolument. It has been held in case S.K. Srivastav v. Union of India. 1971 SLR 454 that Government has the power to transfer a servant within the range of transferability, even if it results in loss of some advantages.

Police officer under suspension is not liable to render any service or perform any duty. He cannot be compelled to attend roll call, which is a part of his duty, and any order having such direction is illegal. Chitranjan Ghosh v. I.G.P.,(1979) 2 SLR 194.

Disciplinary action could be taken against an employee who without seeking redress from his

department or Government authorities seeks a decision from the Court (Vide G. O. No O-3237/II-B3252, date 24-45-1953) in respect of grievances arising out of his employment or condition of service. Section 7 does not actually make provision for any enquiry, rather lays that the exercise of the disciplinary powers will be subject to the rules framed by the State. Chapter 32, P.R. provided for departmental trial and punishment to be inflicted under section 7. A constable who was found to be immoral because he offered certain resentment to a woman with corrupt motive can be regarded unfit to discharge his duties and this ground is not outside the scope of Section 7. Whether a particular act makes one unfit to discharge his duty is a matter solely within the jurisdiction of the dismissing authority (1935 ALJ 547).

Where a sub-inspector gave notice under Section 80, C.P.C. to disciplinary authority about action of defamation suit for certain incident taking place during inquiry, he was not liable for disciplinary action of this as it did not relate to his conditions of service (AIR 1956 All 578: 1958 Cr LJ 1147).

The intention of the Legislative when it enacted Section 7 was that if a person belonging to the police force is biased or commits crime, he is certainly unsuited for discharging his duties and would render himself

unfit for retention in the force by his own improper act and conduct. (1963 ALJ 1036).

If a person belonging to the force abets or commits a crime or other act involving moral turpitude, he is certainly unfit for the discharge of his duty as an officer and may also render himself unfit to be retained in police force because of his won vicious act and conduct. (1964 ALJ 31).

In complaint against a police officer for offences under I.P.C. in a place other than separation district, the D. M. has jurisdiction to take Cognisance. V.P.Tyagi v. Ram Singh. 1975 Cr LJ 897 All.

## **8. Certificates to police-officers, -**

Every police-officer appointed to the police force other than an officer mentioned in Section 4 shall receive on appointment a certificate in the form annexed to this Act under the seal or the Inspector-General or such other officer as the Inspector-General shall appoint by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a police-officer.

## **Surrender of certificate, -**

Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

A police officer shall not by reason of being suspended from office cease to be a police-officer. During the term of suspension the powers, functions and privileges vested in him as a police-officer shall be in abeyance, but he shall continue subject to the same responsibilities, disciplines and penalties and to the same authorities, as if he had not been suspended

#### **Note**

The certificate issued to the police officer on appointment only vests with powers, functions and privileges of a police officer. It is not his appointment and a defective certificate does not affect the appointment (AIR 1967 Cal 436 ; 1967 Cr LJ 1130).

**9. Police officers not to resign without leave or two month's notice, -**

No police officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the District Superintendent or by some other officer authorized to grant such permission, or without the leave of the District Superintendent, to resign, his office unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

**Note**

This section does not give an independent right of resignation, rather it imposes a restriction of the general law to resign from service. Merely giving of a notice of resignation will not be complete after the expiry of the prescribed period as the competent authority may place further restriction on the rights of the officer resigning. A rule restricting the right of resignation is only a regulation of the condition of service and such rule can be made by the Government under Article 309, Para 505 includes such a condition and is valid. *Satyapall Kabra v. D. I. G., Police*, (AIR 1964 SC 204; AIR All. 121).

**10. Police officers not to engage in other employment, -**

No police officer shall engage in any employment or office whenever other than his duties under this Act, unless expressly permitted to do so in written by the Inspector General.

**11. [Police superintendent Fund]. [Rep, by the Repealing act, 1874 (XVI of 1874)]**

**12. Power of Inspector-General to make rules, -**

The Inspector-General of Police may, from time to time, subject to the approval of the State Government, frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of the police-force, the place at which the members of the force shall reside, and the particular service to be performed by them; their inspection, the description of arms, accoutrements and other necessities to be furnished to them, the collecting and communicating by them of intelligence and information; and all such to the order and rules relative to the police-force, as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and of rendering such force efficient in the discharge of its duties.

## Comments

1.	Rules and regulation.
2.	Rules.
3.	Administrative directions.
4.	Lawful order.

### **1. Rules and regulation, -**

It is the State Government that is empowered to frame rules regulating the condition of service of the members of the force. These rules are made by the Government under Section 2 of the Act but they are to be consistent with the provisions of the Act. The State cannot delegate these powers to the Inspector General Police and these rules have force as of statutory law.

### **2. Rules. -**

The Inspector General of Police is only empowered to frame rules under section 12 of the Act, for, amongst other purposes, preventing abuse or neglect of duty. These rules are subject to the approval of the State Government.

**3. Administrative directions, -**

There may be conditions where other orders from the Inspector General of Police may become necessary but they would be merely administrative instructions for the guidance of his officers. They will not determine service conditions nor confer any legal right that in the event of non-compliance could be a subject of complaint before a court; as such order has no statutory basis or legal efficacy as a service condition. (AIR 1964 SC 1361)

**4. Lawful order, -**

The Superintendent of Police may also, make special order as per necessity and they may be lawful order by a competent authority relating to the duties of the officers the breach of which may be punishable under Section 29 of the Act. An order to bind the officer must be given to him and to make him punishable for its non-compliance, the fact for its non-compliance, the fact of its service has to be proved.

The lawful order of Superintendent of Police may be an order regulating the routine work of 'sawars' of the Mounted force under his command or the order as to the duties of men under his command, or the like.

The provision of Section 7 are mandatory and orders emanating from unauthorized proceedings are



invalid. [AIR 1969 Punj 370]. Scope of Section 12 see AIR 1966 SC 1966; AIR 1969 Punj 131.

**13. Additional police officer employed at cost of individuals,**

-

It shall be lawful for the Inspector General of Police or any Deputy Inspector-General, or Assistant Inspector-General of Police or the District Superintendent, subject to the general direction of the Magistrate of the district on the application of any person showing the necessity thereof, to depute any additional number of police-officers to keep the peace at any place within the general police district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District superintendent, and shall be at the charge of the person making the application:

Provided that it shall be lawful for person on whose application such deputation shall have been made on giving one month's notice in writing to the Inspector-General, or Assistant Inspector-General, or to the District Superintendent to require that the police officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice,

**14. Appointment of additional force in the neighbourhood of railway and other works, -**

Whenever any railway, canal or other public work, or any manufactory or commercial concern, shall be carried on or be in operation in any part of the country, and it shall appear to the Inspector-General that the employment of an additional police force in such place is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory or concern, it shall be lawful for the Inspector-General, with the consent of the State Government to depute such additional force to such place and to employ the same so long as such necessity shall continue, and to make orders from time to time upon the person having the control or custody of the funds used in carrying on such work, manufactory or concern, for the payment of the extra force so rendered necessary, and such person shall there upon cause payment to be made accordingly.

**15. Quartering of additional police in disturbed or dangerous districts, -**

- (I) It shall be lawful for the State Government by proclamation to notified in the Official Gazette, and in such other manner as the State Government shall direct, to declare, that any area subject to its authority has been found to be in a disturbed or dangerous state or that from the conduct of the inhabitants of such area or of any class or section of them, it is expedient to increase the number of police.

- (2) It shall thereupon be lawful for the Inspector-General of Police, or other officer authorized by the State Government in this behalf, with the sanction of the State Government to employ any police force in addition to the ordinary fixed complement to be quartered in the areas specified in such proclamation as aforesaid.
- (3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police force shall be borne by the inhabitants of such area described in the proclamation.
- (4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, aforesaid, liable to bear the same and who shall not have been exempted under then next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.
- (5) It shall be lawful for the State Government by order to exempt any persons or class or section of such inhabitants from liability to bear any protection of such cost.
- (6) Every proclamation issued under sub-section ((1) of this section shall state the period for which it is to remain in force, but it may be withdrawn at anytime or

continued from time to time for a further period or periods as the State Government may in each case think fit to direct.

**Explanation, -**

For the of this section, “inhabitants” shall include persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents direct from raiyats or occupiers in such area notwithstanding that they do not actually reside therein.

**Comments**

**SYNOPSIS**

1.	Provision constitutional
2.	Object of the provision.
3.	Basis of caste or religion

**1. Provision constitutional, -**

This section is perfectly constitutional and does not offend Article 14 of the Court. The provision does not impose any tax or penalty upon the inhabitants of the disturbed area and it only makes them liable for the payment of the cost of stationing of the additional police force. The amount of cost is a fixed one, which can be ascertained and determined any time. The State Government's order for such realisation and the provision (Sub-section 3) cannot be challenged either on the ground of arbitrariness or on the ground of imposition of either on the ground of arbitrariness or on the ground of imposition of penalty. Sub-section (5) is also not discriminatory and violative of Article 14, as when read and construed with the whole of Section 15 it will be clear that the policy and principle of exemption can be deduced from the purpose and object of stationing the police force and it does to lay down any principle or policy for the guidance of the exercise of the discretion by the Government in this regard.

**2. Objection of the provision, -**

The object of stationing additional Police Force is to bring back the area to normalcy and it is expedient in the interests of law and order to make such persons responsible for the disturbance to bear the cost of the additional force. (M. Narayan Marthi v. State 1972 Cr Lj 532). Where the officers are of the opinion that the law and order situation at a place was grave and more stringent steps should be taken to maintain peace. The State Government is empowered to issue notification. Neither giving of any notice to the inhabitants of the locality is necessary nor any opportunity under section 15 (I) before holding any enquiry by the officers. The State Government may issue one or more notices under section 15 as per requirement of the sub-sections. Rayanarapu v. State, 1975. Cr LJ 754 AP). There should be valid enquiry for appointment of the tax (A.K. Kraipak v U. O. I, AIR 1970 SC 150). The District Magistrate could conduct such an enquiry, as he deemed necessary for the appointment of the tax under section 15 (4) of the Act (writ appeal no. 207 of 1973 (A.P.) by two judges, decided on 20-3-1974).

**3. Basis of caste or religion, -**

Imposition of tax or exemption there from only on the basis of caste or religion is unconstitutional. (State v. Pratap Singh, AIR 1960 SC 1208), but where persons included in the list belong to other caste also or community and also persons exempted belong to more than one caste, the imposition of tax cannot be said to have been based on consideration of caste (Rayavarapu v. State of A.P. 1975 Cr Lj 754 AP. Where the persons specified in the notification were alone made liable to bear the cost of additional police force, exempting the members of the opposite faction living in the same locality, the imposition was held to be discriminatory and offending Art 14 (B Aswartha v State, AIR 1966 AP 204; 1966 Cr LJ 741).

**15-A Awarding compensation to softeners from misconducts of inhabitants or person interested in land, -**

- (I) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt or loss of, or damage to, property has been caused by or has ensued from the misconduct of the inhabitants of such area or any class or section of them, it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct to make within <sup>1</sup>[three months] from the date of the injury or such shorter period as may be prescribed, an application for compensation to the Magistrate of the

district or of the sub-division of a district within which such area is situated.

<sup>1</sup>[Provided that the period of limitation for such application for compensation in respect of death or grievous hurt or loss of, or damage to property caused before the 1<sup>st</sup> day of April, 1939, shall be four months.]

(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the State Government, after such enquiry as he may deem necessary, and whether any additional police force has or has not been quartered in such area under the last preceding section, to-

- (a) declare the person to whom injury has been caused by or has such misconduct;
- (b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them; and
- (c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section;



Provided that the Magistrate shall not make any declaration or assessment under this sub-section, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

- (3) It shall be lawful for the State Government, by order, to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.
- (4) Every declaration or assessment made or order passed by the magistrate of the district under sub-section (2) shall be subject to revision by the Commissioner of the Division of the State Government but save as aforesaid shall be final.
- (5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

**Explanation, -**

In this section the word “inhabitant” shall have the same meaning as the last preceding section.

**Note**

Unless there is an allegation that the power has been abused by the State Government, the High Court will not interfere. (AIR 1955 All 9).

**16. Recovery of moneys payable under Sections 13,14,15 and 15-A, and disposal of same when recovered, -**

(1) All moneys payable under Section 13,14,15 and 15-A shall be recoverable by the Magistrate of the district in the manner provided by Sections 386 and 387 of the Code of Criminal Procedure, 1882 for the recovery of fines, or by suit in any competent Court.

(2) [Omitted by A.O. 1937]

(3) All moneys paid or recovered under Section 15-A shall be paid by the Magistrate of district to the person to whom and in the proportions in which the same are payable under that section.

**17. Special police-officer, -**

When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place or may be reasonably apprehended, and that police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or disturbance of the peace has occurred, or is apprehended it shall be lawful for any police-officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhoods as such police-officers may require to act as special police-officers for such time and within such lists as he shall deem necessary; and the contrary, comply with the application.

## **Comments**

## **SYNOPSIS**

1.	Appointment when Necessary
2.	Special Police Officers
3.	Limitation by the law

### **1. Appointment when necessary, -**

The three offences of (1) unlawful assembly, (2) riot, and (3) disturbance of the peace, mentioned in this section, indicate that appointment of such police officers should be made only when and where the crimes or offences of such nature that public peace or tranquility is threatened apprehended or have occurred. It may be remembered that the Police Act 1861, came into force when the provisions of Section 107 or 144, Cr P.C. did not exist. The words “disturbance of peace” used in this section, therefore, has to be given a liberal and broad construction to decide on the facts of each case and determine whether in a particular case, disturbance of peace as commonly or ordinarily understood has taken place or is apprehended.

## **2. Special police officers, -**

The appointment of special police officers and imposition of duties on them is not a forced labour incorporated in Article 23 (1). The kind of forced labour contemplated in the constitutional prohibition is of the nature of either traffic in human beings or beggar. The conscription for police service under this section cannot come in such category. So extent of forced labour is permitted by Article 23 (2), as a kind of compulsory service for public purposes and this also covers the provisions of such appointments. It will not

be proper to appoint a non-resident person as special police officer as Section 19 provides that they have to be residents of the locality in which the disturbance has occurred or is threatened.

**3. Limitation by the law, -**

Any right cannot be limitless and the law is itself to serve as a limitation for the exercise of the human rights by all the citizen within certain reasonable restrictions. Article 19 (I) (g) puts reasonable restriction on trade or business, right of free movement under Article 19 (I) (I) is also qualified by sub-clause (5) by imposing reasonable restrictions. Similarly an order under this section of the Act, by which the authorities are empowered to conscript the voluntary service of the residents to act as special police officers, are justified under the doctrine of reasonable restrictions. It is a civil obligation of every citizen to discharge this duty to the worthy obligation for service as a special police officer to help in removing the threat or breach of the peace of the locality

**18. Power of special police-officers, -**

Every special police officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities, as the ordinary officers of police.

**19. Refusal to serve as special police officers, -**

If any person being appointed a special police-officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.

**20. Authority to be exercised by police-officers, -**

Police officers, enrolled under this Act shall not exercise any authority, except the authority provided for a police officer under this Act and any Act, which shall hereafter be passed for regulating criminal procedure.

**Comments**

This section does not create any bar for respective police-officers to function as civil authorities for purposes of Foreigners (Internment) Order *Shahadat v. Superintendent Jail*, 1967 ALJ 201; air 1967 All II; Cr LJ II.

A police officer cannot under this section exercise any power conferred upon him under U.P. Excise Act but this section permits him to exercise authority conferred upon him by this Act. He can detect and bring offenders to justice and can lay any report (information) before a magistrate.

This section has to be read and construed as a whole and it would not be warranted to tear off phrase or clause from its context and give to it a meaning, which it can ever bear. The clause relating to the duty of a police officer to prevent the commission of an offence will not give power which can be used by a superior officer of the police to correct an erring subordinate under the protection of the words “prevent the commission of an offence.”

## **21. Village police officer, -**

Nothing in this act shall affect any hereditary or other village police officer unless such officer shall be enrolled as a police officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other village police officer shall be enrolled

without his consent and the consent of those who have the right of nomination.

**Police chaukidars in the Presidency of Fort William, -**

If any officer appointed under Act XX of 1856 (to make better provision for the appointment and maintenance of Police chaukidars in Cities, Towns, Stations, Suburbs and Bazars in the Presidency of Fort William in Bengal) is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district.

**22. Police officer always on duty and may be employed in any part of district, -**

Every police officer shall, for all-purpose in this Act contained, be considered to be always on duty and may at any time be employed as police officer in any part of the general police district.

**Comments**



The charge of failure to do duties against public servants must refer to the duties, which he is obliged to perform under law and moral considerations cannot be imported. State of U.P. v. B.N. Singh, 1972 SLR 454 All.

When a police officer, absent from duty, was brought to police station forcibly, where he used abusive language, it was held amounted to misconduct, even if he was not strictly on duty in view of section 22. Antonio Rodrigus v. I.G., Police, 1978 SLJ 512.

A police officer committing offence in plain clothes and on leave is to be considered still on duty and there is no bar to proceed against him departmentally. Bhoja Ram v. State, 1979 (2) SLR 459.

1. Now see Sections 421 and 422 of Criminal Procedure Code, 1973 (Act 2 of 1974).

### **23. Duties of police officers, -**

It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorized to apprehend and for whose

apprehension sufficient ground exists; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section without a warrant, to enter and inspect any drinking shop, gaming-house or other place of resort of loose and disorderly characters.

## **Comments**

## **SYNOPSIS**

1.	Scope of the section
2.	Duty of Police Officers
3.	Prevent the commission of Offence.
4.	Collecting and communicating Intelligence

### **1. Scope of the section, -**

This section gives wider powers to police to prevent the commission of offences, both cognizable and non-cognizable and to prevent breaches of Excise Law. Similar powers are conferred by the Cr. P. C. also. This section lays down details of some duties including “to collect and communicate intelligence affecting public peace” keep a watch over bad characters and potential criminals, to detect crime and bring the offenders to justice. The offence, includes offences under this Act, I. P. C. and under a special law.

## **2. Duty of police Officer, -**

Under Section 23 of the Police Act one of the duty of S. P. is to detect and bring the offender to justices. The words are wide enough to include the power to issue a warrant under Section 5 of the Public Gambling Act. As A. S. P., S. P. Rural and S. P. City. are empowered by the State Government Notification under Section I, Police Act (Notification No. 1801/VIII-E-1070-62, dated 20-4-68) to perform all the duties of the District Superintendent of Police, they are within their rights to issue a search warrant under Section 5, Public Gambling Act. *Ramesh v. State*, [1978 Cr Lj 626 (All) ; 1978 ALJ 157] and the decision rendered in *State of U. P. v. Lal Bahadur*. (AIR 1978 All 55) has lost its relevance after the issue of the notification, dated 20-4-1968.

**3. Prevent the commission of offence, -**

The words “prevent the commission of offence” does not give power to the police officers to correct the erring subordinates and this section is to be read as a whole. The violation of the order passed by the superior police officer directing the subordinate to vacate the unlawfully occupied premises does not come within the purview of this section (1956 CWN 789).

A police officer cannot seek production under this section for not constituting contempt of Court. (AIR 1958 Pun 471).

State Government has no power to modify Criminal Procedure Code by making a rule that orders of release passed by Magistrate must be communicated through Superintendent of Police, when the Magistrate sends the release order through the surety, the S.I. Police cannot refuse to obey it. (1938 All AIR 534).

**4. Collecting and communicating intelligence -**

Collecting and communication intelligence includes reports sent by S.I. to superior officer regarding suspicions against a person residing in his jurisdiction. (AIR 1930 Lah 592). But the powers under this section are circumscribed by provisions of Section 151, Cr. P. C (Air 1965 All 161).

Section 23, Police Act prescribes it as the duty of Police officers to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances. In this connection it will be necessary to keep discreet surveillance over reputed bad characters, habitual offenders but intrusive surveillance encroaching on the privacy of a citizen as to infringe fundamental right to personal liberty (Article 21) cannot be permitted. It has to be unobstructive and within bounds for the purpose of preventing crime confined to the limits prescribed by the rule. *Malak Singh v. State of Punjab* (1981 Cr Lj 320 SC).

**24. Police officers may lay information etc, -**

It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant search-warrant or such of the legal process as may by law issue against any person committing an offence.

**25. Police-officers to take charge of unclaimed property and be subject to Magistrate's order as to disposal, -**

It shall be the duty of every police officer to take charge of all unclaimed property and to furnish an inventory thereof to the Magistrate of the district.

The police officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

**Comments**

**SYNOPSIS**

1.	Power of seizure
2.	Summary proceeding.
3	Power of seizure,

The Cr. P. C. authorizes the police to seize the property but does not authorize to dispose it without the order of a Magistrate. Section 25 of the Police Act requires the police to take charge of unclaimed property and furnish its inventory to the Magistrate. They have to abide by the order of the Magistrate for the disposal of property (1967 Cr LJ 167; AIR 1963 Mani 35). But the Cr. P. C is silent about the disposal of property in case of which the police has drawn final report. If the police has to deal with it, normally it should go to the person from whose custody it was taken into possession. *Gar Bux Singh v. State* (AIR 1955 Ajmer 22). The safer course for the police is to seek direction from the magistrate though the order of the magistrate may not be under the provisions of Cr. P. C, but it will be the final order. (*Ram Pal v. State*, (1956 ALJ 727.).

#### **1. Summary proceeding, -**

The proceedings under this section are of a summary and the person aggrieved by any order may establish his right to property in Civil Court. (1956 Cr LJ 1253). An order by magistrate to open a certain house, take charge of said to be unclaimed, property and deposit it as directed is not a judicial order but an order purported to be made under this section. (1963 (I) Cr LJ 442). But an order passed by the magistrate relating to property when the dispute is over possession of the shop building and not over property, is not covered by Section 25. (1972 AWR 121.)

**26. Magistrate may detain property and issue proclamation,**

-

- (1) The Magistrate of the district may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto appear and establish his right to the same within six months from the date of such proclamation.
- (2) The provisions of Section 525 of the Code of Criminal Procedure, 1882 (X of 1882) <sup>1</sup>, shall be applicable to property referred to in this section.

**Comments**

Where a Magistrate decides a claim under this section, his order would be judicial and the aggrieved person may go in revision against the said order or may establish his right to property in the Civil Court. The proceedings under this Act are of a summary nature.

**27. Confiscation of property if no claimant appears, -**



- (1) If no person shall, within the period allowed, claim such property, or the proceeds thereof, if sold, it may, if not already sold under sub-section (2) of the last preceding section, be sold under the orders of the Magistrate of the district.
- (2) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under Section 26 to which no claim has been established shall be at the disposal of the State Government.

**28. Persons refusing to deliver up certificate, etc., on ceasing to be police officers, -**

Every person, having ceased to be an enrolled police-officer under this Act, who shall not forthwith deliver up his certificate and the clothing, accutremments appointment, and other necessities which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment with or without hard labour for a period not exceeding six months, or to both.

**29. Penalties for neglect of duty, etc, -**

Every police-officer who shall be guilty of any violation of duty or willful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody shall be liable, on conviction before a Magistrate to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both

## **Comments**

## SYNOPSIS

1.	Any rule or regulation.
2.	Lawful order
3.	Violation of duty.
4.	Competent authority.
5.	Limitation of Section 42 applicable.
6.	Departmental enquiry not excluded.
7.	Illustrative instances.

1. See Sections 528 of the Code of Criminal Procedure, 1898 (Act V of 1898), now see Section 4589 of Criminal Procedure Code, 1973 (2 of 1974).

1. **Any rule or regulation, -**

The use of the words “any rule or regulation” in this section cannot be interpreted to refer to the rules made by the I. G., Police under Section 12 or by the state Government under Section 46 of the Act only. It also refers to rules and regulations in general, without such restriction. The Government Servants’ Conduct Rules made by the Governor are also rules made by the competent authority coming within the scope of this section. It may be interpreted in terms of the

provisions of the General Clauses Act and to extend them to all rules regulating the conduct of police servants that have been framed by any competent authority under any law.

2. **Lawful order, -**

“Competent authority” occurring in this section cannot be confined to mean the I. G. only. These words have been used only in connection with lawful orders, the violation of which is sought to be punished under this section. It has to be clearly proved that the order itself, for violation of which the prosecution was made was a lawful order before a conviction under this section can be made. Where the order given by an officer was in contravention of any provision of the Police Act or Regulation, its disobedience will not entail conviction under this section.

The allotment of duties is a matter within the discretion of higher authorities and there will be no justification for the subordinate to refuse its performance. The proper course for him is to perform the allotted duty and in case of grievance he can be make representation to higher authority. His failure to perform duty may hold him guilty under this section.

3. **Violation of duty, -**

The expression “violation of duty” connotes something more than mere non-performance of duty. Under certain circumstances it may amount to “illegal omission” but s should be of some positive duty imposed by law which has to be proved that the employee was guilty of violation of duty which should have been done but he willfully failed to do that one must be found that he is guilty of more than mere neglect and it is necessary to inquire whether or not the violation of duty was deliberate and intentional or it was the result of his opinion that he ought not to quit the performance of one duty to perform another.

#### **4. Competent authority, -**

Any rule or regulation made by competent authority:  
The expression “any rule or regulation made by competent authority” does not only refer to rules made by the I. G., Police under section 12 or by the government under Section 46 of the Act. The rules and regulations in general made by the Governor, like Government Servant’s Conduct Rules, are rules made by the competent authority and are covered by the scope of this section [AIR 1962 All 507 : 1962 (2) Cr Lj 459]. Similarly “lawful order” refers to any order which any officer may lawfully give to any individuals or body of individuals under this command. The offence under this section is not limited to the willful breaches or

neglect of a rule or regulation or a lawful order but also includes any violation of duty. When the order is not lawful its breach does not warrant conviction. Lawful authority means an order, which the authority is competent to make.

**5. Limitation of section 42 applicable, -**

Section 29/42. Act a plea not raised before the lower Court can be allowed to be raised for the first time before the Supreme Court if the plea involves only the determination of law point. Prosecution under Section 29, Police Act was barred by limitation under Section 42 of the Act, and it has to be commenced within 3 months from the completion of the act committed. *Pritam Singh v. State*, AIR 1973 SC 1354; 1978 CrLJ 1152; 1971 SCC 653. But limitation will not apply to the prosecution under Section 218, I.P.C., or under other Acts. *71 Maulud Ahmad v. State of U.P.*, AIR 1964 (2) Cr Lj (SC).

**6. Departmental enquiry not excluded, -**

Section 29 does not limit the operation of Section 4, Police Act, which deals with disciplinary proceedings while Section 29 makes certain breach a criminal offence. It is not necessary to prosecute the police officer first under Section 29, P. Act before

departmental proceeding. State of U.P. v. Harish Chandra, AIR 1969 SC 1020.

This section does not exclude a departmental enquiry (AIR 1969 SC 1020). The acts or missions under this section are tribal by summary procedure and “on conviction before a magistrate” makes it tribal by a magistrate only and not by the Sessions Judge. An appeal however, lies against the order of such conviction. But the prosecution of a police officer under this section must be done within the limitation period provided under Section 42, Police Act.

7. **Illustrative instances, -**

Handing over of the police diary to Mukhtar is an offence under this section. A constable refusing to turn out for drill in contravention of the order of head constable in charge of the police station is guilty of the offence. If a Sub-Inspector fails to obey the order of S.P. to register a case against a person and send up for trial he commits this offence. But If he did not record the statements of certain persons, or search a house, in absence of criminal intention he will not be guilty for this offence. Where the S.P. orders a S.I. to report to lines and places him under suspension because his continuation on duty while pending inquiry against him is prejudicial to public interest, the officer committing breach of the order is punishable under

this section. If the police official makes wrong entries in police diary and conceals bail bonds instead of producing them in court he commits an offence.

Where the police officer did not go to civil hospital but placed himself under the treatment of a private practitioner, he should not be held guilty under this section, as the law does not require the officer to enter a civil hospital only. The prosecution of constable for his refusal to cut jungles near the police lines, as ordered by the S. P. May fail if it is not shown that S. P. Was competent to order so as in that case there may not be any violation of duty. Lawful order mean an order which the authority is competent to make if the drill instructor is ordered by authority to perform the duty of a guard, his refusal to do so makes him guilty because allotment of duties is a matter within the discretion of higher authorities. If the S.P. orders S.I. to be confined to this quarter for more than 15 days, in contravention of para 478, PR, its disobedience will not entail punishment (1956 ALJ 181). The absence of a constable from barrack or parade for a certain period may not be punishable if it is not proved that it was in violation of some duty or willful breach or neglect of some rule or regulation or lawful order made by competent authority. Willful disobedience of order of S.P. to carry out the transfer order is punishable under this provision. If the police officer is really ill and failed to report for duty after leave, his failure to



report is not without reasonable cause. If a constable, while protecting persons from rioters is also carried into a building by persons who were protected and they refused to let him go out is not guilty of cowardice under this provision. The detention of a prisoner for more than 24 hours is an offence under this section.

**30 Regulation of public assemblies and processions and licensing of the same, -**

- (1) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares and prescribe the routes by which, and the times at which, such processions may pass.
- (2) He may also, on being satisfied that it intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collection such assembly or directing promoting such procession shall apply for a license.

- (3) On a such application being made, he may issue a license specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section : provided that no fee shall be charged on the application for, or grant of any such license.
- (4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

## **Comments**

## **SYNOPSIS**

1.	Power to control and regulate.
2.	Satisfaction and in judgment of.
3.	Road thoroughfare and public place
4.	As occasion requires.
5.	Rights not fettered.

**1. Power to control and regulate, -**

Sub-section (1) of this section empowers the Police control and regulates processions but not to forbid or ban it. The power to control does not include the power to forbid and order banning the procession is ultra virus the powers of police. Those who convene a meeting (assembly) or take out a procession may be required to obtain a license from the S. P. The S. P. may subject to the conditions under sub-sections (2) and (3), lay down conditions, for the conduct of the assembly or procession, which should be bona fide and fairly calculated to attain the purpose of preserving law and order and the conditions should not be arbitrary or capricious.

**2. Satisfaction and in judgment of, -**

The “satisfaction” of the S.P. and in the “judgment” of the Magistrate, used in the section, has firmer connotation than “apprehension”, which requires that the authority must have applied its mind to the matter and have come to the considered conclusion about the situation and circumstances of the case.

### **3. Road, thoroughfare and public place, -**

There is a difference between “a road, street or thoroughfare” and “the public place”. The idea of a thoroughfare is the right of the public to pass and repass over it but the place to which the public are entitled to go, and over which they have no right of way is not a thoroughfare. A thoroughfare can include a public place but every place of public resort cannot be a thoroughfare for purpose of this section. A place used by the public for passing from one place to another is a thoroughfare covered by this provision but its connotation will not include a place where the public have a right to resort. The road, street thoroughfare is in relation to “assembly” so any procession in any public place whether road, street or thoroughfare or not, should be covered by this provision. Where an assembly becomes a procession, even if it is not on public road, it should become the subject of control within this section (sub-section 2).

A procession is only an assembly in motion, that consciously intends to go from one place to another or to a place and back and when the procession is in a public place, the provisions of this sub section (2) should apply.

**4. As occasion requires, -**

“As occasion requires” in sub-section (I) does not empower the S.P. to lay down a general interdict or to pass an order which can be in operation for a particular period. The condition for the promulgation of the order is a meeting or a procession in contemplation, some thing immediate or in prospect which should satisfy the authority on the point that any persons or class of persons intend to collect an assembly or take out a procession. What is remote or something likely to happen in distant future is not within the scope of occasion. This occasion may be religious, political, economic or social or may be anything, and may arise anyhow, may arise at any time and may be of varying duration, but it must be an occasion. Something which happens every day is not an occasion and sub-section (I) is not meant to control every day conduct. Existence of factions and a protracted state of cold war between them is not an occasion but when some incident has brought the factious feeling to a boil, the situation is an occasion. The occasion may not end with one assembly or procession and may continue in respect to any number of assemblies or processions at the same occasion but the sub-section does not contemplate a general order over a prolonged stretch of time to take

in the assemblies which no one had thought of forming at the time of passing of the order.

**5. Rights not unfettered, -**

If there is a fundamental right to hold public meeting in a public street then a rule (Rule 7 under Bombay Police Act) ) framed by the Commissioner of Police, which gave unguided discretion, practically dependent upon the subjective whim of the authority to grant or refuse permission to hold a public meeting on public street, cannot be held to be valid and has to be struck down on the ground that it afforded no guidance and gave arbitrary power to the police. *Himatlal v. Commissioner of Police*, AIR 1973 SC 87; 1973 Cr LJ 204. But the fundamental rights guaranteed under Article 19 (1) (a) and (b) and 25 of the Constitution are not unfettered and absolute. The right freely to propagate religion is subject to the condition that it does not violate similar fundamental rights of the followers of other religions. If in the judgment of the authority, the collection of the assembly, if uncontrolled, would be likely to cause a breach of peace, the power to grant the license for holding a meeting at the places mentioned in the section can be exercised. *Bedi Gurcharan Singh v. State*, 1975 Cr LJ 917 Punjab.

Where the report does not disclose any issue of motive under Section 30 (2) of the Act, and also does not suggest that the petitioners disobeyed any order issued under Section 30,30-A and 31, the Cognisance by Magistrate on police report which does not disclose any offence, has to be quashed, Ram Brichha Chaudhari v. State 1974 BLJR 563.

**30-A Powers with regard to assemblies and processions violating conditions of license, -**

- (1) Any Magistrate or District Superintendent of Police or Assistant District superintendent of Police or Inspector of Police or any police officer in charge of a station may stop any procession, which violates the conditions of a license granted under the last foregoing section, may order it or any assembly, which violates any such conditions as aforesaid to disperse.
- (2) Any procession or assembly, which neglects or refuses to obey any order given under the last preceding subsection shall be deemed to be an unlawful assembly.

**Notes**

Members of the procession violating the condition of license under which the procession is being taken out can

make the assembly unlawful: Harihar Das v. State, 1968 CLJ 564.

**31. Police to keep order on public roads, etc, -**

It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, ghats and landing places and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, during the time of public worship and in any case when any road, street, thoroughfare, ghat or landing-place may be thronged or may be liable to be obstructed.

### **Comments**

This Section obviously intends to empower the police to regulate traffic on public roads, prevent the commission of offence on such place and prevent obstruction also. The police can issue orders to keep the order and it may be written, verbal or by signs also. There is no specific reference to the issue of the order in this section as it would not be possible to enumerate all possible orders that may be required for keeping order on the public road.



**32. Penalty for disobeying orders issued under last three sections etc, -**

Every person opposing or not obeying the orders issued under the last three preceding section or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of police for the use of the music, or for the conduct of assemblies, and processions shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

**33. Saving of control of Magistrate of district, -**

Nothing in the last four preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

**34. Punishment for certain offences on roads etc, -**

<sup>1</sup>[(I)] Any person who, on any road or in any open place or street or thoroughfare within the limits of any town to which this section shall be specially extended by the state Government commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents (visitors)<sup>1</sup> or passengers shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty

rupees, or to imprisonment with or without hard labour not exceeding eight day, and it shall be lawful for any police-officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely: -

**First-Slaughtering cattles, furious riding, etc,-**

Any person who slaughters any cattle or cleans any carcasses ; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle;

**Second- Cruelty to animals—**

Any person who wants only or cruelty beats, abuses or tortures any animals;

1. Section 34 renumbered as 34 (I) and 'Section' replaced by 'Subjection' and also the word "visitor" by the Police (U. P. Amendment) Act (no. 32) of 1952.

**Third—Obstructing passengers, -**

Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public;

**Fourth- Exposing goods for sale,-**

Any person who exposes any goods for sale;

**Fifth—Throwing dirt into street, -**

Any person who throws or lays down any dirt, fifth, rubbish or any stones or building material; or who constructs any cowshed, stable or the like, or who causes any offensive matter to run from any house, factory, dung heap or the like;

**Sixth—Being found drunk or riotous,-**

Any person who is found drunk or riotous or who is incapable of taking care himself;

**Seventh—Indecent exposure of person, -**

Any person who willfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose;

### **Eight Neglect to protect dangerous places,-**

Any person who neglects to fence in or duly to protect any well, tank or other dangerous place or structure.

- <sup>1</sup>(2) The State Government may, by notification in the official gazette, extend to any rural area, specified in the notification, the provisions of sub-section (I, and thereupon its provisions shall apply to such area as if it were a town to which the said sub-section has been specifically extended.
- (3) The extension under sub-section (2) shall be for a specified period and in respect of all or any of the offences as may be specified.

### **Comments**

### **SYNOPSIS**

1.	Requirements of the law Ingredients
2.	For example.

**1. Requirements of the law: Ingredients, -**

This section does not give any authority to police officer to peruse the man and arrest him. When no such offence as contemplated by the section was committed in view of the police. In cases under this section evidence has to be adduced to prove that the act complained of had occasioned inconvenience, annoyance, risk danger or damage to the residents, public or passengers and the nature of the act may be relevant in determining it. In some case the act complained might be such that an inference of annoyance etc. can well be raised and further evidence may not be necessary to prove the conduct attributed to the person.

The obstruction should be such as to cause inconvenience or danger to public. Police should ask the offender to remove it and on his refusal to do so an offence is made out for taking action against him.

1. sub-sections (2) and (3) have also been added with effect from 20-11-1952 by the Police (U.P) Amendment) Act (No. 32) of 1952.

## **2. For example, -**

If one is found drunk and incapable of taking care of him he may not be liable for punishment unless his demeanour was to the obstruction, annoyance, risk danger or damage to the damage to the passengers on the road. But if police personnel is found drunk at a public place or has become addicted to liquor and convicted for this offence, it involves moral turpitude also. The driving of an 'ekka' with overloading and without torturing the horse may not amount to cruelly abusing it but the driven horse having 'barsati' sore which is cosign and likely to cause damage and risk to people and causing annoyance to the looker amounts too cruelly abusing the animal and an offence under this section.

Evidence of Police officials was accepted by the Courts that the accused attempted to sell cinema tickets of higher rates, which came under this Provision. (Sridhar v. State of Orissa, 1982 Cr Lj 506 Orissa).

<sup>134</sup>.-A Compounding of offences under Sections 32 and 34—The offences punishable under Sections 32 and 34 may be compounded by the District Superintendent of Police.

35 Jurisdiction, -

Any charge against a police officer above the rank or constable under this Act shall be required into and determined only by an officer exercising the powers of a Magistrate.

## **Comments**

## **SYNOPSIS**

1.	Purpose of the provision.
2.	Magistrate and powers of Magistrate.
3.	No conflict between Section 7 and 35
4.	Charge-Its meaning.

**1. Purpose of the provision, -**

This section is intended for judicial enquiries into the charges under this Act and not to departmental enquires. It speaks of the charge and it is incumbent that the enquiry and determination of the charge shall be made by an officer exercising the powers of a Magistrate.

**2. Magistrate and powers of Magistrate, -**

There is a vital difference between “a Magistrate” and “an officer exercising the powers of a Magistrate”. “Magistrate” includes a person who does to enjoy all the powers of a Magistrate as Magistrate of the 1<sup>st</sup> class or 2<sup>nd</sup> class but the officer exercising the powers of a Magistrate used under Section 35 refer to only a Magistrate of the first class. The word “a Magistrate” used in sections 28 and 29 of the Act do not render the provision of Section 35 redundant.

**3. No conflict between Sections 7 and 35, -**

There is no conflict between the provisions of Section 7 and Section 35 as the former deals with departmental proceeding while the later contemplates judicial proceedings and will to be attracted in case of



proceeding under Section 7. (1957 Cr Lj 394 ; AIR 1954 Cal. 60). But in view of the omission of Section 6 by the amending Act of 1882, the provision of Section 35 are contradictory to the provisions of Section 7 and it should be given effect to in preference to that of Section 35. (AIR 1955 all 400).

1. Section 34-A has been added by the Police (U.P. Amendment) Act (no. XII of 1957) with effect from 30-3-1957.

#### **4. Charge—its meaning, -**

The provisions requires that the offence committed under this Act by a police officer above the rank of a constable is to be tried by a first class Magistrate but it does not mean that departmental enquiry cannot be held with respect to it where it is also possible to prosecute him (AIR 1960 SC 1210; 1960 Cr Lj 1971). This section does not apply to departmental enquiry. The word “charge” in this section retains the same meaning which it carried before the amendment in 1882 (1956 Cr Lj 174 ; AIR 1956 All 96). The proceedings contemplated by section 7 and this section are not alternative but cumulative.

Section 35 as it expressly state applies to charges under the Police Act and not to the charge for

an offence under the IPC (1975 Cr Lj 897 All : V.P. Tyagi v. Ram Singh).

**36 Power to Prosecute under their law not affected -**

Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any of the Regulation or Act for any other or higher penalty or punishment than is provided for such offence by this Act;

Proviso,- Provided that no person shall be punished twice for the same offence.

**37. Recovery of penalties and fines imposed by Magistrates, -**

The provisions of Section 64 to 70, both inclusive, of the Indian Penal Code XLV of 1860, and of section 386 to 389 both inclusive, of the Code of Criminal Procedure 1882 (X of 1882) <sup>1</sup> with respect to fines shall apply to penalties and fines imposed under this Act on conviction before a Magistrate:

Provided that notwithstanding anything contained in Section 65 of the first-mentioned Code, any person sentenced to fine under Section 34 of the Act may be imprisoned in default of payment to such fine for any period not exceeding eight days.

- 38. Procedure until return is made to warrant to distress ]  
[Repealed by Section 14 of the Police Amendment Act,  
1895 (VIII of 1895).**
- 39. [Imprisonment if distress not sufficient.] [Repealed ibid].**
- 40. [Levy fines from European] [British subject] [Repealed  
ibid].**
- 41. [Rewards to police and informers payable to General  
Police Fund.]**

**[Repealed by the Government of India Adaptation of Indian  
Laws Order, 1937.]**

**42. Limitation of actions, -**

All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the District in which the act was committed, one month at least before the commencement of the action.

1. See the Code of Criminal Procedure, 1898 (Act V of 1898). See now code of Criminal a Procedure (Act 2 of 1974), Sections 421 to 425.

**Tender of amends, -**

No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such section is brought or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant, and, through a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action:

Proviso-      Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

## **Comments**

### **SYNOPSIS**

1.	Scope of the provision.
2.	Its applicability.
3.	Whether notice necessary.
4.	Where this section does not apply
5.	All actions.
6.	Not applicable to Section 7.
7.	Interpretations.

#### **1. Scope of the provision, -**

The departmental proceedings under Section 7, Police Act cannot be regarded as an action or prosecution against any person as contemplated under this section. This section even does not have any application with regard to prosecution arising out of the exercise of the powers under the Cr. P C. or under any other law. It is applicable only with respect to the actions and prosecutions against a police officer for something done by him under the provisions of the

Police Act or under general police powers given by the Act.

2. **Its applicability, -**

A combined reading of sections 42 and 36 leads to the conclusion that Section 42 applies to a prosecution against a person for an offence committed under the Police Act or under general police powers given by the Act. It does not apply for anything done under any other Act or under police powers conferred under any other acts. *Maulad Ahmad v. State of v. Joginder Singh*, 1969 Cr Lj 4: AIR 1968 SC 1422. But the expression “under the provisions of any other law for the time being in force conferring powers on the police” in Madras District Police Act, Section 53, makes it special provision, must prevail over the general law enacted under Section 468, Cr. P. C. But the provision under the Madras district Police Act (Section 53) is not par material with Section 42 of the Police Act. *R. Meeriah v. State of A.P.*, 1977 Cr Lj (NOC) 258 (AP).

3. **Whether notice necessary, -**

This provision intends the prosecution to be brought before the court promptly and not keep it hanging over the head. The notice serves in two ways. It gives the employee occasion to prepare his defence or compromise the case; and time to authorities to decide

whether the accused officer is to be supported or not. The section requires a notice in writing to be given but it does not prescribe bar for prosecution if notice is not given. If the employee while acting under this provision, ignorantly or inadvertently acted illegally or improperly, he would be entitled to the required notice but it would not be necessary if the officer, taking advantage of his position, acted illegally, maliciously and without cause.

**4. Where this section does to apply, -**

Where the police officer is accused of giving false statement, he has not acted under the provision of this Act or under his general powers. The limitation under this section is not applicable in a prosecution under Section 218, I. P. C. nor it bars the trial for illegal arrest. Where a police officer exceeds his powers, he may not claim protection under this provision. But if a report is submitted to superior officer containing defamatory statement, it is coverable by the expression “anything done or intended to be done under the provision of this Act”. And the period of limitation would apply.

5. **All actions, -**

Action means a civil action. No notice may be required for criminal prosecution. The notice contemplated under this section is a notice under Section 80, C. P. C. and objection under this section that one month's notice was not given must be pleaded in the court of first instance and not in the appellate court. No notice under Section 42 is necessary before one's trial under Section 29 of the act. A suit or action will be governed by the general law of limitation (Limitation Act No IX of 1871) and the provision of limitation under this section ceased to be operative.

6. **Not applicable to section 7, -**

This section does not apply to a disciplinary proceeding against the employee for any misconduct or any other act enumerated in Section 7 on which the proceeding could start. AIR 1955 Cal 183; 1958 Cr Lj 983; AIR 1958 all 560; Air 1957 All 634. This provision refers to all actions or prosecution against any employee for anything done under the provisions of Police Act while Section 29 provides for the punishment for the breaches of discipline. But this will not cover any action brought for anything done under the Cr. P. C or under any other law.



## **7. Interpretations, -**

The general rule making power which vests in the State Government, can be traced neither in Section 7 nor in Section 12 but in Section 46 of the Police Act. *Bhagat ram v. I. G., Police*, (1979) 3 SLR 256 (HP). If the police officer while executing a warrant in the discharge of duty commits assault and cause hurt, this section may apply if he proved it was necessary in the course of the execution of the order. But his falsifying the records or accepting bribe or misappropriating money will not be in execution of duty and this provision will have no application. Absence from roll call is an offence under Section 29, Police Act. Prosecution under the section is barred by virtue of this section when notice warranting his explanation was issued long after three months. *Pritam Singh v. State*, 1971 SC Cr R 402.

## **43. Plea that acts was done under warrant, -**

When any action or prosecution shall be brought or any proceedings held against any police officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by

such Magistrate and the defendant shall thereupon be entitled to a decree in his favour notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the court shall see reason to doubt its being genuine:

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained this in section.

### **Comments**

The plea under this section does not fortify a police officer against acts of contempt of court. Where the facts and circumstance indicate that the act of contempt was deliberate and unlawful, the employer cannot seek protection under Section 23 also.

#### **44. Police officers to keep diary, -**

It shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribe by the State Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their

possession of otherwise, and the names of the witnesses who shall have been examined.

The Magistrate of the district shall be at liberty to call for and inspect such diary.

**45. State Government may prescribed form of returns, -**

The State government may direct the submission of such returns by the Inspector General and other police-officers as to such State Government shall seem proper, and may prescribed the form in which such returns shall be made.

**46. Scope of Act, -**

(1) This Act shall not by its own operation take effect in any presidency, State or place. But the State Government by an order to be published in the official Gazette may extend the whole or any part of this Act to any presidency, State or place; and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such presidency, State or place.

(2) When the whole or any part of this Act shall have been so extended, the State Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act -

- (a) to regulate the procedure to be followed by Magistrates and police officers in the discharge of any duty imposed upon them by or under this Act;
  - (b) to prescribe the time, annex and conditions within and under which claims for compensation under Section 15-A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon; and
  - (c) generally, for giving effect to the provisions of this Act.
- (3) All rules made under this Act may from time to time be amended, added to or cancelled by the State Government.

## **Comments**

### **SYNOPSIS**

1.	Classification not unreasonable
2.	Rules valid under this Act.
3.	Normal rule.
4.	Misapprehension about temporary posts.

#### **1. Classification not reasonable, -**

A classification between subordinate and superior officers may not be said to be unreasonable, as the two classes are not similarly circumstanced. Their duties, need of control and discipline are different and the gradation of service is universal. The administration convenience also demand such classification. Thus there restriction imposed by Section 7 is reasonable and in the interest of general public and the provision is valid in law being protected by Art. 19 (5).

There is no substantial difference between the rules under this Act and Rules 8 and 9 of the U.P.

Disciplinary Proceedings (Administrative Tribunal) Rules. I 47 regarding enquiry against police officers for misdemeanors. (AIR 1961 SC 1245).

**2. Rules valid under this Act, -**

The rules under U.P. Police Training College Manual are not invalid. The cadet has no right to cross-examine the witnesses at enquiry in misconduct while under training, followed by his expulsion. (1964 Alj) 554; 1964 (2) Cr Lj 625).

The notification dated 30-1-1953 [now Temporary Government Servants (Termination of Service) Rules, 1975] providing for termination of service of temporary employee by paying one month's pay in lieu of notice can be applied to temporary police officers. The notification can be treated as having been issued under Section 46 (2) of this Act as regards the police officers (1971 ALJ 724 (FB): 1971 LIC 1151).

**3. Normal rule, -**

Judicial prosecution for an offence under Section 29. Police Act is the normal rule and departmental action an exception for which the sanction of D.M. is required, but it is not necessary for judicial prosecution. Beli Ram v. State 1981 (I) SLR 264 HP; in

which Raj Kumar v. State of Punjab, 1976 Ch LR 39 has been dissented from.

4. **Misapprehension about temporary posts, -**

The misapprehension that temporary posts in the Police Force are not contemplated by the Police Act and the Regulation (para 534 pertaining to the S. I 's and para 541 pertaining to constables) seems to have arisen on account of complete absence from the P.R. of any rules or instructions in respect of temporary police officers. But temporary police officers, like other servants, are obviously covered by notification (no.230/II-B-53), dated 30-1-53, which finds place in Appex. II of the CCA Rules. (This notification has now been rescinded and replaced by U.P. Temporary Government Servants (Termination of Service) Rules, 1975, Vide notification no 20-1-74-Appt-3, date 11-6-75 and heir services are terminable on one month's notice or pay. There is no difficulty in applying this to Police Force, since it has been treated as having been issued in the exercise of the rule making power conferred on the State Government by Section 46 (2) Police Act. Moreover the paragraphs 534 and 539, P. R have not been shown to have statutory force and it appears that they merely embody administrative directions as to what is necessary by way of training and experience before a police officer can be

considered fit for permanent appointment (U. O. I. V Prem Prakash, 1969 SLR 655).

**47 Authority of District Superintendent of Police over village police, -**

It shall be lawful for the State Government in carrying this Act into effect in any part of the territories subject to such State Government, to declare that nay authority which now is or may be exercised by the Magistrate of the district over any village-watchman or other village police-officers for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police.

**Form**

**(See Section 8)**

A.B. has been appointed a member of the Police Force under Act V of 1861, and is vested with the powers, functions and privileges as a police officer.