

# <sup>1</sup>THE POLICE ACT, 1861

(5 of 1861)

[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 of 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 and of the powers of a Magistrate,

the word “Police” shall include all persons who shall be enrolled under this Act;

the word “general police-district” shall embrace any<sup>2</sup> presidency, State or place or any part of any presidency, State or place in which this Act shall be ordered to take effect;

<sup>3</sup>[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 of the duties of a District Superintendent of Police under this Act in any district;]

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

<sup>4</sup> \* \* \* \*

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

the word “month” shall mean a calendar month;

<sup>5</sup>the word “cattle” shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine.

<sup>6</sup>[References to the subordinate ranks of a police-force shall be construed as references to members of that force below the rank of Deputy Superintendent.]

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<sup>1</sup> Short title given by the Indian Short Titles Act, 1897 (14 of 1897).

<sup>2</sup> Under sec. 2 of the police Act, 1888 (3 of 1888), the Central Government may notwithstanding this provision, create a special police-district, consisting of parts of two or more States. As to Delhi State see Gazette of India, 1912, Pt. I, p. 1105.

<sup>3</sup> Ins. By Act No. 8 of 1895, sec 1.

<sup>4</sup> The definitions relating to “number” and “gender” rep. by Act No. 10 of 1914, sec. 3 and sch. II.

<sup>5</sup> Cf. definition of “cattle” in sec. 3 of the Cattle-trespass Act, 1871 (1 of 1871).

<sup>6</sup> Ins. by the A.O. 1937.

*The police Act, 1861*

**COMMENTS**

The statute has to be constructed with reference to the context and other clauses of the Act to make it consistent with it; *Anil Kumar Sawhney v. Gulshan Rai*, (1993)3 Crimes 1064 (SC).

<sup>1</sup>**2. Constitution of the force:-** The entire police-establishment under a State Government shall, for the purposes of this Act, be deemed to be one<sup>2</sup> police-force and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, <sup>3\*\*\*</sup> as shall from time to time be ordered by the State Government. <sup>4\*\*\*</sup>

<sup>5</sup>[ Subject to the provisions of this Act, the pay and all other conditions of service of members of the subordinate ranks of any police-force shall be such as may be determined by the State Government.]

**COMMENTS**

The entire police-establishment under a State Government is deemed to be one police-force.

**3. Superintendence in the State Government:-** The superintendence of the police throughout a general police-district shall vest in and <sup>4\*\*\*</sup> 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 <sup>6\*\*\*</sup> supersede or control any police functionary.

**COMMENTS**

The superintendence of the police has to be exercised by the State Government.

**4. Inspector-General of Police, etc.:-** <sup>7</sup>The administration of the police through-out a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-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.

<sup>8</sup> \* \* \* \*

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<sup>1</sup> Section. 2, so far as it is related to the provinces under the administration of the Lieutenant- Governor of Bengal, rep. by the Bengal Police Act, 1869 (Ben. No. 7 of 1869).

<sup>2</sup> See note to sec. 8, *infra*, as to enrolment of the police force in certain places.

<sup>3</sup> The words “and the members of such force shall receive such pay” omitted by the A.O. 1937.

<sup>4</sup> Certain words omitted by the A.O. 1937.

<sup>5</sup> Ins. by A.O. 1937.

<sup>6</sup> The words “appoint” omitted by the A.O. 1937.

<sup>7</sup> In the town and suburbs of Calcutta, the administration of the Police vests in the “Commissioner of Police”, see sec. 3 of the Calcutta Police Act, 1866 (Ben. No. 4 of 1866).

<sup>8</sup> Certain words omitted by the A.O. 1937.

*The police Act, 1861*

**COMMENTS**

The administration of the police vests in the Inspector-General of Police in the hierarchy of Deputy Inspectors-General, Assistant Inspectors – General, Superintendents, etc.

**5. Powers of Inspector-General- Exercise of Powers:-** 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 to time, be imposed by the State Government.

**COMMENTS**

The State Government may impose any limitation on the powers of the Inspector-General of Police.

**6. Magisterial powers of police officers:-** [*Rep. by the Code of Criminal Procedure, 1882 (10 of 1882), sec. 2 and Sch. 1(b)*].

**7. Appointment, dismissal, etc. of inferior officers:-** <sup>1</sup>[<sup>2</sup>Subject to the provisions 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 remiss or negligent in the discharge of his duty, or unfit for the same; <sup>3</sup>[or may award anyone of the following punishments to any police-officer <sup>4</sup>[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 of 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>5</sup>

**COMMENTS**

Appointment, dismissal, etc. of any police-officer of the subordinate ranks such as inspector. sub-inspector, Assistant sub-inspector and Constable, etc. are governed by the rules made under article 311 of the Constitution of India.

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<sup>1</sup> Subs. by the A.O. 1937, for certain words.

<sup>2</sup> Subs. by the A.O. 1950 (as amended by C.O. 29), for "subject to such rules".

<sup>3</sup> Subs. by Act No.8 of 1895, sec. 2 for certain words.

<sup>4</sup> Ins. by the A.O. 1937.

<sup>5</sup> For cl: (e), applicable to certain areas in the U.P., see U.P. Act No.2 of 1944.

*The Police Act, 1861*

**8. Certificates to police officers:-** <sup>1</sup>Every police-officer <sup>2</sup>[appointed to the police-force, other than an officer mentioned in section 4] shall receive on his appointment, a certificate in the form annexed to this Act, under the seal of 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:-** <sup>3</sup>[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 such 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, discipline and penalties and to the same authorities, as if he had not been suspended.]

**COMMENTS**

A certificate shall be given to every police-officer on his appointment.

*The Police Act, 1861*

**9. Police-officers not to resign without leave or two months' 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,

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<sup>1</sup> As to enrolment, maintenance and discipline of-

(1) the Military Police-force employed in-

(a) the Andaman and Nicobar Islands, *see* the Andaman and Nicobar Islands Military Police (Disbandment) Regulation, 1946 (3 of 1946);

(b) Assam, *see* the Assam Rifles Act. 1941 (5 of 1941);

(c) Bengal *see* the Eastern Frontier Rifles (Bengal Battalion) Act. 1920 (Ben. No. 2 of 1920);

(2) the Punjab Frontier Police-officers, *see* the Punjab Frontier Police-officers Regulation, 1893 (7 of 1893)

(3) the Calcutta and Suburban Police, *see* the Calcutta Police Act, 1866 (Ben. No. 4 of 1866) and the Calcutta Suburban Police Act, 1866 (Ben. No. 2 of 1866);

(4) the police establishment in municipal areas in the U.P., *see* the Municipalities Act, 1916 (U.P. No. 2 of 1916);

(5) the Police establishment in municipal areas in the Punjab, *see* the Punjab Municipal Act, 1911 (Pun. No.3 of 1911);

(6) the Rural Police in the Santhal Parganas, *see* the Santhal Parganas Rural Police Regulation, 1910 (4 of 1910);

(7) the Rural police in Chhotta Nagpur *see* the Chhotta Nagpur Rural Police Act, 1914 (B. & O.No. 1 of 1914);

(8) the U.P. Special Armed Constabulary, *see* the U.P. Special Armed Constabulary Act, 1942 (U.P. No.5 of 1942);

(9) the Delhi Special Police Establishment. *see* the Delhi Special Police Establishment Act. 1946 (25 of 1946);

(10) Delhi Police. *see* Delhi Police Act. 1978 (34 of 1978)

<sup>2</sup> Subs. by the A.O. 1937 for "so appointed".

<sup>3</sup> Subs. by Act No. 8 of 1895, sec. 3, for the original second paragraph.

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.

#### COMMENTS

No police-officer shall be at liberty:-

- (a) to withdraw himself from the duties of his office;
- (b) to resign his office without giving, at least, 2 months' notice of his intention to resign.

**10. Police-officers not to engage in other employment:-** No police-officer shall engage in an employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

#### COMMENTS

No police officer shall engage in an employment or office, other than his duties, without the permission of the Inspector-General.

**11. Police superannuation fund:-** *[Rep. by the Repealing Act, 1874 (16 of 1874), sec.1 and Sch. Pt. I ].*

**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 organisation, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be formed by them; their inspection, the description of arms, accoutrements and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders 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 for rendering such force efficient in the discharge of its duties.

#### COMMENTS

Subject to the approval of the State Government, the Inspector - General may frame rules and orders relative to the organisation, classification and distribution of the police-force as also other matters.

**13. Additional police-officers employed at cost of individuals:-**It shall be lawful for the Inspector-General of Police or any Deputy Inspector- General or Assistant Inspector-General, or for 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 he 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:

*The Police Act, 1861*

Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy 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.

**COMMENTS**

On the application of any person showing the necessity thereof, the superintendent may employ or depute any additional number of police-officers to keep the peace at a specified place, at the charge of the applicant.

**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, thereupon, cause payment to be made accordingly.

**COMMENTS**

The Inspector-General may, with the consent of the State Government, employ or depute an additional force in the neighbourhood of any railway, canal or other public work, or any manufactory or commercial concern at the charge of the person having the control or custody of the funds used in carrying on such work, etc.

**<sup>1</sup>[15. Quartering of additional police in disturbed or dangerous districts:-**

(1) It shall be lawful for the State Government, by proclamation to be 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 authorised 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 area 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.

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<sup>1</sup> Subs. by Act No.8 of 1895, sec. 4, for the original section.

*The Police Act, 1861*

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the 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 portion 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 any time 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 purposes 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 *rai-yats* or occupiers in such area, notwithstanding that they do not actually reside therein.]

#### COMMENTS

The State Government may declare any area to be a disturbed or dangerous district and thereafter increase the number of police.

The proclamation may be withdrawn at any time or continued for a further period or periods.

<sup>1</sup>[**15A. Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land:-** (1) 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 one month 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 subdivision of a district within which such area is situated.

(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 persons to whom injury has been caused by or has ensued from 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:

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<sup>1</sup> Ins. by Act No. 8 of 1895, sec. 5.

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, had 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 or 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.

(6) *Explanation:-* In this section, the word "inhabitants" shall have the same meaning as in the last preceding section].

#### COMMENTS

This section lays down the procedure for awarding compensation to persons-

- (i) to whom death, grievous hurt or injury has been caused or ensued; or
- (ii) to whose property loss or damage has been caused or ensued,  
from the misconduct of the inhabitants of the area in regard to which proclamation is notified under section 15.

<sup>1</sup>[**16. Recovery of moneys payable under sections 13, 14, 15 and 15A, and disposal of same when recovered:-** (1) All moneys payable under sections 13, 14, 15 and 15A 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<sup>2</sup> (10 of 1882) for the recovery of fines, or by suit in any competent Court.

<sup>3</sup>\* \* \* \* \*

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

#### COMMENTS

The Magistrate of the district may recover all moneys payable under sections 13, 14, 15 and 15A of this Act,-

- (i) in accordance with the provisions of sections 421 and 422 of the Code of Criminal Procedure, 1973; or
- (ii) by suit in any competent court.

It will be his duty to pay all moneys paid or recovered under section 15A of this Act to the persons who are entitled thereto.

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<sup>1</sup> Subs. by sec. 6 Act 8 of 1895 for the original section.

<sup>2</sup> See now sections 421 and 422 of the Code of Criminal Procedure, 1973 (2 of 1974).

<sup>3</sup> Sub-section (2) omitted by the A.O. 1937. See, however, para 4 of the Indian and Burma (Transitory Provisions Order, 1937).



**17. Special police-officers:-** 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 the police force ordinarily employed for preventing the peace is not sufficient for its prevention and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot 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 neighbourhood as such police-officer may require, to act as special police-officers for such time and within such limits as he shall deem necessary, and the Magistrate to whom such application is made shall, unless he sees cause to the contrary, comply with the application.

**COMMENTS**

Any police-officer (not below the rank of Inspector) may apply to the Magistrate to appoint residents of the neighbourhood to act as special police-officers.

**18. Powers of special police-officers:-** Every special police-officer so appointed, shall have 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.

**COMMENTS**

Special police-officers shall be treated at par with the ordinary officers of police in respect of all matters such as powers, penalties, subordination, etc..

**19. Refusal to serve as special police-officers:-** If any person, being appointed as 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.

**COMMENTS**

Any person who, without sufficient excuse, neglects or refuses to serve as special police-officer or to perform his duties, shall be liable to be punished with a fine upto Rs. 50/- for every neglect, refusal or disobedience.

**<sup>1</sup>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**

Police-officers do not enjoy unfettered discretion to exercise any authority.

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<sup>1</sup> For some cases in which the application of sec. 20 has been restricted, *see* the Assam Police-Officers Regulation, 1883 (2 of 1883), and sec. 2 of the Punjab Frontier Police-Officers Regulation, 1893 (7 of 1893).

**21. Village police-officers:-** 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 police-officer appointed under<sup>1</sup> 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.

#### COMMENTS

No hereditary or other police-officer shall be affected by the provisions of this Act, unless he is enrolled as a police-officer.

**22. Police-officers always on duty and may be employed in any part of district:-** Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may, at any time, be employed as a police-officer in any part of the general police-district.

#### COMMENTS

Every police-officer is always on duty and he can be employed as such in any part of the general police-district,

**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 offences to justice and to apprehend all persons whom he is legally authorised 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

For any of the purposes mentioned in this section, any police-officer may, without a warrant, enter and inspect any drinking-shop, gaming-house or other place or resort of loose and disorderly characters.

**24. Police-officer may lay information, etc:-** It shall be lawful for any police-officer to lay any information before a Magistrate and to apply for a summon, warrant, search-warrant or such other legal process as may, by law, be issued against any person committing an offence.<sup>2</sup> \* \* \*

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<sup>1</sup> The Bengal Chaukidari Act. 1856.

<sup>2</sup> The words "and to prosecute such person up to final judgment" rep. by Act No. 10 of 1882, sec. 2 and Sch. 1 (b).

*The Police Act, 1861*

**COMMENTS**

Any police-officer may apply to a Magistrate for a summon, warrant, search-warrant or other legal process against any person committing an offence.

**25. Police-officers to take charge of unclaimed property and be subject to Magistrate's orders 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**

A duty is cast on every police-officer

- (i) to take charge of all unclaimed property;
- (ii) to furnish an inventory of such property to the Magistrate of the district; and
- (iii) to dispose of the property in accordance with the Magistrate's order.

**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, to appear and establish his right to the same, within six months from the date of such proclamation.

<sup>1</sup>[(2) The provisions of section 525 of the<sup>2</sup> Code of Criminal Procedure, 1882 (10 of 1882) shall be applicable to property referred to in this section].

**COMMENTS**

The Magistrate of the district has to detain all unclaimed property and issue a proclamation in accordance with the provisions of this section.

<sup>3</sup>[**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<sup>4</sup>[at the disposal of the State Government].

**COMMENTS**

The Magistrate of the district will be competent to order the sale of the property, if no claimant appears within the time specified in the proclamation, issued under section 26.

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<sup>1</sup> Ins. by Act No.8 of 1895, sec. 7.

<sup>2</sup> See now the Code of Criminal Procedure, 1973 (Act 2 of 1974), sec. 459.

<sup>3</sup> Subs. by Act No.8 of 1895, sec. 8, for the original section.

<sup>4</sup> Subs. By the A.O. 1937, for "at the disposal of Government."

The Police Act, 1861

**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, accountments, appointments and other necessaries 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.

**COMMENTS**

Any person who has ceased to be an enrolled police-officer, refuses to deliver up his certificate, clothing, accountments, appointments, and other necessaries, will be liable-

- (i) to a penalty upto Rs. 200/- ; or
- (ii) to imprisonment upto 6 months; or
- iii) to both penalty and imprisonment.

**29. Penalties for neglect of duty, etc:-** Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation of 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, <sup>1</sup>[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**

Any police-officer who commits any actor omission as envisaged by this section shall, be liable to be punished with

- (i) a penalty upto 3 months' pay; or
- (ii) imprisonment upto 3 months; or
- (iii) both penalty and imprisonment.

<sup>2</sup>[**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 required, 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 is 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,

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<sup>1</sup> Ins. by Act No.8 of 1895, sec. 9.

<sup>2</sup> Subs. by Act No.8 of 1895, sec. 10, for the original section.

*The Police Act, 1861*

require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a license.

(3) On 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) Music in the streets:-** He may also regulate the extent to which music may be used in streets on the occasion of festivals and ceremonies.]

**COMMENTS**

The police is empowered to regulate public assemblies and processions and licensing of the same.

Violation of any of conditions of the license granted under this section will entail penalty postulated by section 32.

<sup>1</sup>**[30A. Powers with regard to assemblies and processions violating conditions of licence:-** (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, and 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 sub-section, shall be deemed to be an unlawful assembly].

**COMMENTS**

Violation of any of conditions of a license issued under this section entails penalty stipulated in section 32.

**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 obstruction 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**

Disobeying or opposing any order issued by the police under this section entails punishment under section 32.

**32. Penalty for disobeying orders issued under last three sections, etc:-** Every person opposing or not obeying the orders issued under the last <sup>2</sup>[three] preceding sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not

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<sup>1</sup> Ins. by Act No.8 of 1895, sec. 11.

<sup>2</sup> Subs. by Act No.8 of 1895, sec. 12, for "two".

exceeding two hundred rupees.

*The Police Act, 1861*

**COMMENTS**

On conviction before a Magistrate, a fine upto Rs. 200/- may be imposed on the offender who has been found guilty of any offence under this section.

**33. Saving of control of Magistrate of district:-**Nothing in the last <sup>1</sup>[four] preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

**COMMENTS**

Nothing in sections 30, 30A, 31 and 32 can interfere with the general control of the Magistrate of the district over the matters referred to in these four sections.

**34. Punishment for certain offences on roads, etc:- Powers of police officers.-** Any person who, on any road or in any <sup>2</sup>[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 of damage of the <sup>3</sup>[ residents or passengers] shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment <sup>4</sup>[with or without hard labour] not exceeding eight days; 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 cattle, Curious riding, etc:-** Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle;

**Second-Cruelty to animal:-** Any person who wantonly or cruelly beats, abuses or tortures any animal;

**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, filth, rubbish or any stones or building materials, 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 of himself;

**Seventh-Indecent exposure of person.-**Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing

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<sup>1</sup> Subs. by Act No.8 of 1895 sec. 12, for "three."

<sup>2</sup> Ins. by sec. 13, Act No.8 of 1985.

<sup>3</sup> Subs. by sec 13, Act No.8 of 1985 for "residents and passengers."

<sup>4</sup> Ins by Act No.1 of 1903, sec. 3 and Sch. II.

himself, or by bathing or washing in any tank or reservoir, not being a place set apart for the purpose ;

***Eighth-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.

*The Police Act, 1861*

### COMMENTS

This section empowers every police-officer to take into custody, without a warrant, any person who within his view, commits any of offences specified in clauses First to Eighth.

**35. Jurisdiction** <sup>1\*\*\*</sup> :- Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a <sup>2</sup>Magistrate.

### COMMENTS

Only while exercising the powers of a Magistrate, an officer has jurisdiction to enquire into and determine any charge against a police-officer above the rank of a constable under this Act.

**36. Power to prosecute under other 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 other Regulation or Act or 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.

### COMMENTS

Any person may be prosecuted for an offence punishable by this Act under any other Regulation or Act, too.

However, no person shall be punished twice for the same offence.

<sup>3</sup>[**37. Recovery of penalties and fines imposed by Magistrates:-** The provisions of sections 64 to 70, both inclusive, of the Indian Penal Code, (45 of 1860) and of sections 386 to 389, both inclusive, of the Code of <sup>4</sup>Criminal Procedure, 1882 (10 of 1882) 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 this Act, may be imprisoned in default of payment of such fine for any period not exceeding eight days.]

### COMMENTS

The provisions of sections 64, 65, 66, 67, 68, 69 and 70 of the Indian Penal Code, 1860 and the provisions of the Code of Criminal Procedure, 1973 shall apply to penalties and fines imposed under this Act on conviction before a Magistrate.

A person who is sentenced to fine under section 34 of this Act can be imprisoned in default of payment

<sup>1</sup> Certain words rep. by Act No. 10 of 1882, sec. 2 and Sch. I(b).

<sup>2</sup> *i.e.*, by a Magistrate of the First Class, *See* sec. 3(1) of the Code of Criminal Procedure, 1973 (2 of 1974).

<sup>3</sup> Subs: by Act No.8 of 1895, sec. 14, for the original sections 37 to 40.

<sup>4</sup> *See* now sections 421 to 424 of the Code of Criminal Procedure, 1973 (2 of 1974).

of fine for not more than 8 days.

**38. Procedure until return is made to warrant of distress:-** *[Repealed by the Police Act (1861) Amendment Act, 1895 (8 of 1895), sec. 14].*

**39. Imprisonment of distress not sufficient:-** *[Repealed by the Police Act (1861) Amendment Act, 1895 (8 of 1895), sec. 14].*

**40. Levy of fines from European British Subjects.-** *[Repealed by the Police Act, 1895 Amendment Act, 1895 (8 of 1895), sec. 14/.*

#### The Police Act, 1861

**41. Rewards to police and informers payable to General Police Fund:-** *[Repealed by the A.D. 1937.<sup>1</sup> ]*

**<sup>2</sup>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 provision 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.*

**Tender of amends.-**No plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action 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 though 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

All actions and prosecutions may be instituted against any person--

- (i) within 3 months after the act complained of; and
- (ii) by serving one month's notice in writing of action or cause to such person.

**43. Plea that act was done under warrant:-** When any action of 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:

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

#### COMMENTS

<sup>1</sup> See, however, paragraph 4 of the India and Burma (Transitory Provisions) Order, 1937, section 41 reads as follows:- 'All sums paid for the service of process by police-officers, and all rewards, forfeiture and penalties or shares of rewards, forfeitures and penalties which by law are payable to informers shall when the information is laid by a police-officer, be paid into the general Police Fund'.

<sup>2</sup> So much of sec. 42 (the portion printed in italics) as relates to the limitation of suits rep. by Act No.9 of 1871, sec. 2 and Sch. I.



Any action or prosecution can be instituted against any person for anything done under this Act-

(i) within 3 months after the act complained of had been committed; and

#### *The Police Act, 1861*

(ii) after giving a month's notice in writing of the cause of action or prosecution to the defendant/accused. .

The notice may be served upon the Superintendent of Police or Assistant Superintendent of Police.

**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 prescribed 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 or 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.

#### **COMMENTS**

It is the duty of every officer in-charge of a police-station to keep a general diary in the prescribed form for the purpose of recording complaints and other information.

The Magistrate may call for and inspect such diary.

The expression "diary" referred to in section 167(1) of the Code of Criminal Procedure, 1973 is different from the "general diary" maintained under section 44 of the Police Act; *Directorate of Enforcement v. Deepak Mahajan*, (1994) 1 Crimes 892 (S.C.).

**45. State Government may prescribe 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 prescribe the form in which such returns shall be made.

#### **COMMENTS**

The Inspector-General and other police officers are bound to submit returns in the prescribed form to the State Government.

<sup>1</sup>**[46. Scope of Act:-** (1) This Act shall not, by its own operation, take effect in any <sup>2</sup>presidency, State or place.

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<sup>1</sup> Subs. by Act No.8 of 1895, sec. 15, for the original section.

<sup>2</sup> In the States of Madras and Bombay, there are special Police Acts. *see* the Madras District Police Act, 1859 (24 of 1859) and the Bombay District Police Act, 1867, (Bombay No.7 of 1867). In the Lower Provinces of Bengal, Bengal Act No.7 of 1869 is to be read and taken as part of Act No.5 of 1861, *see* sec. 6 of the former Act.

This Act has been extended under the power conferred by the original section to-

(1) the U.P. including Ajmer-Merwara then under that Government, see Notification No. 964 in the North-Western Provinces Gazette, 1861, p. 634:

[The orders as to enforcement of the Act in 27 districts in the U.P., in Hamirpur, Jalaun, Jhansi, Lalitpur, Nainital (including the Tarai Parganas) and Almora and Garhwal, issued under the original sec. 46, paragraph 2 (after the Act had been extended under paragraph 1 of that section to the whole Province), are kept in force by sec. 16 of Act 8 of 1895);

(2) Oudh, *see* Notification No. 34 in the North-Western Provinces Gazette 1861, p. 1758;

(3) the tract of land between Allahabad and Jubbulpore ceded in full sovereignty by certain Native States;

(4) the C.P., Districts of Nagpur, Raipur, Bhandara, Chanda and Chhindwara, Sironcha, Nimar;

(5) Bengal and Assam;

*The Police Act, 1861*

But the <sup>1</sup>[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, manner and conditions within and under which claims for compensation under section 15A 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 inquiries, 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**

It is only upon an order of the State Government, the whole or any part of this Act takes effect in the presidency, State or place concerned.

The State Government is empowered to make rules in respect of the matters specified in clauses (a) to (c) of sub-section (2).

Section 46 confines itself to anything done or intended to be done under the Police Act, 1861; *S.P. Vaithianathan v. K. Shammuganathan*, (1994) 1 Crimes 725 (S.C.).

An act is not "under" a provision of law merely because the point of time at which it is done coincides with the point of time when some act in exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done "under" a provision of law, one must discover the existence of a reasonable relationship between the provision and the act. In the absence of such a relation the act cannot be said to be done "under" the particular provision of law, *SP. Vaithianathan v. K. Shammuganathan*, (1994) 1 Crimes 725 SC; *State of A.P. v. Venugopal*, (1963) SCR 742.

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(6) Several districts in the Punjab, *see* Notification No. 971, dated 15th May, 1861, Calcutta Gazette, 18th May, 1861, p. 1302.

Under the power conferred by the section as it stood before the 1st April, 1937, it has been extended as follows to :-

(1) Madras; sec. 15, 15A, 16,30, 30A, 31 and 32 of the Act have been extended to the whole of the Madras Presidency, *see* Notification No. 728, dated 31st October, 1895, Gazette of India, 1895, Pt. I, p. 876;

(2) Eastern Doars in the Goalpara District, *see* Notification No. 230, Gazette of India, 1897, Pt. I., p. 198;

(3) the North and South Lushai Hills and the tract known as Ruttan Puiya's villages including Demagri (now known as the Lushai Hills), *see* Gazette of India, 1898. Pt.I., p. 370.

<sup>1</sup> Subs. by the A.O. 1937, for "G.G. in C."

*The Police Act, 1861*

It is no part of the duty under the Act, conferring power on the police to beat and torture any person; *State of A.P. v. Venugopal*, (1963) SCR 742.

Action of torturing any person cannot be in discharge of any duty or function under the Act.

**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 any authority which now is or may be exercised by the Magistrate of the district over any village-watchmen or other village police-officer 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.

**COMMENTS**

The State Government may authorise the Superintendent of Police to exercise any authority over any village-watchmen or other village police-officer for the purposes of the police, subject to the general control of the Magistrate.

**FORM**

*(See section 8)*

A.B. has been appointed a member of the police-force under Act 5 of 1861, and is vested with the powers, functions and privileges of a police-officer.