### PUBLIC NUISANCES

1. **Conditional order for removal of nuisance:** (1) Whenever a [Magistrate of the First Class] considers, on receiving a police-report or other information and on taking

such evidence (if any) as he thinks fit, that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public,

or from any public place, or

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

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

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

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

that any dangerous animal should be destroyed, confined or otherwise disposed of,

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

to remove such obstruction or nuisance; or

to desist from carrying on, or to remove or regulate in such manner as maybe directed, such trade or occupation, or

to remove such goods or merchandise, to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure; or

to remove or support such tree, or to alter the disposal of such substance; or to fence such tank, well or excavation, as the case may be; or .

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do,

to appear before himself or some other *[Magistrate of the First Class]* or Second Class, at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

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

Explanation : A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Subs. by Ordinance, XXXVII of 2001, dt. 13-8-2001.

1. **Service or notification of order:** (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service-of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation published in such manner as the Provincial Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

1. **Person to whom order is addressed to obey or show cause or claim jury:** The person against whom such order is made shall
2. perform within the time and in the manner specified in the order, the act directed thereby; or
3. appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.
4. **Consequence of his failing to do so:** If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by Section 135, he shall be liable to the penalty prescribed in that behalf in Section 188 of the Pakistan Penal Code and the order shall be made absolute.
5. **Procedure where he appears to show cause:** (1) If he appears and shows' cause against the order, the Magistrate shall take evidence *[in the manner provided in Chapter XX].*
6. If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.
7. If the Magistrate is not so satisfied, the order shall be made absolute.

Words subs. by Law Reforms Ordinance, XII of 1972.

1. **Procedure when he claims Jury : (**1) On receiving an application, under Section 135 to appoint a jury, the Magnate shall;
2. forthwith appoint a jury consisting of an uneven number of persons not jess than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;
3. summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and
4. fix a time within which they are to return their verdict-

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

1. **Procedure where jury finds Magistrate's order to be reasonable:** If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

(2) In other cases no further proceedings shall be taken under this Chapter.

**139-A. Procedure where existence of public right is denied:** (1) Where an order is made under Section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river; channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under Section 137 or Section 138 inquire into the matter.

1. If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceeding until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in Section 137 or Section 138, as the case may require.
2. A person who has, on being questioned by the Magistrate under sub-section (1) failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under Section 138.
3. **Procedure on order being made absolute:** (1) When an order has been made absolute under Section 136, Section 137 or Section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by Section 188 of the Pakistan Penal Code.
4. **Consequences of disobedience to order:** if such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sate of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorise its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.
5. No suit shall lie in respect of anything done in good faith under this section.
6. **Procedure on failure to appoint jury or omission to return verdict:** If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by Section 140.
7. **Injunction pending Inquiry:** (1) If a Magistrate making an order under Section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be or has appointed w not, issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.
8. In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.
9. No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

**Magistrate may prohibit repetition or continuance of public nuisance:** A *[Magistrate of the First Class];* may order any person not to repeat or continue a public nuisance, and defined in the Pakistan Penal Code or any special or Local law.