

LEGALITY OF SECTION 144

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ABSTRACT

Often the legality of section 144 of the criminal procedure code of 1973 becomes a debatable topic, this section empowers an executive magistrate of any state to issue a public order in urgent cases of nuisance or apprehended danger, prohibiting the citizen to assemble at one place or organize any event where people may participate in masses, this is termed as 'unlawful assembly', anyone found in violation of such law is booked under Section 188.

Similar instances could be seen during the outbreak of COVID 19 where section 144 of Crpc was imposed under prohibitory order, restricting the movement of people or any sort of public gathering .whereas, section 144 continues to be in force during any communal riot as well as in the wake of protest against citizenship amendment act.

There are always two sides to a coin and similarly, everything has certain advantages and disadvantages associated with it. In the case of "Madhu limaye v sub-divisional magistrate"¹, it was held that the implementation of section 144 and the actions taken are made in the urgency of the situation, and only to prevent some harmful consequences. Section 144 is imposed during an emergency or encases of nuisance and perceived danger that might create a disturbing situation leading to damage to human life or property. Hence, the executive magistrate under given jurisdiction is conferred with the power to issue an order according to section 144 to maintain peace and tranquillity of the region, when there is a looming situation of emergency.

Despite the need of imposing the section to minimize the threat, it is still subjected to illegality. Section 144 of the Crpc provides the restriction from public gathering against or in the favour of the law passed by the government, "any such order made to impose certain restrictions on public gatherings and movement could be challenged on the ground of

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¹ Madhu limaye, AIR 1971

infringing the Fundamental Right enshrined in Article 19(1)(b) or (d) ² and Article 21³ that guarantees personal liberty under the constitution. the constitution of India protects divergent and legitimate expressions unless there is sufficient material to infer upon the impose of section 144, this will create a challenge over the individual rights of the citizens.” And hence, the legality of section 144 of the criminal procedural code is yet to be concluded.

LEGALITY OF SECTION 144

144. Power to issue an order in urgent cases of the nuisance of apprehended danger.

(1) *“In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, of an affray.”*

(2) *“An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.”*

(3) *“An order under this section may be directed to a particular individual, or persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.”*

(4) *“No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall*

² Article 19(1) (d) to move freely throughout the territory of India; 19(1) (b) to assemble peaceably and without arms.

³ Article 21 protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.”

An order which is passed under section 144 of the CRPC is in the interest of maintenance of public order, some of the objects for securing it been to prevent obstruction, annoyance, injury, etc. The authority granted by this section is not arbitrary or limitless; rather, it is founded on fairgrounds. This provision is only invoked in an emergency, and the authority may be used to avoid any kind of interference, inconvenience, or harm to any individual lawfully working, or to cause any risk to human life, health, or welfare, or to produce any sort of public nuisance that threatens public tranquillity and may lead to a riot or affray.

In the case of **Babulal parate versus the state of Maharashtra**,⁴ the high court held that these variables and condition the activity of force and it would thus not be right to respect that the force is being limitless. It is only where the emergency of the gravest character is made out that a court can justify exercising its power under section 144 in order to make any justification that would have the effect of interfering with the exercise of rights of an individual.

In the criminal procedure code, the executive magistrate is given wide powers to deal with prominent situations. Section 144 deals with the magistrate's power in imposing restrictions on the personal liberty are of individuals or communities, where the situation is such that it can cause and rest or violation of peace and tranquillity. Specified classes of the magistrate may make any e orders which is sufficient enough for receding under section 144 in order to create immediate prevention for any disturbance.

ANTICIPATORY NATURE OF SECTION 144

the actions which are taken under section 144 is considered to be anticipatory this is because it has the power to restrict certain actions even before they have been occurred, whereas an anticipatory restriction is generally imposed in cases of emergency, in the cases of nuisance or apprehension of danger that may cause damage to the public peace and tranquillity in the case of *Radhe Das versus Jayaram Mahato*, this case is related to a dispute over a piece of land, the petitioner in this case filed for imposing restriction of the respondent from entering

⁴ Babulal parate versus state of Maharashtra, (1961)3 SCR 423

the property, the magistrate, in this case, passed the order under section 144. “Whereas during the judicial proceeding the respondent claimed that the same prohibition should be imposed on the petitioner which was also granted by the magistrate under section 144. But under such an order the right over the property of both parties was violated. Hence the court ordered that for the prevention of public peace and tranquillity the rights of the individuals can be renounced for the benefit of the society or the public. It was held that the section that the magistrate shall be of the opinion that the immediate prevention of the speedy remedy is it desirable and that the direction he proposes to make it is likely to prevent or tends to prevent any form of disturbance in public tranquillity or riot or an affray. In such circumstances, private rights must give way”.

In The case of **Vishwanadha Rao**, when there is a dispute between the public interest and the private interest, the court held that the public interest would take priority. And so if the Hindu community has obtained from a competent civil court a declaration of the rights to conduct a procession with music before the mosque the magistrate in the interest of public peace may prohibit The Hindu community from taking any such procession in any street where there is the mosque. Such order is passed in order to prevent any form of annoyance disturbance in public which may create a violation of peace and tranquillity. No doubt that the interests of the public peace are paramount but where the magistrate is aware that there will probably be a disturbance in such a case he should resort to section 144.

Thus, section 144 confers full power to the magistrate to take action in case of an emergency where there is a need for immediate prevention for speedy remedy is desired. If there is no case of emergency or an application for speedy remedy nor there is any apprehension of danger to human life, health, or property. The magistrate in such a case cannot pass an order under section 144 unless and until there is reasonable ground that denotes that the consequences could be sufficiently grave enough that can cause harm to public safety.

In the case of **Pir Gul**⁵, the petitioner claimed himself to be the greatest pir of sind, you organized an annual religious festival and objected to a large number of Muslim communities in this religious gathering. The DM of the state of Sind considering the situation ordered to impose section 144 in order to prohibit the celebration of the religious festival. “This order passed by the DM of the state was objected to by the pir and his followers, they claimed in the court that their right to worship was violated. the court held that section 144 is intended

⁵ Pir Gul, AIR 1939 Sind 230, 232

to provide for an emergency and it is idle to contend that in an emergency when right is apprehended and whenever there is any apprehension of serious disturbance in public that may cause harm to public tranquility, the magistrate is then required to deliberate upon and decide the rights of the parties before acting.” This statement was also passed in the case of **ummulkulus v executive_magistrate**.⁶

Although the order passed under section 144 caused a violation of article 25 and article 26 of the constitution that is right to profess religion, but if such suspension of the rights is in the interest of public peace and safety, in such case it must yield to the maintenance of public order and the district magistrate should exercise his power in consonance with section 144, this was held in the case of *Ishtiaq v state*. “Another important aspect to relate to section 144 was observed by the Supreme Court that, when an order is issued under section 144 in order to meet an emergency, it cannot be permanent or semi-permanent. This was held in the case of **Acharya Jagdishranand avadhut vs police commissioner**. It was held that repetitive orders under section 144 are nothing but an abuse of power. In this case, anand margis was prohibited from performing tandav dance on the streets of Calcutta, he was also prohibited from Karen scales in their possession, under section 144 of the CRPC.” The first order was issued for two months, and every two months after that, the same order was issued, according to the Supreme Court, indicating that the commissioner was abusing his authority.

A magistrate who is to make an order under section 144 if they are not competent enough to issue an order must delegate his function to two other magistrates who are competent enough.

CONDITION PRECEDENT TO ASSUMING JURISDICTION

In the case of **Renu Bala**,⁷ it was held that “the first thing which a magistrate has got to be satisfied with is that there are sufficient grounds for proceeding under section 144 and an immediate prevention for speedy remedy is desirable.”

The subsequent component was examined on account of *Raj Narayan versus district magistrate* " the area justice ought to consider that the bearing which he is going to give is one which is probably going to forestall or patterns to forestall hindrance, inconvenience or injury to any individual legitimately utilized or a risk to human life wellbeing or security e or an aggravation of the public peacefulness or a mob or an affray." The judge has the ability to

⁶ *Ummulkulus v executive magistrate*. 1991 Cr LJ 262 (Ker)

⁷ *Renu Bala* 1981 CR LJ NOC 135: 85 CWN 623 ; *C. E McIntosh v nirmal* AIR 1958 ASSAM 114

establish that the conditions which need and request to be given under section 144 are the state of emergency, and such a situation might lead to a breach of peace or disturbance of public tranquility.

Section 144 of the CRPC is an essential treatment for the urgency of the situation of nuisance or apprehension of danger, the order which has to be passed must be not exceeding more than 2 months and should be temporary in nature which is shown through section 144 subsection 4 of CRPC, unless and until there is any danger to human life health or safety.

In the case of Kamini⁸, it was held that “where this essential preliminary to assuming jurisdiction is not found to exist, the order passed by the magistrate must be deemed to order having no legal force and an expression of opinion contained therein must be deemed to be void of legal force or effect.”

In the case of Turub Khan⁹, it was held that "The section 144 is to be applied only in the case of urgency and should not be allowed to take place of any other provision of law which might be more appropriate for example section 133. Before proceeding under the section the magistrate should hold an inquiry and record the urgency of the matter. For the purpose of section 144, it is only necessary that the magistrate issuing the order should believe that apprehension of nuisance or danger exists. No evidence of the presence of such dread is fundamental." The record given by the judge must uncover the way that there was the presence of a circumstance of crisis which called for an *ex parte order* -the order which is passed for the benefit of one party which usually happens in the case of a restraining order. Under section 144 or when there is not sufficient time to issue a notice to the party affected thereby.

RESEARCH AREA

Is curfew an extended form of section 144?

Curfew limitation orders, then again, are dependent upon more awful disintegration in any area or city. It is accepted that it tends to be useful in dealing with any sort of rough circumstance. Simultaneously, the sets of check-in curfew can be for a particular gathering or the overall population.

⁸ Kamini ILR 38 Cal 876

⁹ Turab Khan AIR 1942 oudh 39,41

It restricts any external development without the previous support of the police. Organizations, for instance, markets, schools, colleges, etc are mentioned to remain shut, and simply key organizations are allowed to run. Time limitation is moreover a solicitation given by the District Magistrate. There is a completed constraint on traffic at present. It will not be all in all correct to express that a check-in time is a comprehensive kind of Section 144. The time part for the time limit is huge. Regardless, the experts can similarly grow the check-in time if fundamental.

DOES SECTION 144 MEAN CURFEW?

No, they are not the same, section 144 of CrPC, by and large, disallows public social gathering. Furthermore, then again, curfew arranges individuals to remain inside for a particular time. “In this way, the authorities can force a time limitation for a specific time. Time is significant in this. Notwithstanding, the specialists can broaden the time of curfew whenever required. In particular, in the event that you need to leave your home during the time limit, you need an earlier endorsement from the nearby police. Similarly, although Section 144 of the CrPC prohibits horde social activities, it does not regulate them. A timed curfew is a more significant measure taken to monitor a dangerous situation.” To leave after a curfew, you'll need permission.

RESTRICTIONS DURING CURFEW

- “No individual can do hunger-strike, without the authorization of any competent power;
- It isn't forced on examinee, wedding services, incineration, and religious celebrations;
- No individual can stroll with such an instrument, or any kind of deadly weapon, guns and so forth;
- Even to convey authorized weapons are not permitted at the workplace;
- It likewise forestalls playing or selling sparklers;
- Even discourse or promotion that offends any network culture is likewise denied;

- There is a limitation on the utilization of amplifiers, DJs without earlier authorization.- Five or more people cannot be assembled at a distance of two hundred yards from the examination center;
- Even in marriages with conveying any sort of arms and ammo are restricted;

Presently you may have come to think about the fundamental contrast between Section 144 of CrPC and Curfew. Be that as it may, individuals ordinarily utilize these terms conversely.”A portion of different days we went over the news that fierce fights occurred in a territory and time limit is forced. At the point when a gathering of individuals assembles with an aim to upset the public serenity, such sort of social event or get together is known as an unlawful gathering.

EXAMPLES WHERE SECTION 144 CAME INTO EFFECT

1. Punjab CM orders bother of Section 144 on Friday, requested that limitations under Section 144 of the Criminal Procedure Code (CrPC), which bars gathering of multiple individuals, be forced in the state in the midst of rising COVID-19 cases.
2. The Kerala government has forced area 144 of CrPC, forbidding the get-together of in excess of five individuals to control the flood in Covid cases in the state. A late-night request gave on Thursday by Chief Secretary Vishwas Mehta said social affairs represent a looming peril of an overly spread the contamination
3. Mumbai police on Wednesday gave prohibitory requests under Section 144 of CrPC in the city, limiting the development of individuals in broad daylight puts, and said the measure was taken to check rising COVID-19 cases
4. The Rajasthan government on Saturday chose to force Section 144 of the CrPC in 11 regions of the state because of the rising number of Covid cases. The state has 33 districts and the arrangement precludes a gathering of in excess of five people at a spot. As indicated by a delivery, the public authority additionally chose to proceed with the restriction on social or strict capacities till October 31.

5. Section 144 has been forced in Ayodhya District by the District Magistrate completely expecting Ram Mandir-Babri Masjid's question choice. Section 144 will be as a result till December 10. Ayodhya District organization is on alert.

A five-judge Constitution seat headed by Chief Justice of India Ranjan Gogoi, which began the everyday procedures on August 6 after intervention procedures neglected to locate a neighborly answer for the vexatious debate, has overhauled the cut-off time for wrapping up the procedures and has fixed it on October 17.

6. A customary stone-heaving celebration in Madhya Pradesh's Chhindwara area left 110 individuals harmed on Wednesday. The fest - known as "Gotmar Mela" - was held regardless of section 144 forced in the zone because of Covid-19 flare-up.

7. Following the Joint Action Committee (JAC) of the striking Telangana State Road Transport Corporation (TSRTC) representatives' call for a "Transport Roko," Section 144 CrPC, which prohibits the assembly of multiple persons in a district, has been enforced in all TSRTC terminals throughout Hyderabad on November 16. At these locations, no group gatherings of more than two people would be permitted. If such Bus Roko systems are allowed, many business and academic operations will be interrupted. "Anyone who disobeys this prohibitory order will be apprehended," said Anjani Kumar, Hyderabad's Commissioner of Police. Striking Telangana State Road Transport Corporation (TSRTC) employees have elected to temporarily abandon their fundamental interest in the Corporation's merger with the government. On the 41st day of dissent on Thursday, the Joint Action Committee (JAC) of striking delegates approached the decision to hold the interest because the public authority offered no hint of relaxing its stance.

8. As unrest erupted through Haryana today as a result of the Jat people's pro-reservation movement, the organization halted prohibitory requests in Gurgaon for two days. "Several Jat citizens obstructed the Garhi Harsaru railroad line, NH-8, Atul Kataria Chowk, Iffco Chowk, and other city highways, causing traffic congestion for the rest of the day. For the last two days, we've been enforcing section 144. Schools will reopen on Monday, despite the fact that they were originally expected to be closed.9. Two days after conflicts broke out between two networks over the supposed spoiling of a strict banner, things are getting back to business as usual in Uttar Pradesh's Kanpur area. The neighborhood markets, the government just as tuition-based schools and universities, which were shut after the conflict, resumed today, with

a special case of four influenced territories, Chamanganj, Fazalganj, Nuabasta, and Sishamau, District Magistrate (DM), Kaushalraj Sharma said. No untoward episode was accounted for from the city, yet segment 144 of the Criminal Procedure Code (CrPC), which precludes gathering of a huge gathering of individuals, is still set up.”

As a wellbeing measure, the police and paramilitary powers were keeping a severe vigil in the four influenced territories, said authorities.

CITIZENSHIP AMENDMENT ACT

“As the fights against the questionable Citizenship Amendment Act keep on picking up energy the public authority had depended on coercive measures like the burden of Section 144 in various urban areas across India. As a careful step, the Bengaluru City Police has forced Section 144 of IPC in the city from 19 December till 21 December. Section 144 disallows the social gatherings of multiple people. The progression has been taken in an expectation of a progression of fights, dharnas, and walks arranged by different understudies’ gatherings and associations. The means taken by police impart an exceptionally off-base sign as the dissent against CAA are predominantly coordinated understudies the nation over. Any preventive measure embraced by the public authority to stop understudies’ dissent is the concealment of voices which conflict with the foundation.”

It isn't the first run-through where the public authority is utilizing the law to smother the contradiction enlisted by various gatherings on a few issues. History is packed with models where governments have utilized the instrument of law to take on protesters. The public authority utilizes draconian laws, for example, the dissidence arrangements of the reformatory code, the criminal maligning law, and laws managing scorn discourse to quiet dispute.

These laws are enigmatically phrased, excessively expansive, and inclined to abuse, and have been over and over-utilized for political purposes against pundits at the public and state level. The issue in India isn't that the Constitution doesn't ensure free discourse, however, that it is anything but difficult to quiet free discourse as a result of a blend of overbroad laws, a wasteful criminal equity framework, and the previously mentioned absence of jurisprudential consistency.

India's general set of laws is scandalous for being obstructed and overpowered, prompting long and costly postpones that can debilitate even the honest from battling for their entitlement to free discourse.

SECTION 144: DANGEROUS WEAPON IN THE ARMOR

The aim of Section 144 is to make a request supreme in the event of an immediate aggravation or danger. The substance of Section 144 operation is the seriousness of the situation; its adequacy is the possibility of being able to avert any harmful incidents. “In *Radhe Das v Jairam Mahto* ¹⁰ it was held by the Supreme Court that Section 144 can only be invoked in order so as to prevent the disturbance of the public tranquillity or a riot or an affray. Further in the case of *Manzur Hasan v Muhammad Zaman* ¹¹ and *Shaik Piru Bux v Kalandi Pati* ¹² it was stressed that the section must only be imposed keeping in mind the urgency of the circumstance and the force is to be utilized for keeping up open peace and quietness.”

“Any limitations must not be against cardinal standards of the privilege to life, freedom, and opportunity. Article 19(a) and 19(b) of the Constitution of India plainly allows the privilege to the right to speak freely of discourse and articulation and the option to collect quietly without arms.” Be that as it may, at whatever point specialists sense an assessment developing against them they take asylum behind Section 144, a tradition of British standard.

In the current case, the line separating serene dissent and aggravation of public quietness has been ignored by authorities forcing Section 144. The understudies of various colleges are calmly dissenting and enlisting their dispute against CAA. The inconvenience in such a situation is incredibly discretionary and should just be forced in remarkable conditions. “In the case of *Mazdoor Kisan Shakti Sangathan v Union of India and Anr.* ¹³ The Supreme Court held that it [the order to impose section 144] was not unconstitutional but recognized the right to dissent and asked the public authority and police to outline rules. In our nation which appreciates the opportunity battle against expansionism and persistent progressive soul of political dissidents the endeavour to smother the fights and dispute hit at those fundamental goals.”

¹⁰ *Radhe Das v Jairam Mahto* AIR 1929 pat 714,716

¹¹ *Manzur Hasan v Muhammad Zaman* (1921) ILR 43 All 692

¹² *Shaik Piru Bux v Kalandi Pati* 1970 AIR 1885, 1969 SCR (2) 563

¹³ *Mazdoor Kisan Shakti Sangathan v Union of India and Anr.*, Writ Petition (Civil) No. 1153 of 2017,

COVID-19 AND SECTION 144

Because of the plunder, vicious fights, stone-pelting, and so on in any region or city, Section 144 of CrPC is forced. It forbids the gathering of at least five individuals in a zone. There is additionally a limitation on conveying such a weapon here. Individuals can likewise be captured for abusing it. As indicated by the law, each individual from such "unlawful gathering" can be reserved for "taking part in revolting". Likewise, it is referenced that blocking police from separating an unlawful gathering is a culpable offence. This part likewise engages the specialists to obstruct web access.

In India in a few places, the public authority has forced Section 144 of the CrPC for boosting public security and to limit the danger of Covid.

HIGHLIGHTS OF SECTION 144

It was instituted in 1973. It is imposed in a given district in crisis circumstances or instances of aggravation or saw the risk of some occasion that can possibly harm human lives or property or make an upsetting circumstance. "At the end of the day, we can say it denies public social event. Under this part according to the requests, there can't be the development of any open. All instructive establishments here stay shut. Doing any open gathering or leading any meetings in the territory are prohibited during the period when section 144 is forced around there. In the zone where Section 144 of CrPC is in drive, it is esteemed a culpable offence to discourage any law authorization offices from disbanding an unlawful gathering. In the event that any need emerges, the demonstration likewise engages the specialists to stop web access in the locale. No uncertainty the primary reason for Section 144 is to keep up the harmony and request, the security of general wellbeing also where inconvenience taxi upsets the normal life. Furthermore, Section 144 of the CrPC doesn't allow driving a couple of events that are done in standard events. To manage the crisis circumstances, under the Criminal Procedure Code wide powers have been given to an Executive Magistrate." One such agreement directs his powers to impose restrictions on people's individual freedoms, regardless of whether they are in a specific country, territory, or place, or where the situation can create chaos, peace, or danger, and so on.

As indicated by rules, no association under this segment will remain in power for more than two months from the creation thereof. For hindering risk to human existence, prosperity or security or from any ruckus or from an affray, the state government can take decision if basic and according to the condition decide to grow the authenticity for two additional months with as far as possible authenticity extendable to a half year. Right when the situation gets common, it will in general be eliminated.

CONCLUSION

After a detailed review of the subject area in light of legal declarations and academic editorials, the paper can be concluded with the statement that, though discretionary, Sec. 144 is an important component in the collection of steps taken by the governing body of every location to avoid and control pressing circumstances. A variety of bodies of proof have been recorded against the segment, testing its safe validity, and an equal number of decisions have been made to preserve its credibility. However, optional forces are provided upon the judge under this segment, there are different variables on its operation to forestall interference or shamefulness in the request. This section is more rational due to the fact that. The request for Magistrate may be audited by the High Court. Furthermore, with the increased instances of mobs, affray, and other events disrupting and disturbing public peace, it has become necessary to grant certain powers to the legal role in order to preserve harmony. Nonetheless, there is a need to change the overall strength of the legislative body, as well as to ensure individual rights and diverse opportunities for citizens.

REFERENCES

1. <https://indiankanoon.org/doc/445276/>
2. <http://www.mcrhrdi.gov.in/94fc/material/LAW.pdf>
3. <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814340.pdf>
4. <https://criminallawstudiesnluj.wordpress.com/2020/05/12/section-144-cr-p-c-part-vi-continuity-and-change-1941-to-1950/>

