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Critical Analysis of Sec 144 of the Criminal Procedure Code 1973

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The following paper deals with the Section 144 of Criminal Procedure Code, 1973. The author begins with the introduction, in Part I, explaining the section, its contours, contents and restrictions. The author then moves on to Part II, where he elucidates on what exactly is an unlawful assembly and its relationship with rioting, both of which the section seeks to prevent. Part III traces the jurisprudential history of the section, reflecting on what various High Courts and the Supreme Court have had to say. In Part IV, it is discussed as to why the Section has certain importance and is not completely redundant, as might be argued, putting in highlight its role in controlling violence to maintain social order and how it has been used in attempts to control the unprecedented situations due to COVID 19. In Part V, the author talks about how the section has been used as a tool by the state to misuse - how it has been used to pass orders which are absolutely arbitrary, to curb voices of dissent, and to rampantly create internet blockades. Finally, Part VI provides for a conclusion to the paper, along with a couple of suggestions from the author with respect to how the section can be reformed.

Keywords: section 144, covid, criminal.

INTRODUCTION

Section 144 of the Criminal Procedure Code of 1973 (“CrPC”) is a provision that accords powers to an Executive Magistrate to issue order in “urgent cases of nuisance of apprehended

danger”.¹ The threshold of what shall constitute as an urgent or sufficient ground for the imposition of the section is based on the “opinion” of the Executive Magistrate.² Hereinwith, the Magistrate can direct any person to act, or to abstain from acting, in a certain way, with regards to his person or property, if they feel that such action is necessitated to prevent any sort of danger.³ An order passed under this section usually remains in force for a maximum of two months, except for in situations when the State Executive feels it imperative that it be extended to prevent imminent danger to human life or property,⁴ in which case, the Government can extend the life of such an order, not extending beyond six months from the date of expiration.⁵ However, it is within the right of any Magistrate, and not only the one who issued the order,⁶ to rescind it *suo moto*, or on the application of an distressed party, if they seem so fit.⁷ Such a right is also accorded to the State Government under the section.⁸ Any citizen(s) who chooses to defy such an order is liable to be punished for disobeying a public servant and causing obstruction in the disposal of their duty.⁹

In furtherance of the order passed, a Magistrate is empowered to prohibit the assembly of five or more individuals at one place or stop them from organizing any event that might disrupt the peace of a place.¹⁰ During the time within which the order sustains, all public establishments, except Emergency and essential services, stand suspended.¹¹ The Section further empowers the Magistrate to block internet access as well.¹²

¹ Criminal Procedure Code 1973, s 144

² *Ibid*

³ Criminal Procedure Code 1973, s 144(1)

⁴ *Ibid*

⁵ Criminal Procedure Code 1973, s 144(4)

⁶ *Ibid*

⁷ Criminal Procedure Code 1973, s 144(5)

⁸ Criminal Procedure Code 1973, s 144(6)

⁹ Indian Penal Code 1860, s 188

¹⁰ Times of India, ‘What is Section 144 of the CrPC?’ (*Times of India*, 23 March 2020)

<<https://timesofindia.indiatimes.com/home/education/current-affairs/what-is-section-144-of-the-crpc/articleshow/74773112.cms>> accessed 05 September 2020

¹¹ *Ibid*

¹² *Ibid*

UNLAWFUL ASSEMBLY AND SECTION 144

The Constitution of India recognizes citizens' right to assemble peacefully and without arms.¹³ However, such a gathering cannot be unlawful. Along, with the powers in Section 144, as mentioned above, the CrPC bestows on the police and the magistrate several powers in furtherance of maintaining the peaceful status quo.¹⁴ They have the authority to use civil force to disperse of an assembly with a common unlawful intention.¹⁵ If such measures fall short, and the assembly seems to endanger the general security of the public,¹⁶ the Executive Magistrate has the authority to call upon the help of the Armed Forces to further such dispersal.¹⁷

Thus, it becomes important to ask - what is an unlawful assembly?

The Indian Penal Code ("IPC") defines an "unlawful assembly" as a congregation of five or more people who have a common intention that is contrary to the provisions of law.¹⁸ IPC provides for a list of conditions as to what may be considered as unlawful.¹⁹ These include:

- Displaying use of Criminal force against any public servant in exercise of their lawful power.
- obstructing the execution of any legal process
- being a part of trespass or mischief
- Taking possession of property that is not yours
- Compelling someone to do something that is illegal

For an assembly to be unlawful, it must meet one or more of the objectives above.²⁰ When any member(s) of an unlawful assembly resorts to violence of their common object, it becomes a

¹³ Constitution of India 1950, art 19(1)(b)

¹⁴ Law Times Journal, 'Unlawful Assembly' (*Law Times Journal*, 20 November 2018) <<http://lawtimesjournal.in/unlawful-assembly/>>_accessed 05 September 2020

¹⁵ Criminal Procedure Code 1973, s 129

¹⁶ *Ibid*

¹⁷ Criminal Procedure Code 1973, s 130

¹⁸ Indian Penal Code 1860, s 141

¹⁹ *Ibid*

riot.²¹ However, all the measures mentioned above are in situations when the assembly has already formed.²² Section 144, however, is more of a preventive measure, imposed to make sure that a situation of rioting does not arise at all. It is an extraordinary, emergency measure, which should not be used indiscriminately. Even then, instances of abuse of the Section by the Executive in furtherance of their agenda find mention in common conversation. This, however, is in no way to suggest that orders passed under the section are exclusively limited to unlawful assembly. This paper aims to discuss the jurisprudence around the section, followed by its pros and cons, and concluding by providing a succinct opinion.²³

JURISPRUDENCE REGARDING SECTION 144 OF CRPC

Section 144 of the CrPC is uniquely preventive in its approach. This is because a key element in using orders under this section is urgency. The situation must be such, that it involves very apparent dangers and is fraught with instances like rioting or affray or disturbs “public tranquility”.²⁴ Such must be the urgency that it warrants doing away with the laid procedures to deal with public nuisance.²⁵ It is not surprising then, that this section becomes extremely contentious and subject to frequent litigation, including challenges leveled at its own constitutionality. In this part, we discuss the various judicial pronouncements with regards to the Section.²⁶

In *Madhu Limaye vs SDM, Monghyr*²⁷, the constitutionality of the section was challenged. CJI Hidayatullah, in his landmark judgment, upholds the validity of the section, as long as it is properly applied. Since an order passed under the Section is not immune to the judicial review from higher judiciary, he saw no reason to question the constitutionality of the section. He

²⁰ *Bhawar Singh v State of Madhya Pradesh* (2008) 16 SCC 657

²¹ Indian Penal Code 1860, s 146

²² *Ibid*

²³ *Ibid*

²⁴ Legal Service India, ‘Analysis of Section 144 of CrPC’ (*Legal Service India*, 5 April 2013)

<<http://www.legalservicesindia.com/article/1841/Analysis-of-Section-144-of-CrPC.html>> accessed 05 September 2020

²⁵ *Ibid*

²⁶ *Ibid*

²⁷ *Madhu Limaye v Sub-Divisional Magistrate, Monghyr* 1971 AIR 2486

explains that the importance of the section lies in the notion of urgency to act and to prevent damage before happening.²⁸

In *M. Das vs D C Das*²⁹, the Apex Court once again upholds the idea that the main object of the section is **prevention** of the breach of peace. In light of the same, it also finds that the jurisdiction of an Executive sub-divisional Magistrate is at par with that of an Executive Magistrate, because speed is of the essence in issuance of the order.³⁰

In *BBN School vs DM, Allahabad*,³¹ the Court held that the expression “public tranquility” cannot have a restricted sense of public order, at par with how its understood in context of prevention detention laws. In *Ummulkulus v. EM, Union Territoty*,³² it was held that the Executive Magistrate enjoys wide powers under this section, and as long as they are satisfied that a situation has arisen to pass an order under the section,³³ the order is legally valid. However, as per *Abdool vs Lucky Narain Mundul*,³⁴ Section 144 is a temporary remedy only and, while the Magistrate can pass an immediate order to prevent breach of peace, it does not relieve him in any way of his duty to proceed with a proper inquiry into the circumstances that warranted such an order.³⁵

In *Ram Manohar Lohia*,³⁶ the Allahabad High Court interpreted Section 144 to be provision used in harmony with the rights of movement given to citizens under Art. 19 of the Constitution.³⁷ The exercise of the Magistrate’s power must strictly be in the aid and protection of legal rights. The Magistrate does not have the power, thus, to intervene in lawful exercise of legal rights, and hence the powers under Sec.144 are not absolute. In *Anindya Gopal Mitra*,³⁸ challenged was leveled against the West Bengal police on the matter that they refused permission to political

²⁸ *Ibid*

²⁹ *M Das v DC Das* 1989 Cri L J 163

³⁰ *Ibid*

³¹ *Bal Bharti Nursery School v District Magistrate, Allahabad* 1990 Cri L J 422

³² *Smt. Ummulkulus v The Executive Magistrate, Union Territory* 1991 Cri L J 262

³³ *Ibid*

³⁴ *In Re: Abdool v Lucky Narain Mundul* (1880) ILR 5 Cal 132

³⁵ *Ibid*

³⁶ *Ram Manohar Lohia v State of UP* AIR 1968 All 100

³⁷ *Ibid*

³⁸ *Dr. Anindya Gopal Mitra v State Of West Bengal* 1993 Cri LJ 2096

party, who were in opposition to the ruling party, for holding a rally, and issued a prohibitory order under S.144. The Calcutta High Court ordered that such an order is not sustainable, but the Police were free to take any preventive measures they felt fit.³⁹

In *Acharya Jagdishwaranand Avadhut*,⁴⁰ Supreme Court held that orders passed under the section cannot be of permanent or even semi-permanent nature, and it is only a temporary measure.⁴¹ Thus, continuous repromulgation of the same order at the expiry of the original one cannot be allowed without cogent reasons. The Court, later in *Md. Ghulam Abbas*,⁴² refused to entertain the question of property title on the same ground, stating that a reading of S.144(3) makes it obvious that the provision is supposed to be anticipatory in nature and can only have temporary effect.⁴³

In *Manzur Hasan vs Muhammad Zaman*,⁴⁴ the Bombay High Court laid down certain principles that must be kept in mind while issuing an order under Sec. 144. These are:⁴⁵

- There must be a necessary urgency to the situation.
- In case of a conflict between public and private rights, the former prevails.
- Contentions with regards to property titles and entitlement will not be subject to adjudication in proceedings under S.144
- The exercise of the section should be in agreement with decisions of Civil Courts and earlier judicial precedents.
- The consideration should not be that imposition of a restriction would only affect a small section of the populace.⁴⁶

In the long running jurisprudence evolving around the section, came Supreme Court's latest judgment in *Anuradha Bhasin* in January, 2020.⁴⁷ The challenge was leveled at the

³⁹ *Ibid*

⁴⁰ *Acharya Jagdishwaranand Avadhut v Commissioner of Police, Calcutta* 1984 AIR 512

⁴¹ *Ibid*

⁴² *Md. Gulam Abbas v Md. Ibrahim* 1978 AIR 422

⁴³ *Ibid*

⁴⁴ *Saiyid Manzur Hasan v Saiyid Muhammad Zaman* (1925) 27 BOMLR 170

⁴⁵ *Legal Services India* (n 24)

⁴⁶ *Ibid*

indiscriminate use of the Section in an alleged attempt to curb peaceful protests.⁴⁸ The Apex Court, in a judgment authored by J N.V. Ramana, upheld the idea that imposition of Sec.144 cannot be in prevention of an individual's democratic right of expressing their opinion, grievance or dissent.

SECTION 144 - A NECESSITY

The relevance of the Section lies in its urgency. It is to be used in situations when there simply is no time to approach the often lengthy laid procedure. The harm is sudden, imminent and anticipated. The orders passed under Section 144 are attempts to serve larger public interest.⁴⁹

- **Role of the Section in curbing violence**

The primary motive of having a section like S.144 is prevention of violence. As provided in the section itself, its aim is to prevent dangers leveled at human life and property. In furtherance of such the Executive Magistrate is bestowed with wide powers to even stop individuals from certain acts. Hence, its importance cannot be denied, especially in situations when time is of the essence.⁵⁰

- **Role of the Section in light of COVID-19**

As the world saw the advent of a pandemic brought on by the novel COVID19 virus, quarantine became the norm and lockdowns became common.⁵¹ Several states imposed Sec. 144 to prevent movements to stop the spreading of the virus.⁵² One of the conditions given in the section is passing of order in protection of human life.⁵³ The outbreak of the corona virus

⁴⁷ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

⁴⁸ *Ibid*

⁴⁹ RV KELKAR, *Criminal Procedure* (5th edn, 2012) 814

⁵⁰ *Ibid*

⁵¹ *Ibid*

⁵² The Quint, 'Coronavirus Outbreak: Section 144 in Some Parts of the Country' (*The Quint*, 19 March 2020) <<https://www.thequint.com/news/india/coronavirus-outbreak-section-144-in-few-parts-of-the-country>> accessed 21 October 2021

⁵³ Criminal Procedure Code 1973, s 144(1)

was perceived, quite correctly, in the opinion of the Magistrates, as a threat to human life. The orders passed became a necessary tool to control the spreading of the virus.⁵⁴

SECTION 144 - SUBJECT TO MISUSE

The Section is often criticized for various reasons. It is opined that the powers given to Executive Magistrate under the Section, which are completely to their discretion, can be used arbitrarily and be fraught with *mala fide* intentions. It has also been alleged to be used by the State as a tool to curb dissent and prevent protests. In recent times, criticism has also been levied for the rampant blockage to internet access and questions have been raised as to how legally viable that is.⁵⁵

- **Arbitrary use of the Section**

The powers provided to the Executive Magistrate under S.144 (1) are very wide. In furtherance of what he deems fit, he can pass an order asserting an action or abstain from certain action. This creates the prime situation for the arbitrary use of the section, notwithstanding the scrutiny that it might be subject to from the higher judiciary. Examples of such might be as follows⁵⁶:

In 2015, the Magistrate of Indore used S.144 to impose a ban on Hookah and Hookah bars, saying that it causes injury to life.⁵⁷ In 2011, during the secondary exams for the 11th standard in Udupi, the section was imposed around 100 metres of the exam centers to avoid “malpractice and indiscipline”.⁵⁸ In October 2012,⁵⁹ Collector K.N Satheesh imposed Section 144 in the city of Thiruvantapuram, Kerala, in an apparent effort to control the spread of dengue, a disease carried by mosquito vectors and transferred between humans only through

⁵⁴ *Ibid*

⁵⁵ Namrata Jain, ‘Analysis of Section 144 of Criminal Procedure Code’ (2017) 6 *Supremo Amicus* 44

⁵⁶ *Ibid*

⁵⁷ *Restaurant and Lounge Vyapari v State of Madhya Pradesh* (2016) 2 MP LJ 504

⁵⁸ Jain (n 55)

⁵⁹ *Ibid*

bodily fluids.⁶⁰ In 2010, people who were on a hunger strike in Himachal Pradesh against the construction of Renuka Dam, were arrested for breaching S.144.⁶¹ The reason for imposition of the section given was the health of the protesters and general public tranquility.⁶² In 2010, the Pune Police imposed S.144 in all public parks on Valentine's Day to prevent "immoral practices by young couples".⁶³

POLICE VIOLENCE - CURBING PEACEFUL PROTESTS

According to the Apex Court, it is well within the ambit of the police under Section 144 to take anticipatory action against assemblies in protection of public order and this will not be against the constitutional guarantees of Art.19,⁶⁴ but instead are covered by the restrictions to freedom of expression.⁶⁵ However, such power cannot be understood to the complete extinguishment of the rights under Art. 19 - To express dissent or to protest.⁶⁶

Powers of the police, under Chapter IX of the CrPC are very wide,⁶⁷ extensive and discretionary.⁶⁸ Instances of police brutality in the India are common and rampant.⁶⁹ These include,⁷⁰ but are not limited to, accounts of fake encounters⁷¹ and human rights violation and

⁶⁰ Indian Express, 'Dengue: Prohibitory orders under Sec 144 CrPC imposed' (*Indian Express*, 7 October 2020) <<https://www.newindianexpress.com/cities/thiruvananthapuram/2012/oct/07/dengue-prohibitory-orders-under-sec-144-crpc-imposed-413037.html>> accessed 05 September 2020

⁶¹ *Ibid*

⁶² Himvani, 'Section 144 imposed as protesters start hunger strike' (*Himvani*, 16 November 2010) <<http://www.himvani.com/8611/section-144-imposed-as-protesters-start-hunger-strike/>> accessed 05 September 2020

⁶³ Pune Mirror, 'Police fall out of love!' (*Pune Mirror*, 2 February 2010) <https://punemirror.indiatimes.com/pune/cover-story/police-fall-out-of-love/articleshow/32419021.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 05 September 2020

⁶⁴ *Ibid*

⁶⁵ *Babulal Parate v State of Maharashtra* AIR 1961 SC 884

⁶⁶ *Express Newspapers v Union of India* (1986) 1 SCC 133

⁶⁷ *Ibid*

⁶⁸ Clemens Artz, 'Police Reform and Preventive Powers of Police in India - Observations on an Unnoticed Problem' (2016) 49 *Law and Politics in Africa, Asia and Latin America* 53

⁶⁹ 'Injuries in Police Custody, Report No 113' (*Law Commission of India*, July 1985) <<http://lawcommissionofindia.nic.in/101-169/Report113.pdf>> accessed 05 September 2020

⁷⁰ *Ibid*

custodial deaths.⁷² The Supreme Court, in *DK Basu*,⁷³ set out a series of guidelines to prevent this, however, not much has come to avail.⁷⁴ It is then not surprising that a provision empowering them with preventive powers can be subjected to much abuse.⁷⁵ The real danger of the section is that it warrants too much power into the hands of the police, a body neither trained nor famous for its restraints against the disadvantaged.⁷⁶ With regards to this, the most blatant misuse of this section has been by the States in attempts of silencing the voices that are raised in protest. Hereon, we discuss two instances of such abuse.

RAMLILA MAIDAN INCIDENT

In 2011, Baba Ramdev, along with others, raised hue and cry about the issue of laundering of black money. To that effect, he planned to take out an Anti-Corruption Rally at the Ramlila Maidan, Delhi. In June 2011, he started his hunger strike at the site. The crowd at the venue raised to cross over half a lakh supporters. On the same day, some time close to midnight, the Police informed him that his permission for the event has been revoked. An hour later, approximately 5000 police personnels, including the CRPF, Delhi Police and RAF approach the Maidan. A scuffle between the supporters and the police took place, while Ramdev fled the scene. Eight rounds of teargas shells were charged at peaceful protesters, with police using brute inordinate force against the unarmed masses. Delhi High Court took *suo moto* cognizance of the situation. The State says that there was an imposition of the Sec. 144 and Police were

⁷¹ Headlines Today Bureau, 'NHRC stats show there were more fake encounters in Congress-ruled states than in Narendra Modi's Gujarat' (*India Today*, 4 July 2013) <<https://www.indiatoday.in/india/north/story/fake-encounters-congress-ruled-states-narendra-modi-gujarat-169150-2013-07-04>> accessed 05 September 2020

⁷² Press Trust of India, 'NHRC recorded 31,845 custodial-death cases between 1993 and 2016: Report' (*Business Standard*, 11 December 2019) <https://www.business-standard.com/article/pti-stories/nhrc-recorded-31-845-cases-of-custodial-death-between-1993-2016-report-119121001554_1.html> accessed 05 September 2020

⁷³ *DK Basu v State of West Bengal* (1997) 1 SCC 416

⁷⁴ *Ibid*

⁷⁵ Artz (n 68) page 78

⁷⁶ *Ibid*

well within their right to maintain public tranquility. On a unfavorable decision, the matter was appealed to the Supreme Court.⁷⁷

The Apex Court, in *In Re Ramlila Maidan Incident*, delivers its judgment.⁷⁸ On the matter of the validity of the order imposed under Section 144, the Court found it to be legally valid. However, dealing with the matter of police excesses in carrying out the order, the Bench found the police guilty of violating the protesting individual's fundamental rights under Part III of the Constitutions.⁷⁹

The Bench observed that it is the police's duty to maintain social order, and thus they do have a say in matters of organizing protests, so as to not disturb the public tranquility. However the exercise of this duty cannot override the guarantees under Art 19 and 21 of the Constitution. The Court remarked that it is "not only desirable but mandatory" that the State and the police have a set dispersement plan before they use force, in furtherance of orders passed under Sec 144. Even then the police should use maximum restraint in its use of force.⁸⁰ The Apex Court went on to find guilty not only the police who resorted to lathi charges and teargases, but also initiated disciplinary actions against members of the force who were silent spectators, the ones who didn't help in furthering the evacuation or in transportation of the sick and injured. It was thus made very clear, that even though measures can be taken and permissions be revoked under S.144 to maintain public order, the same cannot be used to justify police brutality.⁸¹

ANTI CAA PROTESTS

Seven years after the Court decided *Ramlila Maidan*, in 2019, the NDA government brought in the Citizenship Amendment Act, 2019. Widespread protests began throughout the length of the country, with the police imposing Sec. 144 in various states in an attempt to curb these

⁷⁷ Mounica Kasturi, 'In Re Ramlila Maidan Incident: Case Analysis' (*Academike*, January 2015) <<https://www.lawctopus.com/academike/in-re-ramlila-maidan-incident-case-analysis/>> accessed 05 September 2020

⁷⁸ *In Re Ramlila Maidan Incident v Home Secretary* (2012) 5 SCC 1

⁷⁹ *Ibid*

⁸⁰ Sarim Naved, 'Section 144 Is Not a Cover for Unchecked Police Action' (*The Wire*, 24 December 2019) <<https://thewire.in/law/section-144-police-protests>> accessed 05 September 2020

⁸¹ *Ibid*

protests. Time and again the courts have had to intervene to question the legality of the orders passed, with the Karnataka High Court calling such an imposition on Bangalore outright illegal.⁸² The States' rampant imposition of the section raised some important questions once again. How wide can the police's powers be? The purpose of the Section was to maintain public order, not for it to be used against the mass general.⁸³ So can the police be allowed to silence the voices in opposition? The Judiciary, overall, answered in the negative⁸⁴, the most striking example being J N.V. Ramana's judgment in *Anuradha Bhasin* in January 2020,⁸⁵ wherein he held that S.144 cannot be used to stop exercise of democratic rights.⁸⁶

However, the fact of the matter remains that despite what is jurisprudentially correct,⁸⁷ the abuse of the section continued throughout the period of protests in a continuing efforts to silence voices.⁸⁸

INTERNET SHUTDOWNS

In 2016, the United Nations Human Rights Commission passed a non binding resolution that effectively made the access to internet a basic human right.⁸⁹ However, India had been one of the 17 countries at the time who were vehemently opposed to the resolution.⁹⁰ Since then, the Judiciary has been called upon to answer if right to internet falls under the Fundamental Right

⁸² Special Correspondent, 'Slapping Section 144 during CAA protests 'illegal': Karnataka High Court' (*The Hindu*, 14 February 2020) <<https://www.thehindu.com/news/national/slapping-section-144-during-caa-protests-illegal-karnataka-high-court/article30814253.ece>> accessed 05 September 2020

⁸³ *Ibid*

⁸⁴ J (Retd) A P Shah, 'In CAA narrative, finding the judiciary's lost voice' ((28 December 2019) <<http://hdl.handle.net/123456789/1733>> accessed 05 September 2020

⁸⁵ *Ibid*

⁸⁶ *Anuradha Bhasin* (n 47)

⁸⁷ *Ibid*

⁸⁸ The Quint, 'Like Kashmir, Sec 144 Is Being Illegally Used to Stifle Dissent' (*The Quint*, 19 December 2019) <<https://www.thequint.com/news/law/caa-protests-in-delhi-bengaluru-after-kashmir-illegal-use-of-section-144-crpc-against-pan-india-protests>> accessed 05 September 2020

⁸⁹ Firstpost, 'The UN Says That Internet Access Is A Basic Human Right, India Disagrees' (*Firstpost*, 6 July 2016) <<https://www.firstpost.com/tech/news-analysis/the-un-says-that-internet-access-is-a-basic-human-right-india-disagrees-3685107.html>> accessed 05 September 2020

⁹⁰ *Ibid*

of Right to Life.⁹¹ While the State has argued otherwise, the Kerala High Court in *Faheema Shirin*, held that it is a right under Art.21.⁹² This view was upheld by the Supreme Court in context of a petition filed against Kashmir’s internet blockage earlier this year.⁹³ A blanket ban on the internet is also a direct attack on the constitutionally guaranteed freedom of speech and expression.⁹⁴ This right encompasses the right to communicate through whatever media one wishes to- print or electronic or audio-visual.⁹⁵ Thus placing a blanket ban on internet connection is in direct contravention to the fundamental right guarantees.⁹⁶

However, with no regards to the above, the nation has time and again seen abstract and arbitrary blockage to internet access. The source of this is found in the Magistrate’s powers under S.144 to maintain public tranquility, and justification provided is that this is hampered by online transfer of ‘fake news’.⁹⁷ In *Ramlila Maidan*, the Supreme Court had held that internet shutdowns should be used as a matter of last resort and not routine. S.144 is an anticipatory action and does not warrant blocking internet access on a whim.⁹⁸ Furthermore, there exists a special provision in law to deal with internet blockages, under the Information Technology Act.⁹⁹ *Generalia Sepcialibus Non-derogant* is a settled position of law, upheld by the Supreme Court in *Motiram Ghelabhai*.¹⁰⁰ This means that when there is a specific provision provided under a statute,¹⁰¹ a general provision should not be used.¹⁰² In *Ram Saran*, the Court further goes on to specify that when there exists a special provision, reliance cannot be placed on

⁹¹ Constitution of India 1950, art 21

⁹² *Faheema Shirin RK v State of Kerala* (2019) 4 KLT 301

⁹³ *Foundation of Media Professionals & Ors v UT of Jammu and Kashmir* 2020 SCC OnLine SC 453

⁹⁴ *Ibid*

⁹⁵ *Union of India v Association for Democratic Reforms* (2002) 5 SCC 574

⁹⁶ *Ibid*

⁹⁷ Lovish Garg, ‘Legality of the Internet Shutdown under Section 144 of Code of Criminal Procedure’ (2016) 3 *Communication, Media, Entertainment and Technology* 95

⁹⁸ *Ibid*

⁹⁹ Information Technology Act 2000, s 81

¹⁰⁰ *Motilal Ghelabhai v Jagan Nagar* 1985 AIR 709

¹⁰¹ *Ibid*

¹⁰² Garg (n 97)

sections of the CrPC.¹⁰³ In light of the above stated facts and existence of S.81 of the IT Act, imposition of net bans under S.144 of CrPC cannot be held to be legally sound.¹⁰⁴

Internet shutdowns in India are a growing menace, with data revealing that in the past year Kashmir underwent 180 shutdowns, while Uttar Pradesh saw 28, highest in the nation.¹⁰⁵ Even if the main motive of these bans is to prevent demonstrations, protests, etc, that can harm the public order, there needs to be a system of checks and balances to prevent the misuse.¹⁰⁶ This could very simply be achieved by imposing the bans under the IT Act, which provides for a review provision, and is more specific,¹⁰⁷ and unlike the unchecked, unfettered powers of the S.144.¹⁰⁸

CONCLUSION

India's criminal justice system – both in structure and practice - reeks heavily of its colonial hangover. The rampant invocation of Section 144 is merely an example of a system that is already heavily skewed in terms of balance of power. The intention of the section, in theory, is pretty noble. It does not confer on the State *carte blanche* powers, but circumscribes the unbridled power in the contours of “in case of an emergency”. It is, at its heart, a preventive measure, that should be invoked as rarely as is possible. Through clauses (5) to (7), it also equips citizens, who have been aggrieved with respect to their person and property, with a right of subsequent hearing. In a utopian world, the section would be a blessing. However, we live in a world far from that. How the section can be abused has been illustrated throughout the course of this paper. In conclusion, the author would like to purport that the need of the hour is not repeal the section *in toto*, but to reform it to suit the original intent of the legislation.

SUGGESTIONS

¹⁰³ *State (Union of India) v Ram Saran* (2013) 12 SCC 578

¹⁰⁴ *Ibid*

¹⁰⁵ Milind Rajratnam & Shivang Yadav, 'Internet Shutdown under Section 144: Only Alternative?' (*Criminal Law Studies NLUJ*, 24 February 2020) <<https://criminallawstudiesnluj.wordpress.com/2020/02/24/internet-shutdown-under-section-144-only-alternative/>> accessed 05 September 2020

¹⁰⁶ *Ibid*

¹⁰⁷ *Ibid*

¹⁰⁸ *Ibid*

The Section is subject to much criticism because it can be invoked as per the satisfaction of the Magistrate, a cog in the Executive wheel. Even the judiciary has held that, although options like writ petitions and appeals lie before a Court for the aggrieved, even they cannot question the validity of the order vis-à-vis the Magistrate's discretion. While it would make no sense to circumspect this power, given that it is envisaged to be an emergency measure, there should be a *post facto* check imposed. Cogent reasons must be documented for passing orders under the Section. These reasons must be corresponded to an independent authority, which checks on the need for the imposition- whether it was truly an emergency. Unnecessary invocation of the section might result in stalled promotions, or even disciplinary actions.

As mentioned earlier, the restrictions imposed on access to internet, if need be for it at all, should completely be brought out of the ambit of this section and be restricted to the provisions of the Information Technology Act, 2000. Since the act is more specific in its approach and provides for a review provision, there already exists a much needed system of checks and balance. Thus, in summation, it can be said that a case can always be made for the necessity of the Section – to tackle emergencies. However, the absence of any principle to bind its unfettering wings is what has led to its misuse over the decades. Need of the hour, then, is not repealing, but reforming the section, either through legislative or judicial intervention.