

Critical comment on S. 144, Cr.P.C

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INTRODUCTION

Section 144 of Cr.P.C does impose restrictions over the personal liberties of the civilians for their safeguard and public tranquillity when there is a near danger or unrest that might reach the people soon in the eyes of the district magistrate or a sub-divisional magistrate or an executive magistrate of a state or the territory who thereby has been empowered by the state government, but that does not mean that there can be an overuse of the power for the implementation of the provision or it shall be used too generally as it suits to the authority. This provision in no such control has ever played with the fundamental rights of the people and has been drafted so as to safeguard the people, and no harm shall be done to the people. This section works perfectly in a democracy as it has been of the people, for the people, and by the people and works hand in hand with the constitution. Section 144 of The Criminal Procedure Code has had deplorable implementation by the apparent authority hence creating a sense of resentment in the eyes of people towards the constitutionally well-drafted provision.

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ARBITRARY USE OF SECTION 144

The Code of Criminal Procedure confers broad powers on the Executive Magistrate to comply through emerging circumstances. The provision recognizes the Magistrates to enforce limits on the personal liberties of people, whether in a specific jurisdiction or in a town itself, where the circumstance is likely to cause disorder or a threat to peace and tranquility in that area due to certain disturbances^[1]. But this doesn't mean that the magistrate can use the provision of the code at his mercy. There need to be substantial grounds to mention as to what conflicted thought gave the magistrate the idea that certain situation might disturb the tranquility and peace of the public provided in the section of the code itself. Under subsection (1) of section it has been mentioned that if a Magistrate considers that he might give orders under section 144 only if it 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] In the case of Kusum Kumari Debi, it states that the statement of the Magistrate does not grant him authority to take action under the provision until such

evidence set out to prove that there was an immediate need for action in the case in question.^[3] Also in the Ramlila Maidan case^[4], it was inferred that a magistrate cannot use the simple impression of the danger as a cogent argument to impose order under this provision, and the danger must be a true, clear, and significant one. Moving on to subsection (5) and (6) of the Section 144, it talks about allowing the petitioner to appeal the petition either in person or by claiming to prove cause against it and to have the order rescinded or revised by the State Government or other senior magistrate hence clearly stating how if one person has any objection against the appeal, he/she can put a question upon it and state can always look into the matter. This section also had a time limit and cannot be used as a permanent solution to any problem. In many cases, it has been seen that section 144 was applied as a permanent restriction to do something where as the provision itself clears that nothing shall exceed for a period of more than 2 months and in state of emergency more than 6 months. In the case of Parathodau Panchayat v. Kanjirappally Panchayat^[5], it was said that the magistrate cannot use the power assigned under this section to order any person to take specific action and thus cannot assume that power even in the guise of an undesirable order. The supreme court has even clearly stated in many instances that hoe the section does not mean to harm the rights of the people. It stated that “This power should be used responsibly, only as a measure to preserve law and order. The order is open to judicial review so that any person aggrieved by such an action can always approach the appropriate forum and challenge the same. But, the aforesaid means of judicial review will stand crippled if the order itself is unreasoned or unnotified,”^[6]. This was stated by the court when there was a decision being taken by the apex court instead of internet shut down in Jammu and Kashmir as, since august, there has been no internet available to the public since a decision was taken to struck down Article 370 of the Indian Constitution and Article 35A. Internet shut down is also available under Section 144 of the code.

IN RESPECT TO THE CONSTITUTIONALITY

Article 19(1)(b) of the constitution provides for the “protection of the rights of the citizens of India to assembly peacefully and without arms”^[7]. The state is also empowered under Article 19(3)^[8] to impose reasonable restrictions “*in the interests of the sovereignty or integrity of India or public order*”^[9] and to follow by this is Section 144 of Cr.P.C. Section 144 confers discretionary authority on the Magistrate. The Code has tried to set out such limitations in such a manner that they are not applied unilaterally or unfairly. There is a clear procedure that the Magistrate has to obey to bear those conditions in mind, only in which directions may be issued under this clause. Such orders may also be subject to review by the High Court and there is a specific time limit for which those very orders may

remain in force. It has been questioned earlier whether the safeguards set down in the Code and the Courts have indeed been adequate to safeguard the fundamental right to freedom of assembly of citizens. Since sub-section (2) has provided absolute powers to the Magistrate to pass even ex-parte orders in an emergency situation.^[10] Hidayatullah, C. J., stated in the well-known case of *Madhu Likaye v S.D.M. Monghyr*^[11] that section 144 of the Criminal Procedure Code is not unconstitutional if it is applied correctly and that there is no reason for it to be struck down at all. And this doesn't mean that it is in any probability over the limits provided by our constitution. Since the integrity of the order is open to challenge, it cannot be argued that, given the wide range of powers conferred on certain magistrates by section 144, it places undue restrictions on some fundamental rights. Consequently, conferring such wide powers on the Magistrate will not amount to a violation of the freedoms granted by the Constitution. Just because there is a mere chance that this section might have a chance of misuse by someone doesn't conclude that it has to be amended or needs to strike down of the code. It just confers upon how it safeguards the interests of the public and still letting the public enjoy their constitutional rights promised by the state. In *Mazdoor Kisan Shakti Sangathan v Union of India and Anr*^[12], where the Supreme Court held that it [the order] was not unconstitutional but recognized the right to protest and asked the government and police to frame guidelines."^[13]

EXAMPLES

In the recent past, there have been few too many examples of section 144 that have come up in front of us where the implementation of this section was highly criticized. Section 144 is one such section of the code which has been used widely to curb violent protests and unlawful assemblies but we have seen a different side to it also where the implementation of the section was done in a poorly manner. The Principal Bench of the Karnataka High Court on February 13th ordered the Bengaluru police commissioner (in charge of the district magistrate) to impose Section 144 of the Criminal Procedure Code (Cr.P.C) across the city during the anti-citizenship (Amendment) Act (CAA) protests of 19 to 21 December 2019. The High Court held that the contested order was unlawful and did not stand the test of the exercise of such an extraordinary power as the Supreme Court had established in *Anuradha Bhasin vs. the Union of India*^[14] which said that there should be no repetitive orders under this provision, there should be a grave emergency, the order issued under this Article would set forth the relevant evidence to provide for a judicial appeal of the same and authority should be exerted in a bona fide and logical way, and the same should be achieved by depending on the actual truth, which is representative of the operation of the mind. The Orders of Restriction raised under Section 144 of the

Code of Criminal Procedure (Cr. P.C) should not be used as a weapon to censor valid expressions, opinions and concerns about democracy when the issue was raised in the supreme court regarding Jammu and Kashmir while the section was imposed in the now turned union territory before the removal of Article 370 and Article 35A of the constitution. The Court observed that the directions given under Section 144 in Jammu and Kashmir did not specify why restrictions had been enforced in expectation of a challenge to law and order or to avoid mass casualties and properties. This was even though the government argued that restrictions had been imposed because of the state's history of cross-border terrorism and infiltration and other security issues.^[15] The differences of opinion and disapproval of the government action could not even lead to the imposition of Section 144 by the court.^[16] On the issue of whether Section 144 could be upheld against the public in general or particular groups or persons, the court referred to the verdict of Madhu Limaye^[17] that a particular order could be issued if the number of persons was so large that differentiation could not be made without risk. It means that the Magistrates cannot apply a restrictive-jacket formula without evaluating objective and material facts.

CONCLUSION

Section 144 of Cr.P.C is one such section that re-assures peace and public tranquillity in the country while there have been drawbacks as it comes to the implementation of the section by the people who are implementing it. Supreme Court has put forth the main objective of the section. It is an essential element under Cr.P.C that the executive body of any state, town, or province has in a state of urgency and danger to the public life. Numerous amounts of petitions and cases were filled, which has challenged the constitutionality of the section. But permissive powers are imposed on the magistrate under this provision, the exercise of which is subject to numerous limitations to preclude any unreasonable or unfair treatment in the process. The fact that the High Court can examine the order of the magistrate referred to in this section makes the application of that discretion more reasonable. However, there needs to be a balance as to how these powers are being vested to the executive body in case of urgent situations and need to protect the fundamental rights of citizens given by the constitution under Article 19 and especially under Article 21 which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law^[18]. And before proceeding further ahead with this section, the magistrate should have an investigation of the matter and shall hold on what level is the urgency of the matter and to what extent there needs to be an implementation of Section 144 of The Code of Criminal Procedure.

- [1] The Code of Criminal Procedure, (1973).
- [2] The Code of Criminal Procedure, (1973).
- [3] Kusum Kumari Debi And Anr. vs Hem Nalini Debi, (1933).
- [4] Re-Ramlila Maidan Incident Dt ... vs Home Secretary, (2012).
- [5] Parathodau Panchayat v. Kanjirappally Panchayat, (1984).
- [6] Section Court, Section 144 not for suppressing people's right: Supreme Court The New Indian Express (2020), <https://www.newindianexpress.com/nation/2020/jan/11/section-144-not-for-suppressing-peoples-right-supreme-court-2088111.html> (last visited May 23, 2020).
- [7] The Constitution of India, (2005).
- [8] The Constitution of India, (2005).
- [9] Constitutionality of section 144 of the Code of Criminal Procedure 1973, The Law Blog (2020), <https://thelawblog.in/2016/10/16/constitutionality-of-section-144-of-the-code-of-criminal-procedure-1973/> (last visited May 20, 2020).
- [10] The Code of Criminal Procedure, (1973).
- [11] Madhu Limaye vs Sub-Divisional Magistrate, (1970).
- [12] Mazdoor Kisan Shakti Sanghatan vs Union Of India, (2018).
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- [13] Best Website for IAS Preparation | Jatin Verma's IAS Academy, Jatin Verma's IAS Academy (2020), <https://www.jatinverma.org> (last visited May 25, 2020).
- [14] Best Website for IAS Preparation | Jatin Verma's IAS Academy, Jatin Verma's IAS Academy (2020), <https://www.jatinverma.org> (last visited May 25, 2020).
- [15] Section 144, not a tool to suppress opinion: SC, The Hindu (2020), <https://www.thehindu.com/news/national/section-144-not-a-tool-to-suppress-opinion-sc/article30537112.ece> (last visited May 25, 2020).
- [16] Section 144, not a tool to suppress opinion: SC, The Hindu (2020), <https://www.thehindu.com/news/national/section-144-not-a-tool-to-suppress-opinion-sc/article30537112.ece> (last visited May 25, 2020).
- [17] Madhu Limaye vs Sub-Divisional Magistrate, (1970).
- [18] The Constitution of India, (2005).