



## ANALYSIS OF SECTION 144 OF CRIMINAL PROCEDURE CODE

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### Abstract

The researcher wish to explore and study about wide powers have been conferred on an Executive Magistrate to deal with the emergent situations under Criminal Procedure Code, 1973. One among such provisions deal with the power of magistrate to impose restrictions, on the personal liberties of individuals, whether in specific locality or in town itself, where the situation has the potential to cause unrest or danger to peace and tranquility in such area, due to certain disputes. Section 144, Criminal Procedure Code, 1973 confers power to issue an order absolute at once in urgent cases of nuisance and apprehend danger. Specified classes of Magistrate may make such orders when in their opinion there is sufficient ground for proceeding under the section and immediate prevention or speedy remedy is desirable.

**Key words** : Public peace, Public tranquility, annoyance, danger , apprehend, prevent.

### Need for study :

Since Section 144 of Criminal Procedure Code, 1973 is prohibitory in nature. It restricts public gathering but doesn't bar it all together. The Researcher feels the need to analyse this particular section because the

position in India regarding this remain controversial at times.

### Objective/Aim of the study :

The researcher aims to analyze Section 144 of Criminal Procedure Code, 1973. He/she also aims to find out whether it is inadequate to confront urgent cases of nuisance and apprehend danger.

### Research Methodology :

The research methodology adopted for the purpose of study is doctrinal in nature. Sources of data are secondary i.e. books, statutes, online website, articles, case laws.

### Introduction :

A very well known and frequently used Sec 144 of Criminal Procedure Code, 1973 grants powers on senior magistrate to issue order in urgent cases of nuisance or apprehend danger. This section deals with another category of preventive jurisdiction of Executive Magistrate which extends to cases of nuisance or danger which need prompt and urgent action. This section even empowers the Magistrate to pass ex- parte orders to remain in force for short duration up to two months which may be extended by state government up to six months in exceptional cases. It is a settled law that Magistrate is authorized to act under Section 144 (1) and (2) only when he is satisfied as regards the existence of such an emergent or urgent situation or circumstances which are likely to disturb the public tranquility and such reasons must be reflected in order itself with reasons thereof. A mere statement that he is satisfied that there is possibility of serious breach between the parties as well as public tranquility isn't sufficient enough to



exercise such wide powers under Section 144 (1) and (2) of the code.

This power conferred under Section 144 of the code acts as a major tool in hands of Executive Magistrate to prevent obstruction, annoyance, injury etc to the general public. This section requires the Magistrate to issue the order in writing setting forth the material facts of the case and the order is to be served according to Section 134 of the code. While taking the action, the court not only consider those situations assessed by Magistrate but would also take in consideration the factors as to whether the orders issued under Section 144 were vague or directed to a specific person.

The power under this Section 144 is not arbitrary, nor is unlimited, it is reasonable. Section 144 is attracted only in an emergency.

The paper begins its analysis by first expounding on the scope of section 144 followed by the conditions that need to be fulfilled in order to invoke it. Further in the paper, details of an order under this section are elaborated upon, like its contents, duration, and mode of its service. While explaining the above, judicial pronouncements have been relied upon to substantiate as well as elucidate the meaning of the section.

### **Section 144 of Criminal Procedure Code, 1973**

It provides that,  
Power to issue order in urgent cases of 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 tranquility, or a riot, or 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 to 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 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.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor in office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub section (4).

(7) Where an application under sub section (5) or sub section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.<sup>1</sup>

#### **Constitutional Validity of this Section :**

Hidaytullah, C . J, stated in the celebrated case of Madhu Likhaye v/s S.D.M Monghyr [28<sup>th</sup> November, 1970], that section 144 of Criminal Procedure Code, 1973 is not unconstitutional if properly applied and the fact that it may be abused is no ground for

its being struck down. And the provisions of the code properly understood are not in excess of limits laid down in the constitution for restricting the freedom guaranteed in it and that is precisely why the court held that section 144 of Criminal Code is valid and constitutional.<sup>2</sup>

Since the propriety of the order is open to challenge, it cannot be said that by reason of the wide amplitude of power which section 144 confers on certain magistrates, it places unreasonable restrictions on certain fundamental rights. The conferment of such wide powers on magistrate doesn't therefore amount to an infringement of the rights guaranteed under the Constitution.

In the above said case, the Magistrate gave a prohibitive order under section 144 in order to avoid a scuffle between members of two labor unions. The petitioner here challenged the provisions as giving arbitrary powers to the Magistrate. Basically, there were five points enumerated in the judgment, which justified the constitutionality of section 144.

They are as follows :

- Although the Magistrate has the power under this section to pass orders ex- parte, however generally the procedure that is followed is to serve notice to the person against whom the order is passed. Only in cases of extreme critical situations that the Magistrate has to resort to passing an ex parte order.
- Additionally, the person aggrieved by the order has a right to challenge the order on the grounds they find appropriate. This

<sup>1</sup> <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814340.pdf>

<sup>2</sup> <https://indiankanon.org/doc/496236/>



supports the view that the power granted under this section is not arbitrary.

- To substantiate the above, an opportunity for hearing and to cause is also provided to person challenging the order of the magistrate. Thus, the principle of Natural Justice has also been included.
- Next the court also stated that the fact that the aggrieved party has the right to challenge the propriety of the order, makes the action of Magistrate more reasonable and based on cogent reason.
- Finally, the High Court's power of revision under Section 435 of the code read with section 439 of the code also makes up for the condition that the order under section 144 is non-appealable. The High Court can either quash the order or ask the magistrate for the material facts, therefore ensuring accountability of the Magistrate.

Therefore, in this case, there has been a number of cases where the courts have accepted this approach and held that the preventive action under Section 144 is justified. Also, any restrictions, which is opposed to the fundamental principles of liberty and justice. One of the tests to identify whether a restriction is reasonable or not, whether the aggrieved party has a right of representation against the restriction imposed or proposed to be imposed. No person can be deprived of his liberty of without being given an opportunity to be heard in defense and that opportunity must be definite, adequate, fair and reasonable. Also, the courts need to make sure whether the restrictions are in excess of the requirement or whether it is in an arbitrary manner.

### Scope :

The actions taken under this section are anticipatory, i.e. it utilized to restrict certain actions even before they actually occur. These actions are generally imposed in case of emergency, where there is an apprehend danger of some event that has potential to cause major public nuisance or cause danger to public tranquility or public peace. The crux of action taken under Section 144 is the urgency of situation; the capability is the likelihood of being able to avoid certain harmful occurrences. Protection and preservation of public peace and public tranquility is the very first function and the aforesaid power is conferred on Executive Magistrate enabling it to perform such function effectively and efficiently during the emergent situations.

In case of **Radhe Das v/s Jiram Mahto**, 123 Ind Cas 73 [February 8<sup>th</sup>, 1929], the dispute was over a piece of property. The petitioner requested to issue order avoiding respondent to enter into the property, which further was granted under Section 144 by the Magistrate. However, while the proceedings, the respondent too claimed for the same prohibition on petitioners, which was subsequently granted by Magistrate under the same section of the code. Also, the respondent in response to present action brought action on the ground that their rights over the property was violated.

The court then held that, if the situation demands any action, then for the preservation of public peace and public tranquility, rights of an individual can be renounced and society's benefit is taken into



consideration.<sup>3</sup> "To give jurisdiction under this section, the Magistrate shall be of opinion that immediate prevention or speedy remedy is desirable and that the direction he proposes to make is likely to prevent a disturbance of the public tranquility or a riot or an affray. In such circumstances private rights must give way."<sup>4</sup>

The principles which must be borne in mind before the application of this situation has been elaborated in case of 'Manzur Hasan v/s Muhammad Zaman<sup>5</sup>,' and has further approved in case 'Shaik Piru Bux v/s Kalandi Pati.'<sup>6</sup> They are :

- Urgency of situation and use of such power only for preservation of public peace and tranquility.
- Rights of individual i.e. private rights can be renounced when there is conflict between public rights and private rights.
- Question of titles over any property or entitlement to rights or disputes of civil nature are not open for adjudication in proceeding under this section.
- Where those questions which have already been decided and given consideration by civil courts or judicial pronouncements, the Magistrate should exercise their powers under Section 144 in aid of rights and against those who interfere with the lawful exercise thereof.
- The consideration shouldn't be that restriction which would affect only particular section of society or community rather than a large section more vociferous and militant.<sup>7</sup>

### Several more examples :

- ✚ During the Senior Secondary Exams of class 11<sup>th</sup> in Udupi, [2011], Section 144 was declared within limits of 100 meters radius of all exam centres to avoid 'malpractice and indiscipline.'
- ✚ In 2010, hunger strike against Renuka Dam in Himachal for violating Section 144, as their health was getting affected, along with the tranquility of their relatives.
- ✚ In Kashmir, Section 144 has been in force for more or less continuously since 2008.<sup>8</sup>

Although the powers granted under this section are extraordinary considering the fact that it enables them to suspend the lawful rights of person if they are of thought that such suspension will be in favor of public interest. But the Magistrate should also keep in mind that every citizen has right to ventilate his grievances either in public or or in private and ask for redress.

In case Acharya Jagdisharanand v/s Police Commissioner<sup>9</sup>, it was held that, the order issued under Section 144 of Criminal Procedure code, 1973 can be either of permanent or semi – permanent nature.

In , Restaurant and Lounge Vyapari v/s State of Madhya Pradesh<sup>10</sup>[August 21<sup>st</sup>, 2015], the Magistrate used Section 144 of Criminal Procedure Code, 1973 and imposed ban on Hookah in city of Indore.

<sup>3</sup> <https://indiankanoon.org/doc/93983/>

<sup>4</sup> <http://www.legalservicesindia.com/articles/crpc.htm>

<sup>5</sup> (1921) ILR 43 All 692

<sup>6</sup> 1970 AIR 1885, 1969 SCR (2) 563

<sup>7</sup> <https://indiankanoon.org/doc/265287/>

<sup>8</sup> <http://thelegiteye.in/2017/10/03/analysis-section-144-crpc/>

<sup>9</sup> 1984 AIR 512, 1984 SCR (1) 447 ; {

<https://indiankanoon.org/doc/798012/>}

<sup>10</sup> <https://indiankanoon.org/doc/64903563/>



It became unlawful as it possess the danger of causing injury to human life as well as disturbing public tranquility.

**Rationales for application of Section 144 of Criminal Procedure Code, 1973 :**

- Annoyance
- Injury to human life
- Disturbance to public tranquility
- Orders cannot be made to give advantages to one party.

**Contents of order:**

- Order must be in writing.
- Order must be specific and definite in terms and conditions.
- ‘Material facts’ must be stated in order.
- Prohibition must be clearly stated

**Service of prohibiting order under Section 144:**

Once the form of order is appropriate, the magistrate must then serve the order upon those expressly mentioned in the order itself. For this purpose, Section 134 CrPC is attracted. Under Section 134, the order must be served on the person against whom it is made (sub-sec. 1); or else, when such personal service is not feasible a copy of the said order must be stuck up at such place(s) as may be deemed fit (sub-section 2). The notice issued must follow the provided terms of the order passed and should not be couched in wider terms. Therefore, if the said procedure were not properly as well as appropriately followed, the order made would then be deemed illegal or void. The person can then not be convicted for any defiance of the order under section 188 of the Criminal Procedure Code, 1973. However, if it can be shown that the person against

whom the order was directed did in fact have knowledge of such order being issued against him, any irregularity in the method of promulgation would not by itself make the order ultra vires.

**Duration of order:**

As expressly mentioned, any order passed under Section 144 shall be valid for period of two months only. [ Sub- Clause (4) ]. Also, as already mentioned, it is not competent to Magistrate to review or resuscitate his orders from time to time. Such an exercise of power would clearly constitute abuse of power.

However, the State Government can extend this time period of two months to a maximum of six months from the date of the expiry of the initial order, if it finds it imperative for prevention of certain situations causing disturbances of safety, health or peace. Although the power granted upon the Government in this respect is executive in nature, and there can be revision of order by a Magistrate in case the court finds the arbitrary or unfair exercise of power.

**Conclusion :**

After careful analysis of the concerned section in the light of judicial pronouncement and academic commentaries, the paper can be concluded with the assertion that, section 144, albeit discretionary, is an essential element in the set of measures that are undertaken by the executive body of any district in order to prevent as well as manage urgent situations. There have been number of cases filed against the section challenging the constitutional validity of the section and an



equal number of decisions upholding its legitimacy. Though, discretionary powers are conferred upon the magistrate under this section, there are various factors on its exercise so as to prevent arbitrariness or unfairness in the order. What makes this section more rationale is that. The High Court can review the order of Magistrate.

Moreover, seeing the increased cases of riots, affray and other incidents ruining and disturbing public peace it has become necessary to confer such powers to the judicial authority so that peace can be maintained. However, there has emerged a need to balance the plenary power of legislature and need to protect personal liberty and other freedoms of citizens.

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