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JINDAL GLOBAL LAW SCHOOL

THE CODE OF CRIMINAL PROCEDURE

Research Paper

“Expansive Powers and Restrictions Under Section 144 Of Crpc.”

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BALLB

Expansive powers and restrictions under Section 144 of CrPC.

“The draconian law is being used unfailingly and rampantly to silence any kind of dissent and impose self-censorship”¹ writes Lara Jesani, a famous activist and lawyer. In theory, the section has a very noble purpose but there has always been hue and cry towards the restrictions under this section. The section claims to act as a preventive measure to curb any elements that disturb the peace of the state as was held in *the BBN School vs District Magistrate, Allahabad*². So why is this section always in the mainstream for all sorts of reasons, especially in the recent times. To understand this, a little history and purpose of the section is required. Section 144³ was first introduced in the mid-19th to curb dissent against the British power and still exists in the statute books as a vestige of the British Empire. The way it aims to maintain this peace is always questioned. The sections although claims to bring tranquillity in the society section is often in controversies because of its nature to include all kinds of emergencies and giving extensive power to the magistrates. This paper will deal with the wide-ranging restrictions and enormous powers of the state under the section and why does it threaten to go against the democratic values of India.

Wide ambit of powers and restriction conflicting with the Fundamental Rights

India has an extremely diverse and complex society and is a country based on the principles of democracy and dissent. The right to dissent and other basic rights are provided in part III of the Indian Constitution however it is claimed that “these rights are riddled with so many exceptions that the exceptions have eaten up the rights altogether”⁴ Article 19⁵ although it provides for various freedoms but also gives the power to restrain those rights in certain conditions as this article is not absolute in nature. Section 144 is one of the statute which curtails these freedoms when imposed. The bare reading of the section implies that it gives the power to the magistrate to pass an order to do or abstain from doing certain acts. What are the limits to these powers that are nowhere specifically defined in the section, the limits, and the kind of restrictions are established in cases post-independence? If we take a look at the restrictions that were in the ambit of the section, we find an increment in that. This is precisely what means when we talk about this section including all kinds of emergencies.

¹ Lara Jesani, *Section 144 of CrPC: Brutal tool has no place in democracy*, Deccan Chronicle, January 21, 2020.

² *BBN School vs District Magistrate, Allahabad* 1990 CriLJ 422.

³ The Code of Criminal Procedure, 1973, section 144.

⁴ D.N Banerjee *SOME ASPECTS OF OUR FUNDAMENTAL RIGHTS: Article 19*, 11 I.J. Political Sciences 27, 26-36 (1950).

⁵ INDIA CONST. art. 19.

From one of the first landmark cases of *Ram Manohar Lohia vs State of UP*⁶ where the court held that restricting Article 19 (a) and (b)⁷ was reasonable to recent cases of statewide bans on the internet. This section moreover gives the magistrate discretionary power to impose section 144 on his reasonability and understanding. The case of *Manzur Hasan v Muhammad Zaman*⁸ first held this and observed that 'The Magistrate should apply his mind to see whether the matter is of such urgency as to require an order under this section.' This paper however will be restricted to the issue of the wide-ranging restrictions and excessive power to the magistrate. It will discuss how the powers vested with the magistrate are used with a wide interpretation and impact of the restrictions on the society.

We went over the nature of the section which entails all types of emergencies ranging from restricting the right to form associations to state-wide internet bans. In the recent times, it has even been used as a tool to formulate the lockdown amid the Coronavirus pandemic. Why is this an issue if it claims and aims to tackle emergencies and maintain tranquillity. A simple answer would be as it gives unchecked discretionary power to the magistrate and the text of the section does not provide a set of restrictions that the magistrate can impose. Does this mean there is absolutely no check and balance and can be used in a frivolous manner?

Theoretically no, in the case of *Babulal Parate Vs State of Maharashtra*⁹, the court held that there should be apprehended danger and reasonable grounds to impose the section. The Court further laid some guidelines regarding this too. Not just this case, the reasonability and immediate apprehended danger criteria is most of the times mentioned in the cases regarding the validity of this section. However recent trends of the use of the section suggest otherwise. The state of Jammu and Kashmir, Uttar Pradesh and Assam faced prolonged impositions of the section with a wide range of restrictions from freedom of speech to internet restrictions. In light of the prolonged internet restrictions and allegation against the state suppressing dissent, the Supreme Court in the case of *Anuradha Bhasin vs UOI*¹⁰ held the internet as a part of Article 19 of the Constitution. In the same case the Court also held that this section is not a tool to suppress dissenting opinion. Different High Courts have been invalidating various orders of section 144, which they find violative of the guidelines set by the Supreme Court in previous cases. One recent example is the case of *Sowmya Reddy vs State of*

⁶ Ram Manohar Lohia vs State of UP, AIR 1968 All 100.

⁷ INDIA CONST. art. 19, cl. (a), (b).

⁸ Manzur Hasan v Muhammad Zaman (1921) ILR 43 All 692.

⁹ Babulal Parate Vs State of Maharashtra AIR 1961 SC 884.

¹⁰ Anuradha Bhasin vs UOI (2020) SCC OnLine SC 25.

*Karnataka*¹¹ where the High Court annulled the order which imposed section 144 in the city of Bangalore. The Apex court has laid down guidelines on the test of reasonability, when the sections should be invoked in different cases like *Madhu Limaye vs S.D.M*¹² and *Modern Medical Dental College Vs State of M.P*¹³ to restrict the discretionary use of power under this section. However, it has been observed that these safeguards have not been adequate to curb the suppressive tendencies of the state. The State has been taking shelter in the inherent vagueness of these safeguards to impose serious restrictions on the fundamental rights of the citizens under the camouflage of safeguarding public peace and tranquility.¹⁴

It is argued that Article 19(2) to 19(6) provides for reasonable restriction. However, the test of reasonability for the restrictions under Article 19 varies in each case which gives the magistrate his discretion to use wide powers under section 144. In the case of *State of Madras v. V.G. Row*¹⁵, the court observed that it is important to bear in mind that the test of reasonableness, wherever prescribed, although these test of reasonableness ‘may vary’, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. Varying test of reasonableness is a grey area where there is often the use of excessive power. As we discussed in the previous paragraph, the Internet is also considered as a fundamental right, curtailment of internet facilities not only causes a restriction on freedom of speech but freedom to carry out any trade or profession under Article 19. This too was held by the Supreme Court in the same Anuradha Bhasin Case. Therefore the power to restrict the internet under section 144 in a certain area when section 144 is imposed, not only curtails right to speech and expression but other rights as well.

The restrictions when section 144 is imposed are not just limited to Article 19 or restriction on Internet but extend further. Article 22(1)¹⁶ provides that no person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds of such arrest. This right is also curtailed when section 144 is imposed. In the case of *Madhu Limaye*, it was held that it is not necessary to furnish the arrested person with full details of the offense, but the information should be sufficient to enable him to understand why he has been arrested

¹¹ Sowmya Reddy vs State of Karnataka 2020.

¹² Madhu Limaye vs Sub-divisional Magistrate AIR 1971 SC 2486.

¹³ Modern Medical Dental College Vs State of M.P. (2012) 4 SCC 707.

¹⁴ Mayur Kulkarni, *Imposition of Restrictions under Section 144 Cr.P.C. and the Test of Proportionality*, CCLSNLUJ (2020).

¹⁵ State of Madras v. V.G. Row AIR 1952 SC 196.

¹⁶ INDIA CONST. art 22, cl. 1.

and to give him an idea of the offense which he is alleged to have committed when section 144 is imposed. Article 25 of the Constitution provides for freedom of religion, which was first curtailed in the case of *Kushumkumaree Debee v. Hemalinee*¹⁷ where the Sikhs were refused to carry out religious processions by the magistrate. This reflects the wide scope of restrictions under section 144. The earlier discussed examples of Internet ban and imposition in light of health pandemic being the latest addition to the restrictions which are ever-increasing.

As a result of no limit to restrictions under section 144, we have unprecedented use of the section. As we are in times of pandemic which requires lockdown to prevent further spread, section 144 is imposed in most of the places hit by the virus. All places of public gatherings and movement of any kind or any kind of public gathering is restricted. In a recent bizarre notification by the Rajkot Administration, Gujarat¹⁸, it banned the android based games PUBG stating it caused mental health issues to the young minds and the Police even arrested several people playing PUBG and booked them under Section 188 IPC¹⁹. The Gujarat High Court however took notice of it and directed the administration against it. This reflects how unprecedentedly the restrictions under section 144 are used in the contemporary times.

Article 21 of the Constitution is arguably one of the articles with the widest interpretation. 'It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution-free air, etc.'²⁰ Section 144 of the CrPC when imposed is in direct hindrance to many such interpretations of Article 21 ranging from right to livelihood to right to go inter-state and abroad to right to proper medical care. Up till now we have a basic understanding that as section 144 restricts freedom of expression, movement, and forming assemblies, it can be in direct conflict with many of these rights under article 21 which require expression, movement, etc. The Supreme Court has always placed the burden of showing that whether detention is in accordance with the procedure established by law on the detaining authority because of Article 21.²¹ In the case of *Icchu Devi v. Union of India*²² held that the fundamental right of life and personal liberty incorporated under Article 21 is

¹⁷ *Kushumkumaree Debee v. Hemalinee* (1933) 63 Cal 11.

¹⁸ <https://www.scconline.com/blog/post/2019/05/17/guj-hc-pubg-ban-rajkot-police-commissioner-lifts-ban-on-pubg-after-high-court-orders-filing-of-affidavit-in-a-pil-filed-by-law-student/>.

¹⁹ Indian Penal Code, 1860, section 188.

²⁰ Syed Zainul Hasan Rizvi & Vareena Rizvi, *Effects of Imposition of section 144 of CrPC, 1973 in the state of Jammu and Kashmir and the Arrest of Prominent Leaders*, LawCorner (2020).

²¹ INDIA CONST. art 21.

²² *Icchu Devi v. Union of India* (1980) 4 SCC 531.

placed on such higher pedestal by this court that it has always insisted that whenever there is any deprivation of life and personal liberty the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. Personal liberty is regarded as the most precious possession of mankind and refuses to tolerate any illegal detention.²³ However the imposition of section 144 in the state of Jammu and Kashmir which was followed by dilution of Article 370 from the state-led to preventive detention and house arrests of many political leaders and activists for a prolonged period without any proper justifications. Section 144 also seems to be broadly used against persons held to be "criminals" or "anti-social elements" by the police and the state.²⁴

Wide interpretation of the section leading to excess powers to the police

It is a section which has a wide array of restrictions and barely has checks and balances on its powers. Historically, in landmark cases from Madhu Limaye to as recent as Anuradha Bhasin has held the constitutional validity of the section with guidelines as precursors to impose the section, which we already discussed vary in nature and too broad. *The Ramlila Maidan*²⁵ case was one of the rare cases where individual police officers were charged for using excessive force in the form of *Lathicharge*. The constitutional validity of section 144 was upheld in this case as well. Moreover, this case involved national political figures and activists. The curtailment of freedoms like the right to move freely during a 144 order further makes it difficult for an aggrieved person to move to the court and file writ petitions under Article 226²⁶ of the Constitution. A very low rate of checks and balances and restricted access to the courts even furthers the discretionary powers proliferation of restrictions under section 144.

The notion of preventive measures against apprehended danger are both shared by the CrPC and Police Codes of various states. The police commissioner assumes the power of the executive magistrate and can issue an order of section 144.²⁷ As we discussed section 144 provides for very wide powers with a significant impact on fundamental rights, the wording is ambiguous and in reality the police seem to make even broader.²⁸ Chapter X (which

²³ Syed Zainul Hasan Rizvi & Vareena Rizvi, Effects of Imposition of section 144 of CrPC, 1973 in the state of Jammu and Kashmir and the Arrest of Prominent Leaders, LawCorner (2020).

²⁴ Clemens Arzt *Police Reform and Preventive Powers of Police in India – Observations on an Unnoticed Problem*, 49 Law and Politics in Africa, Asia and Latin America 53-79 (2016).

²⁵ Re Ramlila Maidan (2012) 5 SCC 1.

²⁶ INDIA CONST. art 226.

²⁷ Clemens Arzt *Police Reform and Preventive Powers of Police in India – Observations on an Unnoticed Problem*, 49 Law and Politics in Africa, Asia and Latin America 74, 53-79 (2016).

²⁸ Clemens Arzt *Police Reform and Preventive Powers of Police in India – Observations on an Unnoticed Problem*, 49 Law and Politics in Africa, Asia and Latin America 75, 53-79 (2016).

includes section 144) of the CrPC stipulates for a broad range of powers of police for the maintenance of public order and tranquility, using again some very vague legal notions that have to be scrutinized, the police itself is empowered to take action guided only by its own discretion.²⁹ The never-ending power and no limits to the restrictions seem to be a "door-opener" for abuse as its power being broadly used by the police³⁰. Ramlila Maidan case as discussed is one of the few cases where the misuse of the powers reaches to the Courts. Most of the cases of abuse of police power are gagged because of restriction on travel etc is imposed during section 144. This establishes a point that section 144 was not tailored to engulf all types of restrictions in all sorts of emergency situations and needs amendments.

The wide ambit of the restriction vests immense power in the hands of the state to curb any dissent or protests against the state. This is why this issue was taken into cognizance in the Anuradha Bhasin case and the Supreme Court ruled that section 144 should not be used as a tool to suppress dissent. In the colonial times too, as discussed in the first paragraph, was to eliminate dissent against the colonial power post the 1857 revolution. This shows how India's criminal justice architecture continues to reflect its colonial heritage, both on paper and in practice.³¹ The section after the independence should have been narrowed down to pose a restriction on the power of the magistrate and the wide scope of restrictions.

Conclusion and Plausible Solution

So what can be a plausible solution that helps the state to maintain tranquillity and keep a check and balance on the powers of the magistrate and police? On the issue of Internet restrictions, which is a burning issue right now, the review provision contained in the IT Act³² and the Temporary Suspension of Telecom Services Rules³³, is a better alternative than Section 144, as the former put checks on the unfettered power of the government. ICRIER in its 2018 report on blanket internet ban suggested that blanket internet ban should be restricted and specific website and messaging applications that can spread rumors and fake news should be identified and blocked.³⁴ Furthermore the section was not meant for use in all types of

²⁹ RATAN LAL RANCHHODDAS & DHIRAJLAL KESHAVLAL THAKORE, CODE OF CRIMINAL PROCEDURE, Gurgaon, p. 219. (21st ed 2011).

³⁰ Re Ramlila maidan (2012) 5 SCC 1.

³¹ Abhinav Sekhri, *Backgrounder / Section 144, a vestige of colonial rule*, The Hindu <https://www.thehindu.com/news/national/backgrounder-section-144-a-vestige-of-colonial-rule/article30352392.ece>.

³² Information Technology Act, 2000.

³³ Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.

³⁴ Rajat Kathuria, Mansi Kedia, Ganesh Varma, Kaushambi Bagchi, Richa Sekhani *The Anatomy of an INTERNET BLACKOUT: Measuring the Economic Impact of Internet Shutdowns in India*, (2018).

apprehended emergencies ranging from apprehended riot to apprehended spread of a disease. The legislature should amend the section to deal with different types of emergencies in a different manner. This would not only provide a more viable solution to the apprehended danger but will also restrict the authorities not to use this section in an expansive manner.

As it is clear in this essay that section 144 gives unrestricted powers to authorities and blanket restrictions are imposed, authorities can resort to other sections in the CrPC for curbing apprehended danger. Section 149³⁵ of CrPC which gives Police the powers to prevent cognizable offenses, commonly used in the cases of apprehended violent protests. The imposition of this section will not curtail the Fundamental Rights of the public at large but only of the perpetrators. Invoking of section 133³⁶ of the CrPC can be another resort. Both the sections, 133 and 144 have similar aims but section 133 order affecting Section 133 can be passed only after a police report is received by the magistrate unlike under section 144. Section 144, a colonial vestige that infers wide and unchecked powers to the police and administration can only be improved by stricter guidelines by the Courts and legislative amendments.

³⁵ The Code of Criminal Procedure, 1973, section 149.

³⁶ The Code of Criminal Procedure, 1973, section 133.