

Unraveling Section 144 of the CrPC: What You Need to Know

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INTRODUCTION

Section 144 of the Criminal Procedure Code (CrPC) of 1973 empowers the Executive Magistrate of any state or territory to issue an order prohibiting the assembly of four or more individuals in a given area. According to s.141 of the Indian Penal Code (IPC) of 1860, this prohibited assembly of people is known as Unlawful Assembly. Section 144 of the CrPC is enforced in situations of imminent nuisance or perceived threat of an event that may lead to disturbance or harm to individuals or property. Typically, under this provision, public gatherings are restricted as a preventive measure. The fourth branch of preventive jurisdiction deals with circumstances where the urgency of the nuisance or apprehended danger necessitates preventative actions. The problem referred to is known as public nuisance, and the risk envisaged is disruption of public tranquility, riot, or affray.¹ Orders under this section are typically ex parte, temporary orders that stay in effect for two months, and only in exceptional circumstances can the period be extended by six months further by the state government. Under Section 144, public movement is restricted, educational institutions must close, and all public gatherings or rallies are prohibited. Obstructing law enforcement from dispersing unlawful meetings is a criminal offence under this provision, and authorities can also limit internet connection. This section forbids actions generally permitted to promote peace and tranquility in the region. An order under this section is an executive order for preserving

peace. An order under section 144 is administrative in nature and not judicial or quasi-judicial. It is amenable to writ jurisdiction if it violates fundamental rights.²

THE RATIONALE BEHIND THE APPLICATION OF S.144 OF CRPC

Section 144 grants the power to impose orders in urgent circumstances of nuisance or aggravated danger. Orders under this Section can be issued by a District Magistrate, a Sub-divisional Magistrate, or any other Executive Magistrate appointed by the State Government. The Legislature has used the phrase 'opinion'. The gist of the action under Section 144 is the situation's urgency. Its efficacy is in its likelihood of preventing some harmful incidents.³ In the most significant judgement in the case of *Madhu Limaye v. SDM, Monghyr & Ors*⁴, a constitution bench of the Supreme Court ruled that mere disobedience of the law is insufficient and that an order under this section must be based on obstruction, nuisance, danger to human life, health or safety, riot or affray. The court construed each of the grounds specified in the clause so that a relationship was established between them and public order. The Magistrate must consider the facts and circumstances to determine if immediate prevention and remedy are necessary in cases of

- i) obstruction, annoyance, or injury to lawfully employed individuals,
- ii) danger to human life, health, or safety, or
- iii) disturbance of public tranquillity, such as a riot or affray.⁵

The executive magistrate has broad authority under this section. It empowers a magistrate to take prompt action to avoid any conditions specified in Section 133 of the Criminal Procedure Code. When the Magistrate arrives at the opinion that a situation has developed that has disrupted public tranquillity and threatened human life and property, the executive magistrate passes an order u/s 141 CrPc.⁶ In the case of *Manzur Hasan v Muhammad Zaman*⁷, it was held that 'The

Magistrate should use his mind to assess the situation and if it is of such urgency or not so as demand an order under this provision’.

UNDERSTANDING “NUISANCE” AND “APPREHENDED DANGER” U/S 144 CRPC

1. Nuisance- Under section 144, a nuisance can be of 2 physical nuisance or a mental nuisance. Physical nuisance requires proximity between the objects. However, mental annoyance does not require closeness. If the magistrate issues an order under Section 144 dealing with nuisance, it should include harm, danger, or disturbance of peace. Section 144 does not protect defamatory statements or abusive writings unless they cause a breach of peace.⁸

2. Apprehended Danger- Section 144 gives a magistrate the power to issue an order if he is sure that if a specific act isn’t stopped now, it may result in the loss of human life and property and will become an infraction with time. This clause prohibits acts that are likely to disrupt public peace. It is not sufficient to state that expanding it would lead to a situation in which establishing a cause-and-effect relationship between public tranquility and the illegal act becomes essential. The relationship should be reasonable, not imaginary or remote.

RECENT JUDGEMENTS

1. Justice K.S. Muttaswamy v. Union of India(2017)⁹

In this case, the Supreme Court established a four-part test to determine the proportionality of passing an order under S.144 CrPc.

- > A restriction on rights must have a justifiable purpose
- > The order under this section must be an effective way to achieve this objective.
- > The action taken cannot unfairly disadvantage any rightsholder.

> There must be a less stringent but equally effective substitute.

2. Anuradha Bhasin vs Union of India (2019)¹⁰

In this case, The Supreme Court ruled that any restrictions on internet access imposed under S.144 must be proportionate and necessary. The court ruled that the law prohibits the indefinite interruption of the internet. This ruling was noteworthy as it reinforced the fundamental right to free speech and expression and access to information in the context of the Internet.¹¹ Following this, the Supreme Court conducted an extensive comparative review of the proportionality standards employed by the India, German, and Canadian courts. It was discovered that while there was agreement that proportionality was the most important technique for achieving judicial balance when resolving disputes about fundamental rights constraints, there was no consensus that proportionality and balancing were synonymous.

The Court outlined its understanding of the proportionality test after Justice K.S. Muttaswamy v. Union of India ¹² and ADM Jabalpur v. Shiv Kant Shukla (1976).¹³

The leading proponents given by the Supreme Court were:

- A. The goal of the restriction must be legitimate.
- B. The restriction must be necessary.
- C. The authorities must consider if alternative measures to the restriction exist.
- D. The least restrictive measure must be taken.
- E. The restriction must be open to judicial review.

3. Re Ramlila Maidan Incident(2011)

In 2011, Baba Ramdev led an Anti-Corruption Rally at Delhi's Ramlila Maidan over black money laundering. Despite a massive turnout, police abruptly revoked permission at midnight, sparking a clash with supporters. Delhi High Court cited Section 144's legality, condemning police excesses violating the protesters' rights under the Constitution. The court held accountable not only those officers who were involved in the

violence but also passive bystanders. This ruling clarified that while Section 144 can maintain order, it doesn't justify police brutality.¹⁴

CONCLUSION

India's Criminal Justice System is heavily influenced by its colonial heritage, as seen by the extensive use of Section 144, which reflects an imbalance of power. While the section's objective is admirable, it does not provide the State unrestricted jurisdiction but rather limits it in times of emergency. Ideally, it serves as a preventative strategy that should be used infrequently. Clauses (5) through (7) give persons harmed by its implementation the right to a subsequent hearing. However, as shown, Section 144 is prone to misuse. The author proposes a change that aligns more with the original aim than full repeal. It is imperative to recalibrate the section to perform its intended role in the present setting.

Reference-

1. *R.V. Kelkar, Criminal Procedure (Easter Book Company, 6th edn., 2014).*
2. *Gulam Abbas v. State of UP, AIR 1981 SC 2198*
3. *R.V. Kelkar, Criminal Procedure (Easter Book Company, 6th edn., 2014).*
4. *AIR 1971 SC 2486*
5. *(1921) ILR 43 All 692.*
6. *M v. DC Das, 1989 Cr LJ NOC 163.*
7. *Code of Criminal Procedure 1973, s. 144*
8. *Kamini Muhan Das Gupta v. Harendra Kumar Sarkar, (1911) 38 Cal 876*
9. *AIR 2017 SC 4161*
10. *AIR 2020 SC 1308[1]s*
11. *Section 144 CrPC: Meaning and Cases. (n.d.). Finology. available at: <https://blog.finology.in/Legal-news/section-144crpc#:~:text=In%20this%20case%2C%20the%20Supreme,Section%20124A%20of%20the%20IPC.> (last visited on January 31, 2024).*

12. *Supra note 9*

13. *AIR 1976 SC 1207*

14. *Re-Ramlila Maidan Incident Dt ... vs Home Secretary (2012) AIR SCW 3660*