

## Section 144 of Code of Criminal Procedure

### What is the issue?

- State governments are suppressing the widespread protests against the [Citizenship Amendment Act](#) by issuing prohibitory orders under Section 144 of CrPC.
- In this backdrop, here is an overview of Section 144 of the Code Of Criminal Procedure (CrPC).

### What is Section 144?

- Section 144 CrPC is a law retained from the colonial era.
- It empowers certain functionaries to issue orders to prevent and address urgent cases of apprehended danger or nuisance.
- These include district magistrate, sub-divisional magistrate or any other executive magistrate specially empowered by the state government in this regard.
- The magistrate has to pass a written order which may be directed -
  - i. against a particular individual, (or)
  - ii. to persons residing in a particular place or area, (or)
  - iii. to the public generally, when they frequent or visit a particular place or area
- In emergency cases, the magistrate can pass these orders without prior notice to the individual against whom the order is directed.

### What powers does the administration have?

- The magistrate can direct any person to abstain from a certain act or to take a certain order with respect to certain property in his/her possession or management.
- This usually includes restrictions on movement, carrying arms and from assembling unlawfully.
- It is generally believed that assembly of three or more people is prohibited under Section 144.
- However, it can be used to restrict even a single individual.
- This is done when the magistrate considers that it is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person.
- It is also employed to prevent danger to human life, health or safety, or a

disturbance of the public tranquility, or a riot.

- But, no order passed under Section 144 can remain in force for more than 2 months, unless the state government considers it necessary.
- Even then, the total period cannot extend to more than 6 months.

### **Why is Section 144 so contentious?**

- The criticism is that the provisions are too broad.
- The words of the section are wide enough to give absolute power to a magistrate that may be exercised unjustifiably.
- The immediate remedy against such an order is a revision application to the magistrate himself.
- An aggrieved individual can approach the High Court by filing a writ petition if his/her fundamental rights are at stake.
- However, fears exist that before the High Court intervenes, the rights could already have been infringed.
- Imposition of Section 144 to an entire state, as now in UP, has also drawn criticism since the security situation differs from area to area.

### **What has been the judiciary's stance?**

- The Courts have earlier held that Section 144 was not an ordinary power flowing from administration.
- It is rather a power used in a judicial manner and which can stand further judicial scrutiny.
- However, the constitutionality of the law was upheld.
- The restrictions imposed through Section 144 cannot be held to be violative of the right to freedom of speech and expression.
- This is because the provision would fall under the "reasonable restrictions" under Article 19(2) of the Constitution.
- The fact that the "law may be abused" is no reason to strike it down altogether.
- The judiciary has also justified blanket prohibitory orders passed under Section 144.
- This is because occasions may arise when it is hard to distinguish between those whose conduct must be controlled and those whose conduct is clear.

### **Does Section 144 provide for communications blockades too?**

- The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 are for suspending telecommunication services.
- They include services covering voice, mobile internet, SMS, landline, fixed broadband, etc.

- These Rules derive their powers from the Indian Telegraph Act of 1885, Section 5(2).
- It talks about interception of messages in the “interests of the sovereignty and integrity of India”.
- However, shutdowns in India are not always under the rules laid down, which come with safeguards and procedures.
- Section 144 of CrPC has often been used to clamp down on telecommunication services and order [Internet shutdowns](#).

**Source: Indian Express**

