

Section 144 CrPC

April 28, 2022

In news- Amidst 'Mahapanchayat' that had been planned by Hindu religious leaders, the administration of Uttarakhand's Haridwar district has imposed prohibitory order under 144 of the Code Of Criminal Procedure (CrPC), 1973 around Dada Jalalpur village near the town of Roorkee.

What is section 144 of CrPC?

- This colonial-era law, **empowers a district magistrate, a sub-divisional magistrate, or any other executive magistrate empowered by the state government, to issue orders to prevent and address urgent cases of apprehended danger or nuisance.**
- The **written order by the officer may be directed against an individual or individuals** residing in a particular area, or to the public at large.
- **In urgent cases, the magistrate can pass the order without giving prior notice** to the individual targeted in the order.
- **Some of the activities restricted under section 144 are:**
 - It restricts carrying any sort of weapon in that area where it has been imposed and people can be detained for violating it. The maximum punishment for such an act is three years.
 - It says that there shall be no movement of public and all educational institutions shall also remain closed and there will be a complete bar on holding any kind of public meetings or rallies during the period of operation of this order.
 - Moreover, obstructing law enforcement agencies from dispersing an **unlawful assembly is a punishable offence.**
 - Section 144 also empowers the authorities to **block internet access.**

- It also bars the conduct of certain activities or actions or events which are allowed to be done in regular courses. It is imposed to ensure the maintenance of peace and tranquillity in an area.
- The provision **allows the magistrate to direct any person to abstain from a certain act**, or to pass an order with respect to a certain property in the possession or under the management of that person.
- This usually **means restrictions on movement, carrying arms, and unlawful assembly** (assembly of three or more people is prohibited).
- **When aimed at restricting a single individual, the order is passed if the magistrate believes it is likely to prevent obstruction, annoyance or injury to any lawfully employed person, or a danger to human life**, health or safety, or a disturbance of the public tranquility, or a riot, etc.
- There are certain places that are highly sensitive have Section 144 imposed in the surrounding areas all the time for example Parliament Building Complex and the Supreme Court.
- **Orders passed under Section 144 remain in force for two months**, unless the state government considers it necessary to extend it.
- But in any case, the total period for which the **order is in force cannot be more than six months**.

Arguments against the section-

- Affected parties have often argued that the section is sweeping, and allows the magistrate to exercise absolute power unjustifiably.
- Under the law, the first remedy against the order is a revision application that must be filed to the same officer who issued the order in the first place.
- An aggrieved individual can file a writ petition in the

High Court if their fundamental rights are affected by the order.

- However, aggrieved individuals argue that in many cases those rights would have already been violated by the state even before the High Court had intervened.
- It has also been argued that imposing prohibitory orders over a very large area – such as was done in all of Uttar Pradesh during the protests against the Citizenship (Amendment) Bill – is not justified because the security situation differs from place to place and cannot be dealt with in the same manner.

Courts rulings on Sec 144-

- Challenges were mounted against the use of the provision in the pre-Independence era as well, for example in 'Re: Ardeshir Phirozshaw ... vs Unknown case (1939)'.
 - **The first major challenge in the Supreme Court came in 1961 in 'Babulal Parate vs State of Maharashtra and Others'**. A five-judge Bench of the **Supreme Court refused to strike down the law**, saying it is "not correct to say that the remedy of a person aggrieved by an order under the section was illusory".
 - **In 1967, the court rejected a challenge to the law by the socialist leader Dr Ram Manohar Lohia**, saying "no democracy can exist if 'public order' is freely allowed to be disturbed by a section of the citizens".
 - In another challenge **in 1970 ('Madhu Limaye vs Sub-Divisional Magistrate')**, a seven-judge Bench headed by then Chief Justice of India M Hidayatullah said **the power of a magistrate under Section 144 "is not an ordinary power flowing from administration but a power used in a judicial manner** and which can stand further judicial scrutiny".
 - The court, however, upheld the constitutionality of the law, ruling that the restrictions imposed through Section 144 are covered under the "reasonable

restrictions” to the fundamental rights laid down under Article 19(2) of the Constitution.

- **In 2012, the Supreme Court criticised the government for using Section 144 against a sleeping crowd in Ramlila Maidan.**
- The court has said that “such a provision can be used only in grave circumstances for maintenance of public peace and the efficacy of the provision is to prevent some harmful occurrence immediately”.