

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

