

VALIDITY OF INTERNET SHUTDOWNS IN THE LIGHT OF SECTION 144 OF THE CODE OF CRIMINAL PROCEDURE, 1973

Written by *Adarsh Dubey*

3rd Year BA LLB Student, Jindal Global Law School

INTRODUCTION

The paper attempts to delve into the intricacies of Section 144 of The Code of Criminal Procedure, 1973. The code confers wide powers at the hands of the Executive Magistrate to deal with emergency situations, and one such provision which confers such powers is Section 144 of The Code of Criminal Procedure, 1973, which deals with the power of the Magistrate to impose limitations on the personal liberties of an individual.¹ The main intention behind enacting the aforesaid section was to avoid possibilities of unrest, danger to human life, disturbance of the public peace and tranquility, or riot etc.² Orders can be given by the specified classes of Magistrates under the abovementioned section to deal with urgent cases of nuisance and apprehended danger, if they are satisfied that immediate prevention and speedy trial is the need of the hour.³ The said section, which is also seen by many as a “prohibitory order”, had an ancient but controversial history.⁴ The said section was first included in the Code in 1861 and the same was used a lot of times during the colonial rule to repress the nationalist voice.⁵

¹ Prasad C, “Analyzing Section 144, CrPC: Is It Inadequate to Confront Urgent Cases of Nuisance or Apprehended Danger?” <<http://www.legalservicesindia.com/articles/crpc.htm>> accessed October 20, 2018

² Ibid.

³ Ibid.

⁴ Celestine A, “Dissecting Section 144: Have Prohibitory Orders Become a Tool Used in Daily Police Work?” (The Economic Times January 6, 2013) <<https://economictimes.indiatimes.com/news/politics-and-nation/dissecting-section-144-have-prohibitory-orders-become-a-tool-used-in-daily-police-work/articleshow/17902880.cms>> accessed October 20, 2018

⁵ Ibid.

The section has been used to subvert many famous nationalist agitations carried out by pioneers such as Jawaharlal Nehru, Mahatma Gandhi etc.⁶

Over the years, the section hasn't changed a lot, and the same has not just survived but it has thrived. The major debate regarding section 144 mostly revolved around the issue of unlawful assembly.⁷ In other words, protests are banned in areas where the section is applied. The section does not expressly talk about protests and demonstrations, but the word "riot" does find a place in the aforesaid section. The section has received criticism from all the corners of the society due to the general nature of it, thereby conferring wide powers to the magistrates.

SCOPE OF SECTION 144

Orders given under section 144 are anticipatory in nature, that is, it restricts certain acts even before they are undertaken.⁸ The law becomes applicable only when the magistrate is satisfied that there is a need for immediate prevention or speedy remedy as provided under the said section.⁹ The Order might prevent a person from carrying out a certain act, or it might be regarding certain property which is managed or possessed by some person.¹⁰ The grounds on the basis of which such orders can be given are: (a) obstruction, (b) annoyance, (c) injuries to any person who is lawfully employed, (d) danger to human life, (e) disturbance of the public peace and tranquillity, (f) riots and (g) affray.¹¹ Orders given under this section are either prohibitory or mandatory in nature. The scope of section 144 is well illustrated in the case of *Radhe Das v Jairam Mahto*, in which the court held that restrictions can be placed on the private

⁶ Ibid.

⁷ Ibid.

⁸ Singh A, "CrPc 144 - Powers Vested With The District Magistrate" (iPleaders, August 16, 2018) <<https://blog.ipleaders.in/crpc-144/>> accessed October 20, 2018

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

rights of an individual, to promote the interest and benefit of the society at large, and to maintain public peace and tranquillity.¹²

CONSTITUTIONAL VALIDITY

The constitutional validity of section 144 has been consistently upheld by the apex court of this country, but it has also provided a list of guidelines that need to be followed while exercising the powers conferred by the said section. The courts in their various judgments have held that the urgency of the situation is the gist of the action under the said section, but have failed to provide an illustration or explanation in furtherance of the same. Although such orders are subject to scrutiny by the High Courts, the same results in a highly cumbersome and ineffective process. After having a close look at the aforesaid section, I feel that the absolute power of the magistrate as provided under this section must be restricted so as to prevent him from infringing the fundamental rights of the citizens. The court in the case of *Madhu Limaye v S.D.M. Monghyr*, while dealing with the constitutional validity of section 144,¹³ held that the restrictions provided under the said section are reasonable and does not exceed the limits as provided by the constitution for restricting the freedoms guaranteed under Article 19(1) (a), (b), (c) and (d).¹⁴ The court also said that if the section is applied with proper caution, then it cannot be unconstitutional and just because there is a possibility that it may be subdued is no ground for declaring the same as unconstitutional.¹⁵ A list of guidelines were given by the court which are as follows: (1) The person has the right to challenge the order passed against him to rule out the possibility of arbitrariness, (2) Such a person will also have an opportunity to be heard, thereby conforming to the principles of natural justice, (3) As the injured person has the right to challenge the order, it makes the magistrate work in a more reasonable and convincing manner, (4) When magistrate passes an ex-parte order, then a notice should be to the person

¹²123 Ind Cas 73

¹³ 1971 AIR 2486

¹⁴ Ibid.

¹⁵ Ibid.

against whom it is passed unless there is a critical situation, (5) High Courts have the power to either struck down or upheld the order, thereby ensuring the liability of the magistrate.¹⁶

INTERNET SHUTDOWNS

The emergence of internet shutdowns across India has been due to the spread of mobile phone enabled Internet, easy availability of affordable smartphones and increase in popularity of social media platforms such as WhatsApp, that are end to end encrypted.¹⁷ Currently, over 450 million people are using the internet in India and the number is expected to go up in the years to come in the wake of reduction in the data rates, increasing affordability of smartphones and changing pattern of information consumption.¹⁸ These shutdowns can have devastating effects on the life of the people given their dependence on the internet for almost all their daily functions. The intention behind having these shutdowns is to prevent the widespread circulation of emotionally charged messages, images, audio and video clips that can invoke religious and other communities against one another.¹⁹ These shutdowns are mostly used in cases of violence, curfews or in places where there is a threat to violence, for e.g. the recent Jat agitation in Haryana.²⁰ One of the many instruments of law that are used by the police and the state to carry out such shutdowns is section 144 of the Code of 1973, which is usually invoked to avoid riot like situations and to impose curfews to maintain law and order in societies where there is grave danger to the life of people on the basis of their identities.²¹ Such powers to enforce a curfew are conferred by section 144 at the hands of the District Magistrate, Sub-divisional Magistrate or other Executive Magistrate and the same can exercised if the concerned Magistrate is satisfied that it is necessary to proceed under the said section.²² This practice of

¹⁶ Supra at Note 8

¹⁷ Narrain S, "Internet Shutdowns: Background and Use of Section 144, Code of Criminal Procedure, 1973" (NLS Socio Legal Review - National Law School of India University) <<http://www.sociolegalreview.com/internet-shutdowns-background-and-use-of-section-144-code-of-criminal-procedure-1973/>> accessed October 20, 2018

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

using section 144 to carry out internet shutdowns have been approved by the Gujarat High Court in the case of *Gaurav Sureshbhai Vyas v. The State of Gujarat* in 2015.²³ The petitioner in this case challenged the internet shutdown in the state of Gujarat by the government and argued that it was not proper on the part of the government to block the internet as a whole and they should have instead invoked section 69A of the IT Act which allowed the government to block specific sites in the interest of the state²⁴. The court while dealing with this issue denied both the claims of the petitioner and held that the internet was not blocked as a whole, as people still had access to Broadband and WIFI services.²⁵ The court clearly differentiated between sections 69A of the IT Act and Section 144 of CrPC by saying that the former is used to block specific sites whereas the latter is used to give directions to a person who is responsible for extending the internet access.²⁶ In cases where the law and order of the country is undermined, the decision as to how it should be maintained and brought under control should rest at the hands of the government and the court finally held that if the government was of the opinion that it was necessary to block the mobile broadband access handle the situation, then the court should not intervene in their decision.²⁷ But the court forgot to recall the Supreme Court case of *Ramlila Maidan Incident v. Home Secretary, Union of India & Ors*, in which the court clearly held that section 144 should be invoked only as a last resort, that is, when the available alternative is not adequate.²⁸ In the present case, there was nothing to show that Internet shutdown was Gujarat Government's last resort. However, in 2016, the order passed by the Gujarat high court was challenged in the apex court and the same was dismissed on the grounds that sometimes it becomes necessary to restrict the access to the internet to maintain the law and order.²⁹

Recently, the Department of Telecommunications (DOT) notified the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 and made amendments to the rules of the Indian Telegraph Act, which permitted the government to shut off the Internet

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ "Legality of Internet Shutdowns under Section 144 CrPC" (SFLC.in) <<https://sflc.in/legality-internet-shutdowns-under-section-144-crpc>> accessed October 20, 2018

²⁹ Ibid.

and telecom access in specific areas. However, such decision will be subject to a number of restrictions.³⁰

This was a big step towards legitimizing Internet Shutdowns, although this time they did it by using the Indian telegraph Act. But this decision received a lot of criticism. The use of the aforesaid act to enforce Internet Bans in the Jammu and Kashmir was criticized by the UN Special Rapporteur, who said that “denying access to the Internet has the effect of disrupting the free exchange of ideas, and the ability of individuals to connect and associate peacefully on matters of shared concern.”³¹ But the Indian government justifies these shutdowns on the grounds that it is necessary to bring a tense situation under control. According to the new rules, such measures, although brought in without consulting with the general public, must be temporary and passed by a body that is at the highest level of the government. These rules also provide for the formation of a three-member review committee that will have to meet to review such decisions of shutdowns. However, the rules have failed to determine what the phrases “public emergency” and “threat to public safety” mean.

CONCLUSION

From the above discussions, we can see how Internet shutdowns can become an instrument of violation of Fundamental rights and may lead to enforcement of unnecessary curfews, under section 144 of the Code of 1973. The said section was inserted in the code to prevent the situations of riots, demonstrations or protests by shutting down the internet thereby stopping the spread of rumors on social media platforms, which is responsible for them in the first place. However, one can view these shutdowns as an acceptance on the part of the government about their inability to maintain the law and order. However, it can argued that if the magistrates can have the power to pass shoot on sight orders then why not orders relating to Internet shutdowns. The answer to the above question can be the disproportionate rise in the number of internet

³⁰ Sociolegalreview.com. (2019). Internet Shutdowns: Amendment to the Telegraph Act and Mobile Company Licenses | NLS Socio Legal Review. [online] Available at: <http://www.sociolegalreview.com/internet-shutdowns-amendment-to-the-telegraph-act-and-mobile-company-licenses/> [Accessed 26 Feb. 2019].

³¹ Ibid.

shutdowns across the country and the decisions regarding these shutdowns have not been subject to proper review. Also, there is lack of transparency in the procedure, that is, how will a person determine whether the decision regarding the shutdowns were necessary and reasonable. Also, these decisions are taken without any consultation with the general public and one cannot deny that the views of the civil society and industries are equally important and should be taken into consideration. Finally, we can also see how the government by amending the Telegraph Act, have resorted to other alternatives to legitimise these shutdowns. It will be interesting to see whether the abovementioned steps taken by the government to control situations of public emergency or threat to public safety, end up becoming a weapon violating the very rights that form the core of human existence or not.

