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SECTION 144- A RULE THAT FITS AMID COVID-19 CRISIS

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The World Health Organization (WHO) declared the novel Corona Virus (COVID-19) a worldwide pandemic. In India, around 63,000 cases are being confirmed and above 2,000 deaths have been occurred due to this pandemic (COVID19), and as noted the prevailing condition of India is far better than other nations. One of the major reasons of the condition comes out to be the imposition of Section 144 of Criminal Procedure Code in the most affected districts of the nation. The further article critically analyses the question of Section 144 being the need of the hour amid the crisis of COVID-19.

COVID19 is the infectious disease caused by the most recently discovered coronavirus. The new virus and disease were unknown before the outbreak began in Wuhan, China in December, 2019. The virus has been named SARS-COV-2 and the disease is now called COVID-19. This virus has shaken the world and put us in the situation we rarely witnessed in the past. The disease is now classified as a pandemic by WHO.

According to the latest situation report of WHO the total confirmed cases across the globe is 3,888,434 and the confirmed deaths is 272,859. In India, the first case of the COVID-19 was reported on 30th January 2020 and now the infection rate of COVID-19 in India is reported to be 1.7, significantly lower than in the worst affected countries. One of the major reasons for this condition is seem to be the early imposing of section 144 Cr.P.C. in most affected states of the

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country. It is being imposed when the total confirmed cases were 492 and only 9 deaths were reported in the country.

Under the Code of Criminal Procedure wide powers have been conferred on an Executive Magistrate to deal with emergent situations which are to prevail in the country. One such provision, i.e. Section 144 deals with the Magistrates powers to impose restrictions on the personal liberties or freedom of individuals, whether in a specific locality or in a town itself, where the situation is of such potential to cause unrest or danger to peace and tranquillity in such an area, due to certain clashes among the citizens. In brief, Section 144 confers powers to pass an order absolute at once in urgent cases of nuisance or apprehended danger. The specified classes of magistrates may make such orders when in their opinion there are sufficient grounds for proceeding under the section and immediate prevention or speedy remedy is worthwhile. The magistrate is required to issue the order in writing by setting forth the material facts of the case and the order is to be served in the manner provided by Section 134 of the Criminal Procedure Code. The wording of the section envisages a situation wherein the power provided there under may be exercised on the assessment of the Magistrate himself - a subjective satisfaction. However, certain judicial pronouncements aptly show that certain stringent conditions have been imposed by the Courts on these most plenary powers.

Actions which are to be taken under this section are anticipatory, i.e., it is utilized to restrict certain actions even before they actually occur. Anticipatory restrictions are imposed generally in the emergency manifestations, where there is an apprehended danger of some event that has the potential to cause major public nuisance or destruction to public tranquillity. The gist of action under Section 144 is the urgency of the situation; its effectiveness is the likelihood of being able to prevent some harmful occurrences. Preservation of public peace and

tranquillity is the foremost function of the Government and the aforesaid power is conferred on the Executive Magistrates enabling it to perform that function effectively during the situations of emergency.

The principles that are to be borne in mind before the application of Section 144 has been emphasized upon in the case of *Manzur Hasan v Muhammad Zaman*³ and has been approved in the landmark case of *Shaik Piru Bux v Kalandi Pati*⁴, They are as follows:

1. Urgency of the situation and the power is to be used for maintaining public peace and tranquility.
2. Private rights may be temporarily overridden when there is a conflict between public interest and private rights.
3. Questions of title to properties or entitlements to rights or disputes of civil nature are not open for adjudication in a proceeding under Section 144.
4. Where those questions have already been decided by the civil courts or by judicial pronouncements, the Magistrate should exercise their power under section 144 in aid of those rights and against those who interfere with the lawful exercise thereof.

So, it is lucid from the above-mentioned points that the order must state the facts on the basis of which the Magistrate has decided to invoke this section. The mere statement of a Magistrate that he considered the case to be imminent is not sufficiently adequate to give him the jurisdiction, if the facts set out by him show that really there was no urgent necessity for action in this connection.

In furtherance, Section 144 of Cr.P.C. is imposed due to the riot, loot, violent protests, stone-pelting, etc in any locality or city. This is a

³ (1921) ILR 43 All 692.

⁴ AIR 1964 Ori.18.

notification which is issued by the District Magistrate. It strictly prohibits the assembly of five or more people in an area. During the imposition of Section 144 there is a restriction on carrying any sort of weapon in the area and if any person is seen to be violating it, can be arrested. Every member of such "unlawful assembly" can be booked for "engaging in rioting" under law. The maximum punishment for such violation is three years. It is stated that obstructing police from breaking up an unlawful assembly is also a punishable offence. The order passed under section 144 is a necessary tool to impose certain restrictions on public gathering, limiting movement out of homes and prohibiting cross border movement across states and the present order could not be challenged on the ground of infringement the fundamental rights enshrined in article 19(1)(b) or (d) of the Indian constitution. Section 144 is well within the limits of reasonable restrictions of article 19(3) and (5) according to which the state may impose reasonable restrictions as may be deemed necessary in the interest of the public order and it is used in the sense of maintaining public peace, safety and tranquility. The constitutionality of the section 144 is challenged in the case *Madhu Limaye v. S.D.M Monghyr*⁵. In this Hidaytullah C.J. stated that the section is not unconstitutional if it is applied properly. The provisions of the code (CrPC) are properly understood and they fall within the limits laid down in the constitution for restricting the freedom guaranteed in it.

The Epidemic Disease act came into force w.e.f. 4th February 1897 with an aim to provide prevention of the spread of dangerous epidemic diseases.

Section 2 and 2A of the ED Act, 1897 empower state and central government to take best possible measures and prescribe regulations with respect to dangerous epidemic diseases. Section 2(1) provides that

⁵ 1971 AIR 2486.

the state government in anticipation of any dangerous epidemic disease can take special measures to maintain public safety. It can do so by issuing public notice prescribing temporary regulations on the public as it shall deem necessary to prevent the outbreak of such disease. This act also comes out to be one of the reasons for the imposition of section 144 in various states. The ED Act, 1897 comes into force as the virus is spreading globally and affecting large number of individuals at the same time.

In the current standpoint, when India is struggling with CAA Protests and Delhi riots, COVID-19 knocked our doors as pandemic disease.

As a result of which, the government has imposed Section 144 of the Cr.P.C. in the most affected areas for maximizing public safety and to minimize the threat of Corona Virus which out of nowhere happens to be the threat for the human life and created a situation of Emergency across the nation. Though there were no violent protests, loots, a situation of riot or anything which can be taken as a threat to human life in general sense, until the World Health Organization took the matter as the major concern declared it as pandemic by considering it as the need of the hour.

As aforesaid in the guidelines given by WHO, it is thereby clearly stated that the virus is spread through the small droplets from the nose or mouth, which are expelled when a person with COVID-19 coughs, sneezes, or speaks with any person who is considered to be fit. Hence, to break the chain of Corona Virus and to save the lives of people, one has to stop coming in contact of other people and stop going in the crowded places as there will be a high risk of spreading of the novel virus. By keeping a reasonable amount of distance, stop the contact among people by any physical means and by not creating a crowd by any chance. By taking the matter seriously, imposition of Section 144 of the Criminal Procedure Code became the need of the hour to save the

lives of the people and to break the chain of COVID-19 in a highly populated country like India. As a result the ratio of infected people as well as the deaths which occurred due to the virus is much stable and controlled as compared to the many developed nations of the world.

After careful analysis of the concerned section in the light of this worldwide pandemic COVID-19, the article can be concluded with the assertion that, Section 144, albeit discretionary, is an essential element in the set of measures that are undertaken by the executive tier of the nation in order to prevent as well as manage situations of urgency. Although in India the number of cases which are reported is still low as compared to other nations across the globe, but still one cannot ignore the harm Corona Virus has already caused due to its quick growth rate and the potential to further aggravate the situation.

So, for the time being, Section 144 Criminal Procedure Code seems adequate to control the specific movement of the most affected groups and the areas of red alert, that are either more prone to the outbreak or are major threat for spreading the virus. This Section can also be invoked to prevent any situation of panic among the general public when it comes to shopping of essential commodities, for instance, food, medications, etc. as we observe in different nations across the globe. Thus, it is rightly concluded that imposition of Section 144 is very well within its legal competency and can be effectively imposed to tackle down this pandemic as the world impatiently waits for the COVID-19 vaccine.