

Maintenance of Public Order and Tranquility

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Chapter X of the Code of Criminal Procedure gives the legal provisions for maintenance of public order and tranquility and lays down the duties, powers and functions of the Executive Magistracy and the Police in this behalf. This chapter is divided into four parts:- Part A-- Unlawful Assemblies, Part B – Public Nuisances, Part C – Urgent Cases of Nuisance or Apprehended Danger and Part D – Disputes as to Immovable Property.

For the purpose of this paper I shall concentrate on Part C, that is, Urgent Cases of Nuisance or Apprehended Danger. There are two sections of Cr.P.C. under Part C of Chapter X, viz., section 144 and section 144A. Under section 144 if the District Magistrate, Sub Divisional Magistrate or an Executive Magistrate specially empowered by the State Government finds that there is sufficient ground to apprehend that a situation is developing, in which certain act or acts or certain use of property will cause obstruction, annoyance, injury, danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray, then the Magistrate may direct that person or persons to abstain from certain acts or take order with respect to the property in question, desist from collecting at designated areas or otherwise behaving in a manner in which public peace may be disturbed. Under 144 A the District Magistrate may prohibit carrying of arms in procession or mass drill or carry out mass training with arms. In both cases prohibitory orders are imposed to prevent crowds from collecting under circumstances in which there is tension or threat and thereby giving the police an opportunity to disperse people before their numbers become very large. In the absence of a prohibitory order large crowds may collect, which may not come within the definition of a lawful assembly or peaceful assembly referred to in Article 19 (1) (b) of the Constitution. This has to be read in the context of Chapter XI of the Code of Criminal Procedure which enjoins upon the Police the need to take preventive action so that cognisable offences do not occur. Under section 151 Cr.P.C. the Police is authorised to arrest without a warrant a person who is likely to commit a cognisable offence. In other words, Parliament in its wisdom have mandated that the Police and the Magistracy have to prevent the commission of offences and have also to maintain public order and tranquility, for which purpose they are suitably empowered by law.

This background is narrated in the context of a writ before the Delhi High Court questioning the imposition of prohibitory orders under section 144 of Cr.P.C. whereby no assembly of people was allowed in designated areas, especially around India Gate. The allegation is that this is a misuse of section 144 Cr.P.C. because it impinges on the right of people to assemble peacefully, even for protesting against government or demanding the taking of certain action by government. The Hon'ble Judges of the High Court are reported to have commented that the Police should not prohibit people from assembling and that it was the duty of the Police to maintain order despite such assemblage. Without in any way showing any disrespect I would submit that the sequence of events following upon the rape of a twenty-three-year old girl in a moving bus in Delhi and her subsequent death had greatly agitated the people and they had assembled in Vijay Chowk to call upon government to take firm action. They wanted to meet the President, but the Police, which was deployed in large numbers, prevented this. What is more, no senior functionary thought it fit to walk down Raisina Hill to meet the

assembled protesters and assure them that government would act very firmly. The Home Minister went on to the extent of saying that it was not possible to meet every agitator and if tomorrow the Naxalites say that they want the Home Minister to meet them should he oblige? The answer is, "Yes". After all the Naxalites are also Indian and however wrong they may be in their behaviour they have a right to be heard.

After hours of waiting the crowd became restive and tried to march forward. At this point the Police used force, including water cannon, tear gas and lathi charges. Anti social elements also joined in and soon there were constant scuffles between the Police and the people right upto India Gate and beyond. Regardless of the justification of the Police action, which is being enquired into separately, the fact is that the situation did become tense and ugly and it was necessary to take steps to allow tempers to cool down. In other words, this was an ideal situation for issuing a prohibitory order under section 144 Cr.P.C. If the Police were to allow crowds to gather under these circumstances there would undoubtedly have been an escalation of mob violence and then the Police would have had to use extreme force, including lethal force. My humble submission to the Hon'ble High Court is that by all means jealously guard the freedoms enshrined in Article 19, but also read clause (2) of the same Article which permits the State to make a law which imposes reasonable restrictions on the exercise of the rights conferred by Article 19. I think section 144 Cr.P.C. is such a reasonable restriction.

However, there is another case recently from Tamil Nadu where every District Magistrate throughout the State has imposed a ban under section 144 Cr.P.C. on the exhibition of a film made by Kamal Hassan, to which some Muslims had objected. The Advocate General of the State had the nerve to come on television and state that government had nothing to do with it and District Magistrates on their own had imposed the ban. Because an order under section 144 is a judicial order by an Executive Magistrate it has to be imposed judiciously. In other words, satisfaction of the Magistrate has to be judicious and objective and not subjective and should not be issued under pressure, albeit from the State Government. How can every District Magistrate in the State come to exactly the same conclusion about the danger to public tranquility caused by a film? Obviously in Tamil Nadu the use of section 144 by District Magistrates has been done on instructions from government and, therefore, it is not an order passed judiciously. This is a clear misuse of authority and the High Court should come down heavily on the District Magistrates who have thus abdicated their functions.

The courts have to be vigilant about misuse of section 144 Cr.P.C. However, in a law and order situation the officer on the spot must have full freedom to take action as, in his best judgement, a particular situation warrants. Use of section 144 to deal with an emergent situation is not only justified but is desirable. Therefore, the High Court should not emasculate the Police or make the Executive Magistracy hesitate in using the preventive sections of law in order that public peace and tranquility may be maintained.
