

THE CONSTITUTIONALITY OF WARRANTLESS SEARCHES AND SEIZURE OPERATIONS

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ABSTRACT

India's crime rate is 2.95 per 100k population, to combat this very crime we have the law to declare what can be classified as a crime and what cannot be classified as a crime, and to reach this consensus we have investigations inclusive of searches and seizures. This article depicts the constitutionality of warrantless searches and seizures and their importance, limitations and. Search warrants are issued to protect citizen's privacy and to avoid unnecessary trouble but in some cases, the warrant may not be necessary and such cases are thrown light upon here, Article 19, Article 20(3), sections 91,92,94,97,165 of the Criminal procedure code are being used as a catalyst to understanding the essence.

Keywords: Searches, Seizures, Warrants, criminal offence, Rights offered by the constitution

INTRODUCTION

Any criminal offence committed is considered to be a crime against society/ state and therefore state's agents like police officers or authorized dignitaries, are given a certain written authority issued by a magistrate or judge to search a person, vehicle, place, etc, this written authority is coined as Search Warrant, this includes the specific date, time and search place. According to the Criminal procedure code, a search warrant can be issued under three circumstances covered under Section 93 as follows:

(a) Where a court has reason to believe that a person to whom a summons or order under Section 91 or a requisition under sub-section (1) of Section 92 has been addressed will not produce the document as required by such summon.

(b) where such a document or thing is not known to the court to be in the possession of any person.

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(c) where the court considers that a general search will serve the purpose of any inquiry, trial, or another proceeding under this code, it may issue a search warrant.¹

Some instances mentioned:

- As any postal service in custody cannot be granted a search warrant by a magistrate other than a district magistrate.
- A warrant for a place suspected to contain stolen property or forged document under section 94.
- For a person confined, owing to the circumstances making it an offence, A warrant shall be issued under section 97.²

Courts can issue search warrants in both cases where the documents aren't presented in stip the place has been suspected to have stolen property, counterfeit coins, and currency, fake stamps, or any objectionable material.

CASES WHERE SEARCH WARRANTS AREN'T INDISPENSABLE

Investigation plays a crucial role and at times in emergencies, certain exception of general law exists that empowers police, officers to carry out searches and seizures without a warrant, these instances and circumstances are stated in section 165 of the criminal procedure code:

- 1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds to believe that anything necessary for an investigation into any offence which he is authorized to investigate may be found in any place and that thing cannot in his opinion be obtained without undue delay without a search, such officer may search for such thing in any place within the limits of such station.
- 2) Police officers proceeding under sub-section (1), shall if practicable, search for the person.
- 3) If a police officer is unable to search for a person and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to make the search and order him to search for such thing in such place.

¹Vasu Kehra, 'Can police search your house or office without a warrant in India?' (2015) iPleaders<[Can police search your house or office without a warrant in India? - iPleaders](#)>, accessed on 15 April 202

4) If a police officer remained outside the house while the search was being made inside by some subordinate officer, the search was not held to be illegal.

5) Copies of any record made under subsection (1) shall be sent to the nearest magistrate empowered to take cognisance of the offence.²

In India, police do these unwarranted searches widely, to bring underlying shreds of evidence to the surface and the obstruction caused or if denied can also be stated as an offence and use of force, leaving civilians with no choice but to allow the police to carry out their activities as it stands valid under section 165, police can carry out their search and later on, check the validity of same if it stands accurate or not. If the search is without a warrant and a civilian cannot deny the authority then, that person can ask his neighbours to be present as they will act as eyewitnesses, searches can be video recorded as well to eliminate the chances of evidence being forged or planted to conspire the accused.³

RIGHTS BEING ATTACKED IN THE PROCEDURE

“Innocent until proven guilty”, it’s a phrase widely and accurately used in the field of law, it infers that the accused has some rights and cannot be treated with hostility until the allegations against him are proven to be true, so the question that pops up is “They are accused of an offence what is the requirement of a warrant to search their belonging or place?”, being accused of a crime doesn’t give the autonomy to police officers or investigating officers to search and do seizure without a warrant exception underlying in section 165 of Code of criminal procedure, Respected and profound constitution of India gives certain rights to the citizen, inclusive of accused and these rights are affected due to presence of section 165:

- Article judgments against self-incrimination, In the constitution, mentioned crisply that ‘No person accused of any offence shall be compelled to be a witness against himself, it is based on the principle of ‘Nemo teneur provider or nemo tenetur scripsitum slander’, which means that the accused cannot be forced to testify

²Ibid.

³Code of Criminal Procedure, s 103, s 165, s 166

against himself, the state will have to prove the accused guilty beyond a reasonable doubt.

- This provision was added to protect the accused from forced acceptance of crime by Police atrocity.
- If there have been any questions that answer expose the victim or accused then they may be denied answering. This same thing is also provided in CrPC section 161.
- Sections 25,26 and 27 of the Indian Evidence Act say that there is no admissible value of a statement given by the accused or victim which harms himself. But if the accused accede pt crime with evidence then it is admissible.
- The protection against self-incrimination extends to both oral evidence and documentary evidence.⁴

Now this documentary evidence can be taken by searches and therefore any search without consent or warrant can lead to a violation of this particular right, so if the accused does not obey the court and then is compelled to search, here accused himself goes into shoes of witness, as 'to be a witness means to become a witness but not to appear as a witness, thus the protection of self-incrimination not only extends to compelled testimony but also to the investigation and interrogation, which intrudes his/her privacy and leads to violation of article 21 as well,

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- Article 21: Right to Life, According to this article, every person – citizens and non-citizens have the right to live and the right to have personal liberty. The state can't deprive any person of these two rights except under procedure as prescribed by the Indian Penal Code,⁵ henceforth right to privacy which is a part of the right to life, also stands affected.

From past reviews and trends in India⁴, it can be crisply concluded that the defendant respects the right to self-guilt and is completely exempted from producing documents that are summoned and convicted. Authorities analyze the documents and then later deduce whether the found document is guilty or not.

⁴*Bombay state vs KathiKalu had* (1961) AIR 1808, 1962 SCR (3) 10

⁵<[The Right to Privacy in India as a Fundamental Right \[UPSC Notes\] \(byjus.com\)](#)> accessed on 16 April 2023

SEARCHES & SEIZURES UNDERTAKING/WORKINGS

If the designated officer proceeds without a warrant to search and confiscate the evidence, that he believes can be found there, he has to first record his belief in writing that he believes something of importance can be found in the investigation, secondly, he has to also mention the material that is being searched for, cause not mentioning the same will be nothing but negligence. Also, this warrantless search can only proceed if the officer in charge doesn't have the required time to process and demand a warrant from the magistrate. Also if the search conducted is illegal and abuse of the power vested in uniform then police officers can entail both punishments and would owe compensation to the aggrieved party.

The nearest magistrate should be informed the of search and should be presented with the record in writing for the same.

After the search is concluded, the officer shall be making the list of things seized, which is to be signed by a witness, though if the officer faces the unavailability of a public witness, he has to provide evidence and be answerable to the court.

Another scenario for a search can be for the stolen property but if the object is not mentioned in the complaint, even the power offered by section 165 of CrPC stands silent, cause this search will be then termed as a general search and no one can intrude in the house of the person without any specifications, or else it would amount to trespass of land, which is defined as unjustified physical interference with land that belongs to one party by another.

The next possibility in a search can be if the premise is closed:-

The officer in charge shall make a demand to the occupier/ owner of the premise to facilitate the process, and under section 100 of CrPC, The person asked shall therefore help in the search and if not done so, police can break open to investigate, and if a person is suspected to conceal any article or information then he can be searched for, if the suspect is female then the availability of a female officer becomes necessary and decency for same needs to be followed. The search should be carried out for a person with two locals or inhabitants of that area so that they can later be called as witnesses, the occupant or owner of the place can also be asked to be present at the time of search and denying to assist public officer can lead to an offence punishable under section 187 of IPC, 1880.

The next scenario is automobiles:-

Where warrants are required in various instances, Automobiles, the Supreme Court has said, are subject to much greater regulation and inspection than dwellings; the expectation of privacy in them is much less. Having reached that judgment, the Court has not modified it to differentiate between areas like the back seat that are generally open to view and closed or concealed areas like the trunk or glove compartment that are not.⁶

If police officers obtain lawful custody of an automobile in which they have probable cause to search for evidence of a crime, a warrantless search is allowed for some period, a few hours at least, after custody is obtained. This rule is based not only on the lesser expectation of privacy attached to an automobile but also on its mobility and the unpredictability with which custody often is obtained. The Supreme Court has not been persuaded that the immobilization of the car while it is in custody ordinarily makes it unnecessary to allow a search until a warrant has been obtained. Second, if officers have lawful custody of an automobile and routinely follow a regular custodial procedure, like an inventory of its contents, a search performed as part of the procedure is permitted. The routine nature of such practices, which are followed by many police departments, has persuaded the Supreme Court that they are reasonable.⁷

CONCLUSION

In a nutshell, Searches and seizures play a vital role to investigate and find proof to deduce a fair, unbiased judgment, but in the process to reach to that stage firstly the investigating officer has to go through the turmoil of Article 19, and Article 20(3), section 91,92,94,97,165 of Criminal procedure code, there is a set procedure and defined in the constitution that how each circumstance is to be handled and circumscribe under the law while doing so, search warrants as an official written order is helpful to investigate from due permission of magistrate but similarly if the search warrant is granted, police officers or investing officers would not be autocratic and make foul use of their power and cause a nuisance to accused or any civilian that is suspected rather would use legally specified tools to proceed, from writing the cause of search to having a witness in course of action, any illegal or troublesome act noticed is punishable, if the investing officer is unable to find the prescribed article, he stands

⁶*State of Gujarat v. Shyamlal Mohanlal Choksi* (1965) MLJ (Cri) 417 : (1965 (2) Cri LJ 256)

⁷<[Warrantless Search | Encyclopedia.com](https://www.encyclopedia.com/legal-terms-and-concepts/criminal-law/warrantless-search)>accessed on 16 April 2023

answerable to court and is liable of offence, similarly to avoid planting of evidences, these rules becomes crucial to have minute details as explained in this article. In my strong opinion, these regulations opted by our legal system stand apt as it facilitates quick and easy recovery of pieces of evidence, though it provides greater autonomy to police which can be misused, enough safeguards are provided by law for the same, as this power given to Kathiis also necessary to keep crimes at bay.

