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# Search and Seizure

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## ABSTRACT

*The legal procedure known as "search and seizure" has been employed by authorities in both civil and criminal cases for a significant period. Its primary purpose is to conduct a thorough examination of a person or a location to specifically locate and secure certain items, which are then taken into safe custody. Subsequently, these seized items are utilized as crucial evidence in court proceedings. Despite its seemingly straightforward nature, this clause holds vast implications and dimensions that warrant careful attention and consideration.*

*In this paper, we aim to delve into the various 'search and seizure' provisions available under Indian law. Furthermore, we will scrutinize the challenges and issues these provisions present, critically analysing the procedural aspects of search and seizure in various countries. To enhance the comprehensiveness of our study, we will conduct an empirical analysis on the validity and efficacy of search and seizure practices in different nations.*

*Through this comprehensive analysis, we hope to identify potential areas of improvement in the search and seizure procedures, enabling authorities to strike an optimal balance between individual rights and the interests of justice. Additionally, we seek to draw attention to the crucial role played by search and seizure evidence in court cases, emphasizing the need for its accurate and lawful acquisition.*

*Overall, this paper endeavours to contribute to the existing body of knowledge on search and seizure, providing valuable insights for legal practitioners, scholars, and policymakers alike. By shedding light on the nuances and challenges of this critical legal process, we aim to promote a more equitable and effective approach to handling search and seizure cases worldwide.*

## I. INTRODUCTION

The steps of an empirical investigation are crucial to encompass search and seizure. Both of these expressions have very distinct implications. "To search is to look critically somewhere to locate somebody." To try to find something, look closely or conduct other careful or comprehensive searches. To find someone or something, thoroughly inspect (a location, vehicle, or person). Yet, both are continuous occurrences and are vital components of an investigation.

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They are commonly recognized as essential to an essential ingredient of an accused person's arrest. Objective evidence is provided via search and seizure. They supply credible proof for the court to evaluate throughout hearings.

In India, search and seizure procedures are defined by the Code of Criminal Procedure (CrPC) and the Indian Constitution. Similar to the United States, the Indian Constitution recognizes citizens from unjustified searches and seizures under **Article 20(3) and Article 21**. Suppose there is a reasonable suspicion that stolen property, illegal drugs, or other evidence of a crime may exist. In that case, there is a reasonable suspicion that there may be stolen property, illegal drugs, or other evidence of a crime; a police officer is authorized to search any location, person, or object under **Section 165 of the Criminal Procedure Code**. However, a warrant is required for a search in most cases, except when there is an urgent need to search and seize evidence without delay.

## II. JUDICIAL PRONOUNCEMENTS

- i. The case of **Kharak Singh v. the State of Uttar Pradesh**<sup>2</sup> is one of the critical decisions on search and seizure in India (1963). In this case, the constitutionality of police home visits and intelligence gathering under the Uttar Pradesh Police Regulations was the matter.

In this case, the Supreme Court ruled that government surveillance and home visits without a valid legal reason are unconstitutional and infringe on the right to privacy. It also declared that the right to privacy is a fundamental right guaranteed by the Indian Constitution. The court furthermore ruled that police could only conduct searches and seizures if they had a warrant or a good faith belief that a crime had happened. This case established the fundamental principle that police could not execute searches and seizures without such a valid legal justification, allowing it a landmark decision in India that recognized the right to privacy as a fundamental right. It has been mentioned in later issues involving Indian law regarding search and seizure and the right to privacy.

- ii. The procedural legitimacy of search warrants was preserved in the case of **V. S. Kuttan Pillai v. Ramakrishnan**,<sup>3</sup> where it was declared that searching the accused's property in no way coerced him to testify against himself or breached **Article 20(3)** of the Indian Constitution.

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<sup>2</sup> **Kharak Singh v. the State of Uttar Pradesh** 1963 AIR 1295, 1964 SCR (1) 332

<sup>3</sup> **V. S. Kuttan Pillai v. Ramakrishnan**, ANR INSC 185 (18 September 1979) 1979

### III. COMPARATIVE STUDY/ ANALYTICAL STUDY

#### (A) Comparison with US practice

In the instance of the nation of India, the right to search and seize is conveyed over several penal procedural laws. **The Code of Criminal Process, 1973**, is the fundamental legislation. For the search and seizure of properties, see, for example, **Sections 47, 100, 102, 51, 52, 91, and 92 of the Criminal Procedure Act.**

The term "search and seizure" was used in the USA to refer to several related ideas. These aspects include an arrest, a stop, and a frisk. The Fourth Amendment and the Fourteenth Amendment focus on providing constitutional status for the conception of an arrest. ***Chimel v. California*** is a famous seizure case in the USA. It sets forth the that must arise before an arrest without even a warrant can be executed. If this condition is not fulfilled, the **4th and 14th Amendments** of the Constitution would be infringed.

In both countries, the supreme courts have established consistency between the facilitation of criminal investigation of a crime and the liberty of a citizen. While vital information should be presented to the court of In addition to the court of justice's significance in the accused people's trial and the law's implementation of his attendance, Preserve a citizen's fundamental rights firmly lest he becomes a victim. The Apex Courts of the United Both nations share the same viewpoints.

### IV. CRITICAL ANALYSIS

1. If we talk about the right to privacy in search and seizure, it is an infringement in some cases where even a person is arrested without a warrant. They infringe on the privacy of an individual.

The cases are **Riley v. California (2014)<sup>4</sup>**: In this case, the Supreme court decided that, in general, police officers are not permitted to inspect the digital information on a mobile phone they have taken from an arrested person without a warrant. The court acknowledged that a search of such information represents a substantial infringement of personal privacy and that cell phones store much private information.

**Carpenter v. United States (2018)<sup>5</sup>**: In this case, the Supreme Court decided that the government required an arrest warrant before getting a person's cell phone location information from a wireless provider. Doing could get a person's cell phone location information from a

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<sup>4</sup>Riley v. California (2014) 134 S. Ct. 2473

<sup>5</sup> Carpenter v. United States (2018)138 S. Ct. 2206

wireless provider since doing so represented a search under the Fourth Amendment.

As with anything which happens, the judiciary is supreme of all, especially our constitution. If anyone in power wrongly infringes a person's right, it will not be considered legally valid. In the above cases, the supreme court proved it by its discussion that there is a legal remedy for obstructing the right to privacy of an individual.

2. There may be several legal options if an Indian citizen's right to privacy is infringed during a search and seizure conducted again by foreign authorities in another nation. The specific remedies will be established by the facts of the case and the laws of the nation where the breach occurred.

These are a few alternatives an Indian national might think about:

- Call the Indian Embassy or Consulate: If an Indian national is arrested or foreign authorities take their property is taken by foreign authorities, they should get in connection with the Indian Consulate or Embassy as soon as possible. The embassy or consulate can help with legal counsel or liaise with regional authorities.
- Complain to public bodies: An Indian citizen may be entitled to complain to local authorities or law enforcement bodies if a search or seizure is carried out improperly or against local regulations. This may result in an investigation and even criminal charges against the responsible parties investigation and even criminal charges against the individuals responsible may result from this.
- Consult a lawyer: An Indian citizen might want to consult a lawyer or law office with global or human rights law expertise in global or human rights law. The solicitor can suggest possible legal options , help bring suggestions on possible legal options, and help bring a claim or lawsuit against the accountable parties.

## **V. CONCLUSION AND SUGGESTIONS**

The conclusion on search and seizure is that it is a crucial tool for law enforcement officers to obtain information during criminal investigations. Still, it must be utilized legally and ethically a legal and ethical manner. According to the Fourth Amendment, all inquiries and seizures must be authorized by a warrant issued by an impartial, unbiased magistrate and also issued by an impartial, disinterested magistrate and must be established on reasonable suspicion. There are, however, some circumstances where a warrant is unnecessary, such as where there is a possibility of impending danger or when the evidence is obvious. Further limits, such as the extent of the search and seizure, the technique used, and the period the material is held, must

also be fulfilled by law enforcement personnel. Several questions about Sections of the CrPC were answered by the court's decision in this case, but others persist because of past police abuse of power. These difficulties need to be legislated and made clear for future reference.

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