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Search and Seizure under CrPC

[CRPC](#) [Subject-Wise Law Notes](#)

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Search and seizure under CrPC are a crucial step in a proper investigation. The police have two ways to carry out a search and seizure. One way is with a legal warrant issued under specific laws like Sections 93, 94, 95 and 97. The other way is without a warrant, allowed under Sections 103, 165 and 166.

There are general rules for search and seizure outlined in Section 100 of the CrPC (Criminal Procedure Code). These rules are generally followed in cases under the Indian Penal Code and other laws, with slight differences. So, in all situations involving search and seizure, the investigating police should follow the rules in Sections 100 and 165 of the CrPC.

It's worth noting that some special laws, like the Narcotic Drugs and Psychotropic Substances Act, 1985, have their own specific procedures for search and seizure that the police must follow.

The police may need to conduct searches in multiple places. One could be at the scene of the crime and others may be at locations where people involved in the crime are hiding, as well as places where evidence related to the crime is stored or hidden.

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Meaning of Search and Seizure under CrPC

In the investigation process, “search” means looking into an individual or their property to find evidence, while “seizure” means taking possession of that property once the search is done. Search can limit a person’s use of their property, but it’s necessary for legal reasons. [Article 19\(5\) of the Constitution](#) of India acknowledges that the right to own property isn’t absolute and comes with some restrictions.

Here are some important points to keep in mind:

- Police can seize property in non-cognizable offence cases, but there must be a reasonable suspicion for the seizure.
- Only a police officer is authorized to seize property; they can’t delegate this task to someone else.
- Under Section 47 of CrPC, a police officer can enter and search premises with an arrest warrant. They can also break open doors or windows to free themselves or others in certain situations. Section 58 allows police to search a person anywhere in India.
- Section 165(1) of Cr.P.C permits police to search within their station’s limits but not when a court-issued warrant is involved.
- After a search, the police can seize some items. They must create a seizure report on the spot to follow the law, as people often accuse them of planting evidence.
- Courts have ruled that evidence obtained through illegal search and seizure may not always be inadmissible; it depends on the circumstances.
- Knowing arrest, search and seizure procedures can protect individuals from mistreatment by those responsible for maintaining law and order. It’s crucial to raise awareness about these topics.

Procedure for Search and Seizure under CrPC

The process for conducting searches and seizures is outlined as follows:

Section 91: The court or the officer in charge can issue a summon or a written order requiring a person to produce documents or items deemed important for an investigation, inquiry or legal proceedings. The person in possession of these documents or items must comply with the request and provide them at the specified time and place.

Section 92: If law enforcement agencies, including the District Magistrate and High Court, believe that a document, parcel or item held by postal or telegraph authorities is crucial for an investigation, trial or legal proceedings, they can instruct the postal or telegraph authority to deliver the item as per court directions. The court may also permit searches by postal or telegraph authorities to locate such items.

Section 93: A search warrant can be issued under several circumstances. Firstly, if the court believes that the person summoned or ordered will not produce the necessary document or item, a warrant can be issued against that person. It can also be issued when the court doesn't know who possesses the document.

The court may specify the extent of the inspection and the person in charge of the inspection must follow these instructions. Only the District Magistrate or Chief Judicial Magistrate can authorize the search of documents in the custody of postal or telegraph authorities.

Section 94: This section deals with searches at places suspected of containing stolen property or forged documents. If a District Magistrate, Sub-divisional Magistrate or a Magistrate of the first class believes that a place is being used for storing stolen property or producing objectionable items as mentioned in this section, they can authorize a police officer (above the rank of constable) to enter the place with assistance if needed.

The police must conduct the search as specified in the warrant, taking possession of objectionable or stolen property. They must report this to the Magistrate or safeguard it until the offender is brought before the Magistrate. If they find anyone involved in the storage, sale or production of objectionable items or stolen property, they can detain the person and later present them before the Magistrate.

Objects considered objectionable under Section 94 include:

- Counterfeit coins, currency notes or stamps.
- Forged documents.
- False seals.
- Pieces of metal prohibited under the Metal Tokens Act, 1889 or brought into India in violation of Section 11 of the Customs Act, 1962.
- Items considered obscene under Section 292 of the [IPC](#).

- Instruments that may be used for producing the above-mentioned objectionable items.

Section 95 empowers the court to declare certain publications as forfeited. If the State Government believes that an article, newspaper, document or book may contain content punishable under specific sections of the Indian Penal Code (IPC), such as 124A, 153A, 153B, 292, 293 or 295A, it can declare all copies of that material forfeited to the Government. A magistrate can authorize a police officer, not below the rank of Sub-Inspector, to seize these documents.

According to the warrant, the police can enter and search for these suspected documents on any premises. The terms "Newspaper" and "Book" have the same meanings as defined in the Press and Registration of Books Act, 1867 and "Document" includes drawings, paintings, photographs or other visible presentations.

For example, in the case of **Anand Chintamani Dighe v. State of Maharashtra**, the State Government seized a notice to forfeit the book titled "Mee Nathuram Godse Bolto ahe" (I am Nathuram Godse speaking) in all forms, including the Gujarati translation. The reason was that the publication of this book was believed to disrupt public peace, promote disharmony or incite hatred among different groups or communities.

Section 97 deals with the search of a person whose confinement constitutes an offence. If a District Magistrate, Sub-Divisional Magistrate or first-class Magistrate has reasonable grounds to believe this, they can issue a search warrant. The person to whom the search warrant is addressed must search for the confined person and, if found, bring them immediately before the Magistrate for further legal proceedings.

Section 98 addresses the process for restoring an abducted woman, including a female child under the age of 18.

Section 99 provides directions for search warrants. The provisions of Sections 38, 70, 72, 74, 77, 78 and 79 apply to all search warrants issued.

Procedures to be Followed During Search and Seizure under Section 100 of CRPC

During a search and seizure conducted under Section 100 of the Criminal Procedure Code (CrPC), it is crucial for the investigating police officer to adhere to specific procedures. Any deviations or violations of these procedures can have adverse consequences for the prosecution case and may invalidate the trial. Here is a simplified explanation of the procedures that should be followed:

Access and Facilities: Ensure that both search with a warrant and search without a warrant allow free entry and provide reasonable facilities.

Entry and Breaking: The police officer conducting the search is authorized to enter the premises. If necessary, they can forcefully open outer or inner doors or windows after properly notifying their authority and purpose and demanding admittance. Section 47(2) includes safeguards to protect the privacy of a pardanashin woman during the search. It's essential to note that if improper or unlawful obstruction or resistance is encountered during the exercise of this power or the performance of official duty, reasonable means can be used to overcome such obstacles.

Search of Persons: To prevent the possibility of someone secretly concealing any article or item being searched for, Section 100(3) permits the search of individuals. If the person to be searched is a woman, another woman must conduct the search, with strict adherence to decency and respect for her modesty.

Presence of Witnesses: The search must take place in the presence of at least two independent and respectable residents of the locality where the search is being conducted. However, if no such residents from the locality are available or willing to act as witnesses, individuals from another locality can serve as witnesses. It is important to emphasize the respectability of the witnesses rather than their specific locality or independence.

This provision is intended to prevent potential manipulation and unfair practices by those authorized to conduct the search and to ensure that any incriminating evidence claimed to have been found in the searched premises was genuinely discovered there and was not planted by the search party. Having witnesses during a search is always recommended and their absence can weaken or even invalidate the admissibility of evidence regarding the discovered items.

Written Order to Witnesses: Section 100(4) requires the officer or person conducting the search to call the witnesses (often referred to as "panch

witnesses") to attend and witness the search and they may issue a written order for this purpose.

If an individual ordered to act as a witness neglects or refuses to attend and witness the search without reasonable cause, they may be deemed to have committed an offence under Section 187 of the Indian Penal Code as per Section 100(8).

Daylight Searches: Whenever possible, searches should be conducted during daylight hours. However, if the information is received after dusk, necessitating an immediate search of a house and if there is a risk of evidence being concealed or destroyed if the search is delayed until daybreak, the house should be sealed and guarded. If sealing and guarding are not feasible, the search should be conducted during the nighttime itself.

Exterior Inspection: Before entering the premises to be searched, inspect the exterior of the place to determine whether there are any means or facilities for introducing property from outside.

Mutual Search: Prior to commencing the search, both the investigating officer and the panch witnesses should conduct a mutual search of each other. This step ensures transparency and accountability.

Systematic and Thorough Search: Search and seizure under CrPC should be conducted in a systematic and thorough manner to ensure that no potential evidence is overlooked or compromised.

Withdrawal of Women: During the search and seizure under CrPC, women should be allowed to withdraw from the premises to safeguard their privacy and dignity.

Avoid Indiscriminate Search and Property Damage: Indiscriminate search and damage to property should be avoided. The search should focus on the specific items or areas relevant to the investigation.

Presence of Occupant or Nominee: In every case, the occupant of the place being searched or their nominee should be permitted to attend during the search. Denying this permission may raise suspicions about the credibility of the discovered evidence. However, if the presence of the occupier or nominee could

cause undue delay and frustrate the purpose of the search, their presence may be dispensed with.

Preparation of List: Prepare a list of all items seized during the search and specify the places where they were found. This list should be prepared by the police officer or the person conducting the search and should be signed by the panch witnesses. Notably, the signature of the accused on the search list is not legally required.

Search List Copies: Create a search list in quadruplicate. All copies should be signed by the police officer conducting the search and the witnesses to the search. The four copies serve different purposes:

- One copy is handed over to the owner or occupant of the house.
- The second copy is sent to the Magistrate.
- The third copy is included with the case diary and sent to the superior officer responsible for case diaries.
- The fourth copy becomes part of the station records, maintaining a record of the search.

Search and Seizure at Different Places under Sections 165 and 166 Read With Section 100 CrPC

Section 165 of the CrPC provides for exceptional circumstances in which responsible police officers can conduct searches without prior court authorization. However, the legislature has put limitations on these powers to prevent abuse and safeguard the rights of citizens.

Here's an explanation of the key points in Section 165 CrPC:

Grounds for Belief: An officer-in-charge of a police station or an investigating officer can conduct a search if they have reasonable grounds to believe that something necessary for the investigation of an offence they are authorized to investigate may be found in a specific place within the jurisdiction of their police station. They must also believe that obtaining this item through other means would cause undue delay.

Recording Grounds: Before conducting the search, the investigating police officer must record the grounds for their belief. They must specify in writing the

item they are searching for. This written record is known as the "record of reasons."

Subordinate Officer: If the investigating police officer is unable to conduct the search personally, they can delegate the search to a subordinate officer. However, they must provide written orders specifying the place to be searched and the item sought. Copies of these records must be sent to the nearest Magistrate empowered to take cognizance of the offence.

When a search needs to be conducted in the jurisdiction of another police station, whether in the same district or a different one, the officer-in-charge of the investigating police station can request the officer-in-charge of the other station to conduct or arrange the search. However, if there is reason to believe that a delay in this process might result in the concealment or destruction of evidence, the investigating police officer can conduct or arrange the search themselves. In such cases, they must promptly notify the officer-in-charge of the police station in whose jurisdiction the search was conducted and the nearest Magistrate empowered to take cognizance of the offence. This ensures that evidence is not compromised due to unnecessary delays.

Additionally, Section 166A of CrPC empowers the investigating police officer to communicate with competent authorities for investigations in countries or places outside India when necessary.

These provisions aim to strike a balance between the need for effective investigations and the protection of individual rights and privacy. They grant limited powers to law enforcement while imposing strict procedural requirements to prevent abuse.

Search and Seizure at the Scene of Crime

When conducting a search and seizure under CrPC at the scene of a crime, the investigating police officer must follow specific procedures to preserve evidence and maintain the integrity of the investigation. Here are the key steps and guidelines:

Preservation of the Crime Scene: The investigating officer should never alter the position of objects at the crime scene, pick up or touch any item before it has been thoroughly documented. The officer should ensure that the original condition of the scene is preserved.

Initial Inquiries: The officer should contact the first person who arrived at the scene and gather initial information. This may include statements from witnesses or individuals present at the scene.

Preventing Interference: Unauthorized persons should not be allowed to interfere with the inspection of the crime scene. It's essential to secure the area and prevent contamination of evidence.

Avoid Crowding: Excessive crowding at the scene should be avoided, as it can lead to the destruction of potential clues. The officer should manage the crowd and ensure that only authorized personnel are present.

Thorough Inspection: The officer should conduct a thorough and systematic inspection of the scene, avoiding any rush. Nothing should be considered trivial and every detail should be noted.

Use of Independent Witnesses: Independent witnesses from the local community should be summoned to assist in drawing a "panchanama" as required under Section 100 of the CrPC. These witnesses provide impartial verification of the search and seizure process under CrPC.

Accurate Documentation: The investigating officer should take accurate and detailed notes of the scene, including descriptions of objects and their exact locations. Sketches drawn to scale should also be created, showing the layout of the scene and the positions of relevant items. The exact position of evidence should be noted.

Photographs and Videographs: In important cases, photographs and videographs of the scene and any objects or evidence should be taken. Visual documentation helps in presenting a clear and accurate account of the crime scene.

Use of Sketches: Sketches should be prepared to scale, indicating compass points (North, South, East, West) and providing accurate distance measurements using appropriate units (e.g., inches, feet, meters). A ruler, scale and compass should be used for measurements.

Disposal of the Seized Property

The disposal of property seized by the police is subject to certain legal procedures and requirements. Here's an explanation of how seized property is handled:

Custody of Seized Property: The police are not authorized to dispose of seized property without an order from the competent court. When the police seize property, they are responsible for its custody until proper legal procedures are followed.

Handing Over to a Person: Under sub-section (2) of Section 102 of the CrPC, the police have the authority to hand over the custody of seized property to a person who is willing to take responsibility for it. This person is required to execute a bond (a legal document) with the condition that they will produce the property before the court whenever required.

Sale in Specific Cases: In certain situations, if the seized property is subject to rapid decay (e.g., perishable goods) and the rightful owner is unknown or absent and the value of the property is less than five hundred rupees, the property may be sold by auction under the orders of the Superintendent of Police. This provision allows for the quick disposal of property that may otherwise go to waste.

Court Disposal: In all other cases and circumstances not covered by the above provisions, the court is empowered to determine the appropriate method of disposal for the seized property. This typically involves following the procedures outlined in Sections 457 and 458 of the CrPC.

Section 457: This section deals with the disposal of property when the rightful owner is known but cannot be found despite reasonable efforts. The court can order the property to be sold and the proceeds are held until the owner claims them.

Section 458: This section pertains to the disposal of property when there is no claimant or when the property is not required for any ongoing legal proceedings. The court may order the property to be sold or otherwise disposed of in a manner it deems appropriate.

Landmark Judgements on Search and Seizure under CrPC

These landmark judgments in Indian law address various aspects related to search and seizure under CrPC:

V. S. Kuttan Pillai v. Ramakrishnan: This case clarified that the procedural validity of search warrants does not violate [Article 20\(3\) of the Indian Constitution](#), as a search for premises occupied by the accused does not compel the accused to provide evidence against themselves. This ruling upheld the legality of search warrants in such cases.

Ramesh vs Laxmi Bai: In this case, it was established that the custody of a son by his father should not be considered unlawful detention. Consequently, no search warrant could be issued in such circumstances. This judgment emphasized the importance of distinguishing between lawful custody and unlawful detention.

Matajog Dobey vs. H.C. Bhari: The court's decision highlighted that when statutory provisions related to searches are not followed, the credibility of the evidence supporting the search may be diminished. However, it also noted that the defendant may provide sufficient reasons for non-compliance with these provisions.

State of Maharashtra vs. Tapas D. Neogy: This case affirmed that a "bank account" is considered property under Section 102 of the Criminal Procedure Code, empowering the police officer to seize the operation of such an account if it is linked to the commission of the offence under investigation. This judgment clarified the scope of property in the context of search and seizure under CrPC.

State of MP vs. Paltan Mallah: The court's ruling emphasized that evidence obtained through an illegal search is not automatically excluded unless it causes the accused serious prejudice. The court has discretion to determine whether or not to accept such evidence, taking into account the circumstances of the case.

Modan Singh vs. State of Rajasthan: This case underscored that if the prosecuting officer provides compelling evidence of retrieving missing items, it is inappropriate to deny the proof of recovery solely because seizure witnesses may not fully support the prosecution's version. The focus is on the strength of the evidence rather than the stance of seizure witnesses.

Difference Between Search and Seizure under CrPC

In the context of the CrPC in India, "search" and "seizure" are distinct legal processes, each serving a specific purpose within the criminal justice system. Here are the key differences between search and seizure under the CrPC:

Search

- **Definition:** A search, under Section 93 of the CrPC, refers to the process of examining a person, place or premises to discover and collect material evidence related to a crime.
- **Authorization:** A search can be conducted either with a warrant issued under specific provisions of the CrPC (e.g., Sections 93, 94, 95 and 97) or without a warrant under certain provisions (e.g., Sections 103, 165 and 166).
- **Purpose:** The primary purpose of a search is to find and collect evidence that may be used in the investigation or prosecution of a criminal offence.
- **Procedure:** The CrPC outlines specific procedures for conducting searches, including the presence of independent witnesses and the preparation of detailed records, such as panchanama and sketches.
- **Example:** Searching a suspect's home with a warrant to find and seize evidence related to a theft.

Seizure

- **Definition:** Seizure, as it pertains to the CrPC, involves taking possession of an item, property or evidence that is found during a search.
- **Authorization:** Seizure is typically a part of the search process. When evidence or items related to a crime are discovered during a search, they are seized by the investigating officer.
- **Purpose:** The purpose of seizure is to secure and preserve evidence or items that are relevant to the investigation or prosecution of a criminal case.
- **Procedure:** The CrPC does not provide specific procedures for seizure itself, as it is an integral part of the search process. However, seized items must be properly documented and their chain of custody must be maintained.
- **Example:** During a search of a suspect's vehicle, the police officer seized a bag containing stolen goods as evidence.

Here is a table summarising the key differences between search and seizure under CrPC:

Aspect	Search	Seizure
Definition	Process of examining a person, place, or premises to discover and collect material evidence related to a crime.	Involves taking possession of an item, property, or evidence discovered during a search.
Authorization	Can be conducted with or without a warrant under specific provisions of the CrPC.	Integral part of the search process; occurs when relevant evidence or items are discovered.
Purpose	To find and collect evidence for use in the investigation or prosecution of a criminal offence.	To secure and preserve evidence or items that are relevant to the case.
Procedure	Specific procedures outlined in the CrPC, including the presence of independent witnesses and detailed record-keeping.	Not subject to separate procedures; part of the search process. Must be properly documented.
Example	Searching a suspect's home with a warrant to find and seize evidence related to a theft.	During a search of a suspect's vehicle, seizing a bag containing stolen goods as evidence.

Conclusion

Search and seizure under CrPC refer to the process of examining a person, place, or premises to collect material evidence and the act of taking possession of relevant items or evidence discovered during the search, respectively.

Both search and seizure under CrPC are important in the investigation and prosecution of criminal cases and they must be conducted in accordance with the procedures outlined in the CrPC to ensure the legality and reliability of the evidence collected.