
THE INTRUSION OF PRIVACY: ANALYSING THE CONFLICT BETWEEN SEARCH AND SEIZURE PROVISIONS UNDER THE INCOME TAX ACT, 1961 AND RIGHT TO PRIVACY

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ABSTRACT

The Income Tax Act of 1961 is the legislation which regulates the entire process of collection and administration of Income tax in India. The search and seizure provisions under the Income Tax Act imposes certain police powers upon the income tax authority which is being misused against the taxpayers. This uncontrolled power poses a threat to the right to privacy of the assessee. This paper tries to analyse the abuse or misuse of power by income tax authorities under search and seizure provisions of Income Tax Act. The article also discusses whether the search and seizure procedure conducted by the income tax authority could be considered as a procedure established by law through which the fundamental right of privacy could be restrained?

Keywords: Search and Seizure, Privacy, Abuse of Power

1. The Evolution of Search and Seizure Provisions

The Sepoy Mutiny of 1857 and the massive liberalisation movement led to the introduction of the idea of income tax in India for the first time in 1860. The Income Tax Law was a unique piece of legislation since the British government changed and revised it numerous times. As the British had exploited the nation and the then-existing Income Tax Act of 1922 made it difficult to collect taxes, the government of independent India was in utmost need of funding. Thus, on the advice of the Direct Taxes Administrative Enquiry Committee, The Income Tax Bill, 1961, was introduced and passed. The Act received the assent of the president on September 13, 1961, and it was brought into effect from April 1, 1962.

Under the previous legislation, the Income Tax Act of 1922, the authorities lacked the authority to search and seize. The powers used by the authorities at that time were identical to those of the civil courts under the code of civil process, including discovery and inspection, witness attendance, document requests, etc. The main reason for not including such powers was the attitude of the public as well as the government towards the income tax laws. Since the tax lacks a quid pro quo i.e. something in return, people consider it as an unbeneficial and useless piece of legislation.

The main causes of these disputes are the governments of the past and present, who have utterly failed to win the public's trust and educate them about the requirements, advantages, and needs of paying taxes. This disinterest with the idea led to tax evasion and nonpayment of income taxes. Many committees were appointed to recommend measures to curb tax evasion and black money and most of their suggestions pointed towards strengthening the administrative authorities of tax. Based on these recommendations a new section was included in the old enactment¹ and when the Act of 1961² was passed the same was included under section 132.

2. Meaning, Objective and Importance of the terms Search and Seizure

Under the Income Tax Act, Search operations are exploratory exercises based on information with the income tax department to find hidden income and wealth in cases of taxpayers, who

¹ Income Tax Act, 1922, § 37(2), No. 11 Acts of Parliament, 1922 (India)

² Income Tax Act, 1961, No. 43 Acts of Parliament, 1961 (India)

have not disclosed their true financial situation in discharge of their tax obligations.³

The term search is nowhere defined under the Income Tax Act. According to the Chambers Dictionary Search means – “to explore all over with a view to finding something”.

The word seizure means, the act, action or process of seizing OR the taking possession of person or property by legal process. According to the Income Tax Act, seizure entails obtaining assets that have not been reported to the Income-Tax department as well as accounts and documents that include information about unreported wealth or income. In *Gian Chand v. State of Punjab*,⁴ the court held that seizure means taking possession contrary to the wishes of the owner of the property.

The word seizes appearing in clause (iii) of section 132(1)⁵ would imply taking possession of books of accounts, other documents, money, bullion, jewellery or other valuable article or thing found because of search by dispossessing the person who has custody over the same with or without his consent, even by force if necessary.⁶

The laws pertaining to search and seizure can be viewed as the point where an individual's rights and the state's obligation to maintain public safety and order meet. These provisions are included to accomplish two primary goals. The main goal of the search and seizure provisions is to gather evidence of tax evasion that the evader would not otherwise produce. The second goal of search and seizure to prevent tax avoidance is to seize the assets and investments of taxpayers that are unrecorded, unaccounted for, or unlawful.

Hence the Search and seizure provisions under the Income Tax Act of 1961 is included to curb the tax evasion and avoidance. The problem arises when these powers are misused or abused by the authorities.

3. Search and Seizure under Income Tax Act, 1961

The search and seizure procedures under the Income Tax Act are mentioned under section 132.

³ Vivek Malhotra, Search, Seizure and Survey under Income Tax Act, TAXGURU, (May 11,2025, 4.35 PM) <https://taxguru.in>

⁴ *Gian Chand v. State of Punjab*, AIR 1967 SC 496.

⁵ Income Tax Act, 1961, § 132(1) (iii), No. 43, Acts of Parliament, 1949 (India).

⁶ 2 N. Rangachari, Search, Seizure, Summons, Survey and Settlement Commission, (Snow white Publications Pvt. Ltd., Lucknow, 1998).

The entire process of search and seizure are activated by issue of a warrant of authorization under section 132 (1). The warrant for search and seizure is issued by the authorized authorities/officers if they have reason to believe that the person has concealed or evaded income. Thus, without any prior judicial warrant the income tax officers can conduct search. As of now the following officers are empowered by the Central Board of Direct Tax to issue warrant of search and seizure under the Act –

- a) Chief Commissioners of Income – Tax,
- b) Directors General of Income – Tax,
- c) Commissioners of Income – Tax,
- d) Directors of Income – Tax,
- e) Deputy Directors of Income – Tax, who are empowered by the board and
- f) Deputy Commissioners of Income – Tax, who are empowered by the board.

Certain conditions are there for issuing a warrant. Once all those conditions are fulfilled the any of the above-mentioned authority could issue a search warrant against the taxpayer who tries to evade or avoid tax or conceal his/her income.

These authorized officers could issue the warrant in consequence of information in his possession. This information can be from an individual also. In such cases the department after verifying the details of the information received can proceed with the next step. And the next condition prior to the issuance of the search warrant is that he should have reason to believe that someone who received a warning or summons to provide books of accounts or other papers has not complied with them or that if any summons or notice that may be issued to any person to produce books of account or documents which will be relevant or useful for any proceedings under the Income Tax Act would not comply with them or that any individual possesses cash, gold, jewellery, or any other valuable item that partially or completely represents income or property that has not been or would not be reported for the purposes of the Income Tax Act. The authority before granting the search warrant must check whether there is a reasonable relationship between the information in his hands and the beliefs he has.

The Allahabad High Court in *Ganga Prasad Maheswari and others v. Commissioner of Income Tax*,⁷ held that the above-mentioned conditions are mandatory in nature and should be followed before issuing the warrant for search.

According to the observation of the Calcutta High Court in *Mamchand and Co., and Others v. Commissioner of Income Tax*⁸ it was held that it is the duty of the officer who issues warrant to show and prove before the court that there was a prima facie reason to believe that the matter is eligible to be proceeded under section 132 of the Income Tax Act. Under the Income Tax Rules, it was mandatory to record reasons for issuing a search warrant by the authorized officer prior to its amendment in the year 1975. Now even though it is not mandatory to record reasons in writing before issuing warrant, to justify his/her action the authorized officer is directed to record reasons in writing. In the case of *Ramesh Chandar and Others v. Commissioner of Income Tax and Others*,⁹ the Punjab and Haryana HC held that the commissioner had to record reasons before issuing the warrant of authorization. As soon as the warrant issued the search begins. The search under the Income Tax Act is always a secret operation and its success depends upon its surprise element. Other than the authorized officer, none of the team members are aware about the details of the place of search. Female officers will be there in the team to examine females. If multiple locations or buildings are included in the warrant of search, search shall be conducted simultaneously in all the places to avoid leakage of information from one place to another.

The search must be conducted in the presence of two witnesses of the locality. This is to ensure that no excesses are committed by any members of the search party, nor any awkward incidents happen. The assessee does not have any say in choosing the witnesses. It is completely the discretion of the authorized officer to select the witnesses. Under the Income Tax Act, there is no reference to the search hours. Even public holidays may also be used for searches. Once it begins, it might last for days at times depending upon the circumstances.

The search begins as soon as the search party enters the building and the person in charge of the building certifies that they have seen the warrant. There is no provision neither under the Act¹⁰ nor under the Rules¹¹ which requires the searching authority to supply a copy of warrant

⁷ *Ganga Prasad Maheswari and others v. Commissioner of Income Tax*, (1983) 139 ITR 1043.

⁸ *Mamchand and Co., and others v. Commissioner of Income Tax*, (1970) 76 ITR 217.

⁹ *Ramesh Chandar and Others v. Commissioner of Income Tax and Others*, (1974) 93 ITR 450.

¹⁰ Income Tax Act, 1961, No. 43 Acts of Parliament, 1961(India)

¹¹ Income Tax Rules, 1962

to the person whose building, place, etc., are to be searched. The search party is responsible for controlling the building or the search premises. It is required that all building entrances and exits be secured to prevent anyone from entering or leaving without the authorised officer's consent. All communication systems shall be under the control of the search team.

The authorized officer records the preliminary sworn statement of the person in charge of the property or premises about the valuables that can be found during the search. This statement is recorded on oath and after warning him about the consequences of any untrue statement, that he shall be prosecuted for perjury.¹²

The Income Tax (Amendment) Act, 1975 allowed the authorised officer to record this statement under either section 131 (1A) following the service of a summons under section 131 but before to the start of the search, or section 132 (4) following the start of the search and during the search. In case if the ingress is resisted by the assessee, assistance of the police officers or officers of the Central Govt. can be sought by the authorized officer. If the building is locked, he can break open any doors, windows, etc. The officer must notify the women that they are free to leave and offer them a reasonable opportunity and facility to do so if the search area is occupied by some of them who, according to custom, do not appear in public. The officer has the right to open the building's lock and conduct a search in the presence of two witnesses if the women still refuse to leave after being given a fair chance. If the authorized officer acts bona fide and takes all necessary precautions normally expected of a prudent person in such situations, his actions cannot be found fault with.¹³

It is not necessary that the search should precede seizure. Normally, any search is undertaken only with a view to seize books of account, documents and undisclosed asset to bring the tax evaded income to tax. There are chances to get these documents or books even without search.¹⁴ There are two types of seizures: deemed and constructive. When a valuable item's characteristics make it impossible to move it to a safe location, or when it is dangerous, the authorised officer may issue an order to the owner prohibiting him from removing any part of it or dealing with it in any other way without the officer's prior consent. It is called as deemed seizure. In situations not covered by the deemed seizure, a constructive seizure may be carried

¹² Bharatiya Nyaya Sanhita, 2023, § 229, No. 45, Acts of Parliament, 2023 (India).

¹³ Shyam Jewellers and Another v. Chief Commissioner (Administration) U.P., (1992) 196 ITR.

¹⁴ Mohammed kunhi v. Mohammed Koya and others, (1973) 91 ITR 301.

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In accordance with section 132(4), a comprehensive sworn statement covering each aspect is taken at the conclusion of the search before winding up. However, if it is deemed necessary, it is allowed to obtain sworn affidavits from the same individual at several stages of the search. The statement must be documented in the language that the assessee is familiar with. If this is not feasible, it should be explained to him in his own words, ideally by someone other than the authorised officer, so that the deponent can be persuaded that what he is signing is the statement with the questions and his responses accurately documented and not what the authorised officer may have written to suit his needs. However, he must sign the sworn statement and supposed to answer the queries of the authorised officer.

The Income Tax Act, 1961 permits the confiscation of valuable items during a search, documents, cash, bullion, jewellery, and other items. Section 132(5) contains requirements governing the retention of assets. Section 132(8) addresses the retention of records and books of accounts. Since the assessment and reassessment may make time there is no predetermined period during which the confiscated property may be kept. For books of accounts and other seized documents, however, the initial period that they can be kept is only 180 days. The object of retention of books is not to penalize the assessee or to confiscate the books for ever.¹⁵ Any further extension of time for retention must be applied for from time to time and approval must be obtained from the commissioner of income tax. The intention behind keeping the books of accounts for 180 days is to give revenue department the opportunity to examine them and draw conclusions about the unreported assets or income that have evaded assessment.

4. Constitutional Validity of Search and Seizure Provisions.

As already stated, the search once started may extend to 2 or 3 days and until it is completed the person being searched along with his family members and employees must act according to the directions of the authorized officer. Even though the search is being conducted for preventing tax avoidance, tax evasion and black money, sometimes it creates a torture to the assessee. There is no regulation which specifies when the search and seizure operation can start, no limit on how long the search party can remain on the property to complete the search.

¹⁵ UOI and Others v. Modern Hotels (p) Ltd. And another, (1990) 185 ITR 475.

Thus, the authority can begin the search at any time of day or night and continue it for days. However, human rights and this unexpected visit need to be balanced.¹⁶

The legality of the Search and Seizure provisions were questioned several times before the Supreme Court and High Courts in India. The provisions were challenged on variety of grounds among which the most discussed and debated are violation of right to privacy and right to freedom of movement. Among these two fundamental rights, the most sensitive and affected one is the right to privacy.

4.1 The right to privacy and Search and Seizure

The term privacy could be summarised as the right to be let alone, limited access, secrecy, control of personal information, personhood and intimacy.¹⁷ All discussions on the meaning of privacy acknowledges that it is an intrinsic human right that facilitates individual to exile outsiders from their intimate zones. The Right to Privacy became a part of the Constitution of India primarily through judicial interpretation, not through the original text of the Constitution.

The constitutionality of the search and seizure provisions were questioned even before 1961 in *M.P. Sharma*¹⁸ case in which the court emphasised that the power of search and seizure is essential for the protection of social security and is regulated by law. Again, in the year 1973 the constitutionality of the provisions was challenged before the Supreme Court in the case of *Pooran Mal v. Director of Inspection*.¹⁹ In this case also the court upheld the law citing its own judgment in *M.P. Sharma v. Satish Chandra*²⁰ and also noted that the constitution does not recognise a fundamental right to privacy similar to the American Fourth Amendment which protects against unreasonable searches and seizures by the government. But the point of difference between these two cases that was unrecognised by the honourable court is that the search and seizure challenged under *M.P. Sharma* case was of Code of Criminal Procedure, while searches under the Income Tax Act do not require a judicial licence. With time, especially post the case of *Maneka Gandhi v. Union of India*²¹ the ambit of Article 21 widened. The judges started to interpret “life and personal liberty” more liberally and opened the door to privacy.

¹⁶ Acharya Shuklendra, Survey, Search, Seizure and settlement of cases under Direct Taxes, 315 (Bharat's Publications, 1999).

¹⁷ Solve DJ, Conceptualizing Privacy, 1094 (California Law Review 2002).

¹⁸ *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.

¹⁹ *Pooran Mal v. Director of Inspection*, AIR 1974 SC 348.

²⁰ *M.P. Sharma*, *supra* note 15 at 8.

²¹ *Maneka Gandhi v. UOI*, AIR 1978 SC 597.

Later in the year 2017 in the landmark case Justice *K.S. Puttaswamy (Retd.) v. UOI*²² a nine-judge bench of Supreme Court unanimously held that the Right to Privacy is a fundamental right under the Constitution. It is covered under Article 21 and this judgment superseded past rulings and said privacy is inherent to life and liberty.

The warrant of authorisation for conducting search is given on presumption and on hearsay information by the authorities. Which means whoever wishes to torture and beat a business enemy can use this weapon if you have some connections in the department. It is understood that without infringing the right of privacy at least to a marginal extent a search operation cannot be conducted. But the problem arises when the power given to the authority is being misused. There are many instances where the honourable supreme court have invalidated the search due to its procedural falls. In the case of *Dwaraka Prasad Agarwal v. Director of Inspection*²³ after reviewing the documents, the Calcutta High Court discovered that the commissioner, in his capacity as director of inspection, had been presented with facts indicating that the assessee accumulated undeclared funds. The court concluded that the nature of that information was not mentioned. Although it was mentioned that an inquiry had been made, the specifics of the inquiry were not noted. The court determined that there was insufficient evidence to support the director of inspection's possession of the information required by section 132. As a result, the search was deemed invalid.

If the privacy is being infringed due to a reasonable cause it could be considered as a due process of law. But the infringement cannot be justified when the power is misused, and the search is conducted without following the procedural requirements. It is clearly mentioned under the provision that upon receiving an information about concealment of income or tax evasion, the department must conduct an enquiry upon the reliability of the information and after enquiry if they have reason to believe that the information is true, they may proceed with issuance of warrant and conduct of search.

To avoid all these chaos, it would be better if the warrant is issued by a judicial authority like how it is done in USA. If the police powers of the authority are taken away the abuse of power could be reduced to a greater extent.

²² Justice K.S. Puttaswamy (Retd.) v. UOI, AIR 2017 SC 4161.

²³ Dwaraka Prasad Agarwal v. Director of Inspection, (1982) 137 ITR 456.

5. Conclusion.

The power of search and seizure is a strong weapon, which if handled without reasonable care, may become more deadly than the offence of tax evasion itself. By analysing the meaning and interpretation given to the term privacy, it is well understood that it is impossible to conduct search without infringing or invading into the privacy of the assessee. This infringement is justifiable if the department follows each procedural aspect of 132 of Income Tax Act in strict sense.

Since no government cannot function without funding, revenue collection is crucial for a nation's development. But still, the unfair, and unjust actions must be restrained. In a country like India, where black money and tax evasion is more, it is not appropriate to remove the search and seizure powers of the Income Tax department. This procedure is the important tool in the hands of the department and if it is repealed, the department will lose its weapons to fight against black money and tax evaders. Hence if measures are taken to avoid abuse of power by the authorities the infringement of right to privacy also could be avoided to a greater extent. Under the Income Tax Act, the authorization of search is entrusted to the senior officers of the department. Instead, if this authorization power is entrusted to the judiciary that may work as a solution for unjustifiable or unreasonable violation of right to privacy.