
A BRIEF REPORT ON SEARCH WARRANTS

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INTRODUCTION

We nowadays often read or hear that a raid had taken place by police officer or income tax department or summons are made or warrants are issued of reason from not paying to tax to hit and run cases but what is warrants and how is it regulated. The way police officers are required to search for a person or thing and on what grounds/basis is like not that common for a common man to know, it's just that if they come people tend to get scared and allow the officers and later might get fooled with thieves. So the paper is just a brief of what the laws are and how it should be regulated in India, and the author has linked it with the constitution because privacy is a fundamental right and is supposed to upheld in all circumstances unless it causes a harm too society as a whole.

WHAT IS WARRANT

According to the 4th Constitutional Amendment¹ in the United States Constitution "no Warrants shall issue, but upon Probable Cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." There are three principal types of criminal warrants: arrest warrants, search warrants, and bench warrants."²

A Warrant is a written order issued by a judicial officer or another authorized person commanding a law of enforcement officer to perform some act incident to the administration of justice.

In simple words, if we may speak, a warrant is any order that is issued by the court of law directing the police officers to look into the matter and either search or do an arrest in case of any criminal activity I supposed to have happened or is going to be, to find out the truth or prevent such a crime to take place.

¹ The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

² <https://legal-dictionary.thefreedictionary.com/Fourth+Amendment>

The term warrant is not defined in the Code of Criminal Procedure. As per concise Oxford dictionary, “Warrant is an official authorization enabling the police or some other body to make an arrest, search premises etc.”³ Thus it is an order or writ of the Court directing and empowering a particular person/authority to execute the directions in the warrant. Such direction may be of several kinds such as to arrest, to search, to receive an accused into custody, to direct to produce an accused/prisoner before the Court issuing the directions or before the superior court for trial.⁴

In India chapter IV of Cr.PC (Code of Criminal Procedure) deals with the matters as well as process to compel appearance As per Sec. 70 of Cr.PC., every warrant of arrest issued by the court shall be signed by the Presiding Officer of such court and shall bear the seal of the court and every such warrant shall remain in force until it is canceled by the court which issued or until it is executed.

The Hon'ble Apex Court in case of *State V. Dawood Ibrahim Kaskar*,⁵ has held that even in the course of an investigation and before taking cognizance of the case warrant can be issued.

THE SCOPE OF A WARRANT

The warrant will define the physical location that can be searched and the type of evidence for which the police are searching. If it limits the search to a certain area of the building, the police cannot search other areas. If it limits the search to drugs and related paraphernalia, the police cannot search for firearms or images of child pornography. The police sometimes have the right to seize illegal items or incriminating evidence that is not described in the warrant if they find it during a legitimate search for the evidence described in the warrant

Warrants are classified into various types but in this paper, the author seeks to mention the important two:

- 1) Search Warrant
- 2) Arrest Warrant

³ <https://www.oxfordlearnersdictionaries.com/>

⁴ [http://mja.gov.in/Site/Upload/GR/Title%20NO.39\(As%20Per%20Workshop%20List%20title%20no39%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.39(As%20Per%20Workshop%20List%20title%20no39%20pdf).pdf)

⁵ AIR 1997 S.C. 2494

Though the paper mainly puts on the light on the concept of search warrants and concepts related to the same, but for reference what an arrest warrant is need to be identified.

According to law, an arrest warrant is a written order issued by a judge or other proper judicial officer, upon probable cause, directing a law enforcement officer to arrest a particular person.

An arrest warrant is issued on the basis of a sworn complaint charging that the accused person has committed a crime. The arrest warrant must identify the person to be arrested by name or other unique characteristics and must describe the crime.

SEARCH WARRANT

In legal language the term Search, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc., in order to find anything concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc., can only be carried out under proper and valid authority of law. Every such search that takes place needs to have a nexus with the crime and not a random search.

A search warrant is a document signed by a magistrate giving law enforcement officers the authority to search a specified place for specific items that are particularly described in the warrant. A warrant must be based on another document called an affidavit, which is signed under oath by some person (a police officer or any other person authorized by the court) expressing the belief that certain items will be found at the location to be searched and giving facts that support the belief. Those facts must constitute probable cause that the objects of the search will be found at the described location. Only those items specifically named in the warrant can be searched for. Search warrants can be obtained to search for specific types of property or for a person. State laws usually define exactly for what things a search can be issued.

In general sense, a search warrant is a written order which is issued by a Judge/ Magistrate or a Court to a police officer or any other person authorizing them to conduct a search of a person, location or vehicle for evidence of a crime and confiscate illegal⁶ evidence of a crime.

Search warrants are very specific as to the property/area and items that may be searched. Search warrants contain very specific details regarding the area/property that may be searched, and the

⁶ <https://www.adamsluka.com>

item(s) that may be searched for. For example, if a search warrant specifies a garage or storage building on a property may be searched, the home cannot be searched. If police are in search of evidence of marijuana cultivation, they cannot specifically search for weapons. However, if police do happen across evidence of a crime or contraband in the course of performing a search for specifically listed items, they are permitted to seize those unlisted items under the law.

The Odisha High Court in the case of *Kalinga Tubes Ltd. v. D. Suri*⁷ said that Search warrant is a written authority given to a police officer or any other authority by a Magistrate or Court for conducting the search of a place either generally or for specified items or documents or for persons who have been wrongfully detained. The Courts have time and again cautioned that the power to issue search warrants shall be exercised with all care and circumspection

Search warrants and the supporting affidavits must follow strict guidelines as to form and content, and the reliability of the affiant (the person signing the affidavit) must be established to the satisfaction of the magistrate who issues the warrant.

The American Supreme Court held that probable cause is established when there is “a fair probability that contraband or evidence of a crime will be found in a particular place.”⁸

Generally it is the duty of the officer in charge of search warrant to provide a copy of such warrant to the person in control such place being searched and officer’s in charge for such search are required to announce their presence when they serve a search warrant and identify themselves as law enforcement officers though in certain cases announcement is not required if it would result in danger to the life of some person or destruction of evidence, for example computer evidence can be so easily and quickly destroyed, therefore officers with search warrants for digital evidence are often held to be justified in foregoing the announcement.⁹

Section 25 of the Criminal Procedure Act of South Africa, empowers a police official to enter premises in connection with state security. If it appears to a magistrate or justice from information on oath that there are reasonable grounds for believing that the internal security of the Republic or the maintenance of law and order is likely to be endangered by or in consequence of any meeting which has been held or is to be held in or upon any premises within his area of jurisdiction, or that an offence has been or is likely to be committed or that

⁷ AIR 1953 Ori 153

⁸ Illinois v gates, 1983

⁹ <https://www.sciencedirect.com/book/9781597492768/scene-of-the-cybercrime>

preparations for the commission of any offence are being made or are likely to be made upon any premises within his area of jurisdiction, he may issue a warrant authorizing a police official to enter the premises at any reasonable time for the purposes of carrying out such investigations and taking such steps as such a police official may consider necessary for the preservation of law and order or the prevention of crime.¹⁰

SEARCH OF PLACE

If the Magistrate upon information and after the inquiry has reason to believe that any place is used for the deposit or sale of any stolen article or any objectionable article like counterfeit coins, currency and or stamps; forged documents; false seals; obscene objects referred in section 292 of Indian Penal Code (IPC) may by warrant authorize a police officer, not below the rank of a constable under section 94 of the code to –

1. Enter if necessary such place
2. Search the place
3. Take possession of the stolen or objectionable article,
4. Convey the same to Magistrate or keep the article safely and,
5. Take into custody every person found in the place as suspect and produce him before the Magistrate

SEARCH OF A CLOSED PLACE

According to section 100, when any place which is required to be searched or inspected is closed, then any person who is residing or is in charge of such closed place shall on demand of the officer who has the search warrant allow him free ingress and afford all reasonable facilities for search. If entry into such place cannot be obtained the officer may proceed in the manner provided u/s 47(2) i.e. break open any door or window of any house or place. The objective of this section is two-folds, firstly it provides right of search and secondly, it ensures that the search conducted is fair and ‘no articles are planted’ by the officer.

¹⁰ S 25 Criminal Procedure Act, South Africa

In *Mahesh Pal Singh vs. Pooran Singh Tewari*, it was held that if certain things have been recovered in a different district beyond the local jurisdiction of the court which issued the warrant, the things recovered have to be taken to the court which issued the warrant so that the details of the case in the FIR might be ascertained and further investigation can be made as per section 101.¹¹

ISSUE OF SEARCH WARRANTS

Search warrant can be issued by a magistrate and by court according to various circumstances and conditions,

When such warrants are issued by court

1. Where a court has reason to believe that a person to whom summons or orders under Section 91 and a requisition under section 92(1)¹² is addressed will not produce the things or documents as required.[section 93(1)(a)¹³]
2. Where the thing or document in question is not known to the court to be in the possession of any person. [Section 93(1)(b)]¹⁴
3. Where the court considers that the purposes of any inquiry, trial or other proceedings will be served by general search or inspection.

When such warrants are issued by a magistrate

1. According to section 94 of the Cr.PC¹⁵ If a Magistrate whether (a District Magistrate Sub-divisional Magistrate or Magistrate of the first class gets any information and after inquiry of the same, thinks it necessary or has reason to believe that a place is being used for the deposit or sale of stolen property or for the deposit, sale or production of any objectionable article or any such objectionable article which is

¹¹Mahesh Pal Singh v. Pooran Singh Tewari and State of Uttar Pradesh, 1987 (11) ACR 685

¹² Section 92 Code of criminal procedure

¹³ Section 93(1)(a) of code of Criminal Procedure 1973, - Where any 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, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition.

¹⁴ Section 93(1)(b) crpc 1973, - where such document or thing is not known to the Court to be the possession of any person.

¹⁵ **Section 94 in The Code Of Criminal Procedure, 1973** Search of place suspected to contain stolen property, forged documents, etc.

deposited in any place, he may authorize any police officer by way of a search warrant to enter, search or take in possession any property to which this section applies.

2. According to Section 95 of Cr.PC 1973¹⁶, when any newspaper, book or document, wherever printed, contains any matter, the publication of which is punishable under section 124-A, 153-A, 153-B, 292, 293 or 295-A of Indian Penal Code, 1860, the State Government may, by notification stating the reasons for such action, declare every copy of such newspaper, book, or document, to be forfeited to the government. After such action, any Magistrate may, by a warrant, authorize any police officer not below the rank of a Sub-Inspector to enter upon and search for such copies in any premises where there is a sufficient reason for suspicion.

In the case of *Manishi Jani v. State of Gujarat*,¹⁷ a book named Jinnah India, partition independence, was forfeited. The notification ordering forfeiture only said that the content of the book were highly objectionable but without explaining in what manner the contents were objectionable and against national interest. There was no explanation of the contents of the book would have affected and disturb public peace or the interest of the state, and how they were going to promote enmity between different groups on grounds of religion, caste, place of birth, residence, language etc. and result in generations of ill feelings among them. The notification was quashed because it fell short of statutory requirements.

In the case of *Anand Chintamani Dighe v. State of Maharashtra*¹⁸, the State Government seized a notice for the forfeiture of the book in all forms entitled “Mee Nathuram Godse Bolto ahe” (I am Nathuram Godse speaking) including Gujarati translation for reasons that the publication of the said book will disturb public tranquillity, encourage disharmony or feelings of enmity, hatred or ill-will among different groups or communities.

¹⁶ Section 95 of the code of criminal procedure 1973, Power to declare certain publications forfeited and to issue search warrants for the same

¹⁷ *Manishi Jani v. State of Gujarat*, AIR 2010 Guj 30, 04-09-2009

¹⁸ 2002 (1) bomcr 57, (2002) 1 BOMLR 671, 2002 crij 8, 2002 (2) mhlj 14

3. According to section 97 of Code of Criminal Procedure 1973,¹⁹ If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has sufficient reason to believe that he can issue a search warrant to a person against a person who is kept under confinement for an offense, then he can direct the person to whom he issued a search warrant to search for the person so confined. Such a search will be made in accordance therewith, and if found, the person shall be immediately taken before a Magistrate who will make such order as appears to be proper.
4. According of section 98 of Cr.PC 1973,²⁰ Power to compel restoration of abducted females – A Magistrate may upon a complaint made on oath of the abduction or unlawful detention of a woman, or of a female child under 18 years of age, for any unlawful purpose, make an order for the instant restoration of such woman to her liberty. It is also issued to such female child to her husband, parent, guardian, or other person having lawful charge of such child and can compel compliance with such order necessary by using sufficient force.

CONSTITUTIONAL VALIDITY OF SEARCH AND SEARCH WARRANTS

In several cases, the constitutional validity of search warrant has been questioned. As if we see in *V.S Kuttan Pillai v. Ramakrishnan*²¹, the Supreme Court held that search of the premises occupied by the accused without the accused being compelled to be a party to such a search would not be violative of the constitutional guarantee enshrined in Article 20(3).²²²³

The question of right to privacy under Art. 21 of the Indian Constitution²⁴ considered to be the basic human rights and has been on an ongoing long debate from over a decade. The court in the case of *MP Sharma V. Satish Chandra*²⁵, in which the matter was related to the investigation of malpractices of a company which involve Search and seizure orders under Art. 91 of the

¹⁹ **Section 97 in The Code Of Criminal Procedure, 1973** Search for persons wrongfully confined

²⁰ Power to compel restoration of abducted females. Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub- divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary. C.- General provisions relating to searches

²¹ 1980 AIR 185, 1980 SCR (1) 673

²² **Art 20(3)**. No person accused of any offence shall be compelled to be a witness against himself

²³ **AIR 2010 SC 1974**

²⁴ **CONSTITUTION OF INDIA Article 21, Protection of life and personal liberty** No person shall be deprived of his life or personal liberty except according to procedure established by law

²⁵ *M. P. Sharma And Others v. Satish Chandra*, 1954 AIR 300, 1954 SCR 1077.

Cr.PC,²⁶ and the company challenged it on the infringement of right to privacy and the court held that there is no concept of right to privacy under the Indian Constitution. In the very next case the apex court of India with a 6 judge bench held out a landmark judgment i.e. in case of *Kharak Singh V. State of U.P.*²⁷, where the validity of U.P. police regulation Act was challenged that the said act is violative of the fundamental right (Article 21) enshrined in part III of the Indian constitution, the court upheld the judgement delivered in *MP Sharma V. Satish Chandra* and said there is no such Right to Privacy guaranteed in Indian Constitution.

But in 2017, the bigger bench of 9 judges in *Justice K.S. Puttaswamy v. Union of India*²⁸, where the national identity project, the Aadhaar project was challenged, ruled that the right to privacy is a fundamental right and that this right is protected under Articles 14, 19 and 21.

This landmark judgement overruled all the previous judgements and stated that any invasion to the fundamental right must be on the basis of the law stipulating a just, fair and reasonable procedure. With this broadened scope of right to privacy, emerges the question of its applicability and boundaries on Indian Criminal and Evidence laws. The basic question that emerges is whether law should be allowed to violate the privacy of citizens to obtain evidence that may convict them of criminal activity, as their wrongfulness would not affect the admissibility of the evidence.

It was in this judgement were the Supreme Court also ruled out that right to privacy is not an absolute right and the state can impose reasonable restrictions for maintaining law and protecting state interests.

OTHER JUDICIAL PRONOUNCEMENTS

In the case of *Ramesh vs Laxmi Bai*,²⁹ It was held that a son in his father's custody should not be held or considered as unlawful detention, and, accordingly, no search warrant could be issued for the same.

²⁶ Section 91(1) of Cr.PC Summons to produce document or other thing.

Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

²⁷ *Kharak Singh v. The State Of U. P. & Others*, 1963 AIR 1295, 1964 SCR (1) 332

²⁸ *Justice K.S. Puttaswamy v. Union of India*, AIR (2017) 10 SCC 1

²⁹ **1999 crilj 5023, (1998) 9 SCC 266**

In the case of *Matajog Dobby vs. H.C. Bhari*,³⁰ the court stated that in cases where statutory provisions have not been complied with, the credibility of evidence in support of the search may be diminished and the evidence provided may be disbelieved unless the defendant gives sufficient reasons for any non-compliance with the provisions.

In the case of the *State of Maharashtra vs. Tapas D. Neogy*,³¹ it was upheld that 'bank account' is to be ascertained as property under section 102 of the code and the police officer is empowered to seize the operation of such bank account in the event that these properties are specifically related to the commission of the offence for which the investigation is conducted.

In the case of the *State of MP vs. Paltan Mallah*,³² it was held that the evidence obtained under illegal search is not completely ruled out unless it has caused the accused serious prejudice. The Courts have always been given the discretion to decide whether or not to accept such evidence.

In the case of *Modan Singh vs. State of Rajasthan*,³³ it was held that if the evidence of the prosecuting officer retrieving the missing items is compelling, it is not appropriate to deny the proof of recovery on the basis that seizure witnesses do not accept the version of the prosecution.

In *United States v. Leon*,³⁴ *Massachusetts v. Sheppard*,³⁵ and *Illinois v. Krull*,³⁶ the Supreme Court applied the good-faith exception to the exclusionary rule. In *Leon* and *Sheppard*, the Court permitted the admission of evidence secured through a search warrant even though the search warrant was faulty. The Court ruled that the officers who obtained the warrants had done so in "good faith," and thus the exclusionary rule³⁷ should not apply.

³⁰ **1956 AIR 44, 1955 SCR (2) 925**

³¹ *State of Maharashtra Vs. Tapas D. Neogy* [1999] INSC 343

³² <https://indiankanoon.org/doc/1182563/>

³³ <https://indiankanoon.org/doc/86104696/>

³⁴ 468 U.S. 897 (1984)

³⁵ 468 U.S. 981 (1984). *Sheppard* is the companion case of *Leon*

³⁶ 480 U.S. 340 (1987).

³⁷ The exclusionary rule prevents the government from using most evidence gathered in violation of the United States Constitution. The decision in *Mapp v. Ohio* established that the exclusionary rule applies to evidence gained from an unreasonable search or seizure in violation of the Fourth Amendment.

CONCLUSION

The authority to search and seize must be specifically prescribed in the law and the officer in question must act in compliance with the specified rules and procedure laid down. Police officers are provided with the authority to conduct inquiries, arrest people, conduct searches, conduct seizures of persons and their property and even use appropriate force in the line of duty if required, Yet the power conferred upon them must be exerted within the limits of the law, and when officers exceed those limits they jeopardize the admissibility of any information gathered for prosecution, And thus, it is concluded that to obtain a search warrant, a police officer must first prove before judge that probable cause exists and not just act on. The reason should be based upon direct information which is obtained by the officer's personal observation and by hearsay information. The search warrant must be specific and must include the specified object and place to be searched. The items that may require additional search events are rooms, outbuildings, persons, vehicles, etc. There are a few exceptions when the search warrants are not required, e.g. lawful arrest, reviews by customs or border officials, searches made with the consent of suspicious person.