

Search & Seizure of Criminal cases- Procedure An Overview

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INTRODUCTION

The investigation search and seizure are covered under the provisions of criminal procedure code (Crpc) 1973 subject to anyother laws in force which regulates the manner of investigation inquiry search seizure and ultimate prosecution / Trial.

FUNCTIONARIES UNDER CRPC

There are various functionaries under Crpc 1973 who implement & regulate the various provisions of the code ; the most important being “ Police authority”

POLICE

The code confers upon police officers certain power such as power to investigate, search seizure Arrest etc. Extensive power are conferred to the Officer in charge of a Police station

The Police officer amongst others, officer of state and union have also been entrusted with the certain powers in respect of search seizure etc. under different statutes like NDPS Act 1985, Customs Act 1962 etc. and notified accordingly.

OFFENCE

Section 2(n) of Crpc envisages “offence “ means any act or omission made punishable by any laws for the time being in force.

Cognizable offence

Section 2© read with Sec 154 of Crpc, Cognizable means an offence for which, and cognizable case means, a case in which a Police officer may in accordance with the First Schedule or under any other Law in force, arrest without warrant

Non Cognizable offence

Section 2(L) read with section 155 of Crpc “Non cognizable offence” means an offence for which and non cognizable case means a case in which a police officer has no authority to arrest without warrant.

FIR (FIRST INFORMATION REPORT)

Chapter-XII section 154, 155 of Crpc envisages that an FIR can be filed in the police station by any person either aggrieved or any other person who has knowledge of the commission of cognizable offence.

A zero FIR means every police officers is law bound to register the FIR of any cognizable offence committed irrespective of the jurisdiction which the offence has alleged to have been committed.

The Apex court had made it mandatory for police to conduct an enquiry before registering the FIR except in cases of Rape, Murder, Robbery etc.(heinous crime)

FIR leads to investigation in which the investigator further proceed to file either a charge sheet or a closure report.

SEARCH & SEIZURE- PROCEDURE

Search & seizure – a significant stage in the process of investigation.

search & seizure can be effected by Police in two ways :-

With warrant issued under the provision of section- 93,94,95 & 97 of Crpc.

Without warrant under the provision of section- 103,165,166 of Crpc.

The entire procedure adopted shall be as per Section- 100 & sec-165 of Crpc and the police officer while acting as investigating officer shall follow the procedure accordingly.

The search of place entered by the person sought to be arrested under provision of section-47 of Crpc.

There are certain special acts like NDPS 1985, Customs Act 1962 etc. which provides the specific provisions of search & seizure where in the provisions of Crpc 1973 relating to searches shall have effect with certain modification.

SCENE OF CRIME

- Immediately on entering the scene of crime the investigating officer himself shall minutely observe and keep note of anything and everything in details as it was- if possible photograph/ videograph to be taken.
- Do not alter, pick up and touch any object before it has been perceived and noted specially their layout.
- Accurate sketches to be drawn.
- Do not allow any unauthorised person to interfere and meddle around and touch anything of importance.
- Inspection of scene of crime deserves a skilled methodical observation for the purpose of preparation of Panchnama as required u/s 100 of Crpc.

POWERS & PRECAUTIONS

- As set out u/s 165 of Crpc, an investigating officer having reasonable belief that for the purpose of investigation anything necessary be found on any place within his jurisdiction of the police station without undue delay, he can search the place either by himself or by his subordinate officer
- Section 166 of Crpc empowers investigating police officer search or cause to be search in other police station limits.

PRECAUTIONS

Precaution to be taken during search and seizure- section 100 of Crpc .

- The free ingress and reasonable facilities to be accorded for both searches with warrant or without warrant.
- A safeguard be provided in favor of pardanashim women.
- In case of improper or unlawful obstruction, search party shall take all necessary reasonable measures to overcome such interventions if any.
- Any body found to take away stealthily any article or thing during search , law provides personal search of the person.
- Search to be made in presence of two respectable witnesses.
- It is desirable to conduct search during daylight if otherwise, it needs immediate intervention on believed reasonable.

PRECAUTIONS (CONTD.)

- Before entering, the search party including the witnesses shall offer themselves to be searched.
- Precautions against any damage to the property is to be adhered.
- List of all things seized and the place of recovery to be incorporated accurately in the Panchnama.
- Panchnama shall be prepared on the spot in quadruplicate copy – one copy to the owner/occupier ; 2nd copy to be send to the Magistrate ; 3rd copy to be sent with case dairy to the superior officer; 4th copy for Police station record.

PANCHNAMA

A Panchanama is essentially a document recording certain things which occur in the presence of Panchas and which are seen and heard by them. Panchas are taken to the scene of an offence to see and hear certain things. A panchanama of this kind recorded and relied upon in support of Section 157 of the Indian Evidence Act.

Accordingly, therefore the Panchnama must in all its facets be truly a factual one in corroborating what was actually seen and heard by the witnesses written in their hand and written out and or certified by them as found to be true and correct.

In a recent Court observation Panchnama has been considered as a statement of the Panchas (witness) not being an order passed by the seizing officer who forms his reasons to believe for the seizure. In view of the above the Board (CBIC) has directed that whenever goods are being seized, in addition to panchnama the proper officer must also issue seizure list/ search list clearly mentioning the reasons to believe that the goods are liable to confiscation.

PANCHNAMA (CONT.)

- Search list showing the places or persons searched and the things seized in such places or from such persons.
- Section 100 of the CrPc search shall be made in the presence of respectable inhabitants of the locality in which the place to be searched is located.
- Search list prepared after search shall be prepared by the officer and signed by the witnesses.
- Persons witnessing the search shall not be required to attend the court as a witness of the search unless specifically summoned by it.
- Copy of the search list shall be delivered to the person searched or the occupant of the place searched at his request.
- Refusal by any person to attend and witness a search is an offence under Section 187 of the Indian Penal Code.
- Personal search of a woman shall be made by another woman, with strict regard to decency.
- The search list shall not only give the description and quantity of the goods seized but also how their marks and numbers, any other distinguishing details.
- The search list shall indicate that the goods as per the inventory list have been seized on the reasonable belief that the same is liable to confiscation under the provisions of Customs Act 1962.
- Further where it is not practicable to seize any such goods, the proper officer may serve the owner of the goods and order that he shall not remove, part with or otherwise deal with the goods except with the provision's permission of such officer.

POINTS TO BE NOTED WHILE PREPARING THE PANCHNAMA:

- Name Occupation age and address of the Panchas to be recorded
- Time date and place of start of proceeding (Search & seizure)
- Reason for search
- Authority of search
- Offering of personal search by the search party
- Mention the presence of the occupants of the premises/ persons to be searched if necessary, their identification details to be incorporated in the panchanama.
- Before starting of the search party should be asked if he would like to be searched before a gazetted officer and the factual to be recorded in the panchanama
- The location of the flat, Number of the rooms, telephone numbers, location of bedrooms, kitchen, bathrooms, etc. to be written in the panchanama.
- The party should be asked if he had any contraband article.
- Give details about the production of the keys of locked almirah, iron safe etc.
- Field test kit result/Expert's preliminary opinion to be written in the Panchanama
- Give gross weights etc. etc.

POINTS TO BE NOTED WHILE PREPARING THE PANCHNAMA (CONT.)

- Sample drawal details / sealing of goods etc.
- Do not fail to mention
- nothing other than what is listed in the inventory list has been taken possession.
- No religious feeling was hurt
- No damage was caused
- Peaceful search if otherwise details to be incorporated in the panchanama.
- Time of start and finish of the search.
- Sealing of seized goods / drawn sample and signature of the party to be taken.
- Signature of the panchas and if the panchanama is written by Customs officer in his own hand his name should be written as writer of the panchnama.
- Mention the provision of law for search and seizure of contravention/reasonable belief etc.
- Mention important events if any.
- Duplicate copy of the panchnama to be handed over to the party under receipt with date & time.
- Mention the presence women search participants officer specially where women are present in the premises.
- Whenever goods are being seized in addition to Panchnama the proper officer must also pass an appropriate order (Seizure memo) clearly mentioning the reasons to believe that the goods are liable to confiscation.

Common Defects:

- **Correction in panchanama not properly attested by the witnesses.**
- **Different parts of panchanama are written by different officers using different pens.**
- **Allowing certain space for filling up the details later, preparing a rough and fair copy of panchnama.**
- **Certain essential details are filled in later.**
- **The carbon paper used for the panchnama are thrown out.**
- **Quoting the legal provisions contravened wrongly.**
- **Securing witnesses likely to be turn hostile.**
- **Failure to mention about the search of woman by woman officer.**

- *The Witnesses:*

- Avoid stock witnesses and prefer independent respectable witnesses of the locality.
- Avoid employees and relatives of the offenders as witnesses
- Select literate dependable and independent persons
- Avoid persons with objectionable antecedents.
- Avoid persons who is likely to influenced by certain consideration.
- Avoid taking minor as a witness.

ELECTRONIC DEVICE

- Electronic devices may contain viable evidence associated with criminal activity. Potential evidence contained in the computer and other electronic devices held in the premises need to be retrieved properly during search. Moreover with the implementation of “easy of doing business” emphasis is on paperless transaction, which provide greater significance of Sec 138 (C) of the Customs Act 1962.
- The information contained in the electronic device / electronic record information are deemed to be a document and is admissible in any proceedings in terms of Sec 65A and 65B of Indian evidence act without further proof. The production of original document and is “Pari Materia” with the provisions of Customs Act and Evidence Act.
- However, proper certification / authentication of the retrieval of data is essential to prove the same as required by Sec 138(C)(2), the evidential value will not be rejected by the court of law.
- Ref: S.N.Agrosh vs Commissioner of Customs, New Delhi and Anwar P.V (Supra).

ARREST MEMO

- Though there is no prescribed format for arrest memo but in compliance with the directions of the Hon'ble Supreme court in D.K. Basu vs S/O W.B reported as 1997 (1), SCC 416, the arrest memo should include the following.
 - Brief facts of the case
 - Details of the person arrested
 - Gist of the evidence against the person
 - Relevant sections of the customs act and other allied acts
 - Ground of arrest must be explained to the arrestee and noted in the arrest memo
 - Date and time of arrest and acknowledge there of.
 - A nominated person as provided by the arrestee (nearest relative) should be informed immediately and fact written in the arrest memo
 - Medical safety provided need to be mentioned in the arrest memo.

IMPORTANT PROVISIONS OF CRPC HAVING RELEVANCE TO SEARCH / SEIZURE / ARREST:

- **Arrest – How made – Sec 46**
- **Grounds of arrest – Sec 50**
- **Search of arrested person (jama talyashi) – Sec 51**
- **Examination of arrested person by doctor – Sec 53**
- **Examination of arrested person at the request of customs – Sec 54**
- **Arrested person to be produced within 24 hours of arrest – Sec 57**
- **To investigate cognizable offence – Sec 156**
- **To proceed to the spot to investigate and arrest the person – Sec 157**
- **Summon for investigation (women or below 15 years age person shall be interrogated at their place) – Sec 160**
- **To examine and take statement – Sec 161**
- **To search any place – Sec 165**

REASONS TO BELIEVE

- The expression “Reason to Believe” is not synonymous with the subjective satisfaction of the officer. Courts are empowered to examine the question whether the reasons for belief have a rational connection or a relevant bearing for the function of the belief and are not extraneous or irrelevant for the purpose of the sections.
- Ref: Pratap Singh vs E.D. 1985 (3) SCC 72

STATEMENT IN WRITING

Person summoned to give his statement and sign it. Such a course is not prohibited either by statute or constitution. It is desirable that such statement shall be in writing. It will safeguard the interest of both the maker and the department and eliminates the possibility of making complain subsequently that his statement was not correctly recorded by the authority

Ref Polpundi

v/s

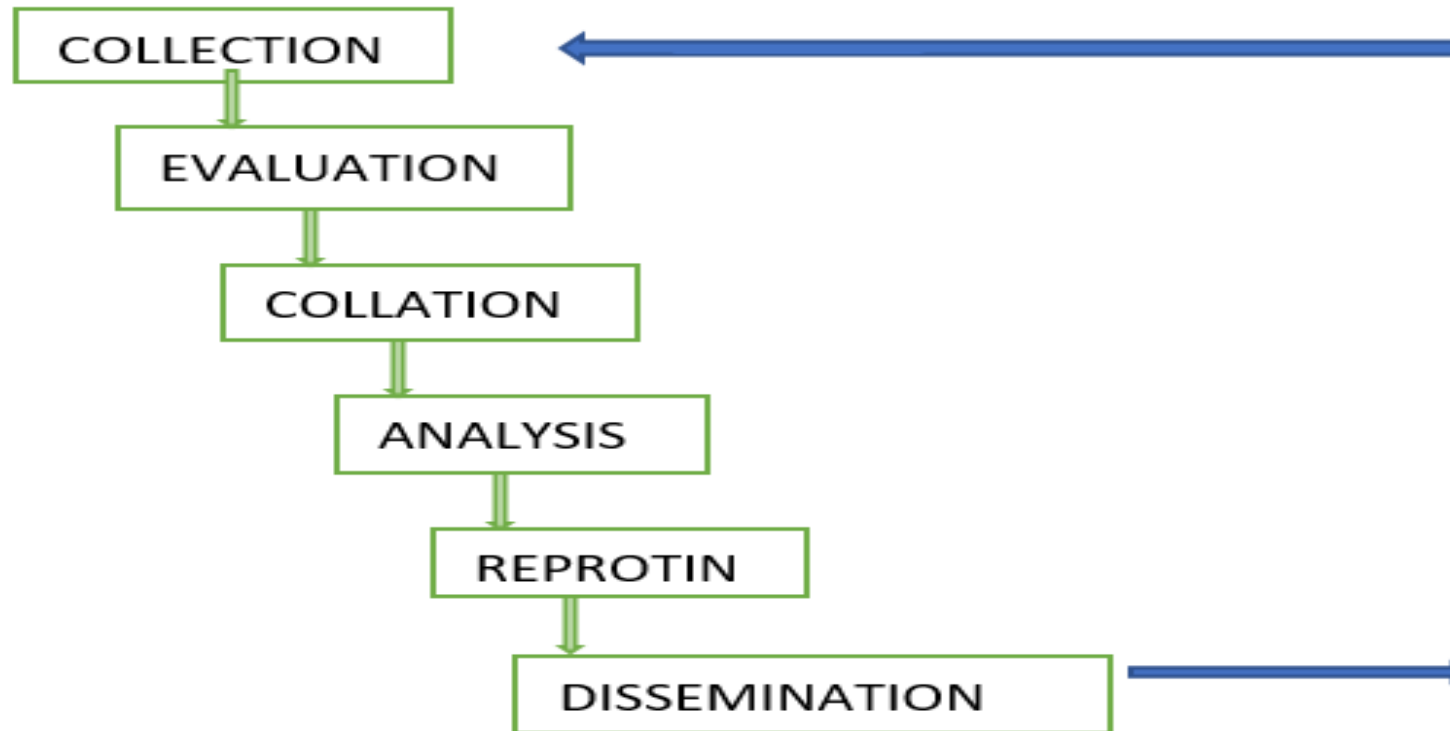
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VERIFICATION & DEVELOPMENT OF INFORMATION

Intelligence Process:



- Without this process Information does not become Intelligence, it remains raw data CECARD – Collection/ Evaluation/ Collation/ Analysis / Reporting – Dissemination.

INTERROGATION AND INTERVIEW/ RECORDING OF STATEMENTS

- ***Interview:***

- The meeting of persons face to face – Controlled Conversation – Systematic questioning to obtain factual details, evidential information relevant to the investigation or about the interviewee himself.

- ***Interrogation:***

Interrogation is the specialized art of questioning an accused, a suspect or a reluctant witness – the process of continuous planned, incisive or persuasive questioning to ascertain all intentionally concealed information about the facts & circumstances of the incident /case and also about the persons pertinent to the investigation. It is an art depending on the alertness and capability of the interrogator.

- An interviewee initially may co-operate but later on may change course for some reason or other and become hostile & reluctant. Then the process interview should be changed to the process of interrogation.
- Similarly, an interrogatee after initial reluctance may later decide to co-operate and disclose the facts & information. The subject then be interviewed and not interrogated.

INTERROGATOR'S ROLE

- An interrogator is **NOT** merely a **fact extractor**. He has to build up a proper edifice on the disjointed facts.
- A few distinctive qualities of a good interrogator are projected below: -
 - He must know the Psychology of the accused.
 - He must have a good personality, patience with objectives approach.
 - He should have a sound memory.
 - He must have quick adoptability.
 - He should response to human.
 - He should have strong analytical mind.

INTERROGATOR'S ROLE (CONT.)

- He should put himself with accused place (empathy)
- He should be knowledgeable of local and international law.
- He should be mentally faster in thought.
- He should have high degree of common sense.
- He should be tactful & skilled in dealing people.
- He should have clear knowledge of case under investigation.
- He should have ability to dominate and control interview.
- He should have ability to guard against his own emotions and reactions.
- He should be a good actor.

INTERROGATOR'S ROLE (CONT.)

So, an interrogator has to be psychologically non-aligned person, neutral, non-prejudiced and receptive in character, Good personality, Patience, Sound memory, Ability to guard against his own emotions and reactions and should have a clear knowledge of the case under interrogation. He may suspect a few thousands, he may gather evidence for a few hundreds, but finally he accuses only a few, to be proved in the Court. In this process of elimination, a good interrogator non-prejudicially has to identify the right culprit.

- **It is further emphasized that the process of interrogation has to obey a few important points, viz.,**
- **Type of interrogation (for accused, witness etc.)**
- **Time of interrogation (early morning vs. tired evening)**
- **Interrogation room.**
- **(It should be private, non-interrupted, quiet and non-offensive in character).**
- **Type of lighting.**
- **(It has some effect on the psychology of the interrogated-person so the arrangement has to be mastered.)**

INTERROGATION TECHNIQUE

- **A few techniques of Interrogation**
- **Conscience Arousal technique:**
- **The conscience of the subject is to be aroused by methods of appeals.**
 - **Appeal to the subject emotion & sensibility.**
 - **Appeal to Decency and Morality.**
 - **Appeal to subject Honours, Prestige and Pride.**
 - **Appeal to subject Religion, Sentiments, Ego.**
 - **Appeal to Rationality.**
 - ***Sympathetic approach:***

INTERROGATION TECHNIQUE (CONT.)

- **The subject may long for someone who is sympathetic to his miseries. Some acts of kindness may win his cooperation. Show concern for his troubled family members if possible. Do little bit of help within your power and not affecting law / procedure.**
- **Friendly Approach:**
 - **The simplest technique is to assure and show that the subject is willing to confess if he is treated in a friendly way. Never hate the criminal but the crime.**
- **Helpful Advisor:**
 - **The interrogator playing the role of helpful advisor to the subject who is a person bewildered with the happenings and required advise.**

INTERROGATION PROCESS

- **The process of acquisition of Information:**
- **The process of acquisition of information is to collect the evidence relevant and admissible under Indian Evidence Act and also to ascertain**
- **Who did?**
- **What he did?**
- **Where he did?**
- **When he did?**
- **How he did?**
- **Why he did?**
- **The success of any interrogation depends on the pattern of all collected clues and evidences. But these clues and evidences have to be properly deducted in the appropriate context to have the right solution.**

INTERROGATION PROCESS (CONT.)

- **Psychology of the Suspects:**

- A suspect is a subjective assessment of the interrogator. As such a suspect defends himself in the absolute negative manner. Until some evidences are placed before, to point to his involvement. A suspect in majority cases may be dissolved as not to be labelled as accused person. This majority factor of escape necessarily dwells in the psychology of the “Suspects” and accordingly mould his behavioural pattern. So, in the interrogation process, this aspect of his psychology has to be assessed.

INTERROGATION PROCESS (CONT.)

- **Psychology of the Accused:**

- The main consideration of the psychology of the accused is in the matter of his involvement in the case, as evidenced by some “evidences”. So, in the interrogation process, an accused play the role of “Non-involved of fender”. As such, on the part of interrogator, this connection between the evidences and the accused has to be established.

- **Psychology of the Witness:**

- A witness may be interested and non-interested by standers. Their psychology too differs. To an interested witness, all interrogation-process is either activated or negativized, depending on his involvement and interest in the case. So, in the ratio of the involvement and non-involvement interest of the witness, lies the true value of the interrogation.

INTERROGATION PROCESS (CONT.)

- **Physiognomic character:**

A study of the Physiognomic character is intimately involved with the process of interrogation because the physiognomic characteristics always do establish a pre-conceived notion, a biased idea regarding the interrogated – person.

- **Social stratum of the Accused:**

The social stratum of the accused has also a great bearing with the process of interrogation. We have to admit, that no matter we are interrogating a definite accused, our approach needs variations in the context of his social position and stratum.

A Mill owner, a Millionaire and a Mini-owner gets different treatment due to our unconscious pre-conception.

- **Facts Contexts & Deductions:**

No matter, relevant facts are ascertained, deduction rightly made, but result may be incorrect if the contexts are not properly studied. In this context-study the witness – interrogation bears an important factor.

Thank you