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SEARCH AND SEIZURE AND OFFENCES AGAINST THE STATE – AN INTERNATIONAL PERSPECTIVE

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INTRODUCTION

In criminal investigation, it is an important part to obtain the evidence through the search and seizure of person, places and things. A police officer or any authorized person, whoever is carrying out a search or seizure must be well versed with the rules and all the statutory provisions related to it. Chapter VII of CrPC, that includes Sections 91-100 of the Code of Criminal Procedure, 1973; deals with the provisions relating to the summons to produce documents or other things, provisions related to search-warrants, and other such laws related to search and seizure. 'Search' involves the checking or careful inspection of a location or area or person, object, etc. in order to find out something concealed or hidden or to trace the evidence of a specific crime. 'Seizure' is a forceful action taken by the law authorities that eventually takes over or captures an entity or an individual or any other thing as required in the entire procedure of investigation and inquiry under the law. However, there are certain procedures that are mandatory to be followed while carrying out the search and seizure, such as, obtaining the search warrant from a Magistrate in which the place of search, the person or things to be seized and the reasons for the same are specified in written. Also, in certain cases the same could be done without obtaining the license in cases where the police has a belief that a person is about to commit a crime or escape or destroy the evidence etc. However, the reason for the search without warrant must be recorded in written by the police.

Offences against the state refer to crimes that are committed against the government or its institutions. These crimes include treason, sedition, espionage, and terrorism, among others. The origin and history of these offences can be traced back to ancient times, but the modern concept of offences against the state developed in the late 18th and early 19th centuries with the emergence of nation-states. During the 19th and 20th centuries, many countries developed

specific laws and regulations to deal with offences against the state. These laws were often controversial, as they could be used to suppress political dissent and limit civil liberties. In some cases, they were used to persecute minorities or opposition groups.

Treason, which refers to the betrayal of one's country, has been considered a serious crime in many societies throughout history. In ancient Rome, for example, treason was punishable by death. The concept of treason was also important in feudal Europe, where loyalty to one's lord was considered paramount. The modern concept of espionage, or spying, emerged during the early 20th century with the development of modern intelligence agencies. Espionage became a major concern during World War II and the Cold War, as countries sought to gather information about their enemies' military and political activities.

Sedition, which refers to speech or actions that incite rebellion against the government, has also been a common offence against the state throughout history. In many countries, sedition laws have been used to silence political opposition and limit free speech. Terrorism, which involves the use of violence and intimidation for political purposes, has become a major concern in the modern era. The 9/11 attacks in the United States brought the issue of terrorism to the forefront of international politics, and many countries have since developed new laws and regulations to combat terrorism.¹

Overall, the history of offences against the state reflects the tension between the need to protect the government and its institutions, and the need to protect individual rights and freedoms. While these offences remain an important part of many legal systems, their use is often controversial and subject to debate.

WHAT IS SEARCH & SEIZURE?

The word 'search' denotes the operation of the government which involves the checking or careful inspection of a location or area or person, object, etc. in order to find out something concealed or hidden or to trace the evidence of a specific crime. The police in India, for the purpose of same, can search an individual or a car or premises or any of his properties after obtaining the due permissions from the court of law; as prescribed by the concerned statutes

¹ Ratan Lal & Dhiraj Lal, *The Indian Penal Code*, (35th ed., 2017)

'Seizure' on the other hand is a forceful action taken by the law authorities that eventually takes over or captures an entity or an individual or any other thing as required in the entire procedure of investigation and inquiry under the law.

WHEN A WARRANT FOR SEARCH AND BE ISSUED?

Section 93 provides for the circumstances when a search warrant can be issued. There are three main conditions provided for the same which are as follows:

First, if the Court believes that a person to whom, summon has been addressed, will not produce the document or the things which is essential as a part of the proceedings, then a warrant can be issued against such a person. Second, if the Court does not know or is unaware of the person, who might have the document, then it may issue warrant.

Third, where the Court believes that for the purpose of any inquiry, trial or proceedings, the general search or inspection is required, it may issue are search warrant. Also, the Court may specify the particular place or part for the purpose of inspection which shall not be extended *suo motu* by the investigating officer or the person in charge of the inspection. No one other than the District Magistrate or Chief Judicial Magistrate can grant the search of a document, parcel or anything which is in the custody of postal or telegraph authority.

SEARCH AND SEIZURE IN INDIAN JURISDICTION

As per Article 21 of the Constitution of India, the 'procedure established by law', in India, prohibits the legislature to pass any unjust laws which may hamper the personal liberty of a person. However, if we talk we talk about the procedure for search and seizure in India, while exercising the powers under Section 100 CrPC, 1973, if the police officer is obstructed from carrying out any investigation, then as per Section 47 of Code, 1973, the police officer has the power to break open the door or window and get access to such place. Also, the search in such compound is not confined to that very place, hence, if any person is found there, who gives rise to any sort of suspicion of a crime committed or which is about to be committed, he is also exposed to search by the police. In case of a female, the search is carried out strictly by the female police only and therefore, in India, there is always lady police officer or personnel, for the purpose of investigation and usual police patrolling.

In India, the police are also empowered under Section 102 of the Code of Criminal Procedure,

1973 to seize any property during an investigation process if there is any suspicion of commission of the crime, however, in India, an illegal search violates the fundamental right under Article 21, of the Constitution and an illegal seizure violates the constitutional right under Article 301A which provides for the freedom of trade, commerce and intercourse throughout the territory of India. It is also essentially required that when the search is made, the seizure list is prepared. The police are required to attest the relevant facts with two or more independent and respectable witnesses of the concerned locality but, mostly the lower rank police personnel, like the havaldar and constables, or any other personnel associated with the police department, become the witness to the search and seizure carried out by the police. This usually happens because the general public does not every time come forward to become a witness for the facts related to the search and seizure.

Section 91 of the Code provides that the Court may issue a summon or the officer in charge may give a written order which mandates a person to produce the document or anything which is believed to have significance in order to carry out the process of investigation, inquiry or any other proceedings. The person who is in possession of such document or thing has to comply with the order of the Court and produce it at the time and place as prescribed by the summon or the order.

Section 92 mentions that if the law enforcement agencies like the District Magistrate and the High Court opine that a document, parcel or anything which is in the custody of the postal or telegraph authority is important for the investigation, trial or the proceedings, then such Magistrate or Court may require the postal or telegraph authority, to deliver any or all of them to such person as the Magistrate or Court directs. The Court may allow the postal or telegraph authority to conduct searches for any document, parcel or item due to which the order of the Court, District Magistrate or Chief Judicial Magistrate is pending.

Section 94 of CrPC deals with the search carried out at the places where it is suspected that they might contain the stolen properties the forged documents. If a District Magistrate, Sub-divisional Magistrate or a Magistrate of first-class, upon the information deems that a place is used for deposit or sale of the stolen property or for the production of objectionable such as counterfeit coin, forged documents, false seals, etc. as mentioned in this Section, then he may authorize the Police Officer who is above the rank of a constable by issuing a warrant to enter such place, to search the place as prescribed by the warrant, to take possession of any property or article which he reasonably suspects to be stolen property or objectionable article as per this Section or to produce the suspected property or article before a Magistrate, or to guard the same until the offender is taken before the Magistrate. The Police is obligated to search the place in

the manner prescribed in the warrant, taking the possession of property that could be objectionable or stolen. He may even keep the objectionable article at a safe place and if he finds any person suspected to be involved in the deposit, sale, or production of the objectionable article or stolen property, he may take the person in the custody and then after, produce him before the Magistrate.

Section 95 empowers the Court to declare certain publications as forfeited. The Court can issue the search warrants for those publications and if the State Government finds that any of such article, newspaper, document or book that might contain some matter which is punishable under certain specific Sections such as Sections 124A, 153A, 153B, 292, 293 or 295A of the Indian Penal Code, 1860, it can declare every copy of such newspaper, article or document to be forfeited to the Government. The Magistrate can thus, authorize any Police Officer who is not below the rank of Sub-Inspector, to seize those documents by issuing warrants. The Police may enter any premises and search the suspected documents there. As per this Section, the term "Newspaper" and "Book" have the same meaning as provided in the Press and Registration of Books Act, 1867, and the word "Document" includes any drawing, painting, photograph, or other visible presentations accordingly.

Section 97 of the Code is regarding the search of a person who is believed by a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to be wrongfully confined. And hence, he may issue a search warrant for the purpose. The person to whom the search warrant is addressed has to search the confined person and after he finds the confined person, he is required to take him immediately before the Magistrate for further proceedings to commence or continue. Similarly, Section 98 mentions the aspects that involves for the restoration of an abducted woman including a female child who is under the age of 18. Section 99 provides for the directions for search warrants and the provisions under Sections 38, 70, 72, 74, 77, etc. of the Code are applied to all the search warrants being issued by the Court.

Section 47 CrPC, 1973 in India deals with the search of a place, person or vehicle when a warrant is not required. This section empowers a police officer to conduct a search without a warrant under certain circumstances. According to Section 47, a police officer may conduct a search of any place, person, or vehicle without a warrant if:

- The person to be searched is in the process of committing an offence or is a probable offender.
- The object of the search is to find evidence that is necessary for the investigation of an offence.
- There are reasonable grounds to believe that such evidence can be found in the place or on the

person or in the vehicle.

However, the search under Section 47 must be conducted in accordance with the procedures established by law, and should not cause any unnecessary humiliation or injury to the person being searched. Furthermore, if a woman is to be searched, the search should be conducted by a woman police officer, or in the presence of a woman who is related to the person being searched. If any property is seized during such a search, the police officer must make a written record of the same, and provide a copy of the same to the person from whom the property was seized.

Section 51 CrPC, 1973 in India deals with the power of a police officer to arrest a person without a warrant. This section lays down the conditions and circumstances under which a police officer can make an arrest without a warrant. According to Section 51, a police officer can arrest a person without a warrant if:

- The person has committed a cognizable offence, or is about to commit such an offence;
- The police officer has reasonable grounds to believe that the person has committed a cognizable offence, or is about to commit such an offence;
- The person has been proclaimed as an offender under the CrPC; or
- The person obstructs the police officer in the discharge of their duties.

However, the police officer making the arrest must also satisfy the following conditions:

- The police officer must inform the person being arrested of the grounds for the arrest, unless the person is aware of the grounds already;
- The police officer must inform the person being arrested of their right to bail, if applicable;
- The police officer must ensure that the person being arrested is treated with respect and dignity, and is not subjected to unnecessary physical restraint or humiliation;
- The police officer must ensure that the person being arrested is produced before a magistrate within 24 hours of the arrest, excluding the time necessary for the journey to the court.

Forms relating to search warrants and summons

Under the Code of Criminal Procedure (CrPC) in India, various forms are used for the issuance of search warrants and summons. These forms are prescribed by the Central government and are an essential part of the procedural requirements for obtaining search warrants and summons.

Here are the details of the forms used for search warrants and summons:

Form No. 2 - Summons: This form is used for issuing a summons to an accused or a witness to appear before a court. It contains the details of the case, the name and address of the person being summoned, the nature of the offence, and the date and time of appearance. The person being summoned is required to sign the summons as proof of receipt.

Form No. 3 - Warrant of Arrest: This form is used for issuing a warrant of arrest against an accused. It contains the details of the case, the name and address of the accused, the nature of the offence, and the reasons for issuing the warrant. The warrant of arrest authorizes the police to arrest the accused and produce them before the court.

Form No. 6 - Search Warrant: This form is used for issuing a search warrant to search a particular place or person for evidence related to a criminal offence. It contains the details of the case, the name and address of the person or place to be searched, the nature of the offence, and the reasons for issuing the warrant. The search warrant authorizes the police to search the specified location and seize any relevant evidence.

Form No. 7 - Seizure Memo: This form is used to record the seizure of any property during a search conducted under a search warrant. It contains the details of the case, the name and address of the person or place searched, the nature of the offence, and the description of the property seized. The person in charge of the property being searched is required to sign the seizure memo.

SEARCH AND SEIZURE IN VARIOUS JURISDICTIONS OF THE WORLD

Search and seizure laws vary across different jurisdictions around the world, but they generally involve the ability of law enforcement officials to search for and seize evidence, property, or individuals suspected of being involved in criminal activities. Here is a brief overview of search and seizure laws in different parts of the world from a legal perspective:

United States: The Fourth Amendment to the US Constitution provides protection against unreasonable searches and seizures. This means that searches and seizures must be based on probable cause and a warrant issued by a judge. However, there are some exceptions to the warrant requirement, such as when there is an emergency situation or when there is a search incident to a lawful arrest.

United Kingdom: In the UK, the police can search individuals or property without a warrant if they have reasonable suspicion that the individual is involved in criminal activity or that the property contains evidence of a crime. However, a warrant is generally required for more intrusive searches or searches of private property.

Canada: Canadian law requires that searches and seizures be reasonable, meaning that they are based on reasonable grounds and authorized by a warrant, except in certain circumstances, such as when there is an emergency or the search is incident to a lawful arrest.

Australia: Australian law allows for searches and seizures without a warrant if the police have reasonable suspicion that a person is involved in criminal activity or that evidence of a crime is in a particular location. However, more intrusive searches or searches of private property generally require a warrant.

European Union: The EU has established the European Convention on Human Rights, which provides for the right to respect for private and family life, home and correspondence. This means that searches and seizures must be proportionate to the legitimate aim of the search and authorized by a warrant, except in certain circumstances, such as when there is an emergency or the search is incident to a lawful arrest.

If we summarize, the search and seizure laws vary across different jurisdictions, but generally require that searches and seizures be based on reasonable suspicion or probable cause, be authorized by a warrant, and be proportionate to the legitimate aim of the search. Exceptions to these requirements may exist in certain circumstances, such as when there is an emergency or the search is incident to a lawful arrest.

RELEVANT CASE LAWS

MP Sharma and Ors. v. Satish Chandra²

It established the legal position that the right to privacy is not a fundamental right under the Indian Constitution, and that the government's power to search and seize documents and other materials is not necessarily a violation of this right.

In this case, the court held that the power of search and seizure is an essential element of the power to investigate and prosecute crimes, and that the Constitution does not provide any

² AIR 1954 SCR 1077.

explicit protection against such actions. The court further held that the provisions of the Indian Evidence Act, which allowed for the compulsory production of documents and materials, did not violate the right to privacy because they applied equally to all individuals and were designed to serve a legitimate public interest in the administration of justice.

However, it is important to note that the court did not hold that the power to search and seize is absolute. Subsequent cases have established that searches and seizures must be conducted in accordance with the law, and that they must be reasonable, proportionate, and not arbitrary. In addition, the court has recognized that the right to privacy is a fundamental right in certain contexts, such as in the context of telephone tapping and surveillance. Thus, the court established that Right to Privacy is not an absolute right in case of search and seizure.

Roop Chand v. the State of Haryana³

The Court restated an established legal principle that when illegal items are discovered and independent witnesses are present, the investigating agency should provide them with assistance. Failing to do so may create doubt about the prosecution's case. However, if none of the witnesses are willing or available to testify, the police can issue a written order to compel their testimony. Anyone who refuses to testify without a reasonable explanation may be charged with an offense under Section 187 of the IPC.

Offences Against the State – Indian Legal Scenario

In India, offences against the state are covered under the Indian Penal Code (IPC) and other laws. Some of the key offences against the state in India include sedition, waging war against the state, promoting enmity between different groups on the grounds of religion, race, language, etc., and unlawful activities related to terrorism.

Sedition, which is covered under Section 124A of the IPC, is one of the most controversial offences against the state in India. The section defines sedition as any act or attempt to bring into hatred or contempt, or excite disaffection towards the government established by law in India. The offence carries a maximum punishment of life imprisonment.⁴

³ AIR 1987 SC 711

⁴ K.D. Gaur, 'Textbook on Indian Penal Code', (7th ed., 2020)

The law has been criticized by some as being overly broad and potentially limiting free speech and dissent. In recent years, several individuals, including journalists, students, and activists, have been charged with sedition for allegedly criticizing the government or expressing dissenting views.⁵

Similarly, the Unlawful Activities (Prevention) Act, or UAPA, is another controversial law related to offences against the state in India. The law, which was first enacted in 1967 and amended several times since then, provides for stringent measures to deal with activities related to terrorism and unlawful organizations.⁶ However, critics have argued that the law is often misused to target political opponents and minority groups.

The Indian government has defended the laws related to offences against the state as necessary to maintain national security and stability. However, the use of these laws has remained a topic of debate and controversy in India, with many arguing that they are being used to suppress dissent and curtail civil liberties. The issue has been the subject of several court cases, with the Supreme Court of India providing some guidance on the scope and interpretation of these laws.

Offences Against the State under the Indian Penal Code, 1860

Chapter VI of the Indian Penal Code, 1860 deals with the Offences Against the State (OAS). It contains 12 sections – Section 121 to Section 130 and Section 121A and Section 124A. Broadly, OAS can be categorized into five heads:

- (i) Waging, concealing attempting, abetting, conspiracy to wage, collecting arms or ammunition to wage war against the Government of India (IPC, Section 121, 121A, 122, 123)
- (ii) Assaulting the President of India, or Governor of any state with the intent to compel or restrain the exercise of any lawful power (IPC, Section 124)
- (iii) Sedition (IPC, Section 124A)
- (iv) Waging war against any Asiatic Power or Depredation (IPC, Section 125 and 126)

⁵ Singh, A. (2022). Sanction for prosecution in ‘Offences Against the State’ in India: The prerogative of the political and the withdrawal of the judicial. *International Journal of Law, Crime and Justice*, 69, 100531. <https://doi.org/10.1016/j.ijlcj.2022.100531>

⁶ Tiwary, A. (2020). The crime of sedition in India: An archaic colonial repression – Is stringency enslaving the right to free speech?. *Indian Law Institute Law Review*. <https://ili.ac.in/pdf/art.pdf>

- (v) Permitting or aiding the escape of a state prisoner or prisoner of war. (IPC, Section 128, 129, 130)

Waging War

The law against waging or abetting to wage war against the Government of India is a law against treason. The state preserves with itself the right to self-preservation. The right to self-preservation of the state refers to the inherent right of a state or a government to take necessary measures to protect itself and its people from external and internal threats. This right is based on the fundamental principle that every state has a duty to safeguard its sovereignty, territorial integrity, and the safety and security of its citizens. The right to self-preservation of the state encompasses measures that a government may take to protect its people and territory, such as surveillance, intelligence gathering, and pre-emptive action against potential threats.

The IPC has incorporated the concept of right of self-preservation of the State under Section 121. The section states that, “whoever wages war, attempts to or abets the waging of war [against the Government of India shall be punishable with death or life imprisonment and fine].”

Thus, to constitute a crime under this section, the following ingredients must exist –

- a. The accused must wage war
- b. Attempt to wage war
- c. Abet the waging of war
- d. Against the Government of India

Section 121 says that all stages of waging a war against the Government of India are equally punishable. No specific number of persons are required to constitute an offence under this section. The abetment, attempt and the actual waging of war are thus treated on the same footing.

Object of Section 121

The number of persons involved and the manner in which they are armed are not material under the law. The law uses the specific criteria of intention of the mind i.e., *quo animo*, to ask what was the intention behind the gathering of persons. All persons who gather with the intention to wage war or to attain an object of public nature by violence or force, regardless of whether they have executed the act or not shall incur the same punishment. The *modus operandi* of preparing

for the offence is immaterial. The important criteria is the intention and purpose to strike against the Government machinery. Usually, this involves the use of arms and deployment of forces against the Government soldiers stationed to protect societal peace and harmony. However, even the number and nature of arms gathered is not material.

Applicability of Section 121

The application of the section is not limited to Indian citizens. Everyone, whether an Indian citizen or a foreigner is subject to prosecution and punishment under Section 121. The international law principle of *de jure gentium* is applicable on foreigners, meaning that the foreigner has agreed upon entering the country that they will be protected and at the same time subject to, the laws of the country.

The Parliament Attack Case⁷ (2005)

The incident took place on December 13, 2001 when terrorists attacked the Parliament House in New Delhi. The attack was carried out by five terrorists who entered the Parliament premises in a car and opened fire. The attack resulted in the deaths of eight security personnel and a gardener, as well as the five terrorists.

The Indian government blamed the attack on two Pakistan-based terrorist groups, Jaish-e-Mohammed and Lashkar-e-Taiba. The incident led to a significant escalation in tensions between India and Pakistan, with India deploying troops to the border and threatening military action. Following the attack, the Indian government launched a massive investigation, which led to the arrest of four individuals who were accused: Mohd Afzal, Shaukat Hussain Guru, AS Gilani and Navjot Sandhu alias Afsan Guru, along with other offenders who were the leaders of the terrorist organisation, *Jaish-e-Mohammed*.

The accused were charged and tried under the Section 3(2) of the Prevention of Terrorism Act (POTA), 2002 and the Sections 121, 121A, 122, 302, 307 read with Section 120B of the Indian Penal Code, 1860 and also under Section 3 of the Explosive Substances Act.

⁷ *Mohd Afzal and Shaukat Hussain Guru v State (NCT) National Capital Territory, Delhi & State (NCT of Delhi) v Navjot Sandhu and Rehman Gilani*, AIR 2005 SC 3820.

The Supreme Court confirmed the death sentence of Mohd Afzal. However, his execution was delayed for several years due to legal challenges and political controversy. He was finally executed in February 2013, amidst protests and criticism from human rights activists who argued that he had not received a fair trial.

The case has been called as 'rarest of rare'. Such a planned operation against the Government of India, an attack on the Parliament House at the time when parliament members and dignitaries were gathered was an attack at the Sovereign authority and integrity of the nation. A terrorist attack on the Parliament House cannot be treated on the same footing as an attack on some public office building. There was a definite purpose and stealth action plan to attack the Parliament building and endanger the lives of all officials of the Parliament. Therefore, the act clearly falls under the scope of Section 121.

However, the interpretation of the expression "waging war" must not be too far stretched so as to include all acts of violence and disturbance to the public order to be reckoned as waging war against the Government.

Mumbai Terrorist Attack Case 2012⁸ - In November, 2008, ten terrorists including Mohammad Ajmal Kasab entered Mumbai through the shores via the Arabian sea. They proceeded to attack the Taj Mahal Palace, the Taj Oberoi Trident and the Chhatrapati Shivaji Terminus railway station, killing and injuring hundreds of people and millions worth of property destroyed.

The Bombay Sessions Court awarded death sentence to Kasab in 2010. All appeals were dismissed by the higher courts and finally the Supreme Court held that any mercy in the form of with the intention of using it against the government shall be punished with imprisonment for life or with imprisonment for a term of not less than ten years. The section also mentions that if the person is a member of an unlawful assembly or a terrorist gang, the punishment may extend to the death penalty.

⁸ *Mohammad Ajmal Amir Kasab v State of Maharashtra*, (2012) 9 SCC 4

Section 123 – Duty to inform the Public about the design to wage war against the Government of India

This section states that any person who knows that there is a design to wage war against the government and intentionally conceals such a design shall be punished with imprisonment for a term that may extend up to ten years and may also be liable to a fine.

In the case of *Shaukat Hussain Guru*⁹, the review petition was rejected by the Supreme Court and his death sentence was upheld. The Bench held that the accused had known about the plans made by Afzal Guru and others and he intentionally did not inform any police official, thereby constituting concealment of facts which led up to the waging of a war against the Government. Therefore, his conviction under Section 123 was justified.

Section 124A – Sedition

Sedition means defamation of the authority of law. All those acts are considered seditious which excite discontent and dissatisfaction towards the Government or create public disturbance leading to a civil war. The offence is punishable with imprisonment upto 3 years and fine. The essential ingredients of the section are: (a) bringing into hatred, or (b) exciting disaffection towards the Government, (c) Through spoken or written words, or signs or visible representations, and (d) The acts were done intentionally.

The provision has been criticized by some for being too broadly worded and for being used to stifle dissent and criticism of the government. However, the section has been upheld by the courts as constitutionally valid, subject to certain restrictions and safeguards.

In *Kedar Nath Singh v State of Bihar*¹⁰, the Supreme Court upheld the constitutional validity¹¹ of this section. The Court said that a citizen has the right to express their opinions on the Government by way of criticism or commentary as long as it does not incite violence or cause public disorder. It was stated that only when it is construed that the words have the tendency to

⁹ *Shaukat Hussain Guru v State of NCT, Delhi* AIR (2008) SC 2419.

¹⁰ *Kedar Nath Singh v State of Bihar*, 1962 Supp. (2) S.C.R. 769.

¹¹ *Kedar Nath Singh v State of Bihar* (2021) Global Freedom of Expression. Available at: <https://globalfreedomofexpression.columbia.edu/cases/nath-s> (Accessed: March 12, 2023).

create public disorder, it would befit a charge under Section 124A.¹²

Section 125 – Waging war against any Asiatic Power

It pertains to the offence of waging war against a state or friendly foreign power in alliance with India. It states that any person who wages war against the government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, imprisonment for life or imprisonment for a term that may extend up to seven years, and shall also be liable to a fine.

Based on the principle of international peaceful coexistence and maintaining friendly relations with neighbouring states, this section is a specific provision that deals with the offence of waging war against a state or foreign power and has been used in cases involving acts of terrorism or insurgency against the Indian state.

It would perhaps be more beneficial and reduce the term 'Asiatic' from the section, keeping in mind Article 51 of the Constitution of India which calls upon the State to promote international peace and security and maintain just, friendly and honourable relations with foreign states and respect international law.

Section 126 – Committing depredation on territories of Power at peace with Government of India

The section defines "depredation" as the act of committing any trespass or offence that involves the use of force, with the intent of plundering, pillaging, or otherwise damaging the property or territory of another state that is at peace with the Indian government. The offence is punishable with imprisonment upto 7 years and fine.

Section 126 is a specific provision that deals with offences against foreign powers and has been used in cases involving cross-border terrorism, piracy, and other forms of transnational crime.

¹² Tarafdar A., 'Indian Penal Code – An Explainer on Offences Against the State', North East Law Journal Available at: <https://www.northeastlawjournal.com/post/indian-penal-code-an-explainer-on-offences-against-the-state> (Accessed: March 9, 2023)

Section 128, 1291 130 - Rescue and Escape of State Prisoners

When a public servant allows a state prisoner to escape voluntarily, then such public servant is shall be held liable for offence under Section 128. If the act was done negligently, he shall be liable under Section 129 and if anyone aides the escape of a prisoner, he shall be liable under Section 130 of the Indian Penal Code.

Offences Against the State under International Law

Offenses against the state, also known as political crimes, are also recognized under international law. The international legal framework for offenses against the state consists of various treaties, conventions, and customary international law.¹³ Here are some examples of the most common offenses against the state under international law:

1. **Genocide:** The crime of genocide is recognized under international law as an offense against the state. It involves acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. The **Genocide Convention of 1948** is the primary international legal instrument for prosecuting the crime of genocide.
2. **War Crimes:** War crimes are acts that violate the laws and customs of war. These can include acts such as intentionally targeting civilians, torturing prisoners of war, or using prohibited weapons. The **Geneva Conventions of 1949** and their additional protocols provide the primary legal framework for prosecuting war crimes.
3. **Crimes Against Humanity:** Crimes against humanity are serious offenses committed as part of a widespread or systematic attack against a civilian population. These can include acts such as murder, torture, enslavement, and persecution on political, racial, or religious grounds. The **Rome Statute of the International Criminal Court (ICC)** provides the primary legal framework for prosecuting crimes against humanity.
4. **Terrorism:** The crime of terrorism is not specifically defined under international law, but acts of terrorism are considered to be offenses against the state. Acts of terrorism involve violence or threats of violence that are intended to create fear and disrupt the normal functioning of society. The United Nations has adopted various treaties and resolutions related to countering terrorism, including the **International Convention for the Suppression of the Financing of Terrorism**.

¹³ Draft Code of Offences against the Peace and Security of Mankind, *Yearbook of the International Law Commission, United Nations 1951*, vol. II.

The ICC is the primary international institution for prosecuting these crimes, although individual countries can also prosecute these crimes under their own national laws or through other international legal mechanisms.

Offences Against the State – International Legal Frameworks

In many countries, such as the United States, the United Kingdom, and Australia, offences against the state involve acts intended to overthrow or undermine the government or its institutions, such as treason, sedition, or other acts that destabilize the state.

In Europe, countries such as France and Germany have similar laws and penalties for offences against the state and criminal conspiracy. In France, for example, offenses against the state include acts intended to overthrow the government, such as acts of terrorism, and are punished with life imprisonment or the death penalty.

In some countries, such as Russia and China, the prosecution of offences against the state and criminal conspiracy is viewed as a means of maintaining stability and security, and may involve restrictions on civil liberties and human rights. In these countries, individuals charged with these crimes may face harsh penalties and may not have access to a fair trial.

One of the key international agreements is the **United Nations Convention against Transnational Organized Crime (UNTOC)**, which was adopted in 2000 and came into force in 2003. UNTOC provides a comprehensive framework for the prosecution of organized criminal groups, including those involved in offenses against the state and criminal conspiracy. The Convention requires signatory countries to criminalize these crimes and to establish jurisdiction over them, even when they are committed outside their territory.

Another important international agreement is the **Council of Europe Convention on the Prevention of Terrorism**, which was adopted in 2005 and came into force in 2007. This Convention provides a framework for cooperation among European countries in the fight against terrorism and the prosecution of offenses against the state. It requires signatory countries to criminalize acts of terrorism, including those committed by individuals or groups involved in criminal conspiracy.

In addition to these international agreements, several regional organizations also play a role in the prosecution of offenses against the state and criminal conspiracy. For example, the European Union has established a number of legal instruments and initiatives aimed at enhancing cooperation and coordination among its member states in the fight against terrorism and organized crime.

Offences Against the State: Position in the United States

In the United States, offences such as treason, sedition, perjury and espionage are penalized under the U.S. Code Title 18 – ‘Crimes and Criminal Procedure’¹⁴. The offences can be categorized under two heads¹⁵ :

1. Offences against the existence of the state
2. Offences harmful to the conduct of public affairs by the government and against the public order.

The main ingredients of the offence of treason are: (a) Actus reus – doing of an overt act and (b) Mens rea – (specific) intention to betray. The prosecution must display specific acts of treason. Merely having the intention to commit treason is not sufficient to penalize a person under this law. If a person intentionally conceals the knowledge of an act of treason or an act against the Government of the United States, then the person is liable for imprisonment for a period up to 10 years with fine.

This is distinct from the case in the United Kingdom, where the concept of ‘constructive treason’ is applicable, where a person can be held liable due to his cumulative actions as well, instead of penalizing only specific acts. The offence of ‘seditious conspiracy’ is punishable in the United States. This includes incitement of public hatred or contempt against the Government through spoken or written statements, punishable with imprisonment up to twenty years with fine.

¹⁴ U.S. Code Title 18-Crimes and Criminal Procedure, S 2384.

¹⁵ Shaswat Nayak , Offences of Acting against the State: A Comparative Study of Legal Positions in India and United States, 4 (3) IJLMH Page 3811 - 3819 (2021), DOI: <https://doi.org/10.1000/IJLMH.11943> .

Conclusion

The processes of searching and seizing are crucial aspects of an investigation as they provide tangible evidence. In India, the 'procedure established by law' under article 21 of the Constitution serves as a limitation on the legislature's ability to enact unfair laws that may infringe on a person's 'personal liberty'. This clause is known as the 'due process clause' and stands in opposition to unjust and inequitable laws or procedures that restrict a person's fundamental freedoms and rights. The main objective of the provisions of CrPC is to ensure the rights of the accused and to protect the fundamental rights of the citizens of our country. Thus, the CrPC helps to ensure the same by striking balance between the both.

Offences against the state are considered to be very serious crimes, and the prosecution of such offences must be conducted in a fair and impartial manner. The prosecution must prove beyond a reasonable doubt that the accused committed the offence, and that there was intent to commit the offence.

