

Awareness Series 2: (search)

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Your Rights that the police do not want you to know

1. Your phone is your private property and now there seems to be a pushback. There is a petition pending in the Supreme Court, seeking formulation of new guidelines on when cops can demand and seize a phone and in what way they can check it. It falls in a grey area, but one thing is clear: **cops must create a hash of a seized phone's content** when they seize a phone or a computer. The hash values must be shared with the person whose devices have been seized. It is used to ensure that there is no tampering with data collected from a phone or a laptop.
2. Under the Code of Criminal Procedure 1973, which lays down the procedure to be followed in criminal cases, the police have the power to conduct searches only when they are investigating an offence.
 - a. There has to be a written notice [under Section 91 of Code of Criminal Procedure] or
 - b. a search warrant [under Section 93 of Code of Criminal Procedure] if someone wants to conduct a search.

Not to Forget that the police also have a general power of search governed by Section 165 of the Code of Criminal Procedure, which says

that if an officer making an investigation has “reasonable grounds for believing” that information for a case needs to be “obtained without undue delay”, he can conduct a search after “recording in writing the grounds of his belief” and specifying what he is searching for.

If the police insist on search then you have to ask under **what provision, what offence or under what suspicion your phone is being asked for**. Ask them for a notice or a search warrant

3. Police **Cannot Enter Your Residence Without a Warrant**. The police can't simply enter your home to search it or any electronic device inside, like a laptop or cell phone, without a warrant;
4. You Can Refuse Consent to a Search if there is no warrant and **If you consent to a search, the police don't need a warrant**.

The most frequent way police are able to search is by asking you for permission. If you say “yes” and consent to the search, then police don’t need a warrant;

5. You Have the **Right to Look at a Search Warrant** under Sec.75 CrPC. The safest thing to do is step outside and shut the door behind you. They may or may not indicate right away why they are there. If they have a warrant, ask to see it. If they offer to simply “interview” you, it is better to decline to speak until your counsel can be present;
6. Police can search you if:
 - a) they have a proper search warrant
 - b) you decide to cooperate with them and give them “informed consent”
 - c) they have strong grounds to believe that you have illegal drugs, weapons, or evidence of any crime in your home, which might get tampered or lost if they went to get a search warrant
7. You Must Be Informed of the Reasons for Your Arrest as per Article 22 of The Constitution of India and Sec.50 CrPC;
8. You Have a Right to Consult a Lawyer of Your Choice and If you cannot afford a lawyer, you may be able to receive legal aid as per Article 22 of **The Constitution of India**;
9. You Must Be told whether you are entitled to be released on bail as per Sec.50 CrPC;
10. You must be produced before the nearest magistrate within 24 hours as per Article 22 of **The Constitution of India**;
11. The **police do not have the right to strip search you**. They will always need a warrant in order to search under your clothes. Under severe circumstances, if you are taken to a remand centre, you may have to change into a prison uniform. Corrections officials may perform a strip search if you will be in contact with other prisoners. Strip down searches always have to be performed with same sex officials;
12. Unless You Have Been Arrested or Detained, You Can Leave the Police Station;
13. Police Need Probable Cause to Pull You Over;
14. You Have the **Right to Remain Silent** under Article 20(3) of **The Constitution of India** as well as Section 161 (2) Cr.P.C;

15. Between 6 pm and 6 am, a **woman has the right to REFUSE to go** to the Police Station, even if an arrest warrant has been issued against her;
16. You Have the **Right to Film or Photograph a Police Officer if he is on duty** at public place;
17. Taking photographs of persons by police for law enforcement purposes is governed by the Identification of Prisoners Act, 1920. **It does not permit taking photographs of persons by police**, except those who have been arrested or convicted of a crime, or sharing such photographs with any other law enforcement agency.

Earlier Runs:

Awareness Series 1