Search and Seizure, Stop and Frisk and Seizure of Persons: Arrests

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Constitutional rights protecting individual liberty and civil rights have been the subject of great importance for the government of the United States at both; the federal and state levels. According to these rights, every individual has the liberty to live his life under the legislative limits and without harming society. In case the person attempts any criminal activity or go against the legislative regulation, he must be punished according to the defined levels. This set up of the constitutional frameworks in the States, where the people can have their civil rights, is essential to maintain proper legislative regulations and living standards. In case, one attempts crime then there are some procedures defined to the law enforcement authorities, on the basis of which they take action against the criminal and brings him to the State's courts for trial. Though different procedures and frameworks are introduced to deal with culprits and criminals, this study aims to highlight the importance of ***‘Search and Seizure, Stop and Frisk and Seizure of Persons when arresting them.’***

When analyzing the constitutional frameworks of the United States, the fourth amendment protects the civil rights of the individual, according to which no law enforcement authority can take any action against the individual without evidence, search warrant, or authentication of the crime attempt. This simply means that police and other law enforcement authorities have to follow a proper procedure in order to arrest the person, attempted any criminal activity. This procedure can be well defined by understanding three key terms; search and seizure, stop and frisk, and seizure of the person.

Starting with the concept of search and seizure can be helpful to understand the importance of evidence in legal actions. In case a person has attempted any crime, the law enforcement officers need to collect sufficient evidence against the person to ensure the conviction and arrest of the offender. However, the latitude in carrying out searches and seizures varies with the variance of the protection framework, defined by different countries to protect the individual rights of the accused person. Some countries have restricted their law enforcement authorities in taking action against any person without a search warrant, whereas other countries ignore the need for a warrant for any legal actions against the offender. For example, in South Africa, the police do not require any warrant to take legal action against the criminal, whereas in France the police forces have extensive powers of search and seizure to deal with the criminals. As the study is focused to discuss regarding search and seizure in the United States, the Fourth Amendment protects the civil rights of the individual and states;

*“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.”* (Britannica, 2018)

There exist several conditions, when the police officers do not have a warrant but they need to take legal action against the offender. In that case, it is essential to understand the importance of ‘Stop and Frisk.' Arrest warrant of the offenders is subject to the requirements of the Fourth Amendment, however, it does not mean that the courts have not given any right to the police officers in taking a person into custody without a warrant. In some situations, when the armed forces have witnessed the crime attempt by a person, they can use the power of stop and frisk. To elaborate a bit more regarding the situation, an example of Terry v. Ohio case can be helpful, when Justice Douglas approved an on the street investigation by the authorities (Justia, 2018). This was the case of armed robbery, when the police officers approached the men and seized one of them for the armed investigation, and discovered a gun. This situation raised the question that whether the policeman’s actions were reasonable according to the Fourth Amendment or not? The court declared the situation in favor of policemen, as the conduct witnessed by the police officer led them to believe regarding an armed robbery and that the safety measures required a “frisk.” (Justia, 2018)

In the United States, the Fourth Amendment had protected the individual's rights and had explained everything regarding the police's rights and the offender's rights. According to these rights, it was clear that the police officers cannot take action against the offenders until they do not have a search warrant for it. However, there were few situations in which the police officers could stop and frisk the persons, only in case the police officers have witnessed the person having a firearm, drug, weapon, or illegal object. Now, the question to the Supreme Court of the United States was that when the ‘seizure' occurred? The Terry Court[[1]](#footnote-1) recognized in dictum that;

*“Not all personal intercourse between policemen and citizens involves ‘seizures’ of persons,” and suggested that “[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.”*

(Justia.com, 2018)

Along with ‘seizure', the search of the person of an arrestee also remained a little controversy in the Court of United States. Initially, the Court upheld a search incident to an illegal arrest but then the issue was to set the situations in which the police officers can ‘search and seizure’ the person. According to the general rule, the warrantless search was strictly tied with the justification permissible, only to prevent access to a weapon or destruction of evidence. Not only a search of the person but also search for any sort of data was also restricted by the Court of the United States. The situation can be well explained with the example of Riley v. California case (414U.S.218, 1973), when the Court declined to give permission to the police officers for searching personal digital data of the person. Though the government was concerned to prevent the destruction of evidence as cell phone data could be destroyed remotely, still, the court did not allow the authorities to search for the digital data without a warrant and ordered to keep the cell phone at a place where radio waves could not reach. Finally, the Court in Riley concluded that,

*“As a “simple” categorical rule, before police can search a cell phone incident to an arrest, the police must “get a warrant.”[[2]](#footnote-2)* (U.S.218, 1973)

The discussion above showed that in all cases, an individual's civil rights are at the priority of the United States' Constitutions. The Court has, in all cases, take care of an individual's self-respect and social values. Not only to the individuals but also the Court has provided protection and safety to the individual's assets. The above-discussed cases have made it clear that no policeman can take any legal action against the person without a warrant, which means that no individual can be called for legal investigation without proper cause or evidence or in the case the policemen have witnessed the crime. The Court has established a proper procedure for the ‘search and seizure’ and ‘stop and frisk.’ The constitutional frameworks have clearly defined all situations in which the forces have to take care of the individual’s right or the situations when the forces can use their rights. There is a proper balance between the rights to the forces and the rights to the individuals, according to which the government, as well as law enforcement forces, are bound to take care of individual's social values while investigating about any incident. However, the purpose of legal frameworks is to eliminate the evil from the society, which can never be possible without strong legislative structure and power to the forces. However, using that power wrongly can leave an adverse impact on people's trust over the legal actions taken by the forces.

Now the questions arise that what if the government will give complete power to the forces in taking action against the criminals? Is it really necessary to restrict the forces in taking search and seizure actions or stop and frisk action against the offenders? Having search warrant for search and seizure may cause a delay in taking legal action against the offenders, isn’t it goes in the favor of the criminal? However, to answer these questions the study by Taslitz (2003) becomes of great importance, through which it becomes clear that why is it important to respect the Fourth Amendment (Taslitz, 2003). Permission to forces of taking free actions against any individual may also cause illegal actions by the forces against a person, belonging to minorities and races of different color. The history is full of such incidents when White police officers used their rights to harm the minorities or the Black people. For example, Michael Brown was killed by a White Ferguson, Missouri police officer (Justice, 2018, pp. 6-7). Such situations may bring police forces in terrible situations, and may affect people's trust over the legal framework of the United States. Thus, restricting the forces in taking free action against the offenders, and developing proper procedures and limitation of search and seizure, and stop and frisk actions are essential to keep people at the safety side, where they can trust the forces (Taslitz, 2003).

Conclusively, The purpose of the constitutional framework of the United States is to provide freedom of living to every person or to develop a society where every individual has the liberty to live his life under the legislative limits and without harming the society. However, when concerned to discuss regarding the situation, in which the forces can arrest the person, then restriction of search warrant, conditions to stop and frisk the offenders, and provision of safety to the individual's assets enhances the strength of the legislative framework of the United States. The forces are restricted to take legal actions against the offenders unless they have the search warrant, through which no one, either police officers or other law enforcement agencies, can harm the civil rights and social values of any person. Having proper evidence, eyewitnesses, search warrants, or court's orders enable the police officers to have the complete right to seizure the person and to arrest them. Also by establishing a proper procedure for person's arrest, the Court also protects the police officers, where they can justify of why they have stopped and frisk the offender, why did they seizure an individual, or why they should arrest the criminal.

References

414U.S.218. (1973). United States v. Robinson.

Britannica. (2018). Search and seizure. *Britannica.com*.

Justia. (2018). Detention Short of Arrest: Stop and Frisk. *US Law*.

Justia.com. (2018). Search Incident to Arrest. *US Law*.

Justice, D. o. (2018). *Community Oriented Policing Service (COPS).* Retrieved from www.cops.usdoj.gov

Taslitz, A. E. (2003). Respect and the Fourth Amendment. *Journal of Criminal Law and Criminology, 94*(1).

U.S.218. (1973). Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee’s person. *Id at 17*.

1. 392 U.S. at 19, n.16. [↑](#footnote-ref-1)
2. “Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee’s person.” Id. at 17. [↑](#footnote-ref-2)