



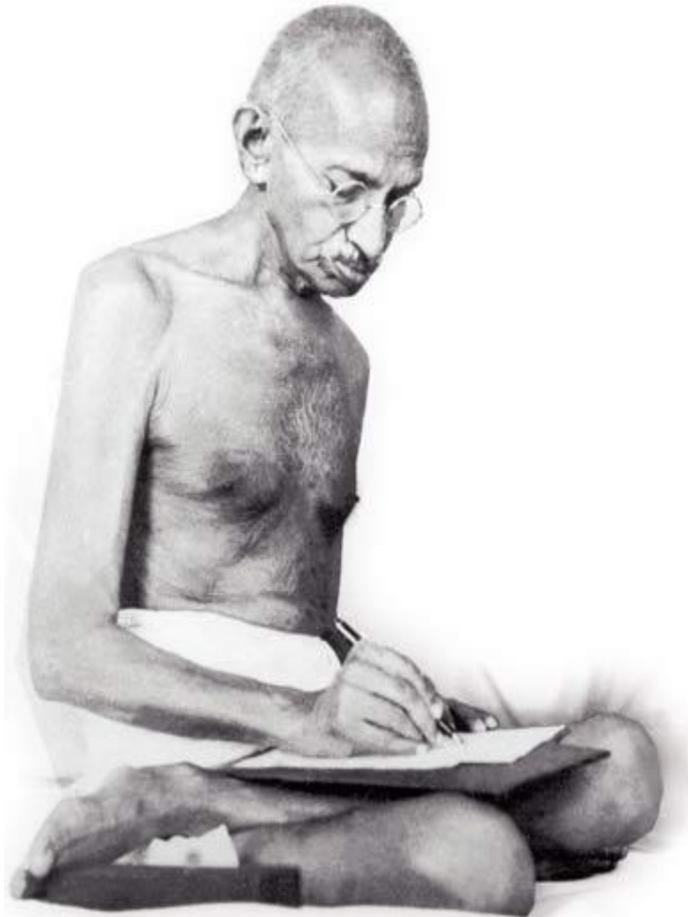
Work With Wisdom Series - 002

MAHAZAR

@ MAHAZARNAMA

@ PANCHANAMA

An unbiased perspective of a former Law Enforcement Officer



“First they ignore you. Then they laugh at you. Then they fight you. Then you win.”
- Mahatma Gandhi

Compiled, Edited and Published by
P. Jacob, Principal Educator, Right Information International Forum,
Siva Complex 2nd Floor, 33, Stringer St., Near High Court, Chennai – 600108
E-mail: rightinformer@gmail.com
Cell: 0-9444953456

This booklet may be freely downloaded from www.rightinformer.com or www.rightinformer.org

CONTENTS

Preface	... 3
Introduction	... 9
Powers and Responsibilities of Officers of Search Parties	... 11
Responsibilities of the Mahazar Witnesses	... 19
<i>Appendix I - Template - Suggested Cover Page</i>	... 21
<i>Appendix II - Template - Suggested Body of Mahazar</i>	... 22
<i>Appendix III - Forms already being used by various departments</i>	... 23
About the Author	... 24

Acknowledgements

I owe my foremost gratitude for the numerous hurdles and challenges thrown before me over the years while in service, in surmounting which, I honed my competency ultimately to become a practical guide and educator.

I remember with a deep sense of awe, my parents, memorable teachers, a few immediate superior officers and a handful of senior officers who for decades stood firm in their convictions and proved that honesty is the best policy at all times and seasons.

I record my sincere and heartfelt thanks to the anonymous co-author without whose inspiration and major contribution this project would not have become a reality.

Thanks to our Auditors, M/s. Sanjiv Shah & Associates, who were instrumental in selecting the cover page image of Mahatma Gandhi. Five years ago, when approached, Mr. P. Rajendra Kumar, Chartered Accountant volunteered to freely audit the accounts of our trust saying "Because you serve the people, we won't charge you for our service."

Finally, I am thankful to my wife 'Pesma' Chandra and our children JBK Paul, JCK Evangeline and JDK Stephen, who are my invincible strength and support. The singular trait common to all of them is their quest to excellence only through righteousness which invigorates me to be an Active Voice even at the age of 65+.

P. Jacob

PREFACE

Galloping progresses in science and technology contrasted with falling standards of ethical values and ever-increasing inefficiency prevailing among a section of the law enforcement machinery, have caused a wide gap between the ability of a law enforcement officer [*hereinafter shortly*, LEO] and the agility with which a criminal walks out scot-free.

'Knowledge Transfer' in officialdom is at the lowest ebb resulting in ignorant innocents often being convicted and offenders rarely getting punished.¹

Section 100 (5) of the Code of Criminal Procedure, 1973 [Cr.P.C.] mandates that a list of all things seized in the course of search of any place shall be prepared by the officer or other person executing the warrant and signed by the witnesses. Similarly Section 100 (7) of Cr.P.C. says that when any person is searched, a list of all things taken possession of shall be prepared. This document is differently called in different places / departments as *Mahazar* / *Mahazarnama* / *Panchanama* / Search List / Statement of the Search Witnesses / Seizure Proceedings [*hereinafter referred to only as 'Mahazar'*]. *Mahazar*, evolved over a period as an improved version of such a list, is a chronological narrative of events transcending the statutory requirement of Cr.P.C.² *Mahazar* is invariably prepared at the end of every search or seizure or in a trap-laying operation. However, '*Mahazar*' is not defined in any law but finds mention in internal procedural laws, *viz.*, Circulars, Manuals, Instructions, etc., of various Law Enforcement Agencies [*hereinafter shortly*, LEAs] *viz.*, Police, CBI, NCB, DRI, Enforcement Directorate, Income Tax, Customs, Central Excise, etc.

A *Mahazar* is written only when the LEOs conduct the search proceedings in the immediate and joint presence of the priorly-called-upon witnesses. If an event takes place in the absence of the LEOs and the witnesses happen to be the natural witnesses of such event, their depositions are recorded only as individual statements and not as joint statement as *Mahazar*. For example, if two persons chanced to witness an accident or a theft, their statements are never recorded as *Mahazar*, but their individual statements are recorded.

1. "Karnataka HC: *The Intelligence Officer v. Arshad Saleem Khan*. on 25 February, 2004 : [2004 CriLJ 4496 : ILR 2004 KAR 3855] Bench: K. Sreedhar Rao, J. <http://indiankanoon.org/doc/529786/> –

"25. . . . It is necessary that every investigation officer should be educated about the necessary steps to be taken at the every stage of investigation in accordance with law. Therefore I like to impress upon the investigation authorities, more so N.C.B. the coordinating agency should in consultation with other authorities draft a protocol of investigation as a uniform guideline to the investigation officers under the Act. Such a course would ensure efficiency and transparency sans imprudent technical lapses."

2. Para 13 (c) of the Customs Preventive Manual (Central) as on 1.1.1987 published by the Directorate of Publications, Customs and Central Excise, New Delhi. – "The actual search under cover of the search warrant shall be executed as if it is a search made under the provisions of the Code of Criminal Procedure. The search shall be conducted in presence of two independent witnesses and the search list (Panchanama) will be prepared in Triplicate. . . . A clear copy of the Panchanama should be given to the person from whose premises the goods are seized."

The concept of *Mahazar* was visualized by LEAs and LEOs in an era when photographic / audio-recording / video-recording equipments were not commonly available, though such a concept or document was never stipulated by law. With the advent of the new era of cheaper and widespread electronic audio-recording, photographic and videographic gadgets, time is ripe that the law and the courts should no longer rely on the *Mahazar* prepared in any overt proceedings, as admissible evidence, and the *Mahazar* need to be replaced by the photographs / audio / video recordings. However, in covert proceedings like traps laid under the Prevention of Corruption Act, the importance of a *Mahazar* cannot be underestimated, and hence its evidentiary value need to be recognized by law itself, instead of being kept as internal procedural laws of departments / agencies. Unless notified in the Government Gazette as Acts, Rules, Regulations, Orders, Notifications, etc., these internal laws of the departments will not bind the general public and accordingly, the Courts are likely to dismiss the cases of the LEAs, if sufficient grounds are advanced by the defence.

Among the various documentary evidences made use in a criminal trial, *Mahazar* plays a distinct and significant role. *Mahazar* empowers the LEA / LEO enormously as it forms foundation for proceeding against any person under law. It is the document which can be created by the LEOs / LEAs as they desire – either to incorporate or to leave anything or detail. *Mahazar* is the only documentary evidence which is required to be signed by at least two local-*cum*-respectable-*cum*-independent inhabitants who have supposedly witnessed the proceedings. Immediately on preparation of such *Mahazar*, the LEO acquires legally exercisable powers to proceed against the person(s) whom he considers to have committed an offence as per the *Mahazar*. The powers may include the power to arrest or remand or detain a person, besides causing many other severe legal consequences. There arises an inevitable probability to abuse such power by the LEO, either negligently or deliberately.¹ A proper *Mahazar* or even any legally unsustainable document titled '*Mahazar*' practically has the potential to create far-reaching legal implications, particularly against whom a case is made out. There is a grave danger that a false criminal case can be created by an LEO just by such a *Mahazar*, if only two persons consent to sign as witnesses disregarding the onus placed on all these persons. Hence, this small booklet is being brought out to sensitize the LEA / LEO and witnesses the legal requirements which were collected from various resources.

Often there are allegations that signatures on the *Mahazar* were obtained from the so-called witnesses who were not even present on the spot. Still the judiciary often believes the *Mahazar* as a sacred document without doubting about the commissions or omissions. Glaring deficiencies noticed in a *Mahazar* prepared by an apex investigation agency prompted us to compile, with a certain amount of urgency, this small booklet. A negligible deviation from the truth by certain individuals in LEAs and the LEOs in the past has

1. 'Personal Website of R. Kannan' - <http://kannanpersonal.com/projects/cbi/cbi-trap.html> - In an illegitimate trap there is no demand by the public servant, but the offer or inducement is made by the member of the public at his own, or as per advice of the investigating officer by way of temptation and where the public servant agrees and receives the gratification, he is caught in the act. This is not only illegal, but also all unprofessional and unethical.

snowballed into the present dismal state of affairs. Through this booklet we earnestly suggest course correction by propounding the right path.

Mahazar helps a judicial authority before whom a case is presented for adjudication, to see the foundation on which the prosecution case is structured.¹ But this is a patently falsified document because though it is actually drafted and written by the LEOs, it is worded and signed as if the witnesses are the authors. In fact, the witnesses simply sign on the dotted lines and do nothing more in the preparation of *Mahazar*. This falsehood is perpetrated and perpetuated for long due to a section of LEOs unwittingly following the past practice. But it is not so with every other LEO. Defence counsels seldom raise this for reasons best known to them. It is time to look at law enforcement with an unbiased perspective.

Unfortunately, the importance on the legality of *Mahazar* does not appear to have seriously been visited by the Judiciary because, the LEAs, LEOs, Legal Officers and Defence Parties have seldom taken a comprehensive and cogent stand. Moreover, in the Indian context, the criminal justice administration appears to be generally inclined against an accused person based on his past criminal history also and not on the strict legal evidence available on the case in hand alone. This terribly emboldens the LEOs to foist cases against a known habitual offender as and when they are asked to, and sometimes against innocent persons also. In the case of former, as the society gives its tacit support, no stigma is attached to the false actions of a LEO. Besides, the habitual offender also accepts his fate, in case he is punished with the help of a legally unsustainable *Mahazar*, taking his so many past criminal activities into consideration. In fact, he may take solace that he is being punished in only one of his several crimes. Whereas, when a case is foisted against an innocent but ignorant person and is punished based on a totally unsustainable *Mahazar*, apart from the untold miseries he / she undergoes, the entire society mutely loses its faith in the administration of justice and the institutions administering justice. Ultimately, the society falsely fears about the law and its enforcement machinery. This makes the law-abiding section of the society more cowardly and the law-violating section more audacious. This tendency ultimately turns highly injurious to the well-being of the democracy.

The serious absence of thorough legal knowledge, more particularly on the subject of *Mahazar*, among the LEOs as to what they must do and what not is due to the collective effect of factors like (i) the absence of bequest of knowledge by the senior LEOs, (ii) the widespread practice of hearsay superficial acquisition of legal knowledge and (iii) the severe vacuum on the availability of treatises on the procedural aspects of law enforcement. The sole reason for third factor is that the compliance of procedural aspects of law is the sole responsibility of the LEAs / LEOs. The legal intellectuals, hence, derive benefit out of such procedural non-compliance by LEOs / LEAs. Only an insider of a LEA can come out to fill up such vacuum. Hence, an urgent need has surfaced to present a handy material on the

1 'Check-list for Customs investigating officers 1988-89' – Guidance on seizure and investigation – 'Search and Seizures'. Compiled by Directorate of Preventive Operations, Customs & Central Excise. – **"Mahazarnama or Panchanama should be like a photograph of the scene of search. . . . It is better to mention in the panchanama that except the articles mentioned in the seizure list, no other articles were seized and no damage was caused either to property or to persons."**

Mahazar for the use of LEOs, LEAs, Legal Officers, Judicial Officers and Defence Parties, in order to ensure that only truth and justice prevail.

The LEOs are often tempted to stray away and tread Hitler's path of "*end justifies means*".¹ It appears that instead of taking earnest efforts to avoid lapses which were condoned in the past by the Hon'ble Supreme Court or the High Courts, the LEOs inherit them as eternal pardon on the cross and continue with the commissions or omissions with impunity.²

In a compilation titled "Check List For . . . Investigating Officers" [For Departmental use only], their officers are prompted as follows:-

³"No irregular search can vitiate the seizure of the articles nor can it vitiate or affect the conviction of the accused unless the accused is prejudiced by the defect. Thus, the failure to call upon respectable persons of the locality to witness the search or failure to prepare the search list on the spot or to include new items in the search list after it has been signed by the witnesses, or

1 Supreme Court: *State of Punjab v. Baldev Singh* on 21 July, 1999 <http://indiankanoon.org/doc/1259796/> – The argument that keeping in view the growing drug menace, an insistence on compliance with all the safeguards contained in Section 50 may result in more acquittals does not appeal to us. . . . **Indeed in every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself.**

2 Bombay HC: *Shankar Raju Banglorkar v. State of Goa* on 25 February, 1992 : [1992 (2) BomCR 169 : 1992 CriLJ 3034] - Bench: E D Dudhat & Dr. D.A. Silva, JJ. - <http://indiankanoon.org/doc/138734/> -.

"19. . . . But at the same time the Court cautioned that **simply because these were directory ones it would not mean that they could be ignored with impunity** . . . Thereafter, on facts, the Court concluded that **most of the safeguards which have been prescribed under the Act had been actually observed only in breach** and this fact would ipso facto show the prejudice that had been caused to the accused by the omission. Hence the conviction and sentence was set aside and the accused set at liberty. . . .

21. . . . We do hope and firmly believe that it is already high time for the concerned authorities to realise that only a more attentive and efficient investigation as well as a strict compliance of the statutory directions of the Act which would enable them to successfully eradicate the drug menace in this State."

3 Supreme Court: *Sunder Singh v. State of Uttar Pradesh* on 3 November, 1955 - : [AIR 1956 SC 411 : 1956 CriLJ 801] - Bench: Bhagwati, V Ayyar, Sinha, JJ.

"9. . . Assuming that the two rickshaw-wallahs who actually witnessed the search as found by the Courts below were not respectable inhabitants of the locality, that circumstance would not invalidate the search. It would only affect the weight of the evidence in support of the search and the recovery. Hence at the highest the irregularity in the search and the recovery in so far as the terms of Section 103 had not been fully complied with would not affect the legality of the proceedings. It only affected the weight of evidence which is a matter for Courts of fact and this Court would not ordinarily go behind the findings of fact concurrently arrived at by the Courts below."

failure to make over a copy of the search list to the accused are irregularities that will not vitiate the trial in the absence of proof of a failure of justice resulting therefrom.”¹

In yet another official website, the CID officers are advised as:-

“The Panchanama recorded either by the I.O. or other person under his supervision should not hit by Sec.162 Cr.P.C. as such the I.O. has to record the search proceedings as if it were written by the panchas. It should not be recorded in the form of examining witnesses as laid down u/s 161 Cr.P.C. True observations of panch witnesses and what is heard by them, those things incorporated in the panchanama at the first person as if it were written by the panchas.”

There need to be an attitudinal change since professional ethics demand that the LEO should abide by law while accusing another person of committing a crime. Especially in the present scenario of erosion of ethical and moral standards in the whole society, false cases booked on genuine persons are on the increase. These persons fight the case on a new platform of ‘offensive defence’ resulting in their innocence proved and ultimately the court pronounces them ‘not guilty’. They claim hefty damages and also demand penal action² / disciplinary proceedings on LEOs. So, it is high time that the LEOs followed every word of the law in letter and spirit.^{3v} Due to our strenuous efforts in the last five years and because

1 Delhi HC: *Prithvi Pal Singh v. State* on 21 February, 2000. Bench: M Siddiqui, J : [2000 III AD Delhi 181 : 84 (2000) DLT 464] - <http://indiankanoon.org/doc/1579890/> -

*“6. ... It is well settled that failure to comply with the provisions of the Code of Criminal Procedure in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 per se does not vitiate the trial under the Act. But it has to be borne in mind that conducting a search and seizure in violation of statutory safeguards would be violative of the reasonable, fair and just procedure. In *Maneka Gandhi Vs. Union of India*, it was held that when a statute itself provides for a reasonable, fair and just procedure, it must be honoured. Thus, an accused has the right to a reasonable, fair and just procedure.”*

2 Andhra Pradesh HC: *Kurella Krishna Prasad v. The State Of A.P.*, on 19 July, 2005 – Bench: C.Y.Somayajulu Cri. Petition No. 4447 of 2004 19/07/2005 <http://indiankanoon.org/doc/984048/>.

“Even if any individual officer or authority has exceeded his limits of power or jurisdiction vested in him under the Act, he may be proceeded against by the aggrieved party or persons by not complaining against him to his higher authorities, but by filing criminal complaints, resorting to the aid of common law.”

3 Calcutta HC: *Arun Agarwal v. The State of West Bengal* on 29 April, 2010 - Author: Tapen Sen, J. - W.P. No. 1299 of 2009 - <http://indiankanoon.org/doc/1413854/>.

*“21. . . . the learned Counsel for the Petitioner, while making his submissions, had also drawn my attention to the concluding portions of the impugned Order passed by the Appellate Authority at Page-132 to show that while passing the Order, the Principal Secretary totally misdirected himself by observing that the application of Section 100 of the Code of Criminal Procedure, 1973 was not mandatory in nature in respect of administrative proceedings initiated under the 2003 Control Order and therefore, non-compliance of Section 100 did not vitiate the Proceedings. 29. In a Judgment of the Supreme Court passed in the case of *Ram Deen Maurya (DR.) vs. State of Uttar Pradesh & Ors.* reported in (2009) 6 SCC 735 it has been*

of the recent developments flashed in the media, more and more LEOs opt for implicit obedience to law and adhere to the plain truth reposing great faith on the judiciary, which the judiciary rightly deserves. The LEO need not necessarily be an expert in law but must be an ardent and faithful enforcer of the law in letter and spirit. A LEO shall possess the utmost humility never to act wiser than the wisdom of the legislature. That is why we entreat the LEOs to enforce law lawfully and the general public to stand in support of law enforcement.

Through this booklet, we provide legal and still realistic inputs for such proper and efficient law enforcement concerning *Mahazar* and various aspects related thereto.



held in para-43, while discussing as to whether a rule is directory or mandatory, that it is a settled Rule of Interpretation, that if a Rule is mandatory, then it must be strictly construed and followed and an act done in breach thereof, will be invalid but if it is only directory, then the act will be valid although non-compliance may give rise to some other penalty, if provided by the Statute. 31. To come to a conclusion as to whether a provision is mandatory or directory, the word "shall" or "may" may not always be a guiding factor but they have to be considered in the context and purpose for which such a provision has been made and the Courts must see the purpose behind inserting such words. 32. In the opinion of this Court, the purpose for which such a provision like Para 25(2) of the Control Order of 2003 was made was in the context of keeping in mind that arbitrary actions of the State should not be encouraged. A Division Bench of this Court has gone a step further while interpreting a provision as to whether it is Mandatory or Directory by keeping in mind that the guiding factor should be also the beneficial purpose for whom the Rule is made. . . . To test a provision whether mandatory or directory, the use of the word 'shall' or 'may' is not a guiding factor, but the main guiding factor is context and purpose for which the provision has been made and the beneficial purpose for whom it is made. . . . **It would, inter alia, depend on whether the requirement is insisted on as a protection for the safeguarding of the right of liberty of person or of property which the action might involve.**

“33. From the aforementioned Judgments and read with the observations made by this Court above, this Court considers that the very purpose to insert Para 25(2) was to ensure reasonableness and non-arbitrariness during the course of search and seizure and therefore, it is a provision that is beneficial not only to the State but also to the person who is being searched as it seeks to enforce the provisions of Article 14 of the Constitution of India rendering an arbitrary action illegal.”

INTRODUCTION

Section 100 of the Code of Criminal Procedure, 1973 (Cr.P.C.) reads as follows:-

“(1) Whenever any place liable to search of inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witness; but no person witnessing a search under this section shall be required to attend the court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).”

Thus, preparation of *Mahazar* is implicitly mandated in Section 100 of Cr.P.C. On the strength of the very same section, a *Mahazar* may be described as:-

- a true record of proceedings of a law enforcement task, diligently recorded / reduced in writing,
- by a Law Enforcement Officer [LEO] or by his scribe,
- on the very spot in which the proceedings have taken place,
- immediately after the planned proceedings are completed,
- in which the LEO records all the relevant facts of the proceedings of any planned legal task, *viz.* (i) search of premises or of persons or of vehicles, and (ii) entrustment or recovery of any material, etc., and any other action closely connected to such proceedings, which have been performed in a place outside a Court Hall,
- in the same chronology in which the proceedings of such legal task have taken place in the immediate and joint presence of the local-*cum*-independent-*cum*-respectable inhabitants of the locality priorly-called-upon to witness the search,
- as to what the witnesses have personally and actually seen and heard,
- to be used as an admissible evidence in criminal proceedings against violator(s) of law.

Simply, a *Mahazar* can be called as proceedings recorded on a paper in lieu of a still camera / video camera / audio recorder.¹

1 Gujarat HC: *Miyabhai Pirbhai v. The State* on 11 April, 1962 : [AIR 1963 Guj 188 : 1963 CriLJ 141 : (1963) GLR 253] - Judgment V.B. Raju, J. <http://indiankanoon.org/doc/1698227/>

“- 9. . . . In *Naginlal Nandlal v. State of Gujarat*, (1961) 2 Guj LR 664 at p. 672, the exact nature of a panchnama has been considered. A Panch may see certain things and **may himself reduce into writing what he has seen**. The writing in such cases is called a Panchnama. A Panchnama may be a statement for the purpose of Section 157 of the Evidence Act. It may be a note. If it is a note, it can be used to refresh the memory of the Panch under Sections 159, 160 and 161 of the Evidence Act, but it would not be a Statement made to a police officer in the course of the Investigation **because the Panch himself has reduced it into writing**. Such a statement would not be hit by Section 162, Cf. P. C. Again a Panch may hear certain statement made to him and may himself reduce into writing what he himself had been told. In such a case the writing of the Panchnama would be a statement made by a person to the Panch witness. In other words, a Panchnama would be a record of a statement made by a person to the Panch, but the Panchnama itself would not be a statement made by the Panch to a police officer in the course of Investigation, **because the Panchnama was reduced into writing by the Panch himself and not by the police officer**. In either of these cases, a Panchnama would not be hit by Section 162, Cr. P. Code, because a panchnama having been reduced into writing by the Panch himself is not a statement made to a police officer. But if a panel sees something and tells a police officer what he had seen and the police officer then reduces into writing what the Panch had told him of what he had seen, then the panchnama would be a record made by the police officer of a statement made to him by the Panch of what the Panch had seen, and, therefore, would be hit by Section 162, Cr. P. Code. Again if a Panch hears certain things or certain statements and tells a police officer what he had heard and the police officer then reduces into writing what the Panch had told him as to what the Panch had heard, then the Panchnama would be a record made by the police officer of a statement made to him by the Panch of what the Panch had heard, and, therefore, would be hit by Section 162, Cr. P. C. . . .

“10. Each case would depend on its own facts. Whether a Panchnama is one of the four above types would depend on the facts of each case, if a Panchnama is of 3rd or 4th type, it would be hit by Section 162, Cr. P. C. But if it is of first two types, then it would not be hit by Section 162, Cr. P. Code. There may be two other types of a Panchnama, A Panch may tell a person who is not a police officer of what he had seen or heard and the person who is not a police officer would reduce into writing what the Panch told him. This can also happen in the presence of a police officer investigating the case. If the police officer investigating the case is not the person before whom a statement is made, the statement would not be hit by Section 162, Cr. P. Code. But if the statement is made to a person who is not a police officer but in the presence of a police investigating officer, then it must be treated as having been made to him, and such a Panchnama must also be treated under Section 162, Cr. P. Code, otherwise, it would be easy for police officers to circumvent Section 162, Cr. P. Code and always say that the Panchnama is a statement made to someone else in their presence. A police officer may himself see or hear certain things and himself reduce into writing what he himself had seen or heard. In that case, it may be a statement of the police officer for the purpose of Section 157, Evidence Act. If a police officer records what he had heard, it would be hit by Section 162, Cr. P. Code. But if the police officer reduces into writing what he himself had seen, it would not be hit by Section 162, Cr. P. Code. Therefore each case depends upon the facts of a

How to conduct a Search of Premise or of a Person?**What are the Powers and Responsibilities of Officers of such Search Parties?**

1. Before starting from the office, prepare a list of officers who shall form part of the party and assign in writing each of their roles and positions they have to take, *viz.*, (i) for guarding perimeter, entrance, exit, CCTV control room, etc, (ii) for conducting search within the premises, (iii) for recording in the log all proceedings chronologically, (iv) for photographing / video-graphing, (v) for collecting and keeping together material objects, documentary evidence etc., found during the search (vi) for sealing recovered items, (vii) for packing and sealing recovered / seized items, etc. (viii) for authoring the *Mahazar* and (ix) for writing *Mahazar*, etc.
2. Prepare a list of all things to be taken into the premises like stationery items, office machines, tools, kits, etc. along with declarations of personal possessions of each member of the search party and of the witnesses.
3. Before making a search, call upon, only in writing,¹ two or more independent and respectable inhabitants of the locality² in which the place to be searched is situated or in

particular case, and whether the Panchnama falls within one of the 8 types is a Question of fact.”

1 ‘Manual of Office Procedure’ Vol. III (Miscellaneous) February 2003 – Directorate of Income Tax (Organisation & Management Services), Central Board of Direct Taxes, Department of Revenue, Government of India. - http://www.incometaxindia.gov.in/archive/MOP_Volume_III.pdf - [page 54] - 12. Witnesses to the search - Appointment of witnesses to the search - 12.1 Before searching a premises, the Authorised Officer is required to call upon two or more respectable inhabitants of the locality to attend and witness the search. Where a vessel, vehicle or aircraft is to be searched, the requirement of the witness being from the same locality would be inapplicable. The Authorised Officer should serve upon the witness the prescribed order in writing. The form for this order will be provided by the Investigation Unit concerned. Non-compliance with the Authorised Officer's order entails prosecution u/s 187 of the Indian Penal Code.

Rajasthan HC: *Raju Munim v. State of Rajasthan* on 9 March, 2006 : [RLW 2006 (2) Raj 1452] - Narendra Kumar Jain, J. <http://indiankanoon.org/doc/1333311/> - 21. . . . He did not issue any order in writing to any inhabitants to attend and witness the search and seizure.

2 Allahabad HC: *Dr. Jainand v. Rex.* on 8 October, 1948 : 1949 CriLJ 498 - Bhargava, J. <http://indiankanoon.org/doc/1279011/>

“[Para 27] - . . . On the strength of this fact it has been argued by the learned Counsel for the appellants that Shamsuddin and Bailey were tools in the hands of the police and the searches were not at all genuine. There appears to be considerable force in this argument, In *Panda Inderjit v. Emperor A.I.R. (84) 1947 ALL. 165 : (48 cr. L, J. 611)*, the search witnesses were residents of different localities and the officer conducting the search had made no attempt to secure the presence of respectable persons; and there it was held that the search was not a good search and it could not be made the basis of a successful prosecution. We, therefore, hold that the searches in the present case were not conducted in the manner provided by law.

which person to be searched is available¹ or of any other locality if no such inhabitant of the said locality is available or is willing to witness to the search, to attend and witness the search. If any inhabitant of the neighbourhood, when called upon declines to be present and to witness the search, without showing any reasonable cause, proceed against him under law, i.e., under Section 187 of Indian Penal Code, 1860 later.²

1 http://www.cidap.gov.in/documents/Panchanama_422200413526%20PM.pdf - "Panchanama" -E. Ramulu, FM (Law), APPA [Crime Investigation Department, Andhra Pradesh State Police].

"In the above said two instances the presence of two or more than two persons for observation, seizure and recording of the same would arise. . . . The intention of the legislative is to guard against possible chicanery and unfair dealings on the part of the officers entrusted with the execution of the search with or without warrant and to ensure that anything incriminating which may be said to have been found in the premises, searched was really found there and was not introduced or planted by the officers of the search party and also anything should not be stolen by any member of the search party during the search. . . . The then British Rulers of India gave much importance to the personal rights of citizens and they regarded personal rights of the citizenry as sacred rights. In those olden days there were neither international organizations to think about personal liberties of citizens nor there was any constitution guaranteeing fundamental rights of the citizens in India. They being foreigners ruling our country realized the personal security and safety of the citizens from the hands of public servants. . . . They felt that there should not be any feeling of insecurity among the public in the hands of officers, who can search any place at any time, as they like on the pretext of discharging duties. To control or check the malpractices of the officers, the presence of independent and respectable persons is made compulsory for search of a place and seizure of article found there in. Even to see that the officers should not knock away any articles under the pretext of search.

In order to create confidence and feeling of safety and security among the public, Section 100 Cr.P.C. is incorporated to make real and true search and seizure from any place."

2 Delhi HC: *Mohd. Raffique v. State* on 29 February, 2000 : [2000 IIIAD Delhi 861 : 2000 CriLJ 2401] - Bench: M Siddiqui <http://indiankanoon.org/doc/1805021/> -

"9. . . . The explanation offered is that public witnesses were requested but they declined to cooperate. My experience is that this explanation is now being offered in almost all cases. In the circumstances of a particular case it may so happen that for a variety of reasons public witnesses may decline to associate themselves but generally speaking it does not so happen. If a public witness declines to co-operate without reasonable cause in spite of an order in writing, to witness the seizure and search, he will be deemed to have committed an offence under section 187 I.P.C. and this has been clearly spelt out in sub-section (8) of section 100 Cr. P.C. In the present case there is a vague explanation that public witnesses were approached but they declined. Neither the name of such witness has been given nor has any order in writing to that effect been preserved, nor it is asserted that a mention about the same has been made in the case diary. Obviously, there is a deliberate attempt to defeat the legislative safeguards."

Madras HC: *Rajendran v. State* on 18 March, 2008 – Coram: T. Sudanthiram, J. Criminal Appeal No.3 of 2002 <http://indiankanoon.org/doc/1591364/>

"13. To establish the genuine attempt made by P.W.1 to secure the witness, P.W.1 ought to have given the particulars of persons whom he called to stand as a witness and whether he has taken any action against the persons who had refused to stand as a witness."

4. Show the original Warrant / Authorization of Search¹ to the person in charge of / occupying the premises to be searched. Serve a photocopy of the same on him and obtained his signature with date, time and place.
5. Show the identity card of each member of the search party and allow him to verify genuineness of the officials.² [Of late thieves fake themselves as departmental officers and gain entry into the premises in the guise of search and loot and kill the occupants. Hence, the general public may reasonably doubt the genuineness of the search party. This aspect also has to be kept in mind by the search party. Hence, resistance from the occupants should be expected and tolerated and all-out efforts to remove the doubts of the occupants should be made before gaining entry. One of the ways include even to

Rajasthan HC: *Abid Khan v. State Of Rajasthan* on 31 January, 2006 : [RLW 2006 (2) Raj 1310 : 2006 (2) WLC 340] - Narendra Kumar Jain, J <http://indiankanoon.org/doc/1956028/> -

"[Para 18].. . . The appellant has been convicted by the Trial Court for 15 years R.I. whereas total quantity of contraband recovered in the present case was 5 gram. In this view of the matter it is necessary to examine and scrutiny the statement of the prosecution witnesses as well as the mandatory provisions of the Act strictly. . . . it is clear that no order in writing was delivered or tendered to any person of the locality to attend and witness a search by PW 11 Rajeev Dutta. Sub-section 8 of Section 100 Cr.P.C. is also an important provision and it clearly says that any person cannot refuse without reasonable cause to attend and witness a search when he is called upon to do so by an order in writing and if he refuses then it is an offence under Section 187 of the IPC. In these circumstances, it is clear that recovery of contraband recovered in the present case is not free from doubt. . . .

"19. Consequently, I allow this appeal, set aside the impugned judgment of the Trial Court and acquit the accused appellant from the offence, he was charged."

1 Supreme Court - *The Commissioner of Commercial ... v. R. S. Jhaver* on 9 August, 1967 : [1968 AIR 59 : 1968 SCR (1) 148] - Bench: Wanchoo, K.N. J. - <http://www.indiankanoon.org/doc/913336/> -

"We have already indicated that the High Court held that the warrant issued by the Magistrate for search of the residential accommodation was bad because it showed that the Magistrate had not applied his mind to the question of issuing it, inasmuch as **there were portions which should have been struck out from the printed form and gaps which should have been filled in. . . .** Therefore, as the safeguards provided in s. 165 of the Code of Criminal Procedure were not followed, anything recovered on a defective search of this kind must be returned. It follows therefor that the final order of the High Court allowing the writ petitions must stand, **non-compliance with the above section would affect the prosecution case and vitiate the trial.** This Judgment was affirmed by a three-Judge Bench in *Saiyad Mohd. Saiyad Umar Saiyad v. State of Gujarat* (1995 (3) SCC 610)."

² CBI Manual Para 13.14

"In the course of a search, it should be ensured that the legal rights of the person searched are respected because any violation thereof may affect the search adversely. The occupant of the premises reserves the following rights: –

- (i) to see the warrant of authorization duly signed and sealed by the issuing authority;
- (ii) to verify the identity of each member of the search party."

give photocopies of the identity cards of all members of the search party and of the witnesses.]

6. Inform the person occupying the premises,¹ only in writing, that –
 - (a) he can have at least two respectable and independent inhabitants of his locality as witnesses;²
 - (b) he may conduct personal search of all members of the search party including the witnesses before the commencement of the search and on conclusion of the search, and at all times of moving in and moving out of any member of the search party. [This is required to prevent planting of any article into the premises];
 - (c) he has the right to have a copy of the *Mahazar* together with all annexures, before the party leaves the spot;
 - (d) he has the right to put his own seals on the packages containing the seized goods or documents, if any;
 - (e) he has the right to inspect the seals on various receptacles placed in the course of the search and subsequently reopened; and

1 Supreme Court : *The State of Punjab v. Baldev Singh* on 21 July, 1999 - Bench: S.B.Majmudar, S V Manohar, K Venkataswami, V.N. Khare, JJ. <http://indiankanoon.org/doc/1259796/>

“. . . after *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, it is no longer permissible to contend that the right to personal liberty can be curtailed even temporarily, by a procedure which is not reasonable, fair and just and when a statute itself provides for a just procedure, it must be honoured. . . . **Procedure based on systematic and unconscionable violation of law by the officials responsible for the enforcement of law, cannot be considered to be fair, just or reasonable procedure.**”

2 ‘Panchnama – a brief treatment By: Arvind Kumar Sharma’ – Published in the website of National Academy of Customs, Excise and Narcotics, Faridabad. <http://www.nacen.gov.in/detailsarticle.asp?aid=63>

With regard to selection of witnesses among other things the following are worth mentioning here. Search witnesses (Panchas) should not be friends / associates of the officers conducting search or seizures. The persons to be searched or whose premises are to be searched may be asked if he has any objection to any of the proposed persons(s) being taken as panchas (witnesses). In case he has an objection which appears sustainable, he may be asked to nominate someone of his choice. Care shall however, be taken to see that any person so nominated by the party is easily available and is not under his employment or related to him or under his influence in any way. In the more important case s and where it is apprehended that the panchas / witnesses are likely to go back on their statements in a court of law, the best course would be to record their statements by issuing summons under section 108 of the Customs Act, 1982. Such statements will not only facilitate action being taken against hostile witness under section 193 of the Indian Penal Code, but will also enable the prosecution to contradict them during cross-examination after they are declared hostile by the court, at the instance of the prosecution. (CBEC Lr. No. F. No. 3/8/65-Cus. III dated 18.9.65] . . . The witnesses are required to be not only impartial but 'respectable'. 'Respectable' here would mean a person who is not disreputed. One should also see that the witnesses are in their senses at the time of panchnama proceedings. Only majors are to be taken in as witnesses as a minors' witness may not withstand the legal scrutiny.

- (f) all those living in the premises can have their meals, children can leave for and return from school, infirm persons can take medicines, rest, etc. at the normal time, subject to the monitoring by the search party.
7. Conduct the search operation only in the immediate joint presence of both the witnesses since Section 100 (5) stipulates that the search list shall contain the places in which the things are respectively found. If many halls / rooms of a place are to be searched, either search them one after the other, only in the immediate and joint presence of both the witnesses or call upon more witnesses.¹
 8. Never allow any of the witnesses to perform even an iota of the work of the search party. The only responsibility of the witnesses is to witness the search alone and to read, understand and sign the *Mahazar* if they concur with its contents.²

1 Supreme Court : *Dilip v. State of M.P* on 24 November, 2006. Bench: S Sinha, Mark, E Katju, JJ. Appeal (Crl.) 1480 of 2004 - <http://www.indiankanoon.org/doc/372947/> -

"Indisputably, however, effect of a search carried out in violation of the provisions of law would have a bearing on the credibility of the evidence of the official witnesses, which would of course be considered on the facts and circumstances of each case. . . .The document prepared by the investigating officer at the spot must invariably disclose that the search was conducted in the aforesaid manner and the name of the female official who carried out the personal search of the female concerned should also be disclosed. The personal search memo of the female concerned should indicate compliance with the aforesaid provisions. Failure to do so may not only affect the credibility of the prosecution case but may also be found as violative of the basic right of a female to be treated with decency and proper dignity."

2 'Manual of Office Procedure' Vol. III (Miscellaneous) February 2003 – Directorate of Income Tax (Organisation & Management Services), Central Board of Direct Taxes, Department of Revenue, Government of India. - http://www.incometaxindia.gov.in/archive/MOP_Volume_III.pdf - [page 55] Chapter 5 – Search and Seizure Para 12: Witnesses to the search - Duties of witnesses:

Duties of a Witness

12.3 The duties of a witness to the search are as under:

- i. Witness the search carefully right from its commencement to its closure.
- ii. Read and understand the warrant of authorisation.
- iii. See that the search and seizure operation is carried out in an orderly manner without any interference.
- iv. See that there is no tampering or destruction of valuables and documents.
- v. See that there is no undue influence or coercion at the time of examination of any person on oath.
- vi. Don't leave the premises without the permission of the Authorised Officer.
- vii. Initial all documents, packets containing seized assets etc., for proper identification.
- viii. See to it that a female is searched only by female members of the search party.
- ix. See to it that correct facts relating to search and seizure are recorded.
- x. If witnessing the continuance of a search on a subsequent date, see to it that the seals are intact and that for continuance of the search, these are broken in your presence.
- xi. See to it that the panchnama is correctly and accurately recorded, sign the panchnama and various annexures for example, inventories of books of account and documents, cash, money, bullion, jewellery and ornaments and other valuable articles and things.

9. Never allow any outsider[s] to perform any of the work of the search party, unless they are specifically summoned and engaged by the search party.
10. As and when an LEO detects and recovers something, the particular place of availability / concealment of each and every item and recovery thereof should be instantaneously shown to the joint view / knowledge of the witnesses very meticulously.¹ This is most important as the location of an offending item and joint viewing of the same by the witnesses will prove the aspect of the conscious possession in the prosecution's case.
11. If the premises being searched have the CCTV facilities, do not order shutting of the recording by such CCTV, but let the control room be monitored by a member of the search party.
12. The leader of the party should not personally engage himself in search operations. Instead, he has to take seat in a central location of the premises, and to function as the Monitor-cum-Evidence Collector-cum-Property Custodian – to receive, accumulate and tag all goods or properties recovered, either on his own or with the help of suitable assistants.
13. Keep the 'Recorder' seated beside the 'Evidence Collector' to maintain an accurate log of all events occurred in detail in the search, such as location of evidence found, time of recovery, etc.
14. No member of the search party should move out of or enter into the premises searched, until the search and *Mahazar* are completed. If any movement is inevitable, he has to offer himself for personal search by the occupant of the premises, every time he moves in / out. Besides, all the relevant details of such movements should be recorded in the *Mahazar* itself without fail.
15. When search is over, conclude the search operations by withdrawing all the search officers to the central location and immediately [to be precise, in the next minute] commence the writing of *Mahazar* without any delay, on the very same central spot.²
16. *Mahazar* is written only after the search proceedings are completed. Hence, both search and writing of *Mahazar* cannot take place concurrently. Similarly, the moment writing

xii. Attend as a witness under any proceedings under the Income-tax Act, 1961, if and when summoned.

1 Delhi HC: *Kishan Pal v. State* [Along With CrI. A. No. ... on 26 March, 2004 - Bench: D Jain, A Sikri, JJ]. - <http://indiankanoon.org/doc/1377447/>

"20. . . . and absence of a public witness at the time of alleged recovery of weapons of offence, though, prima facie, on the facts in hand, both these omissions do provide legitim(sic)ate basis for suspicion that the projected version of the occurrence is distorted."

2 Andhra Pradesh HC: *P.G.Raveendranath v. State...* on 1 March, 2002 Gopala Krishna Tamada, J. – CrI. Revision Case No.1531 OF 1999 - <http://indiankanoon.org/doc/1996202/> -

" . . . he failed to give any plausible reasons for not securing the presence of mediators at the time of his search, which, in my considered view, caused great prejudice to the accused. Further, not preparing the mahazar or panchanama at the relevant point of time would go to the very root of the case which gives rise to a doubt as to whether the search and seizure has taken place as spoken to by the prosecution witnesses. In these circumstances, this court feels it proper to extend the benefit of doubt to the petitioner."

of *Mahazar* is commenced, no search can be continued. In case, the search has to be done after commencement of writing of *Mahazar*, it should be considered as a distinct search, and a new *Mahazar* should be prepared.

17. Prepare the *Mahazar* with at least three carbon copies using new pencil carbon, based on the details provided by the 'Recorder' and the evidence collector.
18. Prepare the *Mahazar* in the handwriting of one of the officers of the party. Wherever the *Mahazar* is prepared using a computer, the file should be saved in a format that is unalterable and provides for read-only and printing access. It is recommended that a TIFF or PDF format be used. The records should not be left in a file format that allows any alteration or modification. Further, in the *Mahazar* itself, bring out the reasons for using a computer and printer. Whenever a computer / printer / still camera / video camera / audio recorder is used in the search / *Mahazar* proceedings, record in the *Mahazar* the identification details of each of these gadgets, such as Brand Name, Model No., Serial No., etc. and the source of electric power used for them without fail.
19. The *Mahazar* should invariably start with time of commencement and conclusion of search proceedings and the time of commencement and conclusion of writing of *Mahazar*. Remember that a *Mahazar* is always identified by the time and date of commencement of writing only.
20. Invariably prepare the *Mahazar* on the spot of search only. If not, record the compelling reasons therefor in the *Mahazar* itself. [Practically, it appears that there is no such compelling reason available in ordinary circumstances]. Only in extraordinary circumstances like, operations in sea, no sheltered / shadowed spot is available to write a *Mahazar* if such absence will cause disturbance from rain and sunlight, etc, can justify the moving of search party with all men, materials and witnesses to the nearest conducive spot.
21. Always write the *Mahazar* in active voice only. Wherever passive voice is used, always mention by whom the action was performed. Recording events without indicating the name of person who performed such an event will demolish the case, if the defence attributes motive to such an omission.
22. Always prepare the *Mahazar* only in the language spoken by all the witnesses [or simply in the mother-tongue of the witnesses]. If the witnesses can only read / write the language in which the *Mahazar* is written, but cannot speak, that makes the contents questionable and unsustainable and the presumption as to the forced / influenced acquisition of their signatures will arise. This is warranted since the witnesses sign on the *Mahazar* as a proof of their understanding of and concurrence with contents thereof, particularly as to what they have seen and heard together.
23. Narrate all the relevant and important proceedings chronologically as seen or heard by both the witnesses together. By chance, if one of the witnesses alone happened to see or hear a particular event, the fact needs to be mentioned as such.
24. Events narrated / instructed by the leader of the search party to the witnesses which were not personally seen or heard by the witnesses should be clearly stated as such, as these words were only from the mouth of the search party.
25. Deliberately omitting any relevant obvious detail might vitiate the entire case. It will attribute existence of personal interests of the LEO in the case and so the LEO may face

legal – both civil and criminal – consequences for such deliberate omission and the court may readily throw out the case for such deliberate omission.

26. In keeping with the current technological development, arrange to audio-record / photograph / videograph all the overt parts of search / recovery proceedings.
27. When the writing of *Mahazar* is completed, record the concluding time and let the contents of the *Mahazar* be read out aloud to (i) the witnesses, (ii) all the members of the search party, (iii) the occupant of the premises and (iv) the offender, if he is present. And if all the witnesses concur with the contents, then let the author of the *Mahazar* affix his signature, let the scribe write down 'Written by me' and sign and then obtain the signatures of the witnesses. The witnesses shall record in the *Mahazar* that "the *Mahazar* was read out to them aloud, contents are factually correct as they have witnessed".
28. All the members / officers of the search party should sign on the *Mahazar* after the signatures of witnesses and of the writer / scribe, to attest their presence and participation in the proceedings and to testify the truthfulness of their individual role in the proceedings.
29. Name(s) of any member(s) of the party, who did not participate in the search proceedings or any person(s) who were simply present in or just visited the premises during such search, should not be recorded in the *Mahazar*.
30. Each signatory of the *Mahazar* including the witnesses, author, scribe, party leader, etc., should invariably sign with date, time, place of signing and record his full name, designation, postal address with PIN code, phone number, etc. in her / his own handwriting.
31. Serve a readable copy of the *Mahazar* on the person from whose possession the goods under seizure were recovered / who is the occupant of the premises searched. On service, obtain her / his signature with date, time and place of service and receipt. Wherever the *Mahazar* is prepared using computer and printer, in addition to the computer printout *Mahazar*, a read only CD / DVD thereof duly attested by the witnesses and the scribe on the label-side of the CD / DVD should necessarily be given to the person in-charge of the premises under acknowledgement.
32. Before the party exiting the premises, each member, and the witnesses, should offer themselves for personal search by the occupying the premises. This is required to prevent the theft of (i) any article from the premises and (ii) any document other than recovered through the *Mahazar*.
33. Don't verbally call / request / invite any occupant / in-charge / offender from the premises to a place outside or to the office of the search party, etc. If a person has to be necessarily secured and taken to the office, either issue a summons to him requiring his appearance at a later time / date or arrest him and take over. Simply stating later on, that on the verbal call / request / invitation of the party, the person came along with the party, that too in the vehicle of the search party kept surrounded by the officers, will prove that the whole story is concocted or fabricated.

34. While arresting the person, strictly follow all the guidelines of the Honorable Supreme Court laid down in the *DK Basu* case.¹
35. Please remember that arrest of a person starts at the moment his freedom is restrained by the LEO[s] and not when the LEO signs the Arrest Memo at a time the LEO is pleased.

Responsibilities of the *Mahazar* Witnesses: -

1. Come forward to be a witness to the search operation of a Law Enforcement Agency, whenever you are called upon to do so.
2. If you are a public servant and when you are on duty, and if a LEA / LEO calls upon you to function as a witness, always ensure that your superior only selects and deposes you as a witness and that too only through an 'on duty' deputation order so that you can claim TA / DA as also regularization of your absence. A verbal direction from your superior to this effect or a direct telephonic request to you from the LEA will never safeguard interests of your career.
3. On return to duty after functioning as a witness, submit a brief written report on file to your next superior officer, mentioning the place, date, starting and closing time of the operation, etc.
4. If you are public servant, you can never be a witness against a public servant in such capacity, i.e. you cannot be selected by any of your superior and assigned as witness. However, there is no bar if you are assigned to be witness in a proceedings against a person other than a public servant. Even though you are a public servant, during non-office hours you are a common man and you can be called upon to be a witness in any other proceedings by any LEA on their own and not through your office.
5. Reveal factual reasons, if any, for your inability to be present as a witness to the search.
6. Reveal to the LEOs all the relevant facts which may affect your status as to the local, respectable, inhabiting independent witness, *viz.*, your strangeness to the locality, your past criminal conduct, pendency of criminal cases against you, your friendly / inimical relationship with the occupant / person to be searched, pendency of civil disputes with the occupant / person to be searched, status of having been witness to many similar cases, status of being a stock witness to many similar cases, the likelihood and vulnerability of your official status before the searching LEA, the likelihood of the particular outcome of the case will make the LEA to work against you, your any other interests in the subject case, etc.
7. Offer yourself for personal search by the occupant of the premises, etc., before entry and exit.
8. Do not have any bias against either the LEA or the occupant.
9. Do not have any interests in the outcome of the case.

1 Supreme Court - *Shri D.K. Basu v. State of West Bengal* - on 18 December, 1996 - Writ Petition (Crl) No. 592 of 1987 - Bench: K Singh, Dr. Anand, JJ. - <http://indiankanoon.org/doc/501198/>

10. Be present together with other witnesses in the place of search only. Witness very meticulously as to what you are seeing and hearing.
11. Do not participate in any of the search activities except functioning as a witness.
12. Do not sign the *Mahazar* without reading it.
13. Do not simply sign the *Mahazar* without concurring with its contents.
14. Ensure that unlawful activity, if any, has taken place, during the search proceedings, is recorded in the *Mahazar* before you sign. If such unlawful activity has not already been recorded by the writer of *Mahazar*, you yourself record such activity in the *Mahazar* before you sign.
15. Remember that you may be summoned to the witness box during the trial of the case and if so reveal all the truth in the court.
16. Your stand to reveal the truth may sustain / destroy the case but will sustain the truth, justice and democracy, because conducting battles fairly in the courts is far better than any other form of violent battles elsewhere.
17. If you have simply signed the *Mahazar* without reading it or without concurring with it, it may destroy the life of innocent persons. Besides, a few black sheep in the LEA may exploit such situations for their personal benefits and get encouraged to foist case against anyone, including you and your near and dear ones later.
18. If you have already signed the *Mahazar* without witnessing the proceedings, or without reading it or without concurring with its contents and later on during the trial it is proved that you had signed the *Mahazar* against the truth, the affected person may take legal action against you, for falsification of records, etc. The probability for such eventualities is more in the modern information technology era of miniature audio / video recording devices, higher level of awareness among citizens, and a vibrant and activist judiciary.
19. Never meet, discuss and deal anything either with (i) the LEAs / LEOs who have made out the case or (ii) the aggrieved persons as it will affect your neutrality in the case. Remember that after signing the *Mahazar*, your next responsibility arrives only inside the court-hall only, as a witness.
20. Similarly do not discuss anything about the case with anyone else as long as the case is *sub judice*.
21. Last but not the least, always remember that you are a neutral person, not at all interested in the success or failure of the case. So don't allow yourself to be tutored by anybody as to what or what not to tell when called upon to give your testimony in the court. No expert guidance is necessary to tell the truth since at all the time, situations and circumstances, truth is constant. It is an unassailable truth that the only thing under the sun which doesn't change is truth and truth alone.

Appendix I: - Template - Suggested Cover Page of Mahazar @ Mahazarnama @ Panchnama

[To be pre-printed, to be kept ready in the stationery kit and to be filled up before starting the search]

- i. Name & designation of officer who called upon witness No.1 to attend and witness a search and approximate time of tendering the order to him. [s.100 (4) & (8) Code of Criminal Procedure 1973]
- ii. Name & designation of officer who called upon witness No.2 and approximate time of tendering the order to him. [s.100 (4) & (8) CrPC 1973]
- iii. Name and address of the persons called upon to witness the search
- iv. Date and Time of search – From To
- v. Time & date of commencement of writing the *Mahazar*.
- vi. Name of occupant /owner of Premises and Full postal address
- vii. Details of Warrant issued [if any]
- viii. Law [Authority] which empowers the search and purpose of search as mentioned in the information.
- ix. Leader of the party: Name, designation & office address in full along with official email id, if any for contact.
- x. Name and designation of each official of the team.
- xi. Whether preliminary statement to verify the veracity of the information / intelligence, if any, recorded from the person in charge of the premises? If so, whether it resulted in the recovery of the contraband?
- xii. Exact spot where the *Mahazar* is prepared:
(In case place of interception is different from place of seizure, reasons therefor.)¹
- xiii. Name[s] of one or more persons – with relationship, present in the premises / vehicle at the time of entry of officials.
- xiv. Name & designation of the Author and Scribe, if any:
- xv. Whether the offer to be searched made to the person in charge of the premises / vehicle before starting of the operation and result there of?
- xvi. Identifying details of specified office machinery / test kit etc. used in the proceedings – Make, Model, Sl. No. etc.
Computer
Printer
Photo / Audio / video
Test kit / forensic
Any other

1 Panchnama – a brief treatment By: Arvind Kumar Sharma – Published in the website of National Academy of Customs, Excise and Narcotics, Faridabad. <http://www.nacen.gov.in/detailsarticle.asp?aid=63>

NB: We have highlighted portions in citation / references by making them bold or underlined.

Appendix II: - Template - Suggested body of Mahazar

Mahazar for search / seizure of

[To be prepared immediately on completion of the search]

I... (Name and designation) having been issued with a warrant to search the above mentioned residential / office / business premises *vide* (Search Warrant reference No. and Date). The Cover Page to this *Mahazar* may be read as part and parcel of this document. I led a team of officials named in the cover page to this document, along with the witnesses who were called upon to witness the search and came to this premises at about . . . hrs. I showed the warrant of authorization to Shri occupant of the premises / vehicle which has been duly signed and sealed by the issuing authority *viz.* Shri ... (name and designation). I record briefly the chronological events in respect of the search / seizure proceedings as follows:-

I, (Name & designation) showed the warrant to Shri (Occupant of the premises) and obtained signature therein for having seen the same. Well before starting the search, I and S/Shri ... who were assigned duties to search and the witnesses offered ourselves to be searched by Shri [name of the occupant of the premises] for anything which might incriminate the occupant of the premises / vehicle which offer Shri . . . politely declined.

As assigned by me, Shri was posted at the entrance, Shri ... was posted at the exit and S/Shri searched the premises in the immediate presence of both the witnesses above named. I supervised the proceedings and functioned as an 'evidence collector of contraband goods and documents'. Shri ... maintained the log of chronological events as 'recorder of log. The officers conducted the search one room after the other. As a result of the search, Shri . . . recovered (details of MO) found at and Shri recovered (details of MO) found at

I informed to the person in charge of the premises that these items are liable to confiscation under the provisions of the . . . Act and hence I hereby affect seizure under this Mahazar and have taken possession thereof for taking further action.

Immediately on completion of the search I and S/Shri ... who were assigned duties to search and the witnesses offered ourselves to be searched by Shri [name of the occupant of the premises] to rule out that nothing other than recorded in the Mahazar @ Mahazarnama @ panchnama are taken away from the premises, which offer Shri . . . politely declined. Neither any inconvenience to persons nor any damage to property was caused during the search. The search operation was completed at Hours and this Mahazar is written on the spot from Hrs (commencement of writing the Mahazar) to Hrs. (completion of writing the Mahazar). The Mahazar has been read aloud to the hearing of the witnesses to this Mahazar, occupants of the premises / vehicle, and the officials present on the spot and concurred by the witnesses as correctly written.



About the Author



The Author is a former Indian Revenue Service (Customs & Central Excise) Officer - an upright and extremely effective law enforcement officer on account of his commitment to implicitly enforce the written law for more than three decades. While in service, many hated him with love for his absolute obedience to the law – to enforce law lawfully alone.

He surpassed his mentors who were legal luminaries, through his implicit submission to them, all the while observing and absorbing their strength of selfless leadership – who always worked well within the framework of law. In turn, those who were / are being guided by the author, do still more impressive work as effective instruments of change, due to their spectacular capabilities.

The author was more into anti-evasion and anti-smuggling work for major part of his service. He has led teams in the Directorate of Intelligence, Customs / Central Excise / Service Tax Commissionerates, Customs Preventive Divisions and Circle offices. He was known in the underworld as 'Karthar' taking cue from his often uttered phrase 'kartharukku chiththamaanaal' [meaning 'If it is the Lord's will']. The matchless anti-smuggling performance of the teams lead by him at different stations, earned him a unique name which is remembered by one or the other in the scene of almost every anti-smuggling operation in the Tamil Nadu coast. The teams physically led by him detected number of major cases and set benchmark in detection and investigation work – 66.1 Kg. (plus 374 kgs. of opium on follow up) and another 58.4Kg of very high purity Brown Sugar – all time big single narcotics seizures in the southern part of India where the entire gangs were brought to book. The author had also performed excellent work in adjudication, writ, prosecution, appeal and review of adjudication and appeal orders.

Declaration of Proper Officer for each every section of the Customs Act, 1962 [Notification No. 40/2012-Customs (N.T.) dated 02-05-2012 issued by the Central Board of Customs and Excise, New Delhi] and amendment of Section 3 of the Customs Act, 1962 are fruits of his relentless efforts in taking up grievances in the interest of good governance. The Department of Consumer Welfare, Government of India has forwarded to all their zonal officers the grievance of customs officials unlawfully allowing the importers to paste MRP labels on imported packages after their arrival in India as against the legal requirement to print MRP details which are strictly implemented in respect of consumer goods manufactured in India.

The author has the following perception of 'democracy':-

- Legislators enact law to rule.
- Bureaucrats are left with no choice but to execute the law in its entirety.
- Not enforcing any law in force might tantamount to committing a crime.
- Disputes, if any, from any quarter are to be brought before the judiciary to render justice.
- Justice begets peace which in turn brings prosperity to the nation.

His official creed is: - **"My every deed is a seed sown and I will reap a manifold harvest in due time – good or bad depending upon what I have sown"** - a truth loftier than Sir Isaac Newton's third Law of Motion that for every action there is an equal (in magnitude) but opposite (in direction) reaction.

Please be encouraged that the change for the good of the nation is just around the corner.

Peace and Prosperity through Justice - **Enforce Law Lawfully**

We assist executives to enforce law lawfully.

We help citizens to stand in support of law enforcement, law making and in dispensing justice.

On request, the Author would counsel those who encounter hurdles in performing official duties lawfully.