



Section 132 of the Income Tax Act,1961

For Prelims: [Fundamental Rights](#), [Income-Tax Act,1961](#), [Supreme Court](#), [Right to Privacy](#), **Wednesbury principle**, **Doctrine of Proportionality**.

For Mains: Puttaswamy judgment and subsequent changes in the understanding of personal liberties, Balancing law enforcement needs with individual rights.

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Why in News?

The landmark judgment in [Justice K.S. Puttaswamy vs Union of India, 2017](#) declared the **fundamental right to privacy**. However, concerns have emerged regarding the extra-constitutional powers granted by **Section 132 of the Income-Tax Act,1961** in India as they seem to violate the **fundamental rights** of the citizens.

What is Section 132 of the Income Tax Act,1961?

- The section was **introduced in 1961, as part of Income Tax Act,1961**, to replace the **Taxation on Income (Investigation Commission) Act, 1947**, which was struck down by the [Supreme Court](#) in [Suraj Mall Mohta vs A.V. Visvanatha Sastri \(1954\)](#) on the ground that it treated a certain class of assesses differently from others, thereby **violating the guarantee of equal treatment** contained in [Article 14 of the Constitution](#).
 - The original income-tax law in 1922 lacked search and seizure powers.
- Section 132 of the Income-Tax Act, 1961, empowers the **tax authorities to conduct searches and seizures** of persons and properties, **without any prior judicial warrant**, if they have a **“reason to believe”** that the person has concealed or evaded income.
 - It grants authorities the power to search buildings, places, vehicles, or aircraft based on suspicion of hiding financial assets.
 - It allows for the seizure of books of account, money, bullion, jewellery, or other valuable items discovered **during the search**. Additionally, tax officials can seize such items found in the possession of any person during a search or survey under the Act.

Case Related to Section 132 of the Income Tax Act,1961

- **Pooran Mal vs Director of Inspection (1973):**
 - The constitutionality of this provision was challenged in the **case of Pooran Mal vs Director of Inspection (1973)**.
 - The Supreme Court **upheld the law, citing its own judgment in M.P. Sharma vs Satish Chandra(1954)** by emphasizing that the **power of search and seizure is essential for the protection of social security** and is regulated by law.
 - The court also noted that the **Constitution does not recognize a fundamental right to privacy** similar to the **American Fourth Amendment** about searches

and seizures.

- The American Fourth Amendment **protects against unreasonable searches and seizures** by the government.
- It was concluded that statutory provisions for searches do not defeat the **constitutional protection under Article 20(3)**.
- The judgment in M.P. Sharma was concerned with **searches under the Code of Criminal Procedure**, while searches under the **Income-Tax Act do not require a judicial licence**.
 - The Court's reading of the law has since changed, with M.P. Sharma being formally overruled. The **right to privacy is now considered intrinsic to the right to personal liberty guaranteed by Article 21 of the Constitution**.

What are the Challenges Regarding Section 132 of the Income Tax Act, 1961?

▪ Breach of the Proportionality Principle:

- Section 132 of the Income-Tax Act, despite not being formally challenged, suggests a potential breach of the doctrine of proportionality principle.
 - The state's power to search and seize is no longer viewed as a simple tool of social security but is subject to the **doctrine of proportionality**. This means that its use must be **intended for a legitimate aim, rationally connected to its objective**, with no alternative less intrusive means available, and a balance struck between the means chosen and the right that is violated.
 - The Supreme Court in the case of **Principal Director of Income Tax vs Laljibhai Kanjibhai Mandalia, 2022** revealed a reliance on the "**Wednesbury**" principle, a standard of administrative review derived from a UK court judgment, treating **search opinions as administrative, not judicial**.
 - Wednesbury principle states that if a decision is so unreasonable that no sensible authority could ever take it, such **decisions are liable to be quashed through judicial review**.
 - Critics argue that **Post-Puttaswamy**, there should be **no place for the Wednesbury rule**, especially **when fundamental rights are at stake**, and that any executive action must conform to statutory law in the strictest sense possible.

▪ Violation of the Right to Privacy:

- The right to privacy, a **fundamental right under Article 21 of the Indian Constitution**, includes protection from unreasonable searches and seizures, as well as confidentiality of personal information.
- Income Tax searches, however, **intrude on individuals' privacy without consent**, often based on vague grounds, leading to potential abuse.
- Additionally, there is a lack of adequate safeguards and oversight mechanisms to prevent misuse and protect the rights of the individuals subjected to I-T searches.
 - The absence of stringent safeguards exposes individuals to potential misuse of power by tax authorities.

▪ Duration and Conditions of Searches:

- The Gujarat High Court's questioning of a raid where individuals were **allegedly kept in virtual detention for days** without proper safeguards highlights concerns about the duration and conditions of such searches.

Way Forward

- Enhance the role of the **judiciary in reviewing the application of Section 132**, moving away from the Wednesbury principle and adopting a more rigorous scrutiny standard to assess the proportionality of executive actions.
- Establish an independent oversight mechanism or **ombudsman with the authority to investigate complaints**, ensure accountability, and recommend corrective measures in cases of potential misuse of powers.
- IT searches should also be limited in terms of the duration, and extent of the searches.

UPSC Civil Services Examination Previous Year Question (PYQ)

Prelims

Q. 'Right to Privacy' is protected under which Article of the Constitution of India? (2021)

- (a) Article 15
- (b) Article 19
- (c) Article 21
- (d) Article 29

Ans: (c)

Q2. Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty. Which of the following in the Constitution of India correctly and appropriately imply the above statement? (2018)

- (a) Article 14 and the provisions under the 42nd Amendment to the Constitution.
- (b) Article 17 and the Directive Principles of State Policy in Part IV.
- (c) Article 21 and the freedoms guaranteed in Part III.
- (d) Article 24 and the provisions under the 44th Amendment to the Constitution.

Ans: (c)

Mains

Q.1 Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. **(2017)**

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