

The legality of stop and frisk practices

Stop-and-frisk practices represent one of the most controversial aspects of policing in the modern world. At their core, these practices permit law enforcement officers to temporarily stop, question, and frisk individuals on the street when there is a reasonable suspicion that the person may be engaged in criminal activity and may be armed or in possession of contraband. The concept is rooted in balancing public safety with constitutional protections against arbitrary state action. Globally, the debate surrounding stop-and-frisk has highlighted the tension between crime prevention and the protection of individual liberties, with legal systems attempting to delineate the fine line between legitimate policing and unconstitutional intrusion.

In its briefest definition, stop-and-frisk refers to the power of police to stop individuals based on reasonable suspicion, conduct limited questioning, and pat them down for weapons or contraband if there is a perceived threat. Unlike full arrests or searches requiring probable cause, this practice rests on the lower threshold of reasonable suspicion. The doctrine was crystallized in the United States in the landmark case *Terry v. Ohio* (1968), where the U.S. Supreme Court ruled that officers may conduct a limited frisk for weapons when they reasonably suspect that a person is involved in criminal activity and poses a danger. This case gave birth to what became widely known as Terry stops, a judicially sanctioned compromise between police efficiency and Fourth Amendment protections against unreasonable searches and seizures. Over the decades, the doctrine evolved in the United States through subsequent cases and policing practices, culminating in widespread application in cities like New York, where it became a cornerstone of proactive policing strategies during the 1990s and early 2000s.

The advantages of stop-and-frisk are framed around public safety. Law enforcement advocates argue that such practices serve as deterrents to street-level crime, reduce gun violence by allowing officers to seize illegal weapons, and provide a flexible tool to address suspicious behavior without requiring the higher threshold of probable cause. In high-crime neighborhoods, police often justify stop-and-frisk as essential to protect vulnerable communities from gang violence and narcotics trafficking. Proponents also claim that it allows for quicker interventions, potentially preventing crimes before they occur. These arguments mirror broader criminal justice approaches that prioritize deterrence and incapacitation as preventive mechanisms.

Yet, stop-and-frisk practices are riddled with loopholes and criticisms that undermine their legitimacy. The most significant concern lies in the ambiguous standard of “reasonable suspicion,” which is susceptible to subjective interpretation and misuse. Studies in the United States, particularly in New York City, revealed that a disproportionately large number of stops

targeted racial minorities, particularly African Americans and Latinos, raising concerns about racial profiling and systemic bias. Data showed that the overwhelming majority of those stopped were innocent of any wrongdoing, suggesting that the practice resulted in unnecessary humiliation, mistrust, and alienation between communities and law enforcement. Moreover, critics argue that such practices can morph into fishing expeditions, where vague suspicion is used as a pretext to harass individuals or conduct intrusive searches. Legal experts have highlighted that such systemic overreach effectively erodes the constitutional safeguards meant to protect citizens from arbitrary state power.

Landmark cases have shaped the trajectory of stop-and-frisk globally, especially in the United States. The foundational *Terry v. Ohio* case legitimized the practice but emphasized its narrow scope. Subsequent cases such as *Illinois v. Wardlow* (2000) expanded the boundaries by allowing flight in high-crime areas to constitute reasonable suspicion, further empowering police discretion. However, in the New York case of *Floyd v. City of New York* (2013), a federal court ruled that the city's stop-and-frisk program was unconstitutional because it violated the Fourth and Fourteenth Amendments through systemic racial discrimination. The decision underscored that while Terry stops are lawful in principle, their large-scale application must conform to constitutional protections. This ruling forced the city to reform its practices and triggered global discussions on the compatibility of stop-and-frisk with democratic values.

In the Indian context, the parallel is not a direct replication of stop-and-frisk as institutionalized in the United States but arises through a combination of police powers under the Code of Criminal Procedure (CrPC), preventive detention laws, habitual offender legislation, and laws prescribing mandatory minimum punishments. Section 151 of the CrPC empowers police officers to arrest individuals without a warrant to prevent the commission of cognizable offenses. Section 41 similarly allows police to arrest without a warrant when they suspect a person is involved in a cognizable crime. In practice, these provisions often translate into police stops and interrogations based on suspicion, creating an environment that resembles the stop-and-frisk model. Moreover, state-level habitual offender laws, such as those in Punjab and Haryana, empower police to surveil and control individuals with prior criminal records, often leading to repeated stops, checks, and harassment. These mechanisms are justified on grounds of preventive policing but have drawn criticism for excessive police discretion and potential misuse against marginalized communities.

The intersection of stop-and-frisk-type powers with mandatory minimum punishment regimes in India, particularly under the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) and sexual violence laws, further complicates the picture. Since mandatory punishments leave no scope for judicial leniency, the threshold for suspicion leading to arrest becomes crucial. For instance, if a person is stopped on suspicion of carrying narcotics, a subsequent conviction almost certainly carries a mandatory minimum sentence, magnifying the consequences of what may have been a questionable stop. Legal scholars in India have argued that this interaction between discretionary police powers and rigid sentencing frameworks

creates a disproportionate system where individuals, often from disadvantaged backgrounds, bear the brunt of state authority.

Landmark Indian cases illustrate the judiciary's attempts to regulate these practices. In *Joginder Kumar v. State of Uttar Pradesh* (1994), the Supreme Court held that arrests cannot be made routinely or arbitrarily; police must justify the necessity of an arrest based on specific facts. This principle resonates with the concerns raised against stop-and-frisk in other jurisdictions. In *State of Punjab v. Baldev Singh* (1999), the Court underscored procedural safeguards under the NDPS Act, emphasizing that rights of the accused must be upheld despite the statute's rigidity. More recently, in *Arnesh Kumar v. State of Bihar* (2014), the Court sought to curb the misuse of arrest powers under Section 498A of the IPC by requiring police officers to follow guidelines and avoid unnecessary arrests. These cases collectively demonstrate the Indian judiciary's awareness of the dangers inherent in unchecked police discretion, akin to global critiques of stop-and-frisk.

The effectiveness of stop-and-frisk as a policing tool remains contested both globally and in India. In New York, defenders pointed to declining crime rates in the 1990s and 2000s, but subsequent research revealed that crime reduction trends persisted even after the practice was curtailed, suggesting that stop-and-frisk was not the decisive factor. In India, reliance on preventive detention, suspicion-based arrests, and habitual offender surveillance has not demonstrably reduced crime but has often led to overburdened courts, overcrowded prisons, and deepened mistrust of law enforcement among vulnerable groups. The absence of systematic empirical studies on the Indian scenario makes it difficult to measure effectiveness, but anecdotal evidence and rights-based critiques suggest that such practices often cause more harm than good by eroding the legitimacy of the police.

The evolution of stop-and-frisk practices globally reflects an ongoing struggle to balance state interests in crime prevention with constitutional values of liberty, dignity, and equality. In the United States, the doctrine evolved from the carefully crafted limits in *Terry* to widespread application in urban centers, before being curtailed by judicial scrutiny in *Floyd*. In Europe, stop-and-search powers exist but are circumscribed by stricter human rights frameworks, particularly under the European Convention on Human Rights, which demands proportionality and necessity. In India, the evolution has been less linear, shaped by colonial legacies of preventive policing, statutory expansions in the post-independence period, and judicial interventions seeking to place limits on police discretion. The persistence of habitual offender laws and rigid punishment regimes suggests an enduring reliance on deterrence and incapacitation rather than rehabilitative strategies.

The way forward requires recalibration of stop-and-frisk-type practices to align with democratic and constitutional norms. Globally, this entails narrowing the definition of reasonable suspicion, ensuring robust accountability mechanisms, and collecting transparent data to monitor the impact of such practices on different communities. In the United States, continued judicial oversight and community policing models may help restore trust. In Europe,

proportionality remains the guiding principle, demonstrating that public safety can coexist with individual rights when practices are tightly regulated. For India, the path forward lies in reducing reliance on arbitrary preventive powers, reforming habitual offender legislation, and reevaluating mandatory minimum punishments to restore judicial discretion. Training police officers in constitutional values, embedding technology-driven oversight such as body cameras, and fostering community participation in policing can mitigate misuse while maintaining public safety.

Ultimately, stop-and-frisk and its Indian counterparts reflect the enduring challenge of criminal justice systems: balancing security with liberty. The global trajectory shows that unchecked discretion inevitably breeds abuse and mistrust, while rigid punishments often compound injustice. A nuanced approach that prioritizes constitutional safeguards, judicial oversight, and evidence-based policing offers the most sustainable way forward. Both the United States and India must continue to learn from their own histories and from comparative jurisdictions, recognizing that the legitimacy of law enforcement rests not merely on its ability to reduce crime but on its capacity to uphold justice, fairness, and dignity for all citizens.

Legal Experts' Opinions on Stop-and-Frisk and Its Indian Parallels

Legal scholars across jurisdictions have voiced strong opinions on the constitutionality, fairness, and effectiveness of stop-and-frisk practices. In the United States, academics like David Rudovsky have criticized stop-and-frisk for enabling systemic racial profiling under the guise of “reasonable suspicion,” arguing that the vagueness of the standard essentially grants police unchecked discretion. Yale Law professor Tracey Meares has similarly emphasized that the practice corrodes community trust in law enforcement, thereby undermining long-term public safety even if it produces short-term deterrence. Scholars such as Jeffrey Fagan, who analyzed New York’s data on stop-and-frisk, demonstrated that the overwhelming majority of stops yielded no contraband, proving that the practice functioned more as a symbolic display of authority than an effective crime control mechanism. From this perspective, many legal experts contend that stop-and-frisk is constitutionally permissible only when tightly constrained, but dangerous when expanded into a generalized tool of urban policing.

Indian legal experts frame the issue differently but highlight parallel risks. Justice V.R. Krishna Iyer, in his writings, long cautioned against preventive detention laws and arbitrary police powers, warning that they represent a “colonial hangover” incompatible with constitutional democracy. Scholars like Ujjwal Kumar Singh have argued that India’s habitual offender laws, though justified on grounds of preventive policing, effectively criminalize identity rather than conduct, leading to disproportionate targeting of marginalized communities such as Dalits, Adivasis, and urban poor. Regarding mandatory minimum sentences under the NDPS Act, senior advocate Anand Grover has observed that these laws often compound injustices by removing judicial discretion, thereby tying judges’ hands in cases where rehabilitation or proportionality might be more appropriate. Legal experts such as Prof. Upendra Baxi have gone further to argue that suspicion-driven practices and rigid sentencing frameworks

combine to create a system of “pre-emptive criminalization,” where individuals are punished for who they are rather than what they have done.

Comparative criminal law scholars have drawn attention to how Indian laws replicate many of the same criticisms leveled against U.S. stop-and-frisk. While the U.S. struggle centers on racial profiling, in India, the problem often manifests through caste, class, and community profiling, reinforced by preventive detention and habitual offender registers. Scholars like Pratiksha Baxi have noted how such practices disproportionately impact vulnerable populations, raising concerns about substantive equality under Articles 14 and 21 of the Constitution. Moreover, Indian commentators frequently highlight the incompatibility of mandatory punishments with the Supreme Court’s evolving jurisprudence on proportionality, especially after cases like *Mithu v. State of Punjab* (1983), which struck down mandatory death sentences as unconstitutional.

Despite their critiques, some legal experts recognize potential advantages if such practices are strictly regulated. In the U.S., Orin Kerr notes that Terry stops, when narrowly applied, can allow officers to intervene in dangerous situations without full probable cause, potentially saving lives. Similarly, in India, some criminologists argue that habitual offender surveillance could theoretically deter repeat crime if coupled with rehabilitation programs. However, even these cautious defenders emphasize the need for safeguards: clear statutory limits, transparent oversight, data-driven evaluation, and robust judicial review.

The consensus among most legal experts, both in the United States and India, is that stop-and-frisk-type practices and rigid punishment regimes are prone to overreach unless embedded within a constitutional framework that prioritizes human dignity, equality, and proportionality. Scholars argue that the way forward must be guided by evidence rather than fear-driven policies, and that reforms must empower courts to check executive discretion while embedding accountability into everyday policing.