“The Doctrine of Fruits of Poisonous Tree and its Relevance in Indian Justice System”

By: Pavan Kasturi (4th Year, University College of Law, Osmania University)

& Vinisha Kaveti (3rd Year, University College of Law, Osmania University)
ABSTRACT:

The Principle of Poison Tree or the term “fruit of the Poisonous Tree” is very similar to the exclusionary rule of evidence law. Assume a scenario that you are accused of the crime of stealing the Content of a story in an unpublished book by taking pictures of that content through your phone and publishing it. The police asked you to give the fingerprints for unlocking the phone, and you refused to give, as it violates the principle of privacy and your fundamental rights enshrined in Article 20, but police not turning their thumbs down obtained your fingerprints through deception practised on you to collect evidence and later found the pictures of the content in your phone. Another scenario could be where your phone conversation was recorded by a third party without your knowledge and then used against you, such recordings in court cases in the recent past has increased enormously. Clearly, the safeguards which should be followed so as to ensure your right to privacy have been violated here and you can be charged for the offence since there is evidence against you. But would the evidence seized still be admissible in the court of law is a cardinal question to ask. Is it true that even when your rights are jeopardised to obtain evidence it is still admissible in the court of law?

In this article, an attempt has been made to comprehend the evolution of the jurisprudence of this principle, limitations and perils of admitting ‘illegally obtained evidence and the viewpoint which promotes the non-application of this doctrine. Finally, considering the new data protection bill, any possible changes to the existing scenario is considered and a way forward is proposed at the end of this article for the Indian criminal justice system.

KEYWORDS:

Illegal, Inadmissible, Telephone tapping, Fruits of Poisonous tree, Article 20, Miranda Rule, Privacy.
**INTRODUCTION:**

The doctrine of fruits of the poisonous tree was coined by Justice Felix Frankfurter of the United States Supreme court as part of the exclusionary rule of evidence\(^1\). The legislative intent behind this doctrine is if the source (tree) of evidence or the evidence itself is tainted anything gained (fruit) from it is also tainted. It was postulated that illegally procured evidence becomes inadmissible in the court of law. According to the Fourth Amendment\(^2\), which was part of the Bill of Rights, a police officer cannot search a person or his house without probable cause or a legally obtained search warrant\(^3\).

“The public interest demands not only that the guilty are brought to conviction, but also that they are brought to conviction in a civilised and publicly acceptable manner.”\(^4\)

There are various ways in which evidence can be obtained illegally. Such as Phone-tapping/recording, collecting evidence without accused knowledge, unwarranted search and seizure, recording using secret cameras etc. The exclusionary rule is consequently designed to deter or to require respect for constitutional security in the only efficiently available way by removing the reason to disregard it. These kinds of evidence are excluded by the courts at the time of trial and the State is prohibited from using the same as evidence during the trial.

However, the courts have later realised that the indiscriminate application of the exclusionary principle can lead to an imbalance in the administration of justice. As such there is nothing in the Indian Evidence Act\(^5\), forbidding the courts from looking into illicitly obtained Evidence. The Courts in India have time and again held that illegally or improperly obtained evidence is not per se inadmissible. In the confessions part, Section 29 of the Indian Evidence act specifically mentions this. The courts have also held that the only test for admissibility of evidence is the test of relevancy and no other. But as Montesquieu said, “there is no crueller tyranny than that which is perpetuated under the shield of law and in the name of justice”. Non-application of this principle can have serious effects on our Criminal system especially when our constitution is marching towards the ideals like Privacy and Liberty.

**DILEMMA ON EXCLUSIONARY RULE**

\(^1\) Fruit of the Poisonous Tree, Cornell Law School, LII, https://www.law.cornell.edu/wex/fruit_of_the_poisonous_tree, (Last accessed: 20 May 2021)
\(^2\) United States Constitution, Amendment IV, (1791).
\(^5\) Indian Evidence Act, 1872.
The State could easily bulldoze its will upon the citizens through its malicious attempts to find a quick solution this could risk the principle of the presumption of innocence and can lead to no rule of law. The exclusionary rule enables citizens to protect their private property, family, and homes from unauthorized scrutiny by the government. The exclusionary rule prevents any evidence from being planted and falsification of evidence documents. Hence one of the principles of fair trial can be achieved through this.

On the other hand, it prevents evidence against the criminals from being used in court so long as the evidence was acquired illegally. The process for a warrant allows enough time for the guilty party to hide or tamper with evidence. This brings a delay in the criminal justice system.

But it is crystal clear that this rule serves its purpose through preserving and protecting human rights and our constitutional ideals. This is much needed in a country like India where police abuse and power misuse in the investigation can be seen too often.

**JURISPRUDENCE ON THE ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE:**

The doctrine was first used in the case of *Nardone v. the United States*⁶, the court has ruled that evidence obtained via warrantless wiretaps, in violation of the communications act of 1934, was inadmissible in federal court. There were contradictory judgements with regard to the exclusionary principle until the case of *Mapp v. Ohio*⁷, in which the Supreme Court has held that under the “due process” clause, evidence found by a search and seizure in violation of the fourth amendment is inadmissible in the court of law. Further, this concept of the fruit of the poisonous tree was comprehensively developed in *Wong Sun v. the United States*⁸

**Facts:** Prosecution introduced narcotics into evidence against the defendant. It comes to the knowledge of the federal officers about the drugs from a witness, who was illegally arrested and detained.

The Supreme Court held that everything the officers discovered as a result of the illegal arrest was a fruit of the poisonous tree, not just the statement itself. Justice Brennan observed that illegally obtained evidence is not sacred or inaccessible when the government learns of it from a source separate and distinct from its own illegal activity. Although initially this

---

doctrine was only applied to criminal proceedings it is now being applied in civil cases as well.

In the year 1966, an important Supreme Court Judgement *Miranda v. Arizona* the jurisprudence was further developed.

Facts: Ernesto Miranda was a 24-year-old high school drop-out, he was accused of kidnapping, raping and robbing an 18-year-old woman. Miranda was then questioned for two hours without a lawyer, his confession to the police officer was used as sole evidence when he was tried and convicted for the crimes by an Arizona court. On an appeal to the Supreme Court, under Chief Justice Earl Warren, with a 5-4 ruling, the Court reversed the Arizona Courts decision and declared that Miranda’s confession could not be used as evidence in a criminal trial.

The U.S Supreme Court has in this case held that when a defendant is taken into custody and subject to questioning his privilege against self-incrimination is at risk. To protect this privilege invoked under the fifth constitutional amendment the following safeguards should be enforced

1. The defendant should be warned that anything that he says can be used against him in the court of law and that he has a right to remain silent.
2. That he has the right to have an attorney to represent.
3. In case he cannot afford one can be appointed to him if he so desires.

In *Nix v Williams*, the court introduced an exception called 'Inevitable Discovery' where in due time the police officials would have recovered the evidence despite the illegality; rendering the violation inconsequential.

**THE SCENARIO IN INDIAN COURTS**

The doctrine of “fruits of the poisonous tree” had no applicability in Indian jurisprudence. The Indian Evidence Act, 1872 does not bar the admissibility of illegally procured evidence. Although there are no statutory or constitutional prohibitions that render such evidence inadmissible, the recognition of the right to privacy as a fundamental right under Article 21 of the Indian Constitution has created a conflict with regard to the position of admissibility of

---

illegally acquired evidence. Therefore the position of the law is better understood when
analysed before and after the recognition of the Right to Privacy.

**BEFORE THE RECOGNITION OF THE RIGHT TO PRIVACY**

The exclusionary rule was never upheld by the Indian courts before the Right to Privacy
came into effect. The Indian Courts have time and again held that the relevancy of evidence
is at a higher pedestal when the question of admissibility arises and not its source.

In *Kuruma v. The Queen*, the Privy Council held that: “The test to be applied in considering
whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is
admissible and the Court is not concerned with how the evidence was obtained”.

In an earlier decision in *Magraj Patodia v. R K Birla*, the Supreme Court held that the fact
that a document was procured by illegal means will not bar its admissibility if it is relevant
otherwise. In *Poorna Mal v. Director of the inspection*, which related to evasion of tax, the
books of accounts have been seized illegally. The primary question before the Apex court
was with regard to the admissibility of evidence that was said to be vitiated. The Court has
held that “*unless there is an express or necessary implied prohibition in the constitution or
other law, evidence obtained as a result of illegal search or seizures is not liable to be shut
out*”.

In fact, the court has also held that neither by invoking the spirit of our constitution nor by a
strained construction of any of the fundamental rights can we spell out the exclusion of
evidence obtained on an illegal search.

In the famous case, *R.M. Malkani v. the State of Maharashtra*, the court held evidence in
the form of tape-recorded evidence of a telephonic conversation without the consent of the
accused was admissible and the illegality in gathering such evidence did not affect its
admissibility. The said criteria with respect to the admissibility of voice recordings were
thereafter crystallized in another decision of the Supreme Court of India. In Afzal Guru’s
case, court relied on R.M Malkani while dealing with the question of admissibility of an

---

12 AIR 1971 SC 1295.
13 1974 AIR 348.
17 State v. Navjot Sandhu @ Afzal Guru, 2005 Cri LJ 3950.
illegally intercepted telephone conversation and stated that the question was no longer res

intra.

In the case of Umesh Kumar v state of A.P\(^{19}\), the court held that even if a document is

procured through unlawful means, its admissibility would be not barred, if it is relevant and
genuine. This clearly indicates that the rationale behind such a ruling is that the relevancy is

on a higher pedestal than the source of procurement. Further, it was opined “in a criminal
case if the strict rules of admissibility would operate unfairly against the accused.” However,
the word “unfairly” is subjective and courts should exercise their discretion in disallowing
evidence.

**AFTER THE RECOGNITION OF THE RIGHT TO PRIVACY :**

The development in the scope of the right to privacy has been very intriguing. But the
recognition of the Right to Privacy as part of the fundamental right did not alter the position
of the doctrine and its applicability. Since no statute can contradict the fundamental rights
enshrined by the Indian Constitution, the concept of Relevancy under section 5 of the Indian
Evidence Act\(^{20}\) has to be now read along with Article 20(3) (Right against Self Incrimination)
and Article 21 (Right to life). But these are enforceable against the State subject to reasonable
restrictions.

The premise that the right to privacy is not envisaged in the Constitution as held in older
precedents like M.P. Sharma\(^{21}\) and Kharak Singh\(^{22}\) no longer hold the water. Even in *PUCL v Union of India*\(^{23}\), the Supreme Court recognized the right to privacy as a legal right and
directed the government to frame rules to safeguard the rights of citizens against unlawful
interception. In 1999, in *Baldev Singh v State of Punjab*,\(^{24}\) even the Apex court opined that
there is a dire need to enact a statute that prohibits all the illegally obtained evidence.

However, the fact remains that illegal evidence is admissible even though the Right to
Privacy has been recognised as a Fundamental Right by the Supreme Court in *Justice KS
Puttaswamy (retired) v. Union of India*\(^{25}\). Hence, no accountability for any violation

---

18 Supra 15.
20 Indian Evidence Act,1872.
23 AIR 1997 SC 568.
25 AIR 2017 SC 4161.
undertaken by the Police administration and the existing procedural safeguards are ineffective as they come with no consequences. The balance between the right to privacy and the conflicting principle of the admissibility of tainted evidence has to be struck. Understanding the Law Commissions recommendation in the form of Section 166A is pivotal in this instance.

94th LAW COMMISSION REPORT

In 1983, the 94th law commission has identified the pitfalls of not putting any bar on illegally procured evidence and the need to revamp the legislation to maintain the spirit of Article 21 of the Indian Constitution and hence suggested incorporating Section 166-A, in CHAPTER X of the Indian Evidence Act. It reads as follows:

“In a criminal proceeding, where it is shown that anything in evidence was obtained by illegal or improper means, the court, after considering the nature of the illegality or impropriety and all the circumstances under which the thing tendered was obtained, may refuse to admit it in evidence, if the court is of the opinion that because of the nature of illegal; or improper means by which it is obtained its admission would tend to bring the administration of justice into disrepute.”

If this section introduced to the act, then the judges would be the sole authority on the admissibility of evidence and since the ball is in the court of the judiciary this jurisprudence can be further developed as per the needs and prevailing situation.

However, these were never put into practice, and the doctrine's status quo remained unchanged, resulting in increased inefficiency in the administration of fair criminal justice and undermining Article 21’s intent. The increased abuse of human rights as a result of phone tapping, unlawful searches, and invasions of privacy necessitates a severe rethinking of the doctrine.

Interestingly, in 2019, the Bombay High Court in Vinit Kumar v. CBI\(^{26}\) set aside certain interception orders and directed the destruction of copies of the intercepted messages as directed interception of telephone calls were ultra vires of Section 5(2) of the Telegraph Act, 1885. The court outlined the ambit of the State’s power on its subjects particularly on matters that do not fall within the category of ‘public emergency’ or ‘in the interest of public

\(^{26}\) 2019 SCC OnLine Bom 3155
Which were held by the Supreme court in Hukum Chand Shyam Lal v. Union of India. The Court also relied on the test of “Principles of proportionality and legitimacy” as laid down by nine judges’ constitutional bench in K.S. Puttaswamy case.

**DATA PROTECTION BILL:**

In the Puttaswamy case, the Apex court there directs the Union Government to examine bringing a robust regime for data protection, balancing individual interests and legitimate State concerns. The Government responded by setting up a Committee of Experts headed by Justice B.N. Sri Krishna to study various issues relating to data protection in India and suggest a draft Data Protection Bill.

In September 2019, the MeitY also set up an expert committee to provide recommendations to develop a framework on this issue. But the Bill is silent on the aspect of illegally obtained evidence. Moreover, Section 42 exempts the State from complying with purpose/collection/data storage limitation; the surveillance data collected for one purpose can be stored for as long as necessary, as long as it is necessary and proportionate. Hence, the exemptions given to the State are much wider. Apart from this, the State is also exempt from data processing obligations under Section 43 which states: “in the interests of prevention, detection, investigation and prosecution of any offence or any other contravention of law”

**WAY FORWARD:**

Even though there is a great urgency to fill the gaping hole, various approaches which are in operation in different parts of the globe need to be considered. Even a new precedent on this issue in light of privacy judgment can advance jurisprudence.

---

28 AIR 1976 SC 789.
29 Supra 27.
30 Ministry of Electronics and Information Technology, Government of India.
32 Vrinda Bhandari and Renuka Sane, Protecting Citizens from the State Post Puttagswamy : Analysing the Privacy Implications of the Justice Srikrishna Committee Report and the Data Protection Bill, 2018., SCC Online, 14 Socio-Legal Rev. 143 (2018)
33 Ibid.
Nonetheless, the new data protection bill can somehow restrict the State in this aspect if any inclusions or amendments are suggested by the legislators for establishing regulatory mechanisms and imposing liability for the breach of required conditions for surveillance in the present bill. It is hoped that future modifications to the DPP Bill would bring clarity on the legality/criminality associated with the recording of telephone calls. A possible guideline could be the ‘one-party consent’ rule followed by the federal law of the United States\(^\text{34}\), which permits recording of a phone conversation if one party to the conversation (including the recording party) consents\(^\text{35}\). Hence it’s either in the hands of the Judiciary or legislative to take a prompt step.

\(^{34}\) 18 U.S.C. 2511(2)(d).


United States Constitution, Amendment IV, (1791).


Indian Evidence Act, 1872.


AIR 1971 SC 1295.

1974 AIR 348.


State v. Navjot Sandhu @ Afzal Guru, 2005 Cri LJ 3950.

Supra 15.


Indian Evidence Act,1872.


AIR 1997 SC 568.


AIR 2017 SC 4161.

2019 SCC OnLine Bom 3155


AIR 1976 SC 789.

Supra 27.

Ministry of Electronics and Information Technology, Government of India.


Vrinda Bhandari and Renuka Sane, Protecting Citizens from the State Post Pusttaswamy : Analysing the Privacy Implications of the Justice Srikrishna Committee Report and the Data Protection Bill, 2018., SCC Online, 14 Socio-Legal Rev. 143 (2018)

Ibid.
