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THE DOCTRINE OF FRUITS OF A POISONOUS TREE: A DETAIL STUDY OF PAST, PRESENT AND FUTURE SCOPE OF THE DOCTRINE IN THE INDIAN AND INTERNATIONAL LAWS

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Abstract

The doctrine of fruits of the poisonous tree is a foundational legal principle concerning evidence obtained through illegal means. It asserts that the tainted nature of unlawfully acquired evidence extends to any subsequent evidence derived from it, rendering it inadmissible in court. This metaphorical concept, likening the unlawful evidence to toxic fruit from a corrupted tree, vividly illustrates the enduring stain of illegality in legal proceedings. Despite its importance, India currently lacks explicit legislation addressing this doctrine, leaving a gap in the legal framework. The origins of this doctrine can be traced back to the exclusionary rule in evidence, which indirectly relates to Section 5 of the Indian Evidence Act. This section deals with the relevance of evidence in court proceedings, indirectly influencing the application of the doctrine. However, the absence of specific legislative provisions leaves room for interpretation and inconsistency in its application. To provide a comprehensive understanding, the research paper delves into the historical evolution of this principle, examining various judicial interpretations over time. Furthermore, it critically assesses the impact of privacy rights on the doctrine's application, considering the evolving landscape of privacy laws and their implications for evidentiary rules. In addition to analysing the domestic context, the research paper also investigates how other countries and international organizations perceive and manage this doctrine. By exploring comparative perspectives, valuable insights can be gained into potential best practices and areas for improvement. In conclusion, the paper advocates for the indispensability of this doctrine and calls for clearer judicial and legislative directives in India. By offering thorough insights and recommendations, the research aims to advance the discourse surrounding the doctrine of fruits of the poisonous tree, contributing to the development of a more robust and equitable legal framework.

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Introduction

The concept known as the "fruit of the poisonous tree" is akin to the exclusionary rule in evidence law. Although this doctrine is connected with exclusionary rule still it has wider scope. While exclusionary principle only exclude evidence obtained in violation of constitution provision, this doctrine excludes all types of illegally obtained evidence. It holds that evidence obtained through unlawful actions such as arrest, search, or seizure cannot be used in court. Courts exclude such evidence during trial, preventing the state from utilizing it. The evidence can be physical evidence, including drugs or weapons, and any information that was obtained from a suspect during a police interrogation under illegal way. This Doctrine simply means that if the means is corrupted/tainted then there is no use of outcome/result, in other words if the source(tree) is poisonous, it is inevitable the result(fruit) will also contain poison in it. An example illustrating this concept could involve a scenario where an individual is accused of recording private videos of someone, and the incriminating video is found on their phone by the police, who forcibly seize it. However, in the court of law, this evidence would be deemed inadmissible.

Some of the ways of collecting the illegal evidence are following: Phone tapping/recording, Forced narcoanalysis, Recording activities using secret camera, Illegal search and seizure.

Origin/History of the Doctrine

The doctrine Fruits of Poisonous Tree is origin in Anglo-American common law principle. In the criminal justice system of the United States, there's a legal metaphor known as the "fruit of the poisonous tree" doctrine. It prohibits the admission of evidence obtained through illegal arrests, seizures, or coercion. This principle was established in the case of *Boyd v. The United States* (1886), where the illegal confiscation of property was deemed a violation of the 4th and 5th amendments. The term "fruit of the poisonous tree" was coined by Justice Frankfurter in *Nardone v. the United States* (1939), where convictions were overturned because evidence obtained in violation of the Communications Act of 1934 was considered tainted, making the case against the accused based on that evidence invalid.

In India it's known as exclusionary principle. Although the phrase "fruit of the poisonous tree" originated in the late 19th century, in India, the concept of inadmissible evidence predates it and is rooted in the Evidence Act of 1872. This act contains provisions that mandate authorities to adhere to lawful procedures when obtaining evidence. Failure to comply with these procedures renders the evidence inadmissible in court.

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Indian Law And Commission.

Law

In India, there isn't a specific or codified provision addressing the admissibility of illegally obtained evidence. Prior to the Puttaswamy case, Indian jurisprudence encompassed both perspectives on this issue.

The provisions that contradict the emphasis on the relevance of evidence, particularly when it's illegally obtained, include the following:

- Article 21- The right to privacy protects an individual liberty and so the illegal way to obtain evidence.
- Section 5 of Evidence act- Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.
- Section 24 of Evidence act- A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or ¹promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.
- Section 25 of Evidence act- No confession made to a [police-officer] [As to statement made to a police officer investigating a case, see the Code of Criminal Procedure, 1973 (2 of 1974), Section 162.] shall be proved as against a person accused of any offence.
- Section 26- No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a [Magistrate] [*A Coroner has been declared to be a Magistrate for the purposes of this section, see the Coroners Act, 1871 (4 of 1871), Section 20.*], shall be proved as against such person.

Although the above-mentioned sections do not explicitly deal with the Doctrine of fruits of poisonous tree still by various judgements and court statement these sections became relevant in dealing with cases related to illegally obtained evidence.

Commission

The 94th Law Commission Report, 1983 headed by justice K.K Mathew examined the provisions of the Indian Evidence Act concerning wrongfully obtained evidence from a human rights standpoint. It

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analysed these provisions in light of the expansive scope of Article 21 of the Constitution, which safeguards various rights. These are the main examination and suggestions of the commission:

- The courts have expressed the view that the current remedies available to individuals facing illegal search and seizure are insufficient. Additionally, the report contends that the exclusionary rule should be adopted in Indian courts to deter illegal conduct in evidence collection. The Commission suggests that amendments to the laws are necessary to establish judicially enforceable sanctions against attempts to unlawfully procure evidence.
- The Commission also analyses the transparency of judicial process in its report. It believes that there is a need to ensure that the wrongdoer must be deprived from the benefit in his wrongdoing in obtaining evidence unlawfully.
- The report notes that opposition to the exclusionary rule mainly emphasizes the court's duty to ascertain the truth and the rights of the victim of the crime. Conversely, proponents of the rule prioritize the rights of individuals subjected to illegal search and seizure, along with concerns about privacy, trust, and confidentiality violations. This dichotomy reflects a debate where one side argues that achieving justice justifies any methods used, while the other contends that unethical means cannot be justified by the desired outcome.
- The conclusion drawn in the Report emphasized the urgent need for legal reform, as the existing law primarily reflected a narrow legalistic perspective, lacking deeper consideration for human values.
- this Report recommended the insertion of Section 166A into the Indian Evidence Act, which would grant courts the power to refuse the admission of any illegally or improperly obtained evidence. If the court determines that the methods used to gather evidence could disrupt the administration of justice, it would advise courts to consider surrounding circumstances when deciding whether to admit or reject evidence. These circumstances include the significance of the evidence, the gravity of the case, and whether the actions were justified by the situation. Therefore, this Section would seek to give courts the discretion to adjudge whether the illegality is so shocking and outrageous that the court would rather exclude the evidence.

The report was based on human rights and in favour of giving individual liberty more priority than people in power or officers. The commission critiques the famous saying regarding the doctrine that “the court does not condone the illegality but, simply overlooks it”, the report stated that by overlooking the illegality the court is also overlooking the rights of people.

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No doubt the Report was so ahead of its time regarding many suggestions. After the famous right to privacy judgement some of the suggestions of this report was adapted by judiciary. But, for almost a decade these progressive suggestions remain untouchable on paper.

Judicial approach

The Indian judicial system primarily emphasizes the relevance of evidence. If evidence obtained by investigative authorities is pertinent to proving the guilt of the accused, it is deemed admissible in court.

Before Right to privacy judgement

Before right to privacy judgement there was mix judgements regarding the illegal evidence. But, in most of the cases the court held the “ends justify the means”. In India if the relevance and genuineness were proved then there is no bar in its admissibility.

In the case of *R. M. Malkani v. State of Maharashtra*, the Court admitted evidence that was obtained illegally. Specifically, the police had affixed a tape-recording device to a telephone with the consent of only one party to record a conversation. However, the opposing party argued that the recorded conversation was obtained unlawfully. Despite this contention, the court ruled that "even if evidence is illegally obtained, it remains admissible."²

In the case of *Poorna Mal v. Director of Inspection of Income Tax (Investigation)*, New Delhi, concerning the admissibility of material seized during a search allegedly tainted by illegality, the Court determined that unless there exists an explicit or necessarily implied prohibition in the Constitution or other laws, evidence obtained through illegal search or seizure cannot be excluded.³

In the case of *Magraj Patodia v. R.K Birla and Ors.*, the Supreme Court ruled that obtaining a document through unlawful or improper means does not automatically render it inadmissible, as long as its authenticity and relevance can be established. Therefore, while assessing such documents, the court may take into account the circumstances surrounding their production, but the illegality or impropriety of their acquisition does not directly affect their significance or relevance.⁴

Aftermath of right to privacy judgement

The evolution of the right to privacy has been fascinating, yet the acknowledgment of privacy as a fundamental right did not change the status or applicability of the doctrine. As no statute can contravene

² 1973, 1 SCC, 471

³ 1974, 1 SCC, 345

⁴ 1971, AIR 1295

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the fundamental rights guaranteed by the Indian Constitution, the concept of relevancy under Section 5 of the Indian Evidence Act must now be interpreted in conjunction with Article 20(3) (Right against Self-Incrimination) and Article 21 (Right to Life). However, these rights are enforceable against the State with reasonable limitations.

In the case of *K.S. Puttaswamy v. Union of India*,⁵ the Supreme Court established privacy as a fundamental right under Article 21 of the Constitution, which guarantees the right to life and personal liberty. This ruling overturned previous decisions like *Kharak Singh and R.M. Malkani*, which had different interpretations. Unlike the US Constitution, there was no explicit protection for privacy against unreasonable search and seizure prior to this judgment. Consequently, the admission of unlawfully obtained evidence was not typically challenged. Courts often accepted such evidence if it was carefully examined, even if procedural rules under the Criminal Procedure Code (CrPC) were violated. However, the Supreme Court's acknowledgment of privacy as an inherent part of Article 21 now raises direct questions about the admissibility of unlawfully obtained evidence. This calls for a revaluation of laws concerning evidence and trial procedures.

Supreme Court in *People's Union for Civil Liberties v. Union of India*, recognized the right to privacy as encompassing the ability to make telephone calls in one's home or workplace without interference. The Court cautioned against adopting the notion that "the ends justify the means," which could lead authorities to disregard Supreme Court orders or constitutional requirements in pursuit of evidence. This judgment appears to elevate unlawfully obtained information above evidence obtained merely illegally or unlawfully. In the case of *State of M.P. through CBI and Ors v. Paltan Mallah and Ors*, it was ruled that evidence obtained through an unlawful search could still be admitted as evidence unless there is a clear statutory infringement or constitutional violation.

In light of these rulings, courts now have the discretion to exclude evidence under Section 5 of the Evidence Act by considering its compatibility with Article 21 (Right to Privacy) and Article 20(3) (Right against self-incrimination) of the Constitution. This would establish a stance similar to that in the United States, effectively excluding unlawfully procured evidence based on principles of judicial integrity, discipline, protectiveness, and reliability.

Sections in The Bhartiya Sakshya Sanhita

⁵ AIR, 2017, SC 4161

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- Section 23 (1) replace the Section 25 of Evidence Act: (1) No confession made to a police officer shall be proved as against a person accused of any offence.⁶
- Section 22 replace the Section 24 of Evidence Act: A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him: Provided that if the confession is made after the impression caused by any such inducement, threat, coercion or promise has, in the opinion of the Court, been fully removed, it is relevant: Provided further that if such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.⁷

The word "coercion" has been added to the list of factors that can make a confession irrelevant in a criminal proceeding under Section 22 of the BSA. The previous provisions regarding inducement, threat, or promise, originally found in Section 28 and 29 of the IEA, are now incorporated directly into Section 22 of the BSA as provisos.

- Section 23 (2) replace the section 26 of Evidence Act: No confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate shall be proved against him: Provided that when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact discovered, may be proved.⁸

The word "coercion" has been added to the factors rendering a confession inadmissible under Section 22 of the BSA. The provisions previously outlined in Sections 28 and 29 of the IEA regarding inducement, threat, or promise to a person are now integrated as subsections within Section 22 of the BSA. The term "while" replaces "whilst" and "him" replaces "such person" throughout the revised section.

⁶Bhartiya Sakshya Adhiniyam

⁷Bhartiya Sakshya Adhiniyam

⁸ Bhartiya Sakshya Adhiniyam

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The amendments introduced are primarily stylistic and organizational in nature, with minimal substantive changes to the underlying legal principles.

Other Countries

In this paper, the author will explore the legal provisions regarding the doctrine of the fruit of the poisonous tree in two major countries: the United States and the United Kingdom. These countries have influenced many legal provisions in other jurisdictions, including our own.

USA- USA is the first country to coin the doctrine of fruits of poisonous tree. In the United States, there are stringent provisions regarding the admission of illegally obtained evidence, including the Exclusionary Rule, the Fruit of the Poisonous Tree doctrine, and the Fourth Amendment to the US Constitution. However, there are also a few exceptions provided to these laws:

- Good faith exception.,
- Inevitable Discovery Doctrine: If the evidence gathered by the investigative authority would inevitably have been discovered by lawful means, it would be considered admissible in court.
- Independent source doctrine: If the investigative authority legally obtains evidence but learns of its whereabouts through illegal means, the court may apply this doctrine and still admit the evidence.
- Attenuation Doctrine: This doctrine stipulates that if the investigative authority engages in initial illegal conduct, such as an unlawful search, seizure, or arrest, but the connection between these unlawful police action and the discovery of the evidence is significantly weakened, then the court may, at its discretion, admit the evidence.

UK- In the UK, unlike the US, strict adherence to the exclusionary rule is not the norm. Instead, the admissibility of evidence is guided by common law principles such as fairness, justice, and the right to a fair trial. English legal practice prioritizes the pursuit of fair trials, and if introducing certain evidence would compromise the integrity of the justice system, the court reserves the right to refuse it. Presently, the court is empowered to reject evidence put forth by the prosecution if, upon thorough examination of the circumstances, admitting such evidence would substantially jeopardize the fairness of the legal proceedings.

Conclusion & Suggestions

After thoroughly reviewing the paper, the author concludes that there is considerable ambiguity surrounding the doctrine in India due to the absence of clear provisions. This ambiguity results in situations where criminals may go free while innocent individuals may be wrongly incarcerated.

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Furthermore, while there is much debate about evidence obtained unlawfully by the police, there is a notable lack of discussion and legal framework regarding evidence obtained illegally by private individuals. Sometimes, individuals have no alternative means to substantiate their claims. Therefore, the author emphasizes the urgent need for legal development in India to safeguard the rights and liberties of citizens, particularly in light of advancements in other fields.

In order to deal with the issue of admissibility of evidence in Courts, the author makes the following suggestions:

- Legislation should draft laws concerning the doctrine with consideration for evidence obtained by both private individuals and police authorities.
- Similar to other countries, Indian laws should incorporate specific exceptions to safeguard victims from injustice.
- It is crucial to establish uniformity across all courts and legislative bodies concerning laws related to the Doctrine of the Fruit of the Poisonous Tree. These laws should serve to prevent authorities from abusing their power.
- The legislature ought to enact laws that align with the principles of privacy, liberty, and the legal rights of individuals
- The legislature and legal system should implement the 94th Law Commission Report.

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