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LEGALITY OF FRUITS OF THE POISONOUS TREE- A COMPARITIVE ANALYSIS

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ABSTRACT

“Fruits of Poisonous Tree” is a doctrine and a rule in criminal law that makes evidence obtained illegally inadmissible in a court of law. This doctrine finds its origins in United States of America in 1920. Evidence obtained through illegal searches, seizures and interrogations are not only inadmissible in the court of law but are not considered as evidence at all. However, there are certain exceptions when such evidence is acceptable. These exceptions are if the source is independent, the evidence is obvious or obtained in good faith.

While comparing The Fruits of Poisonous Tree doctrine in the United States of America, England, Australia and India, it is obvious that different countries treat the doctrine in different ways. There has been shift in the doctrine with the advent of science and technology and the cases of media sting operations, phone tapping, tape recording the conversations, video recording the events are some of the newer ways by which the evidence can be elicited are reasons for the shift.

In conclusion, after looking at various cases in different countries, while the underlying principles of privacy and human rights are same in all the countries considered, the courts treat the doctrine in different ways. The article concludes by mentioning that there should be balance in the application of this principle and the courts should weigh the public safety and security along with the illegality of evidence before admitting or denying the evidence altogether.

Keywords: Admissibility, Phone tapping, 4th Amendment, Bill of Rights, Right Against Self Incrimination.

FRUITS OF POISONOUS TREE

The metaphor 'Fruits of Poisonous tree' is a judge created rule than a law by the legislation.¹ Also called as the Derivative Evidence Doctrine, it is a rule in criminal law that makes evidence that was derived from an illegal search, arrest or interrogation inadmissible.² There are various reasons for which evidence under this doctrine shall be rendered inadmissible. It can be due to illegal search, a tainted seizure, or a coercive interrogation. This rule prohibits authorities from violating the basic rights of the human beings.

However, every country has its own take when it comes to the admission of Derivative Evidence Doctrine or the Fruits of Poisonous tree.

AMERICA

The doctrine gets its origin from United States of America. The unlawful search and seizures are a grave violation of the Fourth Amendment of the U.S. Constitution which is the part of Bill of Rights which guards against unreasonable searches and seizures. The illegal search and seizures aren't given a narrow approach. The Supreme Court in *Boyd v United States*³ concluded that it is not only the breaking of his doors or the rummaging of his drawers that constitute the offence, but it is invasion of his right of private security, personal liberty and private property.

The Fourth Amendment states that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall be issued, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

This doctrine was established in 1920 by the decision in [Silverthorne Lumber Co. v. United States](#).⁴ In this case the Court held that the essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before a court but that it shall not be used at all. But this does not mean that the facts thus obtained become sacred and inaccessible. After gaining the knowledge of that evidence from an independent source, that evidence becomes acceptable.

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¹ <https://www.lacriminaldefenseattorney.com/legal-dictionary/f/fruit-of-poisonous-tree-doctrine>

² *Boyd v. United States*, 116 U.S. 616 (1886)

³ U.S. Supreme Court; *Silverthorne Lumber Co., Inc. v. United States*, 251 U.S. 385 (1920)

Even before 1920 the Supreme court held that the unreasonable seizure and search would violate the Fourth Amendment. In *Weeks v. United States*,⁵ the police officer entered the house of the defendant in his absence and seized certain documents which could be produced as evidence against him. Justice Day in his judgement said that ‘every man’s house is his castle and the Fourth Amendment intended to secure the citizen in person and property against lawful invasion of the sanctity of his home by officers of law’.

The metaphor ‘Fruits of the poisonous tree’ was coined by Justice [Felix Frankfurter](#) in [Nardone v. United States](#).⁶ [In this case, the U.S. Supreme Court](#) ruled that evidence obtained via warrantless wiretaps, in violation of the [Communications Act of 1934](#), was inadmissible in federal court. The Court ruled that use of evidence directly obtained from [wiretapping](#), such as the conversations themselves, and indirectly, such as evidence obtained through knowledge gained from wiretapped conversations, was inadmissible in trial court.

Supreme Court of the USA in *Wong Sun v. United States*,⁷ said that ‘not only must *illegally obtained evidence* be excluded, but also *all evidence obtained or derived* from exploitation of that evidence. The courts deem such evidence tainted Fruits of the poisonous tree.’

However, there are certain exceptions under which this doctrine where evidence is admissible

- The evidence shall be admissible if the prosecution can prove that it was obtained from a source which is independent of the illegality.

[Murray v. U.S.](#) is the modern interpretation of the independent source doctrine

- If the prosecution is able to prove that the investigation officer would have discovered the evidence whether if they would have acted constitutionally or not. This is also called Attenuation doctrine.

[Utah v. Strieff](#), [Brown v. Illinois](#), cited in *Strieff*, articulated three factors for the courts to consider when determining attenuation: temporal proximity, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct.

⁴*Weeks v. United States*; 232 U.S. 383.

⁵ *Nardone v. United States*, 308 U.S. 338 (1939),

⁶ *371 U.S. 471 (1963)*.

- If the defendant with his free will incriminates himself with either testimony or present the court with the supportive evidence.

In *Nix v Williams*,⁸ the respondent conversed with the police and made self-incriminating statements and helped police in discovering the body of the boy he murdered.

- The evidence was obtained in good faith—If evidence is obtained illegally (defective search warrant based on no probable cause), but the police officer was operating in good faith (e.g., a judge signed the search warrant), then the evidence would not be excluded.

[REDACTED]

In *Arizona v. Evans*⁹ the respondent was stopped by the police during a routine traffic stop when the patrol car's computer indicated that there was an outstanding misdemeanor warrant for his arrest. A subsequent search of his car revealed a bag of marijuana, and he was charged with possession. The misdemeanor warrant was quashed before the arrest, hence respondent tried to suppress the marijuana as the Fruits of the poisonous tree. The Supreme Court held that the police officer acted in good faith. Hence the evidence collected from evidence can be used in the court as the Exclusionary rule doesn't apply here.

[REDACTED]

Such evidence would render inadmissible even in the most serious offences. The Fruits of poisonous tree doctrine and Exclusionary rule prevents the investigation officer from conducting any kind of illegal searches and seizures or any other kind of illegal way of extracting evidence.

The court may not always abide by this principle. Over a period of time, it has been seen that the application of this rule often freed the guilty. There were instances in which the court deviated from this rule. This rule has been manipulated as a defence against the police misconduct and to

⁷ *Nix v Williams*,

⁸ *Arizona v Evans*, 514 U.S. 1 (1995)

evade the incrimination. The rule was formulated to check the misconduct by the authorities but ended up in causing injustice to the prosecution because the whole evidence which flows from the illegally obtained evidence is deemed inadmissible. The rule is still applicable but with few exceptions.

In *Stone v. Powell*,¹⁰ the Supreme Court held that ‘the State had provided an opportunity for full and fair litigation of a claim under the Fourth Amendment, state prisoners should not have been granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search and seizure was introduced at trial.’

In *United States v Janis*, the Supreme court again upheld that if the offence against which the illegal search or seizure was conducted to secure evidence, it is bigger than the illegal search conducted by the authority, the admissibility of such seized evidence would outweigh the wrong done by the investigation officer. It held that the use of this evidence seized unconstitutionally by a state officer does not “outweigh the societal costs imposed by the exclusion.”

Since 1970, the courts have started applying this doctrine reluctantly. Today the courts apply their discretion and see whether the Fruits of poisonous tree is applicable or not. For this they usually weigh the public safety with police misconduct and come to a conclusion after seeing which one outweighs the other.

UNITED KINGDOM

In English law there is no such thing as Fruits of poisonous tree. The judges are more concerned about vindicating the truth with the aid of relevant evidence, rather than excluding an illegally obtained evidence. Hence, illegally obtained evidence through unlawful procedure is also admissible. The evidence obtained should be relevant to the case and the admission of such illegality is at the judge’s discretion.

Section 78 of PACE (Police And Criminal Evidence Act, 1984) provides that ‘Evidence may be excluded at the discretion of the trial judge if its admission would adversely affect the fairness of

⁹ U.S. Supreme Court, *Stone v. Powell*, 428 U.S. 465 (1976)

the proceedings.’ This provision is used by the courts to exclude improperly obtained evidence with relatively greater frequency than many had expected would be the case.

Judge Crompton in *R v. Leatham*¹¹ says “It matters not how you get it if you steal it even, it would be admissible in evidence.” In *Kuruma v. the Queen*,¹² the defendant appealed against the unlawful possession of weapons saying that evidence had been obtained by unlawful means. Hence, should not have been admitted against him. While admitting the evidence and expressing about the discretionary power of the criminal court, the court said that- ‘No doubt in a criminal case the judge always has a discretion to disallow evidence if the strict rules of admissibility would operate unfairly against an accused. If, for instance, some admission of some piece of evidence, e.g., a document, had been obtained from a defendant by a trick, no doubt the judge might properly rule it out’.

The same opinion had been voiced in *Jeffrey v. Black*.¹³ The Chief Justice Lord Widgery said that ‘the judges have a general discretion to decline to allow any evidence to be called by the prosecution if they think it would be unfair or oppressive to allow that to be done. It is the discretion which every criminal judge has all the time in respect of all the evidence which is tendered by the prosecution.’

*In Helliwell v Piggott-Sims*¹⁴ the judge has held that the judge can at least use his discretion in criminal cases, but he doesn’t have that option in civil cases.

AUSTRALIA

The courts do not admit illegal evidence as a rule. However, the courts while admitting an illegal evidences in Australia must consider

¹⁰ *R. v. Leatham* (1861) 8 Cox CC 498 at 501

¹¹ ***Kuruma v. The Queen* PC 8 Dec 1954**

¹² *Jeffrey v. Black* [1978] 1 Q.B. 490.

¹³ *Helliwell v Piggott-Sims* [1980] FSR 356

- the probative value of the evidence (how relevant it is to the case);
- the importance of the evidence.
- the nature and gravity of the offence; and
- the difficulty of obtaining the evidence without breaking the law.

INDIA

The main footage on which the Doctrine of The Fruits of Poisonous Tree stands on is the protection of the rights guaranteed by the constitution against the arbitrary and illegal searches, seizures and the coercive interrogation by the police officers to procure evidence. But Just like United Kingdom, Indian Courts show a flexible stance while admitting illegal evidence.

The Indian Evidence Act, the admissibility of evidence is based on relevance than the source. In India the Principle- ‘The end justifies the means’ is applicable and not ‘The Fruits of the poisonous tree.’ The Apex court says that as long as the evidence is not affected by Section 24, Section 25 and Sec 26, it shall be admissible.

The Law commission of India in its 94th report¹⁵ said that this doctrine is against the basic human rights. The report rejects the evidence which was obtained at the cost of someone’s privacy. The report reiterates that the traditional principles have to be replaced with modern rules which maintains the chastity and integrity of the justice while upholding the persons Privacy. The Report advices the addition of Section 166A into the Indian Evidence Act which would allow the courts to reject an illegally obtained evidence.


Kerala High Court in M.C. Sekharan And Ors. vs State Of Kerala ¹⁶ held that- In our country, however bad the means employed in obtaining the information may be, [Section 27](#) of the Evidence Act authorises the court to ignore those means and act on the information if the end justifies it, that is, if mean recovery is made in consequence of the information.

¹⁴ Law Commission of India; 94th report; Evidence obtained illegally and improperly; proposed section 166A of Indian Evidence Act; Dt Oct 28, 1983

¹⁵ Kerala High Court in M.C. Sekharan And Ors. vs State Of Kerala on 2 March, 1979; 1980 CriLJ 31

In State of M.P. through CBI, V. Paltan Mallah,¹⁷ the Supreme Court discussed the 94th Law Commission Report and has categorically held that the evidence collected illegally or in violation of the procedural law will not become admissible.

In R.M. Malkani v. State of Maharashtra,¹⁸ the sting operation was initiated by the police in which the coroner who was asking for bribe from the doctor over a phone call has been tapped. The charges were filed against him on the basis of incriminating statements made by him. In this case the Supreme Court held that "Tape recorded conversation is admissible provided that the conversation is relevant to the matters in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under S.8. It is *res gestae*. It is also comparable to a photograph of a relevant incident. The conversation is therefore a relevant fact and is admissible under S.7."

This case is similar to the Olmstead v United States¹⁹ case, in which the question raised was, whether the policeman violated the law by tapping the phone of the accused to obtain evidence. The prosecution contended that there is no actual trespass into the accused's property do so. The Court ruled that the Government could use the evidence obtained from the wiretapping, The exclusionary rule which holds that illegally obtained evidence may not be used against the defendants at the trial was in force at that time. While expressing his dissent over the judgement, Justice Louis Brandeis wrote that 'there is no difference between listening to a phone call and reading a sealed letter.' He said 'Founders have conferred against the Government, the right to be let alone- The most comprehensive of rights and the right most favoured by the civilized man'.

¹⁶ In State of M.P. through CBI, V. Paltan Mallah ((2005) 3 SCC 169

¹⁷ Malkani v State of Maharashtra, 1973 AIR 157, 1973 SCR (2) 417

¹⁸ **Olmstead v. United States, 277 U.S. 438 (1928)**

The Supreme Court gave a contrary opinion to that of Malkani's case in People's Union for Civil Liberties vs. Union of India & Ors.²⁰ In this case The writ petition was filed in the wake of the report on "Tapping of politicians phones" by the Central Bureau of Investigation (CBI).

The Supreme Court held that the phone-tapping without appropriate safeguards, and without following legal process, was a violation of individuals' fundamental right to privacy. It held that 'Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone-conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.'

Regarding the admissibility of the tape recorded evidence, the Supreme Court of India laid down certain rules in the case of Magraj Patodia v. R.K.Birla ²¹

When a tape is played to the court, it is played to test the genuineness as well as the content. When the court is satisfied with the genuineness of the tape, the content is looked into. This seems to be against the principles of hearsay, for the argument most often given when hearsay evidence is introduced, is that it is not being introduced for the truth of its contents.

This is a very important consideration, because the intonation of the voices could inform the Court of two things:

- The genuineness, by identifying the voices properly.
- The intention behind the voices, which could lead to an establishment of mens rea for the offence.'

To Analyse the Doctrine Selvi v State of Karnataka²² has to be assessed. While assessing the efficacy and legitimacy of impugned techniques like polygraph and narco analysis The Supreme Court of India said that "relying on short-cuts would damage the diligence required for completing meaningful investigations."

CONCLUSION

¹⁹ People's Union for Civil Liberties vs. Union of India & Ors, AIR 1997 SC 568, (1997) 1 SCC 301

²⁰ Magraj Patodia v R.K. Birla, AIR 1971 SC 1297.

²¹ Selvi v State of Karnataka and anr, Criminal Appeal No. 1267 of 2004

In Justice K.S.Putta Swamy v. Union of India, the Supreme Court held that the right to privacy is a fundamental right and that this right is protected under Articles 14, 19 and 21. Under Indian evidence Act, only those evidences are admissible which suggests an inference to fact in issue or relevant fact. In many instances to unearth the crime, the police officers employ illegal means and obtain the evidence which would be helpful for the case.

However, in certain instances the intensity of crime may outweigh the illegality committed by the police officer during his course of investigation. State of Maharashtra v. Natwarlal Damodardas Soni,²³ the anti- corruption bureau entered the residence of the respondent in his absence, made a search and seized the gold biscuits. The respondent contended that the search and seizure was illegal. The Supreme court in its judgement held that though the search was illegal, the seizure was legal and admissible.

The exclusionary evidence was created to stop the police from unnecessarily violating the Fourth amendment of the Constitution. The Bill of Rights is the basis of American constitution. As a matter of fact, any Democratic Constitution. It is the duty of the courts to see that such right is not violated. However, the public safety or the larger good always outweighs the violation of private right of single person. In such cases the Police officers should use their discretion and search for the justice. For example, a serial killer has hidden in a house. After the information received from the reliable evidence, the investigation officer goes to the place, arrests the person and seizes the incriminating evidences. Here, if the police officer waits for the warrant from the higher authority, the delay may cause the escape of the offender who may sneak out in search of his new prey. Hence, arresting the serial offender out weighed the legality or illegality of the police action. Hence such evidence and arrest are admissible by the court.

Though the applicability of this rule varies from one country to another, the cases that courts deal with are different with different contentions. But the rights enshrined under the constitutions of all the countries are same. Hence, it's the primary duty of the court to uphold the rights of the individuals while upholding the safety and security of the people at large. Hence the balanced approach towards the Fruits of the poisonous tree should be applied to help the means meet the end.

²² State of Maharashtra v. Natwarlal Damodardas Soni, 980 AIR 593, 1980 SCR (2) 340