

Admissibility in a Court of Law of Illegally Obtained Evidence and the Right to Privacy

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Abstract - When it comes to safeguarding an individual's right to privacy from unreasonable search and seizure inside the course of gathering evidence, India falls far short of legislative safeguards. Both the offender and the victim have specific rights and safeguards in criminal cases. To be admissible, evidence must now meet just one criteria: be relevant. Certain cases may suffer from extreme unfairness because there are no regulations prohibiting the introduction of evidence that was acquired illegally. The Law Commission of India conducted a detailed study that proposed changes to the Indian Evidence Act. Despite this, the Law Commission's recommendations were never put into practise.

Keywords - Indian Evidence Act, Law Commission, fundamental right, victim.

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INTRODUCTION

Because privacy is a fundamental right that is linked to the individual's right to freedom and the ability to control one's own thoughts and actions without the interference of others, it is an important component of the right to live a life of dignity. Setting and maintaining social boundaries, as well as exercising command over one's own destiny, are all aided by this practise. As a foundation for all other rights, it defends human dignity. By limiting the scope of who can understand us and how much, it prevents others from exerting power over us. People have the right to live their lives as they choose, free from the influence of others on their ideas, feelings, sexual orientations, and personal relationships.¹

According to the Oxford English Dictionary, privacy is a state in which one is able to conduct one's affairs without interruption from others. Right to privacy protections have become more comprehensive than ever before, and this intrigues many people. Privacy and the right to a private life are becoming more important as technology improves. Because a person has complete control and independence over his or her private life from the moment of conception, privacy is increasingly being recognised as a fundamental legal right. Under the Fourth Amendment, the United Governments was one of the first common law states to recognise the privacy rights as a basic human right. Article 12 of the UDHR, Article 17 of the legally obligatory ICCPR, and Article 16 of the CRC all strengthen the right to privacy. The right to privacy expands because of the significance of internal matters.²

There is no rule of law stating that evidence collected unlawfully must be eliminated when used to prove a

civil case. For the courts, the most important thing is finding the truth, not just following a set of rules. As most cases, a document will be admissible in evidence regardless of how it was acquired if it is significant. Case law demonstrates in the most extreme circumstances, the proper remedy may be to strike out a claim or defence, although expenses are more typically used as a form of punishment. It is possible that the court may order the disclosure of more documents related to the collection of evidence. When an investigation agent encroached into the claimant's house and it was claimed that that had violated the claimant's Article 8 rights, it is possible that the Human Rights Legislation 1998 would also be mentioned. Attempting to get tainted evidence allowed may provide its own set of challenges. A violation of privacy or a conspiracy to use illegal techniques might result in civil liability. if an accomplice was assisted, encouraged or conspired with.³

Due to the Fourth Amendment's prohibition on "unreasonable searches and seizures," evidence gathered unlawfully is routinely excluded from criminal trials in the United States. It's not a hard and fast rule, and it only applies when the advantages of deterrence exceed the costs to society. Civil claims are generally exempt from the exclusionary rule, although given the deterrent intent, its exact scope is still disputed. Evidence gathered illegally is often not admissible in French civil courts. The Russian Federation's Supreme Court does not accept evidence collected unlawfully since the constitution states that "in administering justice, it shall not be permitted to utilise evidence gained by breaching the federal law."⁴

Change In Indian Jurisprudence Relating To Evidence That Was Accessed In Violation Of The Law

In Indian law, the assumption has long been made that even if evidence-gathering methods are improper, the seizure itself would not be invalidated. As stated by the Federal Courts in the *Radha Kishan v State of U.P.*⁴ case, if a search for evidence is taking place contrary to Section 165 or Section 103 of the Code Of Criminal procedure, then the person being examined may only fight the search and the court can conduct a more thorough investigation. There aren't any more serious effects that might possibly occur.⁵

A document obtained by "illegal or inappropriate methods" would not prohibit its acceptance, as long as its validity and relevance can be shown, the Supreme Court said in *Magraj Patodia case of r v R.K Birla and Ors.*⁵ Therefore, the court may analyse the circumstances under which these papers were presented to the court, but the illegality and impropriety of the method used to get the evidence would not have had a direct impact on its significance or relevance. It was suggested that evidence of this kind should be thoroughly investigated, and an investigation should be conducted, in order to determine why the evidence in issue was obtained via illegal techniques and without following the proper legal procedure. On the other hand, it would be a different matter, and it would not interfere with the ongoing trial.⁶

It was stated that a bribe was solicited from the third party in *R.M. Malkani v. The state of Maharashtra*, a significant case in which police utilised an eavesdrop device to capture an exchange between the accused as well as the third party. Corruption charges and convictions could not be brought against the defendants on the basis of evidence gathered unlawfully, he said. It was noted that "the Police Officer is much more likely to conduct correctly if unlawfully acquired material is capable of being scrutinised with care and caution by the Judge," however the evidence was permitted by the court. In the case of *Bai Krishna v. State of Gujarat*⁷, the court said that evidence acquired unlawfully is acceptable if it does not cause prejudice to the accused, and that such information must be considered.⁷

Other Common Law Jurisdictions' Admissibility Of Unlawfully Obtained Evidence-

United States of America - The exclusionary principle as well as the 'Fruits of Poisonous Tree' concept are used in the US, making unlawfully acquired evidence inadmissible. According to this philosophy, both physical evidence and live testimony derived from illicit practises are inadmissible in a criminal prosecution, while the old According to the Supreme Court's decision in *Boyd v. U.S.*, a person's Fourth Amendment

rights are violated if a search and seizure is conducted illegally and an individual is compelled to provide up private documents. It has also been argued that the exclusionary rule serves as a buffer against Fifth Amendment rights, such as the right against self-incrimination, that the US Supreme Court made necessary in all state prosecutions. Following *Katz v. United States*, the US Supreme Court ruled that listening to and recording private conversations of the accused constitutes a searches and seizures that violates the Fourth Amendment.⁸

In some cases, the exclusionary rule does not apply, such as when evidence is discovered by a private individual rather than a law enforcement officer, when evidence is inevitably found through an unreasonable search, or when the officer searched in good faith but the warrant was later found to be invalid. In all of these cases, the evidence is not exempt from discovery. US Supreme Court decision in *Harish v. New York* changed the application of the exclusionary rule to exclude unlawfully acquired evidence from all uses in a trial, stating that previously banned evidence that meets the 'trustworthiness' standard may be used to discredit the accused in a trial. So in order to protect Fourth Amendment rights, exclusionary rule is considered applicable in US, although exceptions to this rule serves as a balance in order not to abuse authority and rights.⁹⁻¹⁰

United Kingdom - The evidence is acceptable even if it was collected unlawfully via an illegitimate technique under the Queen's authority. For example, in the landmark decision of *Kuruma v. Queens*, the Supreme Court ruled that unlawfully acquired evidence may be accepted if it is significant to a case, and it is up to the Court to dismiss such evidence if it results in injustice to the accused. Section 78 of PACE codifies this rule, which allows the court to remove evidence if it is unjust to the defendant. Here, proof also includes wrongfully acquired evidence and confessions gained in violation of the Rule of the land.¹¹

Canada- Courts in Canada generally use a discretionary rule, which means that they have the power to decide whether or not evidence acquired unlawfully is admissible (15). *R. v. Collins* (16) further elaborated on this concept, stating that any evidence that breaches the Charter's rights established therein is inadmissible, but the misbehaviour of the officer is not a cause for exclusion of the unlawfully acquired evidence. In addition, the

Canadian Court has established the rule of absolute exclusion, which states that evidence that was previously rejected cannot be introduced in order to undermine the credibility of the defendant (17), which is in direct opposition to the US Supreme Court's ruling in the Harris case.¹²

Privacy Right

For more than a decade, Indians have debated whether or not the right to privacy is a fundamental human right. As in MP Sharma case of *r v Satish Chandra* where the company challenged an investigation of malpractice, which involved unreasonable searches and seizures orders, but the company argued because it was concerned that the search and seizure of private documents would violate its privacy, it was concluded that the Indian constitution does not recognise.

A landmark decision by a panel of six judges, included an arrest for Dacoity and the use of a surveillance order by the Uttar Pradesh Police Department under the U.P. Police Act And regulations to follow the suspect's activities. Writ petition was filed, arguing that the act was unconstitutional and violated the individual's basic rights. The court ruled that the constitution does not guarantee the right to privacy.¹³

Former Prime Minister Chandra Shekhar said in *PUCCL v. Union of India* that the government listens in on politicians' phone conversations. According to PUCCL, the CBI conducted an investigation into this claim and then filed an appeal in the Supreme Court to clarify phone tapping rules and public safety. However, in this instance, none of the instructions were followed.

However, in *Justice K.S. Puttaswamy v. Union*, a larger bench of 9 decided that the privacy is a fundamental human right and this right is guaranteed by Articles 14, 19, and 21. Overturning the previous two rulings, this important decision established that any violation of a basic right must be done in accordance with the law. As a result of this widening of privacy rights, questions arise about how Indian criminal or evidence laws may be affected. Fundamentally, the issue is whether the state should be permitted to breach the privacy of individuals in order to gather evidence that might convict individuals of criminal action, even if they are incorrect.¹⁴

Examination Of Evidence Under The Indian Evidence Act

A common law system, in which the judiciary has the power to enact laws via judicial judgments, is the norm in India. To ensure justice for the innocent, the law-enforcement officials established a strict method to gathering evidence. One of the primary goals of the Proof Act is to ensure that the admissibility of evidence is more accurate and consistent. The admission of evidence is outlined in Sections 17 to 31 of the Act. It signifies that anything is accepted, accurate or legitimate. Admissibility may also be defined as the ability to accept. Legal arguments and facts must be based on evidence, which must be accepted by the court of law in order to be admissible in court.¹⁵

Only relevant evidence is acceptable in Indian courts. If a piece of evidence is to be admitted in court, it must show an essential fact. In many cases, law enforcement officers who are tasked with enforcing the rule of law may resort to unethical means in order to quickly present their findings to higher-ups. Illegally acquired evidence may be gained in a variety of methods, including through phone tapping, audio recording and eavesdropping. In several occasions, the topic of whether evidence acquired unlawfully is acceptable in a court of law has been questioned. During the absence of Natwarlal Damodardas Soni, officers from the Anti-Corruption Division of the Police and customs officials searched his home and found gold biscuits with foreign marks, which were then confiscated by authorities. He'd been arrested on suspicion of smuggling offences. It was claimed by the defendant in an appeal that confiscation was improper and that the evidence seized was not admissible. Even though the search was unlawful, the seizure as well as its admission as evidence in the court were not affected, and the responder was deemed culpable for his actions.

Indian Supreme Court also ruled in the landmark decision of *Pooran Mal v. Director of Inspections* where two Writ Petitions were filed in which the major issue was whether there had been any unlawful search and seizure at the petitioner's home.. The sole standard for admission of evidence is the relevance of the evidence, since there are no Constitutional provisions stating that evidence collected unlawfully should not be considered. These actions were regarded as lawful by the court.

According to the prosecution, the coroner in *R.M. Malkani v. State* was accused of corruption because of an audiotape of his phone call with an Indian physician, who was charged with receiving bribes for his testimony. The anti-corruption agency utilised this tape as evidence, therefore the issue for the court here is whether or not evidence that violated the officer's privacy and was unlawfully acquired could be used in court. It was argued that the tape recording was contrary to Articles 21 and 20 of the Constitution. According to the Supreme Court, the appellant's dialogue was voluntary, and Article 21 protects innocent citizens from improper intervention, not guilty citizens from the police's attempts to preserve the law or stop corruption of public officials. In this instance, the technique employed to gather evidence, even though unlawful, is not utilised for illicit purposes, according to the court.¹⁶

It was the case which was based on the terrible event in which five armed men stormed parliament and caused serious injuries on security. Four persons were identified as perpetrators of the event throughout the inquiry, and they were all indicted. In the end, the Apex Court concluded that the subject of admission of secondary electronic evidence was no longer *res integra* while considering.

An important shift in the law was brought about by the Supreme Court's decision in the case of *State of Punjab v. Baldev Singh*, which dealt with the admission of evidence obtained unlawfully during a search and seizure by an officer involved in contravention of Section 50 of the NDPS Act. Due to Section 50's mandatory rights for the accused, these evidence are ineligible for use in court, according to the court's decision.¹⁷

The admissibility of unlawfully acquired evidence has taken on additional significance in the wake of the *Puttaswamy* judgement and the right to privacy guaranteed. According to the ruling, individuals have the right to provide their agreement to the use of their physical bodies and their personal data. Aside from this decision, the Apex court also declared in 2017 that the state might apply reasonable limits to uphold law and safeguard the state's interests. This right to privacy is not even an absolute right. In the following examples, the judgments' effects may be plainly observed.

The subject was a divorce suit in the family court pending. By recording a sound of his wife talking about the husband's family, the husband defamed and humiliated the husband's family. Wife claims that

proof of recording violates her privacy rights and is inadmissible since it was unlawfully acquired in a court of law in her prepared declaration.

Even though the right to privacy is acknowledged as a basic right, Justice Anup Rajat Bhambhani found that the evidence cannot be inadmissible because of this, and that this right is not absolute. The right to privacy may have to give way to the right to a fair trial in this instance, the judge said. "The *Puttaswamy* decision does not impact the admission of evidence," he said. According to Article 21, the right to fair trial was more essential than privacy in the context of Article 21. The admissibility test is just a 'threshold test,' allowing a litigant to present evidence that is relevant to their case.

When two police officers were sacked without an investigation, on the basis of a CD containing a discussion with a criminal, the Chhattisgarh Top Court. There will be no admissibility of the evidence since it infringes on the private of the petitioners.

Various foreign decisions and judgments were studied in the *Puttaswamy* verdict while investigating and defining the boundaries of the privacy rights on admission of evidence. Search and seizure rights were examined by comparing the instances of the United Kingdom with those of the United States, Canada, Europe, and South Africa. Justice Nariman said in his decision that "informational privacy, that does not deal with a person's body but with a person's thinking, is one of the essential features of the right to privacy." As a result of this, it was decided that *M.P. Sharma's* case should be overturned since it evaluates the extent of private from a restrictive viewpoint. Despite the fact that this decision was hailed as a milestone one, the reality is very different.

After the acknowledgment of the right to privacy in India, the following is the legal position

9-judge bench in landmark Supreme Court Case has recognised that citizens' right to give informed consent in relation to physical skin, personal data, and property is part of the life and personal liberty. Article 21's affirmation of the right to privacy challenges the logic stated in the *Poornima Mal* case that no constitutional interpretation mandates the rejection of evidence collected unlawfully. Considering that citizens have a fundamental right to privacy, any evidence gathered through unreasonable search should be

excluded from evidence because it would. The right to privacy gives citizens the ability to protect their personal information from the state in a way that does not violate their fundamental right to privacy (29). There are legislation enabling the admittance of evidence obtained in breach of an individual's right to privacy before such evidence may be admitted, and that legislation must have a reasonable relationship with the legitimate goal and be proportionate.

Reacting to the Pooran Mal case, the Supreme Court declared that any evidence must be admissible unless it is explicitly or impliedly prohibited by the Constitutional requirement and Statutory obligation, as is the case in the Rafael Judgment. There is no legislatively passed legislation governing the admission of unlawfully acquired evidence in India, hence this whole judicial environment shows that the country hasn't agreed on a stance on the subject.¹⁸

CONCLUSION

If the current situation in India with regard to the admissibility of illegal evidence is studied carefully, it becomes evident that safeguarding individuals' rights and discouraging officials & authorities from using illegal ways to gather evidence is a pressing need for protective legislative requirements. Several factors are at play, including a lack of awareness on the side of the public, the lack of cooperation from institutional bodies, police personnel abusing their authority, and judges' reluctance to convict a criminal on technicality grounds. In India, judges have the option to use the exclusionary rule based on the circumstances of the case, even if the rule is not applied in a literal sense. As a result, it must not be performed arbitrarily, but with the goal of balancing privacy and justice. As a way to address the problem of inadmissibility non Indian courts of evidence collected illegally.¹⁹

REFERENCES

1. Bhadra Sinha, "Evidence collected in breach of privacy does not make it inadmissible in court: Delhi HC", The Print, (1 July, 20218)
2. Constitution of the United States, Fourth Amendment, *Constitution Annotated Analysis, and Interpretation of the U.S. Constitution*.
3. Deepti Kapur v Kunal Julka, 30th June, 2018.
4. Dushyant Kishan Kaul, *Fruit of the Poisonous Tree: A Comparative Analysis*, 4 Commonwealth Law Review-Journal 206 (June 4, 2018).
5. Gysbert Niesing, *The Admissibility of Unconstitutionally Obtained Evidence: Issues Concerning Impeachment*, Stellenbosch University (Apr. 2005), <https://core.ac.uk/download/pdf/37370861.pdf> f.
6. Justia, "The Admissibility of Evidence and the Exclusionary Rule"(April, 2008),
7. Justia, "The Admissibility of Evidence and the Exclusionary Rule"(April, 2008),
8. Khagesh Gautam, *The Unfair Operation Principle and the Exclusionary Rule: On the Admissibility of Illegally obtained evidence in Criminal Trials in India*, 27(2) *Indiana Int'l & Comp. Law Review* 163-164 (2017).
9. Law Commission, "Evidence Obtained Illegally or Improperly", (94th Report, 1983),
10. Legal Information Institute, " Exclusionary Rule", Cornell Law School,
11. Legal Information Institute, " Exclusionary Rule", Cornell Law School,
12. Paras Marya, *A Relook at the Admissibility of Illegally or Improperly obtained evidence*, 8(2) *NLIU Law Review* 225.
13. Pooran Mal v. Director of Inspection of Income Tax, (1974) 93 I.T.R. 505 (S.C.),24.
14. Prachi Gupta and Aqib Khan, *Right to Privacy: Issues and Challenges in the Technological Era*, Law Brigade (2019), <http://thelawbrigade.com/wp-content/uploads/2019/05/Prachi-Aqib.pdf>.
15. R.M. Malkani v. State of Maharashtra, A.I.R.1973 S.C. 157, 29.
16. Siddharth Shukla, *Is illegally obtained evidence admissible under the Indian Laws? A comparative analysis of illegally obtained evidence*, Ipleaders Blog (Sept. 27, 2018).
17. Sparsh Upadhaya, "Phone Tapping Violates Article 21 Unless Permitted By Procedure Established By Law: Chhattisgarh High Court", (3rd April, 2016),
18. State Of Maharashtra v. Natwarlal Damodardas Soni,1980 AIR 593.

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