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Reflecting on the Admissibility of Illegally and Improperly Obtained Documents

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ABSTRACT

Different common law systems address the admission of evidence obtained illegally and improperly in different ways. Therefore to effectively understand its current position and implications to be followed in India, the current paper has two chapters, with the first one comparatively analysing the evidentiary rules from various nations in relation with the admissibility of evidence illegally obtained and showcasing the theoretical underpinnings of the various laws in these various jurisdictions ascertaining whether the general discretion of courts across different jurisdictions regarding the inclusion or exclusion of relevant evidence which are illegally or improperly obtained serves the same purpose. Moving ahead the second half of the paper talks about the position of such evidences in India as if it is included then will be in direct conflict and violation of Right to privacy, a facet or right to life. In contrast to other jurisdictions where unlawfully obtained evidence is eliminated, Indian courts have regularly permitted such evidence in criminal prosecutions in the light of statutory or constitutional provision asserting the exclusion of the same. This paper glances on the 94th Law Commission Report's recommendations from 1983 in light of the recognition of the right to privacy as a fundamental right with specific reference to K.S. Puttaswamy case's take on such evidences. To that end, this article in the second part will first examine the present legal position as stated by the judiciary and explore the reasoning behind those declarations.

Keywords: Evidence, Illegal, Document, Privacy, Admissibility.

I. INTRODUCTION

The cornerstone of justice in the legal system is the admissibility of evidence, which guarantees that the truth is exposed within the bounds of established legal procedure. On the other hand, the admissibility of documents or other evidences obtained by illegal means is a controversial matter that is frequently debated across jurisdictions (Wigmore, 1961). This subject looks at the complex interactions that exist between legality, ethics, and justice in the legal system. Common law countries can be separated into four primary groups based on the admission of evidence

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that has been improperly and unlawfully obtained in criminal proceedings.

First, some countries adopt the strongest position, contending that evidence collected illegally does not render it legally inadmissible because there is no explicit statute or constitutional requirement in place. Secondly, in some countries the court has often, under its discretionary power, rejected evidences and other material that was obtained illegally or fraudulently if it is deemed important. Third, where an express legislative provision under an enactments or laws of some countries exclude evidence which is not declared as legal or legitimate under such a law. Lastly, some countries place constitutional restrictions or prohibitions on adducing evidence which are adduces otherwise in accordance with the law i.e. illegally.

Legally speaking, evidence that was obtained unlawfully or inappropriately does not always need to be removed in order for it to support a claim. The Supreme Court of India has maintained that unless there is any express bar, any evidence is admissible, regardless of whether it was obtained illegally, especially in a criminal proceeding under a criminal law so long as it is relevant to the case. Notwithstanding multiple endeavours to construe protections equivalent to those found in the US Constitution's Fourth Amendment into Article 21, and thus institute an Indian "Exclusionary Rule," the Honourable Supreme Court has unwaveringly refused to expand the scope of Article 21 (Marya, 2019). The courts have made it clear that the truth matters more than adhering to a set procedure and hence if a document is significant, it will usually admitted into evidence regardless of how it is obtained (Marya, 2019).

II. COMPARATIVE ANALYSIS ACROSS JURISDICTIONS

At the very outset, we must first and foremost summarise a comparative review of the legal systems of several countries, including the US, UK, and India, with regard to the admission of such evidence if we are to comprehend the same.

In situations involving federal offences, the US Supreme Court has construed the Fourth Amendment's search and seizure clause to forbid the admission of evidence gathered illegally (Jain, 1980). The admissibility of evidence obtained illegally was not restricted by the "due process" clause until 1961, when states were granted exemption from its application which made it possible for unlawfully obtained evidence to be admitted into evidence in state-level criminal prosecutions (Peiris, 1981). The decision in **Wolf v. State of Colorado** (Wolf, 1949) was overruled and subsequently court ruled in **Mapp v. Ohio** (Mapp, 1961) that "*any evidence that is presented as a result of a search and seizure that violates the Fourth Amendment is not admissible under the "due process" clause in a prosecution that relates to a state offence.*" The court concluded that by eliminating the incentive to disobey the constitutional guarantee, the

exclusion was intended to discourage respect for it (Joyner, 1971). It must be noted that nearly fifty states have implemented the exclusionary rule by 1961. The court has not made the exclusion of evidence in civil cases or other non-criminal processes subject to the Mapp rule (Jain, 1980). It is interesting to note that “the exclusionary rule” was held to be inapplicable in **United States v. Janis** (Janis, 1976), a civil case filed by the Internal Revenue Service, where the local police had conducted an illegal search.

The UK courts continue to take the same stance as the Indian courts. As per the English Law, relevant evidence will be admitted, but if admitting unlawfully obtained evidence will unfairly prejudice the accused, the judge may decide to exclude it (Walker, 1980). One must note that the due regards must be paid to the accused’s position, nature of the investigation, and the seriousness of charge (Choo & Nash, 2007). Furthermore, it appears that the court is generally reluctant to exercise its discretionary power and admit the evidence in cases when it stems from an illegal source, especially when illegality is potential or based on assumption. (Gibson, 2014). Since its implementation, the exclusionary rule in the US has generated discussion and it is often stated that exclusionary rule has certain exceptions: departmental support, civil lawsuits against violating officers, criminal penalties against law enforcement officials, and disciplinary action against violating officers (Gautam, 2017). The American Law Institute suggested in 1971 that the exclusionary standards be changed to let trial judges admit evidence in cases where the privacy infringement was not overt, discourage future privacy invasions by the police, and prevent the defendant from proving the violation was “wilful” (Jain, 1980).

Legal expert John Rear has criticised the English inclusionary rule in the UK, arguing that the discretion to exclude should be used in all circumstances, with the exception of those in where the offence exposed was significant or the unlawfulness of the seizure was only technical (Jain, 1980).

III. ANALYSING THE POSITION OF ADMISSIBILITY OF EVIDENCE OBTAINED ILLEGALLY OR IMPROPERLY IN INDIA

As was already stated, India falls under the group of commonwealth countries and hence when it comes to obtaining or even adducing evidence, there is no express legislation or constitutional provision that excludes, forbids or prohibits evidence obtained illegally or improperly (Kandalgaonkar, 2023). The judiciary’s traditional position, with a few noteworthy exceptions, has been to admit evidence that was obtained illegally as long as it is relevant to the issue at hand and its credibility is unaffected by the authorities’ manner of collection (Dehadrai & Sarmah, 2022).

We shall begin with State of **Maharashtra v. Natwarlal Damodardas Soni** (Natwarlal Damodardas Soni, 1980), which is the recent case relevant to this topic. Here, the accused's property was searched by the authorities, who then confiscated gold. He was therefore charged with several offences. He argued that because the search was illegal, the seizure could not be entered into evidence. It was determined that, legality of the search would not have any bearing on the validity or legitimacy of the seizure or its admissibility as proof.

Regarding tax officials conducting unauthorised searches, there have also been questions about the validity of evidence obtained illegally. The issue of the department's ability to utilise evidence obtained through an unauthorised search has led to a dispute among the High Courts. The Mysore High Court's decision that said such evidence could not be utilised was disagreed with by the high courts in Delhi, Madras, and Allahabad. In **Pooran Mal v. Director of Inspection** (Pooran Mal, 1974), the Court ruled that neither a legislation nor the constitution forbade the use of such evidence.

Furthermore, in the case of **R.M. Malkani v. State of Maharashtra** (Malkani, R.M. , 1973), the police employed a device for the purpose of recording a deliberation and conversation which took place between the accused and some other person about the former's desire for a bribe. The defendant contended that his conviction for the charges of corruption was invalidated by the evidence of illegally obtained tape recordings. The Court decided that it was reasonable and in the interest of justice to admit evidence even when that was obtained illegally. But, an important observation came to be made by the court, when it stated that: "*The police officer is more likely to behave appropriately if the judge views improperly obtained evidence with caution and care.*"

However, it is crucial to remember that in People' Union for Civil Liberties (PUCL v. Union of India), the Supreme Court declared that tapping a person's phone during official surveillance violated that person's right to privacy. This decision established guidelines that must be followed. Nevertheless, the Court declined to make a decision regarding "the exclusionary rule" in evidence and based on the feasibility or practicality of the means employed to get it.

The accused in **Ukha Kolhe v. State of Maharashtra** (Ukha Kolhe, 1963) underwent an alcohol consumption test to determine whether or not he had broken the Bombay Prohibition Act. That being said, the procedure specified in section 129A of the law was not adhered to in that instance. According to the statute, section 129 A does not prohibit the proof that an individual accused of an offence has consumed alcohol from being proven in a way that deviates from this section's provisions. By a majority vote of four to one, it was determined that the

admission of the case's collected evidence could be justified by this clause.

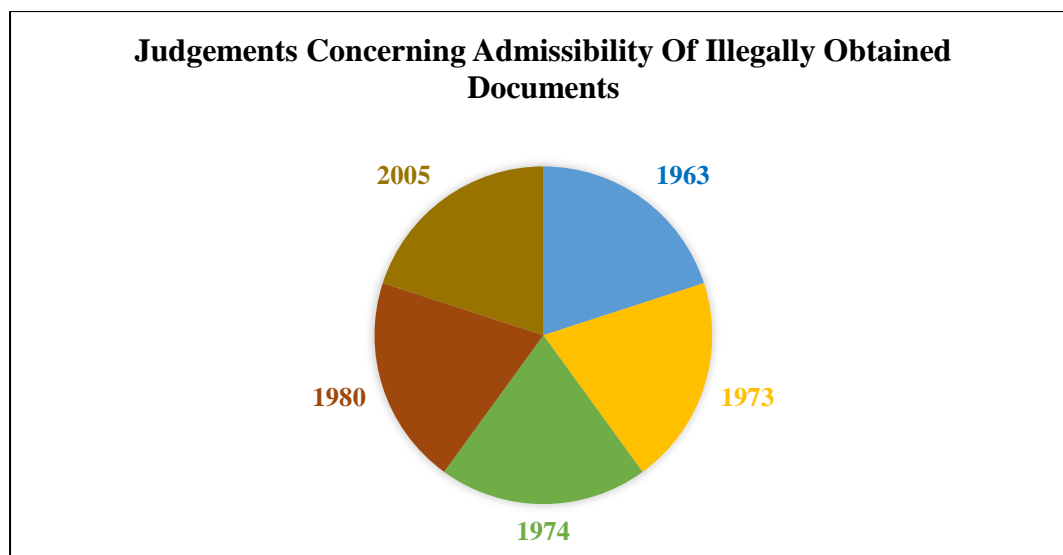
According to the Hon'ble Supreme Court of India, evidence that falls under Section 7 of the Indian Evidence Act is relevant and admissible regardless of whether it was obtained by theft. The court declared that the issue was not "res integra" anymore in **State (NCT of Delhi) v. Navjot Sandhu @ Afzal Guru** (Navjot Sandhu, 2005), citing its previous decision in *R.M. Malkani*, where it was decided that evidence in the form of tape recordings of telephone conversations made without the accused's consent was admissible and that the illegality of the process used to obtain the evidence had no bearing. The argument that it was illegal to record phone calls was rejected by the court since relevant evidence was still admissible.

Consequently, judges generally agree that evidence that was obtained unlawfully is admissible unless it harms the accused and it must be noted that such evidence likewise has to be carefully and cautiously reviewed. The justification for the current legal position that Indian courts have established is clear. The compartmentalization of evidences into admissible and inadmissible is determined and governed by the law, and the Indian law of evidence is essentially fully codified. The judiciary has recognised that the Code of Criminal Procedure 1973 mandates specific safety measures to be followed during the course of investigations. In the event that police are confronted with evidence that they believe breaches these safeguards, the courts are willing to censure them without compromising the credibility of the evidence (Sebastian, 2019).

It must be noted that Indian Courts have, for a lot of reasons, majorly relied and referred to the decisions, interpretations or the position in English Law, especially concerning the admissibility of evidence which is illegally obtained. Unlike the general perception of uncodified laws, the Police and Criminal Evidence Act, 1984 is the evidence law in England, empowering the judges with the authority to reject evidence if admitting it will materially compromise the fairness of the proceedings (Marya, 2019). The 94th Law Commission Report, published in 1983, examined legal theory and made recommendations in light of the broadening the ambit of Article 21 and the growing importance of this subject from the perspective of human rights (Sebastian, 2019). A critical analysis of the Report will lead us to the conclusion, the exclusionary rule serves the purpose of deterrence because it discourages illicit action while gathering evidence. The Commission also looked into the matter of the legal system's integrity, highlighting the necessity of stopping criminal misbehaviour.

The Commission examined arguments against the exclusionary rule, focusing mainly on the court's need to discover the truth, with the illegitimate acquisition of evidence being treated as a secondary concern. Based on Article 21 of the Constitution, the Commission determined that

there was not enough direct jurisdiction to resolve the issue of whether or not to exclude the inclusion of illegal evidence. The Commission recommended addition of Section 166A to the Evidence Act which shall empower the court to reject any evidence that was gathered illegally or unethically and declare that the techniques employed were improper (Behl, 2021). According to this clause, the determination pertaining to the admissibility or rejection of the evidence will take the case's facts into account.



In an effort to prevent circumstances where the illegality is so grave that the judiciary would reject evidence, the Commission tried to provide courts discretion. At the very outset, one must bear in mind that the court has refused to extend the benefit of “right to privacy” under article 21 or other safeguards granted by the constitution in such cases. The reform movement and the Indian viewpoint emphasise how important it is to comprehend how this theory relates to the decision in **Justice K.S. Puttaswamy v. Union of India** (K.S. Puttaswamy, 2017). The Fourth Amendment to the Constitution of the US is mentioned in relation to the expansive right to privacy (Marya, 2019). But doing so would violate a fundamental freedom guaranteed by the Constitution's third section. The standard of reasonableness, equity, and justness would be taken into consideration by the court, and evidence gathered through an unlawful search would be contaminated.

Laws would have to guarantee due process, guard against misuse, be required, appropriate, and least restrictive of rights. In the absence of new laws, judges would arbitrarily compare the violation of a fundamental right to a settled legal matter without according to any set process. This creates a gap in the facts and constitutional law that needs to be filled by the legislature and the courts.

IV. CONCLUSION

There are several justifications for excluding evidence from court proceedings, such as the necessity to deter unethical methods of gathering evidence, foster respect for the legal system, and stop judges from working together with the “dirty business.” Nonetheless, as courts need reliable evidence to make decisions, the factual and trustworthy quality of the evidence might be used to support its retention. Evidence excluded without a remedy result in the accused’s acquittal and raises the possibility of legal action against both the accused and the source of the evidence.

The judiciary in India has been reluctant to accept the arguments which is based on Article 21 of the Constitution, by stating that neither the Constitution nor the Fourth Amendment of the United States contain any provisions pertaining to the right to privacy. Nevertheless, the theory might be put into practice without specific legislation. According to the Law Commission’s advice in Section 166A, Indian law needs to change in this area in order to strike a balance between the needs for evidence and the rules as they currently stand. Judges would have to determine whether evidence covered by Section 166A is admissible, which would have an effect on the constitutional standing of privacy laws and law enforcement.

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