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APPLICATION OF EXCLUSIONARY RULE AND INTERPRETATION OF RIGHT TO PRIVACY BY INDIAN JUDICIARY

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ABSTRACT

This research is conducted analysing the judgment of the nine-bench Supreme Court decision in Justice K.S. Puttaswamy (Retd) V. Union of India with specific reference to the Doctrine of Fruit of Poisonous rule (Exclusionary rule). This rule has been held to be an intrinsic part of the Right to privacy by the various court all across the globe in many jurisdictions. The conflict in front of the court, the way courts have dealt with such conflict and the need to address such conflict. This paper talks about the historical perspective of this doctrine, views taken by the Indian courts prior to the judgment rendered in K.S. Puttaswamy, the views taken post-K.S. Puttaswamy, the departure from the consequentialist approach and the positive and negative implication of this doctrine. A specific reference has been made to the 94th Law Commission Report, which gave the recommendation to insert a new provision in the Indian Evidence act.

INTRODUCTION:

The Hon'ble Supreme court, in the case of Justice K.S Puttaswamy (Retd.) and Anr V. Union of India, decided that the Right to Privacy is an inalienable natural right and an intrinsic part of the multi-dimensional Article 21. The court held that the Right to Privacy could find its place even in article 19 and mentions the principle brought about in Rustom Cavasji Cooper V. Union of India, which held the position taken in A.K. Gopalan V. State of Madras construing each provision contained in the chapter on fundamental rights as embodying distinct protection not good in law. Overruling the decisions in M.P Sharma V. Satish Chandra, District Magistrate and Kharak Singh V. State of Uttar Pradesh, the Supreme court held that there exists a constitutionally protected fundamental Right to Privacy, enshrined in Articles 19 and 21 so if there is such a violation of this right then it has to reasonable and through the procedure established by law which is fair, just and reasonable as expressed in Maneka Gandhi V. Union of India. The International Covenant on Civil and Political Rights in Article 17 says, "(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks". Now, after appreciating the existence of the fundamental Right to Privacy, there comes a more important question of its enforcement and protection. Being a fundamental right, this right also extends to suspects. The enforcement of this right would mean that India has to adopt the doctrine of Fruit of Poisonous Tree, which our courts have sometimes been skeptical to accept. The evidence though obtained illegally, is not necessarily barred if it is otherwise relevant and its genuineness can be proved. It also has to understand that the court, while being duty-bound to ensure that the right procedure is

followed by the investigating authority, also has to ensure that it cannot acquit a guilty person simply because of the procedure in which the evidence was obtained. This examination is conducted to check the implication of Doctrine of Fruit of Poisonous Tree after the incorporation of Right to Privacy as a fundamental natural, inalienable right with its historical application and current position across the globe, with its positives as well as negatives.

HISTORICAL BACKGROUND:

The origins of privacy date back to Aristotle, who distinguishes public and private realms. This distinction was brought affront in order to restrict itself only to activities falling inside the public sphere. Activities in the private realm are more appropriately reserved for private realization and must not be interfered with. This separation of public and private realms can also be seen in cases of tortious liabilities such as public and private wrongs, where wrongs committed against the community as a whole, for instance, a breach of general and public rights (crimes and misdemeanors) the latter would mean infringement of particular rights concerning individuals which are civil injuries in nature. It is pertinent to note that the fourth amendment in the United States Bill of Rights though not in words but in essence, talks about the exclusionary rule. Weeks V. United States established that any evidence obtained as the result of the violation of the fourth amendment would be generally inadmissible in criminal trials, and thus the exclusionary rule formed a major part of the Fourth Amendment and thus a major part of this right. This right enshrined in the Bill of Rights also has its exceptions such as Consent, Pain view and open fields, Exigent circumstances, Motor vehicle, Searches incident to a lawful arrest, Border searches, Foreign Intelligence Surveillance, Schools and Prisons. The Universal Declaration of Human Rights in Article 12 reads, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks”. It is important to observe that a CIA employee and sub-contractor Edward Snowden brought the question of the existence of the Right to Privacy to debate on the global platform after the leak of highly classified information from NSA. In the wake of which event, the governmental agencies got a good enough reason to claim the existence of terrorist threats that overrides the interest of the Right to Privacy. The EU is acclaimed to have extensive data protection laws as compared to the United States governing under the EU General Data Protection Regulation (GDPR). Article 8 of the European Convention of Human Rights and Article 7 of the European Charter of Fundamental Rights preserves and codifies the Right to Privacy against arbitrary intrusions.

Whereas in India, the concept of the Right to Privacy in the ancient Hindu texts would be a point for debate as its inculcation and application are vague because of the absence of those exact words. It is essential to note that Manusmirthi, Arthashastra and other ancient Hindu Scriptures have described the notion by limiting the scope of one person’s right until it encroaches on another person’s right. The essence of the existence of the Right to Privacy can be traced in the stories in Mahabharata and Hitopadesha, the former being an epic about morals and the latter being a collection of fables with major adaptations from Panchatantra, which is a collection of stories on morals and values. The codification or the actual expression of such a right in the Hindu ancient texts as well as ancient Indian laws are silent. It is also pertinent to note that

such an expression of observation can also be seen and understood in the Qur'an, which rebukes those who wish to pry into matters, which do not concern them, or harbor suspicions in respect of others, conceding that some suspicions can even be considered a crime.

Establishing privacy in a historical perspective, we should also trace the historical analysis of Doctrine of Fruit of Poisonous Tree. In the case of R. V. Leatham, held that the relevance of the evidence obtained was more important than the evidence itself, to quote Crompton J., "It matters not how you it; if you steal it even, it would be admissible". Therefore, the courts may take an end justifies the means approach. However, this doctrine was first accepted in the United States Supreme Court in the case of Silverthorne Lumber Co. v. the United States, a case of tax evasion in which the investigating authority illegally seized returns book and made copies of the records, where Justice Oliver Wendell Holmes, Jr., ruled that permit such derivatives would encourage investigating authorities to circumvent the Fourth amendment. Therefore, evidence obtained illegally would in itself be tainted and inadmissible. This precedent was later treated as an extension of the Exclusionary rule. The term, however, was first used in Nardone v. United States, where evidence obtained through warrantless wiretaps in contravention of Communications Act, 1934 held inadmissible in a federal court. The implication of this doctrine would be any evidence derived through illegal means would make such evidence and derivatives inadmissible.

INDIAN PERSPECTIVE OF THE RIGHT TO PRIVACY PRE-K.S. PUTTASWAMY JUDGMENT:

The existence of the Right to Privacy as a fundamental right is questionable during the Pre-K.S. Puttaswamy era due to precedents such as M P Sharma and Kharak Singh, formerly rendered by an eight bench and the latter rendered by a bench of six judges. Both of these judgments observed that constitution does not specifically protect the Right to Privacy. When we analyse the minority, judgment rendered by Justice Subba Rao, "It is true that our constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty" furthermore he quotes Wolf V. Colorado and states, "Importance of security of one's privacy against arbitrary intrusion by the police, could have no less application to an Indian home as to an American home". It is apposite to note that K.S. Puttaswamy, while overruling the majority decision in Kharak Singh, upheld Justice Subba Rao's dissenting judgment. In a close reading of Satwant Singh Sawhney V. D Ramarathnam and the observations made in the dissenting part of the judgment advances the minority view in Kharak Singh.

In spite of these rulings in M P Sharma and Kharak Singh, we must understand that there have been cases that talked about a constitutionally protected right to privacy. Though not constituting the same number of Judges or more than the ones in the aforementioned cases. In the case of Govind V. State of Madhya Pradesh, the court, while not ruling the Police Regulations as unconstitutional, advised the government that they were perilously travelling toward unconstitutionality. In the Rajagopal V. State of Tamil Nadu, where privacy was held to have a two-fold view: "(1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects the personal property against unlawful governmental invasion". Most importantly, the Telephone Tapping case which construes that the Right to

Privacy is an embodiment of Article 21 and that this right could be done away only with the procedure established by law, which has to be fair, just and reasonable as according to the judgment in Maneka Gandhi v Union of India.

THE INTER-LINK BETWEEN PRIVACY AND THE EXCLUSIONARY RULE:

As discussed earlier, the Doctrine of Fruit of Poisonous tree is an extension of the exclusionary rule that prevents the investigating authority from collecting and producing evidence that in violation of constitutionally protected rights. This rule is extensively used in the United States, and it covers all persons within the United States whether or not they are citizens. This could also be referred to as a legal technicality, as this does not look into the aspect if a crime is committed or not but only looks at an illegal act committed by the investigating authority. As noted previously in Silverthorne Lumber Co. v. United States, the court states that allowing illegally obtained evidence in a criminal proceeding "reduces the Fourth Amendment to a form of words", meaning the right to privacy and the exclusionary rule (fruit of the poisonous tree) go hand in hand. The right to privacy cannot exist without allowing the exclusionary rule.

Now the applicability of this rule would not be under scrutiny if not for the judgment in K.S. Puttaswamy, which ensures the Right to Privacy as an inalienable natural right. Now a correlation has to be drawn with this judgment and the already existing Fourth amendment of the United States. It is imperative to understand that while the fourth amendment is not directly applicable to India in its strict sense, at the least not in those exact words. It is observed by the nine benches that such a right to privacy would exist in consonance with articles 14, 19 and 21. Meaning that action is first checked if it is arbitrary (under Art. 14), and if it passes such a test, then its reasonableness has to checked (under Art. 19); finally, the test under article 21 has to be followed, i.e., the procedure established by law. The judgment would go on to postulate privacy in the preamble under the dignity of an individual, to quote Justice Nariman "The dignity of the individual encompasses the right of an individual to develop to the full extent of his potential. And the development can only be if an individual has autonomy over fundamental choices and control over the dissemination of personal information which may be infringed through unauthorized use of such information".

Having understood various facets of privacy, the Supreme Court judgment also quotes some of the important cases dealt with by the American courts concerning the Fourth Amendment with respect to its infringement by a public authority in the way of illegal searches and the constitution of such a search. Justice Chelameswar gives privacy three important faces such as repose, sanctuary and intimate decisions. To satisfy the inter-link between privacy and exclusionary rule, Justice Sanjay Kishan Kaul recognizes the existence of the right to privacy against state and non-state actors alike though under different circumstances. In respect of state actors, he identifies concerns of surveillance and profiling, and in respect of non-state actors, he emphasizes informational privacy. Thus, there is a recognition for the need to take a deeper look at state's action with respect to surveillance and intrusion into personal space is reflected in the judgment, which should squarely mean that though not in the exact words, this doctrine is accepted in its essence. As far as non-state actors are concerned, the court opined that an extensive regulation has to be formulated to keep them in check.

POSITION OF EXCLUSIONARY RULE ELSEWHERE:

In a comparative recent English decision in R V. Sang which dealt with the issue of admission of evidence by a trial Judge. The court of appeal held that a trial judge has the discretion to refuse to admit the evidence if he deems that its prejudicial effect outweighs its probative value.

Save with regard to the admissions, confessions and evidence obtained from the accused after his commission of the offence. The House of Lords seems to give discretion to a judge to exclude evidence to the extent that it disturbs the fact-finding capacity of the jury.

In Scotland, the perspective differs from that of the English. While there is no such rule for exclusion of illegally obtained evidence, yet when such questions are posed, the police can rebut, pointing at the circumstances, which excuse such acts. In the words of Lord Justice General Cooper, "The law must reconcile two highly important interests which are liable to come in conflict viz., the interest of the citizen and the interest of the sate". The law is founded upon the principle that "an irregularity in the manner of obtaining evidence is not necessarily fatal to its admissibility (but) irregularities of this kind always require to be 'excused' or condoned if by the existence of urgency or other circumstances."

In Australia, it is accepted that a judge has the power in the public interest to exclude evidence that has been improperly obtained. The position is the same in New Zealand. In Bunning V. Cross, in a case of driving under the influence of alcohol, the magistrate held the evidence obtained through the breath analyzer test was inadmissible due to non-compliance with the mandatory preliminary road test. In Queensland, the committee of inquiry into the enforcement of the law has given a report surveying the entire field of enforcement of criminal law and the fair and efficient manner of administration of justice with specific reference to the protection of individuals from illegal and undue pressure from the investigating agencies.

In Canada, as a matter of ordinary law, it was presumed before 1971that criminal courts had a recognised jurisdiction to exclude evidence obtained illegally. However, in 1971 an important pronouncement of the Canadian Supreme Court limited the discretion narrowly though not abolishing it. The Supreme Court held that judges had no discretion to exclude evidence whose admission would bring the administration of justice into disrepute. Justice Cartwright dissented and pointed to a common notion that the accused cannot be forced to self-incriminate, which implied that a judge would necessarily require discretion on the exclusion of evidence. So as a matter of common law, the power of Canadian courts to exclude illegally obtained evidence is very limited. The Ontario Law Commission has recommended the discretion to the courts based on the nature of the case, and evidence obtained.

INDIAN PERSPECTIVE OF THE DOCTRINE:

Going through The Indian Evidence Act, 1872, we cannot find a mention of the means to be adopted in collecting evidence in the strictest sense, nor is there a mention of legality or illegality of evidence. We can only understand that it talks about relevancy and which evidence is relevant and irrelevant. However, section 24, 25 and 26 of the acts talks about the confessional statement and its validity. More importantly, confession to a police officer and cannot be used against the accused in a court. Therefore, it is imperative to take a note of the court's view in order of the advancing timeline (Oldest first). Going back to the Privy Council case, Nazir Ahamad V. King-Emperor, in a case of confession to a magistrate, the court held that oral evidence by the magistrate is not a means

of recorded confession. The ratio of the case would go on to say, "where a power is given to do a certain thing in a certain way the thing must be done in that way, to the exclusion of all other methods of performance, or not at all…". To put things in perspective, the Supreme Court in the year 1964, in a case concerning the consumption of liquor while driving, on the fact of dealing with the collection of evidence such as blood samples. Wherein the admissibility of the blood sample was questioned, and it was squarely answered by the court that the blood samples taken without following the procedure prescribed cannot be admitted as evidence and hence rejected such a claim. The case of R.M. Malkani V. State of Maharashtra brings up a peculiar note, as the question of admissibility of an illegally obtained tape-recorded conversation with the permission of one party. Where it was held, "Where a person talking on the telephone allows another person to record it or to hear it, it cannot be said that the other person who is allowed to do so is damaging, removing, tampering, touching machinery battery line or post for intercepting or acquainting himself with the contents of any message. There was no element of coercion or compulsion in attaching the tape recorder to the telephone." In the case of Pooran Mal V. Director of Inspection, by citing the previous other cases where evidence was allowed by the court and holding "Where the test of admissibility of evidence lies in relevancy unless there is an express or necessarily implied prohibition in the constitution or any other law evidence obtained as the result of illegal search or seizure is not liable to be shut out". In a case concerning Foreign Exchange Regulation act, 1973 regarding seizure and preventive detention the court pointing out its earlier decisions held that "the fact that the document was procured through illegal means could not bar its admissibility provided its relevance and genuineness were proved". A judgment delivered by Justice K.G. Balakrishnan in the case of State of M.P. through CBI v. Paltan Mallah, wherein the court held that evidence obtained through illegal search and seizure is not completely excluded unless it has caused some serious prejudice to the accused. Such evidence can be admitted provided there is no express statutory violation or violation of the constitutional principles. To quote "general provisions of CrPC are to be treated as guidelines, and if at all there is a minor violation the court can accept the evidence, courts have the discretion to decide if such an evidence can be accepted or not", it can be noted that the court was talking about the concept of discretionary exclusion. While quoting the judgment, it is also important to point out that the irregularity claimed by the accused is simply that the witness who accompanied the police officer was not from the same locality. In Umesh Kumar V. State of Andhra Pradesh, though the court, in this case, held that "even if a document is procured by improper or illegal means, there is no bar to its admissibility if it is relevant and its genuineness is proved. If the evidence is admissible, it does not matter how it has been obtained". It also put on record stating that "However, as a matter of caution, the court in the exercise of its discretion may disallow certain evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. More so, the court must conclude that it is genuine and free from tampering or mutilation".

When we look at these judicial pronouncements, we understand that the Indian courts have a consequentialist approach towards the evidence. It is attributed due to the fear of letting the guilty party walk away scot-free. Now that Right to Privacy is a fundamental right, illegally obtained evidence is now a violation of the constitutional principles, and

hence it can be argued that such evidence cannot be now admitted in the courts.

It has to be kept in mind that the courts have always safeguarded the constitutional rights protected under article 20 of the constitution that can be easily inferred from the Selvi V. State of Karnataka, delivered by Justice K.G. Balakrishanan (CJI) dealing with the legality of Nacroanalysis, Polygraph, Brain-mapping gave importance to the principles enshrined in Art 20 (3) of the Constitution holding that they cannot have a higher evidentiary value and that those tests have to be conducted with the knowledge of the accused. In addition to this, the court held that these tests only have a persuasive value and are by itself not conclusive of the guilt of the accused.

THE DEPARTURE:

It is a relief to note that though the court has been reluctant to dismiss illegally obtained evidence previously, the judgment rendered by the nine bench Judge in K.S. Puttaswamy has made it very helpful for some courts to dismiss illegally obtained evidence. The high court of Bombay applied the Right to Privacy in its full essence in the case of Vinit Kumar V. Central Bureau of Investigation, where the court set aside certain telephonic interception orders and ordered the records to be destroyed. It held that the CBI did not follow the procedure brought about in the Indian telegraph act, 1885 or the guidelines prescribed in PUCL V. Union of India. It went on to quote the nine-judge bench in stating that an infringement of the Right to Privacy will have to meet the Principle of Proportionality and Legitimacy. The four tests to prove the case:

1. The action must be sanctioned by law;
2. The proposed action must be necessary in a democratic society for a legitimate aim;
3. The extent of such interference must be proportionate to the need for such interference;
4. There must be procedural guarantees against abuse of such interference."

The Bombay High Court also held that the previous judgments suggesting to the contrary, allowing such evidence are no longer binding precedents. The matters of infraction of the fundamental right to privacy would now have to satisfy the previously mentioned tests and cannot be dealt with based on the overruled judgments in M.P. Sharma or Kharak Singh or based thereon or on the same line of reasoning like R.M. Malkani.

The inference to be drawn from this judgment is that evidence obtained illegally or without the procedure established by law is inadmissible, and hence such an investigation or the records seized is liable to be quashed.

However, it is important to note that High Courts have upheld the right to privacy in certain cases even before the K.S. Puttaswamy judgment. In KLD Nagashree v. Government of India, the court directed the destruction of intercepted messages pursuant to the illegal direction. It also observed that the right to privacy is an essential part of Article 21 while quoting PUCL V. Union of India. Further, in Hussein Ghadially v. the State of Gujarat, while quashing the proceedings under TADA for non-compliance of the mandatory requirement of approval, which is construed as non-compliance of "procedure established by law" under article 21 of the Indian Constitution.

The Law Commission, in its 94th report (1983), talks about the exclusionary rule while taking note of the earlier Supreme Court decisions and the existing nature of the codified evidence act. The said report proposed the insertion of section 166A into the Indian evidence act. The proposed 166A reads:

(1) 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 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 the illegal and improper means it was obtained its admission would tend to bring the administration of justice into disrepute.

(2) In determining whether evidence should be excluded under this section, the court shall consider all the circumstances surrounding the proceedings and all the manner in which the evidence was obtained, including –

(a)The extent to which human dignity and social values were violated in obtaining the evidence;

(b)The seriousness of the case;

(c)The importance of the evidence;

(d)The question of whether any harm to an accused or others was inflicted willfully or not, and

(e)The question whether there were circumstances justifying the action, such as a situation of urgency requiring action to prevent destruction or loss of evidence."

Now a closer reading of this section would show us that this section covers all and any necessary precautions that are required to be looked at while appreciating evidence. The report also states that merely shutting out evidence because of some illegality is an extreme measure. Thus, the report-incorporated section 166A is a discretion conferred to the court and not a mandatory provision. The report has incorporated S. 166A as an inclusive determination (Clause 2) as it recognizes that such a list cannot be exhaustive. The report has put human dignity and social values at its heart. It also understands the importance of context in a criminal case, which it enumerates into three factors viz, the seriousness of the case, the importance of the evidence and the magnitude of willful harm caused. The demands of law enforcement have been dealt with by clause 2 of this section. Read together; the section strives to strike a balance between human dignity and the enforcement of the law.

It is pertinent to note that the Supreme Court, in its suo motto cognizance, has stressed the need for appreciation of evidence correctly and strictly by the lower criminal courts at its trial stage. However, it does not specifically talk about the collection of evidence nor its legality; it talks about the procedural inadequacies during the criminal trials with respect to marking of documents and examination of witnesses. It is a reasonable assumption that Supreme Court does not endorse procedural impropriety in the collection of evidence.

ARGUMENTS PRO AND CON:

When we discuss the concept of the Exclusionary rule, it is pertinent to consider the need for such a rule its consequences thereof. The major points for the rule are the ethical argument, the argument of unfairness to the accused, the integrity of the judicial process and the idea of law and morality with holistic development of law. The Ninety fourth-law commission report has discussed the pros and cons of the exclusionary rule extensively.

Law as such is a deterrence to do or to abstain from doing an act. When a crime is an illegal act, another illegal act of obtaining evidence through means not prescribed is also an illegal act. As such, deterrence is a measure imparted to abstain from doing an act. The only effective sanction against the law enforcement agencies for such an act is a rule that excludes such evidence. The adoption of a rule of discretion of exclusion might prima facie

remove the incentive to break the law for obtaining evidence.

The general argument for a sanction against illegally obtained evidence is the availability of alternative remedies to combat such practices. Such alternative remedies include Criminal sanctions, tortious remedies and departmental actions. These remedies, so to say, are in as much, practically inapplicable for the reasons stated forthwith. In case of a criminal sanction, it is not easy for a victim to pursue such actions effectively as he has to gather sufficient evidence and the need to satisfy certain legal pre-requisites such as a sanction for prosecution. Civil actions as a remedy for unlawful search is equally difficult. The departmental action is a notorious process because the state is unlikely to undertake sanctions against the police officer; in the words of Murphy J, "Self-scrutiny is a lofty ideal, but its exaltation reaches new heights if we expect a District Attorney to prosecute himself or his associates for well-meaning violations of search and seizure clause during a raid the District Attorney or his associates ordered."

Another point to be looked at is the ethical angle or the "Clean hands" doctrine. Simply put, the wrongdoer must not avail the benefit of the wrongful act and the person who approaches the court for remedy must have clean hands, metaphorically. A prosecutor cannot put on trial an illegal act through evidence obtained illegally. It is possible to apply the doctrine of clean hands in an impersonal manner by considering the whole law enforcement as one machinery. The point at stake is the illegal conduct of the investigating agency and the need to deprive the wrongdoer of the benefit of such wrongful act alone, but the need to ensure that the stream of justice is not polluted by such abject illegality.

In points against the exclusionary rule, the operation of a rule excluding evidence obtained illegally may obstruct the process of seeking the truth. In some cases, the guilty party may even go free. The predominant concern of the court is the search for truth, and the fact of illegal evidence does not affect the logical relevance of the evidence. Another important point raised against the exclusionary rule is that it would be a grave injustice to a party (victim) to be denied the use of evidence simply because of a technicality.

The idea contemplated in the 94th Law commission report also purports an uncertainty as to its practicability in India due to the absence of a codified Right to Privacy. To quote the report, "There is no doubt that this question will arise in court someday. When it arises, the courts will be called upon to make a difficult choice, but they will have a number of models for concrete study". In light of the Constitutional bench judgment in K.S. Puttaswamy, we now have an inalienable fundamental right to privacy as a natural right; it would now depend on the court's interpretation of the judgment and its applicability with the exclusionary rule.

CONCLUSION

This examination into the aspects of the doctrine of Fruit of Poisonous Tree and its application by the Indian courts shows the changing perspective towards the collection and admission of evidence. The courts face a dichotomy; on the one hand, if evidence obtained illegally is not admitted at the trial, grave injustice may be caused in some cases, and respect for the courts as courts of justice would be diminished. On the Other hand, there are cases where illegal conduct is so shocking that it can be construed as unjust to admit the evidence. While the Indian court at its inception was reluctant to admit such evidence, during the course of time, the courts took a view of not letting the guilty party walk away merely because of a minor technicality. As later

developments took place and the question of privacy was brought before the court repeatedly, the options in front of the court became fewer. The view shifted from not letting the guilty party walk away from making sure that the investigative process was not faulty, thereby making the investigating agencies comply with the procedure established by law. As it seems, an element of elasticity in the law may, in the majority of the cases may better serve the law. The question of admittance of the doctrine, though, is still a conundrum, but it is safely assumable that the courts are moving towards not admitting illegally obtained evidence.

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