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THE DOCTRINE OF FRUITS OF A POISONOUS TREE AND THE RIGHT TO PRIVACY IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

In the criminal justice system of India, the primary consideration governing the admission or rejection of evidence has traditionally been its relevancy rather than the legality of its procurement. The doctrine of fruits of a poisonous tree, which prevents the use of evidence derived from an illegal source and discourages law enforcement agencies from engaging in unlawful conduct while collecting evidence, has found no strict application in Indian law. The settled position of Indian courts has been that, absent a statutory or constitutional provision excluding a particular type of evidence, the mere fact that evidence was obtained illegally is of no consequence, notwithstanding that such evidence may at times be procured through means that violate the basic human and constitutional rights of citizens. The Supreme Court's judgment in Justice K.S. Puttaswamy v. Union of India, recognising privacy as a fundamental right, unsettles this position and raises a pointed question: can courts continue to exercise discretion to admit illegally obtained evidence once the method of its procurement itself constitutes a breach of a fundamental right? This paper analyses the legal position governing the exclusion of illegally obtained evidence in India, situates it against the doctrine's comparative origins, traces its treatment across the pre- and post-Puttaswamy case law, and argues that the continued absence of a statutory exclusionary standard, despite the Law Commission's decades-old recommendation to enact one, leaves a genuine and unresolved tension between the constitutional right to privacy and the public interest in a fair criminal trial.

KEYWORDS: *Admissibility; Right to Privacy; Exclusionary Rule; Evidence; Fair Trial*

1. INTRODUCTION

In the criminal justice system of India, the primary consideration governing the admission or rejection of evidence is its relevancy, meaning that evidence obtained through unlawful or improper means does not, by that fact alone, become inadmissible. Consider a criminal proceeding in which an accused is alleged to have committed murder, and the police, conducting a search and seizure of the accused's premises without conforming to the procedure prescribed by law, recover the murder weapon. That weapon is unquestionably relevant under the Bharatiya Sakshya Adhiniyam, 2023, yet the illegality of the manner in which it was procured raises a distinct question: does that illegality nullify the weapon's admissibility as evidence? If the tree itself is tainted, should its fruit be admitted as lawful evidence? This hypothetical is not chosen arbitrarily; it captures the essential structure of the doctrinal problem this paper examines, in which the substantive relevance of evidence to establishing guilt or innocence stands in tension with the process by which the state came to possess it, a tension every criminal justice system must resolve one way or another, whether through an exclusionary rule, a discretionary balancing

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standard, or, as this paper argues India has effectively chosen by omission, near-total deference to relevance alone.

The law of evidence occupies a pivotal role in the functioning of the justice system, since substantive rights can be vindicated only through evidence that is both relevant and admissible.[1] The metaphor of the poisonous tree captures a specific proposition: the exclusion from trial of evidence, the fruit, derived from unconstitutional investigative practice, the tree.[2] The question is not merely academic. In late 2024, the technology company Samsung challenged the legality of a 2022 search and seizure conducted by the Competition Commission of India, alleging that the cloning of its employees' phones and data, and a related raid on an Amazon reseller's premises, were unlawful, and raising concerns that data seized during the raid may have been used to alter the company's position in the underlying investigation, a contemporary illustration of the doctrine's continuing commercial and constitutional relevance.[3] Since the right to privacy has been held to be a fundamental right by the Supreme Court, this paper asks whether that ruling now sits in unresolved tension with the continued admissibility of illegally obtained evidence, and undertakes a thorough analysis of the doctrine of fruits of a poisonous tree with particular emphasis on the right to privacy in India.

1.1 Objectives of the Study

This paper seeks to furnish insight capable of enhancing clarity on the doctrine of fruits of a poisonous tree in Indian law, to trace its treatment across the pre- and post-Puttaswamy case law, and to offer suggestions addressing the doctrinal lacuna that the Puttaswamy verdict has left unresolved.

1.2 Research Methodology

This paper adopts a doctrinal methodology incorporating analytical and explanatory research, drawing on statutes, judicial decisions, official reports, journal literature, books and credible online repositories.

2. THE DOCTRINE'S ORIGINS AND COMPARATIVE FOUNDATIONS

The doctrine prevents the use of illegally collected evidence and discourages law enforcement agencies from engaging in unlawful conduct while gathering it; "fruits of the poisonous tree" is a metaphor suggesting that if the tree, the source, is tainted, so too is its fruit, the evidence obtained from it. The phrase

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1 K.D. Gaur, Textbook on the Indian Evidence Act (2nd ed., LexisNexis 2020).

2 Daniel Yeager, A History of Fruit of the Poisonous Tree (1916-1942), 67(1) How. L.J. (2023).

3 Samsung Challenges CCI Search and Seizure, Seeks to Halt Anti-Trust Probe, Bus. Standard (Dec. 14, 2024).

was first used by Justice Frankfurter of the Supreme Court of the United States in Nardone v. United States, which held that evidence obtained through wiretapping was inadmissible because it fell foul of the Fourth Amendment's guarantee against unreasonable search and seizure, itself understood to protect a right to privacy.[4] The doctrine's American formulation is thus inseparable from a constitutional privacy guarantee that predates, by decades, any comparable Indian recognition.

English and Commonwealth courts took a markedly different path. In Kuruma v. Queen, the Privy Council held that the test to be applied in both civil and criminal cases in considering whether evidence is admissible is whether it is relevant to the matters in issue, and that if it is relevant, the court is not concerned with how it was obtained.[5] This relevancy-first approach was applied in Regina v. Maqsud Ali, where a secretly tape-recorded conversation, the only incriminating evidence against the accused in a murder trial, was admitted at the trial judge's discretion notwithstanding the manner of its procurement.[6] India's doctrinal starting point, examined in the following Part, tracks this English relevancy-first tradition far more closely than it tracks the American exclusionary model, a divergence of first importance for understanding why the doctrine, in the terms in which it developed in the United States, has found no strict application in Indian law.

This divergence is neither accidental nor merely a matter of judicial preference; it reflects the different constitutional starting points from which each jurisdiction approached the question. American exclusionary doctrine developed as a direct remedy for the violation of an explicit, textually enumerated constitutional guarantee, the Fourth Amendment's protection against unreasonable search and seizure, such that exclusion functions as the primary mechanism by which that guarantee is given practical effect against the state. English law, lacking any comparable entrenched constitutional text, developed instead within a common-law tradition oriented around the reliability and probative value of evidence rather than around vindicating a constitutional right through the trial process itself. India's own constitutional text, prior to Puttaswamy, more closely resembled the English position than the American one: the Constitution contained no explicit privacy guarantee analogous to the Fourth Amendment, leaving Indian courts, quite consistently with their inherited common-law method, to import the English relevancy-first approach directly. Puttaswamy's recognition of an implied constitutional privacy guarantee under Article 21 accordingly places India, for the first time, in a position structurally closer to the American starting point than to the English

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

5 Kuruma v. Queen, (1955) 1 All ER 236 (PC).

6 Regina v. Maqsud Ali, [1966] 1 Q.B. 688 (CCA).

one, even though, as the remainder of this paper demonstrates, Indian courts have not yet drawn the doctrinal consequence from that shift that American courts drew from their own comparable constitutional recognition decades earlier.

3. THE TRADITIONAL INDIAN POSITION: RELEVANCY AS THE SOLE TEST OF ADMISSIBILITY

The Indian judiciary's traditional approach has consistently held that, absent an express statutory or constitutional provision excluding a category of evidence, the illegality of its procurement is of no consequence to its admissibility. In R.M. Malkani v. State of Maharashtra, the state used a recording device to capture a conversation concerning the demand of a bribe; the Supreme Court rejected the argument that the resulting evidence should be excluded as illegally obtained, holding, by reliance on the Privy Council's reasoning in Kuruma, that if evidence is admissible, it matters not how it was obtained, while observing that a police officer is more likely to behave properly where improperly obtained evidence will be viewed by the judge with care and caution.[7] The Court admitted the tape recording notwithstanding its procurement in violation of Section 25 of the Telegraph Act, 1885, treating it as a document under Section 3 of the Evidence Act on the same footing as a photograph, admissible where the voice of the speaker is identified by the maker of the record, the accuracy of the recording is proved and shown free from tampering, and the recorded subject matter is relevant.

The Supreme Court extended this reasoning directly to constitutional terrain in Pooran Mal v. Director of Inspection of Income Tax, holding that the only test for admissibility is relevance, and that unless there exists an express or necessarily implied prohibition in the Constitution or in any other law, evidence obtained through illegal search or seizure is not liable to be excluded; the Court further held that Section 5 of the Indian Evidence Act, 1872 permits relevancy as the sole test of admissibility, and that no other legal provision excludes evidence merely because it was illegally obtained, expressly declining to read any constitutional protection into the law of evidence that would produce a contrary result.[8] Yusufalli Esmail Nagree v. State of Maharashtra applied the same principle to a covertly recorded conversation corroborating a bribery charge, holding that just as a photograph taken without the subject's knowledge may become relevant and admissible, so too may a tape recording of a conversation unnoticed by the speakers.[9] The Supreme Court subsequently elaborated detailed technical safeguards for admitting tape-recorded evidence in

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7 R.M. Malkani v. State of Maharashtra, (1973) 1 S.C.C. 471 (India); Kuruma v. Queen, (1955) 1 All ER 236 (PC).

8 Pooran Mal v. Director of Inspection of Income Tax, (1974) 1 S.C.C. 345 (India).

9 Yusufalli Esmail Nagree v. State of Maharashtra, 1968 A.I.R. 147 (India).

Ram Singh v. Ram Singh (Col.), requiring identification of the speaker's voice, proof of the recording's accuracy, exclusion of any possibility of tampering, demonstrated relevance of the recorded subject matter, secure custody of the recording, and audibility free from distortion, a framework aimed at evidentiary reliability rather than at the legality of the recording's procurement.[10] The Court reaffirmed the underlying relevancy principle in State (NCT of Delhi) v. Navjot Sandhu, holding the question no longer res integra: a tape recording of a relevant conversation is a relevant fact admissible under Section 7 of the Evidence Act, such that the sole criterion for admissibility is relevance rather than the procedure or means through which the evidence was obtained.[11] In Magraj Patodia v. R.K. Birla, the Court confirmed that the procurement of a document by unlawful or improper means does not bar its admissibility provided its genuineness and relevancy can be established, while acknowledging that a court may properly examine the circumstances of procurement and inquire into why unlawful methods were adopted, without that inquiry displacing relevance as the ultimate legal test.[12] Taken together, this line of authority, spanning bribery investigations, tape-recorded evidence and documentary proof alike, establishes a doctrinally consistent Indian position considerably more permissive than the American exclusionary rule and closely aligned instead with the English relevancy-first tradition traced in Part 2.

4. STATUTORY SILENCE: THE ABSENCE OF AN EXCLUSIONARY RULE

This judicially settled position finds no statutory correction. Section 5 of the Telegraph Act, 1885 and Rule 419-A of the Telegraph Rules, 1951 confer discretionary wiretapping powers on the Government in situations of public emergency or public safety, and while these provisions include procedural safeguards, they leave the underlying tension between evidentiary admissibility and public safety concerns unresolved. The High Court decisions in Jatinder Pal Singh v. CBI and Vinit Kumar v. CBI, examined further in Part 5, were among the first to address the admissibility of evidence obtained through wiretapping under the Telegraph Act in the period following Puttaswamy, precisely because the statute itself offers no exclusionary guidance.[13] The procedural safeguards the Telegraph Act does contain, requiring recorded reasons and periodic review committee oversight of interception orders, address the legality of the interception itself rather than the separate and logically subsequent question of what happens to evidence obtained where those safeguards were not observed; a

[10] Ram Singh v. Ram Singh (Col.), A.I.R. 1986 S.C. 3 (India).

[11] State (NCT of Delhi) v. Navjot Sandhu @ Afzal Guru, [2005] Cri. L.J. 3950 (India).

[12] Magraj Patodia v. R.K. Birla, MANU/SC/0322/1970 (India).

[13] Jatinder Pal Singh v. CBI, 2022 SCC OnLine Del 135 (India); Vinit Kumar v. CBI, 2019 SCC OnLine Bom 3155 (India).

wiretap conducted without the requisite sanction may well be unlawful as an administrative matter while the resulting recording remains, under the case law traced in Part 3, fully admissible as evidence, a structural gap between procedural legality and evidentiary consequence that no comparable jurisdiction with a developed exclusionary tradition would tolerate.

The principle of evidentiary admissibility under the Bharatiya Sakshya Adhiniyam, 2023 likewise remains anchored in relevancy, as defined in Section 2 and operationalised through Section 3; the Adhiniyam nowhere addresses illegality in the mode of obtaining evidence as an independent ground for exclusion, meaning that the general position in India remains that it is the relevancy of evidence, irrespective of the legality or illegality of the mode by which it was obtained, that determines admissibility before a court. The persistence of this statutory silence across three successive generations of Indian evidence law, the 1872 Evidence Act, its constitutional reinterpretation, and now the 2023 Adhiniyam enacted after Puttaswamy itself, is the central structural fact this paper's analysis returns to throughout: Parliament has had every opportunity, including the specific occasion of drafting an entirely new evidence code after the right to privacy's constitutional recognition, to supply an exclusionary standard, and has on each occasion declined to do so. This is not a case of legislative oversight capable of correction through minor amendment; it reflects, on the evidence examined in Part 7, a considered institutional choice to prioritise the reliability and probative completeness of the trial record over the deterrent function an exclusionary rule would otherwise serve, a choice the Bharatiya Sakshya Adhiniyam's drafters made with the benefit of, rather than in ignorance of, Puttaswamy's constitutional holding.

5. THE CONSTITUTIONAL TURN: PRIVACY AND ITS POST-PUTTASWAMY IMPLICATIONS

Constitutional privacy jurisprudence developed along a track initially separate from, but increasingly intersecting with, the evidentiary relevancy doctrine traced above. In People's Union for Civil Liberties v. Union of India, the Supreme Court, considering whether surveillance regulations under the U.P. Police Regulations infringed fundamental rights, held that the right to privacy is part of the right to life and personal liberty under Article 21, that telephone conversation is an important facet of private life, and that telephone tapping infringes Article 21 unless conducted according to a procedure established by law; notably, the Court did not extend this holding to the exclusionary question, leaving open whether privacy-infringing surveillance would render resulting evidence inadmissible.[14] The Supreme Court's decision in Selvi v. State of Karnataka addressed a related but distinct dimension of this tension, holding

[14] People's Union for Civil Liberties v. Union of India, A.I.R. 1997 S.C. 568 (India).

that compulsory administration of narco-analysis, polygraph and brain-mapping techniques constitutes an unjustified intrusion into mental privacy amounting to cruel, inhuman or degrading treatment, and that protection of public interest cannot justify the dilution of fundamental rights, reasoning that implicitly favours the exclusion of evidence obtained through such compelled techniques even without directly resolving the general admissibility question.[15]

The decisive constitutional intervention came in Justice K.S. Puttaswamy v. Union of India, where a nine-judge bench held that privacy is the constitutional core of human dignity, operating at both a normative level, underpinning the values on which life, liberty and freedom are founded, and a descriptive level, comprising a bundle of entitlements integral to ordered liberty; the Court held that privacy, like other Part III freedoms, is not absolute, and that any law encroaching upon it must withstand the permissible-restrictions test, requiring a procedure that is fair, just and reasonable, evaluated against the touchstone of legality, legitimate aim and proportionality.[16] Critically, while the judgment places a constitutional embargo on illegal search and seizure that fails this triple test, it does not itself resolve the exclusionary question: the Court affirmed that privacy forms an intrinsic part of the right to life and a structural foundation for other constitutional freedoms, without addressing whether evidence obtained in violation of that right must, for that reason alone, be excluded from a criminal trial.

Subsequent High Court decisions have attempted to fill this gap, with divergent results. In Vinit Kumar v. CBI, the Bombay High Court adopted the Puttaswamy framework directly, holding that where illegally intercepted messages, procured pursuant to an order lacking legal sanction, are permitted to stand notwithstanding directions in PUCL and Puttaswamy, courts risk breeding contempt for law in matters involving the infraction of the fundamental right to privacy; the Court reasoned that treating the ends as justifying the means would effectively license government authorities to violate Supreme Court directions or mandatory statutory rules in order to secure evidence, producing manifest arbitrariness and scant regard for both procedure and fundamental rights.[17] By contrast, in Deepti Kapur v. Kunal Jhulka, the Delhi High Court held that evidence collected in breach of a fundamental right does not thereby become inadmissible, reasoning that the right to privacy must yield to the right to a fair trial; the case concerned a husband's secret recording of his wife's conversation with a friend, and the Court observed that admission of evidence in court does not amount to proof of the underlying fact, and that court proceedings must in

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15 Selvi v. State of Karnataka, MANU/SC/0325/2010 (India).

16 Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

17 Vinit Kumar v. CBI, 2019 SCC OnLine Bom 3155 (India).

any event remain fair and just regardless of how evidence entered the record.[18] The Madhya Pradesh High Court reached the opposite conclusion on materially similar facts in Anurima v. Sunil Mehta, giving primacy to privacy and holding that a husband's covert recording of his wife's conversation, made without her knowledge, was a clear infringement of her Article 21 right to privacy that could not be used as an instrument to create evidence.[19] This direct conflict between Deepti Kapur and Anurima, both decided by High Courts applying the same constitutional text to structurally similar facts, illustrates precisely the doctrinal uncertainty Puttaswamy has generated without resolving.

Further decisions illustrate the doctrine's continuing instability at the margins. In Dnyaneshwar v. State of Maharashtra, the Bombay High Court held a search conducted without a warrant under the urgency provision of Section 165 of the Code of Criminal Procedure to be illegal, awarding compensation to the petitioner where the authorities failed to record the secret information relied upon or to follow the statute's own procedural requirements, illustrating that procedural non-compliance can generate a remedy in damages even where the resulting evidence's admissibility remains untouched.[20] This pattern, a civil or compensatory remedy running alongside continued admissibility of the tainted evidence itself, recurs across the case law this paper has surveyed and merits particular attention: it suggests that Indian courts have, in effect, improvised a partial substitute for an exclusionary rule by developing parallel damages liability for unlawful investigative conduct, while declining to extend that liability to the evidentiary consequence, exclusion, that would most directly deter the underlying misconduct. A police officer or investigating agency weighing the costs of an unlawful search thus faces, under the present law, at most the prospect of a compensation order running against the state exchequer rather than the state's own budget, a diffuse and attenuated deterrent when set against the concrete evidentiary gain the unlawful search may produce.

In Umesh Kumar v. State of Andhra Pradesh, the Supreme Court observed that exclusionary evidence may be discarded where it would operate unfairly against the accused, a fairness-based discretion distinct from, and narrower than, a rule mandating exclusion for illegality as such.[21] Read together, this body of case law confirms that Indian courts, even after Puttaswamy, continue to treat illegally obtained evidence as presumptively admissible, reserving exclusion for the comparatively rare case in which admission would itself work a specific unfairness upon the accused, rather than treating the constitutional illegality of the evidence's procurement as an independent ground for exclusion.

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18 Deepti Kapur v. Kunal Jhulka, A.I.R. 2020 Delhi 156 (India).

19 Anurima alias Abha Mehta v. Sunil Mehta, A.I.R. 2016 M.P. 112 (India).

20 Dnyaneshwar v. State of Maharashtra, 2019 SCC OnLine Bom 4949 (India).

21 Umesh Kumar v. State of Andhra Pradesh, (2013) 10 S.C.C. 591 (India).

The distinction is not merely semantic: a fairness-based discretion asks whether admitting the evidence would prejudice the accused's ability to receive a fair trial on the facts before the court, a question that can be answered affirmatively even for reliable, probative evidence obtained through a serious constitutional violation, whereas an illegality-based exclusionary rule asks a categorically different question, whether the state should be permitted to benefit evidentially from its own unlawful conduct, irrespective of whether that conduct happens to prejudice this particular accused's trial. India's case law has consistently answered only the first question, leaving the second, the one Puttaswamy's constitutional recognition of privacy most directly implicates, effectively unaddressed.

6. THE 94TH LAW COMMISSION REPORT AND THE UNENACTED SECTION 166-A

The Tenth Law Commission of India anticipated much of this difficulty as early as 1983, in its 94th Report on illegally obtained evidence, which identified the core issue with precision: in the absence of a specific statutory or constitutional provision excluding particular types of evidence, the fact that evidence was obtained illegally remains of no consequence to its admission at criminal trial, leaving the question entirely to judicial discretion.[22] The Report surveyed comparative practice and identified four categories of jurisdictions: those, like India, in which illegally obtained evidence is admissible because no law excludes it; those in which illegality is a relevant factor a court may weigh in deciding whether to admit evidence; those with a specific statutory exclusionary provision; and those in which exclusion flows from constitutional guarantee or its judicial construction, a category into which India might plausibly have moved following Puttaswamy had Parliament chosen to legislate accordingly. The Report recommended inserting Section 166-A into the Indian Evidence Act, empowering courts to refuse the admission of illegally or improperly obtained evidence where the nature of the means used to gather it would disrupt the administration of justice, directing courts to weigh the importance of the evidence, the seriousness of the offence, and whether the surrounding circumstances justified the means adopted. No such provision was ever enacted, and the drafters of the Bharatiya Sakshya Adhiniyam, 2023, working four decades after the Report and five years after Puttaswamy itself, chose not to revive it, a legislative silence this paper treats as a deliberate, rather than inadvertent, choice.

7. BALANCING PRIVACY AND FAIR TRIAL: TOWARDS A STATUTORY STANDARD

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22 Law Commission of India, 94th Report on Evidence Obtained Illegally or Improperly and Evidence of Bad Character (1983).

The Committee for Reforms in Criminal Laws, constituted to review the Evidence Act, the Code of Criminal Procedure and the Penal Code, sought expert opinion on precisely this question during its consultations, with legal experts observing that Puttaswamy had placed the admissibility of illegally obtained evidence in genuine doubt and that the Evidence Act required corresponding modification; the prevailing expert view, however, remained that relevance is the sole current criterion for admissibility, with courts expected to treat illegally obtained evidence with due caution rather than to exclude it outright.[23] This confirms that the doctrine of fruits of a poisonous tree carries no binding implication in India notwithstanding privacy's status as a fundamental right, and that the question of illegally obtained evidence remains committed to judicial discretion on the facts of each case, a position the Bharatiya Sakshya Adhiniyam's silence on the point only entrenches.

Two structural arguments inform how this tension should properly be resolved. First, while privacy is a personal right, the right to a fair trial engages a public interest of a different order, and where personal and public interests genuinely conflict, sound principle favours the latter; public justice demands that the search for truth in criminal adjudication not be permanently forfeited merely because the state's investigative methods fell short of constitutional standard, provided the resulting unfairness to the accused is otherwise addressed. This argument, however, should not be overstated: characterising privacy as merely "personal" against a fair trial interest characterised as "public" risks understating the public dimension of privacy itself, since a criminal justice system that tolerates routine constitutional violation in evidence-gathering degrades public confidence in the rule of law generally, a systemic harm that extends well beyond the individual accused whose privacy was invaded in any particular case. The comparison is therefore better framed not as personal interest against public interest, but as one public interest, the reliability and completeness of criminal adjudication, against another, the integrity of the methods the state uses to investigate crime, both of which a mature criminal justice system must serve simultaneously rather than treat as necessarily opposed.

Second, and equally important, privacy, as Puttaswamy itself makes clear, is not an absolute right, and any interference with it must proceed through a fair, just and reasonable procedure; the right to privacy has, in other jurisdictions, supplied the foundational argument for outcomes as consequential as the decriminalisation of homosexuality, reproductive autonomy and the regulation of mass surveillance, underscoring both its importance and the corresponding need to define its operative boundaries with precision rather than treat it as an

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23 Illegally Obtained Evidence and Sealed Cover Under Criminal Law Reforms Panel's Radar, Deccan Herald (Dec. 14, 2024).

unqualified trump card in every evidentiary dispute.[24] The central unresolved question this leaves is whether law enforcement should be permitted to violate a citizen's privacy in order to obtain evidence capable of securing a conviction, on the theory that the wrongfulness of the method does not affect the evidence's admissibility, a position increasingly difficult to reconcile with a constitutional order that has expressly elevated privacy to fundamental-right status.[25] The most workable resolution, consistent with the 94th Report's own proposal, is neither a rigid American-style exclusionary rule nor the current position of near-automatic admissibility, but a structured judicial discretion, exercised through a codified provision rather than ad hoc case law, empowering courts to exclude evidence where its illegal procurement is sufficiently serious, deliberate or shocking to the conscience of the court, while preserving admissibility for good-faith or merely technical procedural lapses that do not implicate the deeper constitutional concern Puttaswamy identifies. Such a standard would require courts to consider, at minimum, the severity of the privacy violation, whether it was deliberate or inadvertent, whether a less invasive investigative method was reasonably available, and the gravity of the offence under investigation, criteria closely tracking those the Law Commission itself proposed four decades ago and that remain, on the analysis this paper has presented, as relevant today as they were in 1983.

8. CONCLUSION AND SUGGESTIONS

Article 21 of the Constitution speaks of a "procedure established by law," and in the interest of justice and a fair trial, that procedure must itself be fair and consistent with the rule of law. The recommendation of the Law Commission's 94th Report, that courts be granted express statutory discretion to exclude illegally obtained evidence where its admission would offend the administration of justice, deserves legislative revival: courts should be directed to weigh whether the circumstances in which evidence was obtained justified the use of improper means, considering the seriousness of the underlying offence, the degree and deliberateness of the illegality, and the extent of prejudice to the accused. Since the sole present test remains relevancy rather than the mode of procurement, that relevancy must now be weighed candidly against the constitutional violation privacy has come to represent since Puttaswamy, without thereby abandoning the rule of law's insistence that abuse of investigative power can never be justified merely because a democracy that abused it also proved a conviction. Granting courts discretionary power to apply an exclusionary standard, calibrated to the facts of each case, would preserve the balance between the right to privacy and the public interest in effective

[24] Paras Marya, A Relook at the Admissibility of Illegally or Improperly Obtained Evidence, 8(2) NLIU L. Rev. 118, 129 (2022).

[25] Id.

criminal justice; conversely, declining to supply courts with the option to exclude egregiously obtained evidence functions, in practice, as a standing invitation to investigative agencies to disregard the rule of law they are meant to serve. Consideration of human dignity, at stake whenever evidence is procured through a serious constitutional violation, cannot be indefinitely deferred in the name of relevancy alone, and the discretionary exclusionary framework proposed above would allow courts to vindicate that dignity in the appropriate case without displacing the search for truth that the criminal process exists to serve in every other. Until Parliament acts, the declaration of privacy as a fundamental right will remain, as this paper has shown, a genuine advance in constitutional doctrine that has not yet been carried through to its logical conclusion in the law of evidence, a gap that continues to require the sustained attention of both the legislature and the judiciary.

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