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Poison tree principle: It's applicability in India

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Abstract
The phrase 'Fruit of the Poisonous Tree' is a set word in Anglo-American common law. It stands in the context of illegal investigations, searches and seizures and the problem of whether 'neutral' information based on illegally gathered evidence can be acceptable in court proceedings. The relative amount of the metaphor is clear: If the foundation of the evidence (the tree) is tainted, then anything deriving from it (the fruit) bears the same flaw. In 1920 the U.S. Supreme Courte in the case of *Lumber Co.* v. *U.S* it was held that if during an illegal search investigators find a key to a post office box containing a crucial document which might prove the defendant's guilt, this document will – as a rule – not be admissible as evidence in court proceedings since it is just one product of the unlawful search. To stick to the metaphor: the document is the fruit of the poisonous tree.

Keywords: fruit, poison tree, confession, orrigion etc.

1. Introduction
The doctrine of poison tree principle or the term "fruit of the poisonous tree" [1] is very similar to the exclusionary rule of evidence law. According to the doctrine of fruit of the poisonous tree, the evidences obtained from unlawful arrest, search or seizure is not acceptable as evidence in the court of law. These kinds of evidences are excluded by the courts at the time of trial and the State is prohibited from using the same as evidence during trial. In my research, I have it in mind to trace the record of this exclusionary rule or the 'fruits of the poisonous tree' term to understand and evaluate the importance of this term. I intend to do this by investigating the different case-laws in this regard that help us in comprehending the mindset of the judges for the application or non-application of the law. In my final conclusion, I study the points which are in favour of or against of this doctrine and the public overheads that are incurred in the relevance and non-application of this doctrine.
The primarily seized evidence normally represents the "poisonous tree," but that evidence is itself the first creation fruit of some prohibited governmental action. Thus, the books and records apprehended in *Weeks v. United States* [2] were the first creation fruit of an unlawful search and seizure. They were not included as evidence because:

> "If letters and personal credentials can thus be seized and used as evidence in a criminal trial against an accused of an offense, the safeguard of the Fourth Amendment declaring his right to be protected against such searches and seizures is of no significance, and, so far as those placed are apprehensive, might as well be incapacitated from the Constitution [3]."

Defiantly, there must be a crucial relationship [4] between the illegal activity and the evidence seized to warrant segregation. Therefore, the *Weeks* view is silent on causation, it is evident that there was a fundamental relationship between the illegitimate search and seizure and the documentary evidence which it discovered.

1.1 Basic Principles of the Miranda Exclusionary Rule
Before examining the exclusionary rule as applied to secondary evidence gleaned from illegally obtained primary evidence, it is instructive to assess the policies behind the exclusionary rule. An exclusionary rule may derive from a constitutional, statutory, or judicial source, and it is axiomatic that states are not precluded from enacting laws which provide greater protection than that required by the Constitution. However, a state legislature in passing a law regulating police activity or a state court in interpreting it, may, within constitutional limitations, decide that certain or all violations should not give rise to the exclusion of reliable evidence.
It may, of course, be argued that rules regulating police conduct are valuable even without the sanction of the exclusionary rule. Laws, never enforced are commonly enacted by states. Certain penal statutes– sodomy, fornication, adultery, and attempted suicide– are rarely the basis for criminal prosecutions. Nevertheless, one might persuasively argue that these statutes serve to discourage the prohibited conduct thereby performing a positive social function [5]. If society is reassured or made more comfortable with these laws on the books, one might well conclude that they are desirable and necessary.
A statute which proscribes certain police conduct might be found designed to perform the same function. A state legislature may desire to reassure certain segments of society that its civil liberties are being honored or to encourage law enforcement officials to restrain their activities, while at the same time finding it unnecessary to exclude reliable evidence.
However, a statue regulating police activity is usually enacted with the intent that it be obeyed [6]. If evidence illegally seized may be used at trial, police are encouraged to violate the statue. "Foolish consistency is the hobgoblin of little minds

[7],” but it is not foolish to expect that when a statute is passed, the incentive to violate it should also be removed. If a constitutional or statutory provision regulating police conduct is both desirable and necessary, should it not be made as effective as possible?

2. The Confession and Poison Tree Principle

The Supreme Court has never held a confession to be a “poisonous tree”. Miranda [8] did not explicitly concern itself with the fruits of a confession obtained absent the required warnings. However, in *Westover* v. *United States* [9] the Court examined the admissibility of the fruit of an illegal interrogation a waiver. In that case, the defendant had been extensively interrogated by local police for some fourteen hours although never informed of his rights. He was then turned over to the FBI, which, after warning him of his rights, pursued a new line of questioning in the same local police headquarters. The defendant subsequently confessed. The Supreme Court held the confession inadmissible because the federal officers were the “beneficiaries of the pressure applied by the local in-custody interrogation [10].” Under these circumstances there could be no assumption that the defendant had intelligently waived his rights, and the Court found that the coercive atmosphere of the illegal local interrogation disabled the suspect from making a knowing and intelligent waiver.

The opinion stated that “a different case would be presented if an accused were taken into custody by the second authority, removed both in time and place from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them [11].” This apparently would suffice to purge the evidence of its primary taint.

3. Incorporation of Poison Tree Principle in Indian Evidence Act

The above mentioned rule of exclusion has some roots in Indian Evidence law. The law of confession clearly says that the confession obtained by violation of the basic protection provided under the constitutional rights is not admissible in court as evidence. The Indian evidence Act and Constitution of India provide some rules in relation to take evidence from the accused person. In above elaborated Article the Author discusses some provisions and now he further explain in detail.

It is clearly understandable that a statement which is not the result of our uninfluenced will and violation may not be in conformity with truth. So also a confession which is baled out from a prisoner by extraneous influence may be sometimes true and sometimes not. Hence it becomes a dubious material for the purpose of evidence. It will not be, therefore, consistent with the spirit of criminal jurisprudence to base the conviction of a man on such undependable material as an extracted confession. Further, a voluntary confession implies that the accused prefer to accuse himself instead of other people accusing him. If that element is lacking, probably the whole basis is gone and it is highly desirable that outsiders should do the business of arraigning an accused person by the proper way permissible under law, instead of doing the same through the mouth of the accused himself by the practice of coercion or inducement.

3.1 Provisions under Indian Evidence Act

In India Sections, 24, 25 and 26 of the Evidence Act, contains this rule of exclusion of confessions. This rule is based on sound considerations of public policy. The court expressed that the rule which excluded evidence of statements made by a prisoner when they are induced by hope held out or fear inspired by a person in authority, is a rule of policy.

1. Confession must not be prompted by inducement, threat or promise (Sec. 24): **-** whether a particular confession attracts the from of Section 24 has to be considered from the point of view of the accused as to how the inducement, threat or promise proceeding from a person in authority would operate in his mind [12]. Any attempt by person in authority to bully out a person into making a confession or any threat or coercion would at once invalidate if it the fear was still operating on his mind at the time he makes the confession [13]. In a case the Magistrate was satisfied that there was no policeman in court room or in any place from where the proceeding could be seen or heard. The statement was recorded by the magistrate after being satisfied that statement was made voluntarily and read out to him and was admitted by him to be correct. The answers and questions recorded showed that the accused was prepared to make the confessional statement. It was held that the statement could not be said to be result of any duress, coercion or inducement by police or any other person [14]. If the accused was handcuffed when he expressed his willingness to show the place is sufficient to show that the disclosure was made under duress, pressure or threats given by the police [15]. Confession made by a delinquent officer to his superior after administration of oath by him though not so empowered when pleaded to be taken under duress is clearly inadmissible [16].

2. A confession made to a police officer shall not be proved against accused (25): **-** Section 25 of the Evidence Act, is broadly worded and it absolutely excludes from the evidence against the accused a confession made by him to the police officer under any circumstances (while in custody or not) confession in section 25 does not mean only of crime under investigation, it is not limited only to confessions of offences with which the accused is charged thus where the accused is charged with murder, a confession to police of a lesser offence (culpable homicide not amounting to murder) is also inadmissible as has been held in *Ali Gohar* v. *R* [17]. Likewise, if A says to a police officer I noticed B murdering X while I was murdering Z, his confession that he murdered Z cannot be proved [18]. The confession made while in custody is not to be proved against the accused as the proviso of section 25 and 26 of the said act does not permit it unless it is made before a Magistrate and also that the statement of the accused leading to the discovery cannot be used against co-accused [19]. The statement given by an accused involving himself in the crime and also implicating third person cannot be proved legally in the court as it will be conflicting with Sections 25 and 26. If such evidence and confession cannot be proved then the occasion of utilizing that statement against another person does not arise [20]. In a preventive detention matter evidence is not to be of the nature which needs conviction of an accused in a criminal case. Even retracted confession made to the

police can be made the basis of detention [21]. Where the accused himself was the complainant and informed about the incident to the police and later confessed his crime by putting everything in writing in his own hand before the investigating officer, it is not possible to consider it a device or document to circumvent section 25 [22].

3. Confession by accused in custody of police shall not be proved against him (26): **-** it has been seen that section 25 makes inadmissible a confession made by the accused person in custody of police. Section 26 goes further and enacts that a confession made by a person while he is in custody of police to a *third person* (of course other than a police officer) is also inadmissible, unless made in the immediate presence of the magistrate. The reason is that a person in custody of the police is presumed to be under their influence and it provides opportunities for offering inducement or extorting confession; but the presence of a magistrate is a safe ground and guarantees the confession. While section 25 applies to confession made to police, section 26 applies to confession (when in police custody) made to a person other than the police. An extra judicial confession by the accused to a witness while he is in police custody is inadmissible in evidence, is hit by section 26 of the Evidence Act [23].

Section 25 if the Evidence Act speaks of a confession made to a police officer, which shall not be proved as against a person accused of any offence. Section 26 of the evidence act also speaks that no confession made by the person whilst he is in custody of police officer unless it be made in immediate presence of the Magistrate shall be proved as against such person. Therefore, these two sections put a complete bar in the admissibility of a confessional statement made to a police officer to a confession made in absentia of a magistrate while in custody [24].

3.2 Validity of Confessional Statements Extorted by Scientific Techniques

The provisions under Indian law are not very clear or we can say the provisions have many loopholes and ambiguity. When we first time read the provisions under Indian law regarding the collection of evidence we can't see any ambiguity but when we read them again we see the loopholes. In starting of this Article we discuss the exclusionary rule, as this rule said the court should exclude the evidences which are illegally obtained. But on other hand, these are the things to think that what are the various ways to receiving evidence for a criminal trial illegally? Here we discuss the most important ways which are most popular to collect evidence from an accused illegally and one more thing is that here we discuss the ways which are related to confession only. First are Narco Analysis, Polygraph and Brain Mapping Tests and second is the custodial torture.

Certain scientific techniques, namely Narco analysis test, polygraph examination and the Brain Electrical Activation Profile (BEAP) test are frequently used to obtain the information from a person for the purpose of improving investigation especially in criminal cases. However, obtaining the information by such techniques raises serious questions about the desirability of efficient investigation and the preservation of individual liberties. It further raises the questions about the meaning and scope of fundamental rights which are available to all citizens. Generally the objections are raised where such tests are conducted on the accused, suspects or witnesses without their consent.

3.3 Validity of Confessional Statements Obtained in Police Custody

This Article is an attempt to understand the problem and address the issue in order to reassure the courts while dealing with the issue of voluntariness of confessional statements that it could not have been an outcome of custodial torture. This Article is significant for the present study as it aims at highlighting the issue of custodial violence in the country in spite of several committees expressing concern and the constitutional mandate against it.

Both in the U.S.A. and U.K. confessions recorded by the Police (usually referred to as custodial confessions) are viewed with some suspicion. In India the 1855 Indian Law Commission report severely indicting the Indian Police '*Darogah*' of committing brutality, in order to achieve quick results led the Indian legislatures to take the extreme step of totally excluding all confessions made by an accused to the police or to anybody while in the custody of Police (except in the presence of a magistrate). This strong distrust of the police by the legislatures found its manifestation in Section 148 and 149 of the Code of Criminal Procedure of 1861. These prohibitions went far in excess of those available in England or USA. The ostensible reason for this was the need to check police brutality which the First Law Commission had rightly described as having grown to menacing proportions. Whether mere exclusion from evidence, without a total prohibition to record any confessions could effectively check police brutality is itself debatable. Even worse however was, that the legislature itself gave to the police on a dish, a giant loophole which was sufficient to completely nullify the exclusion mandated by above mentioned provisions. But under Sec. 150, which made portions of confessions that led to discovery of any fact, admissible in evidence. Sec 148 to 150 of the Code of Criminal Procedure of 1861 now correspond to Section 25 to 27 respectively of the Indian Evidence Act, 1872 and have survived, one and a quarter century of social and legal development and the same is applicable in case of Narcoanalysis Test.

In *Munshi Singh Gautam & Others* v. *State of Madhya Pradesh* [25], Justice A Pasayat observed, "custodial violence, torture and abuse of police power are not peculiar to India." But plead, in which other democracy governed by the rule of law is it so extensive and unrestricted? The court asserted:

> "It is assuming alarming proportions, nowadays. All around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from rooftops to be the defenders of democracy and protectors of people's rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace-loving puritans and savious of citizens' rights."

In *Sheela Barse* v. *State of Maharashtra* [26], Torture and ill-treatment (including rape) in police lock-ups, particularly in

the case of women came up for deliberation. The Apex Court issued several guidelines concerning need for presence of lady police officers, excluding other male accused, grant of legal aid and allowing the detainee to call a friend or a relative. In *Nilabati Behara* v. *State of Orissa* [27], it was decided that the safety of persons in custody has to be ensured and the person concerned has to be held accountable for any custodial death or

4. Reasons for Exclusion of Confessions when Accused in Custody

"The ground on which confession made by a party accused, under promises of favor or threats of injury, are excluded as incompetent, is not because any wrong is done to the accused in using them, but cause he may be induced, by the pressure of hope or fear admit facts unfavorable to him without regard to their truth, in order to obtain the promised relief or avoid the threatened danger, and therefore admissions so obtained have no just and legitimate tendency to prove the facts admitted [28]." The reason of the rule is not that the law supposes that the statement will be false, but that the prisoner has made the confession under a bias and that, therefore, it would be better not to submit it to the jury [29]. "The object of the rule relating to the exclusion of confession is to exclude all confessions that may have been procured by the prisoner being led to suppose that it will be better for him to admit himself to be guilty of an offence which he really never committed [30]." The reason why a confession in such a case is not admissible is that in the law it cannot be depended upon as true; for one in such a case may say, and is likely to say, that which not the truth is if he thinks it to his advantage to do so [31].

"It is not because the law is a afraid of having truth elicited that these confessions are excluded, but because the law is jealous of not having the truth [32]." "It is a trite maxim that the confession of a crime to be admissible against the party confessing, must be voluntary; but this only means that it shall not be induced by improper threats or promises, because, under such circumstances, the party may have been influenced to say what is not true, and the confession cannot be safely acted on [33]." "No confession of guilt shall be heard in evidence unless made voluntarily; for if made under the influence of either hope or fear, there is no test of its truthfulness [34]." The principle upon which a confession is treated as sometimes inadmissible is that under certain conditions it becomes untrustworthy as testimony [35]. The test of exclusion is: "Human nature being what it is, were the prospects attending confession, as weighed at the time, against the prospects attending non – confession, such as to have created, in any considerable degree, a risk that a false confession would be made; or was the inducement such that there was any fair risk of a false confession [36]"? A confession made under duress cannot be said to be voluntary [37].

4.1 Privilege Against Self Incrimination

Perhaps the most prevalent and widely accepted view is that the rule against involuntary confessions is fundamentally linked up with the privilege against self- incrimination, which has come to be regarded as one of the basic canons of the Anglo-American criminal jurisprudence. The Fifth amendment to the constitution of the USA states that "No person; nor shall be compelled in any criminal case to be a witness against himself...." In India, Art. 20(3) of the Constitution enact the privilege in similar words thus: "No person accused of any offence shall be compelled to be a witness against himself."

At first glance, it would appear that the constitutional guarantee is available only when a person comes to depose in a court. However in USA, invoking the 'Due process Clause' of the Fourteenth amendment and in India, even without it, the privilege has been extended to the stage of police investigation also, thereby merging it with the doctrine against involuntary confessions. The privilege has been extended to cover not only those questions which tend to criminate the interrogate with regard to the offence under investigation, but also to questions which may do the same in relation to any other offences for which investigation may or may not be pending. The repeated words of Krishna Iyer, J. in the most celebrated judgment on the topic in India, viz. *Nandini Satpathy* v. *P.L. Dani* [38] may be quoted here with advantage:

> ".... the prohibitive sweep of Art. 20(3) go back to the stage of police interrogation... not, as contended, commencing in courts only……. The ban on self incrimination and the right to silence while an investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter..."

Thus, when Art. 20(3) of the Constitution prohibits use of compulsion against an accused to criminate him, it is only a logical extension of the principle that any confessions recorded by exercise of such compulsion shall not be admitted in evidence against the said accused. However, the doctrine of exclusion of involuntary confessions is slightly wider in one respect i.e. it shuts off not only confessions recorded by using physical force or under threat of using physical force, but also those recorded by way of allurements or promise of some lenient sentence etc.

5. Arguments in Favour and against the exclusionary Rule of Evidence.

Here we discuss the main arguments in favour or against the exclusionary rule of evidence.

a. In favour of exclusion

There are arguments both in favour and against using such evidence. these may be briefly mentioned. The arguments for excluding such evidences are:

1. That, in the absence of others remedies, the rules are necessary to deter the illegal methods of obtaining evidence,
2. That, by eliminating the apparent condonation of illegal police practices, they contribute towards respect for the legal system, and
3. That the free judges from what is felt by some of them to be repugnant complicity in the "dirty business."

b. Against of exclusion

There are also arguments for not excluding such evidence. They are:

1. The evidence illegally obtained is true and reliable and what the courts need to reliable evidence to decide the issues before them.
2. The exclusion of such evidences does not give any remedy against the illegality because the illegality has already taken place. The exclusion has the effect of acquitting the accused against whom the society is entitled to protection. The effect of the exclusion is that both the accused and for the person who committed illegality in obtaining evidence escapes.
3. For obtaining the evidence illegally, the offending person should be punished.

6. Duty of Judge when Confession Appears to be Illegally Induced

Where, upon weighing all the circumstances, the prisoner's denial and the probabilities, it appears to the Judge that a confession had been improperly induced, no matter how true it may be, he is bound to exclude it [39]. Though a confession might have been duly recorded under Sec. 164, Cr. P.C., and though, at time of recording it, it might have appeared voluntary, yet, Courts may reject under Sec. 24, a confession, where any ground of exclusion specified in that section is made to appear. But that it purported to be made voluntarily is a matter for consideration of which the accused may be reasonably expected to give some satisfactory explanation [40].

7. Conclusion

This Article is most important for this research because it shows the comparison between Indian and American concept of exclusion of the confessions or the other evidences which are extorted by police by using scientific techniques or in custodial torture. The rule of exclusion founds first time in American courts in the starting of 19th century but on other hand we see the Indian Evidence Act, this Act made in 1872 and at that time the provisions are the same, for example Sec. 24 of the said Act exclude the confession obtained by inducement or threat etc.

In highly developed nations like USA and the UK, where individual right is given superiority there is no legal taboo against the reception of confessional statements made to the police in evidence. But it won't to be apt to compare the position existing in those countries to that in India. The factual realities cannot be ignored. It is irrefutable fact that the police in our country still rout to crude methods of investigation, principally in mofussil and rural areas and they suffer many handicaps, such as lack of adequate personnel, training equipment and professional independence. These characteristics on the whole, are not so extensive in those countries. Measured from the perspective of scientific investigation, intensity of training and measure of objectivity, the principles and approaches of police personal are poles apart in those countries. The trouble which the framers of the Indian Evidence Act had in mind to exclude confessions to the police, are still widespread though not in the same degree [41].

8. Reference

1. The phrase was coined by Justice Frankfurter in *Nardone* v. *United States*, 308 U.S. 338, 341 (1939).
2. 232 U.S. 383 (1914).
3. *Ibid* at 393.
4. *See* Note, 66 YALE L.J. 270, 282 (1956). Others consider the relationship to be one of essential connection. *See, Rogers* v. *Superior Court*, 146 Cal. 2nd 110-11,933-34(1955).
5. "There are many things that are denounced by the Criminal Code that cannot be prosecuted with success. But it is important that they be denounced by the Criminal Code in order that society may know that the state disapproves." Judge Parker, 32 ALI Proceeding 128 (1955).
6. "Criminal law which is not enforced practically … is much worse than if it was not on the books at all." Learned Hand, *id*. At 129.
7. Emerson, self-reliance, in Essays 29, 37 (1906).
8. 384 U.S. 436 (1966). "Failure to follow the new procedures requires inexorably the exclusion of any statement by the accused, as well as the fruits thereof."It is true, however, that the majority opinion does not specifically enunciate a derivative evidence rule for confessions.
9. 384 U.S. 436, 496 (1966).
10. *Commonwealth* v. *Spoffard*, 343 Mass. 703, 180 N.E. 2d 673 (1962).
11. *Ibid*. at 496.
12. *Jagdish* v. *State*, 2001 (Cur) ACC 318.
13. *Aher Raja* v. *S*, 1955, 2 SCR 1285.
14. *Mor Mahadur Gurang* v. *State of Sikkim*, 2004 Cr.L.J. (NOC) 360 (Sikk).
15. *Shankar Raji Banglorkar* v. *State of Goa*, 1992 Cr.LJ 3034, 3038 (Bom).
16. *Brijbasilal* v. *S*, A 1979 S.C. 1080.
17. A 1941 S 134.
18. *Amar Singh* v. *State of M.P.*, 1995 (4) Crimes 448,450 (MP).
19. *Kamal Kishore* v. *State (Del. Admn.)* 1997 (2) Crimes 169, 173 (Del).
20. *Anant Kumar* v. *State of M.P.*, 1993 Cr.L.J. 1498, 1500 (All).
21. *Ram Baboo* v. *State of U.P.*, 1993 Cr.L.J 3701,3703 (All).
22. *Rajan Johnsonbhai Christy* v. *State of Gujarat*, 1997, Cr.L.J. 3702, 3708 (Guj).
23. *Ram Singh* v. *Sonia*, (2007) 3 S.C.C. 1 (28).
24. *Danti Ram Reang* v. *State of Tripura*, (2011) 1 GLR 13.
25. (2005)9 SCC 631.
26. AIR 1983 SC 378.
27. AIR 1993 SC 1960.
28. *Com.* v. *Morey*, 1 Gray, 462, per Shaw, C.J., Wigmore, Evidence, 1905 Ed., Sec. 822, p. 933.
29. *Rex*. v. *Baldry*, 2 Den. C.C. 430, cited in 9 B.H.C.R. 358 at p. 367.
30. *R.* v. *Court*, 7 C. & P. 486; Wigmore, Evidence, 1905 Ed., Sec. 824, p. 937.

31. *R.* v. *Doyle*, 12 Ont. 354; Wigmore, Evidence, 1905 Ed., Sec. 822 p. 932.
32. *R.* v. *Mansfied*, 14 Cox. C.C. 639, per Williams, C.J.; Wigmore, Evidence, 1905 Ed., Sec. 922, P. 932.
33. Scott's case 1 D. & B. 58; Wigmore, Evidence, 1905 Ed., Sec. 826, p. 940.
34. *State* v. *Whitfield*, 70 N.C. 36; Wigmore, Evidence, 1905 Ed., Sec. 826, p. 940.
35. Wigmore Evidence, 1905 Ed., Sec. 822, p. 831.
36. WIgmore Evidence, 1905 Ed., Sec. 824, p. 937.
37. *Surja Munda* v. *State of Bihar*, 1987 P.L.J.R. 916 at p. 920.
38. AIR 1978 SC 1025.
39. *Emperor* v. *Bhagivadu*, 8 Bom. L.R. 697: 4 Cr. L.J. 332.
40. *Umar* v. *Empress*, 51 P.R. 1887 (Cr.).
41. D. Jagannadha Rao, *Law Relating to Confessions including Accomplice's Evidence and Constitutional aspects of confessions*, 247 (Eastern Book Company, Lucknow, 1967).