

ILLEGALLY OBTAINED EVIDENCE AND RIGHT TO PRIVACY**-T.D SOWMYA¹****Abstract:**

In recent times the judiciary has been taking right to privacy way too seriously and the judgment produced by the judiciary in *Puttu Swamy Vs Union of India* (also known as the Privacy Judgment) got in a new dimension for consideration with regard to the law of evidence. This judgment was given in the light of section 5 of the Indian Evidence Act. Right to privacy is basically a fundamental right. This article focuses on the illegally obtained evidence and Right to privacy in India.

In India, the illegally obtained evidence is admissible in India. The Indian judiciary doesn't recognize this as a crime if the factor of "relevancy" is present. The judiciary will only take the best evidence into account. Whenever an evidence is obtained illegally the question of admissibility arises. According to the Indian Evidence Act, section 27 says that if any evidence has been produced which is related to discovery of a new fact in the custody of a police officer then that evidence shall be proved. It can be admissible even if the police has obtained it through unfair means. Evidence can be illegally obtained for example by: violating the body of the accused, illegal enter and search etc. The Indian Judiciary will not really look into even if the piece of evidence islegally or illegally obtained or on the method of collecting the evidence. The Indian Judiciary will only look for the best evidence and hence of the evidence is relevant to the trial it shall be taken into account. Whereas in other countries like USA illegally obtained evidence is not permissible.²

In *State of Maharashtra Vs Natwarlal Damodardas Soni*³, In this case the accused premises was illegally searched and a lot of gold was seized. The accused contended that the evidence shall not be taken into account and is inadmissible because the search and seizure was illegal.

¹ Student, School of law Sastra Deemed to be university

²Rohan Menon, *The Admissibility in a court of Law of Illegally Obtained Evidence and The Right to Privacy*,

Retrieved from <http://www.legalservicesindia.com/articles/mom1.htm>.

³1980 AIR 593, 1980 SCR (2) 340

The court held that “assuming the seizure was illegal it doesn’t affect the validity and admissibility of evidence”.

In *S. Pratap Singh Vs State of Punjab*⁴, The Supreme Court in this case allowed to hear a telephonic conversation between the Chief Minister’s Wife and the Doctor for the purpose of corroboration of evidence of the witness who stated that the conversation had taken place between the two.

The Constitution of India doesn’t explicitly recognize right to privacy but this has been given recognition and importance through various judicial interpretations and judgments. The Supreme Court recognized the right to privacy in the Rajagopalan’s case and it stated that “right to privacy shall be recognized under article 21 of the Indian Constitution which says “no person shall be deprived of his life or liberty except by the procedure established by law”. Whenever an evidence is obtained illegally the party’s right to privacy is being affected. There are arguments both for and against such evidence. The arguments for this is if the evidence is illegally obtained and if it is true then the court shall continue the trial. The exclusion of such important evidence would lead to acquittal of the accused. The arguments against this is police should stop doing illegal practices and respect the legal system.⁵

In the case of *Singh Vs Singh (2016)* it was held that the court doesn’t explicitly prohibit the use of illegally obtained or covertly obtained evidence. The court shall consider it based on the relevancy of the case. The court also told that before obtaining such illegal pieces of evidence the solicitors shall keep many things in mind like evidence shall not be obtained by physically torturing, telephone tapping should be done only with the permission of the government and personal data shall be disclosed without the permission of the user else it shall lead to violation of right to privacy.⁶

⁴1964 AIR 72, 1964 SCR (4) 733

⁵S.N Jain *Admissibility of Illegally obtained evidence*, Retrieved from http://14.139.60.114:8080/jspui/bitstream/123456789/16648/1/012_Admissibility%20of%20Illegally%20Obtained%20Evidence%20%28322-327%29.pdf

⁶The Lawyer, *Illegally obtained evidence: What can lawyers use in the court?*, Retrieved from <https://www.thelawyer.com/illegally-obtained-evidence-lawyers/>

Conclusion:

The court shall only look into the best evidence possible. The main moto of the court shall not be to convict the accused but it should look into the facts and circumstances of the case, examine the witness and hear from the both the parties. If the court has to render its best decision possible, the petitioners/plaintiff's shall place before the court all the evidences related or relevant to the case. If there's no proper evidence against the accused, then, the court will either discharge the accused or it would lead to acquittal. This would only keep prolonging the case for longer. The court has by way of many judicial interpretations held that illegally obtained evidence shall be admissible. Here when the evidence is illegally obtained, the right to privacy of the individual is getting affected. The state may indulge in such activities in the zeal of booking the culprits. There are both merits and demerits for obtaining illegally obtained evidence. The merit is that once the police or the solicitor finds out the evidence it can be easy for the court to convict the accused. The demerits are that the right to privacy of the individual is being affected which indeed is a fundamental right. The court again shall consider such evidence based on the "relevancy" of the case.