**The fruit of the poisoned tree**

[Saad Javid Satti](https://www.nation.com.pk/columnist/saad-javid-satti)

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In anticipation of the Inquiry Commission constituted by the Federal Government to probe the private telephonic conversations of certain individuals, the limelight on the Laws of Evidence in Pakistan has gained primacy all of a sudden. The inconclusiveness of the law and lack of domestic case law leaves us estranged at a crossroads, where International jurisprudential debates have to be referred to, in order to decide what road needs to be followed, thus, leaving vast discretion in the hands of the judiciary.

“The Fruit of the Poisoned Tree” is a legal parable that was incepted in 1920 by the United States Supreme Court. The Court held that evidence obtained through illegal means was like the fruit of a poisoned tree and that any evidence obtained from such illegal means was to be discouraged and excluded in a court of law.

Illegal means refer to those forbidden acts that are barred either by the Constitution itself or by any Sub-Constitutional legislation in that regard. For example, the Fourth Amendment of the Constitution of the United States protects US citizens from any illegal search and seizure, thus, under the exclusionary rule, if a police officer illegally searches a suspect’s home and finds a gun, any evidentiary statement given by the suspect regarding the gun would be inadmissible as evidence in a court of law.

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Similarly, the dignity of citizens, privacy of home and protection against torture for the purpose of extracting evidence is a fundamental right of all citizens, as envisaged by Article 14 of the Constitution of Pakistan. In developed countries, the fundamental rights of citizens are protected during all seasons, hence, in Pakistan collection of evidence through means which violate such fundamental rights will be deemed to have been procured from a ‘Poisonous Tree’ and such a ‘fruit’ would be inadmissible in a court of law.

Complications arose when the invigorators of this exclusionary doctrine laid down certain exceptions as to when illegally obtained evidence could be relied upon to the detriment of a suspect. And it is these three exceptions that currently leave the Supreme Court of Pakistan in a legal quagmire while determining the admissibility of the audio leaks—whether to permit the use of audio leaks, obtained through phone tapping of public officials, as evidence, despite the inherent mischief in obtaining such audios.

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All exceptions weigh the relationship between the unconstitutional act and the resultant discovery of the evidence. The first exception is the Independent Source doctrine which permits the courts to admit evidence obtained through unconstitutional acts only if the authorities acquired it from a separate, independent source. If translated, this would mean that the evidence acquired must accrue from a wholly unconnected act that is completely aloof from the prior illegal act of collection evidence.

In the situation at hand, there was no subsequent act of acquiring the audio leaks, hence, relying on the Independent Source doctrine would only lead to absurdity.

The second exception is the Inevitable Discovery doctrine which allows for the admission of evidence that would have been discovered even without the unconstitutional act of the authorities. Under this doctrine, the courts may give consideration to the fact that the evidence would have been ultimately discovered even if the illegal procurement of evidence would not taken place.

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Keeping in view the Inevitable Discovery doctrine, the question posed to the Supreme Court of Pakistan is whether the alleged private conversations could have surfaced, if it weren’t for the phone tapping in violation of Article 14 of the Constitution of Pakistan. A value analysis answer to the above question is the need of the hour and ‘not so surprisingly’ it has to be answered by the overburdened judiciary of this country.

The third exception, which resonates with the current situation at hand, is the Attenuation doctrine: Evidence is admissible when the link between the unconstitutional conduct of the authorities and the evidence is so weak or it has been disturbed by some intervening circumstances, so that the right protected by the constitution, that has been violated, would not be served by supersession of the evidence obtained. The doctrine evaluates the chainage between an unconstitutional act and the acquired evidence.

It remains for the Supreme Court to decide whether the discovery of the audio leaks was a sufficient intervening incident to crack the causal relationship between the tapping of private conversations without a warrant and the content of such conversations being used as evidence against those suspected.

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Whether any exception is to be applied or primacy is given to the general rule, one thing is for certain; the ‘fruits’ have created all sorts of factual and legal controversies, not because of their nectar, but, because of the inherent poison that they tend to spit on the people that are responsible for their inception in the first place. An answer to this legal spat would depend on the inference drawn from the framers of the “Fruits of the Poisoned Tree” doctrine.