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WHEN THE SEARCH FOR TRUTH THREATENS FAIRNESS: HUMAN RIGHTS LIMITS ON EVIDENCE UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023

-BHAKTI PATEL

ABSTRACT

A criminal trial is meant to discover what happened and that to fairly. Evidence may appear useful to the prosecution and still raise serious questions about coercion, reliability, privacy or the fairness of the process. The significant question is that, whether a piece of evidence helps prove a case; it is also whether the law permits the State to rely on it, and what should occur when the method of collection was unlawful.

The Bharatiya Sakshya Adhiniyam, 2023 replaced Indian Evidence Act, 1872 for proceedings within its application and came into force on 1 July, 2024ⁱ. The new statute retains rules dealing with involuntary confessions and confessions made to police officers, but it does not set out a universal rule that every item obtained unlawfully must be excluded. Indian courts have recognized that an illegal search does not, by itself, automatically make every resulting item admissible. Correspondingly, constitutional decisions protect people from compelled self-incrimination and certain involuntary investigative techniques.

This blog argues that the issue is best approached through three questions:

1. Was the evidence collected lawfully?
2. Is it relevant, authentic and reliable and is it legally admissible?
3. Finally, what remedy is appropriate if a right was violated?

Having these questions distinct avoids two extremes: assuming that every irregularity requires exclusion, and treating relevance as an answer to every constitutional concern.

KEYWORDS: Bharatiya Sakshya Adhiniyam; illegally obtained evidence; self-incrimination; fair trial; human rights; confession; privacy.

1. INTRODUCTION

Evidence law mediates between two legitimate concerns: The State's need to investigate and prove crime, and the individual's right to be treated fairly during that process. A criminal court must decide cases on relevant material, but the legitimacy of a conviction depends on more than whether the evidence is obtained can affect its reliability, the accused's ability to challenge it, and public confidence in the administration of justice.

The Bharatiya Sakshya Adhiniyam, 2023 replaced Indian Evidence Act, 1872 for matters to which the new legislation may be applicable. The BSA reorganises and updates the law of evidence, including provisions concerning confessions. However, the transition to a new Act does not eliminate constitutional questions inherited from earlier precedents. The core issue remains: when investigative conduct violates a person's rights, should the resulted evidence can be used at trial?ⁱⁱ

The answer us not a simple yes or no. Courts have generally declined to exclude relevant evidence solely because it was obtained through an illegal search, while constitutional decisions have placed firm limits on compelled self-incrimination and involuntary investigative techniques. These principles must be read together, and not collapsed into a single rule. This blog argues that a rights-sensitive approach should distinguish:

- (i) The legality of collection
- (ii) Admissibility and evidentiary reliability, and
- (iii) Remedies for the underlying violation.

That framework better protects fair-trial rights without creating an automatic exclusive rule not supported by any precedent.

2. THE STATUTORY AND CONSTITUTIONAL FRAMEWORK

2.1 THE BSA'S RULES ON CONFESSIONS

Sections 22-24 of the BSA are central to confessionsⁱⁱⁱ. Section 22 deals with confessions caused by inducement, threat, coercion or promise in the circumstances specified by the provision.^{iv} Section 23 generally bars proof of a confession made to a police officer and limits the use of a confession made in police custody, while preserving the statutory discovery exception for the part of information that specifically associates to a fact discovered.^v Section 24 is dealt when a confession by one accused may be considered against another person jointly tried in the circumstances set out in the section.^{vi} These are targeted rules about confessions; they should not be presented as a complete code for every type of evidence obtained unlawfully.

2.2 ARTICLES 20(3) AND 21 OF THE CONSTITUTION

Article 20(3) of the Constitution clarifies that a person accused of an offence cannot be compelled to be a witness against themselves^{vii}. Its application is dependent upon the nature of the material sought and the constituent of compulsion; it is not a blanket ban on each and every collection of substantial or documentary evidence.

Article 21 protects life and personal liberty and has been interpreted to require fair, just and reasonable procedure^{viii}. Article 22 adds safeguards regarding arrest and detention.

^{ix}Together, all these provisions place constitutional limits on the State's investigative powers, although each of them has its own scope.

The International Covenant on Civil and Political Rights ^xalso recognises the right to be compelled to testify against themselves or confess guilt. Article 14(3)(g) of ICCPR is a useful international reference point, alongside the UN Human Rights Committee's General Comment No. 32 on fair-trial rights. ^{xi}This clarifies the human-rights discussions but should not be treated as replacing the domestic constitutional analysis.

3. ILLEGALLY OBTAINED EVIDENCE

3.1 THE PHRASE "ILLEGALLY OBTAINED EVIDENCE" CAN HIDE SEVERAL DIFFERENT LEGAL QUESTIONS.

A careful analysis must differentiate at least three questions. Firstly, whether the investigation process was lawful? A search might lack required mandate, an investigation involve coercion, or an investigative process may intrude on a personal liberty. Establishing a breach is significant even if the evidence later turns out to be relevant.

Secondly, can the resulted outcome of evidence be used in the court?

Relevance is significant, but so is authenticity, reliability, chain of custody and any statutory or constitutional restriction. A recording may be relevant but can it be reliable? The search may be unlawful, but that fact alone does not determine whether the evidence is admissible or not. The rule in *Pooran Mal* is significant here: Indian law has not adopted a general rule that all relevant evidence must be excluded merely because it was obtained through an illegal search. ^{xii}

Thirdly, what remedy follows from the breach?

Depending upon the law and circumstances, the answer may include exclusions where required, rejection of unreliable evidence, action against officials, compensation or other procedural reliefs^{xiii}. These remedies are not interchangeable. Admitting evidence does not hindsight make an unlawful search lawful, just as finding a procedural breach does not automatically answer every admissibility question.

4. JUDICIAL GUIDANCE: SAFEGUARDS AND LIMITS

4.1 NANDINI SATPATHY V. P.L DANI

In this precedent, the Supreme Court considered the protection against self-incrimination during police interrogation. ^{xiv}The judgement is significant because it rejects the idea that constitutional protection matters only once a person enters the courtroom. The way questions are asked and answers are obtained during interrogative investigation can engage the right against compelled self-incrimination. ^{xv}

The case should not be extended into a rule that every statement made to police is automatically inadmissible for every purpose. Its central idea is narrower and more

useful that the courts must look at the circumstances in which a statement was evoked and ask whether the constitutional protection against compulsion was respected.^{xvi}

4.2 SELVI V. STATE OF KARNATAKA

This case dealt with the involuntary administration of narcoanalysis, polygraph examinations and the Brain Electrical Activation Profile Technique. The Supreme Court held that the involuntary use of the techniques at issue violated the protection against self-incrimination and personal liberty. The case places bodily and mental autonomy at the centre of the discussion and makes clear that investigative convenience is not, by itself, a sufficient reason to override constitutional safeguards.

This does not mean that every forensic test or every collection of physical evidence violates Article 20(3). Its significance lies in the need to examine what the technique requires from the person, whether it compels testimonial responses, and whether it respects constitutional autonomy.^{xvii}

4.3 POORAN MAL V. DIRECTOR OF INSPECTION

This has been a leading authority on evidence acquired through an illegal search and seizure. The Supreme Court rejected the proposition that such evidence must be invariably be excluded simply because the search was unlawful, in the absence of an express or necessarily implied legal prohibition.

Pooran Mal does not authorise illegal searches or remove the need to comply with statutory safeguards. Nor does it make questions of relevance, authenticity, reliability or a specific constitutional bar irrelevant. It addresses the proposition that illegality of a search, on its own, does not automatically set admissibility^{xviii}. It must not be used to sidestep the distinct rules governing compelled confessions or involuntary investigative techniques.

4.4 DR. NARESH KUMAR GARG V. STATE OF HARYANA

This recent precedent of Supreme Court linked in the source list applies Pooran Mal principle in the context of a search conducted under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The decision indicates that a defect in mandate investigation does not, by itself, require all evidence collected during a search to be discarded; the evidence's relevance and admissibility remain subject for judicial assessment.

Because the case arose under a specific statute, it should be used for this limited proposition rather than as a universal answer to all evidence obtained in breach of rights.^{xix}

5. THE HUMAN RIGHTS GAP: WHEN RELEVANCE BECOMES TOO NARROW

5.1 A RELEVANCE-FOCUSED APPROACH HAS A PRACTICAL JUSTIFICATION:

Courts need access to probative evidence, and excluding evidence for every minor procedural mistake could obstruct fact-finding. But relevance alone cannot answer whether a confession was coerced or not? Whether the accused can fairly challenge the evidence, or whether the State would benefit from a serious violation of constitutional safeguards.

The concern is not only theoretical. Coercion can produce false confessions^{xx}. Poor documentation can make it difficult to establish where an exhibit came from or whether it has been altered or not. The Digital records may be copied, edited or extracted in ways that are not obvious to the court. A rights-sensitive approach therefore supports accuracy as well as fairness.

Privacy questions also require context-specific analysis. It would be too broad to say that every privacy violation automatically excludes evidence, just as it would be wrong to say that relevance always conquers privacy. Courts must identify the right involved, the legal framework governing evidences, the reliability of the evidence and the effect of admission on a fair trial^{xxi}. The aim should be neither automatic exclusion for every technical defect nor indifference to serious violations.

6. RECOMMENDATIONS FOR A RIGHTS-SENSITIVE EVIDENTIARY APPROACH

6.1 FOUR FOLDS OF RECOMMENDATIONS

Firstly, courts must explain separately whether the evidence collection method was lawful and whether the resulting evidence is admissible. A judgment must identify the rule allegedly breached and explain whether it affects authenticity, reliability, a specific exclusionary provision or constitutional fairness.^{xxii}

Secondly, where evidence collection is contested, the record must testify what happened. Depending on the applicable law, that may require the relevant authorisation, details of the officers involved, the circumstances and timing of evidence collection, and a clear chain of custody. These safeguards are particularly important for digital evidence.

Thirdly, confessions should be examined with care under sections 22–24 of the BSA and the constitutional protection against compelled self-incrimination^{xxiii}. A coerced testimonial statement should not escape scrutiny merely because the prosecution describes it in different terms.^{xxiv}

Fourthly, remedies should be effective and proportionate. Depending on the governing law, this could mean excluding evidence where required, rejecting evidence that is not reliable, referring misconduct for appropriate action, or granting another remedy available in law. It should not be assumed that every illegality leads to exclusion; equally, it should not be assumed that admission makes the violation less significant.

Finally, better training and documentation can prevent disputes before they reach trial. Clear procedures for searches, questioning and digital evidence handling would help investigators preserve evidence while respecting the rights that make criminal proceedings legitimate.

7. CONCLUSION

The BSA must be read alongside the Constitution and the Supreme Court's decisions on confessions, self-incrimination and illegal searches. Indian law does not generally exclude every item of evidence simply because it was obtained through an illegal search^{xxvi}. Pooran Mal remains central to that position. Yet the same legal system recognises meaningful limits on compelled self-incrimination and involuntary investigative techniques, as shown by Nandini Satpathy and Selvi precedent.^{xxvii}

The better approach avoids two extremes. Not every procedural error should automatically destroy the evidentiary value of material, but relevance should not become a complete answer to every rights violation. Courts must ask how the evidence was obtained, whether it is trustworthy, what legal restrictions apply and whether its use would undermine a fair trial. Truth matters, but the legitimacy of criminal justice depends on how that truth is pursued.

ⁱ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, India Code,

<https://www.indiacode.nic.in/handle/123456789/20063>

ⁱⁱ *Pooran Mal v. Director of Inspection (Investigation), Income Tax*, AIR 1974 SC 348; *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025; *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

ⁱⁱⁱ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, §§ 22–24, India Code.

^{iv} *Id.* § 22.

^v *Id.* § 23.

^{vi} *Id.* § 24.

^{vii} INDIA CONST. art. 20, cl. 3.

^{viii} INDIA CONST. art. 21.

^{ix} INDIA CONST. art. 22.

^x International Covenant on Civil and Political Rights art. 14(3)(g), Dec. 16, 1966, 999 U.N.T.S. 171.

^{xi} U.N. Human Rights Committee, General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007).

^{xii} *Pooran Mal v. Director of Inspection (Investigation), Income Tax*, AIR 1974 SC 348, 355–56; (1974) 1 SCC 345.

^{xiii} *See Dr. Naresh Kumar Garg v. State of Haryana*, 2026 INSC 176 (India), ¶¶ 18–23.

^{xiv} *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025, 1035–38; (1978) 2 SCC 424.

^{xv} *Id.* at 1035–38.

^{xvi} *Id.* at 1035–38.

^{xvii} *Selvi v. State of Karnataka*, (2010) 7 SCC 263, 312–26; AIR 2010 SC 1974.

^{xviii} *Pooran Mal v. Director of Inspection (Investigation), Income Tax*, AIR 1974 SC 348, 355–56; (1974) 1 SCC 345.

^{xix} *Dr. Naresh Kumar Garg v. State of Haryana*, 2026 INSC 176 (India), ¶¶ 18–23

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