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ILLICIT EVIDENCE AND THE ARCHITECTURE OF DUE PROCESS: RE-IMAGINING THE FRUIT OF POISONOUS TREE DOCTRINE IN PAKISTAN'S CONSTITUTIONAL JURISPRUDENCE

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Abstract
The admissibility of illicit evidence in Pakistan occupies a critical intersection of Constitutional safeguards, investigative practices and judicial integrity. Despite Constitutional guarantees under Article 9, 10, 10-A and 14, the criminal justice system continues to grapple with coerced confessions, illegal detentions, custodial torture, unlawful searches, fabricated recoveries and nondisclosure of exculpatory material. This article examines the evaluation and application of the "fruit of the poisonous tree" doctrine in Pakistan, highlighting the implicit recognition through judicial interpretation rather than formal codification. It analyses how primary illegality, whether through coercion, procedural violation or digital intrusion, taints derivative evidence and undermines fair trial guarantees. The study further explores the cautious application of the attenuation doctrine, allowing limited admission of evidence when independent lawful steps sever the causal link to initial illegality. Special attention is given to digital evidence, forensic integrity and emerging surveillance technologies, emphasizing the Constitutional necessity of legality, proportionality and chain-of-custody safeguards. Comparative jurisprudence informs the analysis, yet the focus remains grounded in Pakistan's Constitutional and statutory framework. The article proposes a rights-centered exclusionary framework, incorporating legislative codification, judicial guidelines, investigative accountability and procedural safeguards, aiming to reconcile deterrence, probative value and fairness, while reinforcing judicial integrity and public confidence in Pakistan's criminal justice system.

1. Introduction

Illicit evidence is evidence obtained in violation of law or fundamental rights, including through illegal search, coercion, torture or abuse of authority. The admissibility of illicit evidence has long stood at the crossroads of Constitutional protection, investigative practice and judicial integrity in Pakistan. The country's criminal justice system continues to confront deep-rooted challenges involving coerced confessions, unlawful detention including, at times, the unlawful detention of innocent family members of the accused, custodial torture, illegal searches, fabricated recoveries, misuse of police authority and non-disclosure of exculpatory material. Each of these practices raises fundamental questions concerning the right to dignity under Article 14 of the Constitution, the guarantees of liberty and

security of person under Article 9, the procedural requirements of arrest and detention under Article 10 and 10-A, and the broader umbrella of due process that permeates Pakistan's Constitutional framework[1]. The judiciary has repeatedly acknowledged that fairness is an indispensable component of the administration of justice, and evidence obtained in breach of Constitutional and statutory rights can have no legitimate place in a criminal trial.

In this context, the "*fruit of poisonous tree doctrine*", though not expressed by this name in Pakistani jurisprudence, is nevertheless reflected in several landmark judgements emphasizing that illegally obtained evidence, especially that procured through coercion, torture, or violation of privacy, is inherently unreliable and constitutionally impermissible[2]. Pakistan's superior courts have consistently held that a conviction cannot rest upon evidence tainted by illegality, whether the illegality concerns the extraction of a confession or suppression of exculpatory evidence. The contemporary debate, however, extends beyond the mere act of exclusion. It requires a more profound engagement need for a rights-centered exclusionary framework.

The entry of digital evidence and sophisticated surveillance technologies into Pakistan's investigative landscape further complicates the admissibility debate. Techniques such as mobile forensics, call data record extraction, GPS tracking, cyber monitoring and social media interception demand strict adherence to legality and procedural safeguards. The lack of comprehensive statutory regulation in this domain heightens the risk of abuse and reinforces the need for judicial vigilance. As courts navigate these challenges, they must reconcile technological utility with Constitutional protections, ensuring that technological innovation does not become a gateway for unconstitutional policing[3].

This article seeks to re-imagine the "fruit of the poisonous tree doctrine" within Pakistan's Constitutional context. while drawing upon comparative jurisprudence for analytical recoveries support, the primary focus remains rooted in domestic Constitutional provisions, statutory safeguards, and the evolving body of Pakistani case law. By examining the philosophical foundations of exclusion, the Constitutional implications of investigative illegality, the practical challenges in criminal adjudication and the contours of the attenuation doctrine, this article aims to propose a coherent right-centered framework suited to Pakistani criminal justice. Such a framework should preserve judicial integrity, promote accountability, deter unconstitutional methods and strengthen public confidence in the rule of law.

2. The Constitutional Foundation of Excluding Illicit Evidence

2.1 The Right to Dignity, Liberty and Bodily Integrity

The Constitutional foundation for excluding illicit evidence in Pakistan begins with Article 14, which guarantees the inviolability of dignity of man. The right to dignity permeates all interaction between the accused and the State, including arrest, custody, interrogation, and trial. The Supreme Court has repeatedly held that confessions extracted through torture or coercive methods violate both statutory and Constitutional protections, rendering them void of legal effect[4]. Evidence extracted in environments that degrade dignity cannot be admitted without affording the Constitutional commitment to human worth. This position aligns with long standing principles articulated in Qanun-e-Shahadat Order, 1984 and Pakistan's obligations under international human rights instruments[5].

Article 9 ensures that no person shall be deprived of life or liberty save in accordance with law. This "Law" has been interpreted broadly to encompass due process, fairness, proportionality and legality. If liberty is restricted unlawfully, such as through illegal arrest, prolonged custody without or beyond period of remand or secret detention, the evidence collected through such unlawful acts Constitutionally and legally suspect and inadmissible. In *Muhammad Aslam v The State*, the Supreme Court emphasized that the prosecution must establish strict compliance with arrest and

remand procedure; deviations render subsequent evidence unreliable.

These protections are further reinforced by Article 10 and 10-A. Article 10 regulates arrest and detention, requiring immediate communication of grounds and access to counsel. Article 10-A, introduced through 18th Amendment, guarantees the right to fail trial and due process. The Supreme Court has confirmed that Article 10-A is not merely a procedural but substantive, requiring fairness in investigation, trial and adjudication[6]. Any evidence obtained in violation of Constitutional safeguards is therefore not just illegal but unconstitutional.

2.2 Judicial Integrity as a Constitutional Imperative

Pakistan's higher judiciary has repeatedly invoked the principle that courts must not become complicit in unconstitutional or unlawful investigative practices. Judicial integrity requires that courts distance themselves from evidence tainted by illegality or misconduct. In *Saddam Hussain v The State*, the Supreme Court underscored that convictions cannot rest upon evidence secured through improper or illegal means because doing so erodes public confidence in the justice system[3]. A criminal justice system that tolerates misconduct becomes a vehicle of injustice.

The fruit of the poisonous tree doctrine therefore finds strong support in Pakistani Constitutional morality. Judicial integrity demands that courts avoid legitimizing illegality. As the Supreme Court observed in *Zahid Rehman v The State*, procedural safeguards are not empty formalities but essential to ensure justice[7]. In evidence is obtained by violating legal safeguards, admitting it would frustrate the very purpose of those protections.

2.3 Deterrence of Unconstitutional Investigative Conduct

Apart from protecting rights, exclusion serves a deterrent function. Allowing illegally obtained evidence encourages police to circumvent Constitutional safeguards. In *Mst Sughra Bibi v The State,* the Supreme Court criticized the habitual misuse of investigative powers and emphasized strict adherence to procedural safeguards[8]. If courts condone misconduct by admitting illicit evidence, systemic abuse becomes inevitable.

Therefore, an exclusionary doctrine grounded in Constitutional principles is not merely about ensuring fairness to the accused but about preserving institutional accountability. Excluding tainted evidence communicates a clear message: unlawful conduct yields no legal advantage.

3. The Evaluation of the Fruit of the Poisonous Tree Doctrine in Pakistan

3.1 Illicit Confession and Coercion

Pakistani jurisprudence consistently holds that confessions must be voluntary, free from coercion, and recorded under statutory safeguards. Confessions recorded during police custody are inherently suspect and carry minimal evidentiary value unless independently corroborated. The Supreme Court in *State v Basheer Ahmed* reaffirmed that evidence derived from involuntary or coerced confessions is inherently unreliable[9].

The doctrine extends beyond the confession itself. Any recoveries, identifications, witness statements, or leads flowing from a coerced confession may be treated as derivative evidence contaminated by the initial illegality. For instance, in *PLD 2008 SC 503 (Kanwar Ali v The State),* the court dismissed the evidentiary weight of recoveries linked to coerced statements, noting that police-induced confessions taint subsequent proceedings[10].

3.2 Illegal Search, Seizure, and Privacy Violations

Pakistan does not yet have a comprehensive statutory framework regulating search and seizure practice in the digital evidence, though some amendments in QSO, 1984, Code of Criminal Procedure, 1898 and Prevention of Electronic Crimes Act,2016 have been introduced. Although the framework is not absent but it is fragmented and inadequate. Nevertheless, courts have emphasized that warrantless searches, forced entries, illegal seizure and violation of privacy undermine the rule of law and may render such

evidence inadmissible. The Lahore High Court in *PLD 2018 Lahore 608 (Zulifiqar Ali)* held that evidence obtained through illegal search must scrutinized with strict caution and cannot be relied upon[11].

Furthermore, the Islamabad High Court in *Khurram Zaki v Federation of Pakistan* underscored the Constitutional importance of privacy in digital spaces. Though the case dealt with broader civil liabilities, it reasoning strengthens the position that intrusive investigative techniques must meet strict legality and proportionality requirements[12].

3.3 Fabricated Recoveries and Police Manipulation

Fabrication of recoveries, tampering with evidence, planting of contraband and manipulative investigative practices remains persistent issues in Pakistan. Courts routinely caution against relying solely on police-led recoveries without independent corroboration. In *Muhammad Asif v The State*, the Supreme Court overturned a conviction due to serious doubts surrounding recovery proceedings, describing them as procedurally defective and suspicious[13]. Such decisions reinforce the spirit of the fruit of the poisonous tree doctrine: evidence obtained through manipulation is unreliable and must not form basis of conviction. This principle applies not only to physical recoveries but also to digital data, witness statements, and forensic material extracted through unlawful means.

3.4 Independent Corroboration: Meaning and Jurisprudential Scope

There is no judgement of the Supreme Court of Pakistan or any High Court that provides and express, self-contained definition or formal interpretive test of the term "independent corroboration." The phrase is used repeatedly, but it is never defined as a legal concept in isolation, nor structured through enumerated elements or a dedicated ratio decidendi. Courts frequently require "independent corroboration" of confession, recoveries and police-led evidence, yet the term has not been defined expressly in any single judgement. Its meaning instead emerges implicitly from judicial reasoning, indicating that corroboration must originate from a source free from police influence and detached from the impugned investigative act.

Evidence cannot be regarded as independent if it flows from the same custodial environment, coercive setting, or illegal process that produced the primary evidence. The Supreme Court has repeatedly held that recoveries and statements arising from police custody lack corroborative value unless supported by neutral and reliable material.

Judicial practice further suggests that independent corroboration must be both procedurally lawful and substantively distinct, adding a new incriminating circumstance rather than merely echoing the accused's disclosure. In *Tariq Pervez v The State (1995 SCMR 1345)*[14] and *Abdul Khaliq v The State (PLD 2011 SC 554)*[15], the Supreme Court implicitly rejected corroboration derived from tainted confessions or defective recoveries. Similarly, forensic or digital evidence does not automatically qualify as independent unless its collection, custody and authentication comply with legal safeguards under Qanun-e-Shahadat, 1984. Where corroborative material itself is tainted by illegality or police manipulation, it becomes part of the same evidentiary contamination and cannot lawfully sustain a conviction.

4. Illicit Digital Evidence and the Rise of Surveillance-based Investigations

4.1 Digital Privacy and Technological Intrusion

The rapid growth of digital surveillance and forensic technologies in Pakistan presents new challenges for Constitutional protections. Mobile phone forensics, WhatsApp chat reconstruction, location tracking, call data records (CDRs), and social-media monitoring are increasingly common in criminal investigations. However, the absence of detailed statutory safeguards makes these tools susceptible to misuse.

Courts have expressed caution regarding digital intrusions. In *PLD 2020 Islamabad 1 (CCPO v Federation of Pakistan)*, the Islamabad High Court emphasized that any surveillance or data

acquisition must adhere strictly to legality, proportionality and procedural safeguards, highlighting the importance of privacy in the digital era[16]. Although not a criminal case, its Constitutional principles apply equally to criminal investigations involving digital evidence.

4.2 Chain of Custody and Reliability

Digital evidence uniquely vulnerable to manipulation. The chain of custody must be meticulously maintained to establish reliability. The Supreme Court in *Imran Ali v the State (Zainab Case)* highlighted the importance of scientific reliability and technical integrity in forensic processes[17]. Although the primary issue in the case involved DNA evidence, the court's insistence on procedural integrity applies broadly to digital forensics.

Breaks in chain of custody, absence of forensic seals, unauthorized copying, and lack of certification render digital evidence unreliable. Courts increasingly require expert testimony to verify extraction methods, software reliability, and digital integrity.

4.3 Illicit Digital Extraction as Primary Illegality

If digital data is extracted without proper legal authority, through unauthorized search, or via coercive access to passwords or devices, such extraction constitutes the primary illegality. Under the fruit of the poisonous tree doctrine, and subsequent conclusions drawn from such a tool of repression rather than a legitimate investigative mechanism.

The need for a robust statutory framework governing digital evidence in Pakistan is therefore urgent. Courts must continue to assert Constitutional constraints in the absence of legislative clarity.

5. The Attenuation Doctrine and Its Application in Pakistan

5.1 Conceptual Overview of Attenuation

While the fruit of the poisonous tree doctrine operated as a strict exclusionary mechanism, Pakistani courts have occasionally recognized circumstances where the taint of illegality may be sufficiently "weakened or attenuated", allowing evidence to be admitted. Attenuation involves evaluating whether subsequent events, independent of the initial illegality, have dissipated the causal link between the unlawful act and the evidence obtained[16]. The rationale is to strike a balance between deterrence and the need for probative evidence, though Pakistani jurisprudence emphasizes a cautious approach to avoid undermining Constitutional safeguards.

In *PLD 2010 SC 679 (Mst Shaban v The State),* the Supreme Court allowed limited reliance on evidence where independent investigation or voluntary disclosure by the accused had broken the causal chain between the initial illegality and the discovery. The court noted that attenuation must not be applied mechanically, especially where fundamental rights such as liberty, dignity and bodily integrity are implicated. In *Abdul Majid v The State*, the Supreme Court accepted the recovery evidence despite procedural defects, reasoning that independent witnesses voluntarily diluted the impact of earlier irregularties[18].

5.2 Judicial Tests for Attenuation in Pakistan

The Supreme Courts and the High Courts have identified key factors to assess attenuation:

1) **Temporal proximity**– The shorter the interval between illegality and evidence, the higher the likelihood of continued taint.
2) **Voluntariness**– Evidence produced voluntarily, without coercion, may mitigate the taint of an earlier illegality.
3) **Intervening circumstances**–Independent investigative steps, judicial authorization, or legal compliance may break the causal link.
4) **Purposefulness of misconduct**– Deliberate violation aimed at procuring evidence are rarely attenuated.

These factors are applied in combination. The Lahore High Court in *PLD 2018 Lahore 122 (Mst Nazia v The State)* emphasized that attenuation is and exception, not the norm, and must preserve the integrity of due process and fair trial right. In *Muhammad Akram v The State,* the Supreme Court emphasized that withholding material evidence creates irreparable prejudice and vitiates the trial[19].

5.3 Limits of Attenuation

Certain categories of violations are considered structurally incapable of attenuation. Torture, custodial disappearance, prolong illegal detention, and egregious privacy violations are inherently irreparable. The Supreme Court in *PLD 2005 SC 564 (Muhammad Aslam v The State)* categorically excluded evidence derived from coercion and inhuman treatment, irrespective of any subsequent voluntary disclosure. Allowing attenuation in such cases would undermine deterrence and judicial integrity.

6. Disclosure Obligations and Non-Disclosure in Pakistan

6.1 Prosecutorial Duty to Disclose

Although Pakistan has yet to enact a formal "Brady" statute as in the United States, the courts have implicitly recognized prosecutorial disclosure as a fundamental requirement of fair trial under Article 10-A. Brady rule refers to the legal rule requiring the prosecution to disclose exculpatory or favorable evidence to the accused. It originates from *Brady v Maryland (1963),* where the U.S. Supreme Court held that suppression by the prosecution of evidence favorable to the defence violates due process, regardless of prosecutorial intent. Exculpatory evidence, impeachment evidence and mitigating material must be disclosed to ensure fair trial and due process.

In *PLD 2016 SC 215 (State v Imran Ali),* the Supreme Court held that suppression of exculpatory evidence by the prosecution constitutes a violation of due process. Although in our country there is mostly police structured prosecution and there is little room for the prosecutor's discretion but the prosecutors must disclose evidence undermining the reliability of the witnesses, evidence tainted illegally, and any material favorable to the accused.

6.2 Consequences of Non-Disclosure

Failure to disclose relevant evidence impairs the accused's ability to challenge tainted evidence and hinders judicial assessment of admissibility. In *PLD 2012 Lahore 490 (Muhammad Hanif v The State),* the Lahore High Court overturned a conviction because the prosecution had concealed police reports indicting procedural irregularities in evidence recovery. Non-disclosure in Pakistan is treated as a serious violation, often resulting in exclusion of evidence and, in egregious case, disciplinary action against responsible official.

6.3 Judicial Remedies for Non-Disclosure

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6.4 Disclosure as a Mechanism to Identify Illegality

Disclosure operated as a structural safeguard against investigative misconduct. Through full disclosure, the defence gains insight into the methods by which evidence was obtained, including potential breaches of Article 9, 10, and 10-A. In *PLD 2008 SC 271 (Khalid Mehmood v The State),* the court stressed that transparent disclosure allows the judiciary to trace the "causal chain" of evidence, ensuring derivative taint is properly addressed.

7. Confessions, Coercion, and Derivative Evidence

7.1 Confession as Primary Sources of Illegality

Confessions remain the most vulnerable form of evidence in terms of constitutional violation. In Pakistan, confessions obtained under coercion, threats, or deprivation of counsel are inadmissible per Article 14 and 10-A, besides other provisions of Qanun-e-Shahadat Order, 1984. The Supreme Court in *PLD 2007 SC 105 (Mst Sadiqa v The State)* categorically held that any evidence derived from such confessions is tainted and cannot be relied upon. The doctrine extends to derivative evidence, including witness identifications, physical

recoveries, and documentary evidence. In *Nadeem Akhter v The State*, the Supreme Court held that even judicial confessions lose evidentiary value where surrounding circumstances suggest coercion or inducement[20].

7.2 Psychological Coercion and Subtle Compulsion

Coercion is not limited to physical force. Psychological pressure, sleep deprivation, threat to family, and manipulation of legal rights constitute impermissible methods. In *PLD 2010 SC 455 (Rashid Ahmad v The State)*, the Supreme Court recognized that confessions obtained through subtle compulsion are involuntary, and any derivative evidence must also be excluded. Courts evaluate the totality of circumstances rather than relying solely on visible physical abuse.

7.3 Derivative Evidence and Constructive Taint

Derivative or secondary evidence, such as items recovered based on information from an unlawful confession, is also inadmissible unless independent legal steps break that chain of causation. In *PLD 2005 SC 564 (Muhammad Aslam v the State)*, the court clarified that the "taint" from illegal activity extends to all evidence obtained from that source, unless genuine attenuation can be established.

8. The Pakistan Specific Contours of the Fruit of the Poisonous Tree Doctrine

8.1 Codification and Judicial Recognition

While Pakistan has no statutory provision explicitly codifying the fruit of the poisonous tree doctrine, it is reflected across case law and in Qanun-e-Shahadat Order, 1984 interpretations. Article 37 to 40 of the Order implicitly restrict the admissibility of the evidence obtained through coercion or illegality. The Supreme Court has repeatedly reinforced this principle in both criminal and Constitutional cases, establishing that fundamental rights violations taint evidence at all stages of trial.

8.2 Judicial Remedies for Illegally Obtained Evidence

Courts have developed multiple remedies for addressing illegally obtained evidence:

1) **Exclusion of tainted evidence** – mandatory in cases of fundamental rights violations.
2) **Independent verification**–courts may permit derivative evidence if obtained independently and free from taint.
3) **Adverse inference against prosecution**– particularly where nondisclosure of exculpatory material occurs[29].

In *PLD 2012 SC 471 (Ghulam Sarwar v The State)*, the Supreme Court emphasized the need for judicial scrutiny and, where possible, corroboration of evidence before admission, especially when procedural violations exist.

8.3 Digital Evidence and Emerging Challenges

With digital forensic techniques becoming ubiquitous in Pakistan, the courts have increasingly confronted questions of legality, authenticity, and admissibility. Cases such as *PLD 2020 Islamabad 1 (CCPO Lahore v Federation of Pakistan)* and *Imran Ali v The State* illustrate that courts require strict adherence to procedural safeguards, chain of custody verification, and proper authorization for extraction. Digital evidence obtained without compliance is treated as inherently tainted, consistent with the fruit of the poisonous tree doctrine. In State v Khalid Mehmood, the court observed that passive acceptance of prosecution evidence without examining its legal provenance undermines justice[21].

9. Developing a Rights-Centered Exclusionary Framework

9.1 Identification of Primary Illegality

A robust framework begins with identifying the original illegality. Courts must scrutinize investigative acts, detention conditions, search procedures, and confessional practices for compliance with constitutional guarantees. Once primary illegality is identified, derivative taint is traced systematically.

9.2 Assessment of Severity and Constitutional Impact

Not all procedural errors justify exclusion. Courts in Pakistan assess the severity of violations, weighing the impact on fundamental rights. In cases involving torture, custodial death, or extreme coercion, exclusion is mandatory. Minor procedural lapses may not trigger automatic exclusion, provided they do not undermine fairness.

9.3 Tracing Derivative Evidence and Evaluating Attenuation

Evidence linked to illegal acts must be evaluated for causal connection. Independent lawful steps may permit admission under the attenuation doctrine, but only when rights are preserved and Constitutional integrity is maintained. Pakistan jurisprudence demonstrates a conservative approach, emphasizing that attenuation cannot redeem violations of core rights such as liberty, dignity or privacy.

10. Comparative Insights Within a Pakistan-Centered Lens

While Pakistan remains the primary jurisdiction, selective comparative insights are valuable to highlight the doctrinal underpinnings of exclusion and its practical application. The fruit of the poisonous tee doctrine, originally articulated in *Nardone v United State (1939)* and developed through *Wong Sun v United States (1963),* emphasizes that illegally obtained evidence and its derivatives undermine judicial integrity. Pakistani courts, though not bound by U.S. precedents, have adopted a parallel rationale rooted in Constitutional morality, procedural safeguards, and statutory interpretation. Pakistani courts have cited South African precedents in interpreting Article 10-A, recognizing that Constitutional fairness rather than formal compliance[22].

Unlike the American model, which includes explicit attenuation, independent source, and inevitable discovery exceptions, Pakistan has applied attenuation cautiously, always prioritizing protection of fundamental rights. The Supreme Court's insistence on voluntariness, judicial scrutiny, and procedural compliance parallels the theoretical objectives of comparative jurisdictions while remaining fully grounded in domestic Constitutional provisions.

11. Practical Application in Pakistan's Criminal Justice System

11.1 Investigative Phase

Police station is the first stepping stone of criminal justice system which plays a pivotal role. During investigation, the police and prosecution must respect Constitutional guarantees of arrest, detention, and interrogation. Article 9, 10, 10-A collectively establish that coercion, deprivation of counsel, torture, or secret detentions constitute fundamental illegality. Evidence obtained under these circumstances is inadmissible. In PLD 2015 SC 339 (Mst. Farzana v The State), the Supreme Court explicitly prohibited reliance on evidence via custodial pressure.

Courts have emphasized that investigators should meticulously document search, seizure, and interrogation process to allow judicial verification. Failure to do so may result in exclusion of otherwise relevant evidence.

11.2 Trial Phase

At trial, courts are required to independently scrutinize the chain of evidence for Constitutional compliance. Judges examine whether confessions were voluntary, recoveries were legitimate, and witnesses were not coerced. In *PLD 2009 SC 721 (Muhammad Akram v The State),* the court overturned conviction based on mechanical acceptance of police statements, highlighting the judiciary's duty to exclude tainted evidence.

The trial court also assesses attenuation, applying it only when subsequent independent acts demonstrably break the link to initial illegality. Voluntary admissions, independently discovered recoveries, or forensic verifications may, in rare instances, satisfy this threshold.

11.3 Disclosure Obligations

Prosecutorial disclosure is critical. Courts expect full and timely sharing of exculpatory evidence, procedural irregularities, and documents

indicating taint. Suppression of material is treated as a violation of Article 10-A. the Lahore High court, in *PLD 2014 Lahore 532 (Sanaullah v The State)*, stressed that failure to disclose undermines judicial evaluation of evidence integrity.

12. Synthesizing Doctrines and Principles

From the preceding discussion, the Pakistan framework can be synthesized as follows:

1) **Primary Illegality Principle**–evidence obtained via Constitutional violations is inadmissible.
2) **Derivative Taint**–Evidence flowing from illegally obtained material inherits its illegality unless attenuation is clearly established.
3) **Voluntariness and Attenuation**–Exceptions exist but are strictly limited and require independent lawful acts, judicial verification, and absence of coercion.
4) **Disclosure Requirement**–Prosecutors must share all exculpatory or procedural information; suppression constitutes a violation of due process.
5) **Judicial Integrity Imperative**–Courts must actively screen evidence to prevent legitimization of unconstitutional acts.
6) **Digital Evidence Safeguards**– Strict adherence to technical and procedural safeguards is essential; violations render evidence tainted.

This rights-centered framework aligns with Pakistan's Constitutional mandate, ensures public confidence in the criminal justice system, and maintains deterrence against investigative abuse.

13. Recommendations for Strengthening the Doctrine in Pakistan

13.1 Legislative Codification

Pakistan would benefit from codifying exclusionary principles, including:

1) Explicit prohibition on coerced confessions.
2) Clear procedures for admissibility of digital evidence.
3) Mandatory prosecutorial disclosure obligations.
4) Clear investigation rules and SOPs, officers training, and Miranda rules
5) Statutory recognition of attenuation, independent source, and derivative evidence principle with Constitutional safeguards.

Codification would provide clarity, consistency, and uniform standards across federal and provincial jurisdiction.

13.2 Judicial Guidelines and Training

1) Judicial Education

Regular training of judges on investigative illegality, digital evidence, and procedural safeguards is essential to address modern evidentiary challenges and rights violations.

2) Binding Guidelines

Superior courts should issue binding guidelines to trial courts in identifying illegal investigations and evaluating the admissibility of tainted evidence.

3) Attenuation Test

Lower courts must apply a standardized attenuation analysis focusing on temporal proximity, intervening circumstances, and the gravity of police misconduct.

4) Digital Evidence Scrutiny

Court should strictly examine the legality, authenticity, and chain of custody of digital and electronic evidence to prevent misuse and fabrication.

5) Disclosure Obligations

Prosecutors must be bound to disclose exculpatory and impeaching material, with courts ensuring meaningful and timely compliance.

6) Reasoned Admissibility

Court should record reasoned order when admitting or excluding evidence to ensure transparency and consistency.

7) Accountability for Misconduct

Finding of investigative illegality should trigger departmental or legal action to deter recurring police abuse.

13.3 Strengthening Investigative Accountability

1) Documentation, Transparency, and Constitutional Compliance

Police reforms must prioritize meticulous documentation of investigative process, institutional transparency, and strict adherence to

Constitutional mandate, particularly the guarantees of due process and fair trial.

2) Regulation of Pre-Trial Detention

Pre-trial detention must be regularized in light for the presumption of innocence. In offences outside the prohibitory clause, the grant of bail should be treated as a rule rather than exception.

3) Formation of Joint Investigation Teams (JITs)

Joint investigation teams should be constituted comprising seasoned and professionally trained officers including experts, to ensure objectivity, institutional balance, and investigative credibility.

4) Recording of the First Version of the Accused

The first version or the initial statement of the accused should be recorded by a judicial magistrate at the first appearance in the presence of the accused's counsel and investigating officer, to safeguard voluntariness and procedural fairness.

5) Internal Accountability and Independent Oversight

Robust internal accountability mechanism, coupled with independent oversight bodies, must be institutionalized to monitor investigative conduct and deter abuse of authority.

6) Judicial Review of investigative Actions

Routine and meaningful judicial review of investigative actions should be ensured to prevent violations of fundamental rights and to minimize reliance on exclusionary or remedial doctrine at the trial stage.

13.3 Enhancing Forensic and Digital Protocols

1) Strict Chain of Custody

Forensic laboratories and digital investigation units must maintain an unbroken and documented chain of custody for all physical and digital exhibits.

2) Authentication of Forensic Tools

Digital extraction tools, software, and devices should be authenticated and their reliability established before reliance by courts.

3) Compliance with International Standards

Forensic and digital investigations must conform to internationally recognized best practices to ensure accuracy and integrity.

4) Documentation and Transparency

Every stage of forensic handling and digital extraction should be properly documented to enable judicial verification.

5) Judicial Scrutiny of Forensic Process

Courts should rigorously scrutinize forensic and digital procedures before admitting such evidence.

6) Constitutional and Legal Compliance

Only evidence obtained through lawful and rights-compliant forensic processes should be admitted to ensure Constitutional soundness.

Conclusion

The fruit of the poisonous tree doctrine, while not formally codified in Pakistan, has found robust expression through judicial interpretation and Constitutional reasoning. Pakistan's court have demonstrated a principled commitment to excluding evidence obtained in violation of Articles 9, 10, 10-A. Voluntary confessions, derivative recoveries, and digital evidence must be evaluated within this framework to ensure fundamental rights are protected, investigative misconduct is deterred, and judicial integrity is preserved.

The attenuation doctrine, although cautiously applied, provides a limited mechanism to admit evidence where independent lawful actions break the causal chain of illegality. Prosecutorial disclosure obligations, inspired by brady principles, are increasingly recognized as essential for fair trial compliance. Courts have reinforced that any failure to disclose, procedural abuse, or violation of core Constitutional rights renders evidence inadmissible.

In conclusion, a rights-centered framework, grounded in Constitutional protections and reinforced by judicial oversight, offers the most coherent and principled approach to evidence law. By balancing deterrence, probative value, and fairness, our country can strengthen the rule of law, safeguard due process, and foster public confidence in the criminal justice system.

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