

## Evidentiary Value of Exclusionary Rule and its Exception Good Faith Doctrine

---

### **Rana Shahzad Khalid**

Director Legal Studies Superior Law College, Ph. D Scholar  
(University of Kansas) Email: rana.shahzad\_adv@yahoo.com

### **Kiran Nisar**

Lecturer, Khyber Law College University of Peshawar  
Email: kirannisar007@uop.edu.pk

### **Maryam Qasim**

Assistant Professor, Shaheed Benazir Bhutto University  
Sheringal, Dir Upper, Email: [maryam@sbbu.edu.pk](mailto:maryam@sbbu.edu.pk)

---

### **Abstract:**

The Exclusionary Rule, a judge-made principle in the U.S. legal system, was established by the Supreme Court to prevent the admission of evidence obtained in violation of a suspect's constitutional rights. This rule ensures that evidence gathered through unlawful means, such as illegal searches or seizures, cannot be used in court. While rooted in English Common Law, the U.S. Supreme Court has structured it more formally to safeguard individual rights. In Pakistan, similar constitutional protections for the accused are recognized, prohibiting the use of illegally obtained evidence in trials. However, an important exception to this rule is the "Good Faith Doctrine." This doctrine allows evidence to be admitted if law enforcement officials acted with a genuine belief that their actions were lawful, even if it later turns out they were mistaken. The "Good Faith Doctrine" thus serves as an exception to the "Exclusionary Rule", balancing the protection of individual rights with practical law enforcement considerations. The coexistence of these rules reflects a judicial effort to uphold justice while ensuring that the rights of the accused are not compromised.

**Key Words:** Exclusionary Rule, Evidentiary value, Evidence, inadmissibility, in violation, Fundamental Rights, Good Faith.

## **1. Introduction**

The question of admissibility or inadmissibility of evidence always comes into play in criminal cases. In fact, as a general rule, lower courts, no matter where they are situated, accept the evidence procured by police officers irrespective of compliance with the constitutional entitlement or not. Thus, for a long time the United States Supreme Court copied the practice of the English courts in the admission of evidence regardless of the fact that it had been legally or illegally obtained. Thus, for the protection from the constitutional rights granted by the Fourth Amendment to the United States Constitution, the United States Supreme Court laid down a rule which came to be known as the Exclusionary Rule in the *Weeks v US* case<sup>1</sup> when evidence procured by a police officer in a Fourth Amendment violation was barred as evidence. This rule was mainly negative as a lot of people may be locked up and reduce the main aim of the Criminal Justice System. The US Supreme Court for the purpose to minimize the criminal got Scot free, had narrowed down reckless application of the Exclusionary Rule and so another rule known as Good Faith Doctrine<sup>2</sup> was applied where if a police officer in the exercise of his authority knowingly did not violate Fourth Amendment, but acted in good faith, then the evidence seized would not be excluded. The provisions of Pakistani Constitution also recognized such constitutional guarantee of an accused. An excessive application of this created another rule such as “Good Faith Rule” which is an exception of “Exclusionary Rule”.

In this brief assignment, I will briefly discuss some of the cases related to Exclusionary Rule and then I will discuss some of the cases regarding the Good Faith Doctrine which is an exception to the Exclusionary Rule. After that I will also briefly discuss some relevance of the Exclusionary Rule in criminal cases of Pakistan. For this purpose, I break this brief assignment into three sections. As for Part-I of this paper, I shall give a brief overview of Exclusionary and Good Faith Rules As for Part-II of this paper, I shall provide an account of the Pakistani cases, and in Part III of this paper, I shall make recommendations and conclusions.

## **2. Determining Evidence Admissibility or Inadmissibility:**

- a. **Exclusionary Rule:** In the Common Law Traditions, evidence is considered admissible based on its relevance to the case, with judges focusing on its connection to the matter at hand, regardless of how the evidence was obtained. Judges do not concern themselves with the methods used to gather the evidence when determining its admissibility<sup>3</sup>. The Court, in a state of concern while delivering its judgment, emphasized that its primary duty is to determine whether the accused individual has committed the offense they have been charged with or not<sup>4</sup>.

Regarding the satisfaction of privacy of home the famous quote made by William Pitt while defending the privacy of the home of a man can be reproduced here under:<sup>5</sup>

“The poorest man may, in his cottage, bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement.”<sup>6</sup>

Until 1914, the United States Supreme Court followed the Common Law rule, which permitted the admission of evidence obtained unlawfully. However, in the landmark case “*Weeks v. United States*”, the Supreme Court rejected this practice, ruling that evidence acquired in violation of the Fourth Amendment to the U.S. Constitution could not be used in trial. This marked the birth of the "Exclusionary Rule," a judicially created doctrine designed to uphold constitutional rights by barring illegally obtained evidence. The Exclusionary Rule is significant in American jurisprudence, serving as a safeguard against government overreach and ensuring the protection of individual rights under the Fourth Amendment. Importantly, this rule is not a product of statutory law but a judge-made rule, meaning it has been shaped and enforced by court decisions rather than direct legislative action<sup>7</sup>. The exclusionary rule was applied to the States in the United States Supreme Court and *Mapp v Ohio* case, in the historical context of the court<sup>8</sup>. *Mapp* has had it in clear terms through the pen of Justice Clark that it is the best way to carry effective implementation of the constitutionally protected right to personal privacy, by refusing to admit in a trial any

evidence which has been seized by searches or seizures conducted by law enforcement without a warrant or probable cause, violating an individual's rights.

This Rule, in “People v Defore”,<sup>9</sup> they did not even observe their own law and also stated that if the government is a law-breaker then it is as good as encouraging others for Court Contempt as;

“.....If the government becomes a law-breaker, it breeds contempt for the law; it invites anarchy.”<sup>10</sup>

The Exclusionary Rule has solved two problems; one is, it safeguards Fourth Amendment rights as provided under the US Constitution, and second is, it safeguards the Judiciary from the Executive’s action<sup>11</sup>. Justice Burton S. Katz has claimed in his authorship “Justice Overruled” that “police evidence that is obtained in a way that violates any constitutional rights of a suspect should not be admissible in criminal court. The Exclusionary Rule is judicial integrity, and thus it “protected judges from the taint of permitting law enforcers to gain courtroom advantage from unconstitutional behavior”<sup>12</sup>. There are, of course, some extensions, exceptions and permutations”<sup>13</sup>. This prevents courts from becoming accomplices in the unlawful violation of citizens' legitimate rights by prohibiting the unrestricted use of the evidence obtained through such violations. *“When courts admit only lawfully obtained evidence, they encourage those who formulate law enforcement policies, and the officers who implement them, to incorporate Fourth Amendment ideals into their value system. Stone v Powell, 428 US 465, (1976)”*. *“But when courts admit illegally obtained evidence as well, they reward manifest neglect if not an open defiance of the prohibitions of the Constitution.”*<sup>14</sup> The Fourth Amendment does not explicitly mention the suppression of evidence obtained through violations of its provisions. However, the U.S. Supreme Court developed the Exclusionary Rule to safeguard the rights guaranteed by the Fourth Amendment. This rule ensures that any evidence gathered unlawfully, in violation of the amendment's protections against unreasonable searches and seizures, cannot be used against a defendant in court. The rule was established specifically to enforce the Fourth Amendment and protect individuals from

constitutional violations by preventing the use of illegally obtained evidence in trials<sup>15</sup>.

The Court has continued to hold the constitutional provision in deference to its prudential doctrine<sup>16</sup>. The author of the article has reached his conclusion by equating democracy with another system of government in these words:

“The problem with exclusion and well known, and many of the limitations on exclusion are likely appropriate; but the exclusionary rule ultimately may be justified in terms of something like those Churchill used to defend democracy”: “the worst form of Government except for other.....”.<sup>17</sup>.

**b. Good Faith Doctrine: An exception to Exclusionary Rule**

The “Exclusionary Rule” has led to a widespread belief that it allows criminals to escape punishment. This perception arises because the rule sometimes results in the release of serious offenders due to legal technicalities or the absence of certain statutory provisions, making it difficult to properly prosecute them.

This doctrine serves as an immunity to the “Exclusionary Rule”, where the behavior of the police officer plays a crucial role in determining the admissibility of evidence obtained during a search and seizure. If the officer acted in good faith, believing they were following legal procedures, the evidence may still be accepted, even if obtained in violation of the Fourth Amendment. In *Herring v. United States*, the U.S. Supreme Court<sup>18</sup> expanded the Good Faith Doctrine in response to concerns that the excessive application of the Exclusionary Rule was allowing criminals to go free. The Court ruled that if a police officer makes an error under isolated circumstances, rather than due to systematic negligence, the evidence obtained should not be excluded from trial. In this case, the officer acted in good faith, relying on a reasonable cause and a valid arrest warrant for Herring. As a result, the Court rejected the application of the Exclusionary Rule, concluding that the officer's actions were made in good faith, and the evidence remained admissible.<sup>19</sup>

It is noteworthy that this judgment was rendered by a narrow

margin of 5:4, reflecting the contentious nature of the case. Both sides presented their opinions compellingly, highlighting their differing interpretations of the law. This close vote underscores the complexity of the issues involved and illustrates how judicial perspectives can vary among justices, shaping the future application of the law regarding the Exclusionary Rule and its exceptions. In reaching its decision, the Court referenced its earlier ruling in *United States v. Leon*,<sup>20</sup> which distinguished between ordinary negligence and deliberate negligence or recklessness. This distinction is crucial when applying the stringent measures of the Exclusionary Rule, as it asserts that evidence obtained without deliberate negligence should not be excluded, even if it technically violates the Fourth Amendment<sup>21</sup>. The Court's examination of these precedents highlights the balance it seeks to maintain between upholding individual rights and ensuring that valid evidence is not unjustly disregarded.

The US Supreme Court further observed that “*We have never suggested the Exclusionary Rule must apply in every circumstance in which it might provide marginal deterrence*”.<sup>22</sup> The exceeding and reckless application of the Exclusionary Rule on the hand is an anti-thesis of the Criminal Justice System that aims to bring the offender to justice in order to restore law and order in society.

In the later case of *Davis v. United States*<sup>23</sup>, the Supreme Court, by a 7:2 majority, ruled that a search conducted with objectively reasonable reliance on binding appellate precedent does not fall under the scope of the Exclusionary Rule<sup>24</sup>. In this decision, the Court reaffirmed the stance taken in the *Leon* case, emphasizing that the primary purpose of the Exclusionary Rule is to deter police misconduct, not to penalize judicial errors. The Court highlighted that when law enforcement officers act in good faith, following established legal precedents, the exclusion of evidence is not warranted, as the rule is aimed at preventing deliberate violations by the police, rather than mistakes made by judges in interpreting the law<sup>25</sup>.

In a recent case, the court upheld evidence collected by an officer who, despite lacking the authority to make an arrest, was in possession of a warrant for a traffic violation. The officer had been intermittently

observing a house with frequent visitors, raising suspicions of potential drug-related activities. Acting on this suspicion, a search was conducted, and methamphetamine was discovered on the premises. The court admitted this evidence, affirming that the officer's observations, combined with the warrant for a different violation, justified the search and seizure. This case underscores how evidence, even if discovered incidentally during an investigation for a lesser offense, can be deemed admissible if there is reasonable suspicion of more serious criminal activity. The ruling reflects the court's position on balancing procedural requirements with law enforcement's role in preventing illegal activities like drug dealing. Justice Thomas writing for the majority judgment held as –

“We hold that the evidence discovered on Strieff's person was admissible because the unlawful stop was sufficiently attenuated by the preexisting arrest warrant. Although the illegal stop was close in time to Strieff's arrest, that consideration is outweighed by two factors supporting the State. The outstanding arrest warrant for Strieff's arrest is a critical intervening circumstance that is wholly independent of the illegal stop. The discovery of that warrant broke the causal chain between the unconstitutional stop and the discovery of evidence by compelling Officer Fackrell to arrest Strieff. And, it is especially significant that there is no evidence that Officer Fackrell's illegal stop reflected flagrantly unlawful police misconduct.”<sup>26</sup>

In this case, the Utah State Supreme Court first ruled to exclude evidence that was gathered in violation of Fourth Amendment rights, following the guidelines of the Exclusionary Rule. This decision was made to uphold the protections afforded to individuals under the Constitution. However, the U.S. Supreme Court later reversed this decision, reinstating the evidence under the "Good Faith Doctrine." The U.S. Supreme Court reasoned that when law enforcement officers act in good faith, believing they are following legal procedures, the Exclusionary Rule does not apply, as its purpose is to deter intentional misconduct, not penalize honest errors. This ruling once again reaffirmed the application of the “Good Faith Doctrine”.

### 3. **Pakistani Context:**

In Pakistan some constitutional guarantees are provided, particularly by Article 14<sup>27</sup> - the dignity of man and privacy of home and torture has been safeguarded. The statement obtained by the Police under Section 161 of the

Code of Criminal Procedure 1898 has been made as weak evidence in Criminal Procedure. This section was originally included in Criminal Procedure Code by an English man. Since its inception, the concept of the exclusionary rule in one way or another has been part of the Common Law Criminal System but American Supreme Court has developed it to the logical conclusion. Thus courts have decided in different cases that the statement under section 161 is not evidence, legal or substantive, it is not admissible against its maker.<sup>28</sup>

Under the provisions of the Qanoon-e-Shahadat Order 1984, Articles 37, 38, and 39 significantly limit the evidentiary value of confessions made in police custody or before a police officer. Article 39 explicitly prohibits the use of confessions made under coercion, inducement, or threat. Additionally, Articles 38 and 39 render any confession made while in police custody or before a police officer inadmissible as evidence. For example, if an accused confesses their guilt while in a hospital, even if a police officer is merely sitting nearby, this confession is still considered as having been made under police custody, and thus, cannot be treated as valid evidence. A troubling recent trend involves the release of video confessions to the media, but such extra-judicial confessions only serve to weaken the prosecution's case. Courts tend to reject these forms of evidence as they often do not meet the necessary legal standards of voluntariness and authenticity, undermining the strength of the prosecution's arguments. The law thus emphasizes that confessions made without proper safeguards cannot be used to convict an accused<sup>29</sup>.

Former Judge of the apex court of Pakistan Mr. Justice Rehmat Hussain Jaffery<sup>30</sup> has given guidelines to police force in order to collect the legal and admissible evidence that courts may produce in fulfilling the trials and enforcement of Justice in his words:

“The Judiciary can play its role by directing the police vide Article 199 of the Constitution of Pakistan 1973 to perform their duties in accordance with law thereby forcing the police to collect legal and admissible evidence on which conviction can be sustained in the court of law.”<sup>31</sup>



### **Conclusion**

While deciding such cases, the courts should take a little more concern while extending exclusionary rule for evidence. Justice, which has to be one of the criteria that define any society, should be served in each case, and each case should be solved according to the specific law and fact of the case alone. Instead of merely applying one formula that remains static, it will not achieve the goal of serving justice instead it will worsen the problem. The courts should guarantee the constitutional right which has been afforded by the United States famous Rights Amendment at the same time the court should do so while also protecting the criminal justice system so that offenders/criminals may be punished fairly. It is stated by honorable Justice Rehman Hussain Jaffrey,<sup>32</sup> as well as the police officers and the prosecutors, it is essential for them to carry out all legal proceedings and gather evidence in accordance with constitutional provisions to ensure that a criminal does not go unpunished.

In conclusion, I would like to echo the words of former Chief Justice of Pakistan, Mr. Husain Shah, in *Muhammad Nawaz Sharif v. President of Pakistan*, where he referred to the Latin maxim "Fiat Justitia, ruat coelum" (justice be done though the heavens fall), underscoring that justice must always prevail regardless of any external circumstances. Justice Shah modified this principle, emphasizing that "justice must be done and must be seen to be done in such a way that the heavens do not crumble." In the same spirit, I believe that evidence should be admitted in a manner that respects the constitutional rights of individuals, while also ensuring that criminals are held accountable for their actions. This balance is essential not only for legal justice but also for the safety and order of society. Upholding justice is a social and legal necessity, as it ensures that law and order are maintained and that society can function harmoniously. The Criminal Justice System exists to serve this very purpose, promoting fairness while safeguarding societal peace.

## References

---

- <sup>1</sup> (1914), 232 US 383.
- <sup>2</sup> Hudson v US, (1997) 522 US 93.
- <sup>3</sup> Chief Justice Lord Goddard in Kuruma Son of Kania V. R [(1955) 1 All ER 236].
- <sup>4</sup> Fox c Chief Constable, (1986) 1 AC 281.
- <sup>5</sup> LaFare, Wayne R: “Search and Seizure: A Treatise on the Fourth Amendment”, Criminal Practice Series, West Publishing Co., 1987. Volume-I., 2<sup>nd</sup> Edition.
- <sup>6</sup> N. Lasson, “The History and Development of the Fourth Amendment to the US Constitution (1937).”
- <sup>7</sup> Wolf v Colorado, [(1949), 338 US 25].
- <sup>8</sup> [(1961), 367 US 643].
- <sup>9</sup> (1926) 242 N. Y. 13
- <sup>10</sup> Ibid.
- <sup>11</sup> Karim, Justice (Retd), “The Law of Criminal Procedure”: An Anthology of Criminal Procedure based on the Constitutional Law of Pakistan USA, UK, etc and on the Principal Criminal Procedural Law of Pakistan, viz the Code of Criminal Procedure, 1898, Pakistan Law House, First Edition 2010.
- <sup>12</sup> Tomkovicz, J. James, “Davis v US: The Exclusionary Rule continues” Ohio State Journal of Criminal Law, Vol.9.
- <sup>13</sup> Ibid at page 134.
- <sup>14</sup> (1914), 232 US 383.
- <sup>15</sup> “Seven Thesis in Grudging defence of Exclusionary Rule” Legal Studies Research Paper Series, Paper No.13-6, Lawrence Rosenthal Chapman University School of Law [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2235848](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2235848) last accessed on July 11, 2016.
- <sup>16</sup> Ohio State Journal of Criminal Law, Vol.10:2).
- <sup>17</sup> Ibid.
- <sup>18</sup> (2009) 555 US 135.
- <sup>19</sup> Ibid.

<sup>20</sup> (1984) 468 US 897.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid at p.910.

<sup>23</sup> 131 S. Ct. 2419 (2011).

<sup>24</sup> Ibid.

<sup>25</sup> (1984) 468 US 897 at 916.

<sup>26</sup> Utah v Strieff, at page 9.

<sup>27</sup> “ 14. Inviolability of dignity of man, etc (1) The Dignity of man and, subject to law, the privacy of home, shall be inviolable. (2) No person shall be subjected to torture for the purpose of extracting evidence.”

<sup>28</sup> 1997 MLD 1257.

<sup>29</sup> Ibid at Footnote No.16.

<sup>30</sup> Jaffry, Rehmat Hussain, Justice (Retd), “Role of Judiciary in the Criminal Justice Systems”

<sup>31</sup> Ibid.

<sup>32</sup> Ibid at Footnote No.37.