



CONFESSIONS AND LAW IN INDIA: A LEGAL ANALYSIS



Dr. Sunayana Trisal^{a,*}

^a Associate Professor, MMH College, Ghaziabad, Chaudhary Charan Singh University, Meerut, U.P. (India).

KEYWORDS

Confessions, Law, Substantive Law, Procedural Law, Indian Penal Code.

ABSTRACT

The evaluation of the laws pertaining to confession in India brings to the fore the fact that ‘confessions’ has not been defined in any law. This paper is an attempt to examine the embodiment of the provisions pertaining to ‘confession’ under various enactments. The critical discussion encompasses the substantive law as well as the adjective law. Keeping in mind the title of this paper, the provisions have been dealt with in chronological order. The first enactment, which contains provisions pertaining to the confession, is the Indian Penal Code, 1860.

Introduction

It is said that the *very best of witnesses is an accused person who confesses his guilt*¹. That is why in all ages the extreme desire has existed to obtain from the lips of the accused a voluntary acknowledgement of his crime. Under this desire lurks the cruel truth of torture. Not only has this, but fear, hope, vanity, insanity or hallucination also led a man to accuse himself of some crime. On these grounds, the law has always jealously protected a prisoner against becoming the victim of his own delusions, or the machinations of others and at the same time try to hear from his own lips what led him to commit a crime. Sections 330, 331 and 348 of the Indian Penal Code, 1860 contain references to confession. The purpose of these three sections is to prevent torture, in any form, for the purpose of extracting confession. These sections make extortion of confession a penal offence. The lacuna here is that confession hasn’t been defined, and no parameters have been laid down which can explain what confession is and what torture is. The scope of interpretation is thus widened in this manner. Along with the Penal Code, The Evidence Act contains provisions concerning confessions and also the evidentiary value of such confessions.

The Indian Penal Code, 1860

The subject-matter of the above-mentioned sections is shown in the Table below:

1.	Sec. 330	It deals with the offence of hurting someone for extracting confession or information. The purpose of this section is to prevent torture by the police, and any person who is in the position of authority.
2.	Sec. 331	This section tells us about inflicting serious injury to extract confession, or to force restoration of property. The crime under section 331 is cognizable, non-bailable, and triable by the Court. Sections 330 and 331 are primarily intended to prevent torture by the police. Death as a result of hurt or grievous hurt need not be proved. ²
3.	Sec. 348	This section speaks about wrongful confinement for extracting confession, or forcing restoration of property. The offence under this section is cognizable, bailable, non-compoundable and triable by any Magistrate. This section provides that wrongful confinement, which is an essential ingredient, is satisfied if a person is prevented from going beyond certain limits. ³

The Indian Evidence Act, 1872

Then next important piece of legislation which contains provisions relating to confession is the Indian Evidence Act, 1872. Sections 24 to 30 of the Indian Evidence Act are the relevant sections here.

Section 24: To make a confession relevant under this section it must be shown that it was made by an accused person, that it was voluntary, that it is true, in order to make it a foundation for conviction.

The following conditions make a confession admissible:	The following conditions make the confession inadmissible:
When it is not made to a police officer. If it is made to any person in front of a Magistrate. If it is made after the removal of factors which posed threat, promise and inducement.	If it is made to a police officer. If it is made in police custody and not in the presence of a Magistrate. If it is made under promise, threat or enticement from a person yielding some authority.

Keeping into consideration the provisions of section 24,⁴ the Courts will have to follow the following three factors when dealing with a case: presence

- (1) Whether there existed sufficient cause of Inducement, threat or promise;
- (2) Whether by confessing the accused will gain any advantage or avoid any evil.
- (3) Whether the confession has been made because of the inducement, threat or promise.

Under section 24, it does not appear to be necessary that the person who makes the confession should be either accused or in police custody. The section doesn’t contain any limiting words, and it is not necessary that the confession should be made after the arrest.

Section 25: This section follows the principal that a confession to a police officer is not a good practice since the suspicion will always remain that it might have been procured by threat or by proffering some kind of temptation. The rule enacted by this Section is without limitation or qualification. The purpose of this section 25 and 26 is to discourage the admissibility of confessions made because of torture by the police. Exceptions to this are given under section 27. The reason for this rule is to put a stop to the method of torture for forcing confessions and to avoid malpractices and the danger of false confessions. **In Sita Ram v. State of U.P.,**⁵ a confessional letter to a police officer was considered admissible because the letter was not written in his presence. Section 25 bars the proof at the trial of a criminal offence if the confession as to an offence is made to a police officer. It makes no difference that

* Corresponding author

E-mail: sunayanatrisal@gmail.com (Dr. Sunayana Trisal).

<https://orcid.org/0000-0002-8962-1393>

DOI: <https://doi.org/10.53724/lrd/v6n4.05>

Received 25th April 2022; Accepted 18th May 2022

Available online 30th June 2022

2456-3870/©2022 The Journal. Publisher: Welfare Universe. This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/)



subsequently it is proved that an offence was committed, what matters is that the confession was made to a police officer and thus it becomes tainted. Whether the police officer to whom the confession is made is the officer investigating the case or not is irrelevant here. The fact that he is police officer is sufficient to invalidate the confession, to whatever crime it may refer.

Police officers in the ambit of Section 25:

The term 'police officer' includes an officer conferred with the powers of police by law. This term cannot be interpreted broadly to include people who have only some of the powers that the police have. It is applicable to all police officers including deemed police force.

Section 26: This section furthers the principle of section 25, and it **virtually lays down two propositions:**

Firstly: That a confession made to a police officer in the presence of a magistrate, is relevant.

Secondly: A confession to a police officer in the absence of the magistrate is not relevant.

Additionally, Section 26 also says that the confession made to any person like a fellow prisoner, doctor, visitor, *etc.*, while the confessor is in the police custody is inadmissible unless made before the magistrate. For example, the accused was under surveillance of the police when the alleged Extra-Judicial confession was made. The alleged confession was also retracted. It was held that the confession was hit by Section 26.⁶ Another example is: the accused was handcuffed and in police custody when he arrived at the police station. It was held that the statement which the accused allegedly made was definitely when he was in the police custody and as such was hit by Section 26.⁷ The keyword in the section is 'custody' and so its import has to be understood. 'Custody' has not been defined anywhere in the Act, but its plain meaning is sufficiently clear. The two essential ingredients of the term 'custody' are: 1. There must be some sort of curb forced on the freedom of the confessor; 2. Such limitation should have been forced by the police either directly or indirectly.

MIRANDA EXCLUSIONARY RULE:⁸

The inclusion of the Miranda exclusionary rule by the Apex Court, in its pronouncement in the case of *Smt. Nandini Satpathy*,⁹ was a landmark step on its part. The *Miranda* ruling is the historic ruling of the Warren Court,¹⁰ in the United States of America. This ruling fixes the limits on police interrogation.¹¹ In this case, a person *Miranda*, had been arrested for suspected kidnapping and rape, without being informed at the time of questioning that he was entitled to be provided with a lawyer present during interrogation; he had been informed only that he need not to make a statement and that anything which he said might be used against him. He made a confessional statement and was convicted. The United States Supreme Court reversed the conviction, and, *inter alia* laid down constitutional requirements for prosecutors and police to the effect that and accused had the right to remain silent or not to be questioned, and that the warning should be given that anything said could and thereafter be used against him, and back, at the outset, he should be advised of his right to the presence of an attorney of his own retainer, or appointed at the public expense during interrogation. The *Miranda* decision has invoked many controversies; criminal law specialists and constitutional lawyers, being divided with respect to the validity of that ruling. Archibald Cox has perceived, that one element, among others, behind the decision was the egalitarianism which had become a dominant force in the evolution of constitutional law.¹² according to egalitarians, the categories of accused who could be persuaded to make confessions under police interrogation were the poor and ignorant, the friendless and frightened, or the young and weak, but certainly not the wealthy, a man immediately to have the services of a lawyer to protect them, or the experienced criminals who realized the advantage of remaining silent until the arrival of the lawyer as their mouthpiece. The bottom line is, the police could lie about where the interrogation will take place, they could lie about whether the defendant was in custody, they could lie and say that the client was out on bail when, in fact the client was still being

held. The police could lie about the charges against the client. In short, the police could lie about almost anything, and any deceptive tactics employed by the police would be forgiven by the simple expediency of *Miranda* warnings.¹³ Professor Kamisar has attempted to determine when acceptable pressure can become an intimidation.¹⁴ If the conduct of the police is such that a person incriminates himself, then it can be said that it was a by force or under duress.¹⁵

The American system of justice is accusatorial in nature. This holds true for India too. The question that arises here is whether our system of justice is purely accusatorial in nature or does it have inquisitorial attributes too. The fact is that India has a mixed system of justice. The police interrogation is inquisitorial as well as accusatorial and the attitude of the judiciary is also mixed. This is shown by the fact that the age-old maxim emphasizes that a person is supposed to be guiltless unless proven otherwise, is totally disregarded by the judiciary as well as by the police by their attitude in inferring that a person is guilty unless proved innocent.¹⁶ They would rather let nine innocent men be convicted than let one guilty man escape. Yet again the disregard for the universally accepted principle of the criminal law that it is better to let nine guilty men go free than let one innocent person is punished. If it hadn't been so, then it would never have been accepted that the interviews of the accused by the police may be fabricated. Now the accusatorial attitude has been somewhat subdued, because, careful consideration is given where danger is involved when the basis for finding the guilt of the accused are circumstances, or substantially the only circumstance, a confession made while in the police custody which has not been dependably substantiated, and that confessional statement has been established beyond doubt.¹⁷

Section 27: Section 27 is an exception to sections 24, 25 and 26, which states the rules of exclusion of confessions. *Justice Bhagwati* observed that the section appears primarily to be founded on the belief that if some fact is revealed as a result of some information which is proven to be true, then that can safely be allowed as evidence.¹⁸

Section 28: Section 28 is an exception to section 24 and it states the conditions under which an irrelevant confession may become relevant. This provision says that a confession is admissible when the inducement or its impression has been completely removed and thus becomes totally voluntary. Whether or not the inducement, threat, or promise, which renders confession inadmissible, has been fully removed, so as to make it relevant is a question for the Court to consider. Where the Court is satisfied that the confession was made after the influence was removed, then the confession will be admissible in evidence. This was agreed to by the Court in the matter of *Bhagirath v. State of Madhya Pradesh*.¹⁹

Section 29: Section 29 is based on the premise that a relevant confession does not become irrelevant merely because:

1. It was made under a promise that it will remain a confidential matter, or
2. Deception was practiced upon the confessor, or
3. It was made when he was in an inebriated condition, or
4. In answer to questions, he need not have answered, or
5. No warning was given that he is not bound to make the confession.

The Apex Court of the country has laid down that in the case of confessional statements which are otherwise admissible, the court has still to deliberate on the fact whether they can be accepted as factually correct.²⁰

Section 30: This Section states that a confession is only evidence against the confessor and not against others.²¹ The underlying policy here rests on the undeniable fact that such a confession can leave an impression on the judge's mind; thus, it is preferable to control within limits rather than ignore entirely. To sum up while a confession is good evidence against its maker and requires corroboration merely as a matter of prudence, it is not legal evidence against a co-accused at all unless corroborated.²²

The Code of Criminal Procedure, 1973

The next enactment in line for analysis is the Code of Criminal Procedure, 1973. The first Law Commission presented its report on the

reform of civil and criminal administration of Justice in 1958; and it made some recommendations with regard to the Criminal Procedure. Later on a methodical examination of the Code was undertaken by the Law Commission for giving a solid form to the recommendations made in the Fourteenth Report. It also presented the Forty-first Report in 1969. On the basis of the recommendations and after careful examination and scrutiny by the Government, the Code of Criminal Procedure Bill, 1970, was drafted. The Bill was finally passed in 1973.²³ The Code of Criminal Procedure, 1973, came into force on April 1, 1974. The Procedural Law is planned in such a manner that it furthers the ends of justice without introducing endless technicalities.

Now, coming to the relevant sections, pertaining to confessions, which are as follows:

Section 163: The purpose of this section is to ensure that the statement made by a person before the Investigating Officer is voluntary. The important terms under this section are 'police officer' and 'person in authority'

Section 164: There are certain formalities which have to be observed under the code in recording judicial confessions. The Extra-Judicial confessions are not subject to any such formalities. Consequently, there is a distinction in the evidentiary value to be attached to either class of confessions. The judicial confessions have to follow the procedure as laid down in sections 164 and 281 of Cr.P.C. when they are recorded.²⁴ Section 164 of the Code is not exhaustive of the conditions for the admissibility of confessions. It must be read along with sections 24, 25, 26, 27, 28, 29 and 30 of the Indian Evidence Act, which deal with the substantive law with regard to confessions.

THE EFFECTS OF SECTION 164 OF THE CRIMINAL PROCEDURE CODE ARE AS FOLLOWS:	
1.	A confession to a police officer is not admissible in evidence.
2.	If a person is in the custody of the police, then his confession must be recorded before the Magistrate.
3.	A magistrate will record a confession only if he is satisfied that it is voluntary.
4.	When the Magistrate records a confession, he will adhere to section 164 of the Criminal Procedure Code.
5.	Only when the above requirements are followed will the confession become valid and admissible in evidence.

It is the discretion of the Magistrate to record or not to record a confession. If he chooses to record it, then section 164 Cr.P.C. requires him to comply with the provisions given in Section 281.²⁵

It is mandatory that the confession should be recorded in the way that is mentioned in section 281 of Cr. P.C.²⁶ Normally the statement of the accused should be recorded in his own language or in the language in which he is examined. It is not always necessary that the statement of the accused should be recorded by the Magistrate in his own hand. It would be enough that he appends a certificate. The effect of noncompliance with section 281 renders the statement inadmissible.

Section 463 of the Criminal Procedure Code, 1973, is yet another section having a relation with confession. This section corresponds to old section 533, with changes as recommended by the law commission.²⁷ It has been held that this section cures technical defects in the matter of recording of a statement under Sections 164 or 281, but not the substantive requirements of those provisions.²⁸ Under the old Section 533, this distinction was sometimes lost sight of. Hence the law commission made it clear that where the objection is as to any defect in the matter of recording the statements under Sections 164 or 281, oral evidence would be permissible to show that the Magistrate concerned had followed the provisions in those Sections regarding the procedure for recording of such statements.²⁹ Such confession would then be admitted in evidence provided the accused has not been prejudiced by the defect.

Conclusion

The travel through decades and the encounter with the enactments has

proved to be an enriching experience. The recapitulation of the provisions related to confession, manifests that in the Indian Penal Code, 1860, the basic criminal law of the country, any attempt to exhort confession by causing hurt or by confinement will be penalized. Nowhere is it defined what the legislators meant by confession. Then the Indian Evidence Act, 1872 followed and attempts were made to explain the intricacies of confession. Here too, it seems, the legislators forgot to define confession. Or maybe, they thought confession was too simple a term to merit definition. They didn't visualize that not defining confession will lead to opening up the Pandora's box, releasing a load full of evil tools for tampering with the means of confession. Next in the line of legislations was the Criminal Procedure Code, 1973 which laid down the technicalities of recording confession. Finally, coming to the *grundnorm* of our country, that is the Constitution of India, which gives a person the right to say that I decline to answer that question on the grounds that it may implicate me.³⁰ The Constitution forbids force of any kind on a person for the purpose of forcing him to give testimony against his own self. This privilege against self-incrimination may be waived by an accused voluntarily.³¹ This concept has a wider connotation as compared to confession. The emphasis all around is on the voluntary nature of the statements -- whether criminating or self-incriminating.³² In India, corroborating evidence is required to fortify confession. This is necessitated by the fact that torture is used to force a person to confess.³³ The Constitutional provision of Right against self-incrimination is an attempt to give a humanizing effect to the process of obtaining confession. The crux of the above précis is that much is left to be desired. No fool proof provision has been architected to encompass all the intricacies of confession. It has been left to the judiciary to see to it that Power of the Law is not abused and that the innocent does not suffer. It can be said that the future of the confession revolves around the pious and cautious steps taken by our Judges and the law as it exists today can keep pace with the technological era, thus paving way for further dynamic interpretation of laws, maintaining harmony with the progressive society.

Endnotes

¹This is the meaning of the maxim *Optimum Habemus Testem Confitentem Reun*, cited from C.D. Fields, Law of Evidence, 1395 (1990)

² State of H.P. v. Ranjit Singh, 1979 Cr.L.J. NOC.210(HP).

³ Rabinarayan Das v. State, 1992 Cr.L.J. 261.

⁴ Sarkar's, Law of Evidence, 12th ed., 224 (1971).

⁵ A.I.R. 1966 S.C. 1906.

⁶ Jairam Ojha v. The State, A.I.R. 1968 Orissa 97.

⁷ Ramlal Lohar v. State of Assam, 1981 Cr.L.J.1734.

⁸ Miranda v. Arizona, (1966) 384 U.S. 436.

⁹ Smt. Nandini Satpathy v. P.L. Dani, A.I.R. 1978 S.C. 1025.

¹⁰ Miranda ruling received both support and extension in i) Edwards v. Arizona (1981) 451 U.S. 477; ii) Minnick v. Mississippi (1990) US Law Week 4037.

¹¹ J G Starke QC, "United States Supreme Court broadens the "Miranda" Ruling as to the Limits on Police Interrogation", 65 Aus.L.J. 243 (1991).

¹² Archibald Cox, The Warren Court: Constitutional Decision as an Instrument of Reform, 86(1968).

¹³ Horace W. Jordan, Jr., "Fifth and Sixth Amendments--Changing the Balance of Miranda", 77 J.Cr.L. and Criminology 666 (1986).

¹⁴ See Kamisar, Fred E. Inbau: "The Importance of Being Guilty", 68 J. Cr.L. and Criminology 182(1977).

¹⁵ Joseph D. Grano, "Selling the Idea to Tell the Truth: The Professional Intent of Greater and Modern Confessions Law", 84 Mich.L.Rev.662 (1986).

¹⁶ See "India Today", October 15, 1994.

¹⁷ See J.G.Stark, "The High Court's Decision Requiring Trial Judges as a General Rule to Warn Juries About Confessional Statements to the Police", 65 Aus. L.J. 314 (1991).

¹⁸ Ram Kishan v. Bombay, A.I.R. 1955 S.C. 104.

¹⁹ 1959 Cr.L.J. 48.

²⁰ Dagdu v. Maharashtra, A.I.R. 1977 S.C. 1579.

²¹ Paramhans v. State, 1987 (1) Crimes 894 (S.C.); Bhasala Singh v. State, (1987) 1 Crimes 844 (Orissa).

²² Kailash Nath Goyal, "Statements and Confessions of Accused: Some Decisions of Supreme Court", 1960 Cr.L.J. 14.

²³ Durga Das Basu, Criminal Procedure Code, 1(1979).

²⁴ Annual Survey of Indian Law, volume VIII, 76 (1972); G.G.Modak, "Are Confessions made to Magistrates Otherwise Than in the Course of Investigation Admissible as Extra-Judicial Confessions?", 1965 (2) Cr.L.J. 1.

²⁵ Rattanlal and Dhirajlal, The Code of Code of Criminal Procedure, 159 (1991). See also, D. Jagannadha Rao, Law Relating to Confessions, 350 (1967).

²⁶ As given under section 164(4s). Cr.P.C.

²⁷ 41st Report, Vol.I, Para 45.6.

²⁸ Deepchand v. State of Rajasthan, A.I.R. 1961 S.C. 1527.

²⁹ State of U.P. v, Singhara, A.I.R. 1964 S.C. 358.

³⁰ P.W.Young, "Practical Evidence: Taking the Fifth", 65 Aus.L.J. 412 (1991).

³¹ Durga Das Basu, Human Rights in Constitutional Law, 128 (1994).

³² Harvard Law Review, Vol. 18, 65 (1904-1905).

³³ Harvard Law Review, Vol. 19, 469 (1905-1906).
