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CONFESSION MADE TO THE POLICE

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ABSTRACT

Every now and then various reports have highlighted the extent of custodial violence so as to extort the confession from the accused. This is not only a violation of their human rights but also the basic principles enshrined in the various laws of land. This research paper highlights the meaning and types of confessions with a special focus on the provisions in the Indian Evidence Act with regards to the confessions made before the police and also their evidentiary value in the court of law.

Along with an in-depth description of the concepts, cases decided by the Honorable Supreme Court of India with regards to each and every point have also been added so as to understand the various interpretations of the word confession and its admissibility.

KEYWORDS

- 1) Confession
- 2) Admission
- 3) Indian Evidence Act
- 4) Police
- 5) Police Custody

1) INTRODUCTION

Many shocking revelations have been made with regard to the custodial death in the recent years. One such revelation was recently made in a study conducted by the **Common Cause**, a civil society organization that advocates for human rights, and the **Lokniti Programme of the Centre for the Study of Developing Societies**, a research institute supported by the Ministry of Human Resources and Development named “Status of Policing in India Report, 2019”ⁱ

The police personnel surveyed were inquired about the fact that if they agreed that it was alright for the police to adopt a violent attitude towards criminals for the greater good of society – 74% either completely agreed or somewhat agreed.ⁱⁱ

The researchers deliberately used the ambiguous word “criminal” in the question asked in the furtherance of their research, because a criminal could either be accused or convicted.ⁱⁱⁱ

In a second question, they dispelled with the ambiguity by asking if the personnel agreed or disagreed with the statement: “There is nothing wrong in the police beating up criminals to extract confessions”. Here, since the police in the question is still seeking a confession, the criminal can only be accused and not convicted. Four out of five interviewed police personnel agreed with the aforementioned statement.^{iv}

All of these only highlights towards one point that police men can go to any extent so as to extort the confession out of the person. They can pressurize the person to such an extent that he might confess something which he or she has not even committed in the reality.

Section 24 of the Indian Evidence Act specifically mentions that any confession made by person by inducement , threat or promise is irrelevant in criminal proceedings. Sections 25 – 27 of the Indian Evidence Act deal with various aspects of the confessions made before the police,

2) WHAT IS CONFESSION?

2.1) ORIGIN AND MEANING OF WORD CONFESSION

The word confession is having Latin and French origins. It is derives from the words “con”-expressing intensive force and “fateri” which means to declare or vow.^vAccording to the Merriam Webster’s Dictionary, the word confession means, “the act of confessing or the statement of something that is confessed”^{vi}. In other words confession refers to a written or oral acknowledgment of guilt by a party accused of an offense. As per the Oxford Dictionary confession means, “A formal statement admitting that one is guilty of a crime.”^{vii}

2.2) DEFINITION OF CONFESSION AS GIVEN BY JUSTICE STEPHEN

Howbeit, it is interesting to note that the Indian Evidence Act 1872, does not define the word confession. But a number of jurists and writers from time to time have given highly acceptable definitions of the word confession.

One such definition has been given by the draftsman of the Indian Evidence Act; Justice Stephen. He gave this definition in his Digest of the Law of Evidence. According to him, confession can be defined as a form of admission made at any time by a person who has been charged with a crime stating or suggesting the inference that he has committed that particular crime.^{viii}

As per this definition the statement given by an accused will be accepted as a confession only when it fulfills the following conditions:

- If he states that he has committed an offence he is charged with
- If he makes a statement by which he does not clearly admit the guilt, yet from the statement some inference may be drawn that he might have committed the crime.^{ix}

2.3) CONFESSION VS ADMISSION

Another interesting word that appears in this definition is admission. For better understanding it is necessary to differentiate between the admission and confession. Confession if deliberate and voluntary may be accepted as conclusive of the matters confessed. Admissions on the other hand are not conclusive to the matters admitted but it may operate as an estoppel. Confessions always go against the person making it but admissions may be used on behalf of the person making it under the exception provided in Section 21 of the Evidence Act. Moreover where conviction can be based on the statement alone, it is a confession and where some supplementary evidence is needed to authorize a conviction then it is an admission.^x

2.4) TYPES OF CONFESSION

The confessions can be broadly classified in four categories:

JUDICIAL CONFESSION:

A Judicial Confession is the one that is made by the accused in front of a Magistrate or in front of any court during the due course of judicial proceedings. This confession is presumed to be genuine. A conviction can be solely based on the judicial confession made by an accused. In the case of **Emperor VS Lal Baksh AIR 1945 Lah 43** it has been held that a confessional statement made by the accused before a Magistrate is a good evidence and accused can be convicted on the basis of it.

EXTRA-JUDICIAL CONFESSION

Extra-Judicial Confession are not made before a Magistrate or Court but before those people who are not authorized by law to take confession. They may be made to the persons such as police during investigation of an offence. Extra judicial confessions are a weak piece of evidence. Therefore the conviction cannot be based solely on the basis of it.^{xi}

RETRACTED CONFESSION

A retracted confession is one which is made by the accused at the time of beginning of trial. By this confession the accused admits that he or she has committed the said offence but at a later stage during the trial he repudiates from the same. It is well established fact that the conviction cannot be solely based on the retracted confession until and unless it is not corroborated by weighty evidence.

3) WHAT IS SECTION 24 OF THE INDIAN EVIDENCE ACT?

3.1) BARE PROVISION

A bare reading of the Section 24 of the Indian Evidence Act 1872 makes it clear that.,

A confession that has been made by an accused person is irrelevant in a criminal proceeding, if it appears to the honorable court that it has been caused by any inducement, threat or promise which is having reference to the charge against the accused person. It must proceed from a person in authority who in the opinion of the Court has sufficient power to give the accused person grounds for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.^{xii}

3.2) INGREDIENTS OF SECTION 24

In the case of **Bishnu Parsad Sinha v. State of Assam**,^{xiii} The Supreme Court explains most important ingredients of section 24; “these ingredients are the main conditions of irrelevancy:

- The confession must be result of inducement , threat or promise;
- Inducement , etc. should be proceed from a person in authority;
- It should relate to the charge in question ; and
- It should hold out some worldly benefit or disadvantage.”

3.3) CONFESSION MUST BE FREE FROM INDUCEMENT OT THREAT

A confession should be free and voluntary. If it proceeds from remorse and a desire to make reparation for the crime, it is admissible”. If it flow from hope or fear, excited by a person in authority, it is inadmissible. “The ground for not receiving such evidence is such that it would not be safe to receive a statement made under any influence or fear. There is no presumption of law that it is false or that the law considers that such statement cannot be relied upon.”^{xiv}

3.4) PERSON IN AUTHORITY

The term a person in authority within the meaning of Section 24 was held to be one who has authority to interfere in the matter charge against the accused. If this definition is to be accepted that term a person in the authority would mean only the police who are in charge of the investigation and magistrate who is to try the case. This view appears to be too restrictive. It appears that a person in authority within the meaning of Section 24 should be one by the virtue of his position wields some kind of influence over the accused.^{xv}

3.5) INDUCEMENT IN REFERENCE TO THE CHARGE

Induement must have been made in reference to the charge which has been framed against the accused. This inducement must relate to the escape from the charge.

It has been held in the case of **CHAMAN LAL V STATE OF J AND K**^{xvi} that mere exhortion to speak the truth in the name of God cannot in itself amount to an inducement. Similarly where a person charged with murder was made to confess to a Panchayat which threatened his removal from the caste for life, the confession was held to be relevant for the threat had nothing to do with the charge.^{xvii}

3.6) BENEFIT OF TEMPORAL NATURE

The last condition for section 24 to comply is that the inducement, threat or promise must be such as is sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable, for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

4) CONFESSIONS MADE TO THE POLICE:

The aforementioned discussion has described the meaning of the confession but it is interesting to note that the Indian Evidence Act 1872 has dealt separately with the confessions made before the police. Section 25, 26 and 27 of the Indian Evidence Act 1872 deal with the confessions made before the police.

4.1) SECTION 25 OF THE INDIAN EVIDENCE ACT

A reading of section 25 of the Indian Evidence Act makes it clear that , “No confession made before or to a police officer, shall be proved as against a person accused of any offence.”^{xviii}

4.1.1) WHO IS POLICE OFFICER

Section 25 of the Indian Evidence Act provides a healthy protection. This section should not be interpreted in narrow and technical sense but it should be understood in popular and wide perspective. At the same time its interpretation should not be made in such a wide sense that those persons should be included in as police officer who had been given some powers of the

Police Officer. The important quality is that he must not only have power to make investigation of crime but to file a report against criminal and to have the power to prosecute the criminal. “Unless and until a person has power to make investigation and frame a charge against the accused under Section 173 of Cr Pc he cannot be called a Police Officer within the meaning of Section 25 of Evidence Act.”^{xxix}

In **Abdul Rashid V State of Bihar**^{xx} the confession was made by an accused to the Superintendent of the Excise under provisions of Bihar and Orissa Excise Act. The Supreme Court held that the confessional statement was inadmissible as it was made to an excise officer who is police officer under the ambit of Section 25 of the Indian Evidence Act.

4.1.2) MAIN REASON FOR EXCLUDING CONFESSION MADE TO THE POLICE

Numerous judgments delivered by the Supreme Court have enumerated the reasons behind why the confessions made to the police should be inadmissible. In this regard two judgments are worth noting:

In the case of **Nar Singh v. State of Haryana, 2015- 1 LW (Criminal) 742** it was held that “If confessions to police were allowed to be proved in evidence, the police would torture the accused and thus force him to confess to a crime which he might not have committed.”

Similarly in the case of **Narayanrao v. State of A.P., AIR 1957 S.C. 737** it was held that “A confession so obtained would naturally be unreliable, it would not be voluntary, and such a confession will be irrelevant. Whatever maybe it is from, direct, express, implied or inferred from conduct.”

In the case of **Paulose V State of Kerala 1990 Cr LJ 108 Ker** it has been held that the “Broad ground for not admitting confessions made to a police officer is to avoid the danger of admitting a false confession.”

4.1.3) ACCUSED OF THE OFFENCE

The test which has to be applied while deciding whether Section 25 of the Evidence Act applies, is the position of the person making the confession at the time when it is proposed to prove the confession not his position at the time when he is alleged to have made it. A confession therefore made to a police officer by a person when he is not accused of any offence is inadmissible in evidence against him when he is accused of an offence.^{xxi}

4.1.4) CANNOT BE PROVED AGAINST THE ACCUSED

The prohibition which is contained in this section is applicable only to the confessions which are to be proved as against the accused in a case. In other words the confessions cannot be used in support of the prosecution case. It is worth noting that this section does not apply to the statement on which the accused himself wishes to rely upon for his defense.

4.2) SECTION 26 OF THE INDIAN EVIDENCE ACT

As per the Section 26 of the Indian Evidence Act 1872 any confession made by any person whilst he is in the custody of a police-officer, shall not be proved as against such person until and unless that statement is made in the immediate presence of a Magistrate^{xxii}.

4.2.1) OBJECT OF SECTION 26

Section 26 carries the theory of deemed involuntariness. In other words, “The presence of a Magistrate is supposed to negative the influence of police custody on the mind of the accused and to serve as a safeguard for him to feely exercise his option to make a confession or not except when made in presence of a Magistrate, a confession made by an accused whilst he is in police custody to any person be it a fellow prisoner, a doctor or a visitor is inadmissible in evidence.”^{xxiii}

It is also based on the idea that presence of police provides an easy opportunity of coercion for extorting confession obtained from accused persons through any undue influence being received in evidence against him.^{xxiv}

4.2.2) APPLICABILITY OF SECTION

In the case of **Queen V Sangeena**^{xxv} it was held by the court that , “This section will come into force or play when the person in police custody is in conversation with any person other than the police officer and confesses to his guilt.”^{xxvi}

4.2.3) POLICE CUSTODY

“Police custody means police control even if it be exercised in a home, in an open place or in the course of a journey and not necessarily in the walls of a prison.”^{xxvii}

In other words, ‘custody’ refers to a state of being guarded or watched in order to prevent escape. It also includes within its ambit the idea of restrain of liberty as well as confinement. Thus the immediate presence of the custodian is not necessary to bring this section into the question.

It has also been held that the word custody does not mean the formal custody but includes such state of affairs in which the accused can be said to have come into the the hands of a police officer, or can be said to have been some sort of surveillance.^{xxviii}

4.2.4) PRESENCE OF MAGISTRATE

The section recognizes one exception. If the accused confesses while in police custody but in the immediate presence of a Magistrate, the confession will be valid. The presence of the Magistrate rules out the possibility of torture thereby making the confession free, voluntary and reliable.^{xxix}

4.3) SECTION 27 OF THE INDIAN EVIDENCE ACT

According to Section 27 of the Indian Evidence Act, “How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”^{xxx}

4.3.1) CONFESSION TO POLICE AND THE DISCOVERIES

Under the Evidence Act, there are two situations in which confessions to police are admitted in evidence “One is when the statement is made in the immediate presence of Magistrate, and the second, when the statements leads to the discovery of a fact connected with the crime. The discovery assures the truth of the statement and makes it reliable even if it was extorted. This is so provided in section 27.”^{xxxi}

In order to assure genuineness of recoveries, it has become a matter of practice that recoveries should be affected in the presence of witnesses.

The Supreme Court has pointed out that there is no such practice that where recoveries have to be effected from different places, different sets of personas should be called to witness them. The fact that the witnesses to recoveries are the neighbors of the deceased and, therefore, sympathetic to him, is not material.^{xxxii}

4.3.2) NECESSITIES FOR APPLICATION OF THIS SECTION

The two fundamental necessities for the application of Sec. 27 are following:

- That the person given information must be an accused of any offence
- He must also be in police custody

“The provisions of Sec. 27 are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because such an information is further fortified and confirmed by the discovery of articles or the instrument of crime. In the present case the confessional disclosure made by the accused was confirmed by the discovery of the incriminating articles and therefore, there was reason to believe that the disclosure statements was true and the evidence led in that behalf was also worthy of credence.”

“It was soon after the arrest of the appellant that he took the police officer while in custody to the place where according to him he had thrown the dead body of the deceased wrapped by the incriminating articles. Those articles were not found lying on the surface of the ground but they were found after unearthing the dumping ground under the hillock. Those articles were neither visible nor accessible to the people but were hidden under the ground. They were discovered only after the place was pointed out and it was unearthed by the laborers. No fault therefore could be found with regard to the discovery and seizure of the incriminating articles.”^{xxxiii}

Following are the requirements for the application of this section have been laid down in the case of **Inayatullah v State of Maharashtra AIR 1976 SC 483:**

- The fact must have been discovered in the consequence of the information received from the accused.
- The person giving the information must be accused of an offence.
- He must be in the custody of the police officer
- That portion only of the information which relates distinctively to the fact discovered can be proved. The rest is inadmissible.
- Before the statement is proved somebody must depose that some articles were discovered in consequence of the information received from the accused.
- The fact must be a relevant fact that is it must relate to the commission of the crime in question.

4.3.3) CONSTITUTIONAL VALIDITY OF THE SECTION

The constitutional validity of this section was challenged in State of U.P. v. Deoman Upadhyaya, (A.I.R. 1960 S.C. 1125). In this case it was argued that the said section was ultra vires the

Constitution as it was against the provisions of Article 14 Constitution. The validity of this section was challenged on the grounds that this discriminates between the people in police custody and those who are not in such a custody.

In this case, the respondent was convicted by the trial court for murder under the relevant sections of IPC. The conviction was based on the finding that there was a quarrel between the respondent and the deceased, that the respondent had borrowed a gandasa, and that the next morning, he was seen running towards a tank and taking a bath.

The Court also took this thing into notice that he absconded after that, and that the dead body of the deceased was found on the same morning. When the accused was apprehended by the police two days later, the respondent said that he would produce the gandasa and took the police to the tank. After reaching the tank he fetched the said gandasa from the water tank.

When the matter came before the High Court, it was contended by the accused that the statements of the accused to the police were inadmissible as section 27 of the Indian Evidence Act was ultra vires Article 14 of the Constitution. The High Court accepted this contention and acquitted the accused.

Howbeit, an appeal was filed against this decision in the Honorable Supreme Court of India. The Supreme Court reversed the judgment of the High Court by a majority, convicted the accused. The court observed that

“The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. The fact that the principle is restricted to persons in custody will not by itself be a ground for holding that there is an attempted hostile discrimination, because the rule of admissibility of evidence is not extended to a possible, but an uncommon or abnormal class of cases.”

4.3.4) TIME LIMIT OF DISCOVERY

In **Mohan Lal v Ajit Singh** the accused was arrested within four days of the fact of the murder and robbery. He immediately indicated the place where he had hidden the stolen articles and a gold ring and currency notes which bore his finger impressions were recovered within six days. Based on this it was held by the court that the incriminating articles were acquired by the respondent at one and the same time and that it was he and no one else who had robbed the deceased of money and ring in a manner known to him.^{xxxiv}

There is however no restriction under Section 27 that recovery should be made immediately after the disclosure statement made by the accused. The fact that nothing could be recovered as a consequence of the statement was held by the Supreme Court as not to mean that the prosecution case should be thrown out. The weight of other evidence does not become lessened.^{xxxv}

5) CONCLUSION

Thus we can conclude that confessions made before the police or in the custody of the police are not relevant under the provisions of Indian Evidence Act. They are based on the well-grounded principle that the police authorities in order to close the investigation in a case may induce or threaten a person by the means of custodial violence so as to make him/her make confession about

something which they have not committed in the reality. This frustrates the very idea of justice and equality.

In fact it is quite shocking that a number of cases of custodial violence in order to extort confession come out every year. The khakhi clad police officials who are meant to be the safeguards of justice stoop down to a very low level and in order to extort confession forget the very idea of humanity and misuse the power which has been given to them by the constitution and other laws of land.

Today it is very necessary to check custodial violence. Some of the suggestions to do so are:

- There should be stricter implementation of the rules and regulations as well as the restrictions provided under Indian Evidence Act and CRPC.
- When an accused makes a confession care must be taken to check the circumstances under which the statement has been made.
- When an accused is brought before the Magistrate to give the confession magistrate must ensure that there are no marks of torture on the body of the accused.
- The police officials who breach the restrictions imposed by the law should be suspended and disciplinary actions must be taken against them.
- Only the confession made before the magistrate should be made a basis for convicting the accused.

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