

The background of the cover features a close-up, high-angle view of several books and stacks of papers. The books have various colored spines, including blue and black. The pages are mostly off-white or light beige, showing some signs of age. The lighting is dramatic, with strong highlights and deep shadows, creating a sense of depth and texture. The overall composition is centered and balanced, with the text overlaid on a dark, semi-transparent rectangular area.

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**ANALYSIS OF CONFESSION UNDER THE INDIAN EVIDENCE ACT,
1872**

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“A general understanding of the term confession is an admission of one’s guilt. However, there is a widespread controversy regarding its admission as evidence and the situations where it should be acceptable. This paper will be explaining the nature of confessions as described by precedents, how they are different from admissions, their categorization and how to distinguish judicial from an extra judicial confession, the circumstances where it is relevant, its admissibility in proceedings and the extent of their relevancy as evidence. An analytical methodology has been employed in this paper so as to compile existing data on record and analyze it to present the correct legal position in India with regard to confessions and their admissibility. This methodology is used so as to integrate existing data, cumulate relevant precedents, avoid repetition and bring about the lacunae and grey areas in existing research conducted regarding the theory.”

INTRODUCTION

Confession in layman’s terms means any formal statement admitting one’s guilt, and is a recognized form of evidence in most criminal justice systems across the world. In the Indian Scenario, the term is introduced in the Indian Evidence Act, in Section 24 under the chapter of Admission, hereby opening the question of when such confessions are admissible and when they may be declared irrelevant. Section 17 which defines admission gives us an insight to the meaning of the Act attached to a confession. It defines an admission as a statement, which can be oral or written or contained in electronic form, that suggests an implication as to any impugned fact of the case...” However, the term confession has not been defined by the Evidence Act.

However, confession and admission are distinguishable on the basis of whether conviction can be based on a statement alone. It is a confession if a particular statement suffices for a conviction and where some additional evidence is required to sanction a conviction then it is an admission.¹

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¹ Ram Singh v. State, All. L.J. 660 1958.

Mr. Justice Stephen in his Digest of The Law of Evidence defines confession as “an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.”² Further, Lord Atkin in the case of *Pakala Narayana Swami v. Emperor*³ has rejected the above definition and stated that a confession should either declare the offence or at least state substantially all the facts which have led to the offence. An admission of a solemnly implicating fact, or even a decisively incriminating fact is not to be considered a confession.

Confession thus could be understood as an admission through a statement that proves one’s guilt directly. However, solely by admitting to or against a fact or inconclusively admitting to guilt in an indirect fashion, does not amount to making a confession⁴.

DIFFERENCE BETWEEN JUDICIAL AND EXTRA-JUDICIAL CONFESSION

Judicial confessions are generally any confessions that are made in a formal legal proceeding before a Court of law or immediately before a committing magistrate. Any other confessions, essentially, are extra-judicial confessions. Extra-judicial confessions can be made to the police or an investigating officer, and confessions made before anyone apart from these officers, requires corroboration to be admitted as evidence⁵.

Judicial Confessions are made to a judicial magistrate under section 164 of the Criminal Procedure Code or before a Court of law or during trial or a committal proceeding. However, an extra-judicial confession may be made to any person including the police or an investigating officer. To admit a confession which is judicial in nature, the magistrate or whomsoever it’s made to shall not be needed to appear as a witness. This is similar to Section 80 of the Act where the genuineness of documents produced as record of evidence is not questioned and the circumstances, under which it was taken, as described by the person signing, are considered true, and presumed to be duly taken. However, in the case of an extra-judicial confession, the person to whom the confession was made will be called as a witness. Furthermore, as evidence a judicial confession can be fully relied upon as a proof of guilt and can be enough for a conviction as long as it seems true and voluntary, however, an extra judicial

² B.S. Shivashankar & R. Arya, 'A Study on a Study on Confession Under Indian Evidence Act, 1872' (2018) 120(5) International Journal of Pure and Applied Mathematics <<https://acadpubl.eu/hub/2018-120-5/1/34.pdf>> accessed 1 October 2020.

³ *Pakala Narayan Swami v. Emperor*, A.I.R. 1939 BOMLR 428.

⁴ *Om Prakash v. State of U.P.*, A.I.R. 1960 S.C. 409.

⁵ Summary of Criminal Subject Matter on Confession and Admission in Trial, <[http://mja.gov.in/Site/Upload/GR/Title%20NO.219\(As%20Per%20Workshop%20List%20title%20no219%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.219(As%20Per%20Workshop%20List%20title%20no219%20pdf).pdf)> accessed 1 October 2020.

confession has to be supplemented by other evidence and is usually not enough as sole ground for conviction.⁶ However, the law does not require in all cases for extrajudicial confessions to be corroborated⁷, the Apex Court has stated that Conviction of an accused can be based even on uncorroborated extra-judicial confession if it inspires confidence.⁸

Some case laws have also supplemented this distinction, as was the case in *Balwinder Singh v. State of Punjab*⁹, where it was held by the Apex Court that extrajudicial confession is weak evidence and its appreciation in a court must be done with a great caution. Further, the Court in the case of *State of Rajasthan v. Raja Ram*, has held that extrajudicial confession has to be proved like any other fact and its veracity depends on the credibility of the witness.¹⁰

EXTENT, RELEVANCY, AND ADMISSIBILITY OF A CONFESSION AS EVIDENCE

A confession, especially one that is judicial in nature can be accepted as a sole evidence for conviction, as stated before.

The extent of a confession has also been established in the aspect of whether a confession must be accepted as whole or can be admitted only for its inculpatory part. In *Nishi Kant Jha v. State of Bihar*¹¹ it was justly held by the Apex Court that there is no wrong in dividing the statement and trusting a certain part of statements confessed by the accused and neglecting the other part. The court has recognized this notion by applying the English Law and understood that if a Court has enough evidence to neglect the exculpatory part of the confession, then it may rely on the inculpatory part of such confession. This over ruled the principle established in *Palvinder Kaur v. The State of Punjab*¹² which had formerly stated that the Court must obtain and accept the confession in whole, or reject it.

Thus, the extent of a confession is further dependent on a variety of other factors such as its nature, its veracity, to whom it was made to, to bring it to the notice of the Court, etc. Thus, an objective answer without regard to the factual matrix of a case is not going to be conclusive in this regard.

⁶ Sansar Chand v. State of Rajasthan, (2010) 10 SCC 604.

⁷ Piara Singh v. State of Punjab, (1978) 1 SCR 597.

⁸ Ram Lal vs. State of Himachal Pradesh, Criminal Appeal No. 576 of 2010.

⁹ Balwinder Singh v. State of Punjab, A.I.R. 1996 607.

¹⁰ State of Rajasthan v. Raja Ram, Criminal Appeal Nos. 815-816 of 1996.

¹¹ Nishi Kant Jha v. State of Bihar, A.I.R. 1969 422.

¹² Palvinder Kaur v. State of Punjab, A.I.R. 1952 354.

Further, the relevancy of a confession can be established by considering ideals similar to those as have been taken by the Act for relevant facts. “Relevant” is defined under the act with regard to a fact which is connected with another.¹³ Such relevancy can be adjudged either logically or legally, however, what is logical may not always be legal. After, a perusal of the relevant provisions of the Act, three questions can be used to conclusively determine relevancy of a confession:¹⁴

- a) Has it been proved that the accused made the statement attributed to him;
- b) What is the relevancy of the statement; and
- c) What is the impugned statement’s evidentiary value?

If the first question is negative, the others do not arise. Similarly, if the second question is negative the third does not arise. It is also important to note that though the third question is subjective, once the evidentiary value is proven to be high, it makes the confession count as conclusive evidence.¹⁵

Under, the Act, Section 21 and Section 24-30, detail the relevancy of confessions. However, the Act does not distinguish between the relevancy provisions and the exclusionary provisions. Section 24, 25 and 26 are more exclusionary in nature and admissions in the form of confessions if made, are admissible under Section 21 as long as they are not hit by the exclusionary sections.¹⁶ Section 21 states that admissions are said to be relevant and can be proved to be contrary to the person who makes them. Thus, an illustration would suggest that a statement made by an accused stating that s/he was present at the crime scene and was accompanying the persons who committed the crime is relevant under section 21 as an admission.¹⁷

Section 24 endorses a general rule of inadmissibility of confessions if that is made involuntarily with certain inducement or threat. It has also been guaranteed under Article 20(3) of the Indian Constitution that protects any individual from self-incrimination. Thus, any confession that seems induced, threatened or made on basis of a promise of a person of authority is considered irrelevant. The inducement, threat or promise mentioned in the Section, must have referred to the charge against the defendant, and the inducement, threat or promise, must be of the nature that it would appear to

¹³ The Indian Evidence Act, 1827, s 2.

¹⁴ Relevancy and Admissibility of Confessions, <https://sg.inflibnet.ac.in/bitstream/10603/132487/10/10_chapter%203.pdf> accessed 1 October 2020.

¹⁵ Ibid.

¹⁶ Faddi v. State of M.P., A.I.R. 1964 S.C. 1850.

¹⁷ Relevancy and Admissibility (n 14).

the Court as the accused making the confession, because he would gain some advantage or avoid an evil of a temporal nature in reference to the proceedings against him.¹⁸ Lastly, it must “appear to the court” that the circumstances of the impugned inducement, threat or promise, exist, so as to make the confession inadmissible, if the Court does not see such a situation, as has been alleged by the accused, the confession will still be admissible.

The above discussed provision creates two problems. Firstly, judicial discretion with regard to what can construe as a threat, inducement or promise and secondly, the bigger problem arises because of the section being limited to threat, inducement or promise with regard to an accused charge. The Act does not cover any other forms of unlawful obtainment such as wrongful obtainment of evidence through unwarranted seizure or search though it does refer to deception, drunkenness or under promise of secrecy¹⁹. Even the Apex Court has taken the stance that there is no need for exclusion of evidence obtained illegally.²⁰ Though this may be due to a usual lack of evidence in most proceedings, it definitely violates the accused natural rights regarding fair trial or against self-incrimination, etc. and thus must be remedied.

Further, Section 28 states that if the Court is confident that such threat, inducement or promise is fully removed, then the confession made after can be relevant. This is also a subjective provision and requires objective clarification by the Legislature.

Section 25 and 26 protects an accused from custodial brutality and inducement to incriminate him/her by stating that confession made to a police officer couldn't be proved as against the person confessing and is inadequate to convict the accused.²¹ Reasons for such exclusion are that such a confession is made to a person of authority and may be induced or involuntary.²² However, Section 27 acts as a proviso to the above questions and admits a part of the confession if it relates to the discovery of facts.²³

Though there are restrictions on confession as evidence, it is still quite an important form of evidence and is admissible if it is not excluded by any of the abovementioned sections. Though the Act does

¹⁸ Summary of Criminal Subject Matter (n 5).

¹⁹ The Indian Evidence Act, 1827, s 29.

²⁰ Pooran Mal v. Director of Inspection (Investigation), (1974) 1 SCC 345.

²¹ Ram Singh v. State of Maharashtra, 1999 Cr LJ 3763 (Bom).

²² Aghnu Nagesia v. State of Bihar, A.I.R 1966 SC 119.

²³ Pandu Rang Kallu Patil v. State of Maharashtra, Appeal (crl.) 194 of 2000; Mehboob Ali v. State of Rajasthan, 2015 SCC OnLine SC 1043.

not draw a distinction between the sections of admissibility and relevance, it is pertinent to note that there is a clear dissimilarity between admissibility, relevancy and weightage to be given to a certain part of evidence.²⁴ Thus, though an admissible confession is usually relevant, a relevant confession may not be admissible and the weight of a confession which is relevant and admissible can only be decided on the basis of the factual matrix and other evidences.

ANALYSIS AND CONCLUSION

As already discussed, the Act proves to be insufficient in the matter of confessions, majorly due to two problems. Firstly, its lack of distinction between relevancy and exclusionary principles, which makes its interpretation subjective and secondly, it disregards other types of confessions that are made in the absence of free consent. This can create four-fold problems:

Firstly, illegally made confessions through torture, seizure etc. may not be reliable and thus, should not be considered admissible. Secondly, if the law stands against illegally obtaining evidence, the parties will refrain from resorting to corrupt practices to simply prove their cases, due to which many innocents suffer, and thus, it may also lead to less recidivism. Thirdly, if one's rights have been violated due to this confession, it must be remedied by disregarding such a confession, as it is also a principle recognized under the International Law which suggests that absence of free confession leading to violation of rights leads to confession being disregarded. Fourthly, judicial integrity must be maintained by not accepting such unlawfully-tainted evidence.

It must be appreciated however, that the Legislature has shown concern for custodial brutality, and thus, custodial confessions are not to be proven. Thus, it answers the question regarding the statements of the accused made before the police, which cannot be used against him. However, it does prove state-trusted officers as untrustworthy and thus, can lower the morale of society and discourage them to join as executors of law.

Also, a distinction between relevancy and admissibility in the Act and its provisions could have made the Act more objectively comprehensible.

To conclude we can say that, the Act though an ancient one is definitely insightful and ahead of its time in the matter of confessions as evidence, but it, requires an amendment so as to completely answer the problems faced now along with more objective sections to reduce the already heavy

²⁴ Sahoo v. State of U.P, A.I.R. 1966 S.C. 40.

pendency of cases. The amendments can be brought forth to make the Act and the impugned provisions more objective by making an astute distinction between relevancy and exclusionary principles, as discussed before and also widening the scope of the Act by including more situations that can lead to absence of free confession and thereby diminishing use of force or reinforcement to obtain a confession.