

## CRITICALLY ANALYZE THE EVIDENTIARY VALUE OF CONFESSION BEFORE A POLICE OFFICER IN INDIA IN DETAIL

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### ABSTRACT

*The Indian Police & Criminal Justice system is generally regarded as untrustworthy, both outside & inside the country.<sup>2</sup> Although the prime reason for the same is because of the numerous issues which are present in the system, however, the other reason is because of no trust being placed upon the same under the written law also, the same could be witnessed via the Indian Evidence Act & the admissibility of evidence.*

*It is pertinent to note that this issue is not only limited to affecting the accused, however but the whole criminal justice system is also cornered around the same. From various Legal to Non-Legal elements are affected. On an emotional level also, the present section plays an important role.*

*Therefore, in light of this, it becomes important to analyze the Evidence Act. The present article shall analyze the concept of confession itself in India, the situation of sections 24, 25, 26 & 27<sup>3</sup>, and their compatibility with other jurisdictions. Cross Analysis with other legislations, reports, etc shall also be undertaken; the evidentiary value of the same shall be focused upon. Concludingly suggestions & recommendations in this arena shall also be provided. Since Section 25 presents itself as more of a trust issue between the Police and the rest of the system, the same aspect shall be the focus of the present study.*

**Keywords:** *Trust, Criminal Justice System, Indian Evidence Act, Indian Police, Numerous Issues, etc.*

### INTRODUCTION

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<sup>2</sup> Lamani, R. and Venumadhava, G. (2013). Police Corruption in India. International Journal of Criminology and Sociological Theory, [online] 6(4), pp.228–234. Available at: <https://core.ac.uk/download/pdf/230206293.pdf>.

<sup>3</sup> Section 24, 25, 26 & 27 THE INDIAN EVIDENCE ACT, 1872 ACT NO. I. of 1872

The Indian Criminal Justice system is one ideally aims to protect the rights of the accused as much as possible. In support of the same principle, the various safeguards have been provided under law & general practice, one of the most important ones could be seen via the unique situation of confession made before a police officer.<sup>4</sup>

Under Indian Law, a confession made to a police officer<sup>5</sup> holds no evidentiary value unless it comes under Section 27. This whilst being an issue of safeguard simultaneously raises a multitude of issues, of whose analysis needs to be done.



### **CONCEPT OF CONFESSION IN INDIA**

The Concept of Confession as defined by Lord Stephen is one wherein an admission has been made at any time by an individual charged with a crime, the confession is relating to the crime itself & is focused on whether the person committed the crime or not.<sup>6</sup> Under Modern Indian law, the concept of Confession is witnessed within the Indian Evidence act. Section 24 provides

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<sup>4</sup> Krantz, S., 1962. Pretrial Discovery in Criminal Cases: A Necessity for Fair and Impartial Justice. Neb. L. Rev., 42, p.127.

<sup>5</sup> Ramkumar, J.V. (2020). Who Is A “Police Officer” For The Purpose Of Section 25 Of The Indian Evidence Act, 1872? [online] [www.livelaw.in](https://www.livelaw.in). Available at: <https://www.livelaw.in/columns/who-is-a-police-officer-for-the-purpose-of-section-25-of-the-indian-evidence-act-1872-164284> [Accessed 13 Oct. 2021].

<sup>6</sup> A STUDY ON CONFESSION UNDER INDIAN EVIDENCE ACT, 1872. (2018). International Journal of Pure and Applied Mathematics, [online] 120(5), pp.183–195. Available at: <https://acadpubl.eu/hub/2018-120-5/1/34.pdf> [Accessed 13 Oct. 2021].

for the definition of Confession & Section 25 deals with the Confession made before a police officer.<sup>7</sup>

The Rationale behind the insertion of Section 25 of the Evidence act, as reinforced from time to time via various judges, & legislators, is to protect & safeguard the accused from the inhumane treatment which they might be subjected to inhumane treatment by the police and which could also result in the forceful confession being taken out by the police officers from the accused. Furthermore, if the confession in front of police is allowed, then the investigation of the police force would also change accordingly, and this may also result in the scenario wherein an offense might be pinned on another person.<sup>8</sup> It also becomes pertinent that any confession before a police officer would also not reflect well, because of the theoretical position of the police as a neutral party in any matter.

However the exception to this is provided under Section 27, wherein if the confession is in direct consonance with the facts of the act, then in that situation, the confession made before a police officer may also be made applicable under law.



***“Aspects of a Confession”***

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<sup>7</sup> Anon, (2019). BLOG» PROVISIONS RELATING TO CONFESSIONS UNDER THE LAW OF EVIDENCE (SECTIONS 24 TO 30)». [online] Available at: <https://www.lawaudience.com/provisions-relating-to-confessions-under-the-law-of-evidence-sections-24-to-30/> [Accessed 13 Oct. 2021].

<sup>8</sup> Gupta, C.P. and Khandelwal, R., 2021. Role of Police in Criminal Justice System: An Analytical Study on Indian Perspective. GLS Law Journal, 3(1).

## **CRITICAL ANALYSIS OF CONFESSION BEFORE A POLICE OFFICER**

Since a confession as per Section 25 & 26 does not hold any evidentiary value, the debate then shifts about the need of the section, and whether it is worthwhile or not.

The basis for Section 25 & 26 could be seen via the rights granted to Indian citizens under Article 20(3)<sup>9</sup>, the Right to Silence & many other rights & Privileges granted to the common citizens, protects the citizenry from numerous wrongs which could be perpetrated against them.<sup>10</sup> The Prime argument in support of this is the intention to protect the accused against torture by police<sup>11</sup>, however, this simultaneously gives the accused the right to change the statements and facts to his fancies & whips.<sup>12</sup> The law is on the side of the accused in the present situation<sup>13</sup>, because of the situation wherein the accused could also falsely incriminate himself on pressure from the authorities, however, many-a-times accused use this provision in the wrong manner, by creating a spiral in the law, firstly by committing a crime & secondly by the usage of this provision to protect himself.<sup>14</sup>

On the other side of the coin, various scholars disagree with the right to silence which according to them is an unreasonable notion.<sup>15</sup> This is based upon the ideology that if one is innocent then he should not be silent. The Prime argument is that the guarantee of innocence of an individual may be guaranteed without showcasing or hinting towards the presence of a crime.<sup>16</sup> A Crime is committed by an individual only, in such a case, it is better to ask that individual directly instead of going around and assessing the situation of the crime committed via other means.<sup>17</sup>

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<sup>9</sup> Article 20 (3), CONSTITUTION OF INDIA, 1950.

<sup>10</sup> Lal, T. (2020). Evidentiary value of confession before police versus magistrate. [online] Law Times Journal. Available at: <https://lawtimesjournal.in/evidentiary-value-of-confession-before-police-versus-magistrate/>.

<sup>11</sup> Rao, A., 2001. Problems of violence, states of terror: torture in colonial India. *Interventions*, 3(2), pp.186-205.

<sup>12</sup> UNODC (2011). Handbook on Police accountability, Oversight and Integrity CRIMINAL JUSTICE HANDBOOK SERIES. [online] Available at: [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_police\\_Accountability\\_Oversight\\_and\\_Integrity.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf).

<sup>13</sup> EDUREV.IN. (n.d.). how confessions are used in favour of accused Related: The Indian Evidence Act, 1872; Important Questions | EduRev CLAT Question. [online] Available at: <https://edurev.in/question/741081/how-confessions-are-used-in-favour-of-accused-Rela> [Accessed 13 Oct. 2021].

<sup>14</sup> Inbau, F.E. (1937). Self-Incrimination. What Can an Accused Person Be Compelled to Do? *Journal of Criminal Law and Criminology* (1931-1951), 28(2), p.261.

<sup>15</sup> Williams, G., Smith, A. T. H (2006). *Glanville Williams: learning the law*. [online] Open WorldCat. London: Sweet & Maxwell. Available at: <https://www.worldcat.org/title/glanville-williams-learning-the-law/oclc/743495407> [Accessed 12 Oct. 2021].

<sup>16</sup> Uma, S., 2020. Police Atrocities and the Quest for Justice. *Cine Star in Electoral Politics*, 55(50), p.32.

<sup>17</sup> Egriabher, Y.G., 1982. Involuntary Confession: A Case Comment on Criminal Appeal No. 4/71. *J. Ethiopian L.*, 12, p.191.

Furthermore, at a time where the world is going ahead by the speed of light, it is absurd for the law to stay mute & deaf whilst following principles that are a thousand years old.<sup>18</sup> The Exception under Section 27 although made to help the police authorities, only becomes another issue in the court of law.

### **MAJOR CASE**

- **Queen-Empress vs. Babu Lal<sup>19</sup>**: In this case, it was noted that if confession made to the police under threat or torture would not amount to be valid under the law. The same is being done to protect the common citizenry.
- **Narayan Rao vs. the State of Andra Pradesh<sup>20</sup>**: In this case, it was held that the confession made to a police officer would not be valid even if the said officer has been bestowed with the powers & title of a magistrate.
- **Pakala Swami vs. King Emperor<sup>21</sup>**: The recording of the statement, before or during an investigation does not matter, as the same cannot be made admissible under any circumstances.
- **Damodar Prasad vs. the State of U.P<sup>22</sup>**: In this case, it was held that confession made under Section 25, could lead to the discovery of new facts, then would be admissible under Section 27.
- **Mehboob Ali vs. the State of Rajasthan<sup>23</sup>**: It was explained that no confession made to a police officer could be under any circumstances be accepted in a court of law. Section 27 merely acts as a proviso to Section 25, in case it leads to the discovery of new facts, only to move the investigation forward.

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<sup>18</sup> Legal Maxim. (2020). Evidentiary Value of a Confession Made to the Police: A Critical Analysis. [online] Available at: <https://www.legalmaxim.in/evidentiary-value-of-confession-made-to-police-a-critical-analysis/> [Accessed 12 Oct. 2021].

<sup>19</sup> Queen-Empress vs Babu Lal (1899) ILR 21 All 106

<sup>20</sup> Narayan Rao vs The State Of Andhra Pradesh 1957 AIR 737

<sup>21</sup> Pakala Narayana Swami vs Emperor (1939) 41 BOMLR 428

<sup>22</sup> Damodar Prasad And Anr. ... vs The State Of U.P And Ors. U/S 482/378/407 No. - 224 of 2013

<sup>23</sup> Mehboob Ali & Anr vs State Of Rajasthan CRIMINAL APPEAL NO.808 OF 2010

## **THE SITUATION OF EVIDENTIARY VALUE TO A POLICE OFFICER IN THE CRIMINAL SYSTEM VIS-À-VIS OTHER LEGISLATION & REPORT**

It is important to note that the present ban under Section 25 is discriminatory, as a confession to other certain agencies under certain legislations are admissible, to name a few, would be:

- I.** Section 12 of The Railway Protection Force Act, 1957<sup>24</sup>;
- II.** Sections 8 and 9 of The Railway Property Unlawful Possession Act, 1996<sup>25</sup>;
- III.** Section 108 of The Customs Act, 1962<sup>26</sup>;
- IV.** Section 18 of The Terrorist and Disruptive Activities Act of 1987<sup>27</sup>
- V.** Section 18 of the Maharashtra Control of Organized Crime Act, 1999<sup>29</sup>;
- VI.** Section 32 of The Prevention of Terrorism Act, 2002<sup>30</sup>.

The 4<sup>th</sup> Report of the National Police Commission (NPC) has regarded section 25 under the Evidence act as a highly derogatory one.<sup>31</sup> Furthermore from an employee-employer perspective, the section also becomes a negative & un motivating aspect for the police personal. This also in theory furthers the distrust towards the police force, as this goes specifically towards discrediting them.

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<sup>24</sup> Section 12, THE RAILWAY PROTECTION FORCE ACT, 1957 ACT NO. 23 of 1957

<sup>25</sup> Section 8 & 9, THE RAILWAY PROPERTY (UNLAWFUL POSSESSION) ACT, 1966 ACT NO. 29 OF 1966

<sup>26</sup> Section 108, THE CUSTOMS ACT, 1962 (No. 52 of 1962)

<sup>27</sup> TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987 (Act No. 28 of 1987)

<sup>28</sup> The Constitutionality of the same is upheld by the Supreme Court in Kartar Singh v. the State of Punjab: (1994) 3 SCC. 569. The Act has since lapsed.)

<sup>29</sup> Section 18, THE MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999 ACT No. XXX OF 1999

<sup>30</sup> Section 32, THE PREVENTION OF TERRORISM ACT, 2002 Act No. 15 of 2002

<sup>31</sup> INDIAN CULTURE. (n.d.). Fourth Report of the National Police Commission. [online] Available at: <http://www.indianculture.gov.in/fourth-report-national-police-commission> [Accessed 13 Oct. 2021].

## Section 24

- Confession caused by inducement, threat & promise
- Not Valid in Court of Law

## Section 25

- Confession made to Police Officer
- Shall not be proved against a person accused of offence

## Section 26

- Confession made by accused during custody not to be proved against him

## Section 27

- If the statement are in consonance with the events then they are acceptable as facts under Section 27

### *“Admissibility of Evidence”*

## THE SITUATION IN OTHER JURISDICTIONS

For a complete understanding of the evidentiary value of statements made to police officers, the same needs also to be examined from the perspectives of other jurisdictions & the situation about confession to a police officer in these jurisdictions as well.

- **England (U.K):** Under English, The Police and Criminal Evidence Act, 1984’s Section 76, a confession before a police officer is admissible; however, the prosecution is required to prove the same beyond a reasonable doubt. The absence of any kind of force must be there.<sup>32</sup>
- **United States:** Following the landmark case of *Miranda v. Arizona*<sup>33</sup>, a voluntary confession to a police officer is admissible under law, however, the voluntariness of the same has to be extensively decided and judged by the judge. Circumstances of time-

<sup>32</sup> www.hse.gov.uk. (n.d.). Admissibility of confessions - Investigation - Enforcement Guide (England & Wales). [online] Available at: <https://www.hse.gov.uk/enforce/enforcementguide/investigation/witness-admissibility.htm#:~:text=Admissibility%20PACE%20section%2076>.

<sup>33</sup> *Miranda v. Arizona*, 384 U.S. 436

lapse, knowledge of the defendant, presence of counsel, right to remain silent, etc must also be acknowledged.<sup>34</sup>

- **Singapore:** A Sergeant Level police officer is allowed to record a confessional statement, which is acceptable in a court of law.<sup>35</sup>
- **Australia:** The situation of fairness & involuntarily situation<sup>36</sup> needs to be analyzed to understand the circumstances of the confession and to provide legal validity if any to the same.<sup>37</sup>

## PERSONAL COMMENT

Therefore in light of the above analysis done, it would be correct to state that Section 25 & 26, do not hold fast in the 21<sup>st</sup> century and changes need to be made in the same. Specific Research on elements such as time, situation, and circumstances of confession needs to be done.<sup>38</sup>



<sup>34</sup> LII / Legal Information Institute. (2011). *Miranda v. Arizona*. [online] Available at: <https://www.law.cornell.edu/constitution-conan/amendment-5/miranda-v-arizona>.

<sup>35</sup> Ho, H.L. (2019). Criminal Justice and the Exclusion of Incriminating Statements in Singapore. *Ius Gentium: Comparative Perspectives on Law and Justice*, pp.213–252.

<sup>36</sup> ALRC. (n.d.). The fairness factors. [online] Available at: <https://www.alrc.gov.au/publication/copyright-and-the-digital-economy-alrc-report-122/5-the-fair-use-exception/the-fairness-factors/> [Accessed 13 Oct. 2021].

<sup>37</sup> Iryna Marchuk The Fundamental Concept of Crime in International Criminal Law A Comparative Law Analysis. (n.d.). [online] Available at: <https://www.corteidh.or.cr/tablas/r32691.pdf>.

<sup>38</sup> Shuy, R.W., 1998. *The language of confession, interrogation, and deception* (Vol. 2). Sage.



Furthermore, an analysis of the same from various points of view, such as that of the Police, the Judiciary, the Victims, the Accused, etc needs to be done. This would help understand the future of confession in India along with the related aspect of the Police system.

## **SUGGESTIONS & RECOMMENDATIONS**

The world is changing, from where in the 1800s it used to take days for a letter to reach from one place to another the same happens now in an instant moment. Based on the above-done analysis, the following suggestions & recommendations could be implemented for the effective working of the confession in India in the modern era:

- **Protection from Torture:** Although India is a signatory to various international anti-torture conventions and the constitution provides various safeguards, the practice of making out a confession from torture remains a common practice.<sup>39</sup> Specific Laws, Legislation, Good Practice needs to be implemented in this area.
- **Specific Research:** Specific Research needs to be done in between the admissibility of evidence, its reliability, etc. The same could be done by either the legislation or by the courts
- **Reforms in Police System:** Various reforms need to be done to minimize the situation wherein the police officers would even have the chance to do any inhumane treatment.<sup>40</sup>
- **Induction of Technology:** Technology that could be used in assistance of validating a confession, even if made before a police officer, needs to be inducted into the Criminal Justice System.

## **CONCLUSION**

The theory behind the current evidentiary value of confession before the police is now 150+ years old. At that time, the rights & knowledge of the citizens were limited combined with the less development in the nation, however now the situation is being changed, & therefore it would be natural to presume that a change in this section should also be implemented. However

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<sup>39</sup> Copyright OHCHR, APT and APF May (2010). Preventing Torture An Operational Guide for National Human Rights Institutions. [online] Available at: [http://www.ohchr.org/Documents/Countries/NHRI/Torture\\_Prevention\\_Guide.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Torture_Prevention_Guide.pdf) [Accessed 13 Oct. 2021].

<sup>40</sup> OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS Human Rights Standards and Practice for the Police. (2004). [online] Available at: <https://www.ohchr.org/Documents/Publications/training5Add3en.pdf>.

this change should not be done in a single effect instead, numerous other police & criminal justice reforms need to be made first, which would, in turn, make the theory of inhuman treatment itself obsolete, and then only should this section be touched or looked upon.

The most important element of the state, i.e., the police stands on a constant trial because of Sections 25, 26 & 27<sup>41</sup>. The Stigma of the police being untrustworthy is further strengthened by these sections only. The irony in the present situation is that the group of people who are responsible for the protection of the society at large are being less trusted than an accused of a crime. The exception under Section 27 is to a large extent one that is without any proper justification.

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<sup>41</sup> Id.

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