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## Confessions under the Indian Evidence Act

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### Abstract

The Indian Evidence Act does not define the word Confession, but Confession is a statement made by an accused person who is associated with a crime, which infers that they committed a crime. The Act does not differentiate between the Admission and the Confession, but there is a fragile line difference between Admission and Confession. Confessions are upgrades of Admission, making them unique.

Admission can be judicial or extrajudicial, with judicial Admission admitted at the time of the judicial trial and extrajudicial Admission of facts made during normal day-to-day activities. Judicial admissions or extra judicial admissions are entirely admissible by the court of law under Section 58 and have much higher probative value into substantive any fused against or go against the confessor of the statements, with exceptions to Section 21 of the Indian Evidence Act.

Confessions can be of different types depending on the nature of the case. Judicial confessions are made on or before a magistrate or court of law during criminal proceedings, while extrajudicial confessions are made at any place other than the court. The court must examine the confessions efficiently and ensure they are valid and supported by other evidence. Retracted confessions can be used against the person confessing if supported by independent and corroborative evidence.

The Indian Evidence Act of 1872 deals with only the conditions when a confession can be irrelevant. Section 24 states that a confession made by a person accused of some offence is irrelevant if it comes out of inducement, threat, or promise and has occurred from a person in authority, such as a magistrate or court. Section 26 prohibits judicial bodies from proving the guilt of the accused by their Confession. Section 27 lifts the ban on admitting confessions made to police officers in police custody, aiming to help in further discovery of facts and prove other relevant facts.

**Keywords:** Confession, State, Indian Evidence Act, Section 17, Case laws, Constitution of India

## 1. Introduction

The Indian Evidence Act defines "confession" as any statement made by an accused person charged with a crime, suggesting or suggesting the inference that they committed a crime. The term "confession" is not defined or expressed in the Indian Evidence Act, but the inference explained under the definition of Admission in Section 17 applies to Confession in the same manner. Confessions are statements made by the person charged with criminal offences, suggesting a conclusion to any fact in issue or relevant facts. They may infer any reasoning for concluding or suggesting that the accused is guilty of a crime.

The Indian Evidence Act also has a thin line difference between Admission and Confession, as Admission only ends up in Admission of guilt by the accused. Confessions are upgrades of Admission, making them memorable. The court should begin ascertaining the case facts with all other evidence related to the case before turning to the approach of Confession by the accused to administer complete justice to the conclusion of guilt.

Admission plays a vital part in judicial proceedings; if either party proves that the other party has admitted the fact in issue or relevant facts, it becomes easy for the court to administer justice effectively. Section 17 to 23 of the Indian Evidence Act deals explicitly with the portions related to Admission.

"Admission can be judicial or extrajudicial, with judicial Admission made at the time of the judicial proceeding and extrajudicial Admission made during normal day-to-day activities. Judicial Admission or judicial admissions are completely admissible by the court of law under Section 58 of the same Act and have much higher probative value in substantiating any fact".

The Indian Evidence Act has lifted the concept of Admission and Confession, explaining that discretionary and undeviating cognizance of guilt is Confession, and the Confession made by the accused may be used as a piece of damaging evidence against him. However, admissions acknowledged by the person who admitted the fact may not be considered conclusive proof of facts admitted, and the admitted matter or facts can only be considered as substantive or probative evidence of Admission. Confession is a statement made by a person charged with criminal offences, which can infer any reason for concluding or suggesting guilt of a crime. It is made by the person who is charged with the crime and may infer any reason for concluding or suggesting that he is guilty of a crime. The concept of Confession usually deals with criminal proceedings, with no specific section defining it.

"Confessions can be used or go against the confessor of the statements, with exceptions to Section 21 of the Indian Evidence Act. Confessions confessed by more than one person jointly for the same offence can be considered against others accused of the same crime under Section 30 of the Indian Evidence Act"<sup>1</sup>.

Confessions can be of different types depending on the matter of the case. Judicial Confession, also known as judicial Confession, is made by giving statements in the court of law, while extrajudicial Confession is made at any place other than the court. Both types of confessions have different values and relevancy in determining the accused's guilt.

Judicial confessions are made before a magistrate or court during criminal proceedings, while extrajudicial confessions are made at any place other than the court. The court must take care to check if the Confession made by the accused is voluntary and authentic so that no innocent person can be charged for wrongful acts of others, as provided in Article 20(3) of the Indian Constitution. Extrajudicial confessions, also known as extrajudicial confessions, are made at any place other than the court and can be made in the form of prayer or in a private room or self-conversation. Both judicial and extrajudicial confessions can be accepted in the court but have different evidentiary values or probative values to establish any fact. A conviction will not solely be based on the Confession, but the court will test the extrajudicial Confession to make any person guilty of any offence committed by them.

In "**State of Punjab v. Bhagwan Singh**, The Supreme Court held that an extrajudicial confession's value only increases when it is clearly consistent and convincing to the conclusion of the case; otherwise, the accused cannot be held liable for the conviction solely on the basis of the confession made by them"<sup>2</sup>. In "**Balwinder Singh v. State**, the Supreme Court emphasized the importance of credibility in determining the credibility of a confession. The court must examine the confessions efficiently and ensure that they are true and supported by other evidence. Retracted confessions, which are voluntarily made by the confessor but later revoked or retracted, can be used against the person confessing if they are supported by independent and corroborative evidence"<sup>3</sup>.

In "**Pyare Lal v. State of Rajasthan**, the Supreme Court lifted the requirement that a retracted confession has enough value to form any other legal grounds to establish a conviction only if the court satisfies that it was true and was on someone's own will. In *Pancho v. State of Haryana*, the

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<sup>1</sup> Indian Evidence Act 1872

<sup>2</sup> 1952 AIR 214

<sup>3</sup> 1996 AIR 607

court held that confessions made by co-accused do not have much evidentiary value and can only be used to corroborate the conclusion drawn out by other probative evidence"<sup>4</sup>.

The "Indian Evidence Act 1872 deals with the conditions when a confession can be irrelevant. Section 24 of the Act states that a confession made by a person accused of some offence is irrelevant if it comes out of inducement, threat, or promise and has occurred from a person in authority, such as a magistrate or court. The Confession must be out of inducement, threat, or promise, relate to the charge in question, and have the benefit of temporal nature or disadvantage"<sup>5</sup>.

"Confessions made to police officers are not admissible as evidence in a court of law against the accused to prove their guilt. Section 26 prohibits judicial bodies from proving the guilt of the accused by their Confession. Section 27 of the Indian Evidence Act lifts the ban on admitting confessions made to police officers in police custody. The Act allows for the Admission of statements made by an accused, even to police officers, aiming to help in further discovery of facts and prove other relevant facts. This provision allows for the Admission of confessions made to police officers in police custody, even if recorded in the immediate presence of a magistrate. The Supreme Court explained that this Confession may help in further discovery of facts and help the court prove other relevant facts"<sup>6</sup>.

## 2.1 Meaning of Confession

As per **Sir James Stephen**, "As an admission made at the time by a person charged with the crime stating or suggesting the inference that he committed a crime"<sup>7</sup>.

However, Confession is not defined in the Indian Evidence Act, but it is defined and explained by the various jurists and the author. "Section 17 defines the term admission. An admission is a statement oral or documentary or contained in electronic form which suggests an inference to any fact in issue or relevant fact, which is made by any of the persons and under the circumstances hereinafter mentioned"<sup>8</sup>.

Presently, in the wake of understanding the revelation of both the terms (Admission and Confession), it is clear that both include the facts of the case. Admission includes the relevant facts, which is permissible by the court, but the Confession. It is not necessary that every fact is

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<sup>4</sup> 1963 AIR 1094

<sup>5</sup> Indian Evidence Act 1872

<sup>6</sup> Indian Evidence Act 1872

<sup>7</sup><https://www.legalserviceindia.com/legal/article-138-admissions-and-confessions-under-indian-evidence-act-1872>

<sup>8</sup> Indian Evidence Act 1872

admissible in the case in which facts are admitted in the case when the facts themselves are admitted by the accused or the offender who is directly or indirectly involved in the case that admitted facts is known as Confession. Subsequently, the Confession is facts which are made by an individual who is accused of any criminal offences and such proclamations presented by him will recommend an end regarding any reality in issue or as to essential realities. The assertions might induce any thinking for closing or recommending that he is at legitimate fault for wrongdoing. We may likewise characterize the Confession all in all as the admitted facts by the accused in the criminal procedures.

## 2.1.2 Case laws

**2.1.2.1 In Pakala Narayan Swamy Vs. The King Emperor** Lord Atkin said, "A Confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession"<sup>9</sup>.

**2.1.2.2 In "Palvinder Kaur V. Province of Punjab**, the Supreme Court of India upheld the decision taken by the privy council in the Pakala Narayan Swami case on the basis of two reasons. Firstly, the statement made by the person confirming that he is guilty of any offence or Admission made by him indicating all the facts which constitute the offence is considered a confession. Secondly, when the statement made by any person is sufficient for acquittal of the person from his statement, then these statements cannot come under the ambit of the confession"<sup>10</sup>.

**2.1.2.3 In "Nishi Kant Jha v Territory of Bihar**, the Supreme Court focuses on relying on the statement confessed by the accused before or during the trial or neglects some parts of the

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<sup>9</sup> (1939) 66IA 66

<sup>10</sup> AIR 1952 SC 354

admitted facts or denies the statement which is made by himself, then the court will focus on the inculpatory part of the statement, i.e. confession"<sup>11</sup>.

## 2.2 Meaning of Admission

Definition of Admission: - Famous Scholars Stephen, Wills, etc., have defined the term admission in their own way. However, these definitions are insignificant in the context of courts in India because the Indian Evidence Act expressly defined the term admission in section 17. Therefore, in India, the term admission is governed by the definition given in Section 17 and not by the definition of the various Scholars.

According to "Section 17 of the Indian Evidence Act, the definition of admission is: - An Admission is a statement, oral or documentary or contained in electronic form which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances hereinafter mentioned"<sup>12</sup>.

In other words, an admission is a statement that is made by the victim or accused in the form of oral, documentary and electronic form. Which inference regarding facts-in-issue or relevant fact and the statement has been made by any of the persons given in sections 18, 19 and 20 and made in the circumstances given in sections 21 to 23?

In **Rakesh Waddhawan Vs. Jagadamba Industrial Corporation**, "Admission is only a piece of evidence and can be explained. It does not conclusively bind a party unless it amounts to an estoppel. The value of an admission has to be determined by keeping in view the circumstances in which it was made and to whom. A mere failure to object cannot be placed on a footing higher than an admission"<sup>13</sup>.

## 2.3 Difference between Confession and Admission

Admission and Confession are correlated to each other, but both are different in two senses. Admission is defined in the I.E. Act, but Confession is used only on the basis of the interpretation of the courts in the cases.

There is some difference between the Admission and the Confession, which is given below: -

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<sup>11</sup> AIR 1969 SC 422

<sup>12</sup> Indian Evidence Act 1872

<sup>13</sup> AIR 2002 SC 2004



1. A confession is a statement made by an accused person that is sought to be proved against him in criminal proceedings to establish the commission of an offence by him, whereas Admission is a statement of a person that suggests the inference regarding any fact-in-issue or relevant facts in both civil and criminal cases.
2. Confession always goes against the person making it, while Admission may be used on behalf of the person making it under the exceptions provided in section 21.
3. "Confession has been defined nowhere in the Indian Evidence Act. It was defined by the privy council in the case of **Pakala Narayana Swami Vs. King Emperor**, whereas Admission has been defined in section 17"<sup>14</sup>.
4. "Confession, if deliberately and voluntarily made, may be accepted as conclusive of the matters confessed. Admission is not conclusive as to the matters admitted; it may operate as an estoppel (Section 31)"<sup>15</sup>.
5. Confession is Admission in criminal cases only, but Admission is admissible in both criminal as well as in civil cases.

## 2.4 Types of Confession

A confession is not defined in the Indian Evidence Act 1872 but is interpreted by the Supreme Court with the help of various court decisions in the Indian legal system. There are different kinds of Confession, but the courts differentiate the different kinds of Confession on the basis of the style of the recording of the accused statement in the court or outside of the court. The statement which is recorded by the magistrate is called judicial Confession, and statements recorded outside the court are called extra judicial Confession and so on.

### 2.4.1 Judicial Confession

Judicial Confession is a confession that is made before a magistrate or court during judicial proceedings is known as judicial Confession.

Evidentiary Value: -

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<sup>14</sup> (1939) 66IA 66

<sup>15</sup> Indian Evidence Act 1872

A judicial confession is a substantive piece of evidence, and an accused may be convicted only on such evidence if the court is convinced that the Confession is true and voluntary. For Example- A confession made to a Magistrate made to a magistrate order Section-164<sup>16</sup>.

In "**Modi Ganga Vs. State** The supreme court held that the confessional statement, when recorded in accordance with sections 164 and 364, Cr.P.Code, can be admitted in evidence without the magistrate recording such statement being examined"<sup>17</sup>.

#### **2.4.2 Extrajudicial Confession**

A confession that is not judicial is known as extrajudicial Confession. For example- Confessions made by father, teacher, friend etc.

Evidentiary value:-

"There is no legal bar to convict the accused only on the basis of extrajudicial Confession, but a supreme court in **Pyare Lal Vs. State of Rajasthan** Held that the rule of court requires that an accused should not be convicted on the basis of Extra Judicial confession unless it is corroborated, especially in serious cases like murder and culpable homicide."<sup>18</sup> That is why "Supreme Court **Jagta v State of Haryana** held that extrajudicial confession is a fragile type of evidence"<sup>19</sup>.

Lord Macaulay also remarks "that a person should not be convicted on the basis of such confession because generally such a type of confession is made verbally and even an honest man may misunderstand the words altered to him"<sup>20</sup>.

#### **The distinction between the Judicial Confession and Extra Confession**

1. "A Judicial confession is made before a magistrate or court, whereas an Extra Judicial confession is made to any person other than a magistrate or court.
2. A Judicial confession is made during judicial proceedings, but it is not so in the case of Extra judicial Confession.
3. An Extra judicial confession is weaker evidence than a judicial confession, and it requires corroboration in order to base a conviction on it".

#### **2.4.3 Retracted Confession**

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<sup>16</sup> Criminal Procedure Code 1973

<sup>17</sup> AIR 1981 SC 1165

<sup>18</sup> AIR 1963 SC 1094

<sup>19</sup> AIR 1974 SC 1545

<sup>20</sup>[https://pg.punjab.gov.pk/confessions\\_and\\_statements\\_uss\\_164\\_364\\_crpc](https://pg.punjab.gov.pk/confessions_and_statements_uss_164_364_crpc)

The English importance of withdrawal is the activity of stepping back from something. Confession is a sort of Confession that is intentionally made by the questioner; however, subsequently, it is denied or retracted by a similar inquisitor. A retracted Confession can be used against the individual who is admitting a few withdrawn explanations in the event that it is validated by another free and demonstrative proof.

In "**Abdul Ghani Vs. State** The supreme court held that when the accused did not make a confession which has been already made earlier, i.e. the accused back out his/her earlier statement made by him/her, it amounts to retraction of Confession already made"<sup>21</sup>.

In "**Shankara Vs. State** The supreme court held that retracted Confession may form the basis for conviction without corroboration if it is found to be perfectly voluntary and if so is further found to be true and trustworthy"<sup>22</sup>.

In the "**Union of India Vs. J.S. Brar** In This case, the Supreme Court overruled the earlier judgement"<sup>23</sup>. "**Shankara Vs. State** and held that the retracted Confession without independent corroboration cannot sustain a conviction"<sup>24</sup>.

#### **Confession by co-accused:**

When the number of accused is more than one, and the nature of offences indicates that one or more than one accused is involved in the crime, the statement made by one of them is relevant to each other. So, the admitted facts by the co-accused by one of them are binding for all accused in the same offence, not for the other offence.

The High Court, on account of "**Pancho v. Province of Haryana**, held that the Confessions made by the co-accused do not have much evidentiary worth and cannot be considered a meaningful piece of proof. In this way, the Confession made by the co-accused must be utilized to substantiate the end excessively long by other probative proof"<sup>25</sup>.

For example, assume three people, Rahul, Sami and Guddu, are accused together of similar offences, and they are arraigned for the homicide of Cruel. Furthermore, during the legal procedures, Rahul admitted that he, Sami and Guddu murdered, and on the off chance that his explanations of the Rahul are perceived as obvious articulations, the court might utilize the Confession of Rahul against all the accused and can be the ground of the conviction for all three

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<sup>21</sup> AIR 1973 SC 264

<sup>22</sup> AIR 1978 SC 1248

<sup>23</sup> AIR 1993 SC 773

<sup>24</sup> AIR 1978 SC 1248

<sup>25</sup> AIR (2011) 10 SC 165

accused. The Confession made by Rahul is also used as the Confession made by Sami and Guddu. Furthermore, it is the basis of the convictions.

## 2.5 When Confession is Irrelevant

Sections 24, 25, 26 and 27 of the Indian Evidence Act 1872 are irrelevant in the general sense, but they may be relevant after the corroborating evidence is produced in the court.

**Section 24:** - "Section 24 of the Indian Evidence Act 1872 provides that when an accused makes the confession as a result of the Inducement, threat or promise given by a person in authority, such a confession would not be relevant in any criminal proceeding if the inducement, threat or promise is of temporal nature and related to the allegation levelled against the accused"<sup>26</sup>.

It is notable that the term person in authority used in "section 24 has not been defined by the Indian Evidence Act. But in the famous case of **Santokhi Beldar Vs. R** The Patne High held that a person in authority means some are engaged in the arrest, detention, examination or prosecution of the accused or by someone acting in the presence and without the dissent of such a person"<sup>27</sup>.

**Section 25:** - "Section 25 of the Indian Evidence Act 1872 declares that "No Confession made to a police officer shall be proved as against a person accused of any offence". In other words, it can be said that a confession made by an accused to a police officer is not relevant as such not admissible in evidence against the accused"<sup>28</sup>.

**Section 26:-** "It is notable that section 26 is nothing but the extension of section 25 (Confession made to the police officer is irrelevant). Section 25 applies to all confessions made to police officers, whereas section 26 applies to Confession to whosoever made (other than police officers) by a person while in police custody **Ramesh Chandra Vs. Babulal**<sup>29</sup> and **Muthu Kumar Swami Vs. R**"<sup>30</sup>.

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<sup>26</sup> Indian Evidence Act 1872

<sup>27</sup> AIR 1933 Pat 149

<sup>28</sup> Indian Evidence Act 1872

<sup>29</sup> 2014 AIR 509 F.B

<sup>30</sup> 1935 M 397, 456

"Section 26 lays down that confession made to any person when the maker of confession is in police custody cannot be proved against him unless it is made in the immediate presence of a magistrate"<sup>31</sup>.

It is notable that section 26 is in two parts; the first part of the section is known as the general rule, whereas the second part of the section is known as the exception to the general rule.

The first part of the section makes all the confessions irrelevant if they are made when the accused is in the custody of the police.

However, according to the second part of the section, such confessions are relevant if they are made in the immediate presence of the magistrate, though the accused is in police custody.

**Section 27:** - "Section 27 Provides that when an accused gives some information during police custody and as a result of such information, a fact is discovered that part of the information which is directly related to the discovery of a fact is relevant, whether information amounts to confession or not the facts discovered would be relevant even if the information is in the nature of confession"<sup>32</sup>.

In fact, "section 27 is an exception to section 25 and section 26. That is why the Supreme Court also in **Delhi Administration Vs. Bal Krishna** and in **Md. Inatulla Vs. The state**<sup>33</sup> made the scope of section 27 clear and held that section 27 is by way of a proviso (the exception to sections 25 and 26), and a statement even by way of Confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused"<sup>34</sup>.

Conditions for the application of "section 27, in order to apply section 27, the following conditions must be satisfied: -

- a. The person giving the information must be an accused.
- b. The accused must be in the custody of the police.
- c. The statement of the accused (Whether Confession or not) must be distinctly related to the discovery of a fact"<sup>35</sup>.

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<sup>31</sup> Indian Evidence Act 1872

<sup>32</sup> Indian Evidence Act 1872

<sup>33</sup> AIR 1976 SC 83

<sup>34</sup> AIR 1972 SC 3

<sup>35</sup> Indian Evidence Act 1872