



# INDIAN EVIDENCE ACT, 1872 UNIT-2 CONFESSION

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## **I. Introduction of Confession**

The term confession is not defined anywhere in Indian Evidence Act. But it is thought that an Admission in case of a criminal matter is Confession.

The same was stated by **STEPHEN** in his digest that that a confession is an admission made at anytime by a person charged with a crime, stating or suggesting the inference that he committed the crime<sup>1</sup>.

However, Privy Council, In case of **Pakala Narayan Swami vs Emperor AIR 1939**, did not accept this definition. In this case **Lord ATKIN** observed that no statement that contains self exculpatory matter can amount to a confession.

Further, a confession must either admit in terms of the offence or at any rate substantially all the facts which constitute the offence. An offence of a gravely incriminating fact, is not in itself a confession. For example, an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused death with no explanation of any other man's possession, is not a confession even though it strongly suggests that the accused has committed the murder<sup>2</sup>.

A written document acknowledging an offense and signed by the guilty party.<sup>3</sup>

**According to Black's Law Dictionary**, "Confession is a statement made by an accused person

which is sought to be proved against him in criminal proceeding to establish the commission of an offence by him".

**According to Dr. Avatar Singh**, "Confession is a direct admission or acknowledgement of his guilty by a person who has committed a crime. It may be judicial or extra-judicial."<sup>4</sup>

Confession in S.25 of the Indian Evidence Act (1 of 1872); means, as in S.24 of the same Act.

A 'Confession by an accused person' which it is proposed to prove against him to establish an offence.<sup>5</sup>

A confession may occur in many forms. When it is made to the court itself then it will be called **judicial confession**. and when it is made to anybody outside the court, in that case it will be called **extra-judicial confession**. It may even consist of conversation to oneself, which may be produced in evidence if overheard by another.

1. **Judicial Confession:** Judicial confession are those which are made before a magistrate or in court in the due course of legal proceedings.

A judicial confession has been defined to mean “plea of guilty on arrangement (made before a court) if made freely by a person in a fit state of mind.

2. **Extra-Judicial Confession:** Extra-Judicial confessions are those which are made by the accused elsewhere than before a magistrate or in court. It is not necessary that the statements should have been addressed to any definite individual. It may have taken place in the form of a prayer. It may be a

confession. Extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

Extra-judicial confession is generally made before private person which includes even judicial officer in his private capacity. It also includes a magistrate not empowered to record confessions under section 164 of the Cr.P.C. or a magistrate so empowered but receiving the confession at a stage when section 164 does not apply.<sup>7</sup>

In case of **Sahoo vs State of UP, AIR 1966**, an accused who was charged with murder of his daughter in law with whom he was always quarreling was seen on the day of the murder going out of the home saying words to the effect, "*I have finished her and with her the daily quarrels.*"

The statement was held to be **a valid confession** because it is not necessary for the relevance of a confession that it should communicate to some other person.<sup>8</sup>

Relevancy of confession or sort of matter(s) related to confession is further classified in two forms:

*Confession when not relevant*

*Confession when relevant*

**Confession when not relevant:**

A confession becomes irrelevant and thus, inadmissible, in situations described in the Sections 24, 25, and 26.

1. **Section 24 - Confession caused by inducement, threat, or promise from a person in authority –**

Confession made by an accused is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by inducement, threat, or promise, made by any person in authority and that in the view of the court such inducement, threat, or promise gives reasonable ground to the person that by making the confession he would gain any advantage or avoid any evil of a temporary nature in reference to the proceedings against him.<sup>9</sup>

- d) ***It should hold out some material, worldly, or temporal benefit or advantage*** - The inducement should be about some tangible benefit. For example, a reference to spiritual benefit such as, taking an accused to a temple to confess does not fall in this category but a promise to reduce the sentence would fall under it.<sup>13</sup>

## **2. Confession to Police-**

It is presumed that police holds a position of great influence over the actions of the the accused and so there is a high probability that confessions obtained by the police are tainted with threat, or inducement. Further, it is important to prevent the practice of oppression or torture by the police to extract the confession. This principle is espoused by Sections 25 and 26, which are as follows –

- a) ***Section 25 - Confession to police-officer not to be proved*** -No confession made to a police-officer shall be proved as against a person accused of any offence. This section is very broadly word. It strictly disallows any confession made to the police officer as inadmissible no matter what the circumstances. As in the case of ***Raja Ram vs State of Bihar, AIR 1964***<sup>14</sup>

*tries to ensure that the confession is not extracted due to the influence of the police. Any confession made while the maker is in custody of the police is invalid unless it is made in the immediate presence of a magistrate. The presence of a magistrate is, by a legal fiction, regarded as equivalent to removal of police influence and the statement is therefore considered to be free from police influence.*

*Mere absence of the police officer from a room where confession is taken does not terminate his custody of the accused. The word custody does not just mean formal custody but includes such state of affairs in which the accused can be said to have come into the hands of a police officer or can be said to have been under some sort of surveillance or restriction.<sup>15</sup>*

- c) **Section 27** provides another exception when a confession made to the police is admissible. This is when a confession leads to the discovery of a fact connected with the crime. The discovery assures



*person shall be compelled to be a witness against himself. This article seemingly made Section 27 unconstitutional. SC considered this issue in the case of Nisa Sree vs State of Orissa AIR 1954, and held that it is not violative of Article 20(3). A confession may or may not lead to the discovery of an incriminating fact. If the discovered fact is non incriminatory, there is no issue and if it is self-incriminatory, it is admissible if the information is given by the accused without any threat.<sup>16</sup>*

**Confession when relevant:**

The following three types of confession are relevant and admissible –

1. ***Section 27 - Confession leading to a discovery -***  
*Explained above.*

2. ***Section 28 - Confessions made after removal of threat*** -*If the confession is obtained after the impression caused by threat, inducement or*

**deception, etc.** - If a confession is otherwise relevant, it does not become irrelevant merely because it was made -

(a) under a promise of secrecy or

(b) in consequences of a deception practiced on the accused person for the purpose of obtaining it or

(c) while the accused was drunk or

(d) while answering the questions he need not have answered or

(e) when the accused was not warned that he was not bound to make such confession and that evidence of it might be given against him.

The basis of this section is that any breach of confidence or of good faith or practice of any artifice does not invalidate a confession. However, a confession obtained by mere trickery does not carry much weight. For example, in one case, an accused was told that somebody saw him doing the crime and because of this the accused made a confession. The court held the confession as inadmissible.<sup>18</sup>

**ADMISSION****CONFESSION**

Admission usually relates to civil transaction and comprises all statements amounting to admission defined under section 17 and made by person mentioned under section 18, 19 and 20	Confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding to establish the commission of an offence by him.
Admissions are not conclusive as to the matters admitted it may operate as an estoppel.	Confession if deliberately and voluntarily made may be accepted as conclusive of the matters confessed.
Admissions may be used on behalf of the person making it under the exception of section 21 of evidence act.	Confessions always go against the person making it.
Admission by one of the several defendants in suit is no evidence against other defendants	Confessions made by one or two or more accused jointly tried for the same offence can be taken into consideration against the co-accused (section 30)
Admission is statement oral or written which gives inference about the liability of person making admission.	Confession is statement written or oral which is direct admission of suit.

## **VI. Case Study related to Confession**

In **Kishore Chand v. State of Himachal Pradesh**, the extra judicial confession was made to Pradhan who was accompanied by Police (enquiry) Officer. The only interference which could be drawn from the circumstance of the case, is that the confession was made at the time when the accused was in the custody of police and it could not be proved against the accused. It could not be believed that, when a police officer has seen the accused with deceased at last occasion, he will not take the accused in the custody.

In the case it is evident that the Police Officer has created a scene and to avoid Section 25 and 26, the Police Officer has left the accused in the custody of village head man (pradhan).

The Police Officer in this case has no difficulty to take the accused to the Judicial Magistrate and to take extra-judicial confession under section 164 of Cr.P.C which has got more probable value and it gives an opportunity to make the required warning, that this confession will be used against the accused and after

1. State Of Uttar Pradesh vs Singhara Singh And Others on 16 August, 1963.
2. Shankar vs State Of T.N on 4 April, 1994

## **VII. Conclusion**

This change in the Evidence Act is necessary so as to invigorate the trust and faith of the people of India in the Judiciary that they will be provided imparted speedy justice to the wrongs done to them by any person. The draft Criminal Law (Amendment) Bill, 2003 in its statement of objects and reasons mentions that the disposal of criminal trials in the courts takes considerable time and that in many cases trial do not commence for as long as 3 to 5 years after the accused was remitted to judicial custody. In lieu of this, it is pertinent that provisions of Criminal Law be changed so as to reduce the time needed for a common person to get justice. After all **“Justice should not only be done, but also be seen to be done”**.

**Thank  
You**

