



THE INDIAN EVIDENCE ACT CONFESSION

The terms “confession” is nowhere defined. All the provisions relating to confessions occur under the heading of admission. The definition of admission as given in Section 17 becomes applicable to confession also.

Section 17 defines admission as a statement oral or documentary, which suggests any inference as to any fact in issue or relevant fact. If such a statement is made by a party to a Civil proceeding, it will be called an admission and if it is made by a party charged with a crime, it will be called confession. The inference that the statement should suggest should be that he is guilty of the crime.

What a “confession” is a very relevant question. The expression has not been defined in the evidence Act. **Stephen** in his ‘Digest of the law of Evidence’ (Article 21) defines it thus: A confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he has committed that crime.

In the case of **Pakala Narayana Swami v. Emperor**, (1939) 41 BOMLR 428, **Lord Atkin** observed that no statement that contains self-exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially in all the facts which constitute the offence. An admission of a gravely incriminating fact is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver, which caused a 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. The court did not accept the definition of confession given by Stephen in his Digest on the ground that the definition is not contained in the Indian Evidence Act, 1872: and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused "suggesting the inference that he committed" the crime.

The Supreme Court of India has followed the privy Council in the leading case of **Palvinder Kaur v. State of Punjab** [SC 1952], **Mahajan**, J, has observed “The confession must either admit in terms the offence or at any rate, substantially all the

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facts which constitute the offence. The admission of gravely incriminating fact, even conclusively incriminating fact is not by itself a confession.

In **Ajay Singh v. State of Maharashtra** [SC 2007], the Supreme Court reiterated that “confession” is a statement made by an accused which must either admit in terms of the offence, or at any rate substantially all the facts which constitute the offence. Communication to another is not however an essential component to constitute a “Statement”.

The substantive law of confession is contained in Sections 24 to 30 of the Evidence Act and the adjective law, in sections 164, 281 and 463 of the Code of Criminal Procedure, 1973.

BASIS

In the case of **State (NCT of Delhi) v. Navjot Sandhu** [SC 2005], the Supreme Court observed that the confessions are considered highly reliable because no rational person would make admissions against his interest unless prompted by his conscience to tell the truth. However, before acting upon a confession the court must be satisfied that it was freely and voluntarily made.

Confessions are received in evidence in criminal cases upon the same principle on which admissions are received in civil cases, namely, the presumption that a person will not make an untrue statement against his own interest. A man of sound mind and full age, who makes a statement in ordinary simple language and has not been the victim of malpractices, threat, or inducement in making such statement, must be bound by the language of the statement and by its ordinary plain meaning and the act spoken of must be given its legal consequence.

CONFESSION CARRYING INCULPATORY AND EXCULPATORY STATEMENT

Confession should be accepted as a whole or rejected as a whole.

The definition attempted by the Privy Council has found favour with the Supreme Court in its decision in **Palvinder Kaur v. State of Punjab**, SC 1952, over two scores.

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- 1) The definition of confession is that it must either admit the guilt in terms or admit substantially all facts which constitute the offence.
- 2) A mixed-up statement which, even though contains some confessional statement, will still lead to acquittal, is no confession.

In the case of **Palvinder Kaur v. State of Punjab** [SC 1952], Palvinder was on trial for the murder of her husband along with another, who, all the time remained absconding. The deceased's body recovered from a well after two months decomposition. The post mortem could not reveal the reasons of his death whether it was poison or what. In her statement to the court, the accused said that her husband was photographer and used to keep photo developing material which is quick poison, that on the occasion he was ill and she kept the medicine nearby the liquid and by mistake the deceased consumed the poison, that she got afraid of it and with the help of her friend packed the body in trunk and disposed it off into the well.

The statement thus consisted of partly guilty and partly innocent remarks. It was partly inculpatory in the sense that it confessed to something wrong and partly exculpatory in the sense that if accepted it would totally absolve her of any guilt.

The Supreme Court held that a statement that contains self-exculpatory matter which if true would negative the offence, cannot amount to a confession. **This is so because a confession must either be accepted as a whole or rejected as a whole, and the court is not competent to accept only inculpatory part (self-incriminating) and reject exculpatory part (self-defence).**

ENGLISH LAW

The principle of English Law is that the whole statement must be left to the jury who may attach different weights to different parts of it.

This principle was established in **R. v. McGregor**, [1983] QSCCCA 93, and again in **R. v. Storey**, [1978] HCA 39. The court held that it is ultimately for the jury to decide whether that explanation was or might be true. Thus, the principle laid down was that a confessional statement should not be rejected merely because it also carries with it exculpatory statements. It should be for the jury to say what weight shall be given to several parts of the statement.

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SUPREME COURT AND ENGLISH LAW.

The Supreme Court of India also appears to have influenced by this development. Its decision in **Nishi Kant Jha v. State of Bihar** [SC 1969], marks the turning point. The accused was charged with murdering his friend while travelling with him in a train. He was seen washing his clothes in a river flowing near the station where the murder was detected. Blood-stained clothes, papers and a knife were recovered from him, and the blood on them agreed with the blood of the deceased. He admitted washing blood-stained clothes, but explained the presence of blood by two contradictory statements. In one of them, he explained that the blood spilled over him while a struggle between two persons in the compartment and one of them was killed. In the other version, he said that a herd boy robbed and injured him.

The Supreme Court upheld the conviction and pointed out that there was nothing wrong in relying on a part of the statement and rejecting the rest, and for his purpose the court drew support from English authorities. The court did not mean to overrule *Palvinder*, *Hanumat* or *Balmukund* but distinguished the present case from them. Here, there was enough evidence to reject the exculpatory part. The explanations were inconsistent in themselves and also with other evidence on record, and were, therefore, so obviously false that there was no chance of justice being miscarried in discarding them.

In **Champa Rani Mondal v. State of W.B** [SC 2010] held that confessional statement that she caused the death to ward off rape, being wholly exculpatory, was held to be not relevant as, a confession.

In **Veera Ibrahim v. State of Maharashtra** [SC 1976], a person being prosecuted under the Customs Act told the custom officers that he did not know that the goods loaded in his truck were contraband, nor they were loaded with his instructions. The court held that the statement was not a confession, but it did amount to an admission of an incriminatory fact (namely, load of contraband goods) and was, therefore, relevant under Section 17 read with Section 21.

Where the accused confessed that he knew about the conspiracy to commit the murder in question but did not confess that he was a party to the crime, the statement was held to be not relevant as a confession.

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In **Lokeman Shah v. State of W.B.** [SC 2001], the statement of the accused which showed that he joined an assembly when it had already decided to chase the victim and finish him was regarded as a confession. The Supreme Court observed: “The statement must be read as a whole (instead of dissecting it into different sentences) and then only the court should decide whether it contains admission of his inculpatory involvement in the offence. If the result of that test is positive then the statement is confessional, otherwise not.”

Confession should be read as whole and not in parts

It has been held in the case of **Lokeman Shah v. State of West Bengal**, AIR 2001 SC 1760 that in order to decide whether a statement is confessional or not, it must be read as a whole.

A statement which might, at the most, be described as suggesting an inference that the accused committed the crime does not amount to confession.

Form of Confession

A confession may occur in any form. It may be made to the Court or magistrate, it will be known as judicial confession or to anybody outside the court or magistrate, in which case it is called an extra judicial confession. It may even consist of conversation to oneself. The accused who was charged with the murder of his daughter-in-law with whom he was always quarrelling 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 all the quarrels. [Sahoo v. State of U.P., SC 1966]

It was held to be a confession relevant in evidence, as it is not necessary for the relevancy of confession that it should be communicated to some other person.

1) Judicial Confession

Judicial confessions are those, which are made before a magistrate or in the court, in the due course of legal proceedings. The procedure is prescribed by Sections 164 and 281 of CrPC that how the confessional statement be recorded by the magistrate.

As per Section 80 of the Act a confession recorded by magistrate according to law shall be presumed to be genuine. It is enough if the recorded judicial confession is filed before the Court. It has been held in **Kashmira Singh v. State of M.P.**, AIR 1952 SC 159, that it is not necessary to examine the magistrate who recorded it to prove the confession.

In **Emperor v. Lal Baksha**, AIR 1945 Lah 43, it has been held that a confessional statement made by the accused before a Magistrate is good evidence and accused can be convicted on the basis of it. If it is found that the confession was made and was free, voluntary and genuine, there would remain nothing to be done by the prosecution to secure conviction.

It has been held in **Madi Ganga v. State of Orissa**, 1981 Cr LJ 628 (SC) that if corroboration is needed it is enough that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession. General corroboration is enough.

It has been held in **Dhananjay Reddy v. State of Karnataka**, (2001) 4 SCC 9, that an alleged judicial confession proved to have been not legally recorded cannot be used as an extra-judicial confession.

Any confession made to a police officer is totally inadmissible in evidence. even the statements recorded by the police in the course of the investigation cannot be used for any purpose other than those mentioned in Section 162 of the Code. The reason for having such restrictive provisions is obvious. By and large the police is not as yet considered trustworthy. Therefore, the Code provides by Section 164 a special procedure for the recording of confessions and statements made during the course of investigation by competent Judicial Magistrates. The purpose of the special procedure is primarily to ensure that the confessions or statements are made voluntarily and freely, and not under any pressure or influence.

A confession recorded in accordance with the special procedure prescribed by Section 164 can be used as substantive evidence. The record of such a confession is admissible in evidence, even though the Magistrate making the record is not as a witness to formally prove it at the trial of the accused person. Because, according to Section 80, Evidence Act, the court is required to presume that the record is genuine, that any

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statement as to the circumstances under which it was made is true, and that such a confession or statement of the accused has been duly recorded.

A non-confessional statement recorded under Section 164 is not substantive evidence. But if the maker of such a statement is called as a witness in the trial, then his earlier statement can be used for corroborating or contradicting his testimony in the court under Section 157 or Section 145, Evidence Act.

The mode of recording a confession is not the same as in the case of recording a statement. The mode of recording confession is much more elaborate so as to ensure that freely and voluntary confession alone are recorded and recorded accurately.

1. A confession or a statement can be recorded only by a Metropolitan Magistrate or a Judicial Magistrate. Further, no confession shall be recorded by a police officer on whom any power of a Magistrate may have been conferred under any law. [Section 164(1)]
2. If any Executive Magistrate or any other Magistrate not empowered under Section 164(1) above, records a confession, that record cannot be put in evidence, further, no oral evidence of the Magistrate to prove the confession in such a case can be admissible. Because, when a statute confers a power on certain judicial officers, that power can be exercised only by those officers.
3. A confession or a statement can be recorded in the course of an investigation or at any time afterwards before the commencement of the inquiry or trial. [Section 164(1)]
4. Before recording a confession, the Magistrate is required to explain to the person making the confession that a) he is not bound to make such a confession, and b) if he does so it might be used as evidence against him. [Section 164(2)]
5. The Magistrate is under a duty to see that the abovementioned warning is brought home to the mind of the person making the confession. It is also necessary that the Magistrate should disclose his identity to such a person so as to assure him that he is no longer in the hands of the police.



6. In the memorandum required to be made by the Magistrate under sub-section (4), it is necessary to mention, inter alia, the fact of giving the abovesaid warning to the person making the confession.
7. In recording confessions under Section 164(4) there is apparently no need to record the Magistrate's satisfaction. There is no need for the accused to sign up either. Nor is there any obligation to provide legal aid at this stage.
8. The Magistrate is not to record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily. [Section 164(2)]
9. The following directions are normally followed by the Magistrates in order to ensure that a confession is made voluntarily:
 - (a) After warning the person making a confession, the Magistrate should give him adequate time to think and reflect. No hard and fast rule can be made in this connection, but it is of utmost importance that the mind of such a person is completely free from any possible police influence. Normally such a person, if coming from police custody, is sent to judicial custody at least for a day before his confession is recorded.
 - (b) Every inquiry must be made from the accused as to the custody from which he was produced and as to the custody to which he was to be consigned and the treatment he had been receiving in such custody, in order to ensure that there is no scope of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of the accused person. If marks of injuries are found on the person of the accused, he should be asked how he received them.
 - (c) If the accused is handcuffed, the Magistrate should order to remove the handcuffs, and the police and other persons who are likely to have any influence over the accused should be ordered out of court in order to create a free atmosphere.
 - (d) The accused should be assured, in plain terms, of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a confession. Further, if at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate is not to authorise the detention of such a person in police custody. [Sec.164(3)] Even in the case in which the



confession is made and recorded, the accused person, as a matter of rule, should be sent to judicial lock-up and on no account be returned to police custody.

- (e) The accused should particularly be asked the reason why he is going to make a statement which would surely go against his self-interest in the course of trial and he should further be told, in order to remove any lurking suspicion in his mind, that even if he contrives subsequently to retract the confession, it will still be evidence against him.
 - (f) The Magistrate recording the confession must appreciate his function as one of a judicial officer and he must apply his judicial mind to the task of ascertaining that the statement the accused is going to make is of his own accord and not on account of any pressure him. The Magistrate must put questions to the accused in order to ascertain the voluntariness of the confession, and the record of the confession must show that questions were so asked to ascertain voluntariness.
10. The confession is to be recorded in the manner provided by Section 281 for the recording of the examination of an accused person [Section 164(4)] Accordingly the whole confession, including every question put to the accused and every answer given by him, shall be recorded in full. The record shall, if practicable, be in the language in which the accused gave the confession or if that is not practicable, in the language of the court. The record shall be shown or read to the accused or if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall at to explain or add to his answers. The confessions so recorded shall be signed by the accused person making the confession.
11. Section 164 does not mention the place and time of recording of a confession. However, the Magistrate should record the confession in open court and during courts hours.
12. The Magistrate recording a confession or statement under Section 164 is required to send the record directly to the Magistrate by whom the case is to be inquired into or tried [Section 164(6)]
13. Question may arise as to the legal consequence of non-compliance with the provision of Section 164. To some extent Section 463 takes care of such questions. According to that section, if any court before which a confession or statement of an

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accused person recorded (or purporting to be recorded) under Section 164 is tendered, or has been received in evidence, finds that any of the provision of Section 164 have not been complied with by the Magistrate recording the statement, it may, notwithstanding, anything contained in Section 91, Evidence Act, take evidence in regard to such non-compliance and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such a statement.

14. The word “may” in Section 164(1) does not denote that the Magistrate has full discretion to record or not to record a confession according to the procedure laid down in Section 164. The principle is that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. The discretion suggested by the word “may” is only for the purpose of giving true effect to Section 164. For instance, it can hardly be doubted that a Magistrate would not be obliged to record any confession made to him if, for example, it were that of a self-accusing madman, or for any other reason the Magistrate thought it to be incredible or useless for the purpose of justice.

2) Extra Judicial Confession

These are those confessions, which are made by the accused elsewhere than before a magistrate or court. Extra - judicial confession is generally made before private individuals which includes even judicial officer in their private capacity.

A conviction on the basis of extra judicial confession can be based only after subjecting the evidence of witness, to whom confession was made, to rigorous test on the touchstone of credibility. The extra judicial confession can be accepted and can be the basis of a conviction if it passed the test of credibility.

There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material.

In **Sahadevan v. State of TN**, (2012) 6 SCC 403, the principles governing admissibility of an extra-judicial confession capable of forming the basis of conviction of an accused have been summed up by Supreme Court as follows:

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1. The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
2. It should be made voluntarily and should be truthful.
3. It should inspire confidence.
4. An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
5. For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
6. Such statement essentially has to be proved like any other fact and in accordance with law.

In the case of **Baldev Singh v. State of Punjab**, (2009) 6 SCC 564, the Supreme Court held that the evidence of extra-judicial confession is generally of a weak nature. No conviction ordinarily can be based solely thereupon unless the same is corroborated in material particulars. Extra-Judicial confession must be found to be reliable.

The Supreme Court has held in the case of **State of Karnataka v. M.N. Ramdas**, SC 2002, that there is no reason why an extra-judicial confession made to a stranger cannot be relied upon. In case the accused had committed murder and had immediately revealed the fact to PW2, who was a stranger to the accused, the court observed that there was no reason why PW2 would want to implicate the accused into murder and there being enough corroborative evidence the extra-judicial confession made to PW2 could be safely relied upon.

Evidentiary Value of Extra-judicial Confession

The evidentiary value of an extra-judicial confession must be judged in the fact situation obtaining in each case. It would depend not only on the nature of the circumstances but also the time when the confession had been made and the credibility of the witness who testifies thereto [**Sansar Chand v. State of Rajasthan**, SC 2010]

The Supreme Court has observed in **State of Rajasthan v. Raja Ram**, 2003 SC, that an extra-judicial confession if voluntary and true and made in a fit state of mind can be relied upon by the court. The confession will have to be proved like any other fact.

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The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends upon the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of a witness who appears to be unbiased not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. The Court further said that if the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction.

3) **Retracted Confession**

A retracted confession is a statement made by an accused persons before the trial begins, by which he admits to have committed the offence, but which he repudiates at trial. It is unsafe to base the conviction on a retracted confession unless it is corroborated by trustworthy evidence. There is no law that a retracted confession cannot be the basis of conviction but it has been laid down as a rule of practice and prudence, not to rely on retracted confession, unless corroborated. Courts can convict person, when they are of the opinion that the confession was voluntary, consistent and true. The settled view of Supreme Court of India is that as a matter of prudence and caution, which has sanctified itself into a rule of law, a retracted confession cannot be made the sole basis of conviction unless the same is corroborated, but it does not necessarily mean that each and every circumstances mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated, not is it essential that the corroboration must come from the circumstances discovered after the confession was made.

A court may look into account the retracted confession, but it must look for the reasons for making of confession as well as for its retraction, an must weigh the two to

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determine whether the retraction affects the voluntary nature of the confession or not. [State (NCTof Delhi) v. Navjot Sandhu, SC 2005]

In **Pyare Lal Bhargava v. State of Rajasthan**, 1963 SCR Supl. (1) 689, the four-judges Bench of the Supreme Court observed that a retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only a rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration, but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession is true and voluntarily made and has been corroborated in material particulars.

In the case of **Shankaria v. State of Rajasthan**, 1978 SCC (3) 435, the confession was retracted by the appellant when he was examined at the trial under section 311 of the Criminal Procedure Code. The Court held that a confession if voluntary and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under section 164 Cr.P.C, the court must apply a double test.

- (1) Whether the confession was perfectly voluntary?
- (2) If so, whether it is true and trustworthy?

Satisfaction of the first test is a sine qua non for its admissibility in evidence. if the confession appears to the court to have been caused by any inducement, threat or promise as mentioned under section 24 of IEA, it must be excluded. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the Court must, before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with

the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.

When the confession is held to be admissible then the court is to consider what weight should be given to it. As a matter of prudence and caution, which has sanctified itself in a rule of law, a retracted confession cannot be made solely the basis of conviction, unless the same is corroborated. It will be sufficient that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession.

In **State of Tamil Nadu v. Kutty alias Laxmi Narsimhan**, AIR 2001 SC 2778, it has been held that to retract from confession is rarity in criminal cases. To retract from confession is right of confessor and all the accused against whom the confession were proved by prosecution have invariably adopted this right. It would be injudicious to jettison a judicial confession on mere premise that its maker has retracted from it. The Court has the duty to evaluate the confession and see whether it is voluntary and is there any other reason to detract therefrom. If there is no other reason to reject the retracted confession, it is a settled view of the Courts that as a matter of prudence and caution which has sanctified into a rule of law, a retracted confession cannot be made the sole basis of conviction. It is not material corroboration, but general corroboration at least that is required. It is also not essential that the corroboration must come from the circumstances discovered after the confession was made.

Court may convict an accused on his confession alone, although retracted at a later stage, usually the court wants some corroboration of the confessional statement.

Voluntary and Involuntary confession

A voluntary confession means a confession not caused by inducement, threat or promise and does not mean a confession made willingly as all confessions made in consequence of inducement, etc. are voluntary in the latter sense of the term. A confession which is voluntary is admissible, even if it is false. On the contrary a confession which is not voluntary is not admissible, however true if may be. The question whether a confession voluntary is a question of fact, so is the question whether it is true.

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A confession that is voluntary is not necessarily true and conversely, a confession that is true may not be voluntary. Once a confession is rejected as involuntary, the question whether it is true or sufficient for conviction does not at all have to be considered. An involuntary confession will be admissible in civil proceedings as admission against the maker but its weight will be affected due to inducement, etc.

The court in **Mohd. Azad v. State of West Bengal** [SC 2008], it has been observed that confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession, even though it is admissible in evidence. one important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been full removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt.

A confession cannot be used against an accused person unless the court is satisfied that it was voluntary. The court has to be satisfied that at the time of making the confession the accused was a freeman and his movements were not controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession.

In **Pyare Lal Bhargav v. State of Rajasthan** [SC 1963], under section 24 the confession would be irrelevant if the following conditions are satisfied.

1. It should appear to the court that confession is *the result of inducement, threat or promise*.
2. Inducement, threat or promise should proceed from *a person in authority*.
3. It should *relate to charge in question*.

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4. The accused should have the reasonable ground to suppose that he would *gain an advantage or avoid any evil of temporal nature*.

What is the meaning of appears to the court?

Ans: In the case of **State of Rajasthan v. Raja Ram** [SC 2003], It means that it is sufficient *if the legitimate doubt is created in the mind of the court*.

Who is an accused?

Ans: According to **Aghnoo Nagesia v. State of Bihar** [SC 1966], the court held that the word accused includes a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession.

The test which has to be applied in deciding whether section 24 applies is the position of the person at the time when it is proposed to prove the confession and not the position at the time when is alleged to have made it.

In the case of **Pyare Lal Bhargav v. State of Rajasthan** [SC 1963], the court held that there is no need to prove that it was the result of inducement, threat or promise.

1. Inducement, threat or promise

A confession should be free and voluntary. If it flows from hope or fear, excited by a person in authority, it is inadmissible. Where the prisoner is only told to tell the truth without exciting any hope or fear in him, his statement cannot be regarded as being made in response to any threat or promise.

Irrelevant Confessions

- Tell me where the things are and I will be favourable to you.
- If you do not tell the truth, you may get yourself into trouble and I will be worse for you.
- If you do not tell me I will give you to police.

Note: The burden of proof lies on prosecution to prove affirmatively that the confession was free and voluntary. It is sufficient for the purpose of excluding a confession that the confession appears to have been the result of an inducement, even if it is not proved that the inducement reached the accused.

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2. Person in authority

The second requirement is that the inducement, threat or promise should proceed from a person in authority.

Who is person in authority?

Ans: Who is a person in authority would *depend upon the circumstances of each case*. The person who induced, threatened or promised must really be a person in authority and not one whom the accused mistakenly thought to be person in authority.

In **Pyare Lal Bhargav v. State of Rajasthan** [SC 1963], the supreme court held that it is a question of fact in each case whether the person concerned is man of authority or not.

Every Government official is person in authority about whom the accused thinks that he is capable of influencing the course of prosecution.

Persons in Authority

- a) A village Mukhia
- b) The president of village Panchayat.
- c) Pradhan of village.

Not person in authority

- a) Master or mistress
- b) Ordinary panch.

3. Inducement, threat or promise should be in reference to charge.

The inducement, threat or promise should be in reference to the charge in question. Thus, it is necessary for the confession to be excluded from evidence that the accused should labour under the influence that in reference to charge in question his position would be better or worse according as he confesses or not.

Thus, where a person was 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.

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4. Benefit of temporal nature

The last conditions for section 24 to come into play 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 moving the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Thus, the evil which is threatened to him or the benefit which is promised to him must be of material, worldly or temporal nature. E.g. where the accused is told, be sure to tell the truth or you have committed one sin, do not commit another and tell the truth, a confession made in response to this is valid. The same is true where the accused is taken to temple or church and is told to tell the truth in the presence of the Almighty.

Confession after removal of impression caused by threat, etc.

Section 28 provides that when at the time of confession, the impression created in the mind of the accused by threats etc. was no longer there, the confession would be relevant.

CONFESSION TO POLICE

As per Section 25, no confession made to a police officer, shall be proved as against a person accused of any offence.

Section 162 of the Code of Criminal Procedure enacts that neither statement made by any person to a police-officer in the course of an investigation shall, if taken down in writing, be signed by the person making it, nor shall such writing be used as evidence.

It is the policy of law to ensure that statements made to the police has to be used as less as possible in Courts of law as evidence of any matter of fact in issue. The reason for this is that Police in India has been notorious for using forceful tactics to extort incriminating statements from persons accused of any offence. If such statements are admitted in evidence, then it would be prejudicial against the interest of the accused and it would amount to a violation of the principles of fair trial.

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Therefore, any confessional statement made to a police officer by a person accused of an offence is inadmissible in a Court of Law. The statement may be relevant but it is inadmissible. Section 25 attacks the admissibility of such statements and not its relevancy.

The words accused person does not mean that the person making the confession should be an accused person at the time of making the confession. It is sufficient, if at the time of making the confession, criminal proceedings were in contemplation.

Confession to be excluded under Section 25 need not only be the confession of an offence that was under investigation by the police at the time when it was made. It can be a confession of any other offence that may have been committed by the accused. Even such confessions would be hit by Section 25 of the Act and would not be proved.

In **Illias v. Collector of Customs**, AIR 1970 SC 1065, the test for determining whether a person is a police officer within the meaning of Section 25 of the Indian Evidence Act, 1872, is whether the officer has the power to file a charge-sheet as per Section 173 of the Cr.P.C. In this case, it was held that though the custom officials have the power to conduct search, seizure and also investigation, but they do not have the power to submit a proper police report or charge-sheet. For an officer to be classified as a Police Officer within the meaning of Section 25 of the Act, it must have the capacity to commence the proceedings before the Magistrate on the basis of Police Report or Chargesheet.

A confessional statement must have been made by the accused to the police officer to be hit by Section 25 of the Act. Whether it has been made voluntarily or involuntarily is not a matter of concern as the policy of law is not to use such statements.

In **Sita Ram v. State**, AIR 1966 SC 1906, a confessional letter was written by the accused and left near the dead body with the intention of being seen by the Police-Officer. All this was done voluntarily. The Court by its majority took the view that it would not come within the purview of confession made to a Police Officer.

Aghnoo Nagesia v. State of Bihar, AIR 1966 SC 119 is the landmark judgment on Section 25 of the Act. The important principles with respect to Section 25 that were laid down in this case were:

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- a) A confession made to a Police Officer under any circumstances is not admissible in evidence against the accused i.e., whether in custody or free.
- b) The person need not necessarily be an accused at the time when he made the confession.
- c) For a confession to be relevant under Section 26, it should have been made to a person other than a Police Officer.
- d) Section 26 does not qualify the absolute ban imposed by Section 25 of the Act.
- e) Section 27 partially lifts the ban imposed by Section 24, 25 and 26.
- f) An admission has to be used against the accused in entirety. If it contains both self-exculpatory or self-inculpatory statements, then also all the statements have to be used. The prosecution is not at liberty to use the inculpatory part only and discard the exculpatory part. The accused can compel the prosecution to tender the entire evidence.
- g) A confession may not only contain facts that amounts to direct admission of guilt. It may also contain other incriminating facts like motive, preparation, opportunity, provocation, the weapons used, the concealment of weapon and the subsequent conduct of the accused. All these facts would form a part of the confession in its entirety, though singly it is not an admission of guilt, rather it is only an incriminating fact.
- h) Proof of confession is excluded by any provision of law, then the entire confessional statement shall be excluded i.e., including admissions of minor incriminating facts. So, if a confessional statement is excluded to be proved by Section's 24, 25 and 26, then the entire confessional statement is excluded to be proved i.e., all the other incriminating facts would also be barred to be proved.
- i) When an accused makes a confessional F.I.R. to the Police, then the entire confession would be excluded to be proved by virtue of Section 25 of the Act, including all the incriminating facts.
- j) There is no separability test and the entire confession would be excluded from being proved.

Who is police officer?

A police officer means for this purpose a member of regular police force but SC has held that the expression would include any person who is clothed with the power of a police officer.

One of the earliest decisions of the Supreme Court was **State of Punjab v. Barkat Ram** AIR 1962 SC 276. In this case the question was as to whether a Customs Officer acting either under the Land Customs Act, 1924 or under the Sea Customs Act, 1878 or under the Foreign Exchange Regulation Act, 1947 ("FERA" for short) could be treated as a "police officer" within the meaning of Section 25 of the Indian Evidence Act. The majority consisting of *J.L. Kapur & Raghubar Dayal J.J.* held that the "Customs Officer" cannot be treated as a "police officer". But, Justice K. Subba Rao gave a dissenting opinion.

In **Raja Ram v. State of Bihar**, AIR 1964 SC 828, the Supreme Court has held that the test for determining whether a person is a police-officer for purposes of this section would be whether the powers of a police officer which are conferred on him or which are exercisable by him establish a direct or substantial relationship with the prohibition enacted by this section, that is relating to the recording of a confession.

Directorate of Enforcement v. Deepak Mahajan, AIR 1994 SC 1775: (Officer of the Enforcement Directorate arresting an offender under Section 35 (1) of the Foreign Exchange Regulation Act, 1973 ("FERA" for short) which is pari materia with Section 104 (1) of Customs Act, 1962 is not a "police officer");

Ram Singh v. Central Bureau of Narcotics AIR 2011 SC 2490: (Officer of Central Bureau of Narcotics dealing with an offence under NDPS Act, 1985 is not a "police officer")

In the case of **Tofan Singh v. State of Tamil Nadu**, AIR 2020 SC 882, the Supreme Court has declared that confessions made to NDPS officers are inadmissible in evidence.

Police Officers:

- a) Excise Inspector.
- b) Sub- Inspectors
- c) Police Patel

Not Police Officers:

- a) State Reserve police force not vested with the powers of investigation.
- b) Custom officers

c) Officers under the Narcotic Drugs and Psychotropic Substances Act, 1985.

English Law

English law does not discredit confessions to police as a rule. If the judge feels confident that there was no oppression and the statement was not fake, free and voluntary, he may admit it.

Effect of police presence

The casual presence of policemen will not destroy the voluntary nature of confession. But where that person is secret agent of police deputed for the very purpose of receiving a confession, it will suffer from the blemish of being a confession to police.

Confessional F.I.R.

Only that part of confessional FIR is admissible which does not amount to a confession or comes under the scope of Section 27.

Use of Confessional Statement by accused

Though the statement to police made by the confessing accused cannot be used in evidence against him, he can himself rely on those statements in his defence.

Note: A special legislation may change the system of excluding police confessions e.g. TADA.

Confession in police custody [Section 26]

The section 26 comes into play when the person in police custody is in conversation with any other person than a police officer and confesses to his guilt. This section is also based upon the same fear, as the police may torture to confess someone else than the police officer.

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

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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 because presence of a Magistrate rules out the possibility of torture thereby making the confession free, voluntary and reliable.

Immediate presence of Magistrate means his presence in the same room where the confession is being recorded. A confession made while the accused is in judicial custody or Lock- up will be relevant, even if the accused is being guarded by policeman.

Confession made under promise of secrecy etc. [Section 29]

According to section 24 of Indian Evidence Act, a confession which is the outcome of inducement, threat or promise from a person in authority would not be relevant. Section 25 lays down that a confession to a police officer is irrelevant. Section 26 excludes the statement of an accused in a police custody to any person other than a magistrate. Section 29 lays down that if a confession is not excluded by section 24, 25 and 26, it will not be excluded on the grounds of promise of secrecy or of deception or of being drunk or if being made in answer to the question or without warning that it will be used against him in evidence. If any of the reasons mentioned in sections 24, 25 and 26, the confession is inadmissible, then there is no question of applying the provisions of section 29 at all.

If the confession is not tainted with any other cause mentioned in sections 24 to 26 making it invalid or untrustworthy, it does not become irrelevant mainly because it was made:

- 1) By making a promise to the accused that it will be kept secret, or that evidence of it shall not be given against him or
- 2) By practicing a deception on the accused for the purpose of obtaining his confession or
- 3) When the accused was drunk or
- 4) In answer to question which he need not have answered or
- 5) Without warning that he was not bound to make the confession and that evidence of it might be given against him.

The Privy Council in the **Nazir Ahmed's case** (1936) has held that the Magistrate recording a confession must comply with the provisions of Section 164, CrPC. Hence, if the warning required by Section 164, CrPC is not given, it appears that the confession would be inadmissible.

In **State of U.P. v. Singhara Singh**, AIR 1964 SC 358, the SC has conclusively held that if confession recorded by a Magistrate is not recorded as directed under Section 164, CrPC would not be admissible. Therefore, it would be implied that a confession recorded under Section 164, CrPC, without warning would not be admissible.

In **Kehar Singh v. State**, AIR 1988 SC 1883, the SC held that a confession will be admissible in evidence only if it is recorded in compliance with the mandatory provisions of Section 164, CrPC, and if there are any irregularities in the recording of the confession, the confession will be admissible only if the irregularities are curable under Section 463. CrPC and not otherwise.

In **Shivappa v. State of Karnataka**, AIR 1995 SC 980, the SC observed: "Full and adequate compliance not merely in form but in essence with the provisions of Section 164, CrPC is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence". Thus, the provisions of Section 164 CrPC must be complied with not only in form, but in essence. Now it can be submitted that this last portion of Section 29, IEA is applicable only to extra - judicial confessions.

Confession of co-accused [Section 30]

When more than one persons are being jointly tried for one and the same offence or offences they are called co-accused. Any one of them is at liberty to confer to his own guilt and his confession will have full force of evidence against him. But when he confesses by implicating himself as well as other co-accused, that is called confession of co-accused and a question arises what is its value against the other non-confessing co-accused. It is an exception to the principle that a confession of one person is entirely inadmissible against another.

The object of this section is that where an accused person unreservedly confesses his own guilt, and at the same time implicates another person who is jointly tried with

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him for the same offence, his confession may be taken into consideration against such other person as well as against himself, because the admission of his own guilt operates as a sort of sanction, which, to some extent, takes the place of the sanction of an oath and so affords some guarantee that the whole statement is a true one.

Section 30 provides such a confession is relevant if it fulfils the certain conditions.

- a) All the persons must be tried jointly.
- b) Same offence or offences.
- c) Confession made by one person must affect himself as well as others.

For the purposes of Section 30 of the Act, the same offence means an identical offence and not offence of the same kind.

Under section 30 a statement of one accused is admissible as against his co-accused only when they are tried jointly. If the person making the confession died and was never brought to trial, his confession would not be admissible under this section as the confession of co accused. But where during the course of joint trial of two accused, one died but before his death his confession had been put on the record, the confession can be used against other accused under section 30. When accused making confessional trial was discharged not facing trial.

In **Balbir Singh v. State of Punjab**, AIR 1957 SC 216, it has been held that confessional statement of one accused person can be used against another only when the confession is such that the person making it implicates him to the same extent as the person against whom the confession is sought to be used. If the maker of the confession hardly implicates himself, and lays the entire blame upon the other accused person, showing that he was merely an unwilling spectator, then such a confession cannot be taken into consideration against the other accused person.

In **Haroon Haji v. State of Maharashtra**, AIR 1968 SC 832, it has been held that the Act nowhere prevents the Court from taking into consideration the retracted confession of a co-accused against the confessing accused and his co-accused. But it is a very weak type of evidence and it cannot be acted upon until it is corroborated in material particulars.

Confession of a co-accused is no evidence and strictly speaking is not relevant. Section 30 only says that confession of a co-accused can only be taken into consideration against the other accused provided the conditions mentioned under Section 30 of the Act is fulfilled. No conviction can be based upon it solely. It can be used only to corroborate the other evidences available on record. It can be used only to seek an extra assurance.

The section says nothing about the evidentiary value of the confession of a co-accused. All that section says and was necessary to say is that such confession may be taken into consideration against all of them, leaving the weight of the confession to the discretion of the court.

The Supreme Court accepted the effect of the section. The case before the court was **Kashmira Singh v. State of Madhya Pradesh**, 1952 SCR 526. The apex court held that a man should not be deprived of his life and liberty only on the basis of uncorroborated confession of his co-accused.

The Privy Council in **Bhuboni Sahu v. the King**, (1949) 51 BOMLR 955, relating to the evidentiary value of such confession, their lordships laid down that a confession of co-accused is not evidence as the term is defined in S. 3 of Evidence Act. Such confession is not recorded on oath nor it is given in the presence of the accused and nor its truth can be tested by cross-examination.

Thus, the confession of a co-accused is obviously evidence of a very weak type. It is much weaker type of evidence than the evidence of an approver, which is not subject to any of these affirmities.

Acquittal of confessing co-accused: Where the confessing co-accused was acquitted of the main offence and the other accused raised the plea that the confers of such accused should cease to be admissible, the Supreme Court held that such plea was not tenable. The confessional statement was recorded as per Section 164 Cr.P.C. and both the accused were jointly tried. Thus, the requirement of Section 30 was satisfied. The evidence becomes relevant and did not cease to be so because of the acquittal.