

CREDIBILITY AND VOLUNTARINESS OF CONFESSIONS: A STUDY ON THE LIMITATIONS AND FREEDOMS GRANTED UNDER THE INDIAN EVIDENCE ACT, 1872

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ABSTRACT

This paper is an attempt to understand confessions concerning the admissibility, reliability, and validity of such confessions in the custody of a police officer taking into consideration technological advancement, through judicial precedents and case laws. Additionally, the exceptions to custodial confessions, presumptions of the unfairness of police actions, the aspect of ‘voluntariness’, constitutional provisions, and the jurisprudence behind the aforementioned provides a holistic view and interpretation of the existing legislative statutes and judicial interpretation.

Keywords: Confessions, Custodial Confessions, Indian Evidence Act 1872, Admission, Police Officer, Accused person, Offence, Cruel Trilemma, Voluntariness, Indian Constitution

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1. Introduction

Confessions have been used by the courts as a method of confirming all facts that the accused has been charged with. It forms an integral part of the law of evidence as it helps corroborate the evidence that is in question or to discover new evidence(s)¹. The nature of a confession is such that it must either confirm the facts of the offense or admit to the offense². Confessions are mentioned in Section 24 of the Indian Evidence Act³ (hereinafter, 'Evidence Act') and comes under the ambit of admission which provides confession as "an admission made at any time by a person charged with a crime, stating or suggesting the inference, that he committed that crime"⁴.

One of the key differences between admissions and confessions is that the former can be used in both civil and criminal proceedings while the latter is only for criminal proceedings. The emphasis is given on the voluntary aspect of confession⁵ is seldom seen in admissions (while it might affect its weightage in the proceedings). Guilt must be acknowledged explicitly and voluntarily, failure to do the same renders the confession invalid. However, it can be used as an admission under Section 21 of the Evidence Act⁶. Understanding the difference between admission and confessions is critical to gauge the limitations and scope of both.

Conjointly, the custodial confessions under the principle of 'voluntariness' and its admissibility in the court of law through judicial interpretations formulate an essential element of the Indian Evidence Act.

2. Interpretation of Confessions

Any statement, either oral or written, that is made outside the territorial boundaries of the court

¹ While confessions might not be true, facts about a certain case are true. In instances where the confession is first made, following which the evidence is discovered, such a confession will be admissible in a court of law. The facts must exist irrespective of the confession made. Admission of evidence being discovered through a confession is known as the 'Doctrine of Confirmation by Subsequent Recovery'. Section 27 of the Evidence Act forms the basis of this principle, stating that "...any fact is deposed to as *discovered in consequence of information received...*" (emphasis added)

² Pakala Narayana Swami v. Emperor, AIR 1939 PC 47, "...a confession must either admit in terms the offense or at any rate substantially all the facts which constitute the offense. *An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession...*" (emphasis added)

³ Indian Evidence Act, 1872, § 24.

⁴ JAMES FITZJAMES STEPHEN, *Confessions Defined*, A DIGEST OF THE LAW OF EVIDENCE, 209-217 (The W.H. Courtwright Publishing Company 1918).

⁵ State of Haryana v Rajinder Singh, (1996) 8 SCC 77, "...the settled law is that for a confession to be used against the maker in a criminal trial the same has to be *both true and voluntary.*" (emphasis added)

⁶ Indian Evidence Act, 1872, § 21.

by the person(s) accused of an offense (s), addressed to a person or in the form of a written diary entry, video or audiotape, etc. that must have been 'apprehended' by some person(s), necessary to be proved against the accused person(s), inclusive of the necessary facts and elements of the offense (s) charged with, made 'truthfully' and 'voluntarily' amounts to a 'Confession'.

Aghnoo Nagesia v State of Bihar held that "no statement that exculpatory matter can confession if the exculpatory statement is of some fact which if true would negative the offense alleged to be confessed. Moreover, a confession must either admit in terms of the offense or at any rate substantially all the facts which constitute the offense. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not in 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 death with no explanation of other man's possession."⁷

2.1. Custodial Confessions

Under the Indian Evidence Act, 1872, § 25 was subjected to significant derogations under the common law system, wherein confessions made to the police officers are inadmissible in the court of law. Conjointly, the examination and scrutiny by the system of courts and their interpretation upon the vast body of '*judicial dicta*' provide for a constructive and holistic inspection of the aforementioned concerning the application of the 'exclusionary rule', i.e. understanding the authority and the one in question to be a police officer or not.

A custodial confession, according to § 26 provides that "no confession made by any person whilst he is in the custody of a police officer unless it is made in the immediate presence of a Magistrate, shall be proved as against such person."⁸

2.2. An Accused Person in the Custody of a Police Officer

Concerning a complaint, information, or any report for an offense (s), filed before a police officer, with the officer having that authority to arrest the person suspected or accused of the commission of the offense (s), for an investigation, interrogation, and prevention from further commission of an offense, brought to the station-house under the jurisdiction of the police officer, defines 'police custody. In-*State of U.P. v Deoman Upadhaya*, "an accused person is

⁷ *Aghnoo Nagesia v State of Bihar* AIR 1966 SC 119.

⁸ Indian Evidence Act, 1872, § 26.

the one against whom evidence is sought to be led in a criminal proceeding, having the same connotation as the 'a person accused of any offense (s)'.⁹ Additionally, "§ 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable."¹⁰

2.3. A Person to be Considered as a Police Officer

The Evidence Act lacks the true meaning and a clear definition of a 'police officer'. Taking into account the Police Act, 1861, 'Police' includes "all persons enrolled under this Act."¹¹ Even though, the Police Act of 1861, varies across state legislations with emphasis on the officers of the state exercising contradistinctive roles and authorities to be considered as 'police officer(s)', the Black's Law Dictionary defines a police officer as "someone responsible for preserving public order, promoting public safety and preventing and detecting crime."¹² The judiciary provides for its interpretation of the aforementioned legislative statutes, in which respect the case of *Queen Empress v Babu Lal* provided for the imminent apprehension of inserting the exclusionary rule under § 25 to "address the malpractice of resorting to torture for confessions."¹³ In the case of *R v Hurribole*, the Chief Justice of the Calcutta High Court thought that "the term police officer should be read not in any strict technical sense but according to its more comprehensive and popular meaning."¹⁴

With time, the uncertainty upon the identification test or connotation associated with the terminology of a 'police officer' was ambiguous. In terms of the wider application of § 25 the courts adopted an inherently formalistic approach, wherein "even though Excise and Akbari officers had powers of investigation and arrest, they were not considered as police officers".¹⁵

⁹ State of U.P. v Deoman Upadhaya AIR 1960 SC 1125.

¹⁰ State of U.P. v Deoman Upadhaya AIR 1960 SC 1125.

¹¹ The Police Act, 1861, § 1 (State legislation is not of much help either. For instance, the Bombay Police Act, 1951, § 2(11) defines a police officer as "any member of the police force appointed or deemed to be appointed under this Act and includes a special or an additional police officer appointed under Section 21 or 22").

¹² Abhinav Sekhri, Confessions, Police Officers and § 25 of the Indian Evidence Act, 1872, 7, NUJS L. Rev, 55, Pg 57-58, (2014)- BLACK'S Law DICTIONARY 1178 (12th ed., 1999).

¹³ Queen-Empress v Babu Lal (1899) ILR 6 All 509.

¹⁴ R v Hurribole (1876) ILR 1 Cal 207.

¹⁵ Abhinav, *supra* note 12. Judgment rendered in Queen Empress v. Salemuddin Sheik, (1899) ILR 26 Cal 569 & Queen Empress v. Rama Birapa, (1878) ILR 3 Bom 12; Emperor v. Akia, AIR 1927 Nag 222 concerning the Akbari Act, 1878 § 41 (emphasis added).

In *Raja Ram Jaiswal v State of Bihar* the court laid down the test wherein, "a police officer would be a person concerning the powers conferred on him or which are excisable by him because he is deemed to be an officer in charge of a police station, wherein the test would tend to facilitate the obtaining of confession by him."¹⁶ The interpretation of the judiciary, taking into consideration the precedents and with the lapse of time derived a contemporary interpretation. Upon the inspection of confessions to Excise & Custom Officers, in *State of Punjab v Barkat Ram* ('Barkat Ram'), "the prohibition enacted in § 25 allows them to make inquires, but not to investigate an offense under § 156 of the Cr. P.C.,1898, making such confessions inadmissible."¹⁷ In *Badku Joti Savant v State of Mysore*, the judges upon the status of the central excise officers held that "they were not police officers, because of the lack of the statutory powers conferred- the power to file a charge sheet under § 173 of Cr.P.C."¹⁸

Therefore, the very requirement to hold a station-house, the power to arrest or detain, the power to investigate, and to be able to file a charge sheet appropriates to be called a 'police officer' under § 25 of the Evidence Act.

3. Doctrine of Voluntariness

The voluntariness of confessions can be extremely "forgiving and vague"¹⁹, the Supreme Court of America in *Mincey v Arizona*²⁰ stated that confessions obtained through coercion and tactics that break the suspect's will are not admissible, this brings us to the question of what are the limits to which the police can use force/coercion to get the said evidence²¹. The philosophy behind the voluntariness test is essential to understand jurisprudence behind the same and why the Constitution upholds these ideals²². Voluntariness based on actions of the police that are inherently bad or morally incorrect, "regardless of the effects that those actions have on suspects", is the deontological²³ understanding of voluntariness whereas that based on a

¹⁶ *Raja Ram Jaiswal v State of Bihar* [1964] 2 SCR 752.

¹⁷ *State of Punjab v Barkat Ram* [1962] 3 SCR 338.

¹⁸ *Badku Joti Savant v State of Mysore* [1966] 3 SCR 698.

¹⁹ Brandon L. Garrett, *The Substance of False Confessions*, 62, STAN L. REV, 1051, 1094, (2010).

²⁰ 437 U.S. 385, 401-02 (1978)

²¹ Eve, *The Future of Confession Law: Toward Rules for the Voluntariness Test*, 11, Mich. L. Rev., 1, 23 (2011).
"...but that formula merely begs the question of what is sufficient to overbear or break a person's will."

²² *Id.*

²³ BRITANNICA, <https://www.britannica.com/topic/deontological-ethics> (last visited Nov 5, 2020). Deontological actions are such which are carried out because of the duties and obligations owed to a certain superior. These ethics emphasize "morally obligatory" actions "regardless of their consequences to human welfare".

consequentialism²⁴ are such that the actions of the police do not illicit a reliable confession²⁵. However, it is always the case that the two can be separated and viewed in a vacuum; Eve states that it is only “helpful to conceive voluntariness analysis in confession law as having these two different aspects”²⁶.

3.1. Cruel Trilemma and Constitution

One of the key criteria for the admission of a confession in a court of law is voluntariness. This is emphasized because of the Fundamental Right guaranteed in Article 20(3) of the Indian Constitution. It states, “No person accused of any offense shall be **compelled to be a witness against himself**.”²⁷ (emphasis added). Evidence that is provided to the court needs to be such that the person consensually gives the information of a relevant fact by oral or written statements and has personal knowledge of the event taking place. This article acts as a protection for individuals who are accused of an offense and are forced to give evidence against themselves. This provision is borrowed from the Fifth Amendment of the American Constitution which is the same as its Indian counterpart²⁸.

A caveat from this understanding brings us to the question of self-incrimination²⁹, wherein the accused has a right to remain silent (in congruence with the *Miranda* Rights³⁰) if one does not wish to confess. The emphasis on voluntariness comes from the judicial weapon used by the English known as the “cruel trilemma” wherein individuals face “incrimination oneself, perjuring himself under oath, or being held in contempt of courts by refusing to answer in an interrogation”³¹. This is one of the prime reasons for securing the *Miranda* rights³². Section 24 of the Evidence Act, more specifically the question of one being compelled and self-

²⁴ETHICS, <https://ethics.org.au/ethics-explainer>

consequentialism/#:~:text=Consequentialism%20is%20a%20theory%20that,of%20this%20theory%20is%20Utilitarianism (last visited Nov 5, 2020). Consequentialism focuses on how good or bad an action can be depending on the outcome it produces as a result.

²⁵ Eve, *supra* note 21.

²⁶ Eve, *supra* note 21.

²⁷ INDIA CONST. art. 20, § 3.

²⁸ Khagesh Gautam, *The “Deluded Instrument of his own Conviction”: On The Admissibility of Custodial Statements and Confessions under the Indian Evidence Act, 1872*, 1, 6, 2020. Clause 3 of the Fifth Amendment states that “...nor shall be compelled in any criminal case to be a witness against himself...”

²⁹ Not all types of self-incriminatory evidence are non-admissible in court. Article 20(3) is not hit when the confession made is voluntary.

³⁰ *Miranda v. Arizona*, 384 U.S. 436 (1966). The U.S. Supreme Court held that it is imperative that when an accused is taken in for interrogation, the police have to make them aware of the Fifth Amendment protection against self-incriminating evidence and the right to an attorney.

³¹ Sara Ciarelli, *Pre-arrest Silence: Minding that Gap between Fourth Amendment Stops and Fifth Amendment Custody*, 93, J. CRIM. L. & CRIMINOLOGY, 651, 654 (2003).

³² See *Miranda*, *supra* note 30.

incriminating statement, focuses on confessions caused by “inducement, threat, or promise” given to a person in authority³³.

Section 24 focuses on confessions that are not voluntary (thereby rendering them inadmissible). Here the question is not whether the confession was coerced or not but it should be the case wherein it *appears* to the court that the confession was involuntary³⁴, it is upon the accused to make the court known that the confession was involuntary³⁵. However, it is not simple to understand the concept of voluntariness, especially when the same is decided on a case-to-case basis. The standard, therefore, is not clear cut since it has within in “complex values”³⁶ which are bound to be subjective in nature. It is therefore essential to understand the jurisprudence behind the voluntariness that confessions seek.

4. Presumption of Unfairness of Police Actions

While viewing the laws about 'confessions', it is imperative to take into account the potency of the policy, and not just the fundamentals of principle. Voluntariness is a fundamental element to the concept of the admissibility of a confession. "A voluntary confession is creditworthy since its genesis lies in a strong sense of guilt, and hence it can be admitted as evidence, whereas an involuntary statement is the product of false hope being held out to the accused tempting him/her into the confession."³⁷

An underlying inference concerning 'tainted confession(s)' was threats and coercion imposed by the police officers upon the 'suspects'. There was a dire need to prevent such threat and inducement with the adoption of a blanket approach rendering to all confessions being a product of a "reliable confessional statement determining its admissibility on issues of form rather than substance."³⁸ Since the ‘presumption’ of the police atrocities of eliciting confession(s) bears a heavy weightage, § 25 and § 26 of the Indian Evidence Act render confessions, made by an accused to a police officer or any other person in the police custody, inadmissible in the court of law. Thus, in its scope and ambit, these provisions reflect, “legislative intent to proscribe 3rd-

³³ Indian Evidence Act, 1872, § 24.

³⁴ State of Rajasthan v. Raja Ram, (2003) 8 SCC 180. “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 if it is admissible in evidence.” (emphasis added)

³⁵ Indian Evidence Act, 1872, § 102. The burden of proof lies on the accused in such circumstances since failure to prove the same will result in them getting convicted.

³⁶ Blackburn v. Alabama, 361 U.S. 199, 207 (1960).

³⁷ Arghya Sengupta, "Confessions in the Custody of a Police Officer: Is It the Opportune Time for Change?" *Student Bar Review* 18, no. 1 (2006): 31-44. <http://www.jstor.org/stable/44306645>.

³⁸ *Id.*

degree methods being used by police officers, and to ensure lawful and true evidence being presented, instead of allowing the police "to sit comfortably in the shade, rubbing red pepper into a poor devil's eyes rather than go about in the sun hunting up evidence."³⁹ Furthermore, the wider ambit of these clauses, with their combined interpretation, impedes coerced confession to be admissible in the court of law, not necessarily because they are untrue, but under the presumption of being 'tainted', wherein, § 25 and § 26 protect the confessions being induced by threat, force or other 'illegal' means, in the custody of a police officer.

4.1. Deontological Method

The deontological aspect, or what is commonly known as 'police methods', is a form of oppressive mechanisms used by governmental organizations, i.e. the police, to gain a confession from the accused⁴⁰. The question of 'torture' methods used by the police is under intense scrutiny and forms under this method used. For example, in *Lal Singh v State of Gujarat*⁴¹, the police officers were alleged of "cutting the tongue" and causing grave harm to the head to gain a confession⁴². The guidelines suggested in *Kartar Singh v State of Punjab*⁴³ were blatantly ignored by the officials and there are methods in which they tend to bypass such rules⁴⁴. While Section 27 of the Evidence does grant police to use evidence gained after a custodial confession (since the facts remain to be true if not the confession), the question here arises regarding the methods used by the police since some can be such that it is "revolting to the sense of justice"⁴⁵.

4.2. Consequentialist Method

The use of tactics by the police to elicit a confession can create a great deal of uneasiness due to the methods being "offensive to a civilized system"⁴⁶, one where the accused rights and liberties are not protected and are not viewed as human beings⁴⁷. While the 'police methods' focus on the actions of the officers and not the confession, the consequentialist methods pays more attention to the confession gained, whether or not it is true, and then conclude if the tactics

³⁹ Arghya, *supra* note 37.

⁴⁰ Albert W. Alschuler, *Constraint and Confession*, 74, DENV. U. L. REV, 957, 957 (1997). "Courts should define the term coerced confession to mean confession caused by offensive government conduct."

⁴¹ (2001) 3 SCC 221.

⁴² Jinee Lokaneeta, *Defining an Absence: Torture 'Debate' in India*, 49, EPW, 69, 73 (2014)

⁴³ 1993 Supp(2) SCC 740

⁴⁴ Jinee, *supra* note 42.

⁴⁵ *Brown v Mississippi*, 297 U.S. 278 (1936).

⁴⁶ *Miller v Fenton*, 474 U.S. 104, 109 (1985).

⁴⁷ Eve, *supra* note 21, at 25.

used were offensive⁴⁸. The historical background of the same brings us to an old English case, *King v Warickshall*⁴⁹, wherein it was agreed by the court that involuntarily confessions are inherently unreliable and false. An example of this is when the accused is promised that the charges will be dropped or that the punishment will be lowered⁵⁰, even when they have not committed the crime, they might confess otherwise⁵¹. On the contrary, a person might also confess if the police threaten to “increase the severity of the charges if a person does not confess”⁵².

The latter uses the police methods to its advantage to gain a confession, even though it is false. The two are closely related and often overlap one another. The way to move forward is to have rules and regulations that highlight the methodology of a combination of tactics used to elicit a certain response. The legal system ideally should deter police interrogation tactics that are offensive either morally or that contradict the understanding of fairness in India. For the consequentialist aspect, the police must cross the limits of morality to illicit such a confession⁵³.

5. Legal Admissibility & Reliability of Confessions under Deception Detection Tests (DDT)⁵⁴

About the Narco-Analysis⁵⁵ Test, “the report has some validity but is not admissible in court, which considers the circumstances under which it was obtained and assessed its admissibility, wherein the results can be used to get admissible evidence, corroborated with other evidence.”⁵⁶ Despite these tests not being legally admissible, under the common law system, ‘the facts in issue’ often allow the court, to grant ‘limited admissibility’ after due consideration.

⁴⁸ *Id.*, at 27. "...if they are offensive under this strand, it is under their effects: they tend to cause suspects to confess falsely".

⁴⁹ (1783) 1 Leach 263, 168 ER 234. "A free and voluntary confession is deserving of the highest credit because it is presumed to flow from the strongest sense of guilt...confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable shape..."

⁵⁰ Eve, *supra* note 21, at 28.

⁵¹ Indian Evidence Act, 1872, § 24. The idea behind the promise being such that it puts the accused in a more advantageous position.

⁵² Eve, *supra* note 21, at 28.

⁵³ *Id.*, at 43. *Connelly* requirement of police wrongdoing states that there “must be evidence of police ‘overreaching’” to illicit the “additional burden of proof”

⁵⁴ These tests include polygraph, narco-analysis, and brain-mapping having important clinical, scientific, ethical, and legal implications.

⁵⁵ The term is derived from the Greek word ‘narkc’ (“anesthesia” or “torpor”) and is used to describe a diagnostic and psychotherapeutic technique that uses psychotropic drugs, particularly barbiturates, to induce a stupor in which mental elements with strongly associated effects come to the surface where they can be exploited by the therapist.

⁵⁶ Sonakshi Verma, The Concept of Narcoanalysis because of Constitutional Law and Human Rights.

In *Nupur Talwar v CBI & Anr.*, (also known as the Aarushi Talwar-Hemraj Double murder case), the court, subjecting upon the narco-analysis conducted for all individuals 'suspected' for the commission of the double-murder held that, despite the lack of concrete evidence of the Talwar couple "the reports of these cannot be taken as evidence in the court of law and despite a common link between the 3 testimonies of Krishna, Vijay, and Rajkumar, the delusions, misinterpretations, etc., of a person may prompt incriminatory responses."⁵⁷

The DDT's are projected to be violative of Article 20 § 3 of the Indian Constitution, which protects against 'self-incrimination', and Article 21⁵⁸ This provision serves as a "fundamental canon under the common law criminal jurisprudence wherein, subjecting the accused to undergo the test, as has been done by the investigative agencies in India, is considered by many as a blatant violation of Art. 20(3) it was held that to attract of Constitution, being equally violative of the Human Rights- individual rights, liberty, freedom,"⁵⁹ and a possible threat, coercion, use of force, or lack of voluntariness is an element to the aforementioned.

The violation of fundamental rights under Art. 20(3) & Art. 21 was rendered by the supreme court in the case of *Smt. Selvi & Ors Vs State of Karnataka*, wherein, "right to life and personal liberty was judicially expanded to include a right against, cruel, inhuman or degrading treatment and serious concerns upon the professional ethics of medical personnel involved in the administration of these techniques and violation of the human rights of an individual was addressed."⁶⁰

In the case of *State of Bombay v Kathi Kalu Oghad*, "it was observed that self-incrimination means conveying information based upon personal knowledge of the person and cannot include merely the mechanical process of producing documents in court."⁶¹ It has been held in *Kharak Singh v State of U.P. & Ors.* that "executive power cannot intrude on either constitutional rights and liberty or for that matter any other rights of a person and it has also been observed that in absence of any law ant intrusion in fundamental rights must be struck down as unconstitutional."⁶²

6. Exceptions to Custodial Confessions

The Constitution of India aims at preserving and protecting the 'rights of individuals, wherein

⁵⁷ *Nupur Talwar v CBI & Anr.* (Criminal Appeal No. 68 of 2012)

⁵⁸ INDIA CONST. Art. 21.

⁵⁹ *Id.*

⁶⁰ *Smt. Selvi & Ors Vs State of Karnataka*, (Criminal Appeal No. 1267 of 2004).

⁶¹ *State of Bombay v Kathi Kalu Oghad*, 1955(2) SCR 225.

⁶² *Kharak Singh v State of U.P. & Ors.*, 1964(1) SCR 332.

"no person accused of any offense shall be compelled to be a witness against himself"⁶³, serving as a fundamental right of safeguard against self-incrimination. Additionally, "any statement obtained by a police officer in the course of an investigation is inadmissible during a trial, except under 3 circumstances"⁶⁴- wherein, "if a statement is a dying declaration given to a police officer"⁶⁵ as held in the case of *Paniben v State of Gujarat*⁶⁶, *Kushal Rao v State of Bombay*⁶⁷ & *Surinder Kaur v State of Punjab*⁶⁸; "if this statement is the prior statement of a prosecution witness, obtained in the course of an investigation that is now being used by the defense for cross-examining such prosecution witness or "if this statement is a prior custodial statement of the accused that is covered by § 27 of the Evidence Act."⁶⁹

Conjointly, "any confession, custodial or otherwise that the accused may have given to a police officer, is per se inadmissible"⁷⁰ and "any confession that the accused may have given to anybody else while being in the custody of a police officer is also per se inadmissible"⁷¹ or via the '**Doctrine of Subsequent Recovery**' wherein "a part, or those parts, of the custodial statement of the accused person that result in the discovery of facts that can be said to have been discovered indirect consequence of the information disclosed in the custodial statement is also admissible against the accused notwithstanding whether such information amounts to a confession or not."⁷²

However, in *Kanhaiyalal v Union of India*, any statement given by the accused person under "§ 67 of the Narcotic Drugs and Substances Act, 1985 (herein 'NDPS Act') is not the same as the one given under § 161 of Cr.P.C. This confession can be used against him, with the conviction solely based on it."⁷³ In *Sanjay Dutt v State of Maharashtra through CBI*, the court held that under the TADA Act, 1987, "the confession of the accused made to a police officer is

⁶³ INDIA CONST. art 20 § 3.

⁶⁴ Khagesh, *supra* note 28.

⁶⁵ Indian Evidence Act, 1872 § 32(1)

⁶⁶ *Paniben v State of Gujarat* (1992) 2 SCC 474, 480. Based on the legal maxim: "*nemo moriturus proesumitur mentiri*" - a man will not meet his maker with a lie in the mouth.

⁶⁷ *Kushal Rao v State of Bombay* AIR 1958 SC 22. An exception to the 'general rule against hearsay not serving as admissible evidence.

⁶⁸ *Surinder Kaur v State of Punjab*, (2012) 12 SCC 120. It is enough that there is evidence available to show that the dying declaration is 'voluntary and truthful'.

⁶⁹ Khagesh, *supra* note 28.

⁷⁰ Indian Evidence Act, 1872 § 25.

⁷¹ *Id* § 26.

⁷² *Id* § 27.

⁷³ *Kanhaiyalal v Union of India*, AIR 2008 SC 1044: (2008) 4 SCC 668. There was corroboration by other evidence.

admissible against him and can be relied upon solely to convict him.”⁷⁴

7. Conclusion

Confessions, while simple on the face of it, have nuances that need to be addressed and understood for the same to be admissible in a court of law. The use of force, i.e., involuntary confessions, change the psychological mind-set of the accused and inadvertently result in false confessions. This is one of the reasons why confessions are recorded before the Magistrate to avoid the use of police force. However, the gap created by Section 27 and DDTs caveats into a different and often problematic understanding of the admissibility of such confessions, often disregarding the fundamental rights guaranteed under the Constitution.

⁷⁴ Sanjay Dutt v State of Maharashtra through CBI, (Criminal Appeal No. 1060 of 2007).