

## **THE FEDERAL LEGAL REGIME: TO STUDY AND UNDERSTAND THE RELEVANCE OF CONFESSIONS AND ADMISSION UNDER INDIAN LAW**

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### **ABSTRACT**

Confession have long been accepted as authentic evidence of guilt, they also posed certain risks, those both of unreliability and of violation of individual autonomy. On the one hand defendants may not be making a true confession and on the other even if the confession was likely to be true it may have been obtained in ways that were the result of unacceptable pressure on the suspect thus arguably sapping his free will. At the most extreme level this could be by torture. Confessions as admissions of guilt have played an important part in the development of western culture since the late Middle Age and there is an intimate link between law and religion in this area. In 1215 the Roman Catholic Church, in the Fourth Lateran Council, made annual confession obligatory for all the faithful. The American academic Peter Brooks has made an extensive study of the cultural role of confessions. He writes: “The confessional model is so powerful in western culture, I believe, that even those whose religion or non-religion has no place for the Roman Catholic practice of confession are nonetheless deeply influenced by the model. Indeed, it permeates our cultures, including our educational practices and our law. The image of the penitent with the priest, in the intimate yet impersonal, private and protected spaces of the confessional, represents a potent social ritual that both its friends and its enemies have recognised as a shaping cultural experience.

**KEY WORDS :** Relevancy, Facts Etc.

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## INTRODUCTION

A Confession is a voluntary statement by the accused that she or he engaged in conduct which constitutes a crime. It is direct acknowledgement of guilt on the part of the accused, of the element of a crime, either by an inculpatory or exculpatory statement of the details of the crime or an admission of the ultimate fact. Thus a confession may be distinguished from conduct of the accused which tends to establish his or her guilt. The term “confession” as used in a federal statute pertaining to admissibility of confessions in criminal prosecution brought by the United States or the District of Columbia means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing. This definition does not encompass all statements, exculpatory and otherwise. A statement by an accused which is an exculpatory statement or a denial of guilt did not constitute a confession within the meaning of the statute.

The definition of a confession appears to be relatively simple. Even a small boy who went to school can say that he knows what person is doing when he “confesses”. A confession can pertain to not only one but many things, depending on any number of variables. Every crime consists of two or more elements i.e. criminal intent and an act. Murder is the unlawful taking of human life and it consist of the elements like the killing of a human being by the hand of the defendant who, at the time of the killing, had in his mind malice aforethought and an intent to kill with other elements depending on the degree of the murder charged. An assault with a deadly weapon generally consists of putting another in fear of serious bodily injury with a deadly weapon, and an intention to harm or implant a fear of serious bodily injury. So an Inculpatory Statement by a defendant that he “killed Edward Den” or that he “shot at Kelly Ley” is not a confession because they lack certain elements of the crime charged – no malice or intent to kill Edward Den or put Kelly Ley in fear of serious bodily injury. If a crime consists of four elements ordinarily nothing less than a recital of those four elements will constitute a confession. But there are few

exceptions to this. For example, there are such statements which have been held to be in nature of a confession although they did not recite any or all elements of a crime.

### **1.1 RELEVANCY OF VOLUNTARINESS OF INCULPATORY AND EXCULPATORY STATEMENTS**

When an inculpatory or exculpatory statement was made by a person while he was under suspicion but not under arrest will not, in itself, render the statement involuntary and inadmissible. There is no law to prohibit taking a confession from a person who is merely suspected of a crime. This is so, even though the inculpatory or exculpatory statements, admissions and confessions were made to officers who would not have permitted the accused to leave had he asked to do so, and who did not indicate to accused that he was likely to be arrested. Where federal agents informed defendants of their desire to talk with him about a stolen truck and requested him to go to their office, and, when defendant asked agents if he was under arrest, they told him he was not and that he could leave or get a lawyer, confession thereafter obtained was admissible. Where provost marshal of Air Force, upon request of FBI agent and police, ordered members of Air Force who were suspected of robbery to come to his office and be interviewed in presence of an Air Force observer, but they were not placed under arrest until they admitted the robbery, their statements, admissions and confessions were admissible. Where county attorney, after receiving an oral complaint of rape against accused by his step-daughter, sent Sheriff and Deputy out to pick up accused at his place of work, Sheriff did so, informing accused the county attorney wanted to speak to him and accused accompanied Sheriff to county attorney's office where he confessed before Sheriff, his deputy and county attorney, accused's statements, admissions and confession was held admissible.<sup>3</sup>

One of the leading cases that developed this doctrine was the 1783 case of *Rex v. Warickshall*, the accused in that case made a full confession after the police made

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<sup>3</sup> S.V. Joga Rao, Evidence: cases and Materials 130 (Lexis Nexis Butterworths, 2003).

“promise of favour”. The Court held such promises rendered the inculpatory statement involuntary and for that reason the evidence would not be admissible. It went on to reason that such practice made the confessions unreliable. While in this case, the court excluded the confession, it admitted the derivative evidence, the property which the authorities had recovered as a result of the confession. In justifying the admission of the property the court states a theory of admissibility which turned on the reliability of the evidence in question:

## **1.2 GENERAL NEED OF VOLUNTARINESS**

It is Fundamental principle of criminal procedure that a confession must be voluntary. The Fifth Amendment right against ‘Self-Incrimination’ and the ‘Due Process’ clause of the 14th Amendment are the two constitutional bases that require that a confession be voluntarily made in order for it to be admitted into evidence. The Fifth Amendment inquiry applies to the admissibility in evidence of any statement (inculpatory or exculpatory) given during custodial interrogation of a suspect and depends on whether the police provided the suspect with the warnings *Miranda v. Arizona*, requires. As to the due process inquiry, the test for determining whether a confession is voluntary is whether the defendant’s will was overborne by the circumstances surrounding the giving of the confession. In other words, if an individual’s confession was not the product of a rational intellect and a free will, his or her confession is inadmissible because it is coerced. Coercive police activity is a necessary predicate to the finding that a confession is not voluntary within the meaning of the due process clause of the 14th Amendment. Any questioning by a police officer that in fact produces a confession which is not the product of a free intellect renders that confession inadmissible.

The test of voluntariness is not a “but-for” test, and the question is not whether the confession would have been made in the absence of the interrogation. Few criminals are impelled to confess to the police purely of their own accord, without any questioning at all, and thus, it can almost always be said that the interrogation caused the confession. Resolving the issue of a confession’s voluntariness requires a

consideration of the totality of the circumstances, both the characteristics of the accused and the details of the interrogation. The determination as to the voluntariness of the defendant's confession depends cellmate, or to a private person working undercover for the government does not trigger the procedure mandate by statute, and no voluntariness hearing is required under the statute

### **1.3 DOES “VOLUNTARY” MEAN “TRUTHFUL”**

For many years, widespread professional usage equated the term “voluntary” with “reliable” or “trustworthy” or “truthful”, and this usage imparted to the term a fairly uniform meaning at common law. An inculpatory statement can be involuntary because sometimes pain and force may compel men to confess what is not the truth of facts and consequently such extorted statement are not be depended on. In the same way exculpatory statement made by any person can be made because of fear of punishment that cannot be relied upon solely in a trial court. There should be a need to circumstantial evidences that could make the case strong enough. If the condition under which the confession was secured are adjudged more likely to induce the particular accused to speak falsely than truthfully, the common law consider the confession to be “involuntary”. The use of the terminology “involuntary” in this setting simply points to the existence of compulsive casual forces outside his control so great as to explain the likelihood that the accused could and would do an act so contrary to his self-interest as to confess criminal guilt, even though it were actually untrue. Conversely, if it is adjudged more likely that the accused would speak truth fully under these conditions, his confession is said to be “voluntary”<sup>4</sup>.

### **1.4 “VOLUNTARY” AS SHORTHAND FOR A COMPLEX OF VALUES**

The term “voluntary” is a word of art, which should not be taken in any lay or colloquial sense. Now it must be emphasized that in its legal sense the term is a compendious expression intended to indicate in summary form multiple factors of legal significance. These factors embrace a wide range or complex of values which

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<sup>4</sup> Relevancy and Admissibility, available at: <https://www.lawoctopus.com> (Last retrieved 17th November, 2018).

modern confession law considers and which that law seeks to maximize. Many recent pronouncements instruct us to construe “voluntary” as a shorthand expression indicative of these values. Warren, C.J., in *Blackburn v. Alabama*, in cases involving involuntary confessions, this court enforces the strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will. This insistence upon putting the government to the task of proving guilt by means other than inquisition was engendered by historical abuses which are quite familiar. But neither the likelihood that the confession is untrue nor the preservation of the individual’s freedom of will is the sole interest at stake. As we said just last term, “The abhorrence of society to the use of involuntary confessions... also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves”. Thus a complex of values underlies the stricture against use by the state of confessions, which by way of convenient short hand, this Court terms involuntary, and the role played by each in any situation varies according to the particular circumstances of the case.

### **1.5 CONVICTION ARISING OUT OF COERCED STATEMENTS AND CONFESSIONS**

A deeply divided United States Supreme Court ruled in early April that the use of a coerced confession is not automatic grounds for overturning a criminal conviction. The United States Supreme Court said some convictions may be allowed to stand despite the use of confessions obtained in violation of the defendant’s constitutional rights. In an opinion by Chief Justice William H. Rehnquist, the court said if there is so much other evidence of guilt, the use of an involuntary confession could be considered ‘harmless error’. In dissent Justice Byron R. White said that holding ‘dislodges one of the fundamental tenets of our Criminal Justice System’ – that the state may not obtain convictions by wringing Inculpatory Statements out of suspects. ‘Permitting a coerced Statement to be a part of evidence on which a jury is free to

base its verdict of guilt is inconsistent with the thesis that ours is not an Inquisitorial System of Criminal Justice’, said White, joined by Justice Thurgood Marshall, Harry A. Balckmun and John Paul Stevens. White, who ordinarily does not announce his reasoning in cases from the bench and who tends to rule against criminal defendants, took the rare step of reading his dissent. It was first time he has done so since 1983. The court was using “harmless error” test to allow more and more convictions to stand despite violation of a defendant’s Constitutional Rights. For example, it had said the admission of illegally seized evidence or Inculpatory Statements obtained in violation of the right to counsel do not result in automatic reversals. White, said that coerced confessions are fundamentally different from those constitutional violations because they offend a bedrock principle of the American legal system: the defendants cannot be forced to provide incriminating evidence against their will<sup>5</sup>.

#### **1.6 RELEVANCY OF INCULPATORY STATEMENTS AND EXCULPATORY STATEMENTS MADE TO POLICE OFFICER: W.R.T. TO SELF-INCRIMINATION LAWS IN USA**

A person who is asked a question that may implicate him in a crime is under no legal obligation to answer. He has a constitutional right to remain silent. This right to silence is known as the privilege against self-incrimination. It may be invoked at all levels of governmental inquiry in the courts, before legislative committees, at coroner’s inquests, before grand juries, or when questioned by police investigators. This privilege is an old one, having originates in England about 1650. It started out as a restriction only upon the courts – first upon the Church Court (regarding heresy matters) and subsequently upon the law courts (regarding the issue of guilt or innocence to be criminal charge). About one hundred years later a related restriction was placed upon investigation agencies of government in the form of a rule of evidence that barred the use of the confessions obtained by coercive interrogation tactics. Despite historical inaccuracy, the selfincrimination privilege and the confession rule are frequently looked upon as having a common origin and purpose.

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<sup>5</sup> Extra-judicial confession, not backed by cogent reasons, is unreliable, available at: [www.newindianexpress.com](http://www.newindianexpress.com) (Last retrieved 17th November, 2018).

Although there is no intelligent support today for an abandonment of the rule that prohibits the use as courtroom evidence of inculpatory and exculpatory statements and confessions extracted from accused or suspected persons by force, threats, or promise of leniency any one of which might render a confession untrustworthy there is much support for the abolition of self-incrimination privilege which permits a person to refuse to testify in court or before any other governmental body conducting public hearing, without allowing that silence to be held against him.

### **1.7 ADMISSIBILITY OF ILLEGALLY OBTAINED INCULPATORY AND EXCULPATORY EVIDENCE**

When we have to justify the Exclusionary Rule, exclusion of evidence is a very strong deterrent to police misconduct. It is the judicial rectitude that the court should not sanction the use of illegal obtained evidence. If the Court is allowing such evidence, it will tarnish the courtroom and violates the imperative of judicial honourableness. Illegally seized Inculpatory and Exculpatory Statements, Admissions, Confessions should never be an admissible evidence. But in a counter argument to this judicial integrity also requires search of truth and justice, allowing people to go free due to suppression of valuable and convincing evidence does not further judicial ethics.

In case of *Mapp v. Ohio*, U.S Supreme Court, ruled that evidence obtained in violation of the Fourth Amendment to the U.S. Constitution, which prohibits “unreasonable searches and seizures,” is inadmissible in state courts. In so doing it held that the federal exclusionary rule, which forbade the use of unconstitutionally obtained evidence in federal courts, was also applicable to the states through the incorporation doctrine, the theory that most protections of the federal Bill of Rights are guaranteed against the states through the Due Process clause of the Fourteenth Amendment (which prohibits the states from denying life, liberty, or property without due process of law). The *Mapp* ruling also overturned in part the Supreme Court’s decision in *Wolf v. Colorado* (1949), which recognized the right of privacy as “incorporated” but not the federal exclusionary rule. Because of the inherent

vagueness of the Fourth Amendment, the scope of the exclusionary rule has been subjected to interpretation by the courts, including the Supreme Court, which since the 1980s has gradually narrowed the range of circumstances and the kinds of evidence to which the rule applies.<sup>6</sup>

## CONCLUSION

As we know that only confessions made to police officers are not admissible in the court of law. Statements those are not amounting to confessions and discoveries under Section 27 of the Indian Evidence Act are admissible under the court even if made to a police officer. So, if an accused really want to make a confession he can do the same in front of a Magistrate also. As it is evident that police in India want to excel by taking acknowledgments for the conviction of the accused they take into custody. It will be infringement of the Indian Constitution Article 21 and Article 20(3) if we allowed the confessions made by accused in front of a police officer admissible in the court of law. We cannot compare our country in this context with America because the police in America operating in diverse level of approach. In America under U.S. Code Section 35 Admissibility of Confessions are given that provides that a confession made to police officer is admissible if made voluntarily and the test of voluntariness will be checked by the magistrate and jury as the case may be. Here, the confession is admissible but if voluntary but in India it is totally inadmissible which according to Indian Police ethos is a veracious law. No need to amend this law<sup>7</sup>.

American and Indian Constitution have explicitly provided the right to silence to accused under Fifth Amendment to the United States Constitution and Article 20(3) of the Indian Constitution. Protection against forced selfincrimination is the product of due process concept of common law coming under Adversarial Criminal Justice System. This is mere privilege of accused who can waive it. Further in America an accused can make voluntary confessions which does not violates his right to silence

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<sup>6</sup> Adrian Keane, *The Modern Law of Evidence*, 55 (Oxford University Press, New York, 2006).

<sup>7</sup> Ibid

because it does not involve the element of compulsion. Unlike America the only question Indian investigation authorities raises is that why there is general ban on the admissibility of confession made before us by an accused without considering the basic element of voluntariness of confession which is arbitrary and offends due process

The protection against self-incrimination envisaged in Article 20(3) is available only when compulsion is used and not against voluntary statements, disclosure or production of the document or other material. A statement given while in police custody necessarily cannot be taken to be under compulsion and no such inference can be drawn regarding a document or other material. Compulsion means duress and it includes physical and mental compulsion. Any involuntary positive act of an accused incriminating himself would be compulsion within the meaning of Article 20(3) violating the guarantee so granted under Constitution of India by the founding father.

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