CHAPTER-III

LAW RELATING TO CONFESSION UNDER INDIAN EVIDENCE ACT 1872

3.1. Introduction

“A confession may be defined as a voluntary and full acknowledgment of guilt made by the guilty person. The etymological meaning of the word “confession” conveys the meaning of completeness, for this comes from a Latin word “confiteri” --- (Con signifies completeness, and fateri-fari, to speak) so a confession in strictness, must be an unreserved and total avowal by the accused person of his guilt; and such a statement must be wholly free from outside influence, either in the nature of threats or inducement.” A confession will be usually an outcome of the irresistible prompting of a conscience burdened with guilt and contrition. The reason for making a confession as far as the accused person is concerned is to lighten his oppressive mental feelings, and the solace is a feeling that he is boldly facing the consequences of his guilt act by telling the truth. So very often prisoners admit that the pangs of suffering of their repentant hearts are more terrible and oppressive than the suffering of jail life. This is the highest form of a confession, and made with a view, probably, to bring upon oneself the deserved punishment, “the first uniform legislation on Evidence was drafted by the Indian Law Commission.” “The Bill was however, dropped as it was felt not sufficiently elementary in as much as it pre-supposed some knowledge of the English rules and practice and as such would not be suitable in India. J.F. Stephen then drafted a new bill which came to he be passed as the present The Indian Evidence Act, 1872”.

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131 Gopal S. Chaturvedi (ed.) C.D. Field’s, Law on Admissions and Confessions (Delhi Law House, Delhi, 2014).
132 The Draft of Indian Evidence Act, prepared by India Law Commission in 1868.
The law was “enacted a century ago by the representative of the British Government has remained totally static”. The Code of Criminal Procedure\textsuperscript{133} “as once against thoroughly revised in 1973 has not made any changes in sections affecting custodial confessions. The very few amendments made in the Evidence Act have also not touched Sections 24 to 27. No judgment of the Supreme Court or of any of the High Courts in half a century after the Constitution coming into force appears to have questioned the propriety of the total exclusion clause.”

“A confession is a straight acknowledgment of guiltiness, on the part of the accused, and by the very force of the definition expelled an admission which of itself as applied in Criminal Law, is statement by the accused direct or implied, of facts relevant to the issue, and treatment in connection with a proof of other facts to prove his guilt but of itself is insufficient to authorize a conviction. In other words, a confession is an admission made at any time by a person charged with a crime stating or portentous the conclusion that he committed that crime.”

The definition of admission as given in Section 17 of The Indian Evidence Act also becomes applicable to confession also. Section 17 defines admission as “a statement oral or documentary, which suggests any inference to any fact in issue or relevant fact”.\textsuperscript{134}

One practical effect of this difference between the definition of an admission and confession would be that a statement which may not amount to a confession may still be relevant as an admission. In a case before the Supreme Court,\textsuperscript{135} “a person being prosecuted under the Custom Act told the Custom officer that he did not know that the goods loaded in this truck were contraband, nor they were loaded with his instructions. The court held that the statement was

\textsuperscript{133} THE CODE OF CRIMINAL PROCEDURE, 1973. ACT (2 OF 1974).
\textsuperscript{134} Lal, Batuk “Law of Evidence” (Central Law Agency, Edition 20\textsuperscript{th}, Allahabad).
\textsuperscript{135} Veera Ibrahim v. State of Maharashtra, A.I.R.1976 S.C. 1167. Pandru Khadia v. State of Orissa, 1992 Cr. L.J. 762 (Orissa), neither whole guilt admitted, nor the statement addressed to any person. The accused going round the village shouting that he had killed his wife, the court holding that it did not amount to a confession, seems to be wrong, for, it is well known, that a confession may take place even when one is talking to oneself.
not a confession, but it did amount to an admission of an incriminating fact and was, therefore, relevant under Sec. 17 read with Sec. 21.” On this point the distinction between “admission” and “confession” needs to be appreciated. Only voluntary and direct acknowledgment of guilt is a confession but when a confession falls short of actual admission of guilt, it may nevertheless be used as evidence as against the person who made it as an admission under Sec. 21. As an admission it would not suffer from the handicap of being made to a “police officer or a person in authority”. Acting on this, the Supreme Court held that “entries in the diary of a person mentioning the names of certain persons as the recipient of money were not relevant against them but as between Jain brothers they were relevant as admission under Sec. 18 as the statements of an agent who was authorized to make the payments.”

In a statement recorded by the magistrate, the accused did not admit his guilt in terms and merely went on stating the fact of assault on the deceased by mistake. The Supreme Court held that “such statements could not be used against the accused as a confession.” 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 statements was held to be relevant as a confession in case.

3.2. Main Differences between Admission and Confession.

The evidence Act draws a distinction between admission and confessions. The case in Imperatrix v. Pandharinath falls short of holding that admissions and confessions are the same thing. The broad distinction between an admission and confession is that “the latter is statement made by an accused person which is sought to be proved against him in a criminal proceeding

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140 6 Bom. 34.
141 Queen Empress v. Meher Ali Mullick, I.L.R. 15 Cal. 589 at p. 593.
to establish and offence, while under the former term are comprised all other statements amounting to admissions as defined in Sec 18\(^{142}\) In order to determine whether a statement is a confession of guilt or an admission of a criminating circumstance, a court must look to the statement itself.\(^{143}\) “A confession is a direct acknowledgment of guilt on the part of the accused and, by the very force of the definition, excludes an admission, which, of itself, as applied in criminal law, is a statement by the accused, direct or implied, of facts pertinent to the issue, and tending, in connection with proof of other facts to prove his guilt, but of itself is insufficient to authorize conviction.”\(^{144}\) Confession in common acceptation means and implies acknowledgment of guilt its evidentiary value and its acceptability however shall have to be assessed by the court having due regard to the credibility of the witness. In the event however, “the court is otherwise in a position having due regard to the attending circumstances believes the witness before whom the confession is made and is otherwise satisfied that the confession is in fact voluntary and without there being any doubt in regard thereto and order of conviction can be founded on such evidence.”\(^{145}\)

Confession is a species of Admissions.\(^{146}\) It is an accepted doctrine that confessions are admissions but the opposite is not true. The fundamental opinion which governs a confession and an admission is the same and that principle is that a statement made by a person against his personal interest might be true. The word confession is also placed in combination with admission. Therefore Section 17 to 31 deal with admissions usually though sections 24 to 30 deal with confessions as distinguished from admissions. The following are the main differences between the two:

1. The extensive distinction seems to be that a confession is a statement

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\(^{142}\) 5 M.L.J. Art., p. 12 at p.15.  
\(^{143}\) 5 Bom. L.R. 312 at p.313.  
made by an accused person which will be used against him in a criminal proceeding to establish the commission of the offence by him while an admission is a statement by a party to proceeding or by a person who has an interest in the subject-matter of the proceeding whereby he admits a fact in issue or relevant fact and such an admission will be generally used in a civil proceeding.

2. “A confession untainted by any legal disqualification may be established as definite in itself of the matters confessed as conclusive in itself of the matters confessed” as held in *Emperor v. Narayan*,\(^{147}\) but “an admission is no conclusive proof of the matters admitted though it may operate as an estoppels.”\(^{148}\)

3. “A confession always goes against the person making it. An admission may be sometimes proved by or on behalf of the person making the admission” under the provisions of Section 21 of the Evidence Act.

4. The confession of one accused tried along with some other accused may be used in opposition to the others, if the requirements of section 30 of the Evidence Act are satisfied but “an admission of one of several defendants is no evidence against another defendant.”

5. An admission need not be voluntary to be admissible in evidence as is the case with confessions.

6. There can be a relevant admission made by an agent or even a stranger on behalf of a party but for a confession to be relevant. It must be made by the accused himself. Holloway. J. has clarified the distinction in an American case titled as *State v. Guie*.\(^{149}\)

“The distinction between a confession and an admission as applied in criminal law is not a technical refinement but based upon the substantive difference of the character of the evidence deduced from each. A confession is a

\(^{147}\) (1907) 32 (Bom.) III (F.S.).

\(^{148}\) See Section 31, Indian Evidence Act of 1872.

\(^{149}\) 56 (Mont.) 485.
straight acknowledgement of guilt on the part of the accused and by the very force of the definition excludes an admission, which of itself as apply in criminal law is a statement by the accused, direct or implied of facts pertinent to the issue and tending in connection with other facts to prove his guilt, but of itself is insufficient to authorize a conviction.” The matter was also dealt within Ram v. State, and the court observed as follows:

“If the statement by itself is sufficient to prove the guilt of the accused, it is a confession but that if, on the other hand, the statement falls short of it. It amounts to an admission. The acid test which distinguishes a confession from an admission is that where a confession can be based upon the statement alone it is a confession and that where supplementary evidence is needed to authorize a conviction then it is an admission.”

So there is a real difference between a confession and an admission and the matter is put clearly by Holloway J. in an American case “The distinction between a confessions an admission, as applied in criminal law, is not a technical refinement but based upon the substantive differences of the character of the evidence deduced from the each. A confession is a direct Acknowledgment of guilt on the part of the accused, and by the very force of the definition excludes an admission, which (of itself as applied in criminal law) is a statement by the accused, direct or implied, of facts pertinent to the issue and tending in connection with other facts, to prove his guilt, but of itself is insufficient to authorize a conviction”

On hand we discuss the Acid Test to distinguish Confession from Admission, the Allahabad High Court tried to differentiated between a confession and an admission in following manner “The acid test which distinguish a confession from an admission is where a conviction can be based on the statement alone, it is confession, and where some extraneous evidence is needed to authorise

150 AIR 1959 All. 518.
151 State v. Guie 56 Mont. 485, also cited in Wigmore’s Evidence, Sec. 821.
a conviction, then it is admission.” 152


We have seen what is meant by a confession strictly so called. But an absolute confession or the “plenary confession” as it is sometime called is not the only variety that comes up before court for consideration. There will also cases where prisoners do not make absolute confessions but make statements, which though do not contain direct admission of guilt, yet give rise to inference of guilt. Thus if a prisoner states that he killed another person, it is a clear confession. But on the other hand, suppose he states “If I speak, I will be exposing B as murderer who shared with me the jewels from the person of deceased”. This statement undoubtedly contains incrementing material and from “If I speak, I will be also exposing B as a murderer” there follow an admission impliedly that the accused person is in some way guilty for the casualty of the deceased. If the prisoner had stated nothing more than this, question of some nicety arises as to whether this statement can be regarded as confession. If it is regarded as a confession, the safeguards allowed by law, attach to it; if not, it will go without these safe guards.

3.4. Legislative Provisions

The “term Confession 154 is nowhere defined in Indian Evidence Act 1872. All the provisions relating to confession occur under the heading of admission.” 155 This shows the legislative intent of not distinguishing between an ‘admission’ and a ‘confession’, so far as at least definition is concerned. The definition of ‘admission’ as given in section 17 becomes applicable to confession also.

According  to this section a statement is called admission as a statement oral or

152 Ramasing v. State, AIR 1959 All. 518.
153 Rabindra Kumar Pal @ Dara Singh v. Republic of India, AIR 2011 SC 1436.
154 A. Tajudeen v. Union of India, 2014 (11) SCLAE 754.
155 Section 17 of Indian Evidence Act 1872, Admission defined- an admission is a statement, oral or documentary [or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the person, and under the circumstances hereinafter mentioned.
documentary, which suggests any inference as to any fact in issue or relevant fact. If such a statement made by a party in civil proceedings it will be called an ‘admission’ and if it is made by a party charged with a crime it will be called a ‘confession’.

It was held in *State of Maharastra v. Kamal Ad Md Vakil Ansari*\(^{156}\) that in term of the Act, “a confession is a statement made by a person charged with a crime suggesting an inference as to any fact in issue or as to relevant fact. The inference that the statement should suggest should be that he is guilty of the crime.”

The term appears for the first time in Indian Evidence Act under section 24. The Indian Evidence Act 1872, when incorporating Sections 24 to 27 placed confession under the category of admission.\(^{157}\) Thus it can be stated that confessions are a species of admission.\(^{158}\) In *Palvinder Kaur v. State of Punjab*\(^{159}\) the apex court accepted the Privy Council Conclusion in *Pakala Narayan Swami*\(^{160}\) Case over two scores:

1. “That for an admission amounts to confession, it must either admit the guilt in terms or admit considerably all the facts which compose the offence.

2. That a mixed up statement which even though consist of some confessional statement but will lead to acquittal, is no confession.”

Thus, “a statement that has self-exculpatory matter which if true would contradict the convictions, cannot be called a confession.” Now here we discuss the provision of the Indian Evidence Act 1872, in which provisions relating to confession are defined.

### 3.4.1. Significance of Section 24.

Under the Indian evidence Act section 24 have great value because in this section word confession is used. Section 24 explain as, *concession caused by*

\(^{156}\) AIR 2013 S.C. 1441.

\(^{157}\) *Q.E. v. Babu Lal*, I.L.R., 6 All, 509,529 (1884).

\(^{158}\) *Q.E. v. Ashotosh Chuckerbutty*, I.L.R., 4Cal. 483, 492 (1878).

\(^{159}\) AIR 1952 S.C. 354.

\(^{160}\) A 1939 PC 47.
inducement, threat or promise when irrelevant in criminal proceeding.” A confession should be voluntary in order to be admissible. If it is an outcome of remorse and a want to make compensation for the offence, it is admissible. “But if it flows from hope or fear, excited by a person in authority, it shall be inadmissible”161

The purpose is to safeguard the interest of the accused, on the ground of public policy and for proper administration of justice162. The apex Court observed in Aher Raja Khima v. State of Saurashtra,163 “It is abhorrent to out notions of justice and fair play, and is dangerous to allow a man to be convicted on the strength of confession unless it is made; and any attempt by a person in authority to bully a person into making a confession, or any threat or coercion would at once invalidate it, if the fear was still operating on his mind at the time he makes the confession, and if it would appear to him reasonable for supporting that by making he would gain an advantage or avoid any evil of a temporal nature in reference to the proceeding against him.”164

Lord Sumner in Ibrahim v. R., 165 observed is the following words, “Even the rule, which excludes evidence of statements made by a prisoner when they are induced by hope held out, or fear inspired by a person in authority, is a rule of policy”

In Phipson on evidence,166 it is stated that “the ground for the rejection of confessions which are not voluntary is the danger that the prisoner may be induced by hope or fear to incriminate himself falsely.”

165 AIR 1914 PC 599.
Lord Diplock observed that “the underlying rational of this branch of criminal law, though it may originally have been based on ensuring the reliability of confession is, in my view, now to be found in the maxim, *memo debt proderese ipsum*, no one can be required to be his own betrayer, or in its popular English mistranslation *the right to silence*”\textsuperscript{167}

The Apex Court in *Shankaria v. State of Rajasthan*\textsuperscript{168} observed that it is well settled rule that a confession, if voluntarily 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 of Criminal Procedure Code1973, the court must apply a double test:

1. Whether the confession was perfectly voluntary?

2. If so, whether it was true and trustworthy?

Satisfaction of the first test is *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, such as mentioned in Section 24, it must be excluded and rejected *brevimanu*. 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 findings that what is stated therein is true and reliable. For judging the reliability of such confession or, for that matter, of any substantive piece of evidence, there is no rigid cannon of universal application. Even so, one board method which may be useful in most cases for the evaluation of a confession may be indicated. The court should be 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.”\textsuperscript{169}

\textsuperscript{167} *R. v. Sang*, 1979 2 All ER 1222.
\textsuperscript{168} AIR 1978 SC 1248.
Mahmood J. stated that the principle is a rule of relevancy, called forth by the abstract principles of evidence and not a positive prohibition necessitated by exigencies. It is a rule of exclusion because; this section declares that a confession made by an accused under certain circumstances is irrelevant in criminal proceedings. Therefore, it is only the satisfaction of the court is necessary, though there may not be a decision in so many words that a confession is not relevant.  

In the case of *Bishnu Parsad Sinha v. State of Assam*,  The Supreme Court explains most important ingredients of section 24; “these ingredients are the main conditions of irrelevancy:

1. The confession must be result of inducement, threat or promise;
2. Inducement, etc. should be proceed from a person in authority;
3. It should relate to the charge in question; and
4. It should hold out some worldly benefit or disadvantage.”

On the basis of above cases researcher find out the main factors adulterating confession. Some of them are explain in detail as under:

### 3.4.1.1. “Inducement, Threat or Promise”

“A confession should be free and voluntary. If it proceeds from remorse and a desire to make reparation for the crime, it is admissible”. If it flow from hope or fear, exited by a person in authority, it is inadmissible. “The ground for not receiving such evidence is such that it would not be safe to receive a statement made under any influence or fear. There is no presumption of law that it is false or that the law considers that such statement cannot be relied upon.”  

Where the prisoner is only told to tell the truth without exiting any hope or fear in him, his statement cannot be regarding as being made in response to any

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170 *Q.E. v. Babulal*, ILR 1884 6All 509.
171 *AIR 2007 SC 848*.
threat or promise. “Where a prisoner was told by a constable that he need not to say anything to criminating himself, but what he did say would be taken down and used in evidence against him, it was held that such words did not amount to any threat or promise to induce the prisoner to confess.”\textsuperscript{173} POLLACK, C.B. pointed out that “where the admission to speak the truth has been coupled with any expression importing that it would be better for him to do so, the confession was not receivable, and the objectionable words being that it would be better speak the truth”.\textsuperscript{174} In \textit{R. v. Voisin}\textsuperscript{175} it was held that “the body of a woman was found in parcel with a piece of paper carrying the words ‘Bladie Belgiam’. The accused, before being charged, was asked to write the words. He expressed his willingness and wrote ‘Bladie Belgiam’. This amounted to some sort of confession that the writing on the piece of paper found with the body was that of accused. The writing was held to be free and voluntarily and therefore, relevant. The prisoner wrote those words quit voluntarily. The mere fact that they were written at the request of a police officer did not tend to change the character of handwriting, nor did they explain the resemblance between his handwriting and that upon the label, on account for the same miss-spelling occurring in both.” The mere fact that “the accused was in custody of an intelligence officer at the time of the statement would not be sufficient to create the presumption of inducement, thereat or promise.”\textsuperscript{176}

“In deciding whether a particular confession attract the frown of section 24 of the IEA, the question has to be considered from the point of view of the confessing accused as to how the inducement, threat or promise proceeding from a person in authority would operate in his mind.” The facts of the case, \textsuperscript{177}in which this statement occurs, were that a senior police officer, after having failed

\textsuperscript{173} \textit{R. v. Baldry}, (1852) 2 Den. C.C. 430.
\textsuperscript{174} The words “you had better” carry a hidden threat or inducement. \textit{R. v. Richards}, (1967) 1 WLR 653 (C.A.).
\textsuperscript{175} (1918) 1 K.B. 531.
\textsuperscript{176} \textit{Pon Adhithan v. Deputy Director, Narcotics Control Bureau}, AIR 1999 S.C. 2355. The statement in court of intelligence officer corroborated the confessional statement.
to get any confessional statement from the accused through other sources, took upon himself to question the accused and he succeeded in securing confession. The question was whether the confessions were voluntarily. The Supreme Court held that they were not. When the two accused were questioned separately after several abortive attempts to secure confession can it be said that “there was no inducement, threat or promise” of some kind proceedings from the (senior officer) to have made any impact on their minds resulting in the confessions? The officer having stated to the accused that “now that the case has been registered they should state the truth”, it is difficult to hold that by this statement he would not generate in the minds of the accused some hope and assurance that if they told the truth they would receive his support”.

Where the accused was told by the magistrate, “Tell me where the things are and I will be favorable to you,” or “if you do not tell the truth you may get yourself into trouble and it will be worse for you” or “if you make a clear breast of it, I will see you acquitted,” and a sailor’s confession in response to the captain’s words that “if you do not tell me, I will give you to police”, confession obtained in response to these statements were held to be irrelevant.

“It is for the 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. A well known illustration is R. v. Tompon “the prisoner was charged with embezzling the money of the company which employed him. Evidence was offered to show that he not only confessed to the chairman of the company but also returned some money though

178 Nirmal Singh Pehlwan @ Nirma v. Inspector, Customs, Customs House, Punjab , (2011) 12 SCC 298.
179 R. v. Thompson, (1783) 1 Leach 291.
his brother. The chairman admitted that before he received the confession he had asked the prisoners’ brother: ‘It will be the right thing for your brother to make a statement or to make a clean breast of it.’ There was no treat or promise in addition to these words, nor there do any proof that the chairman’s statement was, in fact communicated to the prisoner prior to his confession”. So it was held that “the confession was not admissible.”

Consequently, the conviction was quashed. Cave J., pointed out that though “in the present case there is no evidence that any communication was made to the prisoner at all; but after the chairman’s statement that he had spoken to the prisoners’ brother about the desirability of the prisoner making a clean breast of it, with the expectation that what he would be communicated to the prisoner, it was incumbent on the prosecution to prove whether any, and if so what, communication was actually made to the prisoner before the magistrate could properly be satisfied that the confession was free and voluntarily ,” and this was not done by prosecution.  

3.4.1.2 Person in Authority

The second requirement is that “the inducement, threat or promise should proceed from a person in authority”. Who is a person in authority? The expression definitely refers to government officials: “Magistrate, even those not acting as such in the case, their clerks, corners, police constable, warders and others having custody of the prisoners, searches, prosecutors, and their wives and attorneys”. About these there is no doubt. Every governmental official will be person in authority whom the accused thinks that he is capable of influencing the course of prosecution. A senior military officer is a person in authority over

187 Ibrahim Musa Chauhan @ Baba Chauhan v. State of Maharashtra, 2013 (3) SCALE 207.
189 R. v. Middleton, (1974) Q.B. 191 (C.A.) S.K. Modi v. State of Maharashtra, (1979) 2 S.C.C. 58, where officer of the custom department were held to be person in authority in reference to a person from whom they had extorted a confession.
those below him.\textsuperscript{190} Even a private person can in circumstances be a person in authority over the employee if the charge relates to the contract of employment\textsuperscript{191}. Thus where an employee was charged with arson of his employer’s house, a confession made on exhortations of the employer’s wife that it would save his neck, was held to be irrelevant.\textsuperscript{192} A confession to a private on the threat of dismissal would be equally irrelevant. But “it is only when the offence concerns that master or mistress that holding out the threat or promise renders the confession inadmissible.”\textsuperscript{193} Thus where a maid–servant confessed in response to her mistress’s inducement that she had killed her child, the confession was held to be relevant. A village Mukhiya\textsuperscript{194} (head of a village) and the president of village Panchayat\textsuperscript{195} “have been held to be person in authority.” Thus where a person was apprehended four years after a murder and brought before the village Pardhan where he confessed on the assurance that “he would not be handed over to the police, the Supreme Court held the confession to be not relevant.” \textsuperscript{196}

It is not absolutely essential that the inducement be made by the very person who is in authority. The father of the accused told him at the police station, in the presence of two detectives, to tell the police everything and that if he (the accused) had not hit the victim he could not be hanged. The court of appeal held “that the statement was an inducement.”\textsuperscript{197}

A purely private person “cannot be regarded as a person in authority for this purpose even if he is not able to exert some influence upon the accused”\textsuperscript{198}. In \textit{R. v. Gibbons}\textsuperscript{199} held that a surgeon was called as a witness to prove the confession made to him by the prisoner who was charged with murder. The

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\item[\textsuperscript{190}] \textit{R. v. Smith}, (1959) 2 Q.B. 35.
\item[\textsuperscript{191}] \textit{Gurjinder Singh v. State of Punjab}, AIR 2011 SC 972.
\item[\textsuperscript{192}] \textit{R. v. Upchurch}, (1936) Mood C.C. 465.
\item[\textsuperscript{193}] PARKE, B. in \textit{R. v. Moore}, (1852) 2 Den 522 : 5 Cox C.C. 555.
\item[\textsuperscript{194}] \textit{Emperor v. Har Pirari}, A.I.R. 1926 All. 737.
\item[\textsuperscript{195}] \textit{Emperor v. Aushibibi}, A.I.R. 1916 All. 342.
\item[\textsuperscript{197}] \textit{R. v. Cleary}, (1964) 48 Cr. App. R. 116 (C.A.)
\item[\textsuperscript{198}] \textit{Vikram Singh and ors v. State of Punjab}, AIR 2010 SC 1007.
\item[\textsuperscript{199}] (1823) 1 C. & P. 97 : 171 E.R. 1117.
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surgeon was attending the prisoner at the time the statements were made so that he was a person in authority. The surgeon told the court that he held out no threat or promise to the prisoner, but a woman present on the occasion had told the prisoner that she had better tell the truth and the prisoner confessed to the surgeon. Parke, J. laid down that "as no inducement had been held out by surgeon, to whom the confession was made", and the only inducement held out being by a person having no sort of authority, it must be presumed that the confession to the surgeon was a free and voluntary confession. If the promise held out by any person having any office or authority, as the prosecutor, constable, etc., the case would be different; but here some person, having no authority of any sort officiously says, you had better confess. The court had not the least doubt that the confession was admissible.

Recovery of articles prior to making of confession. - The Court declined to act on “the confession for the reason that the recovery of the articles was made prior to the confession.” The Supreme Court held that the reason was too insufficient for overruling the confession. That aspect, instead of vitiating the confession, could be a factor in favour of voluntariness of the confession. When the culprit found that the articles concealed by him were all disinterred, it was it was possible that he might feel that there was no use in concealing the fact any more. Then he might desire to make a clean breast of everything to any person or authorities.

Warning to the person confessing. - Section 108 of the Custom Act, 1962 empowers its officers to record the statement of person who are summoned under the Act. Since the Act does not authorize the recording of confessions. It would have to be done by using the authority under Section 164, of Criminal Procedure Code, 1973. This section requires “a warning to be given to the person making the

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201 State of Tamil Nadu v. Kutty, AIR 2001 S.C. 2778 at p. 2781. Confession was made by him while in judicial custody and therefore, chances of victimization were ruled out.
statement that it would be used in evidence against him. This is fundamental of criminal jurisprudence."²⁰²

3.4.1.3 “Inducement, Threat or Promise should be in Reference to Charge”

Thirdly, the inducement threat or promise should be in reference to the charge in question. This specifically so stated in the section itself, which says that the inducement must have "reference to the charge against the accused person". Thus, “it is necessary for the confession to be excluded from evidence that the accused should labour influence that in reference to the charge in question his position would be better or worse according as he confesses or not. Inducements in reference to other offences or matters or offences committed by others will not affect the validity of confession.”²⁰³ Thus, “where a person 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 treat had nothing to do with charge.”²⁰⁴

While this is the principle under section 24 of the Act, the position of English law is not clear. After making a deep investigation of all the prior authorities and opinions of authors in Commissioner of Custom and Excise v. Hartz and Power,²⁰⁵ the house of lords found that “neither the authorities nor the opinion of authors were consistent and, therefore, came to conclusion that it is not necessary for a confession to be excluded from evidence that the inducement should relate only to the charge in question”. The principle as stated in COCKEL on the authority of the case is that “to render a confession inadmissible an inducement need not relate to the charge or contemplated charge”.²⁰⁶ The charge upon the two accused was that of conspiracy to defraud in relation to purchase tax. The customs officers threatened one of them with prosecution for violation tax laws; if he did not answer their interrogatories. Consequently, he made oral

²⁰³ Radhakant Yadav v. Union of India, AIR 2012 SC 3565.
²⁰⁴ Empress v. Mohan Lal, (1881) I.L.R. 4 All. 46.
admission of their guilt. The question was about their relevancy. The threat was in reference to purchase tax and the charge about their relevancy. The threat was in reference to purchase tax and the charge upon them was conspiracy. Thus the threat did not relate to charge.

Even so it was held that the confession was not admissible. Lord REID considered authorities. His Lordship noted the following passage from Taylor on EVIDENCE.207 “It may be laid down as a general rule that in order to exclude a confession the inducement whether it be in the shape of promise, a threat or mare advice must have to reference to prisoner’s escape from criminal charge against him.”

A similar opinion is expressed by STEPHEN. He says that “the inducement must have reference to the charge against the accused person”.208

His Lordship then referred to Reg. v. Smith, 209 “A soldier was accused of murder during a barrack room fight. Soon after the fight the sergeant – major put his company on parade and said that they would be kept there until he learned who was responsible. After a time Smith confessed. The inducement clearly was that, if the culprit confessed, his commander would be released. It had nothing to do with any impending charge. But it was held sufficient to make the confession inadmissible. If the alleged rule existed the result would have been different.”

3.4.1.4 Benefit of Temporal Nature

The last condition of section 24 to come to play is that “the inducement, threat or promise must be such as sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making 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 him must be

207 592 (1st ed., 1848).
208 DIGEST OF LAW OF EVIDENCE, 28 (1876, 1st ed).
off material, worldly or temporal nature. For example, the threat of expulsion from the caste to which the accused belongs is an evil of temporal nature, though, of course, if the threat has nothing to do with the charge in question, it will not render the confession inadmissible.\(^{210}\) Mere moral or spiritual inducement or exhortations will not vitiate the confession. For example, where the accused is told, “Be sure to tell the truth”\(^^{211}\) or “You have committed one sin, do not commit another and tell the truth,”\(^^{212}\) a confession made in response to this is valid. The same is true where the accused is taken to a temple or church and told to tell the truth in the presence of Almighty.

**Reliability of Judicial Confession:** - the accused admitted in his confession “the full length role played by him in association with the other two assailants for murdering the two ladies. He did not own in his confession that he also stabbed at least one of the two deceased it was held that the very fact that he did not say in so many words that he also inflicted one stab injury was of no consequence. In a way this aspect was a further assurance that his confession was not what the police wanted him to say to the magistrate. There was no reason to think that the accused has been prevailed upon any extraneous influence to make the confession.”\(^{213}\)

Protection against Self-incrimination is available even at the stage of investigation. It ensures that the statements have been made by the person accused voluntarily and therefore they are reliable.\(^{214}\)

**Burden of Proof:** - the burden is on the accused to show that his confessional statement is irrelevant because it attracts the bar of section 24 of Indian Evidence


\(^{212}\) R. v. Sleeman, (1853) 6 Cox. C.C. 245.

\(^{213}\) State of Tamil Nadu v. Kutty, AIR 2001 S.C. 2778 at p. 2782; Devi Singh v. State of Rajasthan, (2005) 10 S.C.C. 453, magistrate duly observed all legal formalities in recording confession which was also voluntary, police tortured not substantiated, details become verified, conviction on the basis of confession proper. State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 S.C.C. 600, need for confession to have been made with full knowledge of the nature and consequences of the confession.

Act, but such burden is not as high as on the prosecution. Once the accused is able to establish facts which create a reasonable doubt that the confession was not voluntary, the burden would be shifted to the prosecution to show that the confession was voluntary and also satisfied all the requirements of the relevancy.

The confession of an accused person made outside the court (extra judicial) implicating him and his co-accused cannot be used against the co-accused. But on other hand 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. In the context of Bombay terror attack, confession made in custody was nevertheless held to be voluntary as it was made months after the confessing accused had remained in custody and after many sessions of interrogation. Voluntariness of the confession was further becoming clear from the fact that the confession was made to set an example to others to follow him.

3.4.2. Section 25 (Custodial Confessions)

The Indian legislatures have formed a total bar to admissibility of custodial confessions in evidence. So, “confessions made by an accused person to police or to anyone, whilst in police custody.” These are governed by Sections 25 and 26 of the Evidence Act. The total exclusion rule has been justified on the basis of unpredictability of the police for according to rights of the accused during interrogation of a case.

In order Section 25 should be working to avoid a statement being received in evidence. It must amount to a confession. We need not go in detail on what are the main ingredients of a confession after the decision of the Privy Council in Pakala Narayan Swami v. King Emperor. In this case, it was observed by the Council that even statements containing admission of gravely incriminating facts attention to suggest that the accused committed an offence, cannot be covered by

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217 AIR 1939 P.C. 47.
Section 25 if they fall short of actual admission of guilt. So, a statement which is not a confession cannot be expelled by provisions of Section 25 of the IEA. Thus, where a man accused of murder said, “The deceased broke into my house and attacked me with a sword and I killed him in my self-defence” this statement though an admission of fact and made to a police officer, cannot be admissible in evidences. However, testimony of such a statement would be banned by Section 162 of the Code of Criminal Procedure 1973. Now here we explain the main ingredients of Section 25 of Indian Evidence Act, some of them are explained as under:

3.4.2.1 Who is Police Officer?

A police officer means for this purpose “a member of the regular police force, but the Supreme Court has held that the expression would include any person who is clothed with the powers of police officer.” 218 Thus the excise inspectors and sub inspectors enjoying police powers were held to be police officers.219 There is no exact definition of the expression “Police Officer” in any of our Laws, as used in Section 25 of the Evidence Act. Therefore, the first essential is to know what is meant by the term Police. According to the definition of the word ‘Police’ in the Police Act (V of 1861) all those persons who are enrolled under that Act are included within that term. These include low-grade police officers and upper grade police officers. Therefore, the expression “police-officer” in Section 25 is a classification to denote all those who are in the police force.220 The phrase “Police-officer” is also freely used in the Criminal Procedure Code including all ranks of the police with powers assigned to all and different as defined in different sections of that code. Therefore, one thing is very clear that the term police officer includes all persons of the regularly constituted police force starting for a constable to the highest rank i.e. a Director-General. Now the

219 Raja Ram Jaiswal v. state of Bihar, AIR 1964 S.C. 828. See further Assistant Collector, Central Excise v. C. Fernandes, (1982) 3 S.C.C. 512, statements to custom officials for the purpose of inquiry pursuant to a magistrate’s order, held relevant.
220 R. v. Macdonald, 10 B.L.R. App. 2.
question is whether this phrase should be given a limited meaning or a wider meaning i.e. whether it should be restricted in its application to the ordinary constituted police force or should be allowed to include members of other Government departments together with the frequently constituted police force so as to live it a wider interpretation.

In the case of Radha Krishan Marwadi v. Emperor,\(^\text{221}\) the first strict interpretation to the expression “Police-Officer” was pronounced and decided by the special bench of the Patna High Court, it was held that the term “Police-officer, in Section 25 of the Evidence Act was proposed to apply to police officers and police officers alone and to no class of persons other than the police officers.” But it has been the accepted view of most of our High Courts that this term is not limited to officers of the regular police force but to members of the other Government departments so as to give it a broadminded interpretation.\(^\text{222}\) The Supreme Court has also held likewise in a series of decided cases.\(^\text{223}\)

In Q.E. v. Salemudin,\(^\text{224}\) it has been held that the expression ‘police officer’ used in Section 25 is not limited to officers of the regular police but includes members of special police and of the criminal investigation department. A police officer does not cease to be so if he is also invested with magisterial powers.\(^\text{225}\) However, a Sub-Divisional Magistrate has been held not to be a police officer.\(^\text{226}\) A food Grade Inspector\(^\text{227}\) and an Assistant Inspector of Customs\(^\text{228}\) are also not police officers. It has been held in State of Punjab v. Barkat Ram,\(^\text{229}\) that custom officer to possess certain investigatory powers similar to those of police

\(^{221}\)AIR 1932 Pat. 293 (SB).

\(^{222}\)See, e.g. Sarkar, LAW OF EVIDENCE, 683, 705 (17th ed. 2011).


\(^{224}\)3 CWN 393.


\(^{226}\)Srikant Das v. E. 35 Cr. L.J. 1217.

\(^{227}\)Abu v. E 49 Cr. L.J. 43.

\(^{228}\)In re Mayilvahanam 48 Cr. L.J. 326. Also, Percy Rustomje Bosta v. State of Maharashtra, AIR 1971 S.C. 1087.

\(^{229}\)1962 (3) S.C.R. 333.
officers but they can still “not be equated with police officers for the purpose of this provision.” Ram Jethmalani argues that custom officers should also be taken as police officers and confessions made before them should be made inadmissible.\(^\text{230}\) It is however, submitted that the alleged unreliability of the police, being the sole justification propounded for the total exclusion created by Section 25 the term police officer should not be given any extended meaning so as to include other authorities whose reliability or unreliability has not been tested. They are certainly persons in authority and cannot be allowed to compel, coerce or induce any person to make a confession. But these situations can be taken care of by Section 24 and confessions made before them can be excluded if any vitiating circumstances are shown. There is however, no justification to totally exclude confessions made before them irrespective of the circumstances.

3.4.2.2 Main Reasons for Exclusion of Confession to Police

“If confessions to police were allowed to be proved in evidence, the police would torture the accused and thus force him to confess to a crime which he might not have committed.”\(^\text{231}\) “A confession so obtained would naturally be unreliable, it would not be voluntary, and such a confession will be irrelevant. Whatever maybe it is from, direct, express, implied or inferred from conduct.”\(^\text{232}\) The reasons for which this policy was adopted when the Act was passed in 1872 are probably still valid. GOSWAMI, J., of Supreme Court noted:\(^\text{233}\) “the archaic attempt to secure confession by hook or by crook seems to be the be-all and end-all of the police investigation. The police should remember that confession may not always be a short cut to solution. Instead of trying to start from a confession they should strive to arrive at it. Else, when they are busy on their short routes to success, good evidence may be disappear due to inattention to the real clues. Once a confession is obtained, there is often flagging of zeal for a full and thorough investigation with a view to establish the case de hors the confession. It is often a

\(^{230}\) Ram Jethmalani: Confession Modifying the Perspective. 1987 (F): ILEJ 8.

\(^{231}\) Nar Singh v. State of Haryana, 2015- 1 LW(Criminal) 742.


sad experience to find that on the confession, later, being inadmissible for one reason or other, and the case fuddles in the court.”

“Police authority itself, however, carefully controlled, carries a menace to those brought suddenly under its shadow and the law recognizes and provides against the danger of such persons making incriminating confessions with the intention of placating authority without regard to the truth of what they are saying.”

“A series of conflicting suggestions as to the rational underlying this inflexible statutory bar emerges from the decided cases:

1. It has been suggested that an objective and dispassionate attitude cannot confidently be expected from police officers.

2. The privilege against self incrimination has been thought to lie at the root of the principle.

3. Importance has been attached to the discouragement of abuse of authority by the police that could erode the fundamental rights of the citizen.

The risk is great that the police will accomplish behind their closed doors precisely what the demands of our legal order forbid.”

3.4.2.3 Effects of Police’s Presence on Confessional Statements

The mere presence of the police man should not have this effect. “Where the confession being given to someone else and the policeman is only casually present and overhears it that will not destroy the voluntary nature of the confession. But where that person as a secret agent of the police deputed for the

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very purpose of receiving a confession, it will suffer from the blemish of being a confession to police.”

In a rather unusual case, “the accused left a letter recording his confession near the dead body of his victim with an avowed object that it should be discovered by the police, the Supreme Court held the confession should be relevant. There was not even the shadow of policeman when the letter was being written and planted.”

**Exclusion of Confessional Statements only**: this principle of exclusion applies only to statement which amount to a confession. “If the statements fall short of a confession, that is, it does not admit the guilt in terms of substantially all the facts which constitute the offence, it will be admissible even if made to a policeman, for example, the statement of an accused to the police that he witnessed the murder in question. The statement being not a confession was received in evidence against him, as showing his presence on the spot.”

**Confession Inadmissible if made to a Police Officer at any Time before or after the Investigation**: - The words of Section 25 Evidence Act are wide enough to exclude any confession to a police officer. Thus a confession made to a police officer at any time that is either before commencement of investigation or after, is inadmissible. Further in Hussain v. Emperor, it was said that the confession need not be a confession of the crime under investigation. In Kodangi v. Emperor, it was held that “even a confession to the police officer of an offence other than the one under investigation during the investigation of the latter offence

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237 Emperor v. Har Piari, AIR 1926 All. 737. Where the accused made his confessional statement in the house of Sarpanch (Village Chief) in the presence of Gram Ayakshi (a Policeman) the confession was held to be vitiated, Pandru Khadia v. State of Orissa, 1992 Cr. L.J. 762 (Orissa).
240 Queen- Empress v. Jagrup, I.L.R. (1885) 7 All. 646.
242 AIR (1936 Lah. 360.
243 AIR 1932 Mad. 24.
is inadmissible.” For example if A says to the police officer. “I noticed B murdering X while I was murdering Z.” There is a confession of A that he murdered Z. As it is undoubtedly a confession made to a police officer even though made during the investigation of the murder committed by B. It is inadmissible under Section 25, Evidence Act. In re Elukuri Seshapani Chetty, the court said that the whole spirit of Section 25. Evidence Act is to exclude confession to the police and the movement a statement is found to amount a confession it matters not in the slightest of what crime it is said to be a confession. The provisions of Section 25 are unqualified. It indicates an absolute rule of exclusion relating to confession made to a police officer.

3.4.2.4 Confessional F.I.R.

The term F.I.R. hereafter as FIR has not been defined in Indian Evidence Act 1872. But here we see the importance of confessional FIR. “When an accused himself went to the police station and lodges the First Information Report with regard to an offence committed by him the fact of his giving the information is admissible against him as evidence or res-gestae.” A statement in FIR can normally be used only to contradict its maker as provided in section 145 of Evidence Act or to corroborate his evidence as envisage in section 157 of the Act. Neither is possible in criminal trial as long as its maker is an accused in the case unless he offers himself to be examined as a witness. If the information is non-confessional it is admissible as an admission under Section 21of the IEA. But in the case of Aghanoo Nagesia v. State of Bihar, it has been held that “a confessional FIR by the accused to the police cannot be used in evidence against

244 AIR 1937 Mad. 209.
245 A First Information Report (FIR) is a written document prepared by police organizations in Bangladesh, India, and Pakistan when they receive about the commission of a cognizable offence. It is generally a complaint lodged with the police by the victim of a cognizable offense or by someone on his or her behalf, but anyone can make such a report either orally or in writing to the police.
246 Mangu Singh and ors. v. Dharmendra and ors., 2015 (13) SCALE 800.
247 See, e.g. Sarkar, LAW OF EVIDENCE, at pg. no. 622 (17th ed. 2011).
248 AIR 1966 S.C. 199.
him in view of Section 25.” In the case of Banarsi Dass v. State of Punjab,\footnote{1981 Cr. L.J. 1235 (P & H).} it was held that if the First Information Report made by an accused person contains facts connecting to motive research and chance to obligate the crime with which he is charged and the facts reacted therein are self-inculpatory in the sense that the narrative describing the relation between the accused and the deceased gives the motive for the crime by means of which the accused is charged, the entire testimonial must be treated as “a confession made to a police officer” and would be hit by section 25.

In Legal Ram v. Lalit,\footnote{49C 167.} it was held that “the confessional part and the non-confessional part whether amounting to admission or not may be separated and only the confessional part should be excluded.”

It was held in State of Rajasthan v. Shiv Singh,\footnote{AIR 1962 Raj. 3.} that “if there is a confession of the accused pure and simple in the F.I.R. Prepared by him, the whole First Information Report is inadmissible in evidence. If in adding to the confession it contains convinced other matters which are applicable to the inquiry in the crime they may be taken into evidence as admission of the accused but care must be taken to see that such statements are not a part of the narrative of confession. A confessional declaration does not denote only that piece of the statement in which the commission of the authentic offence is referred to. But the accused has made a confession admitting that he had committed an offence and at the same time further gives the details of the preparation which he had made for the commission of the offence. It cannot be said that the part that relates to the research of the offence or other activities of the accused in the material of the commission of the offence can be understand in evidence and only that part which relates to the actual commission of the offence is not admissible in evidence of the case. The whole narrative in such a case is not admissible”. If the first information report made by an accused person contains details linking to “motive, preparation and occasion to commit the crime with which he is charged and the facts recited
in that are as self-inculpatory in the logic that the description describing the relations between the accused and the departed gives the purpose for the crime with which the accused is charged the whole statement must be treated as a confession made to a police officer and would be hit by Section 25.\textsuperscript{252} “A narrative disclosing strained relations between the accused and the deceased or referring to an event that occurred several days before the occurrence in the First Information Report given by the accused being a statement disclosing motive for the crime is inadmissible under Section 25 of the Evidence Act.”\textsuperscript{253}

It was held in \textit{Pakala Narayan Swami v. Emperor},\textsuperscript{254} that in judging whether a statement made by an accused in the First Information Report amounts to a confession or not it has to be seen whether it is self-inculpatory as a in one piece or whether it includes various exculpatory matter relating to a fact which, if true, would establish his innocence. If it is of exculpatory nature then it cannot be deemed. On the other hand if it is self-inculpatory one as a whole, then it amounts to a confession.

However, the court pointed out that if the First Information Report is given by the accused to Police Officer and amounts to a confessional statement the proof of the confession is prohibited by section 25. “The confession includes not only the admission of the offence but all other admissions of incriminating facts related to offence contained in the confessional statement. No part of the confessional statement is receivable in evidence apart from to the amount that prohibit on Section 25 is lifted by Section 27.”\textsuperscript{255} The court said that not even a single case of this Court or of the Privy Council is there on the question which may suggest that apart from Section 27 of a confessional First Information Report provided by an accused is included in evidence against him, therefore, save and except as provided by Section 27 and save and apart from the proper part identifying the accused as the maker of the report, every part of a confessional First Information Report is hit by Section 25 of the Act and no part of that could

\textsuperscript{253} \textit{Ram Sajiwan v. State}, AIR 1964 All. 447.
\textsuperscript{254} AIR 1939 P.C. 47.
\textsuperscript{255} \textit{Aghnoo Nagesia v. State of Bihar} (1966) 1 S.C.R. 134.
be tendered in evidence.

3.4.3. Confessions in Police Custody (Section 26)

Section 26 carries the theory of deemed involuntariness due to presence of police still further and bars any confessions made by the accused to anybody except in the presence of a Magistrate. “The presence of a Magistrate is supposed to negative the influence of police custody on the mind of the accused and to serve as a safeguard for him to feely exercise his option to make a confession or not except when made in presence of a Magistrate, a confession made by an accused whilst he is in police custody to any person be it a fellow prisoner, a doctor or a visitor is inadmissible in evidence.”

Mehmood J. has observed in *Q. v. Babu Lal*, that “Section 25 and 26 lay down two clear and definite rules. In Section 25 the criteria for excluding a confession is the answer to the query. *To whom was the confession made?*, if the answer is that it was given to a police officer, the confession is enormously excluded from evidence. On the other hand the criterion adopted in Section 26 is the answer to the question. *Under what circumstances was the confession made?* If the answer is that it was made whilst the accused was in custody of a police officer the law lays clown that such confession shall be excluded from evidence unless it was made in the immediate presence of a Magistrate.”

3.4.3.1 “Confession in Police Custody”

“No confession is made to anybody while the person making it is in police custody” is provable. “The section will come into play when the person in police custody is in conversation with any person other than a police officer and confess to his guilt.” The section is based upon the same fear, namely, that the police would torture the accused and force him to confess, if not to the police

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257 6 A 509 (F.B.).
259 See *Queen v. Sageena*, A.I.R. 1948 All 7, conversation between the accused and another overheard by a policeman held not relevant.
officer himself, at least to someone else. The confession made to a police officer or to anyone else while the accused in police custody are not different in kind and quality. Both are likely to suffer from the blemish of not being free and voluntary. “The police objectives underlying the limitation are clear. It is the manifest to every one’s experience that from the movement a person feels himself in custody on a criminal charge, his mental condition undergoes a very remarkable change and he naturally becomes much more accessible to every influence that addresses itself to either his hopes or fears.”

“Statements made to TV and press reporters by the accused person in the presence of police and also in police custody were held to be inadmissible.”

3.4.3.2 Police Custody

“Police custody means police control even if it be exercised in a home, in an open place or in the course of a journey and not necessarily in the walls of a prison.” Common connotations of the word ‘custody’ are a state of being guarded or watched to prevent escape, restrain of liberty, confinement. It would therefore be seen that the immediate presence of the custodian is not necessary.

In the case of Parho Sahiwal v. Emperor, it was held that “the word custody has not been defined in the Evidence Act. But the ordinal meaning is sufficiently clear. Two things there must be first there must be some limitation imposed upon the liberty of the confessor; secondly this limitation must be imposed either directly or indirectly by the police.” Under Section 26 there is no necessity to prove a formal arrest. It would be sufficient to constitute police custody if the accused is present before the police and cannot depart as his own free will. It must be pointed out that there is a distinction between an accused being “under arrest” and an accused being “in custody”. The learned judge

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262 Chandra Kant Jha v. State (NCT Govt. of Delhi), 229 (2016) DLT 398.
pointed out that “threat of construing the appearance police custody in Section 26 of the Evidence Act in a more contracted technical logic as beginning from the time when the accused is officially arrested.”\textsuperscript{265} The learned judge said that the correct explanation would be that as soon as an accused or alleged person comes into the custody of a police officer he is in the absence of any clear and clearly identifiable evidence to the opposite, no longer at liberty and is therefore, in “custody” within the meaning of Section 26 and 27 of the Evidence Act. “Even indirect control over the movements or suspects by the police would means to \textit{Police Custody} within the meaning of this Section.”\textsuperscript{266}

In \textit{Jai Ram Ojha v. State},\textsuperscript{267} “a constable who was engaged on beat duty in neighboring village soon after committing of the offence, came to the spot, kept guard over the dead body as some foul play was suspected. He was also guarding the accused so that he may not run away. It was held by the court that the accused was under surveillance or the police constable and that any confession made by the accused under surveillance would be hit by Section 26 of the Evidence Act as confession made under \textit{Police Custody}.”

In \textit{State of U.P. v. Deoman Upadhyay},\textsuperscript{268} the court held that “when a person not in custody approaches a police officer investigating an offence and offers him to provide information primary to the detection of a fact having a manner on the charge which may be made against him he may properly be deemed to have surrendered himself to the police.” Section 46 of the Criminal Procedure Code does not consider any requirement before a person can be said to be taken in custody, submission to the custody by word or action by a person is sufficient. A person openly giving to a police officer some information by words which may be used as evidence against him may be deemed to have submitted himself to the ‘Custody’ of the police officer.

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\textsuperscript{265} Muang Lay v. Emperor AIR 1924 Rangoon, 173. \\
\textsuperscript{266} Haroon v. Emperor AIR 1932,144. \\
\textsuperscript{267} AIR 1968 Orr. 87. \\
\textsuperscript{268} AIR 1960 S.C. 1145.
\end{flushright}
In *State of Maharashtra v. Mohd. Hussain Ismail*, the court held that “a person goes to a police officer and makes a statement which shows that an offence has been committed by him. The accuses himself and though formally he is not arrested since he is not free to move wherever he likes after disclosure of the information to the police he must be deemed to be in police custody”. The fact that “the accused was interrogated and that he made a statement and led the *Panchas* and the police officer to a field and therefore, produced certain articles which were the subject matter of dacoity was sufficient to establish that there was submission on his part to police custody”, it was held in *Bakshia Mukila v. State of Bombay*.

In short it can be said that it is now well settled that “Police Custody” for the purpose of Section 26 or Section 27 of the Evidence Act “does not mean formal custody but includes such State of affairs in which the accused can be said to have been under some sort of surveillance or restriction and does not commence only when the accused is arrested but would commence from the moment when his movements are restricted and he is kept in some sort of direct or indirect police surveillance.”

It is also well settled in *Paramhans Jadad v. State*, that “if once police custody has commenced the mere fact that for a temporary period the police discretely withdraws from the scene and left the accused in of some other person will not render the confession of the accused before that person admissible.” Once an accused is arrested by a police officer and is in his custody the mere fact that for some purpose of other the police officer happens to be temporarily absent and “during his temporary absence leaves the accused in charge of a private individual

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269 AIR 1959 Bom. 534.  
270 AIR 1950) Bom. 263.  
272 *Chottelal v. State* AIR 1954 All. 687.  
273 AIR 1964 Orr. 144
does not terminate his custody the accused shall be deemed to be still in police custody.”

Under Section 26 of Evidence Act, it is immaterial whether the police held the suspected person or the accused under legal custody or under an illegal custody. An illegal custody is ‘custody’ for the purpose of Section 26.

Thus, a confession article by an accused person while he was in illegal custody of the police suffers from the same defects which Section 26. Evidence Act intends to avoid. So a confession made by an accused under such circumstances is also inadmissible in evidence as the illegality of the arrest does not make Section 26, Evidence Act inapplicable. In fact, there is more justification to exclude such confessions than when made in legal custody.

The crucial test, therefore, is whether at the time when a person makes an extra-judicial confession he is a free man or his activities are restricted by the police either by themselves or in the course of some additional organization employed by them for the purpose of securing such a confession.

3.4.3.3 “Presence of Magistrate”

The section recognizes one exception, “If the accused confesses his guilt while in police custody but in the immediate presence of a Magistrate, the confession will be valid. The presence of a Magistrate rules out the possibility of torture thereby making the confession free, voluntary and reliable.” Immediate presence of the Magistrate means “his presence in the same room where the confession is being recorded. His presence in the adjoin room cannot afford the same degree of protection against torture.”

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274  Emperor v. Nat Jagia (1938) 17 Pat. 369
276  The fact that the advice of a counsel was not available at the time when the accused was recording his confession to Magistrate would not destroy its value. Sarkari Mardi v. State of West Bengal, (1992) Cr. L.J. 367 (Cal.).
“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.”

It was held in State of Maharashtra v. Damu, under this section the confession of an accused to be admissible in evidence must be made in the immediate presence of a Magistrate. A confession made to a Magistrate himself conforms to the requirements of this section but if the confessor is made to a third person the presence of the Magistrate is necessary.” It was further held in Jograj v. R that “the section does not make the admissibility of the confession dependent upon the knowledge of the accused as to the identity of the Magistrate, the main consideration being the presence of the Magistrate and the making of the confession in his presence.” The proposition is however doubtful because ignorance of the accused about the presence of the Magistrate still not remove the traumatic influence of police custody from his mind for him to exercise his free will within the matter of making a confession. The confession made in the presence of a Magistrate does not become inadmissible for the mere reason that the accused had been in the custody of the armed constable. Ordinarily a Magistrate should not keep the accused in charge of the armed policeman unless for reasons to be recorded that he is satisfied that there was risk and danger to life. As far as possible, the accused should be kept in charge of the Magistrate’s own staff. Where the police officer took the Magistrate with him while the police officer was conducting his investigation the evidence of the Magistrate as to what happened is not admissible under Section 26. It is unobjectionable; if a Magistrate arrived out such an investigation himself but for a Magistrate merely to accompany a police officer while the police officer is making the investigation does not render the evidence of what happened admissible under the Evidence Act.

279 AIR 2000 SC 1691.
280 AIR 1930 (Lah.) 534.
**Magistrate:** - The word ‘Magistrate’ in Section 26 Evidence Act is not used in any restricted sense. The word is not confined to Magistrate specially empowered under Section 164 of the Code of Criminal Procedure but includes all Magistrates who are empowered under the Code of to Criminal Procedure. Under Section 26 courts are not precluded from taking into consideration confessions made by prisoners in police custody to Magistrate in England or in a foreign country the definition of ‘Magistrates’ in the General Clauses Act not being confined to Magistrates exercising jurisdiction over a particular area.\(^{282}\)

It is, however, submitted that if the word Magistrates is extended to include even Magistrates of foreign countries it would be stretching the meaning of the word ‘Magistrate’ used in Section 26 too far. The Act being limited in its application to the territory of India its provisions also, unless specifically mentioned can have no application to Foreign Territories. Under this section, Magistrates though on leave and not in the district in which they have been exercising jurisdiction are Magistrates within the meaning of Section 26 of Evidence Act. Therefore, it is sufficient for the purposes of Section 26 of Evidence Act to admit the confession. If the same has been made in the presence of a Magistrate, may be of any class or has no jurisdiction over the place where the confession was made.\(^{283}\)

3.4.4. “How Much Of Information Received from Accused May be Proved as Evidence” (Section 27)

Section 27 of Indian evidence act explains that “how much information received from accused may be proved.”\(^{284}\) Under the Evidence Act, there are two situations in which confessions to police are admitted in evidence “One is when the statement is made in the immediate presence of Magistrate, and the second,


\(^{283}\) *R. v. Vahala*, 7 Bombay H.C. 56.

\(^{284}\) See Section 27 of Indian Evidence Act 1872, provided that, when any fact is deposed to as discovered in consequences of information received from a person accused of any offence, in the custody of police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.
when the statements leads to the discovery of a fact connected with the crime. The discovery assures the truth of the statement and makes it reliable even if it was extorted. This is so provided in section 27. In order to assure genuineness of recoveries, it has become a matter of practice that recoveries should be affected in the presence of witnesses. The Supreme Court has pointed out that there is no such practice that where recoveries have to be effected from different places, different sets of personas should be called to witness them. The fact that the witnesses to recoveries are the neighbors of the deceased and, therefore, sympathetic to him, is not material.”

The object of this section is to admit evidence which is relevant to the matter under inquiry, namely, the guilt of the accused and not to admit evidence which is not relevant to the matter. The discovery of a material object is of no relevancy to the question whether the accused is guilty if the offence charged against him unless it is connected with the offence. It is therefore, the connection of the things discovered which renders its discovery a relevant fact. The connection between the offence and the thing discovered may be established by evidence other than the statement leading to the discovery but that does not exclude proof of the connection by the statement itself. “If a relevant fact is discovered in consequences of statements made by one or more accused in custody, so much of those statements as relate distinctly to the discovery of that fact is admissible under this section.” No such statements relating to a relevant fact is admissible under the section if it is made after the discovery of that fact or if it does not relate distinctly to the fact discovered.

3.4.4.1 Fundamental Necessities

The two fundamental necessities for the application of Sec. 27 are following:

1. That the person given information must be an accused of any offence; and
2. He must also be in police custody

“The provisions of Sec. 27 are based on the view that if a fact is actually

discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because such an information is further fortified and confirmed by the discovery of articles or the instrument of crime. In the present case the confessional disclosure made by the accused was confirmed by the discovery of the incrementing articles and therefore, there was reason to believe that the disclosure statements was true and the evidence led in that behalf was also worthy of credence.”

“It was soon after the arrest of the appellant that he took the police officer while in custody to the place where according to him he had thrown the dead body of the deceased wrapped by the incriminating articles. Those articles were not found lying on the surface of the ground but they were found after unearthing the dumping ground under the hill. Those articles were neither visible nor accessible to the people but were hidden under the ground. They were discovered only after the place was pointed out and it was unearthed by the laborers. No fault therefore could be found with regard to the discovery and seizure of the incriminating articles.”

3.4.4.2 “When any Fact is deposed to as Discovered in Consequences of Information”

The ‘fact’ must be a ‘relevant fact’. “The fact said to have been discovered in consequences of information received from a person accused of an offence must be of a kind which such information really helps to bring the light and which it would be difficult to find out otherwise before it can be treated as of any substantial probative value.” The fact must be the consequences, and the information the cause of its discovery. The information and the fact should be connected with each other as cause and effect. “The fact discovered must be in consequences of the information received from the accused, and the fact should not have been already within the prior knowledge of the police. The information

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289 Nga Shwe Tat v. Queen-Empress, (1897) 1 UBR (1897-1901) 152, shopkeeper’s servant killed his wife after closing the shop from inside, runaway after opening and seeing owner arrived, blood-stained clothes recovered at his instance, relevant.
should be free from any element of compulsion.” If any portion of the information does not satisfy this test, it should be excluded. “In order to utilize the provision of this section against an accused person an ordinary recovery cannot be turned into a discovery.” “That portion of the information which merely explains the material thing discovered is not admissible under this section and cannot be proved.” Where a suspect of in custody of police makes a statement that he committed a murder and removed ornaments which he produced later, the first part of the statement does not fall under this section because it is not a statement required to lead up to the production of the property. In a case of burglary a statement made by the accused in police custody that he would show the place where he had hidden the ornaments when that statement leads to the discovery of the ornaments is admissible.

3.4.4.3 “Information Received From a Person Accused of any Offence”

The expression “accused of any offence” is descriptive of the person against whom evidence relating to information alleged to be given by him is made provable by this section. “It does not predicate a formal accusation against him at the time of making the statement sought to be proved, as a condition of its applicability.” Statements leading to recovery must be proved. Where recovery took place 23 days after the statement, the informant being still not charged, and ultimately charged only as an abettor, the Supreme Court upheld the exclusion of the evidence. Where there was no statement on the part of the accused,

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291 Sukhan v. The Crown, (1929) 10 Lah. 283, 293 F.B. ; King-Emperor v. Ramanujam, (1934) 58 Mad. 642 F.B. Anter Singh v. State of Maharashtra, AIR 2004 S.C. 4197 : (2004) 7 S.C.C. 779, the expression fact discovered explained, and also the various requirement of the section restated in point form. The concept of statement which distinctly relates to discovery also explained. Dead body was recovered from an open place, 25 days a pistol was recovered from near about the same place. The whole evidence was regarded as a doubtful.
recoveries were held to be useless.298

The Patna High Court has held that the statements must be of a person who was then an accused. If at the time when the confession was made, the person making it was not an accused person; the statement would not be admissible. A husband who fatally assaulted his wife immediately went to the police station and stated “I went into the west facing room and finding my wife sitting, wounded her and her become senseless”. In consequences of this information the Sub-Inspector went to the house of the informant and found the corpse of the woman in that room. It was held that as the informant had not, up to the time of making the statement, been in the custody of a police officer, the statement was not admissible.299 The Bombay high court has dissented this view and has held that “the words information received from a person accused of any offence cannot be read to mean that he must be an accused when he gives the information but would include a person if he becomes subsequently an accused person, at the time when that statement is sought to be received in evidence against him. Where a person goes to a police officer and makes a statement which shows that an offence has been committed by him, he accuses himself and though he is formally not arrested, since he is not free to move wherever he likes after disclosure of the information to the police he must be deemed to be in custody of the police within this section.”300

3.4.4.4 “In the Custody of Police-Officer”

This section does not apply to information given to police by an accused person who was not in custody at the time it was given.301 The submission of a person to the custody of a police officer within the terms of Sec. 46(1) of the

298 State of Haryana v. Sher Singh, AIR (1981) S.C. 1021 : (1981) Cr. L.J. 714, mere failure on the part of police to interrogate the accused person at whose instance the weapon was recovered was not regarded as a justification for concluding that the recovery was fake.

299 Sarabjit Singh v. State, (1998) Cr. L.J. 2231 (P&H), recovery made in consequences of discloser statement made at a time when the maker of the statement was neither accused of any offence nor under arrest, the statement and recovery were held to be not admissible.


The Code of Criminal Procedure is ‘custody’ within the meaning of this section. The word ‘custody’ in this section does not mean physical custody by arrest. “As soon as the accused or the suspected person comes into the hands of the police officer, he is, in the absence of clear evidence to the contrary, no longer at liberty, and is therefore in custody within the meaning of Sec. 26 and 27.” In the case of mere suspect, “who have not been formally charged with any offence or arrested under any section of the code of criminal procedure, their presence with the police officer under some restraint amounts to custody.” “Custody, connotes some idea of restrain on the on the movement of person whether by word or action and does not means custody after formal restraint.” “Even indirect control over the movements of the suspect by the police would amount to police custody.” “Custody, does not necessarily mean detention or confinement. A person who makes a statement to a police officer voluntarily confessing that he had committed an act which the penal law regards as an offence submits himself to the custody of the said officer is within the meaning of this section.”

The statement of an accused person in custody to a police officer as a result of which the murder weapon and a blood-stained bed sheet were recovered was held to be admissible in evidence even though it was taken by the officer without the presence of any witness.

3.4.4.5 “Such Information …as Relates Distinctly to the Fact…Discovered”

The word “distinctly”, means “indubitably”, “strictly” and “unmistakably”. The Supreme Court has held that “the information would consist of a statement made by the accused to the police-officer and the police-officer…

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308 Ashish Batham v. State of M.P., AIR 2002 S.C. 3206 : (2002) Cr. L.J. 4676, recovery of blood stained life and clothes alleged to be recovered on disclosure made by the accused person, but because the recovery was delayed and was made only after the second remand, doubtful evidentiary value.
officer is precluded from proving the information or part thereof unless it comes within the four corners of the section.”

In a case before the Supreme Court it was said: “during the investigation by police the main accused made a disclosure statement to the effect that he along with others had concealed the dead body of the victim in the stack of hay in the room and that he could get the same recovered. Except for the discovery of the dead body of the victim and no other portion of his statement implicating himself and others with the crime is admissible in the evidence. After the disclosure the statement was made by the main accused the proceeding of the discloser statements of the other accused persons were a wholly impermissible exercise and an obvious attempt to rope them in with the aid of Sec. 27. Since the information had already been given by the main accused in his discloser statement the statement of the other accused persons were not admissible in evidence because at the best they were leading to the rediscovery of a fact already disclosed and capable of discovery”.

Where dead body of the wife of the accused was recovered at his instance by digging his hut and he had been making pretences about her being missing and though the body was reduced to a Skelton, its structure and articles found along with it indicted its identity, the evidence was held to be admissible against the accused.

“The information which distinctly relates to the fact discovered is only admissible. But the statement should not be so truncated as to make it insensible. Information must be recorded and, it’s not recorded the exact information must be adduced through evidence.”

3.4.5. Confession made After Removal of Threat, Inducement, Etc. (Sec. 28)

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311 Ramkishan Mithanlal v. State of Bombay, (1954) 57 Bom. L.R. 600, the court can exhibit and look into only that portion of the statement which is related to disclosure, and not the whole statement.
“If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed it is relevant.”

This section deals with the validity of confession which is made after the effect of inducement is already over. Once the mind is set free from the fear created by threats of evil or from the hope of advantage from confessing (e.g. by lapse the time), any confession made is likely to be free and voluntary and there can hardly be any objection as to its validity. Thus, a confession which is rendered irrelevant under Sec. 24 may become relevant under this section. Sec. 28 lays down the conditions under which a confession rendered irrelevant by Sec. 24 may become relevant.

“A confession is admissible after the impression caused by inducement, etc., has been fully removed because it then becomes free and voluntary. The confession as mentioned in this section should be voluntary and received as a result of reflection and free determination, unaffected and non-induced by original threat or promise. Sec. 28 is an exception to Sec. 24 and hence its proper place should have been just after Sec. 24.”

Confession obtained by the person in authority from accused person exercising inducements or extending threats or promise of the kind mentioned in Sec. 24, are under our law irrelevant. The principle, on which this exclusion of the above kind of confession os based, is that an accused, more often under those circumstances, may be led to falsely incriminating himself having the immediate object of freeing himself from the domineering influence of the person in authority in whose charge he was for the nonce. Whether actually the inducement or threat or promise prompted an accused person to make a confession, is not a matter for close scrutiny it is enough if it appears that the confession was due to the inducement, threat or promise. The casual connection between the improper influences and the confession is not meant to be of mathematical certainty for if it is appears that the confession was engendered by such influences, then it will be
excluded from consideration so the consideration. So the considerations which
govern this matter are, whether inducements, threats or promises presided the
making of a confession, and whether they appear to have influenced and accused
to make confession\textsuperscript{315}.

There is another aspect of this matter which is dealt with in Sec. 28. It is
that an inducement, threat or promise once exercised, is not deemed to have a
lasting impression or effect on the accused. There is a scope of every possibility
for the impression created in the minds of an accused, on account of inducement,
threat or promises, to wane and make an accused a free agent to express his
violation. While dealing this kind of a question, a Judge or Magistrate has to
decide before hand, that the impression resulted from improper influence is fully
removed\textsuperscript{316}. The enquiry in this regard should be real and substantial and the
proof that the impression was removed, should be stronger than for the matter of
seeing whether a confession was evoked by an inducement, threat or promise.

Prof. Wigmore has the following passage regarding this subject; “the
exclusion of a confession necessarily assume

1. That the inducement, if it operated at all, was likely to produce a false
   confession, and

2. That it did in fact operate upon the mind of the person.

The question arising under the first of these elements – the nature of the
inducement- having been examined, it remains to notice those arising under the
second- the existence and operation of the inducement\textsuperscript{317}. Where an inducement
sufficient to exclude any confession obtained by it, has been offered, the question
often arises, whether a confession subsequent in time to the inducement was in
fact influenced by it. “It must be remembered that no attempt was ever made to

\textsuperscript{315} Sanjay Dutt (A-117) v. The State of Maharashtra, through CBI (STF), Bombay, AIR 2013 SC 2687.
\textsuperscript{316} Sit Rosaw v. Emperor, AIR 1936 Rang. 455: 37 Cr. L.J. 1137.
investigate the actual motive of the person confessing, or the part played by the inducement among other motives. The whole theory of the inducement rests on the probable effect, not actual effect, upon the person. While that inducement is held out if a confession is made, no enquiry is every made into the exact share or influence which the inducement had in evoking confession. Nevertheless, though there is no enquiry into the actuality of the operation of inducement, and though it is assumed that if it was there, it operated, we may often have to inquire whether in fact it was there at all i.e., present to the mind of the person confessing.” There are two kinds of cases in which the question may be raised. In the one kind, enquiry is “Did the inducement, for the person in hand, ever come into existence at all?” in other kind, the enquiry is “Was the inducement, for the person in hand, brought to an end before the confession was made?”

3.4.5.1 Scope of the Section

Sec. 28 serves as an exception to the rule contained in Sec. 24, and therefore its place should have been immediately after Sec. 24. But the arrangement in the Evidence Act appears to be that all confessions made irrelevant under it, are placed in juxtaposition while all confessions which are relevant are embodied in the Act, in a serial order. This principal is contained in “Stephen’s Digest of the Law of Evidence”, Art22. It is to the following effect: “A confession is deemed to be voluntary if it is shown to have been made after the complete removal of the impression produced by any inducement, threat or promise which would otherwise render it involuntary.” The impression may not linger for all times. So lapse of time may remove it. The result can be achieved by counter suggestions that the inducement or threats or promises are not going to benefit him, or by cautioning that a confession made by him will be used as evidence against him. So if a court by Judicious exercised of its mind, in a position to hold that the impression caused by an inducement or threat or promise

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318 Wigmore, 853.
319 R. v. Babulal, 6 All 509.
is fully removed, at the time of making of a confession by an accused, then such confession can be admitted as evidence. It is of the first importance, regarding this matter, to see that no trace of the effect of inducement etc., is lingering in the mind of the accused. What amounts to such total effacement of the impression and what circumstance can bring about such a result must necessarily be questions of fact and no cast iron rules can be predicated for this purpose. Thus a Magistrate merely telling the accused that he should not allow himself to be influenced by any inducement cannot be held to be sufficient to end the effects of an inducement.\footnote{Faiz Ahmed v. Emperor, AIR 1936 Lah.}

The section commence with the words “If such a confession as is referred to in Sec. 24 is made etc.”\footnote{Chandra Kumar Kankariya and Ors. v. State of M.P., 2006 (3) MPLJ 280.} What is the meaning of this expression? Is it necessary that the confession should have been actually made in pursuance of an inducement, threat or promise? The word confession in this section is used in its accepted sense with the only qualification that it should be one made to a person in authority, after an inducement, threat or promise was extended and when those factors were present which have a tendency to create a particular impression in the mind of the accused over whom they were used. Even such a confession is rendered relevant by this section if it is made after the impression referred above is fully removed.\footnote{R. v. Cheverton, (1862) 2 F and F 833.} This Section deals with the legality of confession which is made after the effect of inducement is already ended. Once the mind is set free from the apprehension created by threats of evil or from hopes of advantage from confessing any confession made is likely to be open and voluntary and there can barely be any doubt to its validity. It is necessary that the effect of threats or inducements has been completely removed and to the pleasure of the court. All promises or threats should have been inhibited.\footnote{Venkata Narayan v. Emperor, (1938) Mad. W.N. 24; Bhagirathi v. State of M.P., AIR 1950 M.P. 17.}

Where, by reason of exculpatory parts in the declaration, the declaration does not amount to a confession and, though not be relevant as a confession, it
can be incorporated in evidence if it is significant under any other section and
then it will not be striking that it was the result of some inducement, threat or
promise. This has been explained by the Supreme Court in a case in which a truck
operator admitted to the Customs Officers that his truck was transport contraband
but he did not know how it came there. The declaration being not a confession in
the real sense of the word was not hit by Sec. 24 and was receivable as an
admission.\textsuperscript{324}

3.4.5.2 The Meaning of word “Fully”

The word “Fully” in Sec. 28 is significant. It means “thoroughly”,
“completely”, “entirely”, so as not to leave any impression created by the torture
or fear, “for a confession forced from the mind by flattery of hope or by the
torture of fear comes in so questionable a shape that no credit can be given to
it”.\textsuperscript{325} This Section cannot be applied “if there is every reason to believe that the
warning by the Magistrate did not remove the impression caused by the
inducement.”\textsuperscript{326} In the case reported in \textit{Shobha Param kochhi v. State}\textsuperscript{327} as “the
impression created in the mind of the prisoners by the torture of fear had not been
removed” in the short interval between the beating given by the Sub-Inspector and
the recording of the confession the court discarded the confession altogether.

3.4.5.3 Was the inducement brought to an end?

According to Prof. Wigmore here “five questions may arise:

1. Must it be shown clearly that an improper inducement, once offered,
washed brought to an end?

2. Are there any situations in which this showing will be regarded as
impossible, and thus the inducement, once made vitiates any further
confession of that person?

3. Can the same person who has offered inducement put an end to it so as
to make admissible a confession afterwards made to himself?

\textsuperscript{325} \textit{Bhagirath v. State of M.P.,} AIR 1959 M.P. 17.
\textsuperscript{326} \textit{Gulam Hussain Shaikh Chougule v. S. Reynolds, Superintendent of Customs, Marmoga,}
AIR 2001 SC 2930.
\textsuperscript{327} 1954 M.P. 125.
4. Are confessions made subsequently, but to a person different from the one offering the inducement, to be treated as not made under the inducement, or must it be shown to have negative by the second person?

5. What suffice, in general, to end the inducement?"\(^{328}\)

**3.4.5.4 Person who has offered Inducement can put an end to it.**

It has not been decided specifically whether the same person may put an end to an inducement of his own creating. But there is no reason why he cannot. "Where a Magistrate told a prisoner that if he did not strike the fatal blow, and would tell all he knew, he would use his influence to protect him, but afterward communicated to the prisoner a letter from the Secretary of State declining to give pardon, a subsequent confession was received."\(^{329}\)

**3.4.5.5 Inducement offered by one person and confession made to another.**

"There is on principle, no reason for assuming that a promise or a threat made by one person will be treated by the accused as equally to be attributed to some other person who had no share in the others conduct and shows no power or inclination to corroborate his promise or threat. Nevertheless, the inducement may, on the facts, prove to be in effect the second person’s as much as the first ones. it should thus be question to be determined in each case; no general rule can be laid down".\(^{330}\)

**3.4.5.6 What suffices in general to end the impression created by inducement, etc.?**

The questions whether the impression caused by inducement, threat or promise is fully removed are a question of fact and it is for the trial Judge to decide it with reference to all the material placed before him. On account of an intervening caution given by some person of superior authority (but not of equal or inferior authority) to the person holding out the inducement, etc., a confession subsequently made be admissible.

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\(^{328}\) Prof. Wigmore, on *Law of Evidence* at p. 855.


\(^{330}\) *R. v. Tyler* 1 C & P. 129; *R. v. Clewes*, 4C & P 223.
Another question arises in the mind that retracted confession if to be excluded? A confession made to a magistrate but afterwards retracted should also be excluded if it does not appear that the influence which induced the first confession had ceased to operate on the accused mind.\footnote{Emperor v. Ganesh Chandra Goldar, 50 Cal. 127. Influence or impression may continue for a length of time and Magistrate’s warning may not have an immediately reassuring influence.}  

**3.4.6. Confession obtained by Deceit or Promise of Secrecy (Section 29).**

This section proceeds on the view that a confession made by a normal human being, whatever be the incentive for making it, will not lack probative force, if only the authorities capable of influencing the course of a legal proceeding against him, have no hand in the making thereof. The inhibition of an offender to make a confession is not so much due to disinclination to speak the truth as to a fear of punishment and to the ignominy that surrounds a demonstrated guilt. There are a few hardened criminals who have such adamantine firmness of mind as not to give out their mind under the influence of remorse. But even such men may yield to deception or a solemn promise to maintain secrecy and make a confession. Such means, if adopted to obtain a confession, may be highly reprehensible, but it cannot be said that the resultant confession is either not made of his own accord by the accused or that it lacks the element of truth.\footnote{See, e.g. Sarkar, LAW OF EVIDENCE, at pg. no. 730 (17th ed. 2011).}

This provision in its widest import may appear not to preclude a confession obtained by deception or other invalidating origins, mentioned in section 29, by persons in authority. But a practice of deception or promise of secrecy is scarcely distinguishable from the elements mentioned in section 24. So this section cannot have any application to confession which is made to persons in authority. Primarily, extra-judicial confessions which are made to those who are not “person in authority” come within the ambit of section 29.

“The evidence of a policeman, who overheard a prisoner’s statement made
in another room, is not legally inadmissible.”  

A person charged with an offence and while in prison, made confession to a fellow prisoner. The police overheard it by means of a hole bored in the wall, *Held*, though with hesitation that the confession was admissible in evidence. “Where an accused person is overheard muttering something to himself or saying something to his wife or to any other person in confidence, that statement is admissible in evidence.”

**3.5 “Consideration of Proved Confession affecting person making it etc.”**

When more than one person are jointly tried for one and the same offence or offences they are called co-accused. Any one of them on liberty to confess to his own guilt and his confession will have the full force of evidence against him. But when he records a confession implicating himself as well his co-accused, that is called the confession of co-accused and the question arises what is its value against other non-confessing co-accused. Some guidance is to be found in section 30, which provides that such a confession is relevant against all the accused persons.

The section says nothing, nor would it have been desirable to say anything about the evidentiary value of the confession of a co-accused. All that the section says and was necessary to say is that “such confession may be taken into consideration against all of them”, leaving the weight of confession to the discretion of the court. Their lordship of the Privy Council observed: “the confession may be considered by the court, but the section does not say that the confession is to amount to proof; clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the

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336  *State of T.N. v. Nalini*, 1999 Cri L.J. 3124 (S.C.), under Sec. 15 of the TADA Act, 1987, the confession of a co-accused had been given the status of substantive evidence against other co-accused person. But the quality of the evidence will count. The weight to attach is a matter of appreciation of and as a matter of precaution the court may demand some corroboration.
case; it can be put into the scale and weight with the other evidence.”

“Sec. 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a weak type. It does not indeed come within the definition of “evidence” contained in Sec. 3, Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by the cross-examination.”

“To attract the provisions of Sec. 30, it should for all purposes be a confession, that is a statement containing an admission of guilt and not merely a statement raising the inference with regard to such guilt. The evidence of the co-accused cannot be considered under Sec. 30 of the Evidence Act, where he was not tried jointly with the accused and where he did not make a statement incriminating him along with the accused.” As noted, the confession of a co-accused does not come within the definition of evidence contained in Sec.3 of the Act. “It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is only when a person admits guilt to the fullest extent, and exposes himself to the pains and penalties provided for this guilt, there is a guarantee for the truth. The legislature provides that his statement may be considered against his fellow accused charged with the same crime.”

3.6. Conclusion

Section 17 to 30 deals with admissions generally though Sec. 24 to 30 deals with confession as distinguish from admission. It may be said that a confession is a species of which admission is the genus. Any admission by an accused of an incriminating fact falls with the scope of section 18 to 21 of the Indian Evidence Act and is relevant. A confession is an admission in terms of the

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office itself or at any rates substantially all facts which constitute the offence. Section 24, 25 & 26 provide circumstances under which confession is not relevant or cannot prove. Thus new scheme of the Evidence Act is to treat confession Prime Facie as relevant on provable under the category of admission and to provide under Section 24, 25 & 26. The circumstances in which they are relevant on provable. This method of dealing with confession adopted by India Legislature shows a marked departure from the approach of English Law to the admissibility of confession. A statement on a declaration of an independent fact from which guilt may be inferred is not a confession. It is an admission of a particular fact pertinent to the issue and evidence of that fact, but it is not confession. The distinction between confession and admission in criminal law is substantial one confession involves a voluntary acknowledgement of guilt. To make an admission a confession, it must amount to a clear acknowledgement of guilt. To constitute a confession it is not necessary that a person confessing should make a full and explicit admission of guilt. Confession generally means an acknowledgement of guilt while admission is of same fact not involving criminal intent.339