SUMMARY

Awarding punishment is the main object of criminal justice system. There are various stages involved in prosecuting a person. Sometimes, during investigation by police, an accused confesses his/her fault/guilt. But all confessions are not voluntary.

The bare confession of accused is sufficient evidence to warrant his conviction even though, there is no corroborative testimony of his having committed of crime with which the accused stands. But this maximum lurks, the cruelest fallacy. A fallacy which has exhibited itself practically in the form of torture.

Even if where confession is voluntary that is to say where it has not been obtained of the person by instrumentality of his fellowman, how often has experience proved that a party has confessed himself through motive of false hopes of variety, or even under the influence of insanity or hallucination.

It is the duty of the every court to enquire very carefully into all circumstances which lead to the making of the confessions and length of the time during which an accused person is in the police custody before he makes the confession. It is the magistrate’s duty to satisfy himself in every reasonable way that confession is made voluntarily and it is the duty of the magistrate to record those questions and answers by means he was satisfied that the confession is in fact voluntary.

The powers given to police officers in the Cr. P.C. are enormous. A police officer, out of enmity of spite or at the behest of local politician, may register even a patently false case against innocent and law abiding people and may arrest them and may compel them to confess the offence. It becomes very
difficult for the innocent person to come out unscathed either from police custody or judicial custody.

The use by the state of an improperly obtained confession may constitute to deny the “due process of law or the procedure established by law” under Article 21 of the Indian Constitution.” The requirement of conformity to fundamental standard of decision in criminal trial was made operative against the state by the Constitutional guarantees of the Indian Constitution.

The Supreme Court and High Court should act as watch-dogs to protect the fundamental rights of the people which are supreme to all irrespective of all caste, creed, religion, race etc. The confession may be judicial which is made before court or it may be extra judicial, which is made out of court.

We know, term ‘confession’ has not been defined in the Evidence Act but the explanation given by the Privy Council in Pakala Narayan Swami’s case nearly seven decades earlier still holds good. As per decision the confessions are admission of guilt by the accused in a criminal case. It is either admission in terms of the offence or at any rate substantially all the facts which constitute the offence. While separating the inculpatory from the exculpatory portion of the statement, the admission as a whole must satisfy the requirement of admitting substantially all the facts constituting the offence.

The provisions under the Evidence Act running from Section 24 to 30 in its continuity convey, in short, that the inculpatory statement must have been made by the accused himself or herself and such a statement must be truthful and out of free volition of the accused. To satisfy the latter requirement, the confession must be free from the influence of any threat, inducement, promise. Accordingly, confessions made before the Police have been statutorily declared as inadmissible in evidence.
When we read the approach of the Higher Judiciary on extra judicial confessions from the reported case law, we find that the tests of voluntaries and truthfulness of the inculpatory statement made by the accused are dovetailed. Our analysis of the Supreme Court judgments from those different angles have laid down five judicial principles emerging from them:

1. An extra judicial confession to be admissible in evidence and one to be relied upon must fulfill the requirements of its voluntary character and truthfulness. The latter turns to be more important and the former is read from it in cases of retracted extra judicial confessions.

2. It is required to be established from the facts and evidence produced as to whether the accused made the extra judicial confession or not.

3. The inculpatory statement when separated from the exculpatory statement of the accused must constitute the confession when tested on the requirements of Section 24.

4. The veracity of the extra judicial confession is read from the credibility of the persons to whom made, the circumstances in which made and the explanations of the delay between the receipt of confession by a person and its transmission to the Police.

5. Extra judicial confession if voluntary and true can be a sufficient evidence for base of conviction of the accused but if the same is corroborated with some additional independent evidence, the role of prudence also gets thereby satisfied. In the case of a retracted extra-judicial confession such a corroboration turns to be all the more important to take this rule of prudence the place of a rule of law.

Extra judicial confessions, therefore, are sufficient piece of evidence to convict an accused if they satisfy the tests of voluntaries and truthfulness.
Reading the approach of lower judiciary vis-à-vis the guidelines of the Supreme Court of India on extra judicial confessions, this researcher has seen 65 files, where extra judicial confession was a piece of evidence. All such cases were noted to be offences under the *Indian Penal Code*. In all such cases, death of the victim was caused, making direct evidence missing. 75 per cent of these cases were straightway murder cases and the remaining 25 per cent the other categories of offences involving the death of the victim of the crime. Such offences were abetment of murder and dowry deaths. As to why such extra judicial confessions are made by the accused persons, the statistical data of this study has revealed that as many as 75 per cent accept people do so only to save themselves from police harassment, 2 statement make such confessions under the voice of their conscience whereas the remaining 3.12 per cent do so on the advice of other persons.

Testing the observations of our study on the touchstone of judicial guidelines, we note the following points of deviation:

1. The extra judicial confessions in a good many cases are not the inculpatory statements voluntarily made by the accused persons. Therefore, their truthfulness also remains doubtful.

2. In large number of extra judicial confessions, the confessions are actually made by the accused persons to the Police. It is the latter who converts it to an extra judicial confession.

3. There remain some proportion of cases, though not very large, where the statement of the accused does not actually constitute a confession but yet it attracts the rigorous flowing therefrom.

4. The veracity of the extra judicial confessions normally remains to be suspicious and shaky.
5. The Judicial Officers normally place conviction on a corroborated extra judicial confession alone but in some cases even an uncorroborated retracted extra-judicial confession is made the sole basis of conviction of the accused thereby violating the rule of law.

Recording comments and opinions of the Judicial Officers on the deviant points observed by this research study, all the Judicial Officers of our sample believe that some evidence weight must be given to extra judicial confessions to satisfy the interest of victims of the crime as a part of the over-all societal interest. Not agreeing with the convictions solely based on the retracted extra-judicial confessions, the sampled Judicial Officers name it a ‘too much bias’ in favour of the victim. However, all such dispensers of justice want the continuation of statutory provisions on extra-judicial confessions in the interest of proper investigation of the criminal cases and to satisfy the vengeance of the victims of offences. They hold this view even fully knowing that such confessions are actually confessions before the Police which are inadmissible in evidence and non-est in the eyes of law.

In India, we do have specialized investigating agencies like the Central Bureau of Investigations (for short CBI) and crime branch in the state police setup. Police has also formed Special Investigation Units (SIU) at some places to investigate heinous crimes.

What is required is a separate specialized wing consisting of officers well trained in modern techniques of investigation including use of scientific gadgets and equipment and also sensitive to the need of a more humane face of the police organization officers who have good social and educational background preferably a degree in law.

The Investigative Wing referred to above has to be manned by officers of a senior rank rather than by Assistant Sub-Inspectors and Head Constables
who carry out the bulk of investigations today. The need for the investigators to be educationally well qualified and technically skilful can not be over emphasized.

The investigators are persons who are statutorily armed with powers to deal with personal liberty of citizens. The powers of investigators today have to be assigned and exercised keeping the cherished constitutional goal of liberty in mind and the hangover of colonial practices has to be consciously shed.

Thus the ideal investigative wing would be separate wing of officers not below the rank of Deputy Superintendent of Police with at least a bachelor’s degree and preferable a law degree having obtained intensive training in methods of investigation. It is submitted that conduct of all investigations especially those which require arrest and search of persons namely the non-bailable offences by officers of such a wing shall not only ensure more efficient investigations but shall make a world of difference to the image of police thereby instilling a great measure of public confidence in the police.

It is further submitted that the purpose of tackling police oppression during investigation of offences shall not be served unless the investigators or most of them are recruited directly from the Bar or other non-police sectors, at a level above that of an Inspector of Police. Suitably qualified persons may not be available in the constabulary for promotions as they are recruited at a level where the prescribed minimum qualification is a pass in tenth standard.

It is to be emphasized even at the risk of repetition that amendments in the law relating to confessions, as suggested shall be useful only if a thorough reform of the structure and organization of the police is undertaken simultaneously. The provisions of the Evidence Act and the Cr. P.C. that have
stigmatized the police for more than a century and that too without any positive effect have to go but the reasons for the police force to have invited this stigma have also to be tackled. This can hopefully be achieved by redefining some of the powers and functions of the officers directly involved in investigations of crimes on the above lines.

It is generally admitted such extra-judicial confessions are normally a police device to move wheels of investigation where independent witnesses are missing or are not forthcoming. They feel satisfied that courts normally do not convict solely on the basis of extra-judicial confessions. The cases of our study decided otherwise, the advocates find them contrary to legal principles having binding force of law.

Considering all the theoretical and practical aspects of field of law the following suggestions would help to remove the discrepancies in justice system being done due to the lack of proper evidence.

1. Section 25 needs be repealed and alternative frame out adopted, which is both just and for and endeavors to strike a balance between the rights of individuals and freedoms of the police to carry an investigation in one effective manner.

2. The police personnel, who are authorized to undertake the task of investigation should be trained and educated regarding the essential requirements of a legal confession and the demands of the higher judiciary.

3. There should be addition of some more words, ‘coercion’, violence or torture in the body of section 24 and in the title.

4. The states should make accelerated and intensive efforts for adopting scientific means of investigations, whereby the investigation of complex and complicated cases, where no direct
evidence remains available, could be successfully solved and proved in the court of law.

5. Confessions should not be a tool of torture of the accused and therefore guiding principles for recording of principle of confession should be laid down in detail as accordance to Ried’s nine steps of interrogations.

6. Criminal investigation should be made more scientific and interrogation of the accused should be done by trained professionals including legal experts and trained psychologists.

7. The minimum educational qualifications required to join the investigative wing should be graduation in any subject preference being given to law graduate.

8. The performance of investigators should not be evaluated in the statistically on the basis of number of crimes solved. Further mere arrest of some persons or the other in connection with a reported criminal act without any consideration for the nature of evidence collected against him should not be taken as solving the crime.

9. The police personnel, who are authorized to undertake the task of investigation should be trained and educated regarding the essential requirements of a legal confession and the demands of the High Judiciary.

10. The Magistrate should also inquire about the truthfulness of confessional statement of accused with the help of some evidence sufficient for his personal satisfaction. When an accused made the confession statement regarding his committal of crime there are
many circumstances behind the curtain which much be cleared by the magistrate before recording the confessional statement. The statement given by the co-accused should be treated as piece of evidence against the accused.

11. The previous criminal record of accused should also be seen in awarding the quantum of punishment against the present alleged crime, because it must be borne in mind before giving benefit to accused that he must be not of habit to firstly commit the crime and then confess the same. Habitual offenders can easily play with the provisions of law.

12. The magistrate who is recording the confession should put the question before the accused to know about the real role discharged by him-Magistrate must come to conclusion regarding his commission of crime. Plain confession without any reason must not be and taken into evidence. It must be cleaned before recording confession that accused made confession only with his own conscience. He should not have made confession to save any other person.

13. The accused turned Govt. approver (prosecution witness who was originally a co-accused), should be given punishment at least of lesser quantum, because he has confessed the crime where excused by the prosecution, because he is an approver and with his help crime against co-accused is to be proved. But not to give any punishment to approver is not good. It may create an impression that accused/criminal may firstly commit the crime and can easily avoid punishment by turning approver.
14. Comparatively deep enquiry is needed about the truthfulness of confession in case of women and juveniles because they are easily or more effected by the undue influence coercion and fear. They are more soft than other criminals. So great care and caution should be taken before recording confession of women and juveniles.

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