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# HISTORICAL BACKGROUND ANALYSIS ON CONFESSION IN UNITED STATES, UNITED KINGDOM, AND INDIA

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## ABSTRACT

“Confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.”

– Justice Stephen (Digest of the Law of Evidence)<sup>1</sup>

The concept of confession in legal systems has evolved over centuries, reflecting shifting views on justice, evidence, and individual rights. In ancient civilizations such as Mesopotamia and Egypt, confessions were often obtained through divine rituals or coercion, regarded as direct admissions of guilt essential for resolving disputes. In Roman law, confession was recognized as potent evidence, sometimes obtained through torture to ensure compliance and truthfulness. During the medieval period in Europe, confessions were central to inquisitorial legal systems, where ecclesiastical courts heavily relied on them to prosecute heresy and other crimes. The use of coercive methods, however, often raised ethical and reliability concerns. With the Enlightenment era and the rise of human rights philosophies, the legal approach to confession shifted toward protecting individuals from self-incrimination, as seen in legal principles such as the Miranda rights<sup>2</sup> in the United States and the privilege against self-incrimination in common law. Modern legal systems emphasize the voluntary nature of confessions, considering them valid only if obtained without coercion, deception, or undue influence. This historical evolution underscores the delicate balance between securing justice and safeguarding individual rights, highlighting confession's complex role in legal processes.

**Keywords:** Confession, Miranda rights, Self-Incrimination, Voluntary, Coercion, inducement.

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<sup>1</sup> Arya & Shivshankar, Study on Confession under Indian Evidence Act, 1872, INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS ISSN: 1314-3395, Volume 120, No. 5, 2018.

<sup>2</sup> 384 U.S. 436 (1966).

## 1. Introduction

When the court of the Star Chamber was abolished later on, During the mid-Seventeenth Century, the beliefs that a defendant ought to be subjected On Oath and that no evidence should be obtained from him had been established in England. The concept of the passage of time evolved into a right of a Testify against self-incrimination. The concept was brought into the American Legal framework and integrated into her common Law.

## 2. Historical Growth in United States of America

As a British colony, American legal systems inherited English common law principles. This included the admissibility of confessions in criminal trials, provided they were given voluntarily. Forced confessions were often viewed with skepticism.

**Post-Revolutionary Era (1776-1789):** After independence, the U.S. began developing its own legal framework. The Constitution and the Bill of Rights (ratified in 1791) laid the foundation for how confessions were treated under the law.

### 2.1 Fifth Amendment

The right to silence guaranteed by the Fifth Amendment greatly affects the case's outcome. Whether a suspect says so or not. Because one must explicitly invoke their Fifth Amendment rights verbally, *Salinas v. Texas* (2013) found that silence in a noncustodial context amounts to an admission of guilt. As a result, this ruling is in favor of the prosecution using silence as a confession to strengthen their case. When a suspect exercises their right to remain silent, it can help them avoid implicating themselves and work with their legal counsel to develop their plan. A suspect runs the danger of admitting law enforcement add information to their confession if they don't verbally assert their right to remain silent, which also introduces flaws into the process (Griffin, 2016). When a suspect does not expressly claim silence as a right, the prosecution may use it as proof of guilt in court. Then, it can be used Against a suspect at trial to "impeach [their] excuse, explanation, or alibi" (Griffin, 2016, p. 708). Additionally, according to Griffin (2016), p. 708, being silent in response to a statement may "qualify as a defendant's adoption of that Statement for purposes of the exemption of a party's own admissions from the hearsay Prohibition." Suspects do, then, have the right to silence, but they must first establish this privilege and then maintain complete silence until they have had a chance to speak with legal counsel. This will reduce the possibility of false confessions. This will minimize false confession risk.

With effect from December 15, 1791, the V amendment to the US Constitution included the prohibition against self-incrimination. The pertinent section reads as follows: "No person shall be compelled in any criminal case to be a witness against himself..."

## 2.2 Sixth Amendment

According to the Sixth Amendment, every suspect has the right to legal representation prior to being questioned. In addition to protecting a suspect's rights, the chance to speak with legal counsel enables the team to consider feasible strategies they can use during the interrogation and, if necessary, during the subsequent legal proceedings. Developing a plan early on can assist defendants in sticking to it throughout their legal proceedings, whether that approach involves defending themselves or claiming innocence. Because the lawyer can help the defendant prepare and know what to expect during questioning, it can also help prevent false confessions.

Following that, the court determined that "the aim of the requirement of due process is not to keep out false evidence but also to save basic fundamental unfairness in the use of evidence" in the other case of *Lisenba v. California*<sup>3</sup>

## 2.3 Prerequisites for Confessions to Be Inadmissible

In the decision of *Brown v. Mississippi*<sup>4</sup>, decided in 1936, the US Supreme Court set some rules. Because the court lacks a mechanism to assess whether the confession was offered voluntarily or not, confessional statements obtained by investigative authorities that disobey these principles will not be allowed as evidence in any criminal proceeding. This development reached its prime in 1966, starting with the previously described instance. A confession would not be accepted as evidence under the following circumstances, according to the Supreme Court:

*Chambers v. Florida*<sup>5</sup> was a landmark ruling by the U.S. Supreme Court that reversed the convictions of four African American men accused of murder. The Court held that their confessions, obtained after days of prolonged detention and coercion without access to legal counsel, were inadmissible as they violated the Due Process Clause of the Fourteenth Amendment. The decision emphasized the Importance of fair legal procedures and set a

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<sup>3</sup> 314 U.S. 219 (1914).

<sup>4</sup> 297 U.S. 278 (1936).

<sup>5</sup> 309 U.S. 227 (1940).

precedent for the protection of individuals against coerced confessions, advancing civil rights and reinforcing the principles of due process.

*Ashcraft v. Tennessee*<sup>6</sup>, the U.S. Supreme Court overturned the conviction of the defendant, Ashcraft, on the grounds that his confession was coerced and violated the Due Process Clause of the Fourteenth Amendment. The Court determined that Ashcraft's confession, obtained after 36 hours of continuous interrogation without rest, was inadmissible as it was not voluntary. This case set a significant precedent for protecting individuals from coerced confessions and ensuring that due process rights are upheld during interrogations.

*McNabb v. United States*<sup>7</sup>, the U.S. Supreme Court held that confessions obtained during an unnecessary delay between arrest and arraignment were inadmissible in federal court. The Court ruled in favor of the defendants, emphasizing that federal authorities must adhere to procedural safeguards and promptly bring arrested individuals before a magistrate. This decision established what is known as the “McNabb-Mallory Rule”, which prohibits the admission of confessions obtained during periods of illegal detention. The case underscored the importance of procedural fairness and compliance with federal rules governing arrest and detention.

*Miranda v. Arizona*<sup>8</sup>, The outcome of *Miranda v. Arizona* (1966) was a landmark decision by the U.S. Supreme Court. The Court ruled in a 5-4 decision that the Fifth Amendment requires law enforcement officials to inform a suspect of their rights to silence and legal counsel before interrogation. This decision established the Miranda Rights, which include:

1. The right to remain silent.
2. Anything said can be used against the individual in a court of law.
3. The right to an attorney.
4. If the individual cannot afford an attorney, one will be provided.

The ruling overturned Ernesto Miranda's conviction because he had not been informed of his rights during his interrogation. This case significantly impacted U.S. police procedures and continues to influence the criminal justice system.

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<sup>6</sup> 322 U.S. 143(1944).

<sup>7</sup> 318 U.S.322 (1943).

<sup>8</sup> 384 U.S. 436 (1966).

## 2.4 Additional Issues with Confession Admission in the U.S.A

In *Rogers v. Richmond*<sup>9</sup>, The validity of the defendant's confessions was found to be unquestionably true despite independent corroborating evidence, but "in a number of the cases in which the authority of the Due Processes has bound us to reverse state Convictions linking the use of confessions obtained by the non-permissible Methods, confessions were found to be the creation of constitutionally non-permissible methods in their encouragement." The many unique features of U.S.A. law pertaining to prison confessions are recognized by all common law countries, including the United Kingdom and India. One notable aspect is the elimination of self-harming remarks made while in police custody.

In *Lynumn v. Illinois*<sup>10</sup>, "The accused was acquitted, but the narcotics substance was really found from her custody because the court ruled that a confession made by someone else prior to the recovery of the drug from her custody was inadmissible."

## 2.5 Dickersons case summary

*Dickerson v. United States*<sup>11</sup> is a landmark decision by the United States Supreme Court that upheld the requirement for law enforcement officers to inform suspects of their Miranda rights before questioning them. Charles Dickerson was arrested for a bank robbery. During his arrest, he was not immediately informed of his Miranda rights, but was later given the warning. He made a statement confessing to the crime, which was used against him in court. Dickerson argued that his confession should be excluded because the warning came too late, violating the Miranda decision. The main legal question was whether the federal law (specifically, 18 U.S.C. 3501), which allowed confessions to be admitted if made voluntarily, could override the Miranda decision, which requires a warning before questioning a suspect in custody. In a 7-2 ruling, the Supreme Court held that Miranda rights are a constitutional requirement based on the Fifth Amendment's protection against self-incrimination. The Court ruled that the federal law could not supersede the Miranda decision, reaffirming that the Miranda warnings are a necessary safeguard in criminal cases. The decision reinforced the importance of Miranda rights, ensuring that suspects are aware of their right to remain silent and their right to an attorney during custodial interrogations. Despite some legislative attempts to modify or override Miranda, this case solidified its place as a fundamental safeguard in the criminal

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<sup>9</sup> 365 U.S. 534 (1961).

<sup>10</sup> 372 U.S. 528 (1963).

<sup>11</sup> 530 US 428 (2000).

justice system.

### 3. Historical Growth in England

The idea against compelled self-incrimination was formed in England at the start of the 19<sup>th</sup> century. We can clearly observe the development of the right against self-incrimination in England. This was placed in relation to the contentious priest courts, the Star Chamber, and the High Commission, which were viewed as irrational due to their authority over political and religious opponents. Judges have the authority to cross-examine a defendant who had made a pledge. Refusing to testify might result in punishment for the suspect, and it was said that these courts permitted the use of torture during questioning. Furthermore, it is common for interrogations to occur prior to the filing of accusations and without the accused person's knowledge of the alleged actions. The Star Chamber was disbanded in 1640 by Oliver Cromwell's Parliamentary government, and the judiciary subsequently revised its stance on the accused and the exclusion of forced confessions from the evidence. The history of the law pertaining to confession was broken down into four phases by the renowned American jurist John Henry Wigmore<sup>12</sup>. During the Tudor and Stuart eras, there was initially no control over inclusion. It was discovered after 1750 that several confessions had been disregarded due to their unreliability. The third stage saw the development of the exclusionary rule, which states that irrational confessions are not admissible in court. However, this rule has several exceptions, so not all confessions are discarded.

Used as evidence against the accused in criminal proceedings. Baren Parke states, "A confession must be completely voluntary to be admissible in evidence under the Law of England, and there is no doubt that any inducement in the form of a promise or threat held out by a person in authority invalidates a confession."<sup>13</sup>

The law's growth was essentially steady by the end of the 19<sup>th</sup> century. A basic concept was to exclude involuntary confessions. With "involuntary confessions," we mean implies "a confession brought on by coercion or fear from a higher authority." The Privy Council explained in *Abriham v. King*,<sup>14</sup> that "No statement made by an accused person can be used against him in court unless the prosecution can demonstrate that the statement was made voluntarily in the sense that it has not been obtained from him either by apprehension of

<sup>12</sup> John Henry Wigmore, "Treaties on Anglo American system of evidence in Trials"

<sup>13</sup> *R. v. Baldry* (1852) 2 Den. 430.

<sup>14</sup> AIR 1914, PC 155

injustice or hope of advantage exercised or held out by the authority." This rule of evidence was acknowledged as a positive rule in English criminal law.

### **3.1 Judges Rules in England**

The practice standards established by Lord Parker C.J. in *Callis v. Gunn*<sup>15</sup> in 1964 were crucial for judges in their day-to-day work. Extorting confessions must be eliminated from substantial evidence in a case, as was explicitly stated in this instance. These regulations were created for judges, who can exercise some control over police operations during an investigation by exercising the authority granted to them. These regulations were based only on the presiding officer of the court's judgment and without any legal support. These regulations state that every citizen has an obligation to assist law enforcement in identifying and apprehending offenders; nevertheless, they also grant several rights to the accused who is being held by the authorities (Police authority). The person in custody was entitled to speak with an advocate. No comment made by a person may be entered into evidence. individual throughout the inquiry if such declarations were made under duress or with the assurance of authority. It has been shown that this rule is applicable in every situation and is superseding. This procedure for accepting confessions was created in order to ascertain the truth or to ensure a fair trial. Police officers have the right to question anyone, whether or not they are in jail and whether or not they are facing criminal charges. When police officers question someone and gather information that raises questions in their minds, they remind the person that he has the right to remain silent. If the person decides to confess after receiving this warning, the confession will be used against him. The warning that was provided to the accused is explicit and must be spoken to him. Additionally stipulated was the format for recording the accused person's confessional statements.

## **4. Legislative provision regarding Confession**

The Police and Criminal Evidence Act of 1984 was enacted to give the Judges' Rules legal authority. The Police and Criminal Evidence Act of 1984's Sections 76 and 82(1) address the provisions pertaining to the confessional statements' inclusion or exclusion.

### **Section 76<sup>16</sup>**

(1) In any proceedings a confession made by an accused person may be given in evidence

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<sup>15</sup> (1964) 1 QB 495

<sup>16</sup> See Section 76 of the Police and Criminal Evidence Act, 1984.

against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2) above.

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence—

(a) of any facts discovered as a result of the confession; or

(b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) above applies—

(a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and

(b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Part VII of this Act shall prejudice the admissibility of a confession made by an accused person.

(8) In this section “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

**Section 82(1)<sup>17</sup>**

“confession”, includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;

The complete exclusion policy began to give way to the English courts' discretionary authority at the start of the 19th century. The court in *King v. Best*<sup>18</sup> unquestionably rejected a stringent exclusionary rule, which marked the beginning of a new period of inconsistent rulings. The rulings established a process for recording confessions, and the brutality of this process excludes confessional statements.

**5. Historical Growth in INDIA**

The law was first codified in India in the latter part of the 1800s. Before then, people lived in presidential towns, which were subject to local regulations. For the first time, several English legal provisions were introduced by the Royal Charter. Sir J.F. Stephens<sup>105</sup> created the current Indian Evidence Act in 1872. However, There was no Act that applied English law to India on any topic whatsoever. The Indian legislature approved many acts in the first half of the eighteenth century that included the same changes that Lords Denman and Brougham had already implemented in England. Some rules related to evidence are found in the code enacted in 1861 and in the Criminal Procedure Regulation of 1817.

The statute that prohibited confessions from being used as evidence had peaked in England at this time. Every time they handed down convictions, the courts were willingly discarding custodial confessions and faith in favor of other independent evidence. However, their insertion was not prohibited by law. The Fifth Amendment, which was enacted at the time in the United States of America, states that no one is required to make self-incriminating or remarks that might be used against them. However, a century later, the point of complete exclusion was attained.

Apparently, "influenced by the opinion in the U.K. with an additional factor of the eroding integrity of the police, particularly the level of the police at which inquiry of offences was carried out," Indian lawmakers took the bold decision to formally ban all confessions made to the police, regardless of whether they are

1. Whether true or not,

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<sup>17</sup> Section 82(1) of the police and criminal act 1984

<sup>18</sup> (1909) 1 KB, 692 (CCA).

2. either voluntarily or involuntarily,
3. not compulsion or torture, and
4. threat or incentive,

but just the presence of a police officer or even the accused's detention by the police was seen to be sufficient to elicit an opinion—and an involuntariness view that could be challenged.

### **5.1 Code of Criminal Procedure, 1861**

Section 146 of the Criminal Procedure Code of 1861 has other relevant prohibitions, including the prohibition of "a police officer or any other person offering any encouragement by threat or promise or otherwise to any accused person to make any discovery or confession." Section 147 states that a police officer is not allowed to record any admissions, confessions, or declarations made by someone who is suspected of a crime unless it is for his own knowledge, information, or direction. Only administrative restrictions that applied to police personnel were contained in these two sections. However, Section 148 explicitly states that "no confession or admission of a guilty person made to a police officer might be used as evidence against a person accused of any offense." In Section 149, the rule's scope was further expanded by prohibiting "any confessions or admissions of guilt made by an accused person to anybody at the same time as he was in the custody of police apart from when made in the immediate presence of a magistrate from being admitted as evidence."

Section 150, however, "fixed out an exception to both of these rules in cases where any fact is shown to be revealed by the police as a result of an information received from the accused person. In such cases, a part of the information that is definitely related to the facts supported was made admissible whether or not it amounted to confession."

Therefore, "all confessions made to the police or in police custody were not admissible in evidence," according to the fundamental rule. However, a simple confession that revealed a pertinent truth was only allowed to be admitted to the point that it was connected to the discovery, most likely because the finding validates its veracity. However, a confession would need to be documented before any information could be gleaned from it. The taped confession would be duplicated in court and used as evidence in the event that a discovery was made.

It is difficult to reconcile this clause with Section 147, which forbade police personnel from recording confessions. Recording all confessions under the guise of "for his own benefit" is the only workable solution. Information and advice clause, and then to provide evidence for it later

on. These confessional portions were made admissible as evidence by Section 150 of the aforementioned Act; however, this rule did not exempt the clauses outlined in Section 146. The voluntariness principle remained unwavering. It was decided that even if a confession led to the discovery of facts, it could not be used as evidence since it was acquired by a police officer from a prisoner using coercion and assurances of safety in violation of Section 146 of the 1861 Code.

### **5.2 The India Evidence Act 1872**

The Indian Evidence Act was prepared by Sir J.F. Stephen, although it wasn't the first bill; the Indian Law Commission had already drafted one in 1868. Due to its numerous flaws and unsuitability for India, the measure was never enacted into law. Thus, in 1872, J.F. Stephen's legislation became India's First Evidence Law.

Sections 25, 26, and 27 of the Indian Evidence Act and sections 23, 23(1), 23(2) of BSA, which are comparable to Sections 148, 149, and 150 of the Code of 1861, respectively, carried over the general "elimination of custodial confessions from evidence as well as the exemption made in case of confessions primary to discovery of any fact." The basic procedural regulations pertaining to criminal analysis, such as Sections 146 and 147 of the Code of 1861, were not included in the Act since it was created to establish the body of laws governing evidence. However, Section 24 of evidence act and section 22(1) of BNS, declared that any confessions made by an accused individual under duress from a threat or promise from a higher authority were irrelevant in a criminal prosecution. The restriction applies regardless of whether the individual making the threat or promise is a police officer or not, as well as whether the accused was being held by the police when the confession was made.

### **5.3 Code of Criminal Procedure 1898**

The first version of the Code of Criminal Procedure was passed in 1861, After the Indian Penal Code was passed in 1860, Act 10 of 1882 replaced the Code, which was then replaced again in 1898 by the Code of Criminal Procedure Amendment Act of 1923.

The First Law Commission made important recommendations for criminal justice reform in its 14th Report (1958), and the Code was altered after the committee's recommendations were taken into account.

In response to the Fifth Law Commission's Forty-First Report, Parliament passed the 1973

Code of Criminal Process.

Section 162 Of CrPC and Section 181 of BNSS Statements to police and use thereof

1. No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made;

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section [145](#) of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

2. Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act. And section 23 of BSA

After an analytical study of the provisions of the sections 24 to 27 of the Indian Evidence Act and section 22, 23 of BSA section 162 of the Criminal Procedure Code and section 181 of BNSS various important propositions appear:

1. Whether a person made a confession when “he is in the custody of a police officer to a person other than a police officer is not prove against him in a 47 trial in which he is charged with an offence except it is made in the instant presence of a Magistrate”.
2. Whether person is “in custody of police or outside, a confessional statement made by him to a police officer the making of which is get hold of encouragement threat or promise, having reference to the charge against him and proceeding from police is not able to prove against him in any proceeding in which he is charged with the commission of an offence”.
3. A statement made by a accused person to other another person not being a police officer when he is not in custody whether it amounts to a confession or not, if it is otherwise relevant.

4. Any part of the information given by a person when “he is in police custody whether the information is confessional or else which clearly relates to the fact in this manner discovered but no more is verifiable in proceeding in which he is charged with an offence.
5. In State of UP v. Deomani Upadhaya<sup>19</sup> it was held that “a declaration made by a person to a police officer throughout of an investigation of an offence under chapter fourteen of the Criminal Procedure Code cannot excluding to the extent permitted by Section 27 of the Indian Evidence Act be used for any reason at any inquiry or trial in respect of any offence under investigation at the time when such declaration was made in which he is concerned as a person accused of an offence”.

## 6. Conclusion

According to the historical background of the law pertaining to confession, the idea has progressively changed throughout different nations. When evaluating the admissibility and relevance of confessions, the courts are taking a very careful approach. "No one shall be coerced into confessing against themselves in any criminal case." Over time, the regulation evolved into a witness's protection from self-incrimination. The idea was adopted by the American legal system and incorporated into common law.

According to the aforementioned, if the confession is given voluntarily and without compulsion, it appears that it can serve as the only foundation for the accused's conviction. If the involuntary confession serves as the foundation for the conviction or the assent was requested out of concern that the conviction would be viewed badly by the law.

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