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NON-ADMISSIBILITY OF CONFESSIONS MADE IN POLICE CUSTODY: AN UMBRELLA ACCORDED TO ACCUSED PERSONS UNDER THE LAW OF EVIDENCE

By Sanjana Saha

Abstract

Confession is an incriminating statement made by the accused that indicates his culpability. It is an admission of guilt in relation to the crime for which the person has been charged. Etymologically, the term confession screams completeness as it is derived from the Latin word 'Confiteri'. Here con denotes entirety or wholeness, and fateri denotes to speak. Hence it must be an unqualified and total admission of guilt by the accused. Anything that defies the set norm cannot be considered as a confession. For many decades there has been an ongoing debate regarding the validity of confessions made in police custody due to the infamous nature of third-degree torture inside the closed lock-up cells. It is for this reason that confessions made by an accused while in police custody are not considered valid evidence in a court of law. Thus, the purpose of this paper is to review the law under the Indian Evidence Act relating to the same, as well as to list the probable causes and exceptions that work behind its applicability. Finally, it will highlight the international perspective by examining the laws of the United States, the United Kingdom, France, Germany, and Italy.

Keywords: confession, police custody, evidence, Indian Evidence Act

Introduction

India has an elaborate system of jurisprudence which is classified into both civil and criminal laws. The law makers have crystallized and codified these dimensions of law into procedural law and substantive law. Law of Evidence is one such codified piece of law which is both substantive and procedural in nature. It is substantive because it lays down certain rights of the parties to a case like Section 25 and 26 of the Indian Evidence Act. On the other hand, it is procedural

because it exhibits a fixed procedure that needs to be followed in a particular case like section 138 which speaks about the examination of witnesses.

Evidence is the most important aspect of any legal proceeding. In every case, the burden of proof is always on the prosecution to prove beyond doubt the guilt of the defense and evidence aids the prosecution in doing so. Similarly, it also helps the defense party to reject the claims that are advanced by the prosecution. Ultimately it assists the court in reaching a conclusion by either proving or disproving the facts in issue that are there before the court. It is important to note here that a good evidence can make a party win or lose a case. Therefore, it plays an extremely crucial role in court proceedings.

The Indian Evidence Act, 1872 speaks about the various forms of evidences and their applicability in a legal proceeding. Confessions are one of the most important type of evidences. It forms the highest degree of direct evidence based on which the court can either convict the accused or acquit him of all charges. However sometimes these confessions can be falsely extracted from the accused by the detaining authorities. Thus, sections 24 to 27 of the Indian Evidence Act, provides a plethora of safeguards which denies the admission of such confessions in the court of law, which are made to certain authorities and under certain given circumstances as a piece of evidence. Thus, this particular project will drive us through one such provision which mandates that confessions made by an accused person in the custody of police cannot be proved against him in the court of law.

Meaning of the term 'confession'

The most important element of this project is the term 'confession'. Without understanding the meaning of this word, it is not possible to move forward because the main objective is to find out why 'confessions' made by an accused in police custody cannot be proved against that person in the court of law.

The meaning of confession is described under Stephen's Digest of the Law of Evidence as "an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime"[1].

[1] Dr. Avatar Singh, *Principles of the Law of Evidence* 142 (Central Law Publications, Allahabad, 23rd edn., 2018).

However, it is important to understand at this juncture that confession is nowhere described or expressly stated under the Indian Evidence Act. It is usually construed with the meaning of the term admission. Thus, it would not be wrong to say that confession is a part of admission. Under section 17 of the Indian Evidence Act, admission is defined as statements made by an accused in any form which helps to draw an inference with respect to any fact in issue or any relevant fact. However, statements made by a person in civil proceedings which helps to connect or conclude any fact in issue or relevant fact is called admission. When the same statement will be made in a criminal proceeding then it will be termed as confession**.** This is one of the most convenient ways to differentiate both the terms.

The concept of confession has been further clarified through a series of cases. The most significant amongst all is that of ***Pakala Narayan Swami v. Emperor***[2] where it was held that the accused must narrate the whole chain of facts and circumstances that ultimately led to the commission of the crime so that the inference as to the ingredients of the offence can be drawn by the concerned authorities. Moreover, there are two parts of every confession. One is the inculpatory part, which involves own self and the other is the exculpatory part, which does not involve own self. Any statement made by the accused, if it comprises of both inculpatory and exculpatory parts and which can lead to his acquittal, even though it is confessional in nature, cannot be referred to as a confession.

Later on, in the case of ***Palvinder Kaur v. State of Punjab***[3], the Supreme Court overruled the age-old directive that the court cannot accept either the inculpatory part or the exculpatory part of a confession and reject the other and that it must be accepted in its totality. In this case, the inculpatory part of the confession was used to convict the accused while the exculpatory part was clearly set aside and rejected. The decision of the Apex court was clearly in tune with the Privy Council's decision in Pakala Narayan Swami case and the English case of ***R v. Storey***[4].

Confessions are mainly of two types. One is judicial confession which is made before a judicial authority like the magistrate or a judge and the other is extra judicial confession which is made outside the premises of the court. Thus, confession made to any person including the police

[2]AIR 1939 PC 47.
[3]AIR 1952 SC 354.
[4](1968) 52 Cr. App. R. 334.

officer are all extra judicial in nature. Judicial confessions can be used as evidence to convict a person of an offence whereas extra judicial confessions in itself cannot convict a person unless it is proved that it was voluntary and is corroborated by other pieces of evidence.

An overview of section 26 of the Indian Evidence Act, 1872

1. Difference between section 25 and section 26

While dealing with the non-admissibility of confessional statements in the court of law, it is important to understand the difference between section 25 and section 26 of the Indian Evidence Act, 1872 because both the sections seek to achieve the same goal and hence can sometimes be confusing.

While on one hand section 25 talks about the non-admissibility of confessions made to an investigation officer, section 26 on the other hand speaks about the same but in context of those confessions which are made in a police custody. Thus, from the previous sentence it is clearly evident that the scope of section 25 is much broader and general than that of section 26 which is quite specific in nature. The term police custody does not always refer to police lock-up where an accused is lodged after arrest. It can be any place where he is under the surveillance of the police and his movements are constricted.

Moreover, confessions made to any person other than the police officer while in police custody would also fall under the purview of section 26 while in case of section 25, the same needs to be made to the investigating officer specifically.

2. Why confessions made by an accused in police custody are not admissible in court?

According to section 26 of the Indian Evidence Act, 1872 "*no confession made by any person whilst he is in the custody of a police officer shall be proved as against such person*"[5].

For the purpose of this section, it is important to know who an accused person is. Although this term has been defined nowhere in the Code of Criminal Procedure, 1973 yet in simple language it refers to any person who has been charged for violating any provision of law and in case he is convicted for the same he is liable to face punishment.

[5] The Indian Evidence Act, 1872 (Act 1 of 1872).

The choice of words used in section 26 of the Indian Evidence Act, itself points out to the fact that it is used as an embargo that safeguards the right of an accused against involuntary confession of guilt or crime. However, the term 'custody' as used in this section holds wide interpretation. As already mentioned before that police custody does not simply mean a police lockup where the accused is kept for interrogation after arrest. It can include any place where he or she is detained under the superintendence of the police and where his or her right of free movement is being curtailed. Thus, 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 four walls of a prison[6]**.** Moreover, it is important to note here that police custody does not necessarily require the presence of the police officer in person. As long as the accused is well versed with the fact that the place where he is being detained can be accessed by the police any time, any confession made whether in presence or in absence of the police officer will hold no relevance before the court of law. For instance, in the case of ***Emperor v. Jagia***[7] a woman was arrested on suspicion for murder. When the police officer who arrested her left for the police station, keeping her in the custody of villagers, she supposedly confessed to her crime. In this case it was held that this confession would not be admissible against the accused in the court of law. It must be noted here that section 26 of the Indian Evidence Act, 1872 can always be invoked even if confessions are made to a third person just as mentioned before. It can be anyone other than the police officer. However, what hold much more gravity here is the term custody. As long as that individual is in police custody, nothing said to any person will hold and water.

Confessions by an accused in police custody also falls under the purview of extra judicial confession and thereby are considered as weak pieces of evidences. In the case of ***Mintu Hasda v. State of Assam***[8], the deceased named Bhim Bahadur went to the market and next day his body was found. The accused were convicted by the lower court on the basis of their confession. Later when an appeal was filed in the Guwahati High Court, they claimed protection against such confession on the ground that they were extra judicial in nature as they were made in police custody. While deliberating on the same, the court held that in compliance with section 26 of the

[6] Dr. Avatar Singh, *Principles of the Law of Evidence* 164 (Central Law Publications, Allahabad, 23rd edn., 2018).
[7] AIR 1938 Pat. 308.
[8] 2018 SCC OnLine Gau 290.

Indian Evidence Act, 1872 the confession made by the accused in police custody cannot be admitted to any extent before the court.

The main reason as to why section 26 was at all invoked under the Indian Evidence Act was mainly to protect the accused from police brutality and torture. It is no secret that Indian Police often resorts to third degree torture method in order to make the accused confess to his crime. Over the years, the cases of custodial violence have increased three-fold. During the course of interrogation, many a time they use disturbing antics in order to compel the person to admit his guilt. Such methods include everything from merciless beatings to pouring molten metals on various body parts to injuring the private areas to the point where they often succumb to such injuries. As per the annual publication of the National Campaign against Torture there has been five custodial deaths per day on an average in the country for the year 2019, which is quiet alarming.

In March 2019, two persons named Taslim Ansari and Gufran Alam were picked from their respective homes in the dead of the night by officials of the Chakiya Police Station in Bihar in connection with a murder case. When their respective family members went to the police station to meet them a few hours later, they were informed that both are taken to the Dumra Police Station for interrogation. When the family reached Dumra, they were told that both of them fell ill inside the police station and had to be transported to the nearby hospital where they died within an hour of reaching. Their bodies were handed over to their families the next day. It was only while preparing the bodies for burial that they noticed nail and hammer marks on the soles, thighs and wrists of the deceased. They immediately took a video of the same and circulated it which eventually garnered a lot of public outrage. The concerned police officials were eventually dismissed from service and later arrested. Similarly, in October 2019, a security guard named Pradeep Tomar from Uttar Pradesh was brutally beaten to death by some police officers after he was called for interrogation in a murder case. It was later revealed that he was stabbed repeatedly by screw drivers and was also denied water. Incidents like these happen in our country on a regular basis but the cops easily escape conviction by removing the evidences. Illegal arrest and illegal detentions form a major part of such custodial deaths.

It is pertinent to note here that use of torture is a gross violation of human rights. Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

or Punishment (UNCAT) defines the term 'torture' as physical or mental suffering inflicted on an individual for the purpose of extracting any information or confession from that person. Section 5 of the Universal Declaration of Human Rights states that no person shall be subjected to torture or inhuman and cruel treatment. Section 24 of the Indian Evidence Act also plays a crucial role here since it prohibits the admission of any such confessions in criminal proceedings which are made by an accused person under the influence of any sort of incentive, threat or promise. Thus, it would not be wrong to say that both section 24 and 26 of the Indian Evidence Act are intrinsically connected with each other.

3. Exception to the rule of non- admissibility of confessions made in police custody

Although section 26 of the Indian Evidence, 1872 Act as an embargo against the admissibility of confessions made by an accused in police custody, the same section also provides an exception to the above stated fact. It expressly mentions that confessions made in police custody can be accepted in the court of law in case it has been made in the immediate presence of a Magistrate. It is believed that the presence of a Magistrate during the time of confession rules out the possibility of torture thereby making the confession free, voluntary and reliable[9]. That is the reason why judicial confessions are considered as substantive evidences in the eyes of law.

Now the question that arises here is who is a 'Magistrate' as referred under section 26 of the Indian Evidence Act. Initially there were lot of debates and discussions regarding whether the term 'Magistrate' is referred to as the Executive Magistrate or the Judicial Magistrate. There were conflicting views of various high courts concerning the same. While on one hand the Guwahati High Court was of the opinion that 'Magistrate' solely refers to the Judicial Magistrate, the Punjab and Haryana High Court on the other hand were of the opinion that in the absence of any specific mention, the term 'Magistrate' shall include both the Executive as well as the Judicial Magistrate.

In the case of ***Dagadu Dharmaji Shindore v. State of Maharashtra***[10] the Bombay High Court held that the term 'Magistrate' straightway refers to a Judicial Magistrate since the same has also been mentioned under section 164 of the Code of Criminal Procedure. Moreover section

[9] Dr. Avatar Singh, *Principles of the Law of Evidence* 165 (Central Law Publications, Allahabad, 23rd edn., 2018).
[10] 2005 ALL MR(Cri) 1450.

3(4) of the Code of Criminal Procedure expressly clarifies the fact that the Judicial Magistrate shall perform such functions which involves shifting and appreciation of evidences, giving punishments while the Executive Magistrate shall perform all those functions which are executive or administrative in nature.

Section 164 of the Code of Criminal Procedure, 1973 deals with Judicial Confessions where the Metropolitan Magistrate or the Judicial Magistrate shall record the statement and confessions of witnesses and accused before the commission of trial or inquiry. However, it must be noted here that such confession shall hold evidentiary value only when the court is satisfied that they were made after all the procedural requirements laid down under sub section 2 of section 164 of the Code of Criminal Procedure has been complied with. In other words, before making any such confession the Magistrate shall categorically explain to the person that he or she is not bound to make any such confession and in case they do so, it can go against them during the course of the trial.

4. Interplay of section 26 of the Indian Evidence Act and the rule of Self- Incrimination

The concept of Rule of Law which came into existence from a French phrase is considered as the foundation stone of every democratic society. This concept also found its place in the Indian Constitution through case laws and through various articles such as article 19, article 21. Now one of the most important facets of Rule of Law is the right to a fair trial. The term itself explains that the proceedings which are followed in the court of law during the course of trial in a case should be just and equitable. There are several components involved with the concept of fair trial. One such ingredient which is considered as crucial in this respect is the right of a person against self-incrimination. When a person makes any such statements or confessions that can buy him a criminal charge then it is often referred to as self-incrimination. However, the general rule is that every person whether he is an accused or a witness to a case, has an immunity against such actions. As per Article 14(g) of the International Covenant on Civil and Political Rights, no person can be compelled to testify against himself or make any confession of his guilt. Similarly, the Indian Constitution under article 20(3) states that no person accused of any offence should be forced to be a witness against himself.

At this juncture it is important to understand that there exists a close relationship between article 20(3) and section 26 of the Indian Evidence Act. While on one hand Article 20(3) bans the use of compulsion and force on any accused person so as to make him confess to his own guilt, section 26 of the Indian Evidence Act, 1872 on the other hand ensures that any such confession made whilst in the custody of a police shall not be considered as evidence against the person who is making it. Thus, it would not be wrong to say that the sentiment and objective behind section 26 of the Indian Evidence Act flows from Article 20(3) of the Indian Constitution and is an extra precautionary measure against use of any arbitrary practice for the purpose of confession. Thus, the right as embedded under the Indian Constitution is absolute and it gives the accused person the power to even stay quiet during the course of investigation. Both the pieces of legislations aim at ensuring that the statements made by the accused person are in no way coerced or forced.

In the case of ***Nandini Satpathy v. P.L. Dani***[11] the Apex Court beautifully elucidated the relationship between right against self-incrimination and section 26 of the Indian Evidence Act, 1872.

In this case, a complaint was filed against Smt. Nandini Satpathy, former Chief Minister of Orissa by the Deputy Superintendent of Police (Directorate of Vigilance), Cuttack under section 179 of Indian Penal Code for refusing to answer some questions during an interrogation. Based on the complaint she was summoned by the Magistrate. In order to counter the summon, Smt. Nandini Satpathy moved to the High Court and claimed that the charges inflicted against her by the Deputy Superintendent of Police are baseless because she has an immunity to not answer all the questions under Article 20(3) of the Indian Constitution. Her claim was rejected by the High Court thereafter which she filed an appeal in the Apex Court.

When the case went to the Supreme Court, several issues were raised before the court. One of the issues was that whether the right against self-incrimination is confined within the court premises or whether it extends to police interrogation as well. Deliberating on the same, Justice Krishna Iyer had said that the expression 'witness against himself' definitely has a far-reaching scope. It covers all the stages right from the stage of investigation which involves collection of information, materials till the stage of trial. This instantly takes us to the conviction that police

[11](1978) 2 SCC 424.

interrogation also involves interrogation in the police custody. Thus section 26 of the Indian Evidence Act, 1872 basically hold up this fact that even if a person is forced to be a 'witness against himself' then also it would not hold any relevance in the court of law as it operates in consonance with article 20(3). Moreover, the common factor that connects both article 20(3) of the Indian Constitution and section 26 of the Indian Evidence Act is the Miranda Exclusionary rule as proposed in the case of ***Miranda v. Arizona***[12]. Here it was concluded that the right against self-incrimination shall extend right from custodial interrogations to trials in courts and in every other official investigation. However, Article 20(3) does not bar voluntary statement made by an accused. Similarly, under the Evidence Law, section 26 also allows admission of those confessions in the court of law which are made voluntarily by the accused and in the immediate presence of a magistrate.

Clarity regarding the meaning of the term 'compulsion' as used under article 20(3) of the Indian Constitution was sought in the aforesaid case. In order to explain the same, the court gave the reference of ***State of Bombay v. Kathi Kalu Oghad and others***[13] where it was held that compulsion must be understood in terms of the legal expression called duress. According to the Dictionary of English Law written by Earl Jowitt, duress is described as a situation where a person is forced to commit an act under the fear of injury or unlawful imprisonment. Thus, if the concerned person is able to prove that he was compelled to confesses something while in police custody then it would not be admissible against him and would definitely attract article 20(3).

In the case of Nandini Satpathy, the Supreme Court also held that the main objective behind the right against self-incrimination is to protect voluntariness of the accused person. However, interrogations in police custody are generally coercive by nature. Since coercion and voluntariness cannot coexist, custodial interrogation in Indian prisons necessarily violates the right against self-incrimination and is therefore unconstitutional and illegal[14]. Thus, in order to preserve the right against self-incrimination, section 26 of the Indian Evidence act, 1872 has been invoked.

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[12]384 US 436 (1966).
[13]AIR 1961 SC 1808.
[14] A Case for Abjuring Custodial Interrogation, *available at*: https://www.theleaflet.in/a-case-for-abjuring-custodial-interrogation/# *(*last visited on February 16, 2022).

Section 27 of Indian Evidence Act: Doctrine of Confirmation by Subsequent Facts[15]

Section 27 of the Indian Evidence Act, 1872 states that "*When any fact deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a 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*"[16]. This particular section is basically a proviso to section 26. The same can be understood from the term 'provided' as used in the beginning of section 27. Hence section 26 and 27 are connected with each other and the latter is a continuation of the former.

The concept of section 27 basically flows from the English Law principle called the Doctrine of Confirmation by subsequent facts. In the Stephen's Digest of the Law of Evidence the doctrine has been explained as the admission of those confessions made by the accused as evidence that lead to the discovery of certain facts which has the capacity to show the truth and prove the commission of the crime. However, the confessions made in front of the detaining authority must be related to the fact discovered. Thus, the crust of this doctrine is to take into consideration only such part of the confession that leads to the discovery of such facts which can be helpful for the purpose of corroboration during the trial. The Privy Council first dealt with the ingredients and essentials of section 27 of the Indian Evidence Act, 1872 in the case of ***Pulukuri Kottaya v. Emperor***[17]. Later drawing a relationship between section 27 of the India Evidence Act and the Doctrine of Subsequent Facts, Justice Arijit Pasayat had said in the case of ***State of Karnataka v. David Razario***[18] that the basic design of section 27 is implanted in the English Law Doctrine. Whenever any information furnished by the accused leads to a certain discovery then it becomes an authentic information and hence can be used in the court of law.

Thus, section 27 of the Indian Evidence Act, 1872 is an exception to the rule of non-admissibility of confessions made by an accused in police custody. If a fact is found, subsequent to the statement given by a person accused of an offence in police custody, then this section will immediately come into operation as a result of which the statement which led to the discovery

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[15] Section 27: Doctrine of Confirmation by Subsequent Facts, *available at*: Section 27: Doctrine of Confirmation Theory by Subsequent Facts (legalserviceindia.com) (last visited on February 16, 2022)
[16] The Indian Evidence Act, 1872 (Act 1 of 1872).
[17] AIR 1947 PC 67.
[18] AIR 2002 SC 3272.

will be taken into consideration. This is because the discovery of the fact itself ratifies that the confession was true and hence can be safely considered as an evidence without the fear that it would be rejected on the ground that it was induced by threat or coercion. For instance, if a person A is charged for murder of B and he confesses in police custody that he has killed B and hid the murder weapon in the garden of B then the first part will not be admissible in the court of law. Only the second part that leads to the discovery of the murder weapon will be admissible as an evidence against A. The use of the word custody in section 27 is similar to the one used in the previous section. Therefore, it need not necessarily be a police lockup but any place of detention where the right of freedom of movement of the person is scrutinized and restricted.

In the case of State of ***U.P v. Deoman Upadhaya***[19], the Supreme Court ascertained the constitutional validity of section 27 of the Indian Evidence act. In the above-mentioned case, a man named Deoman Upadhaya was accused of murdering a woman over property matters. When he was arrested, he confessed to his crime and also informed the police that he had thrown the murder weapon into the village tank and even helped them in retrieving the same from the tank. Based on the retrieved piece of evidence he was convicted by the lower court. An appeal was filed in the High Court against the judgement under the claim that the evidence cannot be admissible in the court of law as the confession was made in police custody. Hence it has the immunity of section 26 of the Indian Evidence Act, 1872 and that section 27 is an infringement of a person's constitutional rights. As a result, section 27 was declared as unconstitutional by the High Court. However, when the State made an appeal against such decision in the Supreme Court, it was held to be constitutional and the conviction of Deoman Upadhaya was held as valid. Thereafter, the Supreme Court Bench comprising of five judges pointed out that section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable in so far as it distinctly relates to the fact thereby discovered[20].

International Perspective

[19]AIR 1960 SC 1125.

[20] Short Notes on Law, *available at*: http://shortnotesonlaw.blogspot.com/2010/11/state-of-up-vs-deoman-upadhyaya-1960.html (last visited on February 14, 2020).

1. United States

The Fifth Amendment of the US Constitution guarantees the right of a person against self-incrimination. Thus, it means that no person can be pressurized to confess to his crime. In the landmark case of ***Miranda v. Arizona***, the Supreme Court of United States gave a formal recognition to the right of a person to not speak against himself or herself. In the aforesaid case, a person named Ernesto Miranda was arrested in 1963 on the grounds of committing rape, kidnapping and robbery. After arrest he was kept oblivious of his rights as an arrested person. As a result, during the long course of police interrogation he confessed to his crime which was recorded by the police. Based on his confession, he was convicted and sentenced to imprisonment for 20 to 30 years. When he filed an appeal against the conviction to the Supreme Court of Arizona, his pleas were set aside. Finally, he made an appeal before the Supreme Court of the United States where the judgement was reversed. While delivering the judgement, Chief Justice Earl Warren upheld that the confession made by Ernesto Miranda in the custody of the police cannot be used as an evidence against him since the procedure of fair trial was not followed in this case. The fact that he was not informed of his rights itself overrules his conviction. Moreover, there has been a violation of his constitutional rights against self-incrimination and the right to have a legal representative. In the absence of such crucial rights justice cannot be served in the correct manner because the confession made by the accused can be forced by the detaining authorities. This case gave birth to the famous Miranda Rights, which mandates the police to inform an accused his rights as an arrested person. It also gives such persons the right to remain silent during interrogation.

The exclusionary rule of the law of evidence preaches that those evidences which are gathered through unlawful means such as illegal search or seizures or in violation of the fourth amendment of the US Constitution would not be accepted as against the accused in the court of law. The Fruit of the Poisonous Tree Principle is also based on the same notion. Here the illegal means applied to extract the evidences are referred to as ‘the poisonous tree’ and the evidence thereby collected is called the ‘fruit of that tree’. The basic idea behind the doctrine is that if the means obtained to collect the evidence is unlawful and polluted in itself then the evidence collected will also be illegal and coercive in nature. It is important to note here that illegal arrests and detentions also form a part of the fruit of the poisonous tree principle. Often the police arrest

a person illegally in order to take him under their custody. In the case of ***Wong Sung v. United States***[21] it was held that while in the custody, the police use variety of techniques to make the accused confess to his crime which includes force as well. After arrests these people anyway become helpless as they are left to the mercy of the detaining authorities. Hence, they are forced to make confessions against themselves. These confessions are excluded from admission in the court of law by the doctrine of fruit of the poisonous tree.

Thus, the United States has set some major precedents for the world with the help of case laws and doctrines with regard to our topic of research.

2. United Kingdom

In England, initially the process of admission of confessions in police custody was marred by corruption for a long time. Although the Judges had the power to discard a confession brought in by the prosecution on the ground that it was obtained through torture or other illegal methods yet they never applied the same since they were extremely biased. There has been many cases where the English Judges, in violation of the common law, has authorized the use of the rack, the thumb screw and other tools of torture to elicit a confession.

However, things took a turn for the better with the passing of the UK Police and Criminal Evidence Act, 1984. Section 76 sub clause (2) and (3) of the aforesaid act authorizes the admission of confessions made by an accused in the custody of the police provided that the court is satisfied that such confessions are not obtained through any kind of torture or degrading treatment or in such situation where the statement made the accused cannot be considered as reliable. Here the burden of proof basically lies on the prosecution to prove beyond reasonable doubt that the confession has not been given under any sort of oppression. If the court is not satisfied then such confession would not be admitted as evidence against the accused. These provisions were later reiterated in several English cases like R v. Fulling[22] and R v. Paris[23].

English Judge once made a quotation regarding confession by an accused in police custody by stating that if a person voluntary wants to make a statement related to his involvement in a case

[21]371 US 471 (1963).
[22](1978) 2 All ER 65.
[23](1993) [1994] Crim LR 361, CA.

then he is free to do that and a police officer is not barred from hearing such statements and later submitting them in the court of law. However, the investigating officer must keep in mind by every possible means that such confession must not be triggered by anything said or done by him.

In France, the problem of police torture and violence existed even before the commencement of World War II. After the world war such issues continued. However, the French Court of Cassation did not pay any heed to the atrocities meted out by the police. There were no legislations to prevent the admission of those evidences in the court of law which were obtained by the police officers through violation of the interrogation procedures prescribed in the statutes.

The other problem that emerged regarding custodial interrogations was the practice of garde d vue by the police. This concept basically authorizes the police officials to keep an accused in detention until and unless he is produced before the magistrate. Initially the accused could only be detained up to 24 hours before being taken before the procurer but it was later held that the time can be extended up to 96 hours as well. Although detention beyond that period is illegal yet there are no laws or penalties for the same. Gerde d vue is harmful because reports suggest that it is coercive in nature. During the course of police detention, the detainees are not allowed to communicate with anyone. On top of that they are asked questions relentless until their brain becomes exhausted and they themselves confess to their crime. Under this practice, not only an accused but also a witness can be detained in custody as long as the police wants which basically is an infringement of their right against self-incrimination.

However, the problem lies in the fact that the French system has taken no steps in order to nullify such practice till date. Although the court of Cassation has expanded the horizon of the exclusionary principle yet it is yet to be applied in cases of police interrogation and the subsequent violations of procedural laws therein.

3. Germany

Exclusion of statements obtained without due process was introduced in Germany in 1950[24]. Before that, under the Nazis the police forces were ordered to apply coercive and intensified

[24] Walter Pakter, "Exclusionary rules in France, Germany and Italy", 9 *Hastings International and Comparative Law Review* 15 (1985).

methods in order to make the accused confess to his crime. After World War II, the German legislature introduced section 136a in the German Code of Criminal Procedure so as to prevent the mistakes which were done by the National Socialists.

Section 136a of the German Code of Criminal Procedure brought back the exclusionary principle. It mandates that the confession made by the accused person must be voluntary. His freedom to confess on his own must be respected at all cost and it should not be affected or unduly influenced by ill treatment, induced fatigue, use of physical force, administration of drugs, oppression, deception or hypnosis whilst he is in the custody of the police. In case any confession is extracted by way of the above-mentioned procedures then the same cannot be admitted as evidence in the court of law. Later during the 1950s and the 1960s the German Supreme Court passed several judgements in consonance with section 136a which increased the purview of this section to other coercive methods of tortures as well such as use of sleep deprivation technique, truth serum by the police for the purpose of extracting truth from the accused.

4. Italy

Italian Jurist Franco Cordero first spoke about the concept of exclusionary rule and suggested that it should be followed in Italy as well. As a result, the Italian courts began to punish such police officers who tried to extract confessions from the accused in the police custody through coercive measures. Subsequently judgements incorporating the exclusionary principle was applied in two decisions pronounced by the Italian Constitutional Court in the late 1960s. The judgement made it mandatory for the police to conduct interrogation of the accused in the presence of his or her legal representative and also inadmissibility of such statements that are made by the accused in the course of interrogation by the police officers as evidences in the court of law.

Conclusion

To sum up, the fundamental goal of enacting section 26 of the Indian Evidence Act of 1872 was to defend and preserve a person's right to make voluntary admissions. It is important to note that

none of the sections within the Act are being used out of context or without purpose. As previously stated, evidence law is both a substantive and procedural law. As a result, this section has been invoked in accordance with its procedural component.

The sad part is that, in spite having measures in place, officers continue to torture suspects in custody in order to force them to confess to their crimes. Despite the fact that these confessions are never considered by the court, the police's ignorance and lack of understanding of these legal restrictions has kept the history of police brutality and torture alive. The Pradyumn Thakur murder case, which occurred in 2017, is one such classic example. On September 8, 2017, a seven-year-old kid called Pradyumn Thakur of Ryan International School in Bhondsi was found with his throat slit inside his school washroom. An investigation was launched when the parents filed a complaint against the school officials. After a CCTV camera saw Ashok Kumar, a bus conductor linked with the school, walking out of the washroom with his shirt splattered with blood, the police detained him. He had even admitted to his crime, according to the cops. On the 22nd of September, 2017, the case was sent to the Central Bureau of Investigation, which handed Ashok Rai a clean chit because no substantive evidence was uncovered against him that suggests he murdered Pradyumn Gupta or was involved in the crime in any manner. Later, the investigating team filed a charge sheet against one of the eleventh-grade students as the main accused. What's frightening about the whole thing is that after being released from jail, Ashok Kumar went on record saying that after his detention, the police pushed and bullied him into giving comments that may be used against him and buy him a criminal charge. He also discussed the torture he endured in the police cell, as a result of which he was forced to confess to a crime he had never committed.

Section 26 is a procedural safeguard in itself and I do not believe it requires reform. However. the only thing that needs proper attention is that whenever the prosecution introduces a confession made by an accused, during trial, as evidence, the court must ensure that it was made in the immediate presence of the magistrate and that it is of the highest degree of voluntariness.

Besides the standards given down in the Pulukuri Kotayya v. Emperor case must be followed when the court intends to admit any admission made in police custody under the jurisdiction of section 27 of the Indian Evidence Act. Only that portion of the confession that led to the

discovery of a fact can be utilized against the accused, not the rest of the statement that has no bearing on the fact discovered.