

Confessions under the Indian Evidence Act

Meaning of Confession

According to Sir James Stephen "An admission made at any time by a person charged with a crime stating or suggesting the inference that he committed a crime".

Though it an undiscovered fact that the term '*confession*' is nowhere defined or expressed in the Indian Evidence Act, but the inference explained under the definition of admission in [Section 17](#) of Indian evidence Act also applies to confession in the same manner. Section 17 expressly provides that any statement whether oral or in the form documentary which put forward for the consideration of any conclusion to the fact in issue or to the relevant facts.

Now after understanding the discovery of both the term it is very much clear that when is put forward for the consideration of any inference to the fact in issue or to the relevant facts in the civil proceeding then such consideration of statements is known as *confession*. Thus, the confession is something which is made by the person who is charged with any criminal offences and such statements conferred by him shall be suggesting a conclusion as to any fact in issue or as to relevant facts. The statements may infer any reasoning for concluding or suggesting that he is guilty of a crime. We may also define the *confession* in other words that the admission by the accused in the criminal proceedings is a *confession*.

In *Pakala Narayan Swami V. Emperor*, Lord Atkin observed that "A *confession* must either be admitted in the context of any offence or in relation with any substantial facts which inaugurate the offence with criminal proceedings. And an admission of serious wrongdoing, even conclusively incriminating fact is not itself a *confession*".

In, *Palvinder Kaur V. State of Punjab* the Supreme Court uplifted the Privy Council decision in *Pakala Narayan Swami* case and substantiated their arguments over two reasoning- Firstly, the definition of confession only comes to exist when the statements conferring the admission that he is either guilty of any offence or the admission is probating all the facts which constitute the offence. Secondly, when the statement has different qualities and contains such a mixture of confessional statements which conclude to the acquittal of the person making the confession, then such statements cannot be considered as a confession.

In [*Nishi Kant Jha v State of Bihar*](#), the Supreme Court highlighted that there is no wrong on relying some part of statements confessed by the accused and neglecting the other part, the court has traced out this concept from English Law and when court in its capacity understood that it has enough evidence to neglect the exculpatory part of the confession, then it may rely on the inculpatory part such confession.

Conclusively we can understand that the expression of confession means any statements made by an accused which proves his guilt. And there is just a thin line difference between the two terminologies of the Indian Evidence Act that admission is no other different term than admission as a confession only ends up in admission of guilt by the accused. So a person accused of any offence makes any statement against him which may prove his guilt, is called confession or confessional statement. It is observed that confessions are upgrades of admission which makes it special, thus, it is popularly administered that "*All Confessions are admissions, but not all Admissions are confessions.*"

In [*Baburao Bajirao Patil v. State of Maharashtra*](#) [1] the court while deciding the case explained the principle that "the Court before ascertaining the facts for the purpose of deciding the facts in issues of the case, should begin ascertaining the case facts with all other evidences possible related to the case and then only it shall turn to the approach of confession by the accused in order to administer complete justice to the conclusion of guilt of the accused.

Meaning of Admission

Admission plays a vital part in judicial proceedings as if in a case either of the parties to the suit in the judicial proceeding proves that the other party has admitted the fact in issues or the relevant facts in the case then it becomes easy for the Court to administer justice effectively as the court need not take much evidence and has not to involve in the judicial proceedings because the question of the case has already been settled by either of the parties in the course of admission. Section 17 to 23 of the Indian Evidence Act specifically deals with the portions related to *admission*.

The word '*Admission*' expressed in the Evidence Act means "When any person voluntarily acknowledges the existence of any facts in issue or facts". Like in the case of confession we discovered that confession is not much described in the Evidence Act in the same manner the Indian Evidence Act also has not done much effective work on expressing, the term '*Admission*' in an outspread sense.

Section 17 of Indian Evidence Act, defines admission as any statement made in either form such as oral, documentary or in electronic form which has enough

probative value to suggest or conclude any inference as to any fact in issue or relevant fact.

Admissions have no definite pattern but still, it can either be formal or informal. The formal admission is also called as judicial admission which is made at the time of the judicial proceeding, while the informal admission is those admissions which are made in during the normal day to day activity like in the normal course of life. Formal admission or the judicial admissions are completely admissible by the Court of law under Section 58 of the same act and has much higher probative value into substantive any fact. They are generally rebuttable in nature and require no further proof to disprove the facts admitted in a court of law unless the court asks for the same.

In, [Nagindas Ramdas v Dalpatram Ichharam \[2\]](#) the Supreme Court of India explained the effects of admission, that admissions are generally true and clear of any ambiguity, and they shall be considered as the best proof for proving any fact in issue or relevant fact by the admission of certain facts. On the other hand, the informal admission which is made during the day to day activity just help in bringing the facts either by an oral or written statement by the admission of either party.

Under the English law, the term 'admission' is specifically utilised in civil proceedings, and on the other hand, the term 'confession' is used in criminal proceedings. But, under the Indian statute, the Evidence Act didn't distinguish much between both the term rather the Indian Evidence Act short distinguished as that- confession is a statement which is made by the accused declaring himself guilty.

In *CBI v/s V .C. Shukla* the Supreme Court has lifted the concept of admission and confession; and explained the difference that discretionary and undeviating cognizance of guilt is confession, and the confession made by the accused may be used as a piece of negative evidence against him. But on the other hand, admissions acknowledged by the person admission the fact may not be considered under the preview of [Section 4](#) that is conclusive proof of facts admitted, and the admitted matter or facts can only be considered as substantive or probative evidence of admission.

Difference between Confession and Admission

The litmus test distinguishes the different terms of statements which are confession and admission. The litmus test suggests that confession is some

statements which itself is complete in the conviction of the accused the statements alone has the value of convicting the accused, and when there is need of some supplementary or secondary evidence to prove the conviction of the accused then it is an admission.

S. No.	Confession	Admission
1.	The confession is something which is made by the person who is charged with any criminal offences and such statements may infer any reasoning for concluding or suggesting that he is guilty of a crime.	When any person voluntarily acknowledges the existence of any facts in issue or facts.
2.	The concept of confession usually deals with the criminal proceedings and there is no such specific section defining <i>confession</i> .	The concept of admission usually deals with the civil proceedings and section 17 specifically deal with the definition of <i>admission</i> .
3.	If the confessions are purposefully and are made on someone's own will then it may be accepted as conclusive of the facts confessed by the confessor.	Admissions may be operated as estoppels because they are not conclusive as to the facts admitted by the person who in his statement admit some facts.
4.	Confessions are always used or go against the confessor of the statements.	Admissions may be used with respect to the person who has admitted any facts or statements under the exception of Section 21 of the Indian Evidence Act.
5.	Confessions confessed by more than one person jointly for the same offence can be considered against other accused of the same crime under Section 30 of the Indian Evidence Act.	As it is previously observed that admission cannot be used against the person who is admitting the facts by any statements as they don't have much probative evidentiary value. Hence the admission made by the different personalities of the same suit cannot be used as evidence against other persons.

6.	Confession is the direct admission of matter or facts of the cases either in the form of a written or oral statement.	Admission gives the conclusion about the liability of the person who is admitting any facts or matter either in the form of oral or written statements.
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In, *Sahoo v. the State of U.P.*, newly wedded women joined the new house of her husband and after some time the accused murdered his daughter-in-law, and after murdering her daughter-in-law he screamed "I have finished her" and in the course of his statement many of his neighbours heard his statement stating "I have finished her". In this case, the court observed that the statements made by the accused should be considered as confession and they shall be regarded as confessionary in nature.

Types of Confession and process of recording confession

A confession may be of the different type according to the matter of the cases. Broadly confession is differentiated into two different statuses like- when the confession by the means of statements is given itself in the court of law then such confession will be considered as judicial confession, whereas, when the confession by the way of statements is produced at any place other than court then such confession will lead towards extrajudicial confession. The different sets of confession do not have the same evidentiary values as of others and hence their values degrade and upgrade by the circumstance that how what and where these confessions are made. The exceptional feature of confession is that a conversation to himself also leads toward a confession and this feature was lighted in the case of *Sahoo v. the State of U.P.* where the accused has murdered his son's newly wedded wife as he usually has serious arguments with her, and when the accused killed daughter-in-law it was seen and heard by many people living there that he was uttering words while stating that "I finished her and now I am free from any daily quarrels". The court observed in this case that the statement or the self conversation made by the accused shall be considered as a confession to prove his guilt and such confession should be recognised as a relevant in evidence in administering justice, and just being in the case that the statements are not communicated to any other person, other than him does not dilutes the relevancy of a confession. Therefore confession made to himself is also quality evidence which will be considered as relevant evidence in a court of law.

Formal Confession

Formal confession is also known as *Judicial Confession* and those statements which are made before an office of magistrate or in the court of law during any criminal proceedings are known as *formal or judicial confession*. A judicial confession not much other than a "plea of guilty" as per the provision explained under [Article 20\(3\)](#) of Indian Constitution otherwise any confession made against the person who is making the confession will have no evidentiary value and he cannot be concluded guilty of any offence on the behalf of such confession.

Judicial confessions should not be mixed up with informal confession though being a part of the same branch but both have different values and relevancy in determining the accused's guilt. There may be some arguments stating that a conviction can be arranged even on the basis of an extra-judicial confession but on the other hand we must also see that there is no reason in neglecting the arrangement of conviction solely based on the judicial confession. So a confession made by the accused where his statements are leading himself to the bar is probative evidence to prove his guilt but all such confession shall be made in the presence of a magistrate or in a court of law. On the other side the court must take care of all the necessary steps to check if the confession made by the accused which may prove his guilt must be voluntary and true, so that no innocent can be charged for wrongful act of others as provided in Article 20(3) of the Indian Constitution which talks about '[self incrimination](#)'.

Informal Confession

Informal confession is also known as *extrajudicial confession* and those statements which are made at any place other than the place where there is an absence of magistrate or at any place other than the court is considered as an extra-judicial confession. It is not necessary that the statements should have been addressed to any definite individual. Just like in the principle of *judicial confession*, informal confession can also be made in the form of prayer, the informal confession is in any private room or a self conversation. But the court has to take care that no matter judicial or extrajudicial confession, the confession by the accused must be consistent with Article 20(3) of Indian Constitution which say '*No one should be compelled to give evidence against himself*' that means the confession should be on the will of the confessor and must be true, then only a person can be charged for any criminal offence.

A person expressing the guilt of the offence he committed to any private person like any friend or his related persons than such commission of a crime will cover the aspects of extrajudicial confession. Though both judicial and extrajudicial

confession can be accepted in the court but both have different evidentiary value or different probative value so as to establish any fact. Which means a conviction will not solely be based on the confession rather the court will test the extrajudicial confession to make any person guilty of any offence committed by him. What makes the extra-judicial confession different from judicial confession is that extrajudicial confession can be made to any private person which also includes a judicial officer in his private capacity. The extra-judicial confession in some cases also restricts a magistrate to record confession which he is not empowered under [Section 164](#) of the Cr.P.C.

In, [State of Punjab v. Bhagwan Singh](#) [3] the Supreme Court in this case held that an extra-judicial confession's value only increases when it is clearly consistent and convincing to the conclusion of the case otherwise the accused cannot be held liable for the conviction solely on the basis of the confession made by him.

In, [Balwinder Singh v. State](#) [4] the Supreme Court has mentioned some guidelines in the form of deciding the case that in the case of extrajudicial confession it the court must check for the credibility of the person making the confession and all of his statements shall be tested by the court to conclude whether the person who made the confession is trustworthy or not, otherwise a person who is not so trustworthy then his statements cannot be used for making any inference to prove the guilt of the accused.

In, [Sahadevan v. State of Tamil Nadu](#) [5] the Supreme Court while deciding the case has made few principles in the form of guidelines where the court has to check such principles before admitting the confession of the accused, The following principles mentioned by the Supreme Court are:

- Extrajudicial confessions are generally a very weak kind of evidence by itself and the court must examine such statements efficiently.
- Extrajudicial confession should be made by the person's own will and such statements must be true.
- The evidentiary value of extra-judicial confession instantly increases when it is supported by other such evidence.
- The statements of the confessor must prove his guilt like any other fact in issue is proven in the judicial proceedings.

Retracted confession

The English meaning of retraction is 'the action of drawing back something' retraction confession is a type of confession which is previously voluntarily made by the confessor but afterwards it is revoked or retracted by the same confessor. Retracted confession can be utilised against the person who is confessing some retracted statements if it is substantiated by another independent and corroborative evidence.

In *Pyare Lal v. State of Rajasthan* [6] the Supreme Court, in this case, lifted that a retracted confession has enough values to form any other legal grounds to establish any conviction only if the Court satisfies that it was true and was on someone's own will. But the Court has to testify that the conviction cannot be solely be made on such confession until and unless they are corroborated.

Confession by co-accused: When there are more than one accused in a case and they are jointly prosecuted for the same offence, and when any of them confesses any statements against himself in such a way that he may be proved guilty of that offence then the court on such believes may prosecute other accused also who are jointly persecuted in the same offence.

Illustration- If three persons Aman, Vinod and Vijay are charged jointly for the same offence and they are prosecuted for the murder of Harsh. And during the judicial proceedings, Aman gives confessions that he along with Vinod and Vijay killed Harsh and if the statements of the Aman are recognised as true statements then the court may use the confession of Aman against all the accused and can prove the guilt of Vinod and Vijay also. Evidentiary value of different types of confessions

Judicial confession

Section 80 of the Indian Evidence Act give the evidentiary value to the judicial confession and expresses that a confession made in the presence of magistrate or in the court which is recorded by the magistrate as prescribed by the law then such confession shall be presumed to be true and genuine confession and the accused can be tried with the offence. **Section 164** of CrPC empowers magistrate to record confession so it is not necessary that which magistrate recorded the confession unless he is restricted to record the confession. Hence, for raising the presumption the identity of the accused must be clear and proved in the confession to persecute him for the guilt of the offence he committed.

Extra-judicial confession

Though extra-judicial confession don't have much evidentiary value as compared to judicial confession but in the case of a written confession the writing of the accused itself is one of the best evidence available to the court to charge the accused of the offence. And if the confession is not available in the form of written statements then the court may test the oral confession of the accused which was made to any other person. On the court's discretion and satisfaction, the statements of the accused to any other person may be admissible and thereafter the accused may be prosecuted for the offence on which he is charged.

Retracted confession

Retracted confession has circumstantial evidentiary that the cognizance of any offence the police investigate the case on the basis of their investigation they examine the witnesses, fact in issues, accused and many more things. If in the opinion of investigation, police found that the accused is guilty of a particular offence then they submit a report to the concerned magistrate or the court. During the court proceeding, the magistrate has to take pieces of evidence and examines the accused and if on the behalf of investigation report the courts find someone guilty of any particular offence then the court shall direct the accused to confess the statements again. When the trial begins the magistrate has to ask the accused that if he is guilty of an offence or not and if the accused don't plead guilty then he may retract all the confession made to the police during the police investigation and must substantiate his retracted confession. So the value of retracted evidence has circumstantial evidentiary value, therefore, the court has to make any inference very cautiously.

Confession by co-accused

The Supreme Court in the case of *Pancho v. State of Haryana* [7], held that the confessions made by the co-accused do not have much evidentiary value and they cannot be considered as a substantive piece of evidence. Therefore the confession made by the co-accused can only be used to corroborate the conclusion drawn out by other probative evidence.

When is a confession irrelevant?

Sections 24, 25, 26 and relevant part of Section 27 of the Indian Evidence Act, 1872 deals with condition that when can confession be irrelevant.

Section 24 of the same Act describes different instances when a confession on the basis of such instances becomes irrelevant. [Section 24](#) of Indian Evidence Act provides that a confession made by a person who is accused of some offence is irrelevant if such confession comes out of any inducement, threat or promise and such instances have proceeded from a person in authority like police, magistrate, court etc., the other condition of this section is that inducement, threat or promise should be in reference to charge of any offence and all such inducements, threat or promise should give benefit of temporal nature.

For better understanding, we may divide the complete structure into 4 different essentials that are:

- The confession must be out of inducement, threat or promise, inducement, etc.
- Such confession should proceed from a person in authority.
- It should relate to the charge in question.
- It should have the benefit of temporal nature or disadvantage.

Thus, when these conditions are fulfilled then the confession becomes irrelevant.

Confession to Police, Police Custody and effect of police presence

The essence of commission can be found in different statutes but Section 24 to 30 of Evidence Act and section [162](#) to [164](#) of CrPC specifically deals with a confession.

Section 25 provides that “No statements made to a Police Officer shall be considered as a confession for the purpose of proving that confession against that person who is accused to the case”. The terms explained under Section 25 of this Act has vital importance which makes sure that any confession made by the accused to the police officer under any circumstances until provided, is totally not admissible as evidence in a court of law against the accused to prove his guilt.

Section 26 prohibits the judicial bodies to prove the guilt of accused by his confession which is made to police in police custody. [Section 26](#) imposes a partial ban on provisions stated in [Section 25](#) that confession made to the police officer in police custody may be admissible if the confession recorded in the immediate presence of a magistrate.

Confession in further discovery of facts

Section 27 lifts the concept of the relevance of information received from the accused by irrelevant confession made to police or in police custody which may help in further discovery of facts of the cases. Section 27 provides that whenever a fact is forcefully discovered in the course of receiving information from accused during a police investigation or in the police custody and whenever such information leads to the discovery of other relevant facts they may be distinctly be proved.

In *Pandu Rang Kallu Patil v. State of Maharashtra*, while deciding the case stated that Section 27 of the Indian Evidence Act was enacted as to lift and to remove the ban provided in section 25 and 26 of the Act in such a way that- Section 25 and 26, absolutely bans the admission of any confession made to the police or in police custody but the objects of Section 27 provides the admission of statements made by an accused even to the Police Officer and the objective explained by the Supreme Court was that such confession may help in further discovery of facts which may help the court to prove other facts related to the case.