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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE ROLE OF CONFESSION: INDIAN EVIDENCE ACT TO BHARTIYA SAKSHYA ADHINIYAM

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ABSTRACT-

Confessions carry great weight in Indian courtrooms, potentially pushing convictions toward guilt. However, worries remain concerning the trustworthiness of confessions collected under duress during police interrogation. The Indian legal system has been dealing with this issue for decades. The concept of confession has been growing throughout the ages resulting in its impact on the Indian Law. The Indian Evidence Act (IEA) introduced to India by James Fitzjames Stephens sets the ground for administrative development. The 1872 Evidence Act established voluntariness as the primary premise for admitting confessions. expand more landmark court decisions have often emphasized the importance of safeguards against prison pressure. The cases discussed in the study follow the interpretation of the law by the courts. A recent legislative initiative, the Bhartiya Sakshya Adhiniyam (BSA) of 2023, seeks to tighten the legal framework governing confessions. This new law consists of tougher methods for recording confessions, such as the presence of legal counsel during interrogations and required audio-visual recording. These methods are designed to reduce the risk of coercion and ensure that confessions are provided freely. The new law is the outcome of more than 150 years of growth and refinement of the provisions by the Judiciary. The impact of the BSA is yet to be observed. Some believe that sturdier controls will result in more credible confessions and convictions for actual criminals. Others are concerned about the potential load on the legal system and the prospect of stifling inquiries. However, the need for new legislation has been fulfilled by this act, leaving it to the hands of India for futuristic growth and administration. The following years will be critical in establishing the BSA's efficacy in achieving steadiness between eliciting confessions and protecting individual rights.

Keywords- *Confession, duress, safeguards, interrogations, coercion.*

Introduction

The year 1872 was labelled a watershed moment in the history of India's legal system. After lengthy arguments in the Viceroy's Legislative Council, the Indian Evidence Act, written by James Fitzjames Stephens, was enacted into law. This groundbreaking act represented a paradigm shift in the pursuit of justice, equipping India with a modern framework for quick and reliable adjudication. British journalist John Strachey praised Stephens' contribution, saying, "*India owed a great debt of gratitude*" to him for bestowing "a great benefit" - a strong legal system that would assure "outstanding administration" of justice. Strachey's prophetic comments ring true even a century later. The Indian Evidence Act, which is based on strong legal principles, has stood the test of time, demonstrating Stephens' foresight.

Indian Legal System works on strong grounds of the cases and facts presented in the Court. Gathering evidence and facts is not easy for Police Officers, they have to work day and night to gather evidence while some officers with crafty minds make the accused confess his crime by harassing them even if he is guilty or innocent. These Confessions are contrary to the working of law in India, even if the confessions are true, police cannot force anyone to give confessions by harassing them in jail cells. An Accused is to be presumed innocent until proven guilty. The court has the role to judge the accused's crime. The confession comes under the ambit of admission which is a wider concept explained in section 17 of the Evidence Act, there is not a clear definition of confession in the IEA which makes it hard to distinct from admission but with the help of landmark cases both the concepts have been explained deeply.

Understanding Confession-

They are considered being the 'King of Evidencence' because confessions are remarkably effective in criminal law proceedings.

Confession is the promise of swift resolution and undeniable truth. Confession *is a statement made by an accused person which, "admits any fact in issue or relevant fact, and that statement will be admissible in evidence against him."* The very act of procuring a confession from a high-pressure environment threatens to authenticate its source. Coercion works as a background force to procure confessions, even if these confessions are not accountable from their genesis. Confessions in the Indian judicial system are gateways to truth, yet the power of confessions hinges on a critical condition: Voluntariness. A confession is to be admitted in the

court proceedings if the person confessing has voluntariness and no external force is present to imply conditions on his statement.

There are generally two types of confessions-

- 1) Judicial Confessions- These are admissions made by a party in a court of law or during legal proceedings. Because they are delivered in a formal context, judicial confessions are usually made under oath and are frequently regarded as solid evidence in legal situations. They are voluntary confessions made by the confessing party, and they are included in the official court file.
- 2) Extra- Judicial Confessions- These are admissions made by a party outside of a formal court case or legal action. Extrajudicial confessions can occur in several ways, including written confessions in letters or diaries, statements made to law enforcement during an inquiry, and confessions given to friends or family. Extrajudicial confessions can be used as evidence in court, but whether or not they are supported by other evidence and how they were collected are just two examples of the variables that might affect their admissibility and weight as evidence.

Historical Background-

The contemporary rule regarding the admissibility of a confession is not a new concern, but rather the culmination of over four centuries of legal development. In 17th century England, confessions held a simplistic role of seemingly straightforward admission of guilt. The courts at the time accepted the confessions without scrutinizing the methods used to obtain them. In essence, the confessions functioned as a form of a Criminal Plea, which bypassed the need to go through evidentiary analysis.

Throughout the nineteenth century, the concept behind confessional reliability gained hold, eventually being adopted in legal systems across England and the United States. However, it was not until 1936, with the landmark decision of *Brown v. Mississippi*¹, that current constitutional advancements in the form of the exclusionary confession rule emerged. This decision by the United States Supreme Court represented a profound shift, defining the voluntariness of confessions as an essential requirement of due process that applies to all states under the Fourteenth Amendment. Soon after this landmark case, the Court shifted between

subjective and objective approaches to evaluate voluntariness. The subjective test demanded a direct link between police coercion and the subsequent confession, whereas the objective approach automatically rejected confessions gained through intrinsically coercive police practices. Both approaches sought to shield the accused from abusive police treatment between arrest and conviction, reflecting the changing environment of legal protections in the pursuit of justice. Tracing the roots of confessional acceptability in India necessarily leads to colonial foundations. During the British administration, legal principles from England were imported to Indian soil, creating the groundwork for the nation's judicial system. The Indian Evidence Act of 1872, defined evidence regulations, including confession admissibility. Notably, Section 24 of the Act established the grounds under which a confession could be considered involuntary and hence inadmissible in the court.

However, the legal notions embedded by colonial rulers did not remain static. They blended with indigenous legal systems and gradually evolved to represent the distinct spirit of Indian Culture. This trend is shown in landmark cases like- *Pakala Narayan Swami vs. Emperor*². In this case law, the Privy Council clarified the idea that a confession must be free to be accepted, emphasizing the necessity of safeguards against compulsion or inducement. This case law was the turning point in Indian Legal history, confirming the importance of voluntariness in evaluating the admission of confessions. Subsequent judicial rulings refined this principle by drawing on both Indian and foreign jurisprudence. *Palvinder Kaur v. State of Punjab*³ is another key milestone in which the Supreme Court of India underlined the demand for voluntariness while explaining the complexities of police questioning tactics. The Court emphasized the importance of strictly adhering to procedural protections to ensure the integrity of confessions collected during custodial interrogations.

The current rule on confession admissibility in India represents the culmination of centuries of legal development, informed by a rich tapestry of colonial legacies, indigenous legal traditions, and developing judicial interpretations. It represents a difficult balance between the requirements of justice and the protection of individual rights, reflecting the changing code of a democratic society devoted to the rule of law. Furthermore, the jurisprudential framework governing confessions in India is dynamic, responding to evolving societal norms and growing legal theories. In recent years, there has been an increased acknowledgment of the need to strengthen safeguards against custodial mistreatment and harsh interrogation practices. Judicial statements have emphasized the state's duty to protect the accused's dignity and rights, altering

the conversation around confessions within a wider framework of human rights and constitutional principles. Section 22 of BSA defines 'Confession', which was not properly clear in the IEA. The new Act, which is to be imposed by the start of July 2024, gives a proper basic structure to the term 'Confession' which was missing in the previous legislation, making it easy for the new lawyers and the court to interpret.

Authority to record Confession?

The Code of Criminal Procedure is the main legislation dealing with substantive criminal law, which determines the procedure for recording statements by the police officers and the magistrate. Section 161 of CrPC⁴ empowers police officers to examine any person relating to the facts and circumstances of the case. Statements made to Police officers during this phase are not to be signed by anyone. However, it is not in the law that the court will completely ignore the statement recorded and signed in front of police officers, but the court has to be cautious in appreciating the evidence recorded before police officers. According to the case of State of Uttar Pradesh v. M.K. Anthony⁵ and in the case State of Rajasthan v. Teja Ram & others⁶, witnesses don't need to sign their statement, but it is expressly prohibited by Section 162 of CrPC, if this provision is violated then the value of the testimony might weaken when it reaches court.

According to Section 164 of CrPC⁷, only a Magistrate can record a confession, which should be done voluntarily without any threat, inducement, or promise or according to the BSA 2023- without coercion. The Magistrate should record the confession as mentioned in Section 281 of CrPC, this statement cannot be depose of substantive evidence when the person giving such statement does not depose of such facts on oath during trial. Before acting on the confession made in front of the judicial magistrate, the court needs to be satisfied with the completion of procedural requirements that are laid down in sub-sections (2) and (4).

In the case of Paramnanda Pegu v. State of Assam⁸, the court emphasized that its primary focus should be on determining whether the confession made by the accused was voluntary, without any threat, duress, or inducement. The court should sensibly consider the circumstances surrounding the confession to ensure that it was voluntary and not influenced by external factors.

Safeguards Provided by Constitution-

A confession represents the accused's definitive admission of their involvement in the alleged offence. This clear recognition provides effective evidence, considerably affecting court procedures and shaping the course of criminal cases. Confessions obtained by threat, inducement,⁹ or promise to have to charge against the accused person are irrelevant to the Court, if making these statements will, according to the accused give any advantage or avoid any evil of a temporal nature about the proceedings against him. In the U.S., the law provides for Miranda Warning, a law enforcement procedure where they inform a suspect about his rights before questioning them. The law provides the suspects the Right to Silence and the Right to Attorney, somewhat similar to Article 20(3) of the Indian Constitution.¹⁰ The Court will not consider any confession that a person makes against him, this can be derived from Article 20(3) of the Constitution of India. The Constitution states that no accused shall be compelled to be a witness against himself, Article 20(3) acts as a protective umbrella against testimonial compulsion in respect of persons accused of an offence to be a witness against themselves.

The Indian Constitution provides immunity to the accused, according to the legal maxim “**Nemo tenetur prodre accusare seipsum**”, which states that “No man is obliged to be a witness against himself.” The Supreme Court widened the scope of Article 20(3) in the landmark case of *M.P Sharma V. Satish Chandra*¹¹, the court, in this case, declared that a person whose name is mentioned as accused in the first information report by the police officials has full immunity to claim protection under Article 20(3) of the Indian Constitution. The person who has been stated as the accused has the privilege against self-incrimination available at both the trial and Pre-trial stage. Section 162 of the Code of Criminal Procedure states that “*No statement made by any person to a police officer in the course of an investigation 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). 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."¹²

There is the use of narco-test analysis in the investigation and the implication of the test on human rights. In the case of *State of Bombay V. Kathi Kalu Oghad*¹³, the court held that for the evidence obtained from this test to be admissible, it should be proved that the accused was compelled to make a self-incriminating statement. In this context, compulsion refers to physical coercion, threatening or psychological pressure put on the person. The court also emphasized that the statements made voluntarily without any inducement will have full effect and will be accepted in the court.

The confrontational process of interrogation is preceded by an information gathering interview of a person conducted by police officers to determine if a suspect is guilty or innocent. In *Criminal Interrogations and Confessions* (Inbau, Reid, Buckley, & Jayne, 2001), the most influential manual on interrogation, the police officers are advised to use the verbal cues, non-verbal cues, and behavioural attitudes to detect deception—at, they claim, exceedingly high levels of accuracy in the results. Interrogation involves information gathering techniques which focus on building rapport and avoiding assumptions of guilt. These techniques tend to increase the rate of true confessions and reducing the false confessions by focussing on reliable information gathered from interrogation. This process is designed to filter out the misleading lies and to cover up the patches in the case to make it more clear for the Judge to decide.

Recent developments (Bhartiya Sakshaya Adhiniyam)-

Evidence Act through the ages has been a chest for unburst laws, providing unflawed procedures for procuring and presenting evidence to court. Even though the Evidence Act provides effective administration in the justice delivery system, there was a need for a new set of rules in India's legal spectrum. The developments in technology and new societal relations demanded new-fangled legislation with a brighter texture and a futuristic view. The *Bhartiya Sakshya Adhiniyam* (BSA), 2023 Bill, introduced in 2023, marked a significant legislative step in the realm of criminal justice. While the bill's provisions and eventual destiny remain unknown, its potential impact on the admissibility and treatment of confessions in court is apparent. This introduction digs into the broader context of the *Bhartiya Sakshya Adhiniyam* noting the issues connected with confessions and considering various reform options. The new

set of laws engages the scope of Electronic Evidence. The Bhartiya Sakshya Adhiniyam streamlines the procedure of making confessions to police officers and the Magistrate. The new bill strengthens the legal framework around confessions by requiring tougher checks and balances before they can be used as evidence in court. This gives confessions greater weight and contributes to a more equitable trial procedure.

Confessions, especially admissions of guilt made by a suspect, have a unique role in criminal proceedings. They are powerful fragments of evidence, often persuading juries and judges to condemn. However, the procedure of obtaining a confession is complicated. Concerns about coercion, intimidation, and false confessions have long dogged the institution. These worries arise from several sources, including:

- 1) **Suspect Susceptibility:** People under arrest are susceptible to psychological pressure. Sleep deprivation, solitude, and frequent interrogation can all contribute to a desire to please authorities, even if it means creating guilt.
- 2) **Police Practices:** Law enforcement's practices for obtaining confessions have arisen under question. Allegations of coercive interrogation tactics and exploiting vulnerabilities call into doubt the voluntariness of confessions.
- 3) **Lack of Standardisation:** The legal foundation for confessions differs by country. The lack of clear, universal guidelines for eliciting and judging confessions leads to inconsistency and potential abuse.

These concerns have real-world implications. According to studies, false confessions account for a considerable proportion of unjust convictions, emphasizing the importance of reform in this vital area.

The Bhartiya Sakshya Adhiniyam (BSA), 2023 makes numerous notable modifications to strengthen the legal framework around confessions. A significant addition is the addition of a new section (Section 25A) in the IEA¹⁴. This section details the technique for recording confessions by police officers, including special measures to assure their voluntariness. These precautions include required audio-visual recording of confessions, the presence of a lawyer during questioning, and a time limit for imprisonment without counsel. This expanded approach intends to reduce the possibility of coercion and manipulation during police interrogation.

Sections 25, 26, and 27 of the IEA¹⁵ have been merged into one section, as Section 27 allows to find new evidence based on the confession. Section 27 of the Indian Evidence Act states, *Provided that, when any fact is 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. Section 27 has been proven to be an exception to Section 26 as well as Section 25, this means, that if a suspect in police custody tells the police officers about the location of the murder weapon, the statement itself cannot be used as evidence. However, police can take the help of the information and find the murder weapon, which will work as evidence. One such case law, *Chinnaswamy v. State*¹⁷ gives a better understanding of these provisions, the court held in this case that to admit the confession of a person the information given should result in the finding of material evidence that is independently verifiable.

Furthermore, BSA, 2023 amends Section 57 of the CrPC¹⁸, which empowers a Magistrate to record confessions. The amended provision mandates that Magistrates conduct a thorough inquiry to determine whether the confession was made voluntarily, with a specific focus on the presence of any inducement, threat, or promise. This increased scrutiny by Magistrates is intended to further ensure the reliability of confessions admitted as evidence. The BSA's impact on the admissibility of confessions in court has yet to be properly investigated. Proponents of the Act argue that tougher protocols for recording confessions will result in more credible and reliable evidence. They think that this will strengthen the prosecution's case and lead to more convictions of invalid cases. Furthermore, the emphasis on the presence of a lawyer during interrogation is viewed as an important step towards protecting the accused's rights.

However, opponents of the *Bhartiya Sakshya Adhiniyam (BSA), 2023* express alarm about its potential effects. They suggest that mandating the attendance of a lawyer during interrogation may create an unnecessary burden on the judicial system, especially in resource-constrained countries. Furthermore, others are concerned that the new provisions may make it more difficult to obtain confessions from the guilty, thus slowing investigations and resulting in acquittals. The dispute over the BSA's consequences for confessions is expected to persist as courts interpret and apply its provisions. The next several years will be critical in establishing the effectiveness of the new legislation in striking a balance between obtaining convictions and protecting individual rights. It is critical to recognize that the BSA, 2023 is not a single reform,

but other bills introduced in 2023 that will be implemented by July 2024 are also involved in strengthening the ground for an improved justice delivery system in India.

Emerging Legal Challenges for

The legal landscape has grown-out surrounding confessions to new technological advancements. The cases revolving around the crimes related to- hacking, phishing and ransomware attacks have posed new advancements for online confessions through emails, videos or chat logs admitting guilt on their part, but the validity of these confessions can still be posed in courts as they can be faked or AI-generated, which will make it difficult for the judiciary to differentiate between true confessions and false confessions or a real or fake account that has submitted the confession.

Even though India has reached to a new pinnacle of technological advancement with providing new and improved devices to judiciary and police officers, these advancements are not on the level to detect false chat logs or AI- generated videos which are created by professionals. There can be instances like someone else emailing to the court confessing about a crime that has not been committed by the person whose email id has been used or a forced video could be created of a person confessing his guilt, these evidences are hard to determine because of their vague backgrounds. There is a lack of highly-skilled professionals that can detect the problems in these confessions and state which look like true confessions or which ones look false or forced confessions.

Conclusion-

Confessions wield enormous significance in Indian courts, potentially swaying rulings in the direction of guilt. However, questions regarding coercion during police questioning cast doubt on their veracity. Finding a balance between obtaining confessions and respecting individual rights is a constant problem. The Indian Evidence Act of 1872 established voluntariness as the foundation for admitting confessions. Landmark cases have emphasized the importance of safeguards against pressure in police custody. The newly implemented Bhartiya Sakshya Adhiniyam (BSA) of 2023 seeks to improve this framework. It requires stronger rules for recording confessions, such as required audio-visual recording and the presence of legal counsel during interrogation. This seeks to reduce coercion during interrogation. The BSA also authorizes Magistrates to conduct extensive investigations to verify that confessions are given

freely, without threats or promises.

The impact of the BSA is yet to be observed. Proponents think that tougher rules will result in more believable confessions and convictions for true criminals. Opponents are concerned about the strain on the legal system and the potential impediment of investigations. The next few years will be critical in establishing the success of the BSA in balancing the need for confessions with the preservation of individual rights. It is vital to remember that the BSA is part of a bigger legislative reform package to strengthen India's justice system.

¹ Brown v. State of Mississippi, 1936 SCC OnLine US SC 36

² Pakala Narayana Swami v. King-Emperor, 1939 SCC OnLine PC 1

³ Palvinder Kaur v. State of Punjab, (1952) 2 SCC 177

⁴ Code of Criminal Procedure, 1973 §161.

⁵ State of U.P. v. M.K. Anthony, (1985) 1 SCC 505

⁶ State of Rajasthan v. Teja Ram, (1999) 3 SCC 507

⁷ Code of Criminal Procedure, 1973 §164.

⁸ Parmananda Pegu v. State of Assam, (2004) 7 SCC 779

⁹ Code of Criminal Procedure, 1973 §316.

¹⁰ The Constitution of India, arts. 20(3).

¹¹ M.P. Sharma v. Satish Chandra, (1954) 1 SCC 385

¹² Code of Criminal Procedure, 1973 §162.

¹³ State of Bombay v. Kathi Kalu Oghad, 1961 SCC OnLine SC 74

¹⁴ Indian Evidence Act, 1872 §25(a).

¹⁵ Indian Evidence Act, 1872 §25, 26, 27.

¹⁶ Indian Evidence Act, 1872 §27.

¹⁷ Chinnaswamy v. State, 2004 SCC OnLine Mad 914

¹⁸ Code of Criminal Procedure, 1973 §5