



ADMISSION AND CONFESSION: - EVIDENTIARY VALUE

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Admission and confession are two very important concepts used in law of evidence by lawyers to strengthen their cases in the eyes of the court. Both admissions and confessions are used as sources of evidence. If a person gives a nod to a fact or statement, he actually admits or acknowledges the fact. Prior admission by a person can be taken in a court of law as a statement that proves guilt or a crime. Admission as a source of evidence is mostly used in civil cases. Confession is not defined in the Act. Confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. Confessional statement must be voluntary and genuine and legal. Judicial Confession, Extrajudicial confession, Voluntary and non-voluntary confession are some kinds of confessions. A Confession to police officer not to be proved, No confession made to a police officer shall be proved as against a person accused of any offence. If the confession of the accused is supported by the discovery of a fact then it may be presumed to be true and not to have been extracted.

Admission and confession are two very important concepts used in law of evidence by lawyers to strengthen their cases in the eyes of the court. Both admissions and confessions are used as sources of evidence.

There are many similarities in the two concepts, but there are also subtle differences that will be highlighted in this article, Admission is taken according to the procedure stated in **Code of Civil Procedure 1908** whereas Confession is taken according to the procedure stated in section **164** of **Code of Criminal Procedure 1898**, Section 17 to 31 of the Indian Evidence Act (hereinafter referred as IEA) deals with the provision of Admissions and confessions.

Admission

Admission plays a very important part in judicial proceedings. If a person gives a nod to a fact or statement, he actually admits or acknowledges the fact. Prior admission by a person can be taken in a court of law as a statement that proves guilt or a crime. Admission as a source of evidence is mostly used in civil cases. The expression 'Admission' means "Voluntarily acknowledgement of the existence or truth of a particular fact". But In the Evidence Act the term 'Admission' has not been used in this wider sense. It deals with admissions by statements only oral or written or contained in an electronic form. If one party to the suit or any other proceeding proves that the other party has admitted his case, the work of court becomes easier. The admission must be clear and unambiguous.

There are three parts of the definition:

1. It defines term "admission"
2. It says that an admission will be relevant only if it is made by any of the person specified in the Act.
3. Admission" is Relevant only in the circumstances mentioned in the Act.

Characteristics of Admission



To constitute admission, the following characteristics are to be present as per section 17 of Indian Evidence Act:-

1. It may be oral or documentary
2. It is a statement to suggest any inference to any fact in issue or relevant fact.
3. It must be made by any person prescribed under the Act; and
4. It must be made under the circumstance prescribed under the Act.

The admission is admissible because of the following reasons:

- a) Admission as a waiver of proof;
- b) Admission as statement against interest;
- c) Admission as evidence of contradictory statement;
- d) Admission as evidence of truth.
- e) Admission is the best substantive evidence that an opposite party can rely upon.

Nature of Admission

The statements made by parties during judicial proceeding are 'self regarding statements'. The self regarding statements may be classified under two heads –

- i) **Self-serving Statements** - self-serving statements are those, which serve, promote or advance the interest of the person making it. Hence they are not allowed to be proved. They enable to create evidence for themselves.
- ii) **Self-harming** - Self-harming statements are those which harm or prejudice or injure the interest of the person making it. These self-harming statements all technically known as

“Admissions” and are allowed to be proved.

Persons who can make admissions

The following persons can make admissions:-

1. A party to civil or criminal proceeding or his expressly or impliedly authorized agent¹. This includes two classes:-

- a) Parties to suit or proceedings
- b) Agent of parties

2. Parties to the suit suing or being sued in a representative character while they hold the character, e.g., trustees, executors, etc.²

3. Persons having proprietary or pecuniary interest in the proceeding if the statement are made in their character of persons so interested and during the continuance of their interest.³

4. Predecessor-in title:- persons whom the parties to the suit have derived their interest in the subject matter of the suit, provided the statements are made during the continuance of their interest.⁴

5. A person whose position is in issues of liability is necessary to prove as against any part to the suit.⁵

6. Statement by referees.⁶

Confession

¹ Section 18 IEA.

² Ibid.

³ Ibid, *Sahdeo v Board of Revenue*, AIR 1980 All. 408, *Ambika Devi v. BalMukand Pandey* AIR Pat. 111.

⁴ Section 18(2), *Avtar Singh v. Atma Singh* AIR 1982 J&K 141.

⁵ Section 19 IEA, *Sivalingam v. Sakhtival* 1989 Mad. 252.

⁶ Section 20 IEA, *R v. Mallary*, (1884) 13QBD 33, *Hairachand Kothari v. State of Rajasthan* AIR 1985 SC 998.



The word “confession” appears for the first time in Section 24 of the Indian Evidence Act. This section comes under the heading of Admission so it is clear that the confessions are merely one species of admission. Confession is not defined in the Act. Mr. Justice Stephen in his “Digest of the law of Evidence” defines confession as “confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.” Confessional statement must be voluntary and genuine and legal.⁷

In *Pakala Narayan Swami v Emperor*⁸ Lord Atkin observed “A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not in itself a confession”.

In the case of *Palvinder Kaur v State of Punjab*⁹ the Supreme Court approved the Privy Council decision in *Pakala Narayan Swami* case over two scores. Firstly, that the definition of confession is that it must either admit the guilt in terms or admit substantially all the facts which constitute the offence. Secondly, that a mixed up statement which even though contains some confessional statement will still lead to acquittal, is no confession. Thus, a statement that contains self-exculpatory matter which

if true would negate the matter or offence, cannot amount to confession.

Kinds of confession

A confession may occur in many forms. When it is made to the court itself then it will be called judicial confession and when it is made to anybody outside the court, in that case it will be called extra-judicial confession. It may even consist of conversation to oneself, which may be produced in evidence if overheard by another.

a) **Judicial Confession**-these are those which are made before a magistrate or in court in the due course of legal proceedings. A judicial confession has been defined to mean “plea of guilty on arraignment (made before a court) if made freely by a person in a fit state of mind.

b) **Extra-judicial confession**- These are those which are made by the accused elsewhere than before a magistrate or in court. It is not necessary that the statements should have been addressed to any definite individual. It may be a confession to a private person. An extra-judicial confession has been defined to mean “a free and voluntary confession of guilt by a person accused of a crime in the course of conversation with persons other than judge or magistrate seized of the charge against himself.” A man after the commission of a crime may write a letter to his relation or friend expressing his sorrow over the matter. This may amount to confession. Extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. Extra-judicial confession is generally made before private person who includes even judicial

⁷*Mohammad Ajmal Mohammad Amir Kasab Alia ABU Mujahid v. State of Maharashtra* AIR 2012 SC 3565.

⁸ (1939) 41 BOMLR 428.

⁹ 1952 AIR 354.



officer in his private capacity. It also includes a magistrate not empowered to record confessions under section 164 of the Cr.P.C. or a magistrate so empowered but receiving the confession at a stage when section 164 does not apply.

Difference between judicial and extra-judicial confession: (Table)

Judicial confession	Extra-judicial confession
1. Judicial confessions are those which are made to a judicial magistrate under section 164 of Cr.P.C. or before the court during committal proceeding or during trial.	1. Extra-judicial confession are those which are made to any person other than those authorized by law to take confession. It may be made to any person or to police during investigation of an offence.
2. To prove judicial confession the person to whom judicial confession is made need not be called as witness.	2. Extra-judicial confession are proved by calling the person as witness before whom the extra-judicial confession is made.
3. Judicial confession can be relied as proof of guilt against the accused person if it appears to the court to be voluntary and true.	3. Extra-judicial confession alone cannot be relied it needs support of other supporting evidence.
4. A conviction may be based on judicial confession.	4. It is unsafe to base conviction on extra-judicial confession.

c) Voluntary and non-voluntary confession-

A confession of an accused may be classified into Voluntary¹⁰ and non-voluntary confession. A confession to the police officer is the confession made by the accused while in the custody of a police officer and never relevant and can never be proved under Section 25 and 26. A

confession appears to the court to have been caused by any inducement, threat or promise having reference to the change against the accused person proceeding from a person in authority and sufficient in opinion of the court to give the accused person grounds, which would appear to him reasonable for supporting that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him, it will not be relevant and it cannot be proved against the person making the statement. Section 24 of the Evidence Act lays down the rule for the exclusion of the confessions which are made non-voluntarily.

Confession caused by inducement, thread or Promise

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise¹¹ having reference to the charge against the accused person,

¹⁰ Abdul Razak v. State of Maharashtra AIR 1970 SC 385.

¹¹ Section 24 Indian Evidence Act.



proceeding from a person in authority and sufficient, in the opinion of the

court, to give the accused person grounds, which would appear to him reasonable, for supporting that by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceeding against him.

Confession to police

A Confession to police officer not to be proved, No confession made to a police officer shall be proved as against a person accused of any offence.¹² Reasons for exclusion of confession to police another variety of confessions that are under the evidence act regarded as involuntary are those made to a personnel. Confessions to police were allowed to be proved in evidence, the police would torture the accused and thus force him to confess to a crime which he might not have committed. A confession so obtained would naturally be unreliable. Such a confession will be irrelevant whatever may be its form direct, express, implied or inferred from conduct.

Confessional FIR

The statement which is not confession cannot be excluded by the provision of section 25. Where this statement happens to have been made to the police prior to the commencement of the investigation of the case it cannot possibly be hit by section 162 of CrPC and therefore admissible.¹³ Supreme Court has held that where the person, who lodged the FIR, regarding the occurrence of

a murder is subsequently himself an accused and report lodged by him is not a confession but is an admission by him of certain facts which have a bearing on the question to be determined by the Court.¹⁴ Only that part of a confessional First Information Report is admissible which does not amount to a confession or which comes under the scope of section 27. The non confessional part of the FIR can be used as evidence against the accused as showing his conduct under section 8.

Confession and Police Custody

A confession which is made in custody of a police officer cannot be proved against him, *unless it is made before a Magistrate*.¹⁵ The word custody is used here in wide sense. "The custody of a police officer for the purpose of section 26, IEA, is no mere physical custody." A person may be in custody of a police officer though the other may not be physically in possession of the person of the accused making the confession. There must be two things in order to constitute custody. Firstly, there must be some control imposed upon the movement of the confessor, he may not be at liberty to go any way he likes, secondly, such control must be imposed by some police officer indirectly. The crucial test is whether at the time when a person makes a confession he is a free man or his movements are controlled by the police by themselves or through some other agency employed by them for the purpose of securing such confession.¹⁶ The word

¹² Section 25 IEA.

¹³ *Shital Chandra v. State* AIR 1956 Cal. 82, *Jasoda Haldar v Saitendranath*, AIR 1957 Cal 37.

¹⁴ *Nasir Ali Khan v. State of UP.*, 1957 SC 366. A. *Nagesia v. State of Bihar* AIR 1966 SC 119.

¹⁵ Section 26 IEA.

¹⁶ *Mst. Maharani v. Emperor*, AIR 1948 All 7.



‘custody’ in this the following section does not mean formal custody but includes such state of affairs in which the accused can be said to have come into the hands of a police officer, or can be said to have been some sort of surveillance or restriction.

How much of Information received from accused may be proved

If the confession of the accused is supported by the discovery of a fact then it may be presumed to be true and not to have been extracted. It comes into operation only-

- If and when certain facts are deposed as discovered in consequence of information received from an accused person in police custody, and
- If the information relates distinctly to the fact discovered.

This section is based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. But clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.¹⁷

In **Pandu Rang Kallu Patil v. State of Maharashtra**¹⁸, it was held by Supreme Court that section 27 of evidence act was enacted as proviso to. The provisions of sections of Section 25 and 26, which imposed a complete ban on admissibility of any confession made by accused either to police or at any one while in police custody.

¹⁷ Section 27 IEA.

¹⁸ 2002(1) SCR 338.

Nonetheless the ban would be lifted if the statement is distinctly related to discovery of facts. The object of making provision in section 27 was to permit a certain portion of statement made by an accused to Police Officer admissible in evidence whether or not such statement is confessional or non confessional.

Section 24, 25 and 26 of the Evidence Act exclude certain confessions. Section 24 lays down that if a confession appears to have been caused by threat, promise or inducement from some man in authority it will be irrelevant and cannot be proved against the confessor. Section 25 excludes a confession made to a police officer. Section 26 lays down that if a person while in custody of a policeman confesses his guilt to any other person not being a Magistrate, his settlement will not be proved against him.

Section 27 lays down that when at any trial, evidence is led to the effect that some fact was discovered in consequence of the information given by the accused of an offence in custody of the police officer, so much of the information as relates to the facts discovered by that information, may be proved irrespective of the facts discovered by that information, may be proved irrespective of the facts whether that information amounts to confession or not.¹⁹

Confession after removal of Threat or Promise²⁰- u/s 24 we have seen that if the opinion of a court a confession seems to

¹⁹ *Md. Inayatullah v. State of Maharashtra*, AIR 1976 SC 438; *Earabha Drappa v. State of Karnataka*, AIR 1983 SC 446.

²⁰ Section 28 IEA.



have been caused by any inducement, threat or promise having reference to the charge and proceeding from a person in authority, it is irrelevant and cannot be proved even against a person making the confession, Section 28 provides that if there is inducement, threat or promise given to the accused in order to obtain confession of guilt from him but the confession is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court been fully removed, the confession will be relevant becomes pre and voluntary. It must be borne in mind that there must be strong and cogent evidence that the influence of the inducement has really ceased.

Impression produced by promise or threat may be removed

- By lapse of time, or
- By an intervening caution giving by some person of superior authority to the person holding out the inducement, where a prisoner confessed some months after the promise and after the warning his confession was received.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, Etc., In such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to question which he need not have answered, whatever may have been the form of those questions, because he was not warned that he was not bound to make such

confession, and that evidence if it might be given against him.²¹

Section 24 lays down that a confession which is the outcome of inducement, threat or promise from a person in authority would not be relevant. Section 25 lays down that a confession to a police officer is irrelevant. Section 26 excludes the statement of an accused in a police custody to any person other than a Magistrate. Section 29 lays down that if a confession is not excluded by Sections 24, 25 or 29 it will not be excluded on the ground of promise of secrecy or of deception or of being drunk, or of being made in answer to question or without warning that it will be used against him in evidence.

Section 29 assumes that there is no bar to the admissibility of the confession in question arising from any of the earlier provision, viz, section 24 to 26 and it then proceeds to the invalidate or negative other positive objections or bars that may be raised against the admissibility.²²

Consideration of proved confession affecting person making it and others jointly under trial for the same offence²³

When more persons than one are jointly tried for the same offence, the confession made by one of them, if admissible in evidence, should be taken into consideration against all the accused, and not against the person who alone made it. It appears to be very strange that the confession of one

²¹ Section 29 IEA.
²² B. Lal, “Law of Evidence” (Central Law Agency, Edition 20th, Allahabad)
²³ Section 30 IEA.



person is to be taken into consideration against another. Where the confession of one accused is proved at the trial, the other accused persons have no other opportunity to cross examine him. It is opposed to the principle of jurisprudence to use a statement against a person without giving him the opportunity to cross examine the person making the statement. This section is an exception to the rule that the confession of one person is entirely admissible against the other.

EVIDENTIARY VALUE OF ADMISSION AND CONFESSION

Value of admission:- the reception of admission considered as exceptions to the rule against hearsay is grounded upon a fact that what a person says may be presumed to be true as against himself and when not obnoxious to that rule, upon the fact of inconsistency. The general rule is that an admission can only be given in evidence against the party making it, and not against any other party. To this rule there are certain exceptions which are mentioned in section 18-20.

Principle underlying the evidentiary value of an admission may be as:-

1. An admission constitutes a substantive piece of evidence in the case and for that reason can be relied upon for proving the truth of the facts incorporated therein.
2. An admission has the effect of shifting the onus of proving to the contrary on the party against whom it is produced with the result that it casts an imperative duty on such party

to explain it. In the absence of satisfactory explanation it is presuming to be true.²⁴

3. An admission, in order to be competent and to have the value and effect referred to above should be clear, certain and definite and not ambiguous, value or confused.²⁵

Confession

Value of judicial confession- a confessional statement made by accused before the magistrate is good evidence and accused to be convicted on the basis of it.²⁶ A case where there is no proof of *corpus delicti* must be distinguished from another where that is proved. In the absence of the *corpus delicti* a confession alone may not suffice to justify conviction.²⁷ A confession can obviously be used against the maker of it and is in itself sufficient to support his conviction.

Value of extra-judicial confession- extra-judicial confessions are not usually considered with favour but that does not mean that such a confession coming from a person who has no reason to state falsely and to whom it is made in the circumstances which support his statement should not be believed. The evidence of extra-judicial confession is a weak piece of evidence.²⁸ The extra-judicial confession must be received with great case and caution.²⁹ It can be relied upon only when it is clear,

²⁴*Dharamwati Bai and others v. Shiv Singh* AIR 1991 MP 18.

²⁵*Oud Kishore v. Ram Gopal* AIR 1979 SC 861.

²⁶*Emperor v. LalBaksha*, AIR 1945, Lah.43.

²⁷*Birey Singh v. State* 1951.

²⁸*State of Punjab v. Bhagwan Singh*, 1975 Cr.LJ 282; *Indir Kumar v. State of Tripura*, 1992 Cr.LJ. 13.

²⁹BatukLal, "The law of Evidence", pg. 132, 7th Ed., 2009.



consistent and convincing. The court has to decide whether the person before whom the admission is said to have been made is trustworthy witnesses.³⁰

Value of Retracted Confession- A retracted confession is a statement made by an accused person before the trial begins by which he admits to have committed the offence but which he repudiates at the trial. After the commission of a serious offence police officer makes investigation into the matter, examines witnesses and the accused.³¹ If in his opinion the accused is proved to have committed the offence, he submits a report to a magistrate having jurisdiction in the matter. The court takes evidence and examines the accused. If during the investigation, the accused on being examined by the police officer is willing to admit the guilt the police officer sends the accused to some magistrate for recording his statement. The magistrate after being satisfied that the accused admits in his statement to have committed the offence this recorded statement by the magistrate may be proved at the trial. When the trial begins the accused on being asked as to whether he committed the crime he may say that he did not commit the crime. The question may again be put to him as to whether he made statement before the magistrate during the investigation confessing the guilt. He may deny to have made the statement at all or he may say that he made that statement due to

undue influence of the police. In this case the confession made by the accused to the magistrate before the trial begins is called retracted confession. It is unsafe to base the conviction on a retracted confession unless it is corroborated by trustworthy evidence. There is no definite law that a retracted confession cannot be the basis of the conviction but it has been laid down as a rule of practice and prudence not to rely on retracted confession unless corroborated.³²

Proof of judicial confession- A confession recorded by the magistrate according to law shall be presumed to be genuine. It is enough if the recorded judicial confession is filed before the court. It is not necessary to examine the magistrate who recorded it to prove the confession. But the identity of the accused has to be proved.³³

Proof of extra-judicial confession- extra-judicial confession may be in writing or oral. In the case of a written confession the writing itself will be the best evidence but if it is not available or is lost the person before whom the confession was made be produced to depose that the accused made the statement before him. When the confession has not been recorded, person or persons before whom the accused made the statement should be produced before the court and they should prove the statement made by the accused.

Admission and Confession Difference

³⁰*State of Punjab v. Bhagwan Singh* AIR 1975 SC 258, *Inspector of Police T.N. v. Palanisamy* AIR 2009 SC 1012.

³¹*State of UP v. Boota Singh* AIR 1978 SC 1770, *State of Maharashtra v. Madhukar Keshav*, AIR 1980 SC 1224, *Keshar Singh and others v. State (Delhi Administration)* AIR 1988 SC 1833.

³²*State of Maharashtra v. P.K Pathak* AIR 1980 SC 1224.

³³Section 80 IEA.



Section 17 to 31 deals with admission generally and include Section 24 to 30 which deal with confession as distinguished from admission.

Confession	Admission
1. Confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding to establish the commission of an offence by him.	1. Admission usually relates to civil transaction and comprises all statements amounting to admission defined under section 17 and made by a person mentioned under section 18, 19 and 20.
2. Confession if deliberately and voluntarily made may be accepted as conclusive of the matters confessed.	2. Admissions are not conclusive as to the matters admitted it may operate as an estoppel.
3. Confessions always go against the person making it	3. Admissions may be used on behalf of the person making it under the exception of section 21 of evidence act.
4. Confessions made by one or two or more accused jointly tried for the same offence can be taken into consideration against the co-accused (section 30)	4. Admission by one of the several defendants in suit is no evidence against other defendants.
5. Confession is statement written or oral which is direct admission of suit.	5. Admission is statement oral or written which gives inference about the liability of person making admission.
6. A retracted confession may form the basis of conviction.	6. A retracted admission is of no value.
7. All confessions are admission	7. All admissions are not confession.

Conclusion

It can be said that the admission has a wider scope than confession, as the latter comes under the ambit of the former. Hence, every confession is an admission, but the reverse is not true. The main difference between these two is that in case of confession, the conviction is based on the statement itself, however, in the case of admission, additional evidence is required, to support the conviction. If the statement is found to be an admission, it shall be admissible under Section 21 and if it amounts to a confession, it shall be admissible under Section 24 to 30. If it is found to be holding improper inducement, threat or promise, it would be hit by the restriction in Section 24 and shall not be admissible as a confession anymore, but, it may still be admissible under Section 21 as an admission provided it suggests an inference as to a fact in issue or a relevant fact. A restriction on admissibility of an admission is laid down, that it shall not be made to a police officer during an ongoing investigation.

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