



## VOLUNTARY CONFESSIONS OR CONSTITUTIONAL VIOLATION: RETHINKING POLICE INTERROGATION IN INDIA

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### Abstract

The law of confessions in India rests on the foundational premise that only voluntary statements possess evidentiary value. However, the persistence of custodial violence and coercive interrogation practices raises serious doubts about the authenticity of this assumption. This article critically examines the legal and constitutional framework governing confessions, highlighting the tension between crime control objectives and due process guarantees. It analyses statutory provisions under the Indian Evidence Act, 1872 and procedural safeguards under the Code of Criminal Procedure, 1973, alongside the evolving jurisprudence of Article 20(3) and Article 21 of the Constitution of India. Through an evaluation of judicial decisions, comparative perspectives, and institutional shortcomings, the article argues that the notion of voluntariness often operates as a legal fiction. It concludes by proposing reforms aimed at strengthening accountability, enhancing evidentiary reliability, and aligning interrogation practices with constitutional morality.

**Keywords:** Voluntary Confessions; Custodial Violence; Police Interrogation; Article 20(3); Article 21; False Confessions; Evidentiary Reliability; Due Process; Police Reforms; Constitutional Morality

### 1. Introduction: The Paradox of Voluntary Confessions

The concept of voluntariness in confessions forms a cornerstone of criminal jurisprudence, yet its practical

operation remains fraught with complexity. A confession is regarded as reliable evidence only when it is made freely and without any inducement, threat, or coercion. This principle is embodied in the Indian Evidence Act, 1872, which excludes confessions obtained through improper means. However, the assessment of voluntariness is rarely straightforward in practice. Interrogation settings often involve subtle pressures, prolonged questioning, and unequal power dynamics, making it difficult to determine whether a statement is truly the result of an individual's free will. As a result, the legal understanding of voluntariness may not fully capture the realities of custodial environments.

This concern reflects a broader tension between the objectives of crime control and the demands of due process. On one side, the criminal justice system emphasizes efficient investigation and conviction, often relying on confessional evidence as a crucial tool. On the other, constitutional values require that such evidence be obtained through fair and lawful procedures. The Indian system, influenced by both its colonial legacy and its constitutional framework, continues to struggle with reconciling these competing priorities. In practice, the pressure to secure results may lead to investigative methods that undermine procedural safeguards, thereby casting doubt on the authenticity of confessions.

The constitutional framework attempts to address this tension by embedding safeguards against coercion and arbitrary state action. Article 20(3) of the Constitution of India protects individuals from being compelled to incriminate themselves, while Article 21 ensures that any deprivation of personal liberty must follow a procedure that is just, fair, and reasonable. Judicial interpretation has significantly expanded the scope of these protections, particularly by incorporating principles of substantive due process.<sup>1</sup> Nevertheless, reports of custodial coercion persist, raising serious

<sup>1</sup> Ratanlal & Dhirajlal, *The Law of Evidence*

(LexisNexis, 26th edn., 2017) 268–276



questions about the effectiveness of these constitutional guarantees in practice.<sup>2</sup>

The paradox, therefore, lies in the coexistence of a legal framework that formally rejects coercion and an investigative reality where such practices are not entirely absent. This contradiction calls for a deeper re-examination of how voluntariness is conceptualized and enforced within the Indian criminal justice system.<sup>3</sup>

## 2. Legal Framework Governing Confessions in India

The law relating to confessions in India is structured through a combination of evidentiary rules, procedural safeguards, and constitutional guarantees, all aimed at ensuring that statements made by an accused are not the product of coercion. The Indian Evidence Act, 1872 provides the primary framework under Sections 24 to 30. Section 24 excludes confessions that appear to have been obtained through inducement, threat, or promise, thereby emphasizing the importance of voluntariness.<sup>4</sup> Sections 25 and 26 go further by making confessions to police officers, or those made in police custody, generally inadmissible unless recorded in the presence of a Magistrate. These provisions reflect a long-standing concern regarding the possibility of abuse of power during custodial interrogation.<sup>5</sup> At the same time, Section 27 introduces a limited exception by permitting the admissibility of information that leads to the discovery of a relevant fact, thereby acknowledging investigative necessities while retaining safeguards.

Procedural law complements these evidentiary rules through Section 164 of the Code of Criminal Procedure, 1973, which governs the recording of confessions by a Magistrate. This provision

incorporates several protective measures intended to secure voluntariness. The Magistrate is required to inform the accused that they are under no obligation to confess and that any statement made may be used as evidence against them.<sup>6</sup> Additionally, the Magistrate must ensure that the accused is free from police influence and is given adequate time to reflect before making a statement. These procedural requirements aim to create an environment where the possibility of coercion is minimized, thereby enhancing the credibility of judicial confessions.

The constitutional dimension further strengthens this framework. Article 20(3) of the Constitution of India embodies the principle against self-incrimination, protecting individuals from being compelled to testify against themselves. Judicial interpretation has clarified that this protection extends beyond physical force to include mental pressure and indirect forms of compulsion. Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted to require that all procedures affecting liberty must be fair, just, and reasonable. Together, these provisions impose substantive constraints on investigative practices and reinforce the inadmissibility of coerced confessions.

Despite this comprehensive legal framework, its practical enforcement remains uneven. Empirical studies and legal scholarship continue to point out that confessional evidence is often relied upon in circumstances where procedural safeguards may not have been fully observed. This gap between legal standards and actual practices highlights the need for stronger institutional accountability and a shift towards evidence-based investigation.

<sup>2</sup> K.N. Chandrasekharan Pillai, "Confessions and the Right Against Self-Incrimination" (2008) 50 *Journal of the Indian Law Institute* 124–130.

<sup>3</sup> Law Commission of India, *185th Report on Review of the Indian Evidence Act, 1872* (2003) paras 46–53.

<sup>4</sup> A.N. Mulla, *The Indian Evidence Act* (LexisNexis, 19th edn., 2018) 312–330.

<sup>5</sup> K.I. Vibhute, "Confession Evidence and Police Practices in India: A Critical Study" (2004) 46 *Journal of the Indian Law Institute* 312.

<sup>6</sup> Law Commission of India, *180th Report on Article 20(3) of the Constitution of India and the Right to Silence* (2002) paras 10–18.



### 3. The Myth of Voluntariness: Coercion in Police Interrogation

The notion that confessions are ordinarily voluntary is increasingly questioned in light of persistent accounts of coercion within custodial settings. While the law formally rejects involuntary statements, the realities of police interrogation often reveal a different picture. Custodial violence, including the use of so-called “third-degree” methods, continues to cast doubt on the authenticity of confessions obtained during investigation.<sup>7</sup> Physical force, though constitutionally impermissible, is not entirely absent from policing practices, particularly in cases where there is pressure to secure quick results. Such methods not only violate legal safeguards but also undermine the evidentiary value of the confession itself.<sup>8</sup>

Beyond overt physical abuse, coercion frequently operates in more subtle and less visible forms. Psychological pressure, prolonged interrogation, sleep deprivation, and threats of harsher consequences are commonly documented techniques that may compel an accused to confess. These methods, while harder to prove, can be equally effective in eroding an individual’s capacity to exercise free choice. Legal scholarship has emphasized that voluntariness cannot be assessed merely by the absence of physical force; rather, it must account for the broader context in which the statement is made, including the mental state of the accused and the conditions of detention. In this sense, the distinction between voluntary and involuntary confessions becomes increasingly fragile.

The problem is further aggravated by the socio-economic vulnerabilities of many accused persons. Individuals from marginalized backgrounds often lack access to legal representation at the initial stages of investigation and may be unaware of their rights. Illiteracy, poverty, and social disadvantage can make them particularly susceptible to intimidation and

manipulation by law enforcement authorities.<sup>9</sup> In such circumstances, the power imbalance between the police and the accused becomes stark, raising serious concerns about the fairness of the process. Empirical studies have shown that vulnerable individuals are more likely to confess under pressure, even in the absence of actual guilt, thereby increasing the risk of wrongful convictions.

Judicial interventions have acknowledged these concerns, yet the persistence of custodial coercion suggests that existing safeguards are not fully effective in practice. The continued reliance on confessional evidence within an adversarial system that lacks adequate oversight mechanisms contributes to this problem.<sup>10</sup> As a result, the idea of voluntariness often operates more as a legal fiction than as an empirical reality. A meaningful reassessment of interrogation practices is therefore necessary, one that recognizes the complex interplay of physical, psychological, and structural factors influencing confessions.

### Judicial Approach: Safeguards and Their Limitations

The Indian judiciary has been instrumental in evolving a rights-based framework to regulate custodial interrogation and the admissibility of confessions. Recognising the inherent risk of abuse in police custody, courts have repeatedly emphasised that the legitimacy of the criminal process depends upon adherence to constitutional guarantees of fairness and dignity. This judicial approach reflects a broader shift from a formalistic understanding of procedure to a substantive commitment to due process, particularly under Article 21 of the Constitution of India.

A decisive turning point in this evolution came with *Maneka Gandhi v. Union of India*, where the Supreme Court held that any procedure depriving a person of personal liberty must be “just, fair and reasonable,” thereby introducing the doctrine of substantive due

<sup>7</sup> Upendra Baxi, “Torture, Custodial Violence and the Supreme Court” (1985) 27 *Journal of the Indian Law Institute* 157.

<sup>8</sup> K.I. Vibhute, “Police Interrogation and the Right to Silence: A Critical Study” (2005) 47 *Journal of the*

*Indian Law Institute* 45–60.

<sup>9</sup> Amnesty International, *India: Torture, Rape and Deaths in Custody* (1992) 12–18.

<sup>10</sup> S. Chandra, *Human Rights and Criminal Justice System in India* (Mittal Publications, 2007) 203–215.



process into Indian constitutional law.<sup>11</sup> This interpretation significantly expanded the scope of Article 21, enabling courts to scrutinise not only legislative provisions but also executive practices, including methods of police interrogation. The judgment laid the constitutional foundation for challenging coercive techniques that undermine the voluntariness of confessions.

Subsequent rulings deepened this rights-oriented approach. In *Nandini Satpathy v. P.L. Dani*, the Court extended the protection against self-incrimination to the stage of police questioning, affirming that an accused has the right to remain silent when confronted with questions that may expose them to criminal liability.<sup>12</sup> This recognition was crucial in addressing the coercive environment of custodial interrogation, where the line between questioning and compulsion is often blurred. Similarly, in *D.K. Basu v. State of West Bengal*, the Court confronted the issue of custodial violence directly and laid down detailed procedural safeguards governing arrest and detention.<sup>13</sup> These included requirements such as preparing arrest memos, informing relatives, ensuring access to legal counsel, and conducting periodic medical examinations. The guidelines were intended to introduce transparency and accountability into police procedures.

Further judicial developments continued to reinforce these protections. In *Joginder Kumar v. State of Uttar Pradesh*, the Court stressed that arrest should not be routine and must be justified on reasonable grounds, thereby limiting arbitrary detention.<sup>14</sup> In *Selvi v. State of Karnataka*, the Court held that involuntary administration of techniques such as narco-analysis and polygraph tests violates the right against self-incrimination and personal liberty.<sup>15</sup> These decisions

collectively demonstrate the judiciary's sustained effort to expand the scope of constitutional safeguards in response to evolving forms of coercion.

However, despite this progressive jurisprudence, significant limitations persist in practice. One of the most pressing concerns is the gap between judicially articulated standards and their implementation on the ground. The guidelines laid down in *D.K. Basu*, though binding, are frequently reduced to procedural formalities, with limited compliance in actual policing practices. Empirical studies and official reports continue to document instances of custodial violence, indicating that judicial intervention alone has not been sufficient to eradicate coercive methods.<sup>16</sup> The absence of effective enforcement mechanisms, coupled with weak institutional accountability, allows violations to persist with relative impunity.

Additionally, structural constraints within the criminal justice system contribute to this problem. Investigative agencies often operate under significant pressure to secure convictions, which may incentivize reliance on confessional evidence rather than scientific investigation. As noted in legal scholarship, this dependence on confessions creates conditions in which coercion, whether physical or psychological, becomes an expedient tool despite its illegality.<sup>17</sup> Delays in trials, inadequate forensic infrastructure, and lack of training further exacerbate these challenges.

In sum, while the judiciary has developed a comprehensive framework of safeguards aimed at protecting accused persons from coercive interrogation, the effectiveness of these measures remains constrained by systemic and institutional realities. The expansion of due process under Article

<sup>11</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>12</sup> *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.

<sup>13</sup> *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

<sup>14</sup> *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.

<sup>15</sup> *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

<sup>16</sup> Law Commission of India, *273rd Report on Implementation of UN Convention Against Torture* (2017) paras 3.1–3.20.

<sup>17</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982) 102–115.



21 represents a significant constitutional achievement, yet its practical realisation requires stronger mechanisms of enforcement, greater police accountability, and a shift towards evidence-based investigative practices.

### 5. Evidentiary Reliability of Police Confessions

The evidentiary value of police confessions has long been viewed with caution in Indian criminal law, primarily due to concerns regarding their reliability. The statutory framework under the Indian Evidence Act, 1872 itself reflects this distrust by excluding confessions made to police officers or in police custody, except under narrowly defined circumstances. This legislative approach is grounded in the recognition that confessions obtained in custodial settings are particularly susceptible to coercion, thereby raising serious doubts about their truthfulness.<sup>18</sup>

One of the central concerns associated with police confessions is the risk of false confessions. Empirical studies and legal scholarship have demonstrated that individuals may admit to offences they did not commit under conditions of intense pressure, fear, or psychological manipulation. Factors such as prolonged interrogation, intimidation, and the promise of leniency can significantly impair an individual's capacity to make voluntary decisions.<sup>19</sup> In some instances, vulnerable individuals may confess simply to escape the immediate distress of custodial conditions, without fully appreciating the legal consequences of their statements. The phenomenon of false confessions challenges the traditional assumption that self-incriminatory statements are inherently reliable, and calls into question their evidentiary weight in criminal trials.

In contrast, judicial confessions recorded under Section 164 of the Code of Criminal Procedure, 1973

are generally accorded greater credibility. This distinction arises from the procedural safeguards built into the recording process. A Magistrate is required to ensure that the accused is not under any form of police influence, is aware of their right not to confess, and is given sufficient time for reflection.<sup>20</sup> These safeguards are intended to create conditions in which the statement is more likely to be voluntary and informed. Consequently, courts tend to treat judicial confessions as more reliable than those obtained by police officers, though even these are subject to careful scrutiny.

The differential treatment of police and judicial confessions highlights an important aspect of evidentiary assessment: the context in which a statement is made significantly affects its reliability. While police confessions are excluded due to the risk of coercion, the admissibility of discovery statements under Section 27 of the Evidence Act introduces a limited exception. However, this exception has been criticised for potentially allowing indirectly coerced information to influence the outcome of a trial.<sup>21</sup> The concern is that even partial reliance on such statements may compromise the integrity of the evidentiary process.

The implications of unreliable confessions extend directly to the fairness of criminal trials. The right to a fair trial, recognised as part of Article 21 of the Constitution of India, requires that convictions be based on credible and lawfully obtained evidence. The use of coerced or unreliable confessions not only increases the risk of wrongful convictions but also undermines public confidence in the justice system. Judicial decisions have repeatedly emphasised that evidentiary rules must be applied in a manner that

<sup>18</sup> A.N. Mulla, *The Indian Evidence Act* (LexisNexis, 19th edn., 2018) 320–328.

<sup>19</sup> K.I. Vibhute, “Confessions, Police Interrogation and the Right to Silence” (2005) 47 *Journal of the Indian Law Institute* 52–60.

<sup>20</sup> K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* (Eastern Book Company, 6th edn., 2016) 214–220

<sup>21</sup> S. Sarkar, *Sarkar on Evidence* (LexisNexis, 18th edn., 2016) 490–498.



safeguards the rights of the accused, rather than facilitating conviction at any cost.<sup>22</sup>

Moreover, an over-reliance on confessional evidence may discourage the use of scientific investigative methods, such as forensic analysis, which are generally considered more objective and reliable. Legal commentators have argued that the persistence of confession-centric investigation reflects deeper structural issues within the criminal justice system, including inadequate resources and institutional inertia.<sup>23</sup> Addressing these concerns requires a shift in investigative priorities, with greater emphasis on corroborative and independent evidence.

In sum, the evidentiary reliability of police confessions remains highly questionable, given the risks associated with coercion and false admissions. While the legal framework attempts to mitigate these risks through exclusionary rules and procedural safeguards, their effectiveness depends on rigorous judicial scrutiny and consistent enforcement. Ensuring the integrity of criminal trials ultimately requires moving away from reliance on confessions and towards more reliable forms of evidence.

#### 6. Comparative Perspective: Lessons from Other Jurisdictions

A comparative examination of confession law reveals that jurisdictions such as the United Kingdom and the United States have developed more structured safeguards to regulate police interrogation, particularly in response to concerns regarding coercion and reliability. These systems offer useful insights for rethinking the Indian approach, where the gap between legal principles and actual practices continues to persist.

In the United Kingdom, the enactment of the Police and Criminal Evidence Act 1984 (PACE) marked a

significant shift towards regulating police powers and ensuring procedural fairness during custodial interrogation. The Act, along with its accompanying Codes of Practice, lays down detailed guidelines governing the treatment of suspects, the conduct of interviews, and the recording of confessions. A key feature of PACE is the requirement that all custodial interrogations be properly documented, often through audio or video recording, to ensure transparency and accountability.<sup>24</sup> Additionally, suspects are guaranteed the right to legal advice during questioning, which acts as an important safeguard against coercion. The Act also empowers courts to exclude confessions if they are obtained through oppression or in circumstances that render them unreliable.<sup>25</sup> This emphasis on both procedural compliance and evidentiary reliability reflects a more holistic approach to safeguarding the rights of the accused.

In the United States, the protection against coerced confessions is primarily derived from constitutional jurisprudence. The landmark decision in *Miranda v. Arizona* established the requirement that individuals in police custody must be informed of their rights, including the right to remain silent and the right to consult an attorney.<sup>26</sup> These “Miranda warnings” are intended to counter the inherently coercive nature of custodial interrogation by ensuring that suspects are aware of their constitutional protections. The failure to provide such warnings generally renders any resulting confession inadmissible. Complementing this framework is the exclusionary rule, which mandates that evidence obtained in violation of constitutional rights cannot be used in court.<sup>27</sup> This doctrine serves both as a deterrent against unlawful police conduct and as a mechanism for preserving the integrity of the judicial process.

When compared to these jurisdictions, the Indian legal framework appears to rely more heavily on post facto

<sup>22</sup> *State of Punjab v. Barkat Ram*, AIR 1962 SC 276.

<sup>23</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982) 108–120.

<sup>24</sup> David Ormerod and Karl Laird, *Smith, Hogan, and Ormerod's Criminal Law* (Oxford University Press,

15th edn., 2018) 345–352.

<sup>25</sup> Zander, *The Police and Criminal Evidence Act 1984* (Sweet & Maxwell, 6th edn., 2015) 112–125.

<sup>26</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>27</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).



judicial scrutiny rather than preventive safeguards during interrogation. While statutory provisions under the Indian Evidence Act, 1872 exclude police confessions and constitutional protections exist under Article 20(3), the absence of comprehensive procedural regulation akin to PACE or mandatory warnings comparable to *Miranda* limits their practical effectiveness.<sup>28</sup> Moreover, the lack of consistent implementation of measures such as legal representation during interrogation and electronic recording of statements reduces transparency in custodial practices.

The comparative experience suggests that effective protection against coercion requires not only exclusionary rules but also proactive safeguards embedded within the interrogation process itself. The UK model demonstrates the importance of detailed statutory regulation and oversight, while the US approach highlights the role of constitutional rights and judicial enforcement in shaping police conduct. For India, these lessons point towards the need for institutional reforms, including mandatory recording of interrogations, greater access to legal counsel at the pre-trial stage, and clearer guidelines governing police questioning.<sup>29</sup>

Ultimately, a shift towards preventive safeguards, rather than reliance solely on evidentiary exclusion, may enhance both the reliability of confessions and the fairness of the criminal justice system. Incorporating such measures would not only align Indian practices with international standards but also strengthen the constitutional commitment to due process and human dignity.

### 7. Institutional Failures and Accountability Deficit

The persistence of coercive interrogation practices in India cannot be understood solely as a failure of legal norms; it is equally a reflection of deeper institutional deficiencies within the criminal justice system. Despite the existence of constitutional safeguards and judicial guidelines, the lack of structural reforms in policing has significantly weakened their practical impact. The continued reliance on outdated investigative methods, coupled with inadequate training and resource constraints, has contributed to an environment in which coercive practices remain embedded within everyday police functioning.<sup>30</sup>

One of the central issues is the slow and uneven implementation of police reforms. The Supreme Court's decision in *Prakash Singh v. Union of India* sought to address systemic problems such as political interference, lack of accountability, and absence of professional autonomy by directing states to establish mechanisms like Police Complaints Authorities and fixed tenures for senior officers.<sup>31</sup> However, compliance with these directives has been inconsistent across states, limiting their effectiveness in bringing about meaningful change. Scholars have noted that without institutional independence and internal accountability, legal safeguards against custodial abuse are unlikely to be fully realised.<sup>32</sup>

Another critical concern is the weak enforcement of arrest and interrogation guidelines laid down by the judiciary. In *D.K. Basu v. State of West Bengal*, the Court prescribed detailed procedures intended to ensure transparency and protect detainees from abuse.<sup>33</sup> These included requirements such as documenting arrests, informing relatives, and conducting medical examinations. While these guidelines are binding in law, their implementation

<sup>28</sup> Wayne R. LaFare et al., *Criminal Procedure* (West Academic Publishing, 5th edn., 2009) 468–480.

<sup>29</sup> K.I. Vibhute, "Confession Evidence and Comparative Criminal Procedure" (2006) 48 *Journal of the Indian Law Institute* 210–225.

<sup>30</sup> K.S. Subramanian, *Political Violence and the Police in India* (Sage Publications, 2007) 145–162.

<sup>31</sup> *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

<sup>32</sup> Arvind Verma, "Police Reforms in India: Moving from Rhetoric to Action" (2010) 52 *Journal of the Indian Law Institute* 89–105.

<sup>33</sup> *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416



often remains superficial. Empirical studies and official reports suggest that compliance is frequently treated as a matter of form rather than substance, with records being manipulated or safeguards ignored in practice.<sup>34</sup> The absence of effective monitoring mechanisms further exacerbates this problem, allowing violations to persist without meaningful consequences.

Oversight institutions, including the National Human Rights Commission (NHRC), have played an important role in documenting and addressing custodial violence. The NHRC has issued guidelines on arrest procedures, custodial deaths, and police accountability, and has sought to promote greater transparency through reporting requirements.<sup>35</sup> However, its powers remain largely recommendatory, limiting its ability to enforce compliance. Similarly, other oversight bodies often face constraints in terms of resources, jurisdiction, and independence, which restrict their effectiveness in holding law enforcement agencies accountable.

The accountability deficit is further compounded by systemic barriers within the criminal justice process. Prosecutions of police officials for custodial violence are relatively rare, and when initiated, they often face procedural delays and evidentiary challenges. The requirement of prior sanction for prosecution in certain cases creates an additional hurdle, reinforcing a culture of impunity.<sup>36</sup> Legal commentators have argued that this lack of accountability not only undermines individual rights but also erodes public confidence in the justice system.

In this context, the failure to translate legal safeguards into effective institutional practices remains a central concern. While the normative framework governing confessions and custodial conduct is well developed, its enforcement is hindered by structural weaknesses,

inadequate oversight, and limited accountability. Addressing these issues requires comprehensive police reforms, stronger enforcement of judicial guidelines, and the empowerment of oversight institutions to ensure compliance. Without such measures, the gap between constitutional ideals and ground realities is likely to persist.

### 8. Reforms and the Way Forward

Addressing the persistent concerns surrounding coerced confessions requires a shift from purely normative safeguards to concrete institutional reforms that reshape investigative practices. While the existing legal framework under the Indian Evidence Act, 1872 and constitutional protections provide a foundation, their effectiveness depends largely on the adoption of preventive mechanisms that ensure transparency and accountability during interrogation.

One of the most widely recommended reforms is the mandatory video recording of custodial interrogations. Recording the entire process of questioning can significantly reduce the scope for coercion by creating an objective record of police conduct. It also assists courts in assessing the voluntariness of confessions with greater accuracy. Comparative experience, particularly from jurisdictions such as the United Kingdom, demonstrates that electronic recording enhances both evidentiary reliability and public confidence in the criminal justice system.<sup>37</sup> In the Indian context, while courts have occasionally endorsed such measures, their implementation remains inconsistent. Institutionalising this requirement through clear statutory mandates could act as a strong deterrent against custodial abuse.

Another critical safeguard is the presence of legal counsel during police interrogation. Although the right to consult a lawyer is recognised as part of fair procedure under Article 21 of the Constitution of

<sup>34</sup> Law Commission of India, *273rd Report on Implementation of UN Convention Against Torture* (2017) paras 4.1–4.20.

<sup>35</sup> National Human Rights Commission, *Guidelines on Custodial Death/Rape* (Revised 2010).

<sup>36</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982) 112–120.

<sup>37</sup> David Ormerod and Karl Laird, *Smith, Hogan, and Ormerod's Criminal Law* (Oxford University Press, 15th edn., 2018) 350–356.



India, its practical enforcement at the stage of questioning remains limited. Judicial pronouncements have acknowledged that access to legal advice can mitigate the inherently coercive nature of custodial interrogation, yet the absence of a clear, enforceable right to have counsel present during questioning weakens this protection.<sup>38</sup> Legal scholars have argued that early access to legal representation not only protects the rights of the accused but also enhances the legitimacy of the investigative process.

Equally important is the need to strengthen forensic-based investigation. The continued reliance on confessional evidence reflects, in part, the inadequacy of scientific investigative infrastructure. Expanding forensic capabilities such as DNA analysis, digital forensics, and crime scene reconstruction can reduce dependence on confessions and promote more objective forms of evidence.<sup>39</sup> Reports of the Law Commission have consistently emphasised that modernising investigative techniques is essential for improving both efficiency and fairness in the criminal justice system. A transition towards evidence-based policing would also align Indian practices with international standards.

Reforms in police training and organisational structure are also indispensable. Many of the deficiencies in interrogation practices stem from outdated training methods, lack of awareness of legal standards, and institutional pressures to secure quick results. Comprehensive training programmes that emphasise human rights, scientific investigation, and ethical interrogation techniques can help shift the culture of policing away from coercion.<sup>40</sup> At the structural level, implementing long-pending police reforms such as those recommended in *Prakash Singh v. Union of India* would enhance professionalism and reduce external interference, thereby improving accountability.

Ultimately, meaningful reform requires an integrated approach that combines legal safeguards with institutional transformation. Isolated measures are unlikely to succeed unless supported by effective monitoring mechanisms and a commitment to accountability. Strengthening oversight institutions, ensuring compliance with judicial guidelines, and promoting transparency in police functioning are essential components of this process. Without such systemic changes, the gap between constitutional ideals and investigative practices is likely to endure.

### 9. Conclusion: Reconciling Confessions with Constitutional Morality

The discourse on custodial confessions in India ultimately converges on a fundamental constitutional question: whether the pursuit of truth in criminal investigation can justify practices that compromise individual dignity and liberty. The framework governing confessions, though formally robust, continues to be tested by the persistence of coercive interrogation methods. Reconciling this tension requires a reorientation of the criminal justice system in light of constitutional morality, which places the individual at the centre of legal protection rather than treating them as a mere subject of investigation.

The jurisprudence developed under Article 21 of the Constitution of India has consistently emphasised that the right to life and personal liberty includes protection against arbitrary and abusive state action. In *Maneka Gandhi v. Union of India*, the Supreme Court underscored that procedure must be just, fair, and reasonable, thereby embedding substantive due process within Indian constitutional law.<sup>41</sup> This principle has profound implications for the law of confessions, as it demands that the methods used to obtain evidence must themselves conform to standards of fairness. Any confession extracted through coercion, whether physical or psychological, not only

<sup>38</sup> *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.

<sup>39</sup> Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial Capacity* (2014) paras 7–10.

<sup>40</sup> Arvind Verma and K.S. Subramanian,

“Understanding the Police in India” (2009) 51 *Journal of the Indian Law Institute* 43–60.

<sup>41</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.



loses evidentiary value but also represents a violation of constitutional guarantees.

Reasserting the primacy of dignity and liberty requires recognising that custodial violence and compelled confessions are not merely procedural irregularities but serious infringements of fundamental rights. Judicial decisions have repeatedly affirmed that the state cannot secure convictions at the cost of constitutional protections. In *D.K. Basu v. State of West Bengal*, the Court explicitly linked custodial abuse to the erosion of the rule of law, highlighting the need for accountability and transparency in police conduct.<sup>42</sup> Similarly, legal scholarship has argued that the legitimacy of the criminal justice system depends on its ability to uphold rights even in the face of investigative challenges.<sup>43</sup>

A crucial aspect of this transformation lies in moving away from confession-centric policing towards an evidence-based investigative model. The continued dependence on confessional statements reflects deeper structural weaknesses, including inadequate forensic infrastructure and institutional inertia. As scholars have noted, reliance on confessions not only increases the risk of wrongful convictions but also discourages the development of scientific methods of investigation.<sup>44</sup> Strengthening forensic capabilities and promoting objective forms of evidence can reduce the incentives for coercive interrogation, thereby aligning investigative practices with constitutional values.

At the same time, the concept of constitutional morality requires that institutions internalise the principles of accountability and restraint. This involves not only enforcing existing safeguards but also cultivating a culture of rights within law enforcement agencies. Training, oversight, and structural reforms must work in tandem to ensure that the protection of individual rights is not viewed as an

obstacle to effective policing but as an essential component of it.<sup>45</sup>

In conclusion, the challenge is not merely to regulate confessions but to transform the conditions under which they are obtained. A criminal justice system that respects dignity, ensures fairness, and relies on credible evidence is better equipped to deliver justice in both form and substance. Bridging the gap between legal ideals and institutional practices is essential for restoring public confidence and upholding the constitutional promise of liberty.

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#### REFERENCES

- Books
- M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018).
- Ratanlal & Dhirajlal, *The Law of Evidence* (26th edn., LexisNexis, 2017).
- A.N. Mulla, *The Indian Evidence Act* (19th edn., LexisNexis, 2018).
- S. Sarkar, *Sarkar on Evidence* (18th edn., LexisNexis, 2016).
- K.N. Chandrasekharan Pillai, R.V. Kelkar's *Criminal Procedure* (6th edn., Eastern Book Company, 2016).
- Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982).
- K.S. Subramanian, *Political Violence and the Police in India* (Sage Publications, 2007).
- S. Chandra, *Human Rights and Criminal Justice System in India* (Mittal Publications, 2007).
- David Ormerod and Karl Laird, Smith, Hogan, and Ormerod's *Criminal Law* (15th edn., Oxford University Press, 2018).

<sup>42</sup> *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

<sup>43</sup> M.P. Jain, *Indian Constitutional Law* (LexisNexis, 8th edn., 2018) 1360–1368.

<sup>44</sup> K.I. Vibhute, "Confessions, Criminal Justice and

Human Rights" (2006) 48 *Journal of the Indian Law Institute* 215–230.

<sup>45</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982) 118–125.



- Wayne R. LaFare et al., *Criminal Procedure* (5th edn., West Academic Publishing, 2009).
- Journal Articles
- Upendra Baxi, “Torture, Custodial Violence and the Supreme Court” (1985) 27 *Journal of the Indian Law Institute* 157.
- K.I. Vibhute, “Confession Evidence and Police Practices in India: A Critical Study” (2004) 46 *Journal of the Indian Law Institute* 312.
- K.I. Vibhute, “Police Interrogation and the Right to Silence” (2005) 47 *Journal of the Indian Law Institute* 45.
- K.I. Vibhute, “Confessions, Criminal Justice and Human Rights” (2006) 48 *Journal of the Indian Law Institute* 215.
- Arvind Verma, “Police Reforms in India: Moving from Rhetoric to Action” (2010) 52 *Journal of the Indian Law Institute* 89.
- Arvind Verma and K.S. Subramanian, “Understanding the Police in India” (2009) 51 *Journal of the Indian Law Institute* 43.
- K.N. Chandrasekharan Pillai, “Confessions and the Right Against Self-Incrimination” (2008) 50 *Journal of the Indian Law Institute* 123.
- Law Commission Reports
- Law Commission of India, 48th Report on Some Questions under the Code of Criminal Procedure Bill, 1970 (1972).
- Law Commission of India, 180th Report on Article 20(3) of the Constitution of India and the Right to Silence (2002).
- Law Commission of India, 185th Report on Review of the Indian Evidence Act, 1872 (2003).
- Law Commission of India, 245th Report on Arrears and Backlog: Creating Additional Judicial Capacity (2014).
- Law Commission of India, 273rd Report on Implementation of the United Nations Convention Against Torture (2017).
- Cases
- *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
- *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424.
- *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.
- *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.
- *Selvi v. State of Karnataka*, (2010) 7 SCC 263.
- *Prakash Singh v. Union of India*, (2006) 8 SCC 1.
- *State of Punjab v. Barkat Ram*, AIR 1962 SC 276.
- *Miranda v. Arizona*, 384 U.S. 436 (1966).
- Statutes and International/Institutional Materials
- Indian Evidence Act, 1872
- Code of Criminal Procedure, 1973
- Constitution of India
- Police and Criminal Evidence Act 1984
- National Human Rights Commission, Guidelines on Custodial Death/Rape (2010).
- Amnesty International, India: Torture, Rape and Deaths in Custody (1992).