Notes and Comments

CONFESSIONS IN THE CUSTODY OF A POLICE OFFICER: IS IT THE OPPORTUNE TIME FOR CHANGE?

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This paper reviews the law relating to confessions in the custody of a police officer, as prevalent in India and the United Kingdom. It argues for changing the law as it stands today in India, by making confessions admissible in law, provided certain procedural safeguards are put in place. In outlining the proposed model, the paper draws on statutory provisions on this point in the United Kingdom, and seeks to incorporate analogous provisions in India. This change, as the paper recommends, is in the final analysis, both sound on principle and efficacious in practice.

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I. INTRODUCTION

One of the several purposes of a criminal justice system is to ensure that the guilty are brought to justice. However, in determining the existence of the guilt of alleged offenders, several succinctly defined rules of evidence have been incorporated in the system, which look to concretise procedural regularity in the interest of the general populace.1 Hence, the object of punishment must be harmonized with the object of adoption of fair means, as mandated by the law of evidence.2 One important aspect of this balancing act pertains to confessions made

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2 Id.
while in the custody of a police officer, an oft-debated subject, especially in the context of the recent judgment in the Parliament Attack case.\(^3\) This article will look into the contrasting approaches to this complex issue adopted in India and the United Kingdom, and will analyse why the former has allowed its procedural law of evidence to override the substantial law of determining the guilt of the individual, while the latter has traversed the opposite path.

In pursuance of these objectives, the first part of this paper analyses the differing approaches towards the issue of admissibility of confessions in the two jurisdictions, and the rationales which underlie the distinct stances adopted. The second part elaborates on the distinctions in the general principles by adverting to the legislations governing the subject matter of confessions in the United Kingdom and in India, in order to comprehend the nuances of the statutory manifestations of these differences. Finally, the paper analyses the concept of the admissibility of evidence of subsequently confirmed facts elicited as a result of confessions in police custody, and the extent to which this exception militates against the general principle of confessions in both the jurisdictions. In this light, this Part assesses whether there is a necessity for such a provision in either of the legal systems. On the basis of the aforesaid analysis, the author draws conclusions as to whether there is a need for change in the Indian law relating to confessions made in police custody.

**II. Rationale for Inadmissibility of Confessions**

Confessions\(^4\) by an accused, made to a police officer, or to another person while in the custody of a police officer, are as a rule inadmissible under the Indian Evidence Act, 1872 ("I.E.A."). Section 25 of the Act renders confessions made to a police officer inadmissible as evidence whereas section 26 is wider in its purview,

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\(^4\) The term “confession” has not been defined in the Indian Evidence Act, 1872. An accepted definition is the one provided by Lord Atkin in Pakala Narayana Swami v. Emperor, A.I.R. 1939 P.C. 47, 52, wherein he stated:

A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence.

On the other hand, the acknowledgement of certain facts, which fall short of establishing the offence proved, that is, that which does not prove the guilt of the accused, is an admission. See Central Bureau of Investigation v. V.C. Shukla, (1998) 3 S.C.C. 410, 437.
and excludes all confessions made while in the custody of a police officer. The ambit of the latter is wider than the former since it also excludes confessions to third parties, if there is a suspicion that the person making was in a position amenable to the influence of a police officer. The broad reasoning for the enactment of these sections was to prevent the practice of torture, extortion and oppression, which was rampanty employed by the police in order to extort confessions. Hence, they are based on the assumption that a confession made to the police officer may suffer from the impairment of want of genuineness, as there is a high degree of probability that the same was not voluntarily procured. However, while torture must undoubtedly be condemned, law makers must not lose sight of the fact that inadmissibility of such confessions is the ultimate fallout of their purported unreliability, which is the root malaise that they must look to cure, instead of being satisfied with merely making such confessions inadmissible.

The United Kingdom has sought to cure this malaise by examining confessions in light of their credibility. Torture, fear, inducement, oppression are all seen as means of undermining the reliability and credibility of confessions.

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5 I.E.A., §. 25:
No confession made to a police officer shall be proved as against a person accused of any offence.

I.E.A., §. 26:
No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate shall be proved against such person.


7 The rationale for this has been explained in the 1st Report of the Indian Law Commissioners which inter alia stated:
The evidence taken by the Parliamentary Committee on Indian Affairs...abundantly show that the powers of the police are often abused for purposes of extortion and oppression; and we have considered whether the powers now exercised by the police might not be greatly abridged...

8 The notorious fact that confessions in India are largely obtained by police deceit and torture has been noted in several judicial decisions. See, e.g., Nandini Satpathy v. P.L. Dani, (1978) 2 S.C.C. 424, 428; Queen v. Bepin Behari Dev, 2 C.W.N. 71; Jagiibon Ghose v. Emperor, 15 C.W.N. 861.

Hence the judiciary is given the discretion to not allow confessions which have been engendered by any form of coercion, oppression, or other means that make the reliability of such confessions suspect. This principle of English Law focuses on the humanness of the means employed, and is simultaneously effective in reaching the ends of delivering justice, by taking into consideration all voluntary confessions. Therefore, this approach deserves to be commended. In Indian law on the other hand, there is a well-entrenched distinction between admissibility and reliability. However, these two concepts are inextricably intertwined, when discussed in relation to the law of confessions. The author believes that, in light of this blurring of differences in relation to confessions, Indian law should follow its

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The Police and Criminal Evidence Act, 1984 [hereinafter P.A.C.E.], § 76:

(1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained-

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof;

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2) above.

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence-

(a) of any facts discovered as a result of the confession; or

(b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) above applies-

(a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and

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English counterpart, and examine the degree of credibility of evidence, as a precondition to any test of admissibility.

III. PRESUMPTION OF UNFAIRNESS OF POLICE ACTIONS

Laws relating to confession, however, cannot be viewed solely through the prism of principle; their efficacy in policy must be simultaneously considered. Hence, while there is need to delve into statutory nuances, it is equally important to assess whether these provisions are actually workable in practice or not. United Kingdom's efforts to legislate a law on confessions, have displayed a singular focus on regulating the process of police interrogation. From the early 20th century, there was a marked movement away from the strict "voluntariness" standard of admissibility of confessions. This standard was based on the view that a voluntary confession is creditworthy, since its genesis lies in a strong sense of guilt, and

(b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Part VII of this Act shall prejudice the admissibility of a confession made by an accused person.

(8) In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

(9) Where the proceedings mentioned in subsection (1) above are proceedings before a magistrates' court inquiring into an offence as examining justices this section shall have effect with the omission of-

(a) in subsection (1) the words "and is not excluded by the court in pursuance of this section", and

(b) subsections (2) to (6) and (8).

The significant legislation in this regard has been P.A.C.E., which was enacted to allow the court to correct the unfairness arising in the criminal trial process, by allowing otherwise admissible evidence to be excluded from the prosecution case in its substantive sections relating to confessions. This functions in tandem with the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers [hereinafter Codes of Practice], issued thereunder, and incorporated in § 66, P.A.C.E., which provides an exhaustive regulatory framework positing rules for every step of the interrogation process. The impetus, hence, is to concretise standards which must be adhered to by the police while questioning suspects and accused persons. The novelty of this approach is that instead of disallowing incriminating statements made by the accused, it looks to nip the problem in the bud, by preventing police officers from posing such questions, answers to which would be potentially violative of the rights enjoyed by the accused. For more on the legislative history of P.A.C.E., see generally Cross & Tapper, supra note 9, at 617-624, 629-637.
hence, it can be admitted as evidence. As opposed to this, an involuntary statement is the product of a false hope being held out to the accused tempting him/her into the confession. A need was felt to prevent threats and coercion, which were perceived to be the root cause of tainted confessions. Hence, the initial change was to adopt a blanket approach rendering all confessions obtained as a result of a suspicion of a threat or inducement inadmissible. In its formulation however, the test rode roughshod over the potential reliability of a confessional statement, and ended up determining its admissibility on issues of form rather than substance. Subsequently however, the procedure adopted looked to couple the need for reliability with the objective of curtailing police excesses. The case which marked the beginning of this approach was Ibrahim v. R., in which Lord Sumner emphasised the need for credibility being the cornerstone for admissibility of confessions, an end which necessarily involved the curtailment of police atrocities. Simultaneously however, there was a progressive liberalisation as far as acceptance of aggressive police techniques went, and the high watermark of this phase was marked by the decision in D.P.P. v. Ping Lin. The zenith of this trend was marked by the fact that a presumption of fairness to police actions evolved, which was however tempered by the concomitant creation of a standard of oppression which would render a confession inadmissible. This is embodied in section 76, P.A.C.E., which is the ruling position of law today.

13 The most illustrative case applying the voluntariness standard is R. v. Warickshall, 168 Eng. Rep. 234 (K.B. 1783), cited from Cross & Tapper, supra note 9, at 604.

14 Under this approach, if a confession was a consequence of a threat or promise, the same would suffice to exclude the confession, with no credence attached to its potential reliability. See, e.g., R. v. Knight, 21 T.L.R. 310, cited from Cross & Tapper, supra note 9, at 605. However, this approach quickly fell out of favour as the necessity of pretrial police investigations became imperative, and a presumption of fairness was attributed to this process.

15 This approach soon became crystallised when permitted techniques to elicit information and the consequent issue of admissibility of the same became a part of the Judges' Rules, first issued in 1912, which were drafted to guide police officers in their task of questioning pretrial suspects. See Ian Brownlie, Police Questioning, Custody and Caution, 1960 CRIM. L. REV. 298, 298-99.

16 [1975] 3 All E.R. 175. In this case the accused had been charged of drug possession. On the assurance of the police officer that if he identified the name of his supplier his sentence may be reduced by the judge, he disclosed the details of his supplier. The confession was held to be admissible despite inducement as the extent of police action to elicit the confession was held not sufficient to cast a doubt on its creditworthiness.

Section 76, P.A.C.E. dispensed with the mandatory exclusion of confessions, together with placing the burden squarely on the prosecution, to prove beyond reasonable doubt, that unfair means had not been employed in eliciting the confessions sought to be relied upon. From a plain reading of the section it becomes clear that on principle, confessions made while in the custody of a police officer are admissible as evidence in court. As far as the conditions under which the bar operates are concerned, the focus is on ensuring reliability. To this end, confessions engendered through oppression or any other means, which compromise on reliability, will be inadmissible. The definition of oppression given in section 76(8) has been borrowed from Article 3 of the European Convention of Human Rights 1950, which proscribes torture or inhuman and degrading treatment. Further the use of violence, in order to constitute oppression, must be a substantial application of force extending beyond mere battery. In sum, it is an action epitomising wickedness and impropriety. The other means that render confessions inadmissible under section 76(2)(b), essentially refer to any other circumstances which may shroud the reliability of the confession in suspicion, such as something said or done which is external to the accused. Further, in order to be admissible, a confession must also satisfy the overriding test of section 78, which gives judges the discretion to exclude evidence on the basis of other statutory provisions. With the evidentiary burden being placed on the prosecution to show the lack of oppression and the fairness of the methods employed in the eliciting the confession, the author feels that the balance between the public interests of conviction and the systemic interests of safeguarding procedure has been maintained. This has been supplemented by

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18 Supra note 10.
19 A complete bar on admissibility of such confessions, based on the premise that the same would be obtained by tainted methods, is not operative in United Kingdom. Judicial decisions under P.A.C.E have shown that the number of confessions rendered inadmissible as a consequence of this standard being imposed is not significant. This is primarily because the word “oppression” has been viewed by the courts as an extreme standard, and they have been reluctant to broaden its ambit. See R. v. Fulling, [1987] 2 All E.R. 65, where the Court of Appeals held that oppression is the word which best manifests detestability and wickedness. See also R. v. Seelig, [1991] 4 All E.R. 421, in which the Court refused to consider cases of compulsory interrogation as oppressive.
20 Cross & Tapper, supra note 9, at 618.
21 This is because § 76, P.A.C.E., has rejected the common law approach to oppression, since it is a codifying act and has to be interpreted according to its natural meaning, and without any connotations provided by previous law. See Fulling, supra note 19.
23 It is important to note that exclusion of evidence, when not directly possible under §76, can be brought under §§ 78 and 82, P.A.C.E. § 78 provides:
the Codes of Practice,\textsuperscript{24} which seek to mitigate police excesses through mandatory internal disciplinary norms for the police. Thus in Britain, the Parliament has taken a reasoned and consistent stand as far as confessions are concerned. It is cognizant of the utility of confessions in any prosecution case, but aware at the same time, of potential abuses of police power leading to violation of the rights of the accused. It has also not been myopic in its view and limited its prohibitive measures to police impropriety, but has placed the major thrust on ensuring credibility. Though sound on principle, in the opinion of the author, it is however contingent on a police force effectively fettered by checks and balances. Hence, such an approach will only be successful in those societies where the police exercise restraint and humane, either intrinsically or owing to external constraints.

In India, on the other hand, the presumption of police excesses in eliciting confessions continues to weigh heavily with the legislators, presenting a seemingly insurmountable obstacle to the development of the law of confessions. Hence, confessions, whether made to a police officer by an accused, or by any person while in police custody, are inadmissible as evidence in court, by virtue of sections 25 and 26, I.E.A.\textsuperscript{25} Thus in its scope and ambit, these provisions of law reflect a

(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.

(3) This section shall not apply in the case of proceedings before a magistrates' Court inquiring into an offence as examining justices.

§ 82 is the general provision for the power of courts to exclude evidence. It reads:

Nothing in this Part of this Act shall prejudice any power of a court to exclude evidence at its discretion.

\textsuperscript{24} Supra note 11.

\textsuperscript{25} The reasoning behind the same primarily is that confessions made before a police officer may be coerced, and hence would not be reliable enough to be adduced as evidence before the court, and would inevitably fall foul of § 24, I.E.A., which is a general provision prohibiting confessions prompted by inducement. This presumption is more empirical and cultural rather than being necessarily on principle. Its genesis lies in the general cynicism with which police practices are viewed in India, and has been noted by several authorities. \textit{See Monir, Principles and Digest of the Law of Evidence} 307 (Deoki Nandan J. ed., 1999) [hereinafter \textit{Monir}]; \textit{Ratanlal & Dhirajlal, supra note 6}, at 102. However, for a nuanced distinction between junior and senior police officers, and the consequent restriction of inadmissibility of confessions made before the latter only, \textit{see Law Commission of India, 69\textsuperscript{TH} Report on the Indian Evidence Act, 1872 §§ 11.16-11.18 (1977).}
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legislative intent to proscribe third degree methods being used by police officers, and to ensure lawful and true evidence being presented, instead of allowing the police “to sit comfortably in the shade, rubbing red pepper into a poor devil’s eyes rather than go about in the sun hunting up evidence.”

Section 26 serves as a comprehensive bar on extra-judicial confessions, made while in the custody of a police officer. A confession in the presence of a Magistrate, on the other hand, is admissible, as the judicial officer is deemed to offset any potential for abuse of police power. This is, however, subject to the procedure laid down in section 164 of the Code of Criminal Procedure, 1973. Section 26 is wide enough to render inadmissible the confession of any person, irrespective of his being an accused, or not. The only important criterion which has to be fulfilled for the section to be attracted is that the confessor must be “in the custody of the police officer.” This term does not merely connote custody after formal arrest of a person, but also includes situations where a person is under the surveillance and control of the police, as well.

Thus, these sections are wide in their ambit, and by their combined operation, exclude certain confessions from admissibility, not because they are necessarily presumed untrue, but because the means of their elicitation may have been tainted. These sections are also instrumental in fructifying the operation of section 24, as the gravest possibility of confessions being induced by threat or other means is while in police custody, or when being made to a police officer. An

28 State of Uttar Pradesh v. Deoman Upadhyaya, A.I.R. 1960 S.C. 1125; Rambharose Kachhi v. Emperor, A.I.R. 1944 Nag. 105. In these cases it was held that any confession made by any person to a police officer would be barred from admissibility under § 26, I.E.A. The only qualification, however, would be that he must be in the custody of a police officer while making the statement. This section is hence complementary to § 162, Code of Criminal Procedure, 1973, which prohibits evidence tendered to a police officer from being signed by the witness and admitted in Court.
30 Deoman Upadhyaya, supra note 28.
31 I.E.A., § 24 reads:

24. 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 promise, having reference to the charge against the accused person, proceeding from a person in
exception, however, in the interests of national security, has been authorised by the courts, albeit reluctantly, in the landmark decision in Kartar Singh v. State of Punjab. The majority judicial opinion expressed in the case seems to suggest a movement towards attaching greater acceptability to confessions made in police custody, or at any rate the prioritising of national security, and the need to punish and consequently avert acts of terrorism in India, over the formulaic principles of inadmissibility of confessions. Inferring any generic metamorphosis in judicial reasoning from the aforesaid would, however, be fallacious, especially in light of the partially dissenting opinions in the case, as well as subsequent judicial decisions, which have expressed concern regarding rendering confessions to police officers admissible. Hence from a survey of commentaries and an analysis of case law, it can be concluded that in India, confessions in the custody of a police officer are, on principle, barred because there is a presumption of them being forced. Through these provisions the Legislature has aimed at achieving the end of primarily thwarting police excesses, which is considered to suffice in making confessions more reliable. In United Kingdom, however, a different route of resolution has been taken, by burdening the prosecution with the onus of proving the fairness of proceedings, instead of by curbing police power. While the approaches may be divergent, in the opinion of the author, the end to be achieved is singular a balance between respect for procedure and public interest in punishment of the guilty.

IV. FRUITS OF AN INADMISSIBLE CONFESSION

An equally important concept, which raises significant questions regarding the equilibrium sought to be achieved between respect for procedural regularity and substantive justice, relates to confirmation of parts of confessional statements by subsequently discovered facts. The issue involved as far as discovery of facts as a result of confessional statements is concerned, is whether these facts, if subsequently proven true, can be admissible, thereby lending credence to at authority and sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

33 See Parliament Attack, supra note 3, at ¶ 10 (P. Venkatarama Reddi, J.).
34 This term is inspired by the doctrine of "Fruits of the Poisonous Tree" developed in the context of the exclusionary rule in the Fourth Amendment to the United States Constitution. See, McCormick ON EVIDENCE 498-506 (Edward Cleary ed., 1984).
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least a significant part of the confession made.\textsuperscript{35} British judicial history on the issue of admitting facts gleaned from confessions is substantial.\textsuperscript{36} P.A.C.E. has borrowed the gist of these common law decisions, and concretised the law insofar as admissibility of subsequent facts is concerned.\textsuperscript{37} According to this formulation, though a confession may be wholly or partly excluded, the same shall not affect the admissibility of any facts discovered as a consequence of the confession.\textsuperscript{38} In the opinion of the author, the legislation has been unequivocal in the words used, and has strayed away from ambiguous standards such as “strictly relates” or “distinctly relates” whose prevalence in common law is rampant. By allowing the fruits of a confession to be admitted the legislators have shown a distinct propensity towards securing the public interest of punishing the guilty, and not permitting them to seek refuge behind a procedural rampart.

In India, section 27, I.E.A.,\textsuperscript{39} which is the analogous provision, is founded on the principle that the discovery of a fact as a consequence of the confession,

\textsuperscript{35} A strong argument in favour of admitting subsequently discovered facts has been put forward by several authors. According to this view, as a general rule, evidence discovered through confession should be admissible, irrespective of the evidentiary status of the confession itself, unless there is proof to show the judge that the facts have been obtained in circumstances running contrary to the well-enshrined principle of fairness. However, doubts still remain over the admissibility of the confession (or part of it) because mere confirmation of a subsequent fact is not enough to test the veracity of the entire confession, since the reasons as to why certain confessions are barred are not limited to a lack of truthfulness alone. See generally A. Gotlieb, Confirmation by Subsequent Facts, 72 Law Q. Rev. 209 (1956).

\textsuperscript{36} The earliest view espoused was that subsequent facts completely dissociated with the confession would be admissible as was held in the cases of R. v. Warickshall, 1783 1 Leach C.C. 263 and R. v. Berriman, (1844) 6 Cox C.C. 388. The consequent development of the law which took place in common law, was to admit subsequent facts which would thereby verify only a part of the confession. This part of the confession would then become admissible, as it would be creditworthy, whereas the rest of the confession would remain out of bounds for the court. See R. v. Thurtell (unreported) and R. v. Harris (unreported) cited from Gotlieb, id. at 218. Subsequently, this test was subtly modified to allow evidence only of subsequent facts and so much of the confessions as strictly relates to the facts. See R. v. Griffin (unreported) and R. v. Butcher (unreported) cited from Gotlieb, id. at 220. This proposition of common law was finally supplanted by P.A.C.E. in 1984.

\textsuperscript{37} P.A.C.E., § 76 (4), (5) and (6), supra note 10.

\textsuperscript{38} However by virtue of § 76(5), P.A.C.E., evidence of the causal link between the discovery of the fact and any excluded confession cannot be raised by the prosecution, unless this evidence of the manner of its discovery is provided by the defence.

\textsuperscript{39} I.E.A., § 27:

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
verifies its contents, thereby rebutting the presumption of taint. Hence, the relevant part of the confession distinctly relating to the subsequently discovered facts can be admitted.\textsuperscript{40} Since this acts as a proviso to the preceding sections,\textsuperscript{41} its ambit is restricted, and it is applicable only on the fulfilment of certain requirements, viz, there must be discovery of a relevant fact in consequence of information received from the accused; the discovery of such facts must be deposed to; at the time of receiving the information the accused must be in police custody; only that part of the information relating distinctly to the fact discovered and deposed to is admissible.\textsuperscript{42}

Certain terms used in section 27 warrant consideration to understand the scope of this exception to the “inadmissibility of confession” rule. The term “fact discovered” includes not only the physical object, but also the knowledge of the accused regarding the place from which it was produced.\textsuperscript{43} This fact discovered, which must be deposed to, must also be a consequence of the confession of the accused person.\textsuperscript{44} Hence it should be a discovery which would not have been confession or not, as relates distinctly to the fact thereby discovered, may be proved.

\textsuperscript{40} The rationale behind the section was explained by Sir John Beaumont J. in \textit{Pulukuri Kottaya v. Emperor}, A.I.R. 1947 P.C. 67, 70. He said:

The section seems to be 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.

\textsuperscript{41} The early cases seem to indicate that judicial opinion favoured holding § 27 as a proviso to § 26 only. \textit{See Remembrancer of Legal Affairs, Bengal v. Bhajoo Majhi, A.I.R. 1930 Cal. 291; Debiram v. State of Punjab, A.I.R. 1962 Punj. 70.} However, the Supreme Court has subsequently held that § 27 is an exception to § 25 and § 26. \textit{See State of Bombay v. Kathi Kalu Oghad, A.I.R. 1961 S.C. 1808; State of Uttar Pradesh v. Deoman Upadhaya, A.I.R. 1960 S.C. 1125.} The \textit{185th Law Commission Report} has gone a step further and stated that § 27 must be regarded as an exception to § 24 as well, except when the facts are “discovered by threat, coercion, violence or torture.” \textit{See Law Commission of India, 185th Report on the Review of the Indian Evidence Act 167 (2003).}


\textsuperscript{43} \textit{Md. Inayatullah, id.; Pulukuri Kottaya, supra note 40.}

\textsuperscript{44} \textit{Deoman Upadhaya, supra note 41, at 1128-1129.} In this case it was held that since § 27 is an exception to the preceding sections, the term “accused of an offence” must be construed widely. The reasoning is that § 25 is not restricted only to the accused, and applies equally to any other person in custody of a police officer. Since § 27 is an exception to § 25, the term “accused of an offence” has to be construed widely to include not only those who have been formally charged with the offence, at the time of making the confession, but also those who are subsequently so charged.
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possible had it not been for the information received from the accused person, and proof of this must be led. Further, the clause "relates distinctly" marks a shift from the term in the original provision, which called for a strict relation between the confession and the subsequent discovery. However, the current terminology also leads to the conclusion that the fact which is discovered must indubitably be a consequence of the confession of the accused person.

A further elucidation of the law contained in section 27 was provided in State of Uttar Pradesh v. Deoman Upadhyaya, where the Supreme Court dealt with the constitutionality of this provision. In holding section 27 intra vires Article 14 of the Constitution, the Supreme Court opined that this section aims to cover persons in custody of police officials, where the possibility of an unreliable confession is considerable. On this basis, it justified the distinction made between such persons and those not in custody.

Though the British and Indian provisions on the fruits of a confession may be different in form, in the opinion of the author, they are strikingly similar in substance. The underlying principle behind both laws is to ensure that the prosecution is not deprived of crucial evidence just because it forms part of a tainted (either presumptively or in actuality) confession of the accused. If these facts were to be excluded as evidence, then a comprehensive but suspect confession would be rendered an antithesis to its own object, as it would hinder prosecution rather than assist it. However, in the opinion of the author, in India, the perpetuation of such an exception is largely contingent on the general principle of confessions being considered inadmissible. If the general principle is removed, then concurrently the scope and application of section 27 too will be limited to only those situations where the prosecution fails to adequately discharge its burden of proving the non-employment of torture or other illegal methods to obtain the confession.

V. CONCLUSION

In the final analysis, any change in the law relating to confessions in India must be seen through the dual prisms of the need to outlaw torture in police stations, and simultaneously maintain the balance between the interests in

46 Thus only that portion of the confessional statement of the accused will be admitted, as has been proved true by the consequent discovery of fact and not the entire confession itself. See Md. Inayatullah, supra note 42.
convicting the guilty on the one hand, and respecting rules of procedure on the
other. The former can be achieved by diligently implementing a sacrosanct code
of practice, akin to that in the United Kingdom. Violations of such a code by police
officers ought to invite the strictest internal censure, including dismissal from
service. A deterrent of this nature will certainly go a long way in reforming police
practices in the country. It will create a more responsible police force that restrains
itself from the use of coercive tactics, if not out of respect for the rights of the
accused, then for its own material concerns. Secondly, as far as the issue of
respecting procedural regularity vis-à-vis convicting the guilty is concerned, it
may be feared that the repercussion of restraining the police force, may be a
further reduction of the already abysmal conviction rate in India. However, if
together with curbing reprehensible police practices, there is a prima facie
presumption drawn in favour of the legality of police action in recording
confessions, the balance between substantive justice and procedural regularity
would be maintained. This must be coupled with placing the burden on the
prosecution to prove voluntariness of a confession and the non-employment of
torture, oppression and any other form of degrading treatment, which would be
necessary for sustaining this presumption. This would also imply that the
admissibility of particular confessions in police custody would be judged on a
case-by-case basis, instead of being enshrined as an inviolable rule. Such a change
in the law, quite apart from fulfilling any instrumental rationales and assisting
chances of prosecution, is required primarily on principle, for if the necessary
safeguards for ensuring voluntariness and credibility are effectuated, there is no
logical reason as to why statements made to police officers should still be the
subject of differential treatment and be considered inadmissible. The United
Kingdom, by taking the lead in this regard, has shown that reforming police
practices and the consequent changing of mindsets of persons towards the police
force, is a gradual process, and is not beyond the purview of the law. Introducing
such an amendment to the law in India would analogously be a move away from
antiquity. Thus, it is expedient that this change be effected.