
Mayank Jain

Roll No. 410

*C*ONFESSION

Mr. S.L. Chajjerh

Faculty – Code of Criminal Procedure, 1973.

CHAPTERIZATION

1.) ACKNOWLEDGMENT	3
2.) ABSTRACT.....	4
3.) CONFESSION: STATUTORY AND TRADITIONAL DIMENSIONS.....	5
a. Interrogation by Police and Confessions.....	5
b. Role of The Hon'ble Supreme Court of India ...	8
4.) CONFESSION UNDER POTA & TADA.....	10
a. Counter Terrorism Laws and the Supreme Court of India.....	10
b. Constitutionality of Custodial Confessions...	11
c. Cooling Time.....	13
d. Confession under POTA & TADA.....	14
e. Atmosphere for recording & language of Confession.	15
f. Recording of Summons.....	16
g. Admissibility, Corroboration and Conviction of Evidence.....	17
5.) RETRACTION FROM CONFESSION.....	23
6.) CRITIQUE OF MALIMATH RECOMMENDATIONS ON REFORMS.....	25
7.) CONTEMPORARY FORM OF CONFESSIONS...	27
8.) CONCLUSION.....	31

----Confession----

ACKNOWLEDGEMENT

I hereby take the opportunity to thank Mr. S.L. Chajjerh, Faculty of Law, for his constant guidance and the inspiration that he radiates. His jovial behavior and ease making attitude eased my tension and the initial doubts I had about my potentialities. I feel obliged to mention his unmatched role in helping me realize my potentialities. This project is a mere exhibition of the same.

Thank You Sir, I believe the indelible impact that you have on me shall go beyond the pages of this project and reflect in all my endeavors of life.

Hoping Acceptance & Appreciation from you, I hereby submit this project cum paper.

Regards.

Mayank Jain

Roll No. 410

ABSTRACT

Confession of witnesses and the accused is a very important determinant in the pronouncement of guilt in a Criminal Justice Trial. The scope and the parameters of 'Confession' and the confessional statements have traveled beyond the boundaries of the traditional Sections 24, 25, 27 and Sections 161, 164, 167 in the Indian Evidence Act, 1872 and the Code of Criminal Procedure Code, 1973 respectively. With the emergence of new scientific techniques like Brain Fingerprinting, Brain Mapping, Narco- Analysis, Lie detectors, etc. for tracing the exact information for purposes of corroboration of information and admissibility as piece of evidence in the cases, a need for bringing changes in both the provisions of Procedural Codes above mentioned is an emerging thought. Further 'Confession' is a concept closely interrelated to the concerns of Part III rights enshrined in the Constitution of India, under Article 20(3), 21 etc. The gross misuse of the powers of the investigating agencies (police) and the abuse of counter-terrorism laws in the country like the (repealed) POTA and TADA which are now struck for the gross violation of Fundamental Rights under Article 14 and 21 due to their inherent vagaries (Sec. 32 of POTA and Sec. 15 of TADA) from the rights of accused under the Indian Evidence Act, 1872. The Hon'ble Supreme Court of India has accepted fact that 'Confessional Statements' due effect the entire findings and decisions of the Criminal Trials. Thus in various case laws the Courts in India the importance of Voluntary Confessions, Prevention of Retraction from Confessions, avoiding duress and use of 3rd degree force by the police while the accused is in custody. The importance of confessional statement by the witnesses is reflected in the Supreme Courts concern to bring in Witness Protection Mechanism for purposes of the criminal justice system.

Recent developments in the domain of "Confession" are many; the famous Malimath Committee reflects the thoughtful concerns on the same in the report on Criminal Reforms.

This above highlighted reactionist approach of the various law making, law enforcing and law interpreting agencies is triggered by the crucial fact that now both the terrorist as well as the criminals have become much smarter and trickier whereby they developing string immunities to the tactics of the investigating agencies. This need of the hour for the investigating and law enforcing agencies can be elucidated by very recent examples of criminals like that of the Attack on the Parliament, the master- servant duo in Nithari Killings, the Afzan Guru Criminal trials. Etc.

CONFESSION: TRADITIONAL & STATUTORY DIMENSIONS

Police interrogation constitutes a very important part of the existing criminal justice system. Although *Evidencing law* The Indian Evidence Act 1872 and Criminal Procedure Code 1973 do not cast much weight on any statement coming out of an accused person while interrogated by the police which in legal terms is not considered as an admissible part of evidence as per Section 25¹ of the Indian Evidence Act, 1872. Nevertheless police personals are applying third degree method to extract statement which may help the investigation. In India such allegations are frequent that they torture accused under custody to elicit confessional statement, though it is made to a magistrate and that judicial officer has to maintain some civility and follow the set order given under Cr.P.C. when recording confessional statement of any individual².

Interrogation by Police and Confessions

The statements made to the police are not admitted for the purposes of admissible pieces of evidence as can be traced from reading Section 162³ of Cr. P.C with Section 25

¹ **Section 25 reads as:** *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.*

² **Section 161 reads as:** *Examination of witnesses by police. (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such Officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

³ **Section 162:** *Statements to police not to be signed: Use of statements in evidence.*

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for

----Confession----

of the Indian Evidence Act. Statements to police not to be signed: Use of statements in evidence.

A plain reading of sections 61 and 167 of the Cr.P.C. reveals that the police investigation of the offence in the case of a person arrested without warrant should be completed in the first instance within 24 hours under section 61 or if not then within 15 days under section 167. Any police officer making an investigation may *examine orally any person supposed to be acquainted with the facts and circumstances of the case, the finding can thereafter be adduced in writing but these statements aren't to be signed by the maker of such statements under Section 162 (2). Section 161 (2) provides what civilities should be followed by police officer when making oral examination.* A person during oral examination shall be bound to answer all questions relating to the case put to him by the concerned police officer, other than questions the answers to which would have a tendency to expose him/her to a criminal charge or to a penalty or forfeiture. Any statement made to a police officer cannot be used for any purpose of any inquiry or trial in respect of any offence under investigation. This statement may be used to contradict such witness. [Section 162 of the Cr.P.C.]

any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of

The Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the reexamination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

Explanation.-An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

----Confession----

The Evidence Act provides some safeguards as to the time when a person is interrogated by police. While interrogating a suspect the questioning must not be coercive or too intimidating. The police should not extract admission or confession by third degree method. [Section 25 of the Evidence Act⁴.] *Statement made to police officer by the accused is not admissible in evidence except that part of the statement which leads to discovery of incriminating material*⁵. The caution as to the admissibility of confession made to a police officer is intended to protect the accused person against third degree method by the police. The evidencing law is very clear in that a confession made to a police officer is not admissible, but it can be used in evidence of the thing recovered as a result of the confession made to a police officer by the accused⁶. Thus if a weapon used in a number of cases is recovered by the police as a result of confession made by an accused person, the recovery is a relevant piece of evidence⁷. Thus it would not be wrong to say that the provisions of the Evidence Act clearly malign the police and do not keep trust on them. If we read together the provisions of the Constitution and the Evidence Act, the message is very clear. There is no mandate under the scheme of the Constitution⁸ and Evidence Act *that a person can be threatened, tortured or any way manipulated for the purpose of extracting any kind of statement which has incriminating impact on the arrested or accused person.*

But the sad and the bad part of the story is that in spite of the provisions of the Constitution and Evidence Act, Police is applying third degree method, which renders the authentication of a true and genuine confession by the accused, the witnesses under skepticism and the entire criminal proceedings under judicial spectacles. The practicality of Indian Prisons and Police custodial torture has become so endemic that every year many people died of or severely injured of police torture. Because of various reasons third degree method is in practice. In the first place hardened criminals have some

⁴ *Supra Footnote 1.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *State of U. P. v. Deoman Upadhyaya* AIR 1960 SC 1125

⁸ As being violative of the provisions of the Part III rights under Article 20(3), Article 21 and Article 14 of the Constitution of India.

----Confession----

training to survive tough treatment so, police cannot extract information from them without the aid of third degree method. This means that a large percentage of confessional statements that are made are made involuntary out of the extreme pressure that is imposed behind the bars or while in police custody. Besides this confessions of the witnesses also keep changing by the influence and the indirect pressure that the criminals or accused in the high profile cases can exercise by virtue of their high social status.

Secondly, police arrests some persons and threatens to torture or torture them because of eliciting money and many innocent people on basis of forced Confessions are arrested by police and punished by the courts. This type of allegation has been frequently leveled against police. *Thirdly*, commoners have some typical ethos as to how criminals should be treated by the police.

A large section of police heavily consider that police cannot be effective if they do not take resort to tough treatment against hardened criminals.

Fourthly, criminal justice system of the Indian sub-continent is based on the Anglo-Saxon accusatorial system under which the focus of the judiciary is not on truth, but on evidence and this makes the '*Confessionary Statements*' to be admitted as evidence as extremely important in Criminal Adjudication.

Role of the Supreme Court of India

In the context of wide custodial violence for purposes of making the accused commit his guilt in India has developed constitutional tort. In *Nilabati Behra v. State of Orissa*⁹, the court ordered that the government of Orissa to give Rs. 1,50,000 as compensation to deceased's mother. In this case one Suman Behra (22) died when he was under the custody of police in the District of Sundergarh in Orissa. After the death Nilabati Behra, mother of Suman Behra, sent a letter addressing the Supreme Court of India.

⁹ (AIR 1993 SC 1960)

----Confession----

In *SAHELI v. Commissioner of Police*¹⁰ court directed payment of compensation when a nine-year old child was died of torture while under custody of Anand Prabhat Police station in Delhi. In *Nandini Satpati v P.L. Dhani*¹¹ the Supreme Court observed that, if police applied any mode of pressure which is subtle or crude, mental or physical, direct or indirect, that is not a matter to be considered, but if it is sufficiently substantial in obtaining information from the accused, it becomes a case of custodial torture. Supreme Court clearly declared that custodial torture is violative of right against self-incrimination and an arrested person cannot be bound to answer self-incriminatory questions.

In *Niranjan Singh v. Prabhakar Rajaram*¹² the Supreme Court emphatically observed that, "*The police instead of being protector of law, have become engineer of terror and panic putting people into fear.*" The Supreme Court again expressed its concern in *Kishore Singh v. State of Rajasthan*¹³ and observed that, "*Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights.*"

Further the court held that *The Public Prosecutor is appointed by the State or Central Government and the prosecution machinery is to be completely separated from the investigation agency (the police)*¹⁴. In 1995, the Supreme Court ordered in that the prosecution agency be autonomous, having a regular cadre of prosecuting officers. Also on earlier occasions the Court has categorically laid down that the Public Prosecutor is not a part of the investigating agency, but is an independent statutory authority and that the duty of a Public Prosecutor is to represent not the police, but the State.

Investigation of criminal cases and interrogation of accused and witnesses by police are inevitable and important part of criminal justice system. Without this

¹⁰ (1990) 1SCC 422

¹¹ (AIR 1978 SC 1075)

¹² (AIR 1980 SC 785)

¹³ (AIR 1981 SC 625)

¹⁴ *SB Sahane v. State of Maharashtra* (AIR 1995 SC 1628)

----Confession----

mechanism police cannot detect criminal cases and cannot bring wrongdoers before a court of law. They must have the authority to investigate and interrogate, but at the same time constitutional requirements should be fulfilled. Legal, constitutional and state dispensation should be arranged in a way not to let any innocent person to be harassed or tortured by law enforcing staffs, for the purposes of tracking confession out of them.

CONFESSION UNDER POTA & TADA:

Counter-terrorism Laws & The Supreme Court on Confessions

The primary concern in the ends of justice in a criminal matter is that a guilty man does not escape but also no innocent man is punished¹⁵.

The lack of a consistent policy backed by serious research and public debate remains a crucial drawback with counter-terrorism legislations like POTA & TADA in India. Political expediency and the fulfillment of populist pre-election promises and postures, and not well-considered security concerns, appear to be the only and overwhelming reasons for such enactments. This is precisely the reason and purpose behind the acceptance of the Unlawful Activities (Prevention) Amendment Ordinance, 2004, by Parliament as an Act without much debate and no discussion whatsoever on the contents of its predecessor, POTA¹⁶.

Constitutionality of Custodial Confessions

One of the most controversial aspects of past counterterrorism laws – both TADA and POTA – has been *the admissibility of a confession made to a police officer*. The

¹⁵ As Per Viscount Simon in *Stirland v Director of Public Prosecution*, (1944) 2 All ER 13 quoted in *State of UP v Anil Singh*, (1988) Supp SCC 686, 692.

¹⁶ The Prevention of Terrorism Act, 2002 (Act no. 15 of 2002) – referred to as POTA.

----Confession----

relevant part of Sec. 32 (1) of POTA¹⁷ and Sec. 15 of TADA were deliberate departures from the ordinary evidence laws in India. This showed how these laws had a self-contained scheme for recording the confession of an accused and its admissibility in his trial¹⁸.

These very conflicting provisions of the Evidence Act and the Code¹⁹, which Section 32 of POTA aimed to override or preclude was the basis for its constitutional challenge of these anti- terrorist laws. Section 162 of the Code further reinforces these prohibitions. It relates to any statement recorded during an investigation and mandates that no statements so recorded by a police officer, if reduced in writing, be signed by the person making it, and that the statement shall not be used for any purpose save as provided in the Code and the Evidence Act. The ban imposed by Section 162 applies to all statements whether confessional or otherwise, made to a police officer, whether by an accused or not during the course of an investigation²⁰.

In *Kartar Singh* it was argued that such a procedure (in this case, as prescribed by the TADA Act, 1987):

1. *Leads to invidious discrimination (between TADA and non-TADA offenders) and thus such a classification is arbitrary and unreasonable and without any*

¹⁷ Notwithstanding anything in the Code¹² or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police ... shall be admissible in the trial of such person....'

¹⁸ *State v Nalini*, (1999) 5 SCC p. 253, pp. 404-405, p. 575

¹⁹ Section 25 & Section 26 of The Indian Evidence Act, 1872.

²⁰ **Sec. 162:** *Statements to police not to be signed: Use of statements in evidence.* – (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made...

----Confession----

substantial basis, and being so, falls foul of the 'equal protection of laws' clause of Article 14 of the Constitution²¹.

2. *Is oppressive and violates the principle of just and fair trial offending Article 21 of the Constitution²².*

A clear stand was taken, that presumption against the validity of custodial confessions stands rebutted only in extreme and grave times; only when existing laws fail to effectively tackle or successfully address pressing dangers to society and the nation. Even under such extraordinary circumstances, this is not to argue that custodial confessions be treated on par with non-custodial confessions, but rather, to acknowledge the 'suspect' nature of the former, and ensure that stringent safeguards be made an intrinsic part of the scheme of such laws, and that such safeguards be scrupulously observed so as to prevent the possibility of the extortion of any false confession.

Thus Article 20(3) of the Constitution mandates the first and foremost precondition for any valid confession: "*No person accused of any offence shall be compelled to be a witness against himself*". In addition, Section 24 of the Evidence Act²³

²¹ Coming to the distinction made in TADA Act, grouping the terrorist and disruptionists as a separate class of offenders from ordinary criminals under the normal laws and the classification of offences under TADA Act as aggravated form of crimes distinguishable from the ordinary crimes have to be tested and determined as to whether this distinction and classification are reasonable and valid within the term of Art 14 of the Constitution.

²² 'The contention based on Article 21 was linked to the fact that the TADA procedure allowed confessions made to a police officer admissible in total contradistinction to the existing criminal procedure under the Evidence Act and the Code, and thus pleaded that this was unfair and unjust as against the "procedure established by law" clause of Article 21 of the Constitution. This would expose the accused under police custody subjected to ceaseless and dastard coercion and physical and psychological inhuman treatment by investigating agencies.'

²³ **Sec. 24:** *Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.-* 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

----Confession----

specifically bars confessions that may be the result of any inducement, threat or promise, from the courts' consideration. Thus *any confession*, be it custodial or non-custodial, to be accepted by a court of law, should not be 'compelled', in other words, must be 'voluntary', meaning thereby that counterterrorism laws have to primarily safeguard the voluntary nature of a confession and see to it that no form of compulsion is used against the accused while extracting a confession²⁴.

Cooling Time

This is a judicial concept introduced in some decisions but stands unrecognized by POTA, or its predecessor, TADA. The courts, too, have not been very clear on this issue. It raises the issue *whether there should be a time gap between the administration of the caution and the recording of the confession. Moreover, if so, what should be the period or length of such a time gap?* The concept seems to have arisen from the belief that the accused should be granted some time "to coolly think over whether he wanted to voluntarily make a confessional statement despite knowing the consequences thereof."

In other words, once granted, the cooling time has to be reasonable. It is for the officer to decide what would be reasonable, depending on the facts and circumstances of the case but "it cannot be mere farce for the sake of granting time²⁵."

In the same case, the Court held "in the facts and circumstances" that the grant of half an hour as cooling time was unreasonable²⁶. In another case where the accused was reference to the charge against the accused person, 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 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.

²⁴ *Devender Pal Singh v State of NCT of Delhi*, (2002) 5 SCC, p. 234.

²⁵ *Devender Pal Singh v State of NCT of Delhi*, (2002) 5 SCC, p. 234.

²⁶ *Gurdeep Singh v State (Delhi Admn.)*, AIR 1999 SC 3646, 3652-3653; *Mohd. Khalid v State of West Bengal*, (2002) 7 SCC p. 334 & 357; *Nazir Khan v State of Delhi*, (2003) 8 SCC, p. 461, pp. 481-2.

----Confession----

granted "time not exceeding 48 hours" the Court, without commenting on reasonableness or otherwise of the time granted, accepted the statements to be admissible. Where an officer deposed in court that, as a matter of practice, he granted five minutes to any accused produced before him and after expiry of these minutes if the accused still wanted to make a confession he used to proceed and record the statement, the Court declared the practice adopted by the officer to be illegal²⁷. *Sufficient time being given to the accused for reflection before making a confession, merely because it was recorded a day or so before the police remand was to expire would not make it involuntary*²⁸.

Confession under POTA & TADA

*Although Section 15 of TADA and Section 32 of POTA dealt with confessions, nowhere in the Acts is the term 'confession' defined, neither does the Evidence Act offer a definition. It has, however, been held by the Court that the judicial principles enunciated by the courts concerning the meaning and content of 'confession' under the Evidence Act shall apply to the TADA. According to the Court, a 'confession' has either to be an express acknowledgement of guilt of the offence charged or it must admit substantially all the facts which constitute the offence. The Court must have a proper confession before it and not a merely circumstantial narrative or information which could be incriminating*²⁹. *According to both the Acts, only a confession made before 'a police officer not lower in rank than a Superintendent of police' is valid*³⁰.

Voluntary and True Confessional Statement

'Voluntary' means that the accused makes the statement "out of his own free will inspired by the sound of his own conscience to speak nothing but the truth"; it should not be the "result of any tutoring, compulsion or pressurization."

²⁷ On controversy as to whether these guidelines were mandatory or directory, see, *Lal Singh v State of Gujarat*, AIR 2001 SC 746, 757; *S.N. Dube v N.B. Bhoir*, (2002) 2 SCC, p. 254 & 287.

²⁸ *Bharatbhai v State of Gujarat*, AIR 2002 SC, p. 3620 & 3631

²⁹ *Nazir Ahmad Bhatt v State of Delhi*, (2002) 1 SCC, p. 674 & 677.

³⁰ *Simon v State of Karnataka*, (2004) 1 SCC, p. 74, pp. 81-82.

----Confession----

Section 15 (2) of the TADA Act³¹ required that the "police officer shall not record such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily³²."

This meant that Section 32 does away with the requirement that a confession be voluntary? The Court in the POTA case cleared any doubts – if these ever existed: "It is settled position that if a confession was forcibly extracted, it is a nullity in law. Non-inclusion of this obvious and settled principle does not make the Section invalid".⁵⁶

Thus, it is clear, that only voluntary confessions are acceptable by law. This is mandated by Article 20 (3) of the Constitution and Section 24 of the Evidence Act. This very principle was enforced by Section 15 of the TADA Act read along with Rule 15 of the TADA Rules and its successor POTA reinforces it in Section 32. The wordings in TADA and POTA may vary, but the judicial principles enunciated in the cases relating to what constitutes a voluntary confession under TADA cannot be denied application when interpreting POTA's Section 32. The right to remain silent, not to be compelled or induced to make a confession and that a confession be recorded in an atmosphere free from threat or inducement have long been accepted as requirements of a free and voluntary confession.

Whenever an accused challenges that his confessional statement is not voluntary, the initial burden is on the prosecution to prove that requirements warranted by the counterterrorism law have been complied with. Once the prosecution has fulfilled its initial duty the burden shifts to the accused. Then it is for the accused to show and satisfy

³¹ As compared to this, POTA, makes no mention as to the voluntary nature of the confession but provides that:

- a. The accused has a right to remain silent (Sec. 32 (2) proviso),
- b. The police officer shall not compel or induce the accused to make any confession (Sec. 32 (2) proviso); and
- c. The confession shall be recorded in an atmosphere free from threat or inducement (Sec.32 (3))

³² As per Rule 15 (3) (b) the memorandum to be signed and attached by the police officer at the end of the confession had to, inter alia, included the statement "I believe that this confession was made voluntarily."

----Confession----

the court that the confessional statement was not made voluntarily. The prosecution is not required to show why the accused wanted to make the confessional statement.

However, the initial burden on the prosecution does not arise on a mere allegation that requisite procedures or safeguards were not observed, or that the statement was recorded under duress or coercion. Such allegations would be of no consequence as they can be made by the accused in every case after making a confessional statement. Under Section 114 of the Indian Evidence Act, there is a statutory presumption that, when an official act is proved to have been done, it will be presumed to have been regularly performed.

Atmosphere for recording & Language of Confession

Though the specific requirement that ‘*the confession shall be recorded in an atmosphere free from threat or inducement*’ (POTA Section 32 (3)), did not form a part of the TADA Act or Rules, it was however brought into effect indirectly as forming one of the constituent elements of the overall concept of a ‘voluntary confession’ in *Gurdeep Singh v. State (Delhi Admn.)*^{33, 34}.

TADA Rules necessitated that the confession shall invariably be recorded in the language in which such a confession is made. In case this was not practicable, there were two

³³ (2000) 1 SCC 498

³⁴ In this case, the appellant was in handcuffs while the confessional statement was recorded. There was another policeman in the room at some distance from the appellant holding the chain of his handcuff. Armed guards stood outside the room in which the confessional statement was being recorded. The Court had to decide: whether this set of circumstances could be construed to be such as to infer that the confessional statement recorded was not voluntary.

----Confession----

options – it could be recorded either in the language used by such police officer for official purposes or in the language of the Designated Court. Further, it provided that if the maker of the confession did not understand the language in which it was recorded, it be interpreted to him in a language he understood.

To avoid contentious situations, POTA prescribes that the confession shall be recorded in the same language in which the person makes it (Section 32 (3)), and leaves no other options as provided by TADA. It could be argued that this takes care of any error or manipulation that may creep into the confession through the process of interpretation. As the confession has to be recorded by an officer not lower in rank than a Superintendent of Police and the confession has only to be recorded in the language in which it is made, this could lead to administrative difficulties for the Police as well as unwarranted prolonged detention for the accused.

Recording of Statement

The law provides that the confessional statement shall be recorded "either in writing or any mechanical or electronic device like cassettes, tapes or soundtracks from out of which sound or images can be reproduced" (Sec.32 (1) POTA). This is the verbatim replication of the relevant provision in the TADA Act (Section 15 (1)), except for the addition of the word 'electronic'. According to both these provisions only a police officer not lower in rank than a Superintendent of Police can record the confession.

The Court in Kartar Singh looked at the recording of the confession on a mechanical device very suspiciously. Agreeing to the appellant's counsel that such a device could be "tampered, tailored, tinkered, edited and erased etc.," the Court said "we strongly feel that there must be some severe safeguards which should be scrupulously observed while recording the confession... so that the possibility of extorting any false confession can be prevented to some appreciable extent".

----Confession----

Admissibility, Corroboration & Conviction of Evidence

Unlike under the TADA Act, Section 15 (1), *wherein conditions fulfilled, a confession was admissible in a trial of the confessor or co-accused, abettor or conspirator, Section 32 (1) of POTA restricts the admissibility of such a confession to only the trial of person confessing.* The Designated Court had a duty to presume that an accused had committed the offence if his co-accused had, in a confession, involved the former [Section 15 (1) read with 21 (1)]. This meant that the court would treat the confession as substantive evidence against the former, and in the absence of proof to the contrary, could also convict a co-accused on its basis³⁵.

Other Considerations

These procedural safeguards do not exhaust the protection offered to the accused. Though custodial confessions are admissible in evidence, it is still for the court to decide on its acceptability or evidentiary or probative value. Under the appropriate circumstances, however, the evidentiary value of custodial confessions is held to be unimpeachable. It was often argued that a confessional statement being recorded by a police officer is a weak type of evidence and must always be corroborated before basing a conviction. In a series of cases, the Supreme Court has held that once the confessional statement is found to be voluntary and truthful, it becomes substantive evidence and does not require any corroboration, and the maker of a confession can be convicted on such uncorroborated confession.³⁶

Though it is entirely for the court trying the offence to decide the question of admissibility or reliability of a confession in its judicial wisdom strictly adhering to the

³⁵ . However, in 1993, by an amendment (Act 43 of 1993) such a presumption was removed by deleting Sub-Clauses (c) and (d) of Section 21 Clause (1) and Section 15 Clause (1) was amended to bring it in conformity with Section 30 of the Evidence Act. Under POTA, a confession to a police officer is only admissible against its maker. Possibly, because such a provision is an exception to ordinary criminal law principles, its use has been restricted to the essential minimum.

³⁶ *Jayawant Dattatray Suryarao v State of Maharashtra*, AIR 2002 SC, p. 143 & 165; *Ravinder Singh v State of Maharashtra* AIR 2002 SC, p. 2241; *State v Nalini* (1999) 5 SC, p. 253.

----Confession----

law, it must, while so deciding the question, satisfy itself that there was no trap, and no importune seeking of evidence during the custodial interrogation and all conditions required are fulfilled.

One argument raised against POTA, which does apply to custodial confessions as well, is that it is open to misuse or abuse." Once legislation is passed the Government has an obligation to exercise all available options to prevent terrorism within the bounds of the Constitution". This did not mean that the Court has given a free hand to the police in such cases. Against discarding the evidence of police officials merely on the ground that they belong to the police force and thus are either interested in the investigation or the prosecuting agency, the Court warned, "...their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought."³⁷ Such evidence has to inspire confidence and in the absence thereof, conviction cannot be sustained³⁸.

The Court, in *Bilal Ahmed Kaloo*, ruled "there is no question of looking into the confessional statement ... much less relying on it since he was acquitted of all offences under TADA".³⁹ The logic put forward was "Any confession made to a police officer is inadmissible in evidence as for these offences and hence... the said ban would not wane off in respect of offences under the Penal Code merely because the trial was held by the Designated Court for Offences under TADA as well."⁴⁰ However, in a later case, the Court, without referring to the above case ruled, "We have... absolutely no doubt that a confession, if usable under Section 15 of the TADA, would not become unusable merely because the case is different or the crime is different."⁴¹ The Court drew strength from the

³⁷ *Pradeep N. Madgaonkar v State of Maharashtra*, (1995) 4 SCC, p. 255 & 261. Also, see *Kalp Nath Rai v State (through CBI)*, (1997) 8 SCC, p. 732 & 757.

³⁸ *Sahib Singh & Wariyam Singh* for 'related' or 'interested' witnesses.

³⁹ *Bilal Ahmed Kaloo v State of A.P.*, (1977) 7 SCC, p. 431 & 434.

⁴⁰ *Ibid.*

⁴¹ *State of Gujarat v Mohammed Atik*, (1984) 4 SCC, p. 351 & 354.

----Confession----

fact that there was "no statutory inhibition"⁴² against such use as well as the ruling in *State of Rajasthan v Bhup Singh*⁴³, where a similar objection was raised in the context of the admissibility of a confessional statement under Section 27 of the Evidence Act. The matter was unequivocally laid to rest when the Court specifically overruled *Bilal Ahmed Kaloo* in *State v Nalini*⁴⁴, where the Court pointed out that the former case had not taken into consideration the implications of Section 12 *vis-à-vis* Section 15 of TADA while dealing with the issue. It ruled that the *Bilal Ahmed Kaloo* did not lay down the correct law and that a duly recorded confessional statement would continue to remain admissible for other offences under any other law which were tried along with the TADA offences, even if the accused was acquitted of offences under TADA in that trial⁴⁵. Nevertheless, the ghost of *Bilal Ahmed Kaloo*'s decision seems to still haunt the Court's corridors. In *Gurprit Singh vs. State of Punjab*, possibly by oversight, the Court, once again relying on the case, ruled that confessional statements recorded during investigation in TADA cannot be used for convicting an accused for any offence under the Indian Penal Code.

. The present Government appears to be oblivious of the essentials of the debate. With the repeal of POTA and the enactment of the diluted *Unlawful Activities (Prevention) Amendment Act*, it has lost out on the advantage so painfully achieved over the past years.

In many a cases it has emerged in the criminal jurisprudence "Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge and convicted on improper

⁴² *Ibid.*

⁴³ (1977) 10 SCC, p. 675 cited in *State of Gujarat*, p. 355.

⁴⁴ (1995) 5 SCC, p. 253.

⁴⁵ In spite of the fact that all three Judges on the Bench wrote their own judgment and differed on many issues in this case, they concurred on this issue. *State v Nalini*, p. 304 (Thomas, J.), 401 (Wadhwa, J.), 570 (Quadri, J.).

----Confession----

evidence. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of man of intelligence how much more true is it of the ignorant and illiterate, or those of feeble intellect."

In *Miranda v. Arizona*⁴⁶ the Court categorically held that it was obligatory upon the police to warn the accused of his right to remain silent, which must be accompanied by the explanation that anything said could and would be used against the individual in a court of law. Chief Justice Warren cast a constitutional obligation upon the authorities to inform the suspect of his right to counsel and ruled:

"It is necessary to warn him not only he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. Without this additional warning, the administration of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one.⁴⁷"

The Supreme Court of India also recognized the right to counsel in *R.M. Wasawa case*⁴⁸ and dwelt on the quality of legal assistance to be made available to the accused so that misappropriation of confessional statement for the purposes of the evidence shall not occur. The way and manner in which confession is brought out of a layman, the mannerism in which it is interpreted and used for or against the confessional is important to realize how important is the proper iteration and adducing of the confession for the purposes of conviction of the person. The need of the same is further aggravated in case or matter of indigent and poor who are blatantly unaware of the tactics and the grit of making the confessional statement.

On the recommendation of the Law Commission of India in its 48th Report of new Section 304 was introduced in the Code of Criminal Procedure 1973 stipulating that

⁴⁶ 384 US 436 (1966)

⁴⁷ *Id*

⁴⁸ *Infra Footnote 50.*

----Confession----

"in a trial before the Court of Session, *the accused is not represented by a pleader, and where it appears to the court that the accused has not sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the State.*"⁴⁹

The Supreme Court of India also recognized the right to counsel in *R.M. Wasawa case*⁵⁰ and dwelt on the quality of legal assistance to be made available to the accused so that *misappropriation of confessional statement for the purposes of the evidence shall not occur*. The way and manner in which confession is brought out of a layman, the mannerism in which it is interpreted and used for or against the confessionary is important to realize how important is the proper iteration and adducing of the confession for the purposes of conviction of the person. The need of the same is further aggravated in case or matter of indigent and poor who are blatantly unaware of the tactics and the grit of making the confessional statement.

The Supreme Court of India in *Hussainara Khatoon v. Home Secy., State of Bihar*⁵¹ held that a duty was cast on the Magistrate or the Sessions Judge to inform the accused who is indigent that he is entitled to obtain free legal services at the cost of the State and *further the grit and the information as regards to the way and the mannerism of making a confessional statement shall also be provided via Legal Aid to them*. This was reiterated in *Ranjan Dwivedi v. Union of India*⁵².

RETRACTION FROM CONFESSION

Retraction of statements is something that happens in most criminal cases. The reason behind the same may be the inadequate police protection or the ill developed mechanism for witness protection or the inherent securities of the witnesses or the accused under

⁴⁹ *Ranchod Mathur Wasawa v. State of Gujarat*, (1974) 3 SCC 581

⁵⁰

⁵¹ (1980) 1 SCC 108

⁵² (1983) 3 SCC 307

----Confession----

influence of the status of the opposing party, as happens in almost all the high profile cases.⁵³ This increases the difficulty level of the test of the investigators' skills as they will have to get corroborative evidence to nail the accused. However, this does not mean that the prosecution's case collapses. The onus now falls on the defence to show that the statements given by the accused were obtained through coercion.

Prosecution can still argue that the retraction was an afterthought on the part of the accused and they resorted to it under legal advice. The case of the police does become weaker but the onus is still on the defence to prove that the confession was completely involuntary. *But the irony of the entire situation remains that the several judgments of the Supreme Court that say that even a retracted confession is admissible as evidence in court.*

This can be elucidated by the 1993 serial blasts case, for the verdict, which was recently dictated in a designated Tada court, *retracted confessions* have been used against several accused to pronounce them guilty. The court further laid strict guidelines that this does not exonerate the police from performing their duty and bring corroborative evidence before a judge to show that there is some merit in the confession. Moreover, under the MCOCA even a confession given before a police officer of the rank of DCP and above is admissible in court even if it is later retracted before a judicial authority. The same principle was used to convict *Mohammed Afroz*, arrested in connection with the 9/11 attacks, last year.

⁵³ (1997) 1 SCC 416

CRITIQUE OF MALIMATH RECOMMENDATIONS ON CONFESSION REFORMS

While examining certain key provisions of the recommendations of the Malimath Committee, one lacunae emerges strikingly visible, this is the Committee's failure to take into account international human rights standards which establish a framework of human rights for criminal justice systems throughout the world, as also a disregard for those human rights standards to which India is a party and which it is therefore bound to uphold. Under the same falls the 'standard, methods of obtaining, appreciation and admissibility of confession'. This is coined in following few points:

Increasing Vulnerability to Custodial Torture

As a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, India has committed to not do anything that is inconsistent with its object and purpose. The prohibition of torture is absolute and may not be suspended no matter how heinous the crime for which someone has been arrested, even in situations of emergency.

However there is little doubt that torture and other cruel, inhuman and degrading treatment continue to be endemic throughout India. Supreme Court orders, NHRC guidelines and official sanctions have not deterred officials from inflicting torture on individuals in their custody. The Malimath Committee's recommendations discussed below may further increase vulnerability to torture.

Increase in periods of custody

Section 167 of the Code of Criminal Procedure (CrPC) currently provides that a person can be held in police custody for up to 15 days if ordered by the nearest judicial magistrate. The Malimath Committee recommends that the period of police remand be extended from 15 to 30 days for grave offences, leaving detainees more vulnerable to torture or ill-treatment. The Committee ignores a significant body of evidence (*including*

----Confession----

the 177th, 180th report of the Law Commission and those of the National Police Commission), which indicates that police routinely abuse their powers of arrest and detention.

Making confessions admissible as evidence

The Committee recommends that section 25 of the Indian Evidence Act should be amended on the lines of Section 32 of the Prevention of Terrorism Act (POTA) (now repealed and replaced by UAPA) *to allow a confession, recorded by a Superintendent of Police (or officer above him) which is also audio or video-recorded, admissible in Indian courts as evidence*, subject to the condition that the accused was informed of his right to consult a lawyer.

Furthermore, section 32 of POTA is similar to the section 15 of the now lapsed Terrorist and Disruptive Activities (Prevention) Act [TADA]. In *Kartar Singh v. State of Punjab*⁵⁴, while the majority of the judges upheld the constitutionality of section 15, they recognized the danger inherent in this section of TADA noting the existence of “over zealous police officers resorting to inhuman, parabolic, archaic, and drastic methods of treating the suspects in their anxiety to collect evidence by hook or crook and wrenching a decision in their favour...”

The right to silence

The Malimath Committee makes a highly controversial recommendation that “*the court should have the freedom to question the accused to elicit the relevant information and if he refuses to answer, to draw adverse inference against the accused*”. The Committee opined that if this questioning is done “*without duress*”, the right to silence available to the accused under Article 20(3) of the Constitution of India would be respected as would the procedural provision in the CrPC (section 161(2)). The Committee states that the drawing of adverse inference on silence does not offend the right granted by Article 20(3), as “*it does not involve testimonial compulsion.*” But this violates the

⁵⁴ (1994 3 SCC 569)

----Confession----

India's Commitments to international humanitarian conventions to which it is a state party⁵⁵ and also the directives of International Organizations⁵⁶.

- Further an important question with regards to the '*Confessional Statements qua the compulsion*' as a challenge the constitutional right, the issue thus remains as to what constitutes compulsion. The present position that *drawing adverse inference* when the accused remains silent is not "compulsion" ignores the object of the right and undermines the spirit of the fundamental right to silence⁵⁷ under Article 20(3).

CONTEMPORARY FORM OF CONFESSIONAL EVIDENCES

- *NARCO ANALYSIS TESTS*
- *BRAIN MAPPING TESTS*
- *CONFESSION IN MEDIA TRIAL*

Coming out of the traditional shell of Evidence under section 24- 27 of the Indian Evidence Act, Section 161- 167 of the Code for Criminal Procedure. Although narco-analysis tests are yet to be accepted as evidence in a court of law, they can help investigators crack the worst of cases. It's called sodium pentothal. Used traditionally in

⁵⁵ Article 14(3)(g) International Covenant on Civil and Political Rights & The UN Body of Principles for the Protection of All Persons and under the Rome Statute of the International Criminal Court: referring to various "minimum guarantees" and states that everyone has a right not to be compelled to testify against himself or to confess guilt.

⁵⁶ Amnesty International Open letter to ex- Law Minister *Jana Krishnamurthy* about the then forthcoming trial of Abdul Rehman Geelani and three others. Letter numbered: AI Index: ASA 20/010/2002: 8 July 2002.

⁵⁷ The Law Commission of India 180th Report issued in May 2002 equivocally stated that any move to amend the provisions of Cr.P.C, would be "Ultra vires of Article 20(3) and Article 21 of the Constitution of India.". To draw an adverse inference from the refusal to testify is indeed to punish a person who seeks to exercise his right under Article 20(3).

----Confession----

operating theatres across the world, an adequate dose of the barbiturate helps induce general anesthesia before surgery and is so potent that it takes less than a minute to bring about the onset of unconsciousness in a person. When administered in a lower dose, however, the drug doesn't knock one off, but nevertheless generates a state of stupor. It's a trance-like phase, experts say, where a person's inhibitions are lowered to the extent of making him spill facts that would otherwise have been suppressed by his conscious self. That's when medical science gives way to forensics.

The use of this technique of '*Narco Analysis test*' was abated in popularly known '*Stamp Paper Scam*' where the prime *Abu Karim Telgi*, was administered truth serum during a narco-analysis test, under the effect of which truth as regards to the case was extracted out of him. Recently, in February, 2007, the notorious *master-servant duo* accused in the Nithari killings was subjected to the same analysis — they also underwent another test called *brain mapping*, by Noida police personnel.

*The Indian Judiciary has admitted the results of these tests,*⁵⁸ *However, experts say they can't even be referred to in a court of law.* Nonetheless, they were conducted to aid investigators in cracking the cases. The legal experts opine that "If a person accused of murder reveals during such a test that he has hidden his weapon in a particular place, it may help the police in tracking down the weapon. '*While the court may not recognize the test, it may consider the weapon, if found, as evidence*', it means that the information as obtained from the subjects under the effect of the Truth Serum shall further be utilized for the purposes of corroboration of the other available evidences or say for the purposes of collection of evidences⁵⁹.

*It seems that the narco-analysis and brain mapping are better alternatives to older processes such as the polygraph, commonly known as the **lie detector**.* While the polygraph was used on people in full control of their consciousness, narco-analysis and brain mapping are tests targeted at the subconscious human mind and impulses in the human brain, respectively "*Brain mapping, on the other hand, works on the principle of*

⁵⁸ Nithari Killings main accused Moninder Singh Kohli and Stamp Paper scam kingpin Abdul Karim Telgi

⁵⁹ As per the mandate of Section 27 of the Indian Evidence Act, 1872.

----Confession----

*providing a person with **external stimuli** such as pictures or sound clips and then scanning the brain for corresponding responses.”*

In the Nithari case, for example, the accused were shown pictures of the missing children during brain mapping. “If the accused had seen the children before, their brains would respond to those pictures with familiarity, and those impulses would be recorded by the receptors.

Technically, it all sounds fine. ***But questions still abound about the dependability of these processes. Often the ‘Hardened criminals may not respond to narco-analysis as easily as first-time offenders, a person with a criminal bent of mind may remain silent even under the effect of the truth serum’. But the legal fact which remains unabated is that a narco- analysis test is not an established method of investigation.***

*Critically speaking, narco-tests are only a more refined way of getting people to confess than older confession techniques such as **third degree torture**. And either way, we are left with an inefficient investigative agency that can’t follow up a case on its own abilities and has to depend on what the accused tell it and this makes such new revolutionary techniques redundant for purposes of evidential records before the courts.*

Another aspect of these tests which has drawn flak is their self-incriminating nature, which comes in direct conflict with the constitutional right of Indian citizens as guaranteed by Article 20 of the Indian Constitution. *“No person accused of any offence shall be compelled to be a witness against himself,”*

- In that light, it technically becomes mandatory for investigative authorities to obtain the written permission of an accused before conducting such tests on him or her. This is where several human rights lawyers smell a rat. In many a cases where such investigation is conducted the investigators often go ahead with these analyses without the written consent of the accused to undergo such a test.
- Further it often so happens that the investigating teams conducting these tests leak the results to the media, only to mislead the public about the investigative process, which further violates the rights of the accused as under the Constitution of India.

BRAIN FINGERPRINTING.....emerging technique to extract confessions

Farwell Brain Fingerprinting⁶⁰ is based on the principle that the brain is central to all human acts. In a criminal act, there may or may not be many kinds of peripheral evidence, but the brain is always there, planning, executing, and recording the crime. The fundamental difference between a perpetrator and a falsely accused, innocent person is that the perpetrator, having committed the crime, has the details of the crime stored in his brain, and the innocent suspect does not.

Matching evidence from a crime scene with evidence on the perpetrator

Farwell Brain Fingerprinting matches evidence from a crime scene with evidence stored in the brain of the perpetrator, similarly to the way conventional fingerprinting matches fingerprints at the crime scene with the fingers of the perpetrator, and DNA fingerprinting matches biological samples from the crime scene with the DNA in the body of the perpetrator.

The propagators who advocate the use of these emerging scientific techniques for the purposes of extracting confession and then adducing them as evidences in the court of law after the requisite corroboration, stress on the point that such techniques and the confessional information arrived at from the findings of such experiments are not violative of Right to Silence under Article 20(3) and liberty under Article 21 of the Constitution of India. The reason they give for such a succinct comment is that: ‘all the

⁶⁰ Farwell Brain Fingerprinting works as follows. Words or pictures relevant to a crime are flashed on a computer screen, along with other, irrelevant words or pictures. Electrical brain responses are measured non-invasively through a patented headband equipped with sensors. Dr. Farwell has discovered that a specific brain-wave response called a MERMER (memory and encoding related multifaceted electroencephalographic response) is elicited when the brain processes noteworthy information it recognizes. Thus, when details of the crime that only the perpetrator would know are presented, a MERMER is emitted by the brain of a perpetrator, but not by the brain of an innocent suspect. In Farwell Brain Fingerprinting, a computer analyzes the brain response to detect the MERMER, and thus determines scientifically whether or not the specific crime-relevant information is stored in the brain of the suspect.

----Confession----

information and the confessional statements that are arrived at or collected as the resultant findings of these experiments is already existent in a person's (prospective criminal or the present accused) mind, it nowhere, by any means or any stretch of imagination would amount to pressuring or alluring or extorting someone to say self incriminatory statements. These means and techniques are just mechanism to find out the true information which is already existent and shall go helpful in a long way in solving the judicial dilemmas in criminal cases.

CONFESSION UNDER MEDIA TRAIL

While shedding the tattered old blanket of accounting evidence the Courts in India have very recently started recognizing the importance of confessional statements made in media. The Supreme Court added a new, and significant, chapter to the conservative criminal jurisprudence and given a role to the media in criminal trials by ruling that interviews given by an accused to TV channels could be considered evidence by courts. *The country's criminal jurisprudence, which presumes innocence in favour of the accused and goes by the principle that a 100 guilty could escape the clutches of law but not a single innocent should be punished, had not recognized role of media in a trial since recent and this is what makes the CrPC redundant in these issues.*

This recent development can be traced in the light of, the apex court's January 22 order by a Bench comprising Justices Arijit Pasayat and SH Kapadia while they dismissed Sajidbeg Asifbeg Mirza's (accused) petition saying, "*There is no merit in it*" and that the trial court could consider admissibility of statements given by an accused to media. This has proved not only a significant leap in law but also a trend-setter. This has wide implications for sting operations, the recent "entrapment" of MPs seeking bribes for local area development contracts being a case in point, as such interviews may become key evidence in corruption trials.

Further the televised confession of Ravinder Pradhan to the murder of Meerut lecturer Kavita in 2003 would now have a different connotation.

----Confession----

The facts of the case in which the ‘judicially scintillating’ order has been passed are:

- The process began right at the trial court stage in Gujarat when in the murder incident of 2000, the accused Sajidbeg Asifbeg Mirza was allegedly beaten up by police during his custodial interrogation. When Mirza was admitted to a hospital in Surat, a local TV channel interviewed him.
- As what he said in the interview, being relevant to prove his guilt, the prosecution moved trial court requesting it to summon the videographer as witness to prove contents of the interview.
- The accused and his counsel objected saying *extra-judicial confessions* before media cannot be cited as evidence during the trial in a criminal case. The trial court did not agree with this plea and summoned the videographer to depose before it as a witness.
- The accused moved Gujarat High Court to appeal the summoning order and cited the SC judgment in the Parliament attack case, which narrated that Senior Counsel Ram Jethmalani, appearing for SAR Geelani, had cited a TV interview given by Mohammed Afzal Guru to a TV channel purportedly confessing to his guilt but absolving Geelani.
- The HC said the apex court, in the Parliament attack case, had rejected the admissibility of Afzal's statement to the TV channel as it became apparent that the interview was arranged by the police and recorded in their presence.
- The HC, agreeing with the trial court, held that the SC has not laid down any principle about admissibility of confessional statement by an accused to media, if it were given suo-motu and without any pressure from the police. Mirza carried his appeal to the Supreme Court.
- A division bench comprising the above named judges dismissed Mirza's petition saying, "There is no merit in it", and laying guidelines that "It goes without saying that the relevance and admissibility of the statement, if any, given by the accused before the mediapersons shall be considered at the appropriate state in the trial."

----Confession----

This is a revolutionary start and leaves scope for future expectations for the admissibility of trial and confessions before media to be admitted as Admissible piece of Evidence under the Indian Evidence Act, 1872.

CONCLUSION

On a concluding note it would be apt to state that the importance of confession can never be undermined for the purposes of a criminal trial. Confession under the Criminal Procedure Code, 1973 has many facets to it. It has a key value in the Criminal Justice System, and therefore the sanctity of the authenticity of confessionary statements be maintained and the constant process of evolvement of new forms and mechanisms of retracing confessionary evidence, shall well be aligned in the mainstream provisions of the existing Procedural laws and the entire evidential jurisprudence in the country. In India, the importance and the sacrosanct of the confession is all the more important for the reason that the Law enforcing agency is the same as the investigating agency is both vested in the police. So at times the over enthusiasm and the anxiety of the police agency is reflected in their infliction of forceful means and resorting to the use of third degree violence for the purposes of the retracting and bringing out the confession out of the accused persons in custody or the one's taken on police remand.

The Criminal justice system in India in the recent times is reflecting stances of transition and change where many new techniques and scientific tools for the purposes of extracting the exclusive information stored in the minds of the accused in relation to the commission of the crime is traced by the use of new techniques like *Brain Mapping*, *use of lie detectors*, *truth serums*, *DNA Fingerprinting* and also the highly debated Confessional Statement under the media or the popularly called the Media Trial. This raises the very obvious concerns of the vanguard of the Constitutional Provisions and safeguards as under *Articles 20(3), 21, 14* and others. The important pertinent question before the various learned High Courts and the Hon'ble Supreme Court in India is that what would be the legal status of the confession statement arising out of the techniques above mentioned, when the person has no control over what he is saying and though the use of unfailing, accurate technologies the brain and the related information is read through. This also arouses the obvious judicial concerns of the Evidentiary provisions and the level or degree of corroboration for making the confessions as obtained above to

-----Confession-----

be able to be admitted for the purposes of legally acceptable and admissible piece of evidence in the courts.

The court has taken a strictly clear stand on the point that the standards of ‘confessions’ have to be kept as uniform for all the criminals, be they the ordinary criminals or the recidivists under the popular counter terrorism laws, the method, mode and the standards of the Confession collection and confession appreciation cannot be different for criminals, which is well reflected in the repealing of *POTA* and *TADA* as an aftermath of deliberations and debates.

It seems that the boundaries and the scope of the Evidence and more importantly the value of *Confessions*, be it that of the accused or the star witnesses, co- accused etc have become highly important in order to prevent the misuse and the miscarriage of the justice under the present, relevant provisions of the *Indian Evidence Act, 1872*, like happened in the instance of *Zaheera Sheik*, a prime witness in *Best Bakery Case* and that of *Bharti Yadav* in the *Nitish Katara’s case* where the retraction in the confessions of the prime witnesses reflected the gross violation and undermining of the provisions of the *Criminal Procedure Code 1973* and have reflected how the provisions of these traditionally enacted procedural laws will leave the entire “Confession” and its impact of the Criminal Justice System as redundant, if the new emerging trends and provisions are not assimilated and incorporated in the present Evidence Appreciation as under the Criminal Procedural Laws of the Country.