

A comparative study between admission and confession

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Abstract:

The term confession and admission were coined for evidentiary value , courts have attempted to clear the difference between them, a confession is a acknowledgment by a party in term to express his guilt in a criminal case. Thus, admission is a statement of facts from which the guilt may be deduced and which takes towards proof of the guilt. Confessions are of greater evidentiary value than admissions, confessions should be received with greater caution than admissions. Section 17 to 31 of Indian evidence act ,1872 deals with admission . Section 24 to 30 of Indian evidence act deals with confession as differentiated from admission .confession is a statement made by the guilty person which is to be proved against him in criminal proceedings to establish the offense committed by him and it should be given voluntarily by the accused person. Admission is a oral statement or written which gives information about the liability of the person making admission. Thus the research shall be about the comparison study between admission and confession .

Keywords: Confession,admission, distinguished, guilty,voluntarily.

Introduction:

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

Forms of confession

A confession may occur in many forms. When it is made to the court itself then it will be called judicial confession and when it is made to anybody outside the court, in that case it will be called extra-judicial confession. It may even consist of conversation to oneself, which may be produced in evidence if overheard by another. For example, in *Sahoo v. State of U.P.* the accused who was charged with the murder of his daughter-in-law with whom he was always quarreling was seen on the day of the murder going out of the house, saying words to the effect : "I have finished her and with her the daily quarrels." The statement was held to be a confession relevant in evidence, for it is not necessary for the relevancy of a confession that it should be communicated to some other person.

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

Extra-judicial confessions- Are those which are made by the accused elsewhere than before a magistrate or in court. It is not necessary that the statements should have been addressed to any definite individual. It may have taken place in the form of a prayer. It may be a confession to a private person. An extra-judicial confession has been defined to mean " a free and voluntary confession of guilt by a person accused of a crime in the course of conversation with persons other than judge or magistrate seized of the charge against himself. A man after the commission of a crime may write a letter to his relation or friend expressing his sorrow over the matter. This may amount to confession. Extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. Extra-judicial confession is generally made before private person which includes even judicial officer in his private capacity. It also includes a magistrate not empowered to record confessions under section 164 of the Cr.P.C. or a magistrate so empowered but receiving the confession at a stage when section 164 does not apply.

An 'admission' is a statement of fact which waives or dispenses with the production of evidence, by conceding that the fact asserted by the opponent is true. Admissions are followed because the conduct of a party to a proceeding, in respect of the matter in dispute, whether by acts, speech, or writing, which is clearly inconsistent with the truth of his contention, is a fact relevant to the issue. Admissions constitute a very weak kind of evidence, and the Court may reject them if it is satisfied, from other circumstances, that they are untrue.

Admissions are broadly classified into two categories: (a) judicial admissions, and (b) extra-judicial admissions. Judicial admissions are formal admissions made by a party to the proceeding in the case. Extra-judicial admissions are informal admissions not appearing on the record of the case. Judicial

admissions, being made in the case, are fully binding on the party who makes them. They constitute a waiver of proof. They can be made the foundation of the rights of the parties.

Extra-judicial admissions are also binding on the party against whom they are set up. Unlike judicial admissions, they are binding only partially and not fully, except in cases where they operate as or have the effect of estoppel, in which case, they are fully binding, and may constitute the foundation of the rights of the parties. In the case of *Ajodhya Prasad m. Bhawani Shanker*.

Research question :

The laws relating to admission and confession is better in india or USA.

Aim:

- To know the legal status of confession and admission in India.
- To know the differentiation between confession and admission.
- To analyse the types of admission and confession

Hypothesis:

Law relating to confession in Indian evidence act, might have higher evidentiary value.

Research methodology:

The researcher has followed secondary data collection. This is a doctrine study . The researcher has also utilised commentaries,books,treaties,articles,notes , comments and other writings to incorporate the various views of multitude of jurists, with the intention of presenting a holistic view. The researcher has made extensive use of case laws in this paper,so as to discern a trend in the judicial pronouncements.

Evidentiary value of confession

A confessional statement made by the accused before a magistrate if it is made voluntarily is a good evidence and accused can be convicted on the basis of it. It is substantive piece of evidence and a conviction can be bases solely on such confession provided it is voluntary and proved. Now the settled law is that a conviction can be based on confession only if it is proved to be voluntary and true. If corroboration is needed it is enough that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession. General corroboration is enough.

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

Retracted confession - a retracted confession is a statement made by an accused person before the trial begins before the magistrate by which he admits to have committed the offence, but which he repudiates at the trial.

Value of retracted confession-In 1957 in *Pyare Lal Vs. State of Assam* it was held that a retracted confession may still be used as a basis for conviction. Its corroboration would be a matter of prudence and not of law. In *Bharat Vs. State of Uttar Pradesh (1974 SC)* it was held that a confession is a substantive piece of evidence provided that it was made voluntarily. However, when a confession is retracted the Court has to act cautiously and require a greater corroboration of the confession. In *Parmanand Teghu Vs. State of Assam (2004 SC)* the same points were reiterated. In *NCT of Delhi Vs. Navjot Sandhu Alias Afsal Guruit* it was held that once the earlier confession has been proved to be voluntary then retraction will not play any role as such however in the *Parliament Attack Case*, the confession of Afzal and Saukat, the two co-accused was given up not because of retraction but because the earlier confession was improperly recorded i.e. it was proved not to be made voluntarily.

Proof of judicial confession-Under section 80 of Evidence Act a confession recorded by the magistrate according to law shall be presumed to be genuine. It is enough if the recorded judicial confession is filed before the court. It is not necessary to examine the magistrate who recorded it to prove the confession. But the identity of the accused has to be proved.

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

Confession to police (at any time before or after the investigation begins)

Section 25 – 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.

Reasons for exclusion of confession to police-another variety of confessions that are under the evidence act regarded as involuntary are those made to a police officer. Section 25 expressly declares that such confessions shall not be proved. If confessions to police were allowed to be proved in evidence, the police would torture the accused and thus force him to confess to a crime which he might not have committed. A confession so obtained would naturally be unreliable. It would not be voluntary. Such a confession will be irrelevant whatever may be its form, direct, express, implied or inferred from conduct. The reasons for which this policy was adopted when the act was passed in 1872 are probably still valid.

In *Dagdu v. State of Maharashtra*³, Supreme Court noted that The archaic attempt to secure confessions by hook or by crook seems to be the be-all and end-all of the police investigation.

Statement Not Amounting To Confession is not hit by Section 25.

Use of Confessional Statement By Accused

Though the statements to police made by the confessing accused cannot be used in evidence against him, he can himself rely on those statements in his defence. The statement of the accused in FIR that he killed his wife giving her a fatal blow when some tangible proof of her indiscretion was available was not usable against him to establish his guilt. But once his guilt was established through other evidence, he was permitted to rely upon his statement so as to show that he was acting under grave and sudden provocation. There is nothing in Evidence Act which precludes an accused person from relying upon his own confessional statements for his own purposes.

Special Legislation

A special legislation may change the system of excluding police confessions. For example, under the Terrorists and Disruptive Activities(prevention) Act, 1987, (S15) confessional statements were not excluded from evidence on grounds that the persons making them were in police custody. The court said in another case that section 15 was an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision was that a confession recorded under S.15 of TADA was a substantive piece of evidence and could be used against a co-accused also.

Section 26- Confession By Accused While In Custody Of Police Not To Be Proved Against Him.

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

3.A.I.R. 1977 S.C. 1579

Object-The object of section 26 of the Evidence Act is to prevent the abuse of their powers by the police, and hence confessions made by accused persons while in custody of police cannot be proved against them unless made in presence of a magistrate. The custody of a police officer provides easy opportunity of coercion for extorting confession obtained from accused persons through any undue influence being received in evidence against him.

Evidentiary value of an admission

Section 21 lays down that, as a general rule, admissions are relevant, and may be proved against the person who makes them or his representative in interest, and if duly proved, though not conclusive, are sufficient evidence of the facts admitted. The effect usually given to admissions proved against persons who make them is destructive, and not constructive. Whether they are true or not does not matter. The effective point is that they destroy the force of inconsistent statements made later. The person against whom an admission is proved is at liberty to show that it was mistaken or untrue. When an admission is duly proved, and the person against whom it is proved does not satisfy the Court that it was mistaken or untrue, the Court may decide the case in accordance with such admission. An erroneous admission does not bind the person making such admission.

The Supreme Court had held that a contractor's bill which is expressly stated to be a final settlement of his demand for the work done, amounts to an admission against the contractor, who would be bound by it, unless satisfactory proof to the contrary is produced. *Central Coal Fields Ltd. v. Mining Constructions and Multi-contract Pvt. Ltd.*⁴

Confession law in usa and India

USA

In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

India

There is no definition of the word “confession” in the Indian Evidence Act[1] and it appears for the first time in Section 24. It is clear that confessions are merely a species of admission which is defined under Section 17 of the Act. It is correct to say that every confession necessarily is an admission but every admission does not necessarily amount to a confession. Sections 17 to 23 deal with admissions whereas Sections 24 to 30 deal with confessions.

Comparison between admission and confession

An admission represents a statement that tends toward proving guilt. On the other hand, a confession is a fully corroborated statement during which the suspect accepts personal responsibility for committing a crime. This distinction is important for legal and procedural reasons. For example, a theft suspect who agrees to reimburse the victim for the Rs. 50 stolen has offered an admission, not a confession. While a willingness to pay back an amount of money stolen is very typical of the guilty suspect, we have had at least one occurrence of a verified innocent person who agreed to do this also. The principle to keep in mind is that an admission does not accept personal responsibility for committing the crime.

The distinction between a confession and an admission is not based upon a technical refinement but instead; it is based upon the substantive differences of the character of the evidence deduced from each. In other words, a confession is a direct acknowledgement of guilt, on the part of the accused, and by the very definition of it, excludes an admission which of itself is a statement, oral or documentary, that enables the court to gather an inference as to any relevant fact or fact in issue. It will be scrupulous to say that every confession, by definition, is an admission but every admission doesn't necessarily amount to a confession. In other words, a confession is an admission provided that a person charged with a crime, standing or suggesting the inference that he committed the crime, makes it at any time.

According to the established theories and law, all admissions are not confessions but all confessions are admissions. Though only voluntary and direct acknowledgment of guilt is a confession, but when a confession falls short of actual admission of guilt, and is not taken down according to law, it may be used as evidence against the person who made it, as an admission under Section 21.

The Evidence Act draws a distinction between admissions and confessions and the nature of the

4. 1982.1.S.C.C.415

distinction was considered many times. In *R v. Santya Bandhu*, the distinction between an admission and confession has been thus explained, as the word confession as used in the Act, must not be construed as including a mere inculpatory admission, which falls short of being an admission of guilt. It is one thing to make statements giving rise to an inference of guilt and another thing to confess a crime. The contrary view held in *R v. Bhairab*, was based on Stephen's definition of confession but, confession as now explained in *Pakala Narayan vs. Emperor* endorses the opinion of the cases of *R v. Jagrup* and *R v. Santya Bandhu*.

Conclusion:

This research paper concludes that confession has higher evidentiary value in Indian evidence act , compared to admission law in Indian evidence act .

Confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding establish the commission of offence by him. Whereas, an admission usually relates to civil transaction and comprises all statements amounting to admission defined under Section 17 and made by person mentioned under Sections 18,19 and 20. Confessions, if deliberately and voluntarily made, may be accepted as conclusive of the matters confessed whereas; admissions are never conclusive to the matters admitted, though it may act as an estoppel. Confessions always go against the person making it whereas, admissions may be used on behalf of the person making it under the exceptions provided in Section 21 of Evidence Act. Confessions made by one or two or more accused jointly tried for the same offence can be taken into consideration against the co-accused also as mentioned in Section 30. On the other hand, admission by one of several defendants in a suit is no evidence against others. Confession is statement written or oral which is a direct admission of suit and Admission is a statement, oral or written, which gives inference about the liability of person making admission.

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