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# **VOLUNTARINESS UNDER SECTION 183 BNSS: A HUMAN RIGHTS CRITIQUE OF MAGISTRATE-RECORDED STATEMENTS**

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## **ABSTRACT**

This paper examines the doctrine of voluntariness in confessions recorded under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, with a focus on whether existing legal safeguards ensure substantive or merely formal compliance. It analyses the statutory framework under the Bharatiya Sakshya Adhinyam governing admissibility of confessions, particularly the exclusionary rules relating to inducement, threat, promise and police custody, alongside the procedural obligations imposed on Magistrates to independently verify voluntariness. The study further evaluates judicial standards developed by the Supreme Court, including requirements of meaningful scrutiny, cooling-off periods and caution toward retracted confessions. A human rights perspective is incorporated through Articles 20(3) and 21 of the Constitution, as well as international instruments such as the ICCPR and the Convention Against Torture, which collectively prohibit compelled self-incrimination and coercive interrogation. The paper argues that despite a robust doctrinal and statutory structure, practical realities of custodial interrogation—marked by systemic coercion, socio-economic vulnerability of accused persons and mechanical judicial compliance—undermine the authenticity of confessions. It concludes that voluntariness is often reduced to formal certification rather than a reflection of genuine free will, revealing a structural imbalance between State power and individual autonomy that necessitates stricter enforcement and institutional reform.

## 1. INTRODUCTION:

Under the criminal justice administration, confession by the accused has historically held an important, and also, a paradoxical place. Traditionally, it is heralded as the ‘queen of proofs’, for it provides a direct admission of guilt from the mouth of the accused. However, pursuit of this proof comes with the risk of systemic coercion, physical abuse and sophisticated psychological manipulation. Therefore, the central issue on the jurisprudence of confession has been the reliability of ‘voluntariness’ of confession and the fundamental human rights of the accused person. When the whole of State machinery is involved in the process of extracting the truth, the line between a genuine investigative interrogation and that of a coercive and rights-violative coercion is blurred, thus necessitating a strong legal framework that can prevent the latter and ensure the former.

The underlying rule to all civilised criminal systems is that no person shall be forced to be a witness against himself, that he be not forced to confess any crimes he committed. To ensure that persons are protected against any coercion to this effect, democratic systems have deployed adequate constitutional and statutory safeguards which act as a barrier against presentation of such confessions as evidence. Voluntariness is a *sine qua non* for its admission as an evidence, lack of which not only renders the admission as factually incorrect but also a serious violation of rule of law. The legislative framework which governs criminal procedure and evidence are replete with safeguards which insulate the accused from any systemic coercion that may result in violation of these rights. Judicial Magistrates are placed as neutral entities into these processes, where they are tasked to ensure that any confession by the accused is a product of personal volition rather than any coercion, inducement, compulsion or threat from external sources.

Unfortunately, the theoretical safeguards so constructed often disintegrate in the face of ground realities of police custody and structural vulnerabilities of the accused. The physical transition from the intimidating police detention cell to the formal setting of a Magistrate’s office does not lead to magical dissipation of psychological trauma, the fear of reprisal or the conditioning achieved during prior interrogation. As a result, the legal safeguards designed to protect the accused are reduced to mere formalities. This leads to one obvious question: Whether the voluntariness of confession of an accused is substantially voluntary or only formally so? This paper delves into legal frameworks, evolving concepts of voluntariness, judicial standards

applied by appellate court and practical realities that undermine and threaten the authenticity and sanctity of the confessions under criminal justice administration.

## 2. LEGAL FRAMEWORK:

### 2.1 SECTION 183 of Bharatiya Nagarik Suraksha Sanhit, 2025 (formerly Section 164 CrPC)

The procedure for recording a confession during the investigation is governed by Section 183 of BNSS (formerly, Section 164 of CrPC)<sup>1</sup>. The primary purpose of this provision is to facilitate the judicial recording of the statement and confessions in a legal manner i.e devoid of any factors that render the statement or confession involuntary and as such, inadmissible<sup>2</sup>.

The statute explicitly recognizes that the confession must be free from coercion, particularly that of police<sup>3</sup>. As such, it allows only a Judicial Magistrate the record a confession, thereby removing the possibility of the police officers forcing the accused to make a confession through custodial torture or any other illegal method<sup>4</sup>. To ensure that the voluntariness of the confession is maintained, the statute imposes certain non-negotiable obligations on the Magistrate prior to allowing the accused to make any confession as such. This obligation includes informing the accused that he or she is not bound in any manner whatsoever to make any confession except for his or her own voluntary wish. Further, the accused is to be informed as a matter of obligation that the statements made by the accused are admissible against him in a court of law as evidence. The Magistrate is barred from recording any statements or confession unless it is 'reason to believe', after detailed and meaningful questioning, that the confession made is of voluntary nature<sup>5</sup>. In the event that the accused refuses to make a confession, the Magistrate is duty bound to not authorize the return of the accused into the custody of the police or other investigative agency. Instead, the accused shall be committed to judicial custody to prevent any negative consequences at the hand of the investigative agency against the accused.

### 2.2 Bharatiya Sakshya Adhiniyam, 2025 (formerly, Indian Evidence Act, 1872)

The admissibility of the confession as evidence is governed by Bharatiya Sakshya Adhiniyam,

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<sup>1</sup> *Bharatiya Nagarik Suraksha Sanhita, 2023*, § 183; *Code of Criminal Procedure, 1973*, § 164.

<sup>2</sup> *Bharatiya Sakshya Adhiniyam, 2023*, § 24.

<sup>3</sup> *Id.* § 24.

<sup>4</sup> *Bharatiya Nagarik Suraksha Sanhita, 2023*, § 183(1).

<sup>5</sup> *Id.* § 183(4); *Shivappa v State of Karnataka (1995) 2 SCC 76*.

2025 (formerly, Indian Evidence Act, 1872)<sup>6</sup>. The statute places absolute and conditional embargoes on the admissibility of the confession on the basis of where and under what circumstances they have been made.

Section 22 of BSA renders a confession absolutely irrelevant and inadmissible in a criminal proceeding if it appears to the court that the confession in question has been caused by any inducement, threat or promise<sup>7</sup>. The statute, however, requires that this form of influence must come from a ‘person in authority’ and must be in reference to the charge against the accused. The psychological test for the court to conduct is to verify where the accused had reasonable grounds to believe that he or she may gain an advantage or avoid an evil of temporal nature, in reference to the proceedings against him, if he or she complies with the influence of the ‘person in authority’<sup>8</sup>.

Section 23 of BSA mandates that no confession made to a police officer shall be proved against the person accused of any offence.<sup>9</sup> This prohibition is an absolute prohibition—meaning, the confession is statutorily inadmissible regardless of whether the confession was made out of one’s own volition or otherwise<sup>10</sup>. Section 23 further states that any confession made by the person accused of any offence whilst in the custody of police shall not be proved against him, unless it is made in the immediate presence of the Magistrate<sup>11</sup>. In total, this section compels the police or any other investigative agency to produce the accused (who is willing to confess) in the presence of Judicial Magistrate under Section 183 BNSS if the confession is to be admissible in a court of law as evidence. However, despite this rigorous legal structure, the transition from police custody to Magistrate does not remove the lingering pressure on the accused, thus leading to mere formal certification of voluntariness rather than substantive one.

### 3. CONCEPT OF VOLUNTARINESS

In criminal jurisprudence, the concept of voluntariness transcends the mere physical compliance or mechanical affirmative utterance of willingness—it requires an unadulterated autonomy and unfettered unfolding of human will. A confession is acceptable only when it is

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<sup>6</sup> *Bharatiya Sakshya Adhinyam, 2023*.

<sup>7</sup> *Id.* § 22.

<sup>8</sup> *Dagdu v State of Maharashtra (1977) 3 SCC 68*.

<sup>9</sup> *Bharatiya Sakshya Adhinyam, 2023*, § 23.

<sup>10</sup> *Id.*

<sup>11</sup> *Bharatiya Nagarik Suraksha Sanhita, 2023*, § 183.

a product of free and informed choice, and devoid of any manipulation, fear or hopes of state-sponsored leniency.<sup>12</sup>

The criteria for determining voluntariness are mostly negative since they include no threats, inducements or coercive influences. Under Section 22 of BSA, guilt cannot be established by an admission made with these three forms of taint<sup>13</sup>. An inducement is defined as the offer by another person either implicitly or explicitly of something tangible, e.g. a promise to pardon, to lessen charges, or the release of a relative who was detained in exchange for a confession. A threat refers both to the imminent risk of being tortured physically and/or the long-term mental anguish of being imprisoned continuously or being the victim of violence or public humiliation. A promiser will act upon the desire of the accused to be relieved from their guilt and create a business-like relationship wherein the true and spontaneous act of remorse is destroyed. The court must look at the accused's situation based on what appears reasonable under the particular circumstances of and vulnerabilities of the accused when assessing whether the threat or promise will cause them to confess<sup>14</sup>.

Ultimately, the prosecution has the sole duty to prove that a confession was made freely, without coercion or unlawful methods<sup>15</sup>. To do this, the prosecution must provide evidence that demonstrates, beyond a reasonable doubt, that coercion did not exist. In contrast, the standard for the defence to meet the requirements of an exclusion under Section 22 is quite low because the statute uses the phrase "if it appears to the Court," so the defendant is not required to provide absolute proof of torture to be able to exclude evidence from being used at trial. Rather, if there exists a reasonable basis to draw a conclusion or even some anomalies (circumstantial evidence that suggests the confession was obtained through undue coercion) the court can exclude the evidence.

Although there is a clear doctrinal framework that defines and creates an allocation of the burden of establishing voluntariness, the actual determination of whether or not a party has been voluntarily suffocated by the police is a persistent epistemological problem for the courts. That is, when a party is taken out of the clearly isolated, frightening, and information-poor situation of police holding cells and brought directly before a Magistrate, the invisible chain of

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

<sup>13</sup> *Bharatiya Sakshya Adhinyam, 2023*, § 22.

<sup>14</sup> *Dagdu v State of Maharashtra* (1977) 3 SCC 68.

<sup>15</sup> *State (NCT of Delhi) v Navjot Sandhu* (2005) 11 SCC 600.

psychological submission to police authority will very likely continue to exist. A party's subservience to the police will not simply disappear because the location has changed from a police station to a courtroom. Accordingly, even though the Magistrate is performing his or her required statutory function of providing the requisite statutory warnings and signing the necessary memoranda, the parties' autonomy of will is still suspiciously low. In most custodial detention situations, because of the existing power dynamics that accompany detentions, there is a formal certification of voluntariness but substantive uncertainty exists.

#### 4. JUDICIAL STANDARD OF VOLUNTARINESS

Appellate courts understand how easy it is for a person to change their mind about the confession they gave while in custody, and what outside influences could have forced them to give that confession. Because of this, appellate courts have established rigorous judicial standards to evaluate the extent to which statements made to a magistrate are voluntary. The Supreme Court of India has stated that mere mechanical compliance with statutory provision is not enough; Magistrates must also make an effort to meaningfully conduct an investigation into underlying coercion that may have been present at the time the statement or confession was made<sup>16</sup>.

Judicial checks enforced by the courts require careful consideration of the accused's mental status, their specific level of confinement before being produced before the court, and how much time has actually passed between being interrogated by police and when a confession was recorded. The Supreme Court case *Shivappa v. State of Karnataka* (1995) is the definitive explanation as to the Magistrate's mandatory, non-delegable responsibilities in relation to recording confessions and other statements of accused persons<sup>17</sup>. In *Shivappa*, the Supreme Court overturned a murder conviction relying solely on a confession, due to how the Magistrate had violated virtually every procedural requirement, thus engendering a complete nullity to the prior action. Therefore, the Supreme Court set forth the principle that the Magistrate must investigate why the accused confessed so suddenly. In this case, the Magistrate failed to inform the accused that he was acting in his judicial capacity, failed to ask if there had been police coercion or influence on the accused to confess, and most troubling, did not provide any assurances that if the accused did not provide a confession, they would not be returned to police

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<sup>16</sup> *Shivappa v State of Karnataka* (1995) 2 SCC 76.

<sup>17</sup> *Id.*

custody. Consequently, the Supreme Court held that the combination of these failures made the confession inherently unreliable, therefore legally inadmissible and, as such, incapable of sustaining a conviction<sup>18</sup>.

One of the other important judicial standards that was designed to prevent coerced confessions is the requirement of a so-called "cooling-off" period. Courts have determined that an accused person who has been taken from the intimidating environment of a police lock-up directly into a Magistrate Court needs sufficient time to free himself from the psychological control of the investigative officers. The Supreme Court has said, in its landmark decision of *Sarwan Singh v. State of Punjab* (1957), that the accused person must have sufficient time to consider and reflect on his confession; that this time must be totally free from police presence; and that the time period must be reasonable (usually about 24 hours) while being held in a secure judicial facility, in order for the suspect to gather his thoughts, process the legal warnings he has received, and comprehend the severe implications that will result from providing a confession<sup>19</sup>. If a confession is taken immediately after the suspect is brought in by police, the legal presumption of a voluntary confession is destroyed<sup>20</sup>.

The Supreme Court also made clear by its ruling in *Babu Singh v. Babu Lal* that any failure of procedure may lead to serious consequences; on the other hand, the proximity of police custody and the fact that these circumstances could result in coercion of the suspect<sup>21</sup>. The Supreme Court held that the confession was not admissible because the recording of the confession occurred less than 24 hours following the release of the appellant from police custody. The Supreme Court found that the mere lack of time between the release and the recording of the confession was not the only circumstance that rendered the confession inadmissible. The recording magistrate had previously assisted the police in the investigation by attesting to recovery memos. The prior involvement of the magistrate in the investigative process of the case irreparably compromised the magistrate's objectivity and impartiality, which destroyed the sanctity of the confession. Therefore, the recording of the confession was merely an extension of the police investigation and did not in any way serve as an independent check on the police investigation<sup>22</sup>.

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<sup>18</sup> *Id.*

<sup>19</sup> *Sarwan Singh v State of Punjab, AIR 1957 SC 637.*

<sup>20</sup> *Id.*

<sup>21</sup> *Babu Singh v Babu Lal (1978) 1 SCC 579.*

<sup>22</sup> *Id.*

A retracted confession is a confession that has been withdrawn or retracted due to the accused's claim that they were coerced or threatened into making it. The law recognizes that such confessions are considered weak evidence and, as such, extremely generally rigorous corroborating evidence (other than the confession) is required to sustain a conviction based solely on a retracted confession<sup>23</sup>. In addition, the corroborating evidence must show that the specific crime was committed and that there exists credible evidence to establish that the specific accused was the perpetrator (of that crime)<sup>24</sup>. This intense distrust toward retracted confessions and heavy requirement of corroboration arises from the court's substantial recognition that the accused may have been coerced into making a confession during the initial recording of their confession to the magistrate but that the actual facts as to whether the confession was coerced will be determined in a trial of the accused<sup>25</sup>.

## 5. HUMAN RIGHTS SUBMISSION

### 5.1 Article 20(3): Protection Against Self-Incrimination

Article 20 (3) of the Constitution of India enshrines a fundamental human right: 'no accused person will be compelled to give evidence against themselves<sup>26</sup>, and the provision is the foundation for the right against forced confessions. This right has its roots in the well-established common law principle of *nemo tenet seipsum accusare*, which serves as an important constitutional safeguard against the coercive power of the State<sup>27</sup>. The Supreme Court has interpreted 'compulsion' to mean not only the physical infliction of torture but also the use of extreme psychological manipulation, extended interrogative questioning without sleep, and the creation of an intimidating atmosphere that overwhelms the accused's free will<sup>28</sup>. Article 20(3) serves to maintain that the burden of proof for establishing guilt is and will remain exclusively on the prosecution, thereby prohibiting the State from making the accused a primary means of their own penal elimination<sup>29</sup>. All confessional evidence obtained via compulsion violates this absolute constitutional right<sup>30</sup>, and as such, all such evidence is fundamentally void and legally non-existent. The right against self-incrimination reflects the

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<sup>23</sup> *Pyare Lal Bhargava v State of Rajasthan, AIR 1963 SC 1094.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *INDIA CONST.* art. 20, § 3.

<sup>27</sup> *Id.*

<sup>28</sup> *Nandini Satpathy v PL Dani (1978) 2 SCC 424.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

fundamental power inequality existent in all custodial situations, where an isolated and frightened person is confronted by the vast resources of persons engaged in law enforcement.

## 5.2 Article 21: Fair Trial and Due Process

Article 21 of the Constitution, which guarantees every person the right to live and to be free, provides even greater protections against coerced confessions by stating that no one can be deprived of these rights except through a legal process<sup>31</sup>. The Supreme Court has interpreted Article 21 to include the requirements of substantive due process, procedural fairness and reasonableness<sup>32</sup>. Any criminal justice system that relies on a confession obtained through torture, inducement or involuntariness is fundamentally and irreparably violating an accused person's right to a fair trial<sup>33</sup>. The case law interpreting Article 21 establishes that the procedural protections designed to test if someone made their confession voluntarily (such as the Magistrate's warning and the cooling off period) are not just administrative hurdles or bureaucratic guidelines. These protections are the means by which constitutional liberty is maintained<sup>34</sup>. Therefore, when an investigating agency obtains a confession by bypassing these procedural safeguards or when a Magistrate fails to enforce them, they are violating the constitutional requirement of a fair and equitable process and creating a farce of justice in the subsequent trial<sup>35</sup>.

## 5.3 International Law

The legal foundation of India is aligned with international regulations of human rights. These international instruments set global standards which govern how people charged with a crime are treated and therefore regulate criminal justice worldwide. ICCPR Article 14(3)(g) states that everyone has the right "not to be compelled to testify against himself or to confess guilt"<sup>36</sup>. The UN Human Rights Committee has repeatedly stated that this right is crucial for preserving the integrity of the criminal justice system; protecting against the abuse of power by authorities and their ability to imprison individuals without unjustified means; as such, this right has also been indirectly but necessarily associated with the prohibition of torture<sup>37</sup>. The CAT

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<sup>31</sup> *INDIA CONST.* art. 21.

<sup>32</sup> *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *International Covenant on Civil and Political Rights*, art. 14(3)(g), Dec. 16, 1966.

<sup>37</sup> *Id.*

(Convention Against Torture and Other Cruel) specifies that torture is intentional infliction of severe pain or suffering for purpose of obtaining information or confession from person or third party<sup>38</sup>. International law supports that mediums of torture to obtain confessions create the primary instrument for custodial violence around the world, that the state must exhaustively substantiate the voluntary nature of any admission/solo detected by international norms, and that documentation will highlight the disparity between elevated international norms and enforcement place upon the police resulting in a substantial degree of certifications that the admission to soil there considered voluntary, therefore raising question as to whether they actually were<sup>39</sup>.

## 6. PRACTICAL REALITY

When challenged by the harsh realities of the Indian criminal justice system, the structure of legal protections tends to fall apart. Empirical studies, documentation on human rights and acknowledgments by courts reflect a dark image of the dangerous path a confession takes from the police station to the court<sup>40</sup>.

A major and potentially exploitable weakness in the criminal justice system is the time between the accused being presented before a Magistrate and being arrested. The police investigative authorities, under tremendous pressure to secure convictions and clear cases, often use unlawful force to achieve these goals. While in the out-of-sight and unmonitored areas of police custody, and in complete violation of the individual rights of the accused, the police use physical violence, psychological violence, and extreme threats to intimidate and hurt the accused<sup>41</sup>. By the time the accused reaches the Magistrate's office, he will have been psychologically traumatized, and there is often no way to undo this trauma. The pressure from the police does not simply evaporate when the accused arrives at the courthouse; the implicit threat of future violence against him, the possibility that the police will file false charges again, or the potential for police violence to be inflicted against members of the accused's family will continue to ensure that the accused is sufficiently intimidated to relate the statement he will give in the courtroom.

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<sup>38</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, art. 1, Dec. 10, 1984.

<sup>39</sup> *Id.*

<sup>40</sup> *Matters of Judgment* (Project 39A, Nat'l L. Univ. Delhi 2021).

<sup>41</sup> *Id.*

The highest levels of the judiciary unequivocally recognise that this form of systemic coercion occurs through the use of various forms of systemic coercion to obtain confessions. This previously unannounced study titled "Matters of Judgement," was conducted by Project 39A through numerous interviews with former judges of the Supreme Court of India regarding the serious pitfalls that exist within the Indian criminal justice system, specifically, the issue of torture<sup>42</sup>. The findings of this study were shocking. Out of the 39 Supreme Court judges interviewed about the issue of torture, 38 of them indicated that police torture and other third degree methods are widely used as a means of obtaining confessions, regardless of whether or not the person being tortured is guilty. Therefore, when the highest appellate court in the country finds that the investigatory phase of a case is riddled with violence, it completely and irretrievably erodes the validity of any confession made in the court.

The capacity of Magistrates to serve as an effective barrier to abusive police coercion is also diminished by the occurrence of mechanical compliance in our judicial environment. Due to tremendous dockets, overwhelming workloads and administrative pressure, Magistrates often simplify their momentous constitutional obligation to investigate the voluntariness of a confession to a quick, bureaucratic checklist. The statutory warnings are delivered in a mechanical, expedited manner and there is often no time for the probing, compassionate inquiries directed by the Supreme Court (e.g., Shivappa) or they are done superficially. Rather than adequately probing the mental condition of the accused, the Magistrate essentially just makes sure the proper forms are signed and the appropriate memoranda are added to the file. Consequently, the Magistrate becomes a passive recording assistant for the police instead of an active protector of the Constitution<sup>43</sup>.

The socio-economic situation of the accused class results in a large-scale crisis of mechanical compliance; not surprisingly, the majority of undertrials and death row inmates in India come from extremely disenfranchised and poor populations<sup>44</sup>. The disproportionately high incidence of accused represented by lower castes, religious minorities and the very poor; the same lack of formal education, financial and legal literacy is prevalent among all individuals accused of a crime, making them unable to even attempt to exercise their rights against an unsympathetic governmental authority. Often times, after having been subjected to severe police brutality during days of custodial torture without education, funds or knowledge of the legal system, it

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<sup>42</sup> *Id.*

<sup>43</sup> *Shivappa v State of Karnataka (1995) 2 SCC 76.*

<sup>44</sup> *IndiaSpend, India's Jail Stats: 7 in 10 Undertrials (2019).*

is near impossible for these indigent and illiterate accused persons to have any possibility of lodging a complaint regarding police torture or to exercise their right to remain silent at the time they appear before a magistrate. The inequality between the magistrate and the accused is total; thus, when the magistrate provides his signature on a confession statement there can be little doubt that it is a tragic legal fiction; that the magistrate has acknowledged the accused's voluntary execution of his confession by signing the document is formally determined and will not be upset, but ultimately the magistrate will have set forth an inaccurate notion of the accused's true state of mind at the time of the confession.

## **7. CRITICAL ANALYSIS**

Analyzing the jurisprudential theory of confessions reveals a significant structural imbalance between the coercive power of the state and the isolated, vulnerable, and frequently marginalized accused person, which is further exacerbated by the severe realities of their situation. The legal structure attempts to balance this considerable imbalance, but this attempt is often unsuccessful because procedural safeguards do not conveniently turn from statute to practice and thus, create an ongoing disconnect between the law and how it is implemented in practice.

The existing system has a major flaw because there is a judicial presumption of voluntary confession once the Magistrate has affixed the statutory record of proceedings. Once the formal administrative requirements of Section 183 BNSS are satisfied, there is an incredible evidentiary burden put on an accused at trial to show that the confession was obtained through torture or inducement. This creates a procedural trap for the defence. How is a marginalized, imprisoned person supposed to produce some type of hard evidence of police torture happening in the dark corners of a lockup from weeks or months prior? The physical wounds may have healed, but the mental scars are invisible to the court, and the police have created a culture of denial and protect one another against any claims of wrongdoing. Faced with a confession that has the solemn signature and endorsement of a Judicial Magistrate, the Trial Court will naturally and legally accept it as innocent evidence. In this way, the protection put in place for the accused becomes the mechanism that ultimately determines the fate of the accused by providing the unassailable gloss of judicial procedure to the tainted narrative.

Judicial scrutiny is not applied consistently, making evidentiary issues even more difficult to analyse. The "independence" of the judiciary is undermined in such cases as Babu Singh and

Shivappa, where apex courts established extremely high and demanding standards for use by magistrates; however, there seems to be enormous inconsistency in how those standards are utilized by trial courts. For example, many trial judges simply ignore indicators of coercion that may be apparent due to the existence of the formal documents. A great deal of reliance is placed by judges on the principle of "substantial compliance" to disregard blatant deviations in procedures that occur, thereby negating the mandatory protective warnings given and the required minimum time delays.

As a result, the protective mechanisms appear to be more of formal compliance with the law, rather than as methods of protecting the dignity of people. The law requires that the magistrate perform the unthinkable: neutralize the psychological impact of days of police abuse with a short, formal judicial warning. Until the underlying reasons for this problem have been corrected, specifically the systemic culture of police abuse when investigating, the lack of forensic independence, and the dramatic socio-economic disempowerment of the accused, recording confessions in a judicial setting will be nothing more than a farce. The only logical conclusion that can be drawn is that, within the existing structure of the criminal justice system, the state always overshadows the individual, and therefore, while voluntariness is certified on a technical basis, it is not certified on a substantive basis.

## **8. CONCLUSION**

The different ways that are used to determine if a confession is fit to be used in a court of law where there are two main components to the reason why a confession may not be admissible—a state's duty to ensure public safety, and a state's constitutional obligation to ensure that all humans and their dignity are protected—is at the heart of the significance of confession admissibility jurisprudence. The way that the Indian courts apply the evidence rules and the other applicable laws such as Section 183 BNSS provides the basis for how the Indian Criminal Justice System is theoretically sound and has many problems in application.

In order to create standards for admissibility of confessions and to provide a structure in which a defendant's free will was free from coercive actions by law enforcement, the Members of the Parliament constructed a barrier for law enforcement to overcome to prove that the confession is free of police coercion, where the Judiciary is the ultimate independent adjudicative institution for the evidentiary determination. In practice, databases maintained by sociologists, human rights organizations, and by the highest courts of the land reflect that torture,

psychological manipulation, and coercion are the routinely used methods of law enforcement in obtaining confessions from defendants. The socio-economic factors that exist for the majority of defendants are so overwhelming that the defendant has no ability to resist the coercive environment perpetrated by law enforcement, nor to compare their own traumatic experience to others before the issuing Judge or Magistrate.

As a result, the procedural safeguards that provide assurances of true voluntariness often become empty exercises in simply complying mechanically. Magistrates, burdened with administrative pressures that are systemic in nature, do not always conduct the type of thorough, probing, and, most importantly, sympathetic investigations that are required of them under landmark rulings. The recent legislative improvements made to the BNSS (audio / video recording of custodial interrogations and provision of counsel) provide much-needed and very late steps toward greater transparency but do not cure the existing system of fundamental investigative culture primarily relying on force and not on forensic techniques.

Due to the fact that an immense, paradigm shift regarding the methodology of conducting investigations is required; strict and total accountability for custodial abuse; and rigid enforcing of exclusionary rules by trial courts; the confession as a class of evidence will be viewed with suspicion.

Additionally, the ability of police coercion to enter through the courtroom door undetected, as a result of the official bureaucratic signatures affixed by judicial officers, only exacerbates this situation. With both the judiciary and law enforcement failing to protect the accused's true autonomy, the result for the legal profession is a dismal fact: that, in cases that involve criminal confessions, the "voluntariness" of the confession has been certified in the formal sense but is very uncertain in substance.