
CONFESSIONS MADE TO POLICE OFFICERS: LEGAL POSITIONS UNDER THE BHARTIYA SAKSHIYA ADHINIYAM, 2023

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ABSTRACT

The enactment of the Bhartiya Sakshya Adhinyam, 2023, marks the important structural reform of Indian evidence law since the colonial Indian Evidence Act, 1872. Still, in one of the most constitutionally sensitive areas of criminal procedure, which is the admissibility of confessions made to the police officers, the legislature preserved the existing framework while introducing the modifications, and those implications remain unexplained. This paper undertakes a doctrinal analysis of the law which governs the confession under Bhartiya Sakshya Adhinyam, 2023, examining and evaluating whether the new statute meaningfully departs from its previous statutes or merely changes the words of the colonial inheritance. Including constitutional jurisprudence under Articles 20(3) and 21 of the Constitution of India, landmark Supreme Court decisions, and comparative frameworks from the United Kingdom and the United States, the paper argues that the Bhartiya Sakshya Adhinyam, 2023 represents a cosmetic rather than a substantial reform. While the statute retains the absolute bar on police confessions and the conditional discovery exception, the structural gaps still exist in the new statute, the absence of mandatory procedural safeguards such as video recording and access to counsel creates conditions for persistent misuse. This paper concludes by advancing a targeted reform proposals designed to align the Indian confession law with constitutional guarantees and International fair trial standards.

Keywords: Confessions, Bharatiya Sakshya Adhinyam, police officer, Indian Evidence Act.

1. Introduction:

The Bharatiya Sakshya Adhiniyam, 2023,¹ repeals and replaces the Indian Evidence Act, 1872,² a statute conceived under the British colonial administration to serve the need for evidence of a system of policing that prioritised confessional evidence and summary justice over individual rights. One hundred and fifty years after the original enactment, the Bhartiya Sakshya Adhiniyam, 2023 enters force against the constitutional order that places human dignity, fair trial, and protection against self-incrimination at its centre. The question this paper addresses is very simple, which is whether the Bhartiya Sakshya Adhiniyam alters the legal position governing confessions made to the police officers in any meaningful respect, or does it preserve the framework which it replaced?

The confession of an accused is the strongest evidence the prosecution can adduce in theory. In practice, it is also the evidence most susceptible to fabrication and coercion. The colonial legislature was alert to this tension. The absolute bar on the admissibility of confessions made to police officers by section 25 and qualified by section 27 of the Indian Evidence Act, 1872, which is evident of the legislative acknowledgement that the Indian Police could not be trusted to receive confessions. That acknowledgement, however, was never accompanied by a structural mechanism to address the root causes of custodial coercion. The result was a confession law that excluded the tainted evidence but left the conditions producing it largely intact.

2. Conceptual Foundations of Confession Law

2.1 Defining “Confession”

Neither the Indian Evidence Act, 1872, nor the Bhartiya Sakshya Adhiniyam, 2023, defines “confessions” as a term. The definition has therefore been a product of judicial elaboration. In *Pakala Narayana Swami v. Emperor*,³ the Privy Council held that a confession must be read as a whole and that an admission of a gravely incriminating fact, even if not a complete admission of guilt, does not constitute a confession unless it amounts to an acknowledgement of all the facts necessary to constitute the offence. This position was refined by the Supreme

¹ Bharatiya Sakshya Adhiniyam, No. 47 of 2023

² Indian Evidence Act, No. 1 of 1872.

³ *Pakala Narayana Swami v. Emperor*, AIR 1939 PC 47.

Court in *Palvinder kaur v. State of Punjab*,⁴ where it was held that a mixed statement containing both inculpatory and exculpatory elements cannot be selectively read to extract only the incriminating portions. The confession must either stand or fail as a whole. Further nuance was introduced in *Nishi Kant Jha v. State of Bihar*,⁵ where the Court confirmed that an exculpatory statement that, on its face, denies guilt cannot be treated as a confession even if the denial is implausible.

The early Allahabad High Court formulation in *Queen-Empress v. Babulal*,⁶ which required only that the accused directly acknowledge guilt, was thus substantially narrowed by subsequent precedent. At present, a confession denotes a direct acknowledgement by the accused of all the ingredients of the offence charged.

2.2 Confession Distinguished from Admission

An admission, as defined under the *Bhartiya Sakshya Adhiniyam, 2023*, substantially preserving the formulation of Section 17 of the Indian Evidence Act, 1872, is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact.⁷ A confession is a species of admission, the genus-species relationship is well established, but it carries the additional requirement of an unequivocal acknowledgement of guilt. The significance of the distinction lies in the differential evidence treatment, whereas an admission may be received against a party in a variety of contexts, a confession by an accused person is subjected to the heightened restrictions governing police statements. An admission short of a confession.

2.3 Judicial and Extra- Judicial Confessions

The law draws a further distinction between confessions made before the Magistrate in the course of judicial proceedings, which are judicial confessions, and those made elsewhere, which are extra-judicial confessions. A judicial confession, made voluntarily and in compliance with the procedural requirements of the *Bharatiya Nagarik Suraksha Sanhita, 2023*, is fully admissible and carries substantial evidential weight. An extrajudicial confession, by contrast, depends for its weight on the reliability of the person to whom it was made and the

⁴ *Palvinder kaur v. State of Punjab*, AIR 1952 SC 354.

⁵ *Nishi Kant Jha v. State of Bihar*, AIR 1969 SC 422.

⁶ *Queen-Empress v. Babulal*, (1884) ILR 6 ALL 509.

⁷ Indian Evidence Act § 17, No. 1 of 1872.

circumstances attending it. The most opposed subcategory of extra-judicial confessions is that made in police custody, the very category to which the exclusionary rule under Sections 25 and 26 of the 1872 Act is directed. In *Aghnoo Nagesia v. State of Bihar*,⁸ the hon'ble Supreme Court confirmed that any confession made to a police officer fall within the prohibition.

2.4 Rationale for Excluding Police Confessions

The exclusionary rule rests on three intersecting rationales. First, the reliability rationale is confessions extracted through coercion, inducement, or threat are inherently unreliable because a person in custody who believes compliance will bring relief may confess to crimes not committed. Second is the rights based rationale, compelling a person to confess against their own interest offends the privilege against self-incrimination, which antedates formal constitutional protection in India and is now secured by Article 20(3). Third is the systemic rationale, which is admitting police confessions would incentivise custodial abuse and promote a culture of confession as investigation, substituting coercive interrogation for the difficult work of independent evidence gathering. Each of these rationales retained its force in 2023. The *Bhartiya Sakshya Adhiniyam, 2023*'s treatment of the exclusionary rule must be evaluated against all three.

3. Legal Position Under the *Bhartiya Sakshya Adhiniyam, 2023*

3.1. Corresponding Provisions

The *Bhartiya Sakshya Adhiniyam* includes the confession provisions within sections 22 to 24. Section 22 renders irrelevant confessions caused by inducement, threat, or promise from a person in authority.⁹ Section 23 reaffirms the absolute bar on police confession basically a confession made to a police officer shall not be proved against a person accused of an offence.¹⁰ Section 24 governs confessions in custody and the discovery exceptions.¹¹

3.2 Structural and Linguistic Changes

The *Bhartiya Sakshya Adhiniyam* renumbering of the provisions is the most immediately

⁸ *Aghnoo Nagesia v. State of Bihar*, AIR 1966 SC 119.

⁹ *Bhartiya Sakshya Adhiniyam* § 22, No. 47 of 2023.

¹⁰ *Bhartiya Sakshya Adhiniyam* § 23, No. 47 of 2023.

¹¹ *Bhartiya Sakshya Adhiniyam* § 24, No. 47 of 2023.

apparent change. But the structural consolidation raises interpretive concerns of its own. Under the 1872 Act, Sections 26 and 27 operated as distinct provisions with distinct preconditions. Section 26 addressed custody broadly, while Section 27 carved the discovery exceptions from the combined prohibition of Sections 25 and 26. The Bharatiya Sakshya Adhiniyam merger of these provisions within a single section removes the textual separation that historically assisted courts in identifying which provisions of the law were being engaged. The risk of conflation, which means treating the discovery exception as an independent admissibility gateway rather than a narrow qualification to the general bar, is accordingly heightened.

The Bharatiya Sakshya Adhiniyam introduces one important addition that is Section 24(1) explicitly includes a reference to the admissibility of confessions made in the Presence of a Magistrate in electronic form, including audio-video recording.¹² This is a modest but significant modernisation that anticipates digital evidence in the confessional context. However, the provisions pertain to Magistrate-recorded confessions, not to police interrogations. The question of whether police interrogations themselves should be subject to mandatory recording, the single most effective safeguard against the fabricated confessions, remains unaddressed.

3.3 Legislative Intent

Parliamentary debate on the Bharatiya Sakshya Adhiniyam, 2023, limited light on the legislature's specific intentions regarding the confession provisions. The broader legislative narrative prioritized the decolonisation of British-era statutes with indigenously named successors and modernisation through the incorporation of electronic evidence. Neither the statement of Objects and Reasons nor the Select Committee reports engaged substantively silence is itself significant, and it suggests that prohibition was treated as settled, constitutional, and beyond contention, foreclosing any examination of whether its enforcement mechanisms were adequate.

4. Constitutional Dimensions

4.1 Article 20(3): The privilege Against Self-Incrimination

Article 20(3) of the Constitution mandates that no person accused of any offence shall be

¹² Bharatiya Sakshya Adhiniyam § 24(1), No. 47 of 2023.

compelled to be a witness against himself.¹³ In *State of Bombay v. Kathi kalu oghad*,¹⁴ the constitution Bench confirmed that the privilege attaches to testimony in the sense of personal knowledge communicated through words and held that compelling the accused to produce physical specimens, blood samples, and handwriting did not constitute testimonial compulsion. This holding has been subject to sustained scholarly criticism on the ground that its formalism privileges form over substance.

The Supreme Court in *Selvi v. State of Karnataka*,¹⁵ significantly advanced the constitutional analysis in the context of narcoanalysis, polygraph, and brain-mapping examinations. The Court held that these techniques amounted to testimonial compulsion in violation of Articles 20(3) and Article 21, focuses on the privilege protects not merely the final statement but the mental process of self-incrimination. Selvi's expansion of the constitutional guarantee to encompass the integrity of the mental process cannot be coerced through narcoanalysis, it cannot be coerced through the physical environment of police custody either. The Bharatiya Sakshya Adhiniyam, 2023, failure to operationalise this principle through mandatory interrogation safeguards is constitutionally difficult to defend.

4.2 Article 21: Custodial Dignity and Fair Trial

Article 21 protects the right to life and personal liberty deprivation except according to procedures established by law.¹⁶ Following *Maneka Gandhi v. Union of India*,¹⁷ the word procedure has been read to require that any deprivation be fair, just, and reasonable, thereby importing a substantive due process standard. The custodial torture jurisprudence developed by the Supreme Court in *DK Basu v. State of West Bengal*,¹⁸ which laid down detailed requirements for the treatment of arrested person including the right to have the arrest communicated to a nominated person and access to legal counsel, situates the confession law within a broader constitutional regime governing the relationship between state's investigative power and individual dignity. The Bharatiya Sakshya Adhiniyam, 2023, is silent on the custodial state's investigative power and individual dignity. The Bharatiya Sakshya Adhiniyam, 2023, silence on custodial safeguards is in evident tension with the constitutional

¹³ India Const. art. 20, cl. 3.

¹⁴ *State of Bombay v. Kathi kalu oghad*, AIR 1961 SC 1808

¹⁵ *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

¹⁶ India Const. art. 21.

¹⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

¹⁸ *K Basu v. State of West Bengal*, AIR 1997 SC 610

infrastructure erected by these decisions.

The Supreme Court's decisions in *Tofan Singh v. State of Tamil Nadu*,¹⁹ addressed the constitutional validity of provisions under the Narcotic Drugs and Psychotropic Substances Act, 1985, that permitted confessions to officers above the rank of Sub-Inspector. The Constitution Bench held that such officers were police officers within the meaning of Section 25 of the Indian Evidence Act, 1872 and that confessions to them were accordingly inadmissible. The decision's constitutional reasoning, that the exclusionary rule implements the fundamental right against self-incrimination and must be read broadly, is directly applicable to the Bharatiya Sakshya Adhiniyam, 2023. Any legislative attempt to narrow the category of Police Officer for the purposes of the confession bar would fall foul of *Tofan Singh*.

5. Reform Proposals

5.1 Mandatory Audio-Visual Recording

The single most impactful reform available to the Indian legislature would be a statutory mandate for audio-visual recording of all custodial interrogation from the moment of arrest. The recording should be conducted on tamper-evident equipment, copies should be deposited with the Magistrate before whom the accused is produced, and any confession or disclosure made during an unrecorded interrogation should be inadmissible. This reform would not only deter custodial violence but would provide courts with an objective basis for evaluating the voluntariness of any state.

5.2 Right to Counsel During Interrogation

The hon'ble Supreme Court in *Nandini Satpathy v. P.L. Dani*²⁰ and *DK Basu*²¹ has progressively strengthened the accused's Procedural right in custody without legislatively mandating the presence of counsel during interrogation. Statutory provisions requiring that the accused be afforded a reasonable opportunity to consult legal counsel before any custodial questioning commences, and that the fact of consultation, or the accused's informed waiver of it, be documented would align Indian law with the *Salduz* doctrine and the evolving

¹⁹ *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1

²⁰ *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025

²¹ *Supra* Note. 18

constitutional standard.

5.3 Restricting the Discovery Exception

The discovery exception should be legislatively narrowed to require independent corroboration of both the fact of discovery and the chain of custody of the discovered object. At a minimum, the panchnama recording the discovery should be prepared in the presence of two independent witnesses, not police witnesses, and the entire discovery process should be video recorded. Courts should be empowered to exclude a discovery as unreliable where these requirements are not met, even if the formal conditions of the provisions are satisfied. The Law Commission's recommendation for stricter controls on the discovery exception should be given legislative effect in any future amendment of the Bharatiya Sakshya Adhiniyam, 2023.

5.4 Judicial Oversight

A system of periodic Judicial review of detention conditions, analogous to the remand system but more substantive in its procedural requirements, would create structural accountability for custodial treatment. The National Human Rights Commission has repeatedly recommended²² the introduction of an independent complaint's mechanism for custodial violations. The Bharatiya Sakshya Adhiniyam, 2023 reform process provided an opportunity to embed such a mechanism within the evidentiary framework as a condition of admissibility.

6. Conclusion

The Bharatiya Sakshya Adhiniyam, 2023, neither modernises nor regresses Indian confession law, it perpetuates it. The absolute bar on police confessions, constitutionally grounded in Articles 20(3) and 21 and reinforced by a century of Supreme Court jurisprudence, is preserved in form. But the structural conditions that have consistently rendered the bar practically ineffective, the absence of mandatory recording, the right to counsel, and independent verification of discoveries, are left entirely unaddressed. The discovery exception, textually consolidation with the custody bar in Section 24, remains as constitutionally paradoxical as under its predecessor, it admits the product of a process whose coercive character the statute itself acknowledges.

²² National Human Rights Commission v. State of Arunachal Pradesh, AIR 1996 SC 1234.

The research questions posed at the outset can now be answered. The Bharatiya Sakshya Adhinyam, 2023 has not altered the prohibition in any meaningful substantive respect. The exclusionary rule is neither diluted nor reinforced Magistrate confessions that leave the police interrogation context entirely unregulated. The constitutional implications are unchanged, the formal alignment of the exclusionary rule with Articles 20(3) and 21 persists, but the gap between constitutional aspiration and investigative practice remains as wide as it was under the 1872 Act.

The trajectory of confessional law in India will ultimately be determined not by the text of the Bharatiya Sakshya Adhinyam, 2023, but by the willingness of the judiciary to expand the constitutional framework raised in *Selvi*, *DK Basu*, and *Tofan Singh* into a substantive mandate for interrogation safeguards. If the Supreme Court holds, as the logic of *Selvi* strongly suggests it should, that the coercive atmosphere of police custody constitutes compulsion for the purposes of Article 20(3) regardless of whether physical force is applied, the discovery exception's constitutional foundations will be severely weakened. That development, rather than legislative reform, may prove to be the decisive moment in the evolution of Indian Confession Law.