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## POLICE CONFESSIONS AND ITS JUDICIAL SCRUTINY: AN ANALYSIS UNDER BHARATIYA SAKSHYA ADHINIYAM 2023

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### ABSTRACT

The enactment of the Bharatiya Sakshya Adhiniyam, 2023 (hereinafter "BSA") marks a decisive legislative departure from the colonial Indian Evidence Act of 1872, fundamentally reconfiguring the evidentiary framework governing police confessions in India. Confessions made to police officers occupy a uniquely controversial position within criminal jurisprudence—they are simultaneously indispensable investigative tools and potent instruments of abuse. The BSA, while retaining the structural core of its predecessor's confession-related provisions, introduces subtle yet significant modifications that carry profound implications for criminal trials, custodial rights, and the constitutional guarantee against self-incrimination. This paper undertakes a comprehensive examination of the statutory provisions governing police confessions under the BSA, traces the evolution of judicial scrutiny through landmark Supreme Court decisions, and evaluates whether the new legislation adequately addresses the persistent concerns of coercion, voluntariness, and procedural fairness. It also conducts a comparative assessment with the Bharatiya Nagarik Suraksha Sanhita, 2023, the contemporaneous procedural code, to present a holistic picture of the reformed legal architecture. The paper concludes that while the BSA represents a constructive step toward modernisation, critical lacunae remain, particularly in relation to mandatory audio-visual documentation, legal access during interrogation, and the absence of an independent oversight mechanism for custodial confessions.

**Keywords:** Bharatiya Sakshya Adhiniyam 2023, Police Confession, Custodial Confession, Judicial Scrutiny, Self-Incrimination, Voluntariness, BSA, Indian Evidence Law.

### I. INTRODUCTION

The law of confessions constitutes one of the most contested terrains in the administration of criminal justice. A confession, at its most elemental, is a declaration by a person charged with a crime that he is guilty of the offence charged.<sup>1193</sup> In the Indian context, the admissibility of confessions has historically been calibrated against a dual anxiety: the need to secure convictions in cases where confessions may be the most probative

evidence available, and the equally pressing need to protect accused persons from the coercive machinery of the state. The enactment of the Bharatiya Sakshya Adhiniyam, 2023,<sup>1194</sup> which replaced the Indian Evidence Act, 1872,<sup>1195</sup> presents an opportune moment to reassess the normative architecture governing police confessions.

The exclusionary rule against police confessions, long embedded in Indian evidence law, rests on a foundational concern: that the

<sup>1193</sup>Law Commission of India, *185th Report on Review of the Indian Evidence Act, 1872* 14 (2003).

<sup>1194</sup>Bharatiya Sakshya Adhiniyam, No. 47 of 2023 (India).

<sup>1195</sup>Indian Evidence Act, No. 1 of 1872 (India) (repealed).

police–accused relationship is inherently coercive. A person in custody is peculiarly vulnerable to psychological and physical pressure, and any admission extracted in such circumstances carries an inherent taint that militates against its reliability and fairness. The legislature, across successive iterations, has sought to operationalise this concern through a categorical prohibition against the admissibility of confessions made to police officers.<sup>1196</sup>

Yet the doctrinal landscape surrounding this prohibition has never been static. Courts have navigated a labyrinth of exceptions, qualifications, and evidentiary doctrines—ranging from the admissibility of facts discovered pursuant to a confession to the role of judicial magistrates in recording confessions—that significantly circumscribe the apparent rigour of the exclusionary rule. This paper interrogates whether the BSA, 2023 has adequately recalibrated these tensions, or whether it has merely restated the old law in new legislative garb without addressing the structural deficiencies that have allowed custodial coercion to persist.

## II. THE STATUTORY FRAMEWORK UNDER BHARATIYA SAKSHYA ADHINIYAM, 2023

The BSA consolidates the law governing confessions primarily within Sections 22 to 26,<sup>1197</sup> mirroring the general structure of Sections 24 to 30 of the erstwhile Indian Evidence Act. Section 22 of the BSA retains the foundational exclusionary rule by providing that a confession made to a police officer shall not be proved against a person accused of any offence. This provision reflects the legislature's recognition, confirmed by decades of judicial experience, that statements extracted by police officers are inherently suspect.

Section 23 of the BSA addresses confessions made while in custody. It prescribes that a confession made by an accused while in the custody of a police officer shall not be proved

against him unless it is made in the immediate presence of a Magistrate.<sup>1198</sup> This provision, directly paralleling its predecessor, seeks to introduce a judicial buffer into the confession–recording process, premised on the assumption that the presence of an independent judicial officer would deter coercion and validate the voluntariness of the statement.

Section 24 of the BSA addresses the admissibility of facts discovered pursuant to information given by an accused in police custody.<sup>1199</sup> This is the codified form of the "discovery doctrine," which permits the prosecution to rely on the portion of a custodial statement that directly leads to the discovery of a physical fact, even if the statement itself would otherwise be inadmissible as a police confession. The provision represents a pragmatic accommodation: while the confession in its entirety remains excluded, the evidentiary value of the discovery it precipitates is preserved.

Section 25 of the BSA, corresponding to Section 30 of the old Act, preserves the provision allowing consideration of a co–accused's confession where multiple persons are tried jointly for the same offence.<sup>1200</sup> This provision has long been a source of scholarly controversy, since it permits the court to take into account a confession against a non–confessing accused—a departure from standard evidentiary principles that has prompted sustained judicial caution in its application.

One notable development in the BSA is its interaction with the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the procedural counterpart that governs the recording of judicial confessions.<sup>1201</sup> Section 183 of the BNSS lays down a detailed procedure for the recording of confessions by magistrates, including the requirement that the magistrate satisfy himself that the confession is voluntary, explain to the accused that he is not bound to

<sup>1198</sup>Bharatiya Sakshya Adhinyam § 23 (2023).

<sup>1199</sup>Bharatiya Sakshya Adhinyam § 23(2) (2023).

<sup>1200</sup>Bharatiya Sakshya Adhinyam §§ 25–26 (2023).

<sup>1201</sup>Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 183 (India).

<sup>1196</sup>Bharatiya Sakshya Adhinyam § 22 (2023).

<sup>1197</sup>Bharatiya Sakshya Adhinyam §§ 22–24 (2023).

make it, and offer the accused an opportunity to retract.<sup>1202</sup> The BSA and the BNSS must therefore be read as an integrated legislative framework when analysing the admissibility of confessions in the criminal process.

### III. JUDICIAL SCRUTINY: EVOLUTION THROUGH LANDMARK DECISIONS

The judiciary has played a constitutive role in shaping the law of police confessions, often supplying content and constitutional grounding that the statutory text alone could not provide. The Supreme Court's engagement with this area of law spans more than six decades and traverses questions of constitutional right, evidentiary reliability, and institutional accountability.

In *State of Uttar Pradesh v. Deoman Upadhyay*,<sup>1203</sup> the Supreme Court authoritatively construed the scope of the exclusionary rule, holding that the prohibition on police confessions extends to confessions made to officers of any rank, regardless of whether the officer is the investigating officer in the case. The court underscored that the rationale for exclusion is institutional—it is the police–accused relationship itself, and not the identity of a particular officer, that generates the structural conditions for coercion.

The landmark Privy Council decision in *Pulukuri Kottaya v. King-Emperor*,<sup>1204</sup> though decided under the colonial framework, continues to govern the interpretation of the discovery doctrine. The Privy Council held that only that portion of a custodial information which "distinctly relates" to the fact discovered is admissible, and that the remainder of the statement must be excluded. This disciplined approach to parsing custodial statements has been consistently affirmed by the Supreme Court of India and remains equally applicable under the corresponding provision of the BSA.

The constitutional dimension of police confessions received its fullest elaboration in *Nandini Satpathy v. P.L. Dani*,<sup>1205</sup> where the Supreme Court held that Article 20(3) of the Constitution, which protects every accused person from being compelled to be a witness against himself,<sup>1206</sup> extends not merely to testimonial compulsion in formal proceedings, but to any form of self-incriminating statement obtained under coercive circumstances. The court explicitly recognised the police interrogation setting as one inherently susceptible to such compulsion, and imported into Indian law principles closely analogous to the *Miranda* doctrine developed in the United States.<sup>1207</sup>

The *D.K. Basu* decision,<sup>1208</sup> which arose from a petition addressing widespread custodial violence, represents the Supreme Court's most comprehensive effort to establish procedural safeguards against coerced confessions. The court laid down an exhaustive set of guidelines governing arrest, detention, and interrogation, including requirements of identification, medical examination, and intimation to relatives. These guidelines, though not specifically directed at confession law, constitute a structural prophylactic against the conditions that make coerced confessions possible.

In *Selvi v. State of Karnataka*,<sup>1209</sup> the Supreme Court addressed the admissibility of narco-analysis, brain-mapping, and polygraph tests in the context of Article 20(3) and Article 21.<sup>1210</sup> The court held that compelling an accused to undergo these tests violated the right against self-incrimination and the right to life and personal liberty. The decision is significant for its broad conception of "compelled testimony," which encompasses not merely verbal statements but any form of physiological or

<sup>1205</sup>*Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424 (India).

<sup>1206</sup>INDIA CONST. art. 20, cl. 3.

<sup>1207</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>1208</sup>*D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416 (India).

<sup>1209</sup>*Selvi v. State of Karnataka*, (2010) 7 SCC 263 (India).

<sup>1210</sup>INDIA CONST. art. 21.

<sup>1202</sup>*Bharatiya Nagarik Suraksha Sanhita* § 183(6) (2023).

<sup>1203</sup>*State of Uttar Pradesh v. Deoman Upadhyay*, AIR 1960 SC 1125 (India).

<sup>1204</sup>*Pulukuri Kottaya v. King-Emperor*, AIR 1947 PC 67 (Privy Council).

psychological compulsion directed at extracting incriminating information.

Kathi Kalu Oghad v. State of Bombay<sup>1211</sup> remains the foundational authority on the distinction between testimonial and non-testimonial evidence in the constitutional context. The eleven-judge constitutional bench held that while an accused cannot be compelled to give testimonial evidence, he may lawfully be required to produce non-testimonial physical evidence such as handwriting specimens or signatures. This distinction, though developed in a broader constitutional setting, has direct relevance to the forensic dimensions of police interrogation and the boundaries of lawful custodial evidence-gathering under the BSA.

#### IV. THE VOLUNTARINESS STANDARD AND ITS DOCTRINAL CHALLENGES

Central to the admissibility of any confession is the doctrine of voluntariness, which demands that a confession be the product of the accused's free will, unaffected by any threat, inducement, or promise from a person in authority.<sup>1212</sup> The BSA, like its predecessor, does not define "voluntariness" as a positive condition, but rather operationalises it negatively through the exclusion of confessions tainted by improper influence.

This negative formulation creates significant doctrinal challenges. The prosecution bears the initial burden of establishing that a judicial confession was made in accordance with the prescribed procedure, but the accused carries the practical burden of demonstrating, often in the teeth of official denials, that the confession was preceded by custodial abuse. The inherent power asymmetry of the custodial setting, combined with the practical difficulties of proving what transpired behind closed doors, renders this burden highly onerous.

In Pyare Lal Bhargava v. State of Rajasthan,<sup>1213</sup> the Supreme Court held that where a

confession is retracted, the court is required to examine the totality of the circumstances to assess whether the retraction is credible, and whether the original statement was indeed voluntary. The court cautioned that a mere retraction, unsupported by evidence of coercion, is insufficient to vitiate an otherwise properly recorded judicial confession. Conversely, in State of Maharashtra v. Damu,<sup>1214</sup> the court held that where there is credible evidence of prior police contact, the retraction of a judicial confession must be evaluated with heightened scrutiny, since the gap between police custody and judicial recording may have been insufficient to dissipate the coercive influence.

The BSA's Explanation to Section 24 clarifies that the discovery doctrine operates independently of the voluntariness of the statement from which the discovery flows.<sup>1215</sup> This creates a doctrinal tension: the involuntariness that renders the full statement inadmissible does not infect the admissibility of the discovered fact. Critics argue that this approach effectively rewards coerced confessions by permitting the prosecution to benefit from physical evidence obtained through improper interrogation, so long as the confession itself is formally excluded.

#### V. CONSTITUTIONAL DIMENSIONS: ARTICLES 20(3) AND 21

The constitutional guarantee against self-incrimination enshrined in Article 20(3) of the Constitution of India, provides that no person accused of an offence shall be compelled to be a witness against himself. This provision, which operates at a level superior to ordinary statute law, constitutes the constitutional foundation upon which the statutory exclusionary rules governing police confessions are erected.

Article 21, which guarantees the right to life and personal liberty except in accordance with a procedure established by law, has been

<sup>1211</sup>Kathi Kalu Oghad v. State of Bombay, AIR 1961 SC 1808 (India).

<sup>1212</sup>Bharatiya Sakshya Adhiniyam § 24 (2023).

<sup>1213</sup>Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094 (India).

<sup>1214</sup>State of Maharashtra v. Damu, (2000) 6 SCC 269 (India).

<sup>1215</sup>Bharatiya Sakshya Adhiniyam § 24, Explanation (2023).

expansively interpreted by the Supreme Court to encompass the right against custodial violence, the right to legal representation during interrogation, and the right to be treated with dignity throughout the criminal process.<sup>1216</sup> These constitutional rights collectively undergird the normative architecture of the BSA's confession-related provisions.

The introduction of the Criminal Procedure (Identification) Act, 2022,<sup>1217</sup> operative alongside the BSA, has introduced fresh constitutional questions about the limits of state power to compel individuals to furnish biological samples and biometric data. Read alongside the Selvi framework, these developments suggest that the constitutional doctrine around compelled self-incrimination is in a phase of active evolution that the BSA, drafted before these questions were fully resolved, may not have comprehensively addressed.

#### VI. COMPARATIVE ANALYSIS: GLOBAL FRAMEWORKS AND THEIR LESSONS

A comparative perspective enriches the analysis of the BSA's confession framework by locating it within the broader landscape of global evidentiary jurisprudence. The American framework, anchored by *Miranda v. Arizona*, requires that prior to custodial interrogation, the suspect must be informed of specific constitutional rights, including the right to remain silent and the right to counsel. The admissibility of any custodial confession is contingent upon proof that these warnings were administered and that the rights were waived knowingly and voluntarily. The BSA contains no analogous requirement, an omission that represents a significant departure from the international standard.

The Irish framework, governed by the Criminal Justice Act, 1984,<sup>1218</sup> similarly requires careful documentation of the circumstances surrounding custodial interrogations, including audio-visual recording, to prevent disputes

about the voluntariness of confessions. The BNSS provides for audio-visual recording of Section 183 statements,<sup>1219</sup> but this requirement does not extend to the broader interrogation process that precedes the formal confession-recording exercise. This gap is particularly acute given that coercion typically occurs during informal pre-confession interrogation rather than at the point of formal recording.

In *Amit v. State of Uttarakhand*,<sup>1220</sup> the Supreme Court emphasised that corroboration is essential before a confession can safely ground a conviction, and that the absence of corroborating material evidence should prompt courts to approach the confession with considerable circumspection. This judicial insistence on corroboration represents a significant structural safeguard within the Indian system, compensating to some extent for the absence of a formal pre-interrogation rights regime.

#### VII. CRITICAL APPRAISAL: LACUNAE IN THE BSA FRAMEWORK

Despite the BSA's modernising ambitions, several critical lacunae remain that limit its effectiveness as a protective framework. First, the absence of a statutory right to legal counsel prior to and during police interrogation represents the most glaring deficiency. The D.K. Basu guidelines nominally provide for legal access, but their breach carries no automatic consequence in terms of the admissibility of the resulting statement.

Second, the BSA does not mandate audio-visual recording of police interrogations as a precondition for admissibility. While the BNSS requires magistrates to audio-visually record judicial confessions, the vast majority of confessions and inculpatory statements are made during informal police interrogation that precedes the judicial recording process. The National Human Rights Commission's annual reports have consistently documented

<sup>1216</sup>*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

<sup>1217</sup>Criminal Procedure (Identification) Act, No. 11 of 2022 (India).

<sup>1218</sup>Criminal Justice Act 1984 (Ireland), § 4.

<sup>1219</sup>*Bharatiya Nagarik Suraksha Sanhita* § 183(5) (2023).

<sup>1220</sup>*Amit v. State of Uttarakhand*, (2012) 4 SCC 107 (India).

instances of custodial abuse,<sup>1221</sup> underscoring the inadequacy of existing safeguards in the absence of mandatory documentation.

Third, the People's Union for Civil Liberties decision<sup>1222</sup> had flagged the structural deficiencies of custodial oversight long before the BSA's enactment, yet the new legislation does not establish an independent oversight body with jurisdiction to investigate complaints of custodial coercion or to audit the conditions under which confessions are recorded. This institutional gap represents a systemic failure that statutory text alone cannot remedy.

### VIII. CONCLUSION

The Bharatiya Sakshya Adhiniyam, 2023 represents a significant legislative milestone in the ongoing project of reforming Indian evidence law. Its provisions on police confessions retain the essential architecture of the colonial framework while introducing incremental modifications calibrated to the demands of modern criminal justice. The judicial framework built through decades of Supreme Court decisions—from Pulukuri Kottaya to Selvi—provides an indispensable layer of interpretive scaffolding that shapes the practical operation of these statutory provisions.

Yet the BSA's engagement with police confessions remains incomplete. The persistent absence of a statutory right to counsel during interrogation, the gap in mandatory audio-visual documentation of police questioning, and the lack of an independent oversight mechanism collectively ensure that the conditions that make coerced confessions possible are not structurally disrupted by the new legislative regime. The discovery doctrine, as preserved in Section 24, continues to allow the fruits of potentially coerced interrogation to enter the courtroom through the back door of

physical evidence, raising questions about the coherence of the exclusionary framework.

The legitimacy of any criminal justice system ultimately rests upon the quality of the process through which guilt is established. Where that process is contaminated by coercion—however subsequently cleansed by judicial ritual—the resulting conviction carries a moral deficit that undermines public confidence in the administration of justice. The BSA has taken a step in the right direction. The distance yet to be traversed remains considerable, and future legislative and judicial attention must be directed at filling the structural gaps that the current framework leaves conspicuously unaddressed.

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