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Revisiting The Admissibility Of Confessions Under The Bharatiya Sakshya Adhiniyam, 2023: A Comparative And Critical Analysis

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Abstract

The adoption of the Bharatiya Sakshya Adhiniyam, 2023 is an important change in the Indian law context since it sees the abolition of the Indian Evidence Act of 1872, which was written in colonial times. One of the most urgent sections of the reform is the treatment of confessions that is involved in the criminal adjudication to the greatest extent. This research paper is a critical analysis of the provisions in regard to admissions and confessions in the sections of 15- 26 of the Bharatiya Sakshya Adhiniyam, 2023 as compared to the relevant provisions in the Indian Evidence Act, 1872 and international norms. The research will evaluate the capability of the new legal system to improve the rights of the accused and at the same time ensure the effectiveness of criminal investigations. The paper has examined in the first instance the criteria of admissibility, police confession issue, and the issue of protection against coercion through doctrinal legal research. It also explores how the confession law in India has been developed over the years of jurisprudence with a neutralisation on the landmark cases and how significantly they can be redone in the new act. Comparative analysis with other legal systems like the United Kingdom and the United States gives a wider outlook in best practises and compliance with human rights.

The paper will end by diagnosing the ambiguities and difficulties in applying the new provisions and give recommendations on how judicators can interpret the new provisions and how the law can be simplified. The given research adds to the current discourse of the reform of evidence law in India and is aimed at informing both scholarly and policy-oriented debates about the answer to the question of a justified balance between the consideration of the justice delivery and the rights of individuals.

Keywords: Bharatiya, Sakshya Adhiniyam, Confession, Evidence law, Criminal Justice Reform.

Introduction

The criminal justice system of any democratic society depends on the quality of the available evidentiary system. In India, the Indian Evidence Act,1872 was the foundation of the law of evidentiary law in more than 150 years. Nevertheless, the socio-legal environment has been to change quite considerably, since the colonial period, and it requires an overhaul accordingly. In reaction, the Government of India has enacted the Bharatiya Sakshya Adhiniyam Proposal 2023, which replaces the archaic law in 1872 with a modernised law framework to be used in bringing the evidentiary processes into competing with the contemporary reality and constitutional virtues.

One of the most important elements of evidence law is the treatment of the confessions and especially during the criminal proceedings The new Adhiniyam presents subtle amendments to the regulations of admissions and confessions, which fall under the category of Sections 15 to 26, which are the areas that should be scrutinised closely. The changes are not only semantic but also indicate a shift of the intent of legislations to create some level of balance between the precondition of effective law enforcement and protection of personal rights.

In this research paper, a doctrinal and a comparative legal study of the stipulations regarding confessions in the **Bharatiya Sakshya Adhiniyam, 2023**[1] thus abolition of the **Indian Evidence Act of 1872**[2] will be carried out. The objective of this reform is to establish the consequences of such changes to the admissibility of confessions, authority of police, and the privileges at the disposal of the accused. Also discussed in the study is the way in which Indian jurisprudence is likely to change according to the new order in law that occurs in consideration of the preexisting precedence and international human-right practises.

Goals and Objectives:

1. To examine the legal framework of dealing with confessions under the BSA, 2023.
2. To make a comparison between the new provisions with the Indian Evidence Act, 1872 and international standards.
3. The implication of these changes on the rights of the accused and judicial administration.

[1] Bharatiya Sakshya Adhiniyam, No.47 of 2023 (India).
[2] Indian Evidence Act, No. 1 of 1872 (India)

Methodology:

The methodology entails a critical reading in legal texts, judicial declarations and commentary. The jurisdictions such as the US and the UK are the ones where the confession law has developed to a high point and therefore provide some insights of comparison. The paper concludes by giving recommendations on how the judicial interpretation and clarity in legislation to ensure that the new provisions meet the two aspects of justice and fairness

Legal History.

In India, therefore, the evidence law is essentially a creation of colonialism. During the writing of the Indian Evidence Act which was drafted in 1872 by Sir James Fitzjames, Stephen, there was an attempt to ensure that the evidentiary practises in British India are harmonised. Of course, it became a big thing at the time, but it was predominantly colonialist in nature and failed to support the constitutional values following independence. Courts over the decades attempted to modernise it though its basic structure remained largely unchanged.

In light of the fact that there had to be a change, the Indian government unveiled the Bharatiya Sakshya Adhiniyam 2023 as a part of a larger development to de-colonise the criminal law, in addition to the BNS and BNSS. The Adhiniyam objective of the new one is to make evidence law easier, modernised and more rights focused. It preserves the net essentials of relevance, admissibility and burden of proof but makes adjustment to the structure and terms in line with modern realities.

Amongst the largest changes is the treatment of admissions and confessions which is now enshrined in Sections 15-26 of the Bharatiya Sakshya Adhiniyama. These substitute Sections17-30 of the Act of 1872. The new law emphasises on voluntariness, reliability and protection against coercion- particularly in custody. It also clarifies the admissibility of confessions made to the law enforcement officers that was once a controversial matter.

Traditionally, the Indian courts have struggled on whether the confessions obtained outside the supervision of the judicial system should be admissible. The landmark case of State of U.P. v. Rajesh Gautam stated that the confessions should be voluntary and not forced by any inducement, threat, and promise. In Selvi v. The Supreme Court decided that narco-analysis and other forms of involuntary techniques are against **Article 20(3)**[3] of the Constitution, State of Karnataka. The Bharatiya Sakshya

[3] INDIA CONST. art. 20(3).

Adhiniyam attempts to set those principles of the judiciary within better statutory language. Certainly, an example could be the plain no confessions to the police, which is stated in Section 22 to further prevent the use of sections previously supported in court rulings. Section 26 concerns dying declarations, the appropriate way to keep them relevant to the evidence and make the procedural integrity.

It is not merely a change between the 1872 and the 2023 Adhiniyam but it is a long-run investment in constitutionalism, human rights, and fairness in the very process of making any changes. Through grounding statutes on judicial precedents and international norms, the new law will seek to strike a balance between good prosecution and government safeguarding of individual freedoms. It is within the context of this historical and legal context that the Bharatiya Sakshya Adhiniyam will be carefully analysed in relation to directing the manner in which confessions are managed. In the following part, these provisions will be ventured in with regards to their structure, scope, and implication to criminal justice in India.

Confessions Legislation.

The Bharatiya 2023 is a more complex legal framework concerning the dealings with admission and confessions taking place under the Sections 15-26. These regulations are designed to be careful about confessions so that there is a balance between the evidentiary aspect of confessions and the risk of abuses of the same, particularly under custodial circumstances

3.1. Sectional Overview

- Section 15–21: These sections deal with admissions, defining them as statements suggesting any deduction regarding a pertinent or disputed fact. Admissions from parties to proceedings, their agents, or persons jointly interested are admissible. Confessions are not ultimate evidence and can be challenged.
- Section 22-25: These are sections of confessions- essentially a subdivision of confessions given by the accused during criminal proceedings. The law subdivides confessions into judicial and extra-judicial confessions, as the former takes place before a magistrate, whereas the latter takes place outside the courtroom. Particularly, Section 22 outlaws' confessions provided to the police officers until they are documented by a magistrate, which actually burdens the load against pressure.

- Section 26: This section is concerned with dying declarations. They can only be submitted when the person making the statement is sure that death is eminent and the statement been made is about the cause of death. The provision retains the evidentiary weight of dying declarations, subject to judicial scrutiny.

3.2. Voluntariness and Safeguards

The admissibility of confessions hinges on voluntariness. The Bharatiya Sakshya Adhiniyam codifies the principle that confessions obtained through inducement, threat, or promise are inadmissible. This aligns with Article 20(3) of the Indian Constitution, which protects against self-incrimination.

Section 23 strengthens this safeguard by requiring that confessions made in police custody must be recorded by a magistrate. This provision reflects the jurisprudence laid down in Kehar Singh v. State (Delhi Administration), where the Supreme Court emphasized the need for judicial oversight in confession recording.

3.3. Confessions to Police Officers

Under the Indian Evidence Act, 1872, Section 25 categorically excluded confessions made to police officers. The new Adhiniyam retains this exclusion but adds procedural clarity. Section 22 now allows such confessions only if recorded by a magistrate, thereby introducing a controlled exception. The Adhiniyam's approach reflects a cautious acceptance of police confessions under strict judicial supervision.

3.4. Judicial Confessions

Judicial confessions, made voluntarily before a magistrate, are admissible and carry substantial evidentiary weight. The Adhiniyam does not alter this principle but emphasizes procedural integrity. The magistrate must ensure that the confession is made without pressure and that the accused understands its implications.

In Ram Singh v. Sonia, the court held that judicial confessions must be recorded with due care, and any deviation from procedure could render them inadmissible. The Adhiniyam reinforces this by requiring magistrates to follow prescribed protocols during recording.

3.5. Dying Declarations

Section 26 preserves the admissibility of dying declarations, a well-established exception to hearsay. The provision requires that the declarant must be under a genuine belief of impending death and the statement must relate directly to the cause of death.

In Pakala Narayana Swami v. Emperor, the Privy Council held that dying declarations are admissible even if not made to a magistrate, provided they meet the criteria of spontaneity and relevance. Indian courts have consistently upheld this principle, and the Adhiniyam codifies it with procedural safeguards.

3.6. Evidentiary Weight and Corroboration

While confessions can be sufficient for conviction, courts often seek corroboration, especially in cases involving extra-judicial confessions. The Adhiniyam does not mandate corroboration, but judicial practice favours it to ensure reliability but the the Supreme Court laid down the "five golden principles" for circumstantial evidence, emphasizing the need for corroborative support. Confessions, particularly those made outside court, are evaluated against these standards.

3.7. Implications for Criminal Justice

The Bharatiya Sakshya Adhiniyam's framework reflects a rights-based approach to confession law. By codifying judicial safeguards and limiting police discretion, it aims to prevent custodial abuse and wrongful convictions. The provisions also align with international standards, such as Article 14 of the **International Covenant on Civil and Political Rights (ICCPR)**[4], which guarantees the right to a fair trial.

However, challenges remain. The effectiveness of magistrate oversight depends on training, infrastructure, and judicial independence. Moreover, the admissibility of confessions still hinges on subjective assessments of voluntariness, which may vary across jurisdictions.

4. Comparative Jurisprudence

The legal treatment of confessions varies significantly across jurisdictions, reflecting different balances between state interests and individual rights. A comparative analysis of confession law in the United

[4] International Covenant on Civil and Political Rights art. 14, Dec. 16, 1966, 999 U.N.T.S. 171.

Kingdom, United States, and India reveals both convergences and divergences in legal philosophy and procedural safeguards.

4.1. United Kingdom

In the UK, confession law is governed primarily by the PACE, 1984. Under Section 76, a confession is inadmissible if obtained through oppression or if it is unreliable due to circumstances in which it was made. The law defines oppression broadly, including torture, inhuman treatment, and threats. PACE also mandates that confessions be recorded under strict procedural safeguards, including the presence of legal counsel and audio/video documentation. The Code of Practice C outlines the rights of detainees and the procedures for interrogation. Courts in the UK routinely exclude confessions that violate these standards, emphasizing the principle of fair trial under the Human Rights Act, 1998.

This approach is more structured than India's, where voluntariness is assessed judicially but lacks uniform procedural enforcement. The Bharatiya Sakshya Adhiniyam, 2023[1] moves closer to the UK model by requiring magistrate oversight for confessions made in custody but does not yet mandate technological recording or legal representation during interrogation.

4.2. United States

The Fifth Amendment's protection against self-incrimination and the Sixth Amendment's right to counsel have a significant influence on confession law in the United States. The need that suspects be made aware of their rights before to being questioned in custody was established by the seminal case Miranda v. Arizona (1966). Any confession is inadmissible if Miranda warnings are not given. The exclusionary rule, which forbids the use of evidence gathered in violation of constitutional rights, is another tool used by the US. Courts evaluate voluntariness by considering all relevant factors, such as the length of the interrogation, the physical conditions, and the psychological pressure.

Compared to India, the US system offers stronger procedural safeguards and clearer constitutional remedies. The Bharatiya Sakshya Adhiniyam does not yet incorporate a formal warning system akin to Miranda rights, although it emphasizes voluntariness and judicial recording.

4.3. International Standards

International human rights instruments also influence confession law. Article 14 of the ICCPR guarantees the right to a fair trial, including protection against self-incrimination. The UNCAT prohibits the use of confessions obtained through torture.

India is a signatory to both treaties, and its judiciary has often invoked these principles. **In Selvi v. State of Karnataka**[5], the Supreme Court held that involuntary techniques like narco-analysis violate international norms and constitutional rights. The BSA, 2023 reflects this jurisprudence by codifying safeguards against coercion.

However, implementation gaps remain. Unlike some jurisdictions, India does not yet have a statutory requirement for legal counsel during interrogation or mandatory video recording of confessions. These procedural enhancements could strengthen the evidentiary value and reliability of confessions.

4.4. Lessons for India

The comparative analysis highlights several areas where Indian law could evolve:

- Mandatory Legal Representation: Like the UK and US, India could require the presence of counsel during custodial interrogation to ensure voluntariness.
- Technological Safeguards: Audio-visual recording of confessions, as practiced in the UK, would enhance transparency and reduce disputes over admissibility.
- Formal Rights Notification: A statutory equivalent of Miranda warnings could reinforce constitutional protections and reduce reliance on judicial discretion.
- Independent Oversight: Establishing independent bodies to monitor interrogation practices could prevent abuse and ensure compliance with legal standards

5. Critical Analysis and Case Law Review

The BSA, 2023 introduces a structured framework for the admissibility of confessions, yet its practical application raises several critical questions. This section evaluates the strengths and limitations of the new provisions through doctrinal analysis and judicial interpretation, focusing on key case law and legal reasoning.

5.1. Strengths of the New Framework

The Adhiniyam's emphasis on voluntariness, judicial oversight, and exclusion of police confessions unless recorded by a magistrate reflects a progressive shift. Section 22, which bars confessions made to

[5] Selvi v. State of Karnataka, (2010) 7 SCC 263 (India).

police officers unless judicially recorded, aligns with constitutional safeguards under Article 20(3) and judicial precedents such as **Nandini Satpathy v. P.L. Dani**[6], where the Supreme Court held that no person can be compelled to answer questions that may incriminate them.

The codification of protections against inducement, threat, or promise under Section 23 strengthens the evidentiary reliability of confessions. This provision mirrors the reasoning in **Kehar Singh v. State (Delhi Administration)**[7], where the court emphasized the need for confessions to be free from external influence.

5.2. Judicial Interpretation and Challenges

Despite statutory clarity, judicial interpretation remains crucial. **In State of U.P. v. Rajesh Gautam**,[8] the court reiterated that confessions must be evaluated based on the circumstances of their making. The Bharatiya Sakshya Adhiniyam adopts this principle but does not prescribe uniform procedures for assessing voluntariness, leaving room for subjective judicial discretion.

5.3. Dying Declarations and Evidentiary Weight

Section 26 preserves the admissibility of dying declarations, a principle upheld **in Pakala Narayana Swami v. Emperor**[9]. Courts have consistently accepted dying declarations as substantive evidence, provided they are made in a state of impending death and relate directly to the cause of death.

In Laxman v. State of Maharashtra[10], the Supreme Court clarified that the absence of a magistrate does not invalidate a dying declaration if it is otherwise reliable. The Adhiniyam reflects this flexibility but does not introduce additional safeguards, such as mandatory medical certification of the declarant's condition, which could enhance reliability.

5.4. Confessions in Custody and Police Practices

The exclusion of confessions made to police officers unless recorded by a magistrate is a significant reform. However, its effectiveness depends on implementation. **In State of Punjab v. Barkat Ram**[11], the court emphasized the inherent risk of coercion in police custody. The Adhiniyam addresses this by

[6] Nandini Satpathy v. P.L. Dani, AIR 1978 SC 1025 (India).
[7] Kehar Singh v. State (Delhi Admin.), AIR 1988 SC 1883 (India).
[8] State of U.P. v. Rajesh Gautam, (2003) 5 SCC 113 (India).
[9] Pakala Narayana Swami v. Emperor, AIR 1939 PC 47 (India).
[10] Laxman v. State of Maharashtra, (2002) 6 SCC 710 (India).
[11] State of Punjab v. Barkat Ram, AIR 1962 SC 276 (India).

requiring judicial recording, but does not mandate audio-visual documentation, which could prevent disputes over voluntariness.

In Selvi v. State of Karnataka[5], the court held that involuntary techniques like narco-analysis violate the right against self-incrimination. The Adhiniyam codifies protections against coercion but does not extend to procedural rights such as access to counsel, which are standard in jurisdictions like the US and UK.

5.5. Evidentiary Value and Judicial Caution

Indian courts have traditionally exercised caution in relying solely on confessions for conviction. In **Sharad Birdhichand Sarda v. State of Maharashtra**[12], the Supreme Court laid down the "five golden principles" for circumstantial evidence, emphasizing the need for corroboration and consistency.

The Bharatiya Sakshya Adhiniyam does not alter this judicial approach but reinforces the need for careful evaluation. Confessions, especially extra-judicial ones, must be supported by other evidence to ensure fairness and prevent miscarriage of justice.

5.6. Ambiguities and Areas for Reform

While the Adhiniyam introduces clarity, certain ambiguities persist:

- Definition of Voluntariness: The law does not define specific indicators of voluntariness, leaving interpretation to judicial discretion.
- Procedural Gaps: Lack of mandatory legal representation and technological safeguards during confession recording.
- Uniform Standards: No centralized protocol for magistrates to assess and record confessions, leading to procedural inconsistencies.

These gaps could be addressed through subordinate legislation or judicial guidelines to ensure uniformity and protect rights.

5.7. Impact on Criminal Justice

The new framework has the potential to enhance the integrity of criminal trials by ensuring that confessions are reliable and rights compliant. However, its success depends on judicial training,

[12] Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 (India).

infrastructure, and consistent enforcement. The judiciary must interpret the provisions in light of constitutional values and international standards to prevent misuse and uphold justice.

The Bharatiya Sakshya Adhiniyam, 2023 represents a progressive step toward aligning Indian evidence law with global best practices. Its emphasis on judicial oversight and voluntariness reflects a rights-based approach. However, further reforms are needed to institutionalize procedural safeguards and ensure consistent enforcement across jurisdictions.

Conclusion and Suggestions:

The Bharatiya Sakshya Adhiniyam, 2023[1] represents a pivotal reform in India's evidentiary framework, particularly in its treatment of confessions. By codifying judicial safeguards, excluding police confessions unless recorded by a magistrate, and reinforcing the principle of voluntariness, the Adhiniyam aligns itself with constitutional protections and evolving jurisprudence. These changes reflect a deliberate shift toward a rights-based approach, striking a balance between the protection of individual liberties and the requirement for efficient law enforcement.

The analysis reveals that while the statutory provisions are progressive, their practical implementation remains contingent on procedural consistency, judicial training, and infrastructural support. The absence of mandatory legal representation during interrogation and lack of technological safeguards such as audio-visual recording of confessions are notable gaps. These procedural enhancements, if adopted, could significantly strengthen the reliability and admissibility of confessions.

Comparative insights from jurisdictions like the UK and the US highlight the importance of structured interrogation protocols, formal rights notification, and independent oversight. India's legal system, while moving in the right direction, must institutionalize these safeguards to ensure uniformity and prevent misuse. Judicial interpretation will play a critical role in shaping the application of the new provisions. Courts must continue to exercise caution, especially with extra-judicial confessions, and insist on corroboration to uphold the integrity of criminal trials. The evidentiary value of dying declarations must also be assessed with procedural rigor to prevent wrongful convictions.

In conclusion, the Bharatiya Sakshya Adhiniyam, 2023 lays a strong foundation for reforming confession law in India. To fully realize its potential, further legislative refinement and procedural innovation are essential. These steps will ensure that the law protects the rights and dignity of people in addition to serving the purposes of justice to every individual subjected to the criminal process.

References:

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4. *International Covenant on Civil and Political Rights art. 14, Dec. 16, 1966, 999 U.N.T.S. 171.*
5. *Selvi v. State of Karnataka*, (2010) 7 SCC 263 (India).
6. *Nandini Satpathy v. P.L. Dani, AIR 1978 SC 1025 (India).*
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