



INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 5 | Issue 3 | 2026

Art. 31

The Confession Conundrum: Doctrine analysis on Code of Criminal Procedure Section 164 (183 BNSS)- Boon or Bane towards Criminal Justice System

Dr. P. G. Sunanda Bhagavathy

Professor,

Karunya Institute of Technology and Sciences (Deemed), Coimbatore

Atul Raj

Assistant Professor,

Harsha Institute of Management Studies, Bengaluru

E. Atchaya

Research Scholar,

Karunya Institute of Technology and Sciences (Deemed), Coimbatore

Recommended Citation

Dr. P. G. Sunanda Bhagavathy, Atul Raj & E. Atchaya, *The Confession Conundrum: Doctrine analysis on Code of Criminal Procedure Section 164 (183 BNSS)- Boon or Bane towards Criminal Justice System*, 5 IJHRLR 447-456 (2026).

Available at www.humanrightlawreview.in/current-issues/.

This Article is brought to you for free and open access by the International Journal of Human Rights Law Review by an authorized Lex Assisto & Co. administrator.

For more information,

please contact humanrightlawreview@gmail.com

The Confession Conundrum: Doctrine analysis on Code of Criminal Procedure Section 164 (183 BNSS)- Boon or Bane towards Criminal Justice System

ABSTRACT

The lack of definition of the term 'confession' in the Indian Evidence Act of 1872 (Bharatiya Sakshya Adhiniyam, 2023) is indeed an affair of grave concern, where it cannot be treated as a legal loophole. It can be considered an intelligent approach taken by the judiciary, keeping in mind the need to leave a little scope within the process of judicial interpretation. In contrast, when assessing the contents of Section 164 of Code of Criminal Procedure (183 Bharatiya Nagarik Suraksha Sanhita, 2023), 1973, it must be said that the responsibility of conducting an honest investigation shall guarantee a just outcome. Under this section, it becomes feasible for the Magistrates to record the confessions of the accused and the key witnesses involved in the process of investigation. Despite the complete dependence of the police on this provision, there are certain obstacles that arise in the process of implementation. Sometimes, the inadequacies of technology, the mechanical method of recording, and excessive pressure applied to the accused before taking him to the court may spoil the whole procedure. Besides the differences, the withdrawal of statements by the confessing/witnessing individual prior to his appearance in the court raises doubts. The purpose of the current article is to analyze the pros and cons of the CrPC 164 (183 BNSS) section statement recorded in criminal cases and how it stands with justice.

KEYWORDS

164 CrPC (183 BNSS), Confession, Voluntariness, Retraction, Evidentiary Value.

1. INTRODUCTION

The Code of Criminal Procedure 1973 acts as the foundational stone of the process of criminal procedure in India, where the most important but highly contentious section of the Code is Section 164 (183 BNSS). This provision gives the magistrate with the authority to make records of confession and statement before trial. Although, in one sense, the provision is said to be the protection provided by the Constitution against torture and coercion by law enforcement officials, yet more often

than not, the provision tends to serve as an alibi to mechanical procedure. One of the inherent difficulties which would arise in any discussion relating to Section 164 (183 BNSS) is that there is no statutory definition of the term "confession" as used under the Indian Evidence Act, 1872 (Bharatiya Sakshya Adhiniyam, 2023).¹ In contrast to the approach adopted by other common law jurisdictions, there has been no attempt made to provide a definition of the term "confession" and distinguish it from an admission in the Indian context.² The failure of the court to make any effort in providing such definitions should not be viewed as an oversight by the legislature but as an intentional act taken by the judiciary. One of the best examples in this regard is the definition provided by the Privy Council in *Pakala Narayana Swami vs. King Emperor*.³

Several cases have been affected adversely by numerous retractions. One of the most sorrowful occasions in which such an event took place is that of the *Best Bakery case*.⁴ After the rioting in Gujarat in the year 2002, a number of witnesses made their statements under Section 164 (183 BNSS) of the Criminal Procedure Code. However, at the trial stage, almost all witnesses withdrew their statement application alleging that they were forced to make the statement by the police. In consequence of this, all the accused were acquitted by the trial court and there was no option left but to accept the situation, keeping in view the factual scenario.⁵ The underlying principle of CrPC Section 164 (183 BNSS) was stated by Justice V.R. Krishna Iyer that a "confession must reflect a mind unburdened by fear or persuasion or inducement."⁶ The study paper will revolve around this judicial philosophy.

2. LITERATURE REVIEWED

This provides a review of the existing literature on Section 164 CrPC (183 BNSS). More of the scholarly works have been done regarding the role of the judicial control in criminal investigation but there is a need to safeguard the rights of the detainees and the flaws in the system which threatens these rights.

2.1 Boon - Structural Safeguard of Section 164

In reality, existing literature often reiterates that Section 164 CrPC (183 BNSS) which allows the judicial magistrate to record the confessions made by accused and statements of witnesses while conducting the

¹ Ratanlal & Dhirajlal, *The Code of Criminal Procedure* 412-18 (19th ed. 2019).

² Indian Evidence Act sec 17-31 (1872).

³ *Pakala Narayana Swami v. King Emperor*, (1939) 40 Cri LJ 364 (PC).

⁴ *State of Gujarat v. Anirudh Singh*, (2008) 9 SCC 741.

⁵ Id. at ¶ 56.

⁶ *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424, ¶ 22 (Krishna Iyer, J.).

investigation under oath, despite the fact that such magistrate may have no territorial jurisdiction with respect to such matters.⁷ In the link, there are many reasons why it's done. First, taking the record at the early stage of judicial trial allows us to verify or challenge any statements which are being used as evidence in court, as well as protecting the witness from any threats or attempts of manipulation.⁸ Second, recording of such evidence in the court which is consistent with the general trends of the procedural criminal justice practice and development of judicially-based criminal justice system.⁹ Finally, thirdly, it allows resolving such problems as poor or delayed investigation.¹⁰ Evidence found of similar issues involving Indonesian Criminal Procedural Law where the process of detention and pre-trial activities should be carried out based on the rule of law, which is essential for judges to make sure that human rights are safeguarded in the process of investigation.¹¹ Judicial recording of the statement is critical in reducing the likelihood of informal confession instigated by the police that can then be utilized in court under evidential law procedures.¹²

2.2 Bane - Risks and Misuses

The experience of wide CrPC implementation shows that it is prone to many cases of arbitrary use of pretrial discretion and even custody torture if there is no control from the judiciary in place. There is a high possibility of the same with respect to CrPC Section 164 (183 BNSS) statements since their protection is also likely to be only on paper.¹³ However, despite the structural strengths of the system, procedural deficiencies, such as lack of explanation regarding the reasons behind the measures taken during the investigations, compromise the actual implementation of rights. Comparative studies in the Russian criminal process highlight the need for reforms in the investigative procedure rules, especially Article 164, which will promote understanding of the

⁷ M. Khan, Use of the Statement Recorded Under Section 164 of Code of Criminal Procedure With Reference to Article 145 of the Qanun-E-Shahadat Order 1982, 2020, at 3, <https://doi.org/10.2139/ssrn.3622913>.

⁸ Id. at 5.

⁹ Gani Hamaminata, Perkembangan Sistem Peradilan Pidana Di Indonesia, 2 JURNAL HUKUM, POLITIK DAN ILMU SOSIAL 4 (2023); see also Md. Josim Uddin & M. Shameem, Judicial Interpretation of Section 167 of the CrPC, Rights of Detainee and Police Procedure in Bangladesh, 13 INT'L J. RES. & SCI. INNOVATION 5 (2026).

¹⁰ Sumia Azhar et al., Criminal Procedure Code in Pakistan: Evaluating the Process and Challenges in Investigating Crimes, 3 CRITICAL REV. SOC. SCI. STUD. 12 (2025).

¹¹ Ana Maryana et al., Protection of Human Rights Against Criminal Offenders in Detention Process, 1 JURNAL RUANG HUKUM 8 (2022).

¹² Khan, supra note 8, at 6.

¹³ Uddin & Shameem, supra note 10, at 8.

rights and reasoning behind the measures taken by the participants.¹⁴ Furthermore, the frequent reliance on testimony in the absence of appropriate legal advice and protection can add up to the already numerous disadvantages of the structurally uneven criminal justice system.¹⁵ Cumulative disadvantage literature highlights that the existing inequalities during the earlier stages of criminal processes will be compounded and have disproportionate impacts on marginalized groups.¹⁶

2.3 Protection of Rights of Detainee

Regarding the protection for the detainees, it is clear that although CrPC Section 164 (183 BNSS) gives better protection for the detainees, it will only be done in the context of the interpretation of the law by the courts.¹⁷ Further, the requirement of CrPC Section 164 (183 BNSS) that a confession or any statement has to be made in front of the magistrate and not in front of the police officer handles the issue of torture or abuse of the detainees at the investigative stage.¹⁸ There are several key factors in pre-trial detention which ought to be considered so as to ensure no violation of freedom arises.¹⁹ In this regard, CrPC Section 164 (183 BNSS) fits into this framework due to the involvement of the judge in the investigation process.

2.4 Research Gap

The existing literature, while recognizing the duality of CrPC Section 164 (183 BNSS) as being something that can work both to protect and endanger the individual in question, fails to provide an analysis of how CrPC Section 164 (183 BNSS) operates in the Indian technology context, more issues related to the use of videotapes and retraction in cases like

¹⁴ Aleksandr I. Bayanov, *Explanation of the Purpose of the Investigative Action by the Participants of the Criminal Proceedings Is a Necessary Condition of Realization of Their Rights and Legal Interests* (Dec. 2017), St. Petersburg State University, <https://dspace.spbu.ru/items/12b577c2-76fd-4d17-88e0-44d60707b085>

¹⁵ Armando Lara-Millan & Nicholas Cleve, *Interorganizational Utility of Welfare Stigma in the Criminal Justice System*, 55 *CRIMINOLOGY* 12 (2017); see also Maretha Engelbrecht & Marelize Schoeman, *Majority in Numbers, Minority in Justice: A Critical Reflection on Penal Discrimination in South Africa*, 14 *INT'L J. CRIME JUST. & SOC. DEMOCRACY* 8 (2025).

¹⁶ Megan C. Kurlychek & B. Johnson, *Cumulative Disadvantage in the American Criminal Justice System*, 2 *ANN. REV. CRIMINOLOGY* 15 (2019).

¹⁷ Uddin & Shameem, *supra* note 10, at 10.

¹⁸ *Id.* at 11.

¹⁹ See Marija Pleić, *Procedural Rights of Suspects and Accused Persons During Pre-Trial Detention*, in *EU 2020 – LESSONS FROM THE PAST AND SOLUTIONS FOR THE FUTURE* 8 (2020); see also *Concerning Detention of Persons in Criminal Proceedings: The Practice of the European Court of Human Rights*, 2020, at 35, <https://doi.org/10.26565/2075-1834-2020-29-35>.

that of Best Bakery.

3. RESEARCH METHODOLOGY

This study adopts a purely doctrinal and analytical approach meaning I have relied on existing legal sources rather than conducting fieldwork or surveys. The core of the research revolves around a close reading of the Code of Criminal Procedure, 1973, particularly Section 164 (183 BNSS), along with relevant provisions of the Indian Evidence Act, 1872. To understand how courts have shaped the interpretation of this provision, I have examined landmark judicial pronouncements that deal with voluntariness, retraction of confessions, and the role of magistrates.

4. RESEARCH OBJECTIVES

This study aims to:

1. examine the legal framework and safeguards of Section 164 CrPC (183 BNSS)
2. analyze the higher evidentiary credibility of statements recorded thereunder compared to police statements.
3. evaluate its role as a safeguard against custodial torture and police coercion
4. assess its utility in corroboration and contradiction under the Indian Evidence Act, 1872 (Bharatiya Sakshya Adhinyam, 2023).

5. LEGAL FRAMEWORK

Under Section 164 of CrPC (183 BNSS), every metropolitan or judicial magistrate has the authority to record the confession or statement of the accused person during an investigation.²⁰ While sub-section (1) provides the authority to the magistrate for recording the confession or statement, sub-section (2) mandates that such confession must be recorded only after informing the accused that he is not under any compulsion to give any confession, which may be used as evidence against him.²¹

Section 164 (183 BNSS) categorizes the confessions or statements as follows:

1. Confession of the accused person, which requires certain formalities like allowing the accused a period of cooling off before

²⁰ Cr.P.C. § 164(1) (1973).

²¹ Cr.P.C. § 164(2) (1973).

presenting him to the magistrate by keeping him in judicial custody.

2. Statement of the witness or victim, which does not require any formalities similar to those mentioned above.

The clause differentiates between two kinds of statements: *confessions* of the accused and *statements* of witnesses/victims. Confessions call for additional precautions to be observed for instance, a mandatory “cooling-off” period, during which the accused individual is detained until he/she appears before a magistrate.²² The magistrate will verify whether the confession is voluntary, documented as a question-answer sequence, and signed by the accused after reading the same.²³

6. BOON - SECTION 164 (183 BNSS)

6.1 Evidentiary Strength

It would be extremely important from the judicial point of view to have a statement made by the accused before the magistrate rather than a police statement made pursuant to Section 161 of CrPC (180 BNSS).²⁴ This is because, in the former case, the statement is made in the presence of a judicially neutral person, ensuring thereby that no pressure was put on the accused to make that statement.²⁵

6.2 Protection against police abuse

However, the primary application of Section 164 (183 BNSS) lies in using it to protect against custodial torture. In the matter of *D.K. Basu v. State of West Bengal*, it was held that custodial torture constituted one of the most heinous forms of violations of the inviolable integrity of the human body.²⁶ Through Section 164, there is a definite method of obtaining statements where such statements are made without any outside coercion imposed by the police.²⁷

7. BANE - SECTION 164 (183 BNSS)

7.1 Possibility of Coercion before recording

Nevertheless, the major limitation of this chapter is that the provisions protect against coercions only at the time of recording but not at the time of recording. Coercions could be experienced by the accused during their

²² *Babubhai Udesinh Parmar v. State of Gujarat*, (2006) 12 SCC 268.

²³ Cr.P.C. § 164(3) (1973).

²⁴ *State of Maharashtra v. Damu*, (2000) 6 SCC 269.

²⁵ See *Sarkar*, supra note 23, at 1258.

²⁶ *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416, ¶ 35.

²⁷ *Id.*

custody with police officers prior to their production before the magistrate.²⁸ At the time when they are presented to the magistrate, they will definitely be threatened in some manner. However, it would be hard for the magistrates to recognize such an intimidating environment because they lack forensic skills and time.²⁹

7.2 Confessions to Retraction

Confessions taken according to Section 164 (183 BNSS) are considered legally valid; nevertheless, in trial, the accused will likely retract the confession on grounds of threats and forceful inducement.³⁰ Here, the duty falls on the prosecutor to provide the recording magistrate as the witness in voluntary confessions, which is a tedious process that might not be fully accepted by the trial judge. The act of retraction has become quite routine that confessions done under Section 164 (183 BNSS) are seen by some prosecuting attorneys as being unreliable.³¹

7.3 Mechanical Recording by Magistrate

Apart from the earlier observations by the judges, there have been certain other observations regarding the practice known as “mechanical recording.” The point to be noted here is that what takes place in such instances is that the magistrate, in mechanical fashion, only repeats the questions without asking any question related to the required facts at all.³² The practice of mechanical recording has been condemned by the Supreme Court of India in the case of *Alakh Alok Srivastava vs. Union of India*.³³

7.4 Delay and Procedural Lapses

The delayed submission of the accused before the magistrates, absence of cooling-off period, and inaccurate way of recording reduce the evidentiary weight of the statements made under Section 164 (183 BNSS).³⁴ If there is any procedural flaw in the process of recording a statement, then it will be deemed as inadmissible evidence in judicial

²⁸ Asian Centre for Human Rights, *Torture in India 2023: Annual Report* 45-52 (2024).

²⁹ *Alakh Alok Srivastava*, (2018) 4 SCC 602, ¶ 28.

³⁰ Law Commission of India, 185th Report on Review of the Indian Evidence Act 78-82 (2003).

³¹ K. Chockalingam, *Evidentiary Value of Retracted Confession*, 4 J. Indian L. Inst. 101, 105-08 (1962).

³² *Alakh Alok Srivastava*, (2018) 4 SCC 602, ¶ 32.

³³ *Id.* at ¶ 35.

³⁴ *Nazir Ahmad*, (1936) 37 Cri LJ 897.

proceedings, and it would amount to wastage of resources.³⁵

8. JUDICIAL INTERPRETATION

Voluntariness is considered the test as to when evidence can be allowed in terms of Section 164 (183 BNSS) of CrPC, as determined by the Indian courts. According to the case of "Nazir Ahmad v. King Emperor", it was determined that in case of non-compliance with the terms provided under Section 164 (183 BNSS), the confession becomes inadmissible regardless of the fact that it was indeed a genuine one.³⁶ The court reiterated in "State of U.P. v. Singhara Singh" that Section 164 (183 BNSS) is mandatory and not just a directory³⁷. In the case of *Babubhai Udesinh Parmar v. State of Gujarat*, the following standards have been laid down to judge the question of voluntariness: adequate time for consideration, warning the accused about the consequences, injury, and behavior of the accused.³⁸

The Supreme Court in *State of Gujarat v. Anirudh Singh* held that a retraction does not automatically invalidate the value of evidence because the court is supposed to take into consideration the motive behind the retraction and the circumstances under which the statement was made.³⁹ The Court even took it one step further to say that those witnesses who retract their statements without justifiable causes can be prosecuted for perjury.⁴⁰ The idea of Justice Krishna Iyer lives on, as he made sure in *Nandini Satpathy v. P.L. Dani* that the privilege against self-incrimination extends beyond custody by saying, "A confession, to be worthy of acceptance, must be the product of a free and informed mind."⁴¹

9. SUGGESTIONS AND REFORM

Considering the above discussion, the following reforms have been proposed in this research paper:

First, the CrPC Section 164 (183 BNSS) should be amended in such a manner that "video recording" must be made compulsory for taking the confession or statement of witnesses and non-compliance to do so would make them presumptively inadmissible in accordance with the

³⁵ Ratanlal & Dhirajlal, supra note 2, at 416.

³⁶ Nazir Ahmad, (1936) 37 Cri LJ 897.

³⁷ Singhara Singh, AIR 1964 SC 358.

³⁸ Babubhai Udesinh Parmar, (2006) 12 SCC 268.

³⁹ State of Gujarat v. Anirudh Singh, (2008) 9 SCC 741, ¶ 58.

⁴⁰ Id. at ¶ 60.

⁴¹ Nandini Satpathy, (1978) 2 SCC 424, ¶ 22.

suggestion of the 185th Report of the Law Commission.⁴²

Second, there is a requirement of budgetary provisions for the e-Courts initiative to ensure the availability of video recording facilities in every magistrate court of India.⁴³

Third, mandatory training on how to spot coercion, conduct voluntariness checks, and operate recording equipment must be provided at regular intervals of every two years.

Fourthly, the Witness Protection Scheme 2018 must be put into effect across the country as a solution to the issue of retractions raised by the Best Bakery case. Threatened witnesses will never give consistent statements.⁴⁴

10. CONCLUSION

Therefore, Section 164 (183 BNSS) of the CrPC stands at the crossroads. What started as a protection against custodial coercion has now degenerated into nothing more than a formality. Due to the lack of legislation defining the term "confession," there have been uncertainties for decades within the courts. The act of retractions, as seen in the case of Best Bakery, has eroded trust in the criminal justice system. It cannot be said with absolute certainty whether the clause is beneficial or not. In fact, it all boils down to how the procedure is understood by the magistrate.

Justice Krishna Iyer stated, "A confession should emanate from a free and enlightened mind."⁴⁵ By the year 2026, the issue of whether a confession was voluntary would be unanswerable based on paper documents alone. Video documentation, when well-financed and well-enforced, may provide magistrates with an understanding of what the paper is attempting to conceal. Witness protection may prevent truth from bowing down under threats. Proper legal wording could end the centuries-old confusion within courtrooms. We have the choice to let Section 164 (183 BNSS) remain merely an anachronistic footnote or transform it into a beacon of respect for the law. The latter choice would serve justice. "The recording of confessions and statements must be in strict adherence to procedural safeguards, for they are the bulwark

⁴² Law Commission of India, 185th Report, *supra* note 40, at 112.

⁴³ e-Committee, *supra* note 55, at 50.

⁴⁴ Witness Protection Scheme, 2018, Ministry of Home Affairs, Govt. of India.

⁴⁵ Nandini Satpathy, (1978) 2 SCC 424, ¶ 22.

against violation of personal liberty and human dignity.”⁴⁶

⁴⁶ As Justice N.V. Ramana observed, procedural safeguards in recording confessions act as a bulwark against violations of personal liberty and human dignity an idea that lies at the very heart of Section 164 CrPC (183 BNSS).