



## **Procuring Confessional Evidence of Criminals, Its Significance As Compared To Forensic, Digital and Other Oral Evidence of Witnesses**

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### **Abstract:**

The work presented in this paper concentrates on the significance of confessional statement of the criminal and particularly how it is procured; using what methodology and tactics. The significance of voluntary confession is more effective evidence in court of law. The question that merely a confessional statement of the accused is sufficient for punishment or it must be coupled, conjoined and amalgamated with other types of evidence such as forensic, digital forensic, documentary or oral evidence tendered by prosecution witnesses. The reasons for voluntary confession must be recorded in writing in court of law. Therefore, confessional statements obtained by torture or other third degree methods by police or investigating agency may jeopardize and endanger the administration of justice. A few third degree methods to obtain the confessional statement are exhibited. Sometimes, innocent persons admit their guilt and are punished in the absence of transparency. However, the significance other types of evidence cannot be ruled out in the presence of confessional statement of the criminal. The paper also presents the analysis of the authenticity of the confessional statement gathered using medication or methods of hypnotism.

**Keywords:** Admissibility of evidence, Forensic Evidence, Digital information, Prosecution.

### **1. Introduction**

The purpose of this paper is to highlight the admissibility and inadmissibility of evidence in court of law, with special emphasis and contrast to forensic, digital evidence, oral evidence by **witnesses before** Police and court. The philosophy of the right and wrong has been fully elaborated in Jurisprudence [11] which forms basis of various legal systems and their operations. The admissibility of evidence

mainly depends on its veracity and reliability. The second important question is how the prosecution can make use of available evidence effectively in the court of law. The present authors have presented a detailed study [1] in the area of 'effective prosecution'. The supporting tools in the effective prosecution [1] are forensic and digital evidence, information contained in the Databases of the criminal Information Systems. The prosecution can only be effective [1], if the

evidence on record is authentic and consistent. The value of digital and forensic evidence in criminal cases cannot be minimized. The digital information is collected by the police or investigating officers has to be used by the prosecutor in the court. This information normally consists of [1] hard disk of computers, mobiles, databases and other sophisticated electronic Medias used by invoking into the networks to commit frauds. The criminals often transfer money into their accounts or fictitious accounts by illegal techniques.

Similarly, the unethical [9] and illegal practices and banking frauds are often committed and observed in banking transactions [1]. In the present time, it has become extremely useful to keep up the information such as and related to Iris, DNA, Fingerprints, modus operandi and facial prints of criminals in the Criminal Data Base System for future verification and retrieval. This requirement has been stressed upon by [2],[3],[4] and [5] giving detailed arguments. For example, the modus operandi in a previously committed offence can thus match to trace out Offenders in present offence during investigation. The biometrics technology plays a pivotal role in this situation.

## 2. Evidence

In this paper, both areas, the civil and criminal cases are under consideration, therefore, all the types of law of evidence shall be applicable such as Oral evidence by witnesses, documentary evidence, direct, secondary, and primary subject to the provisions of Law of Evidence, “Qanun-e-Shahadat” which was introduced and promulgated in Pakistan in 1984. As for as electronic crimes are concerned, there exist the law called prevention of Electronic Crimes Act (PECA)

introduced in 2016; which also prescribes the manner to record evidence and what type of evidence [10]. This paper also considers another type of evidence tendered by the concerned criminal what is called confessional statement, admitting his guilt.

## 3. The Confessional Statement

In the confessional statement the offender admits and acknowledges his offence or legal wrong done. The admission may oral or in writing. The confession has different import, significance and meaning in Criminology, law, Psychology and religion. Often the confessional statement is tendered to claim some credit best known to sinner or offender. According to Law prevailing in USA, the voluntary confession is valid. It is described in [14] that “the distinction between "to do" and "to confess", between having thoughts of love and confessing one's love, between the indetermination of a feeling and its final definition", as a theme that "creeps into the various stories".

According to [15], Confession is basis of mental health and the confession is self-examination and practice of doing honesty with himself. Further, the confession is categorized as judicial confession and confession before police. The judicial confession is made before the magistrate or concerned court of law. It may be recorded by the court during the investigation of the case. The extra-judicial confession may not be as a strong evidence as confession made voluntarily before court. However, the valid confession is made with a promise or threat to accused. According to the legal provisions of Evidence Act, the confession made before Police by a person shall not be used against him as evidence. According to [17], in Nigeria, the evidence provided by police in a criminal

court is the confessional statement.

### 3.1 Duty of Prosecution

It is the duty of the prosecution to prove the veracity and reliability of the confessional statement. In this report contradictory and conflicting points of controlling crime have been discussed. The amendment have been made in Nigerian Law on confession has been

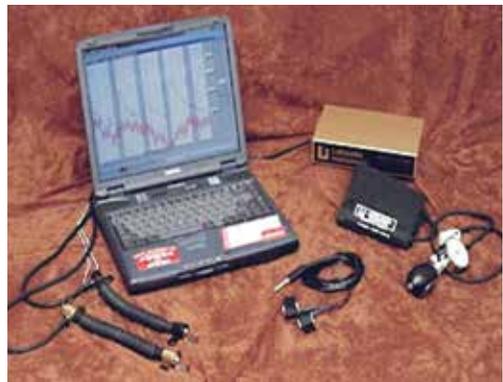


Figure 1: Polygraph Devices for Confession

## 4 Legal Position of Confessional Statement

The confessional statements procured under section 164,364 and 533 of the Criminal Procedure Code have special significance. It is essential that the oral confession in civil cases must be recorded very carefully. The use of different words and phrases may change the meaning of the confessional statement.

made. The issue of confession being admissible or not admissible has been left over to the discretion of the judge. In US court the polygraph test is accepted. The polygraph test is carried out conveniently without torture, as explained at depth in [2], which may indicate whether the accused is telling a lie. The polygraph test can only be reliable if an expert technician is conducting it.



Therefore, a lot of care is required, for example, the while recording the confessional statement the court must sent the Police outside court room and order to remove the handcuff (Lahore High Court Rules & Orders Vol. III, Chap. XIII). The judges must tell the accused that there is no binding on him to tender the confessional statement. This rule of law has been reported in (DB) PLD 1958 Lahore 559 and also in PLD 1987 FSC 43. According to these rules, it is mandatory for

the Magistrate to ascertain and record that the accused has made the confession voluntarily as per injunction of the rule 1975 P.Cr. LJ 889. Further, the judicial confession recorded shall be ruled out not being consistent with High Court Ruling (Chap. 13 Vol. III and NLR 1987 Cr. 831).

### 5. Procuring Confessional Statement When the Accused is Under Intoxication

It is improper to record the Confessional Statement when the accused is served with intoxication material, which may hamper the physical and mental control on what is being said. The effect of alcohol are particularly worth mentioning. The alcohol apart from being poison shows the effects such as problems in breathing, vomiting, low body

temperature, Seizures and especially it creates Confusion. It reduces the testimonial capacity and adversely affects the faculty of mind concerned with intelligence and truthfulness. The accused may be in the state of half sleep and the speech may be irrelevant.

In India, a drug is used which is prepared from wild Cannabis Indica having narcotics effect, which can be smoked or chewed and also named as “Hasheesh”. A drink in water or milk is also used made for intoxication. The person taking it in the form of smoke or drink loses in control on mental faculties related to wisdom, which is temporarily hampered. Under such condition the person talks freely, even about his secrets. Therefore, sometimes this method is used for obtaining confessional statement or for the purpose of knowing facts of the case, by Police.

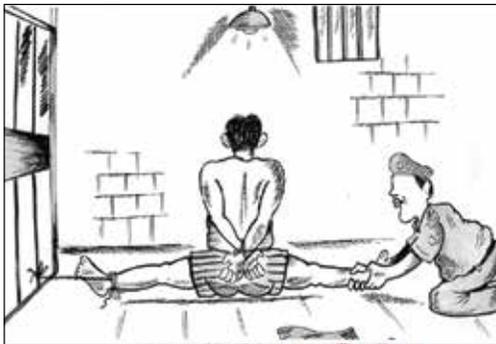


Figure 2: Police Tactics for Confession

## 6. Police Tactics to Procure Confessional Statement

Police employs various techniques [16] and third degree methods to procure the confessional statement. The degree of torture varies from situation to situation. The most notorious practices are the burning of abdomen and parts of the body and skin, hanging in inverted position for longer intervals of times, breaking bones and using red hot steel rods to burn the hands and feet. Apart from physical torture and intoxication, the Police also use other methods of investigation while the accused is under the custody, such as the Reid Technique, isolation, maximization, minimization, asking informal questioning and also lying.

## 7. Reid Technique

According to [19], the Reid technique consists of interviewing and arguing with the accused by two officers at a cup of tea. It is effective in the criminal cases. One playing “bad cop” and the other “good cop” and the session of questioning continues until the accused confesses his guilt. In the maximization technique the person interrogating the suspect begins with the assumption that the accused is guilty. In another method the accused is kept away from family and friends in isolation.

## 8. Hypnotic Technique

There are several techniques available in literature but [23] gives explanation 31 Techniques to create hypnotic induction. A few of these are simple such as Eye Cues & eye contact, Arm “Levitation” Technique, Relaxation technique, Handshake technique, Visualization. Some images such as specially designed spirals pictures and other model are shown to the person being hypnotized and asked to visualize the situation. In recent years, this science is being extensively applied to

cure people from addiction, fears, to change habit, cognitive behavior or pain management using relaxation method.

## 9. Hypnosis and its Applications in Criminology

The offender’s conviction or exoneration mainly depends upon the evidence other than that of hypnosis report. The report of hypnotist is supportive evidence. The hypnosis or mesmerism or hypnotism takes a person into state of consciousness, oblivion or sleep and the power of voluntary action is temporarily withheld but the person gives response to the commands of hypnotist. It is 200 years old psycho-technique. It is normally used to unfold the forgotten memory. People under the effect of hypnotic effect are regressed [20]. It is frequently used in criminology and crime investigations. In [21] its uses in Psychology have described to study the focused attention of mind. The discipline of hypnosis sometimes is termed as Abnormal Psychology or imaginative field or enactment. The procedure of hypnotizing a person is called art of mentalism or hypnotherapy. The hypnotism is applied to areas of music, stage performance and most importantly in crime investigations. Why hypnosis is useful in Criminology, crime detection and investigation because the hypnotized person speaks out all the information automatically without caring or being concerned with people sitting around him. This characteristic makes the discipline useful for crime investigations and procuring confession of criminal.

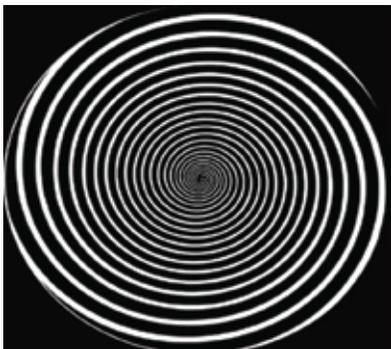
Another characteristic of the hypnosis is the hypnotic induction, which makes it attractive for field of criminology. It is a technique to put the subject into a state called hypnotic trance. This is how the confessional submissions come out the mind of accused. The Braid’s eye fixation method is most influential.

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## 10. FBA Uses of Hypnotic Techniques

The Federal Bureau of Investigation (FBI) is using the hypnosis in crime investigation. In important criminal cases, the police, psychiatrists, physicians and lawyers separately conduct sessions of hypnosis induction to make the criminals confess. However, this is done without prejudice to the task of the investigating officers, which proceeds independently. The hypnotic induction works successfully on criminal involved cases such as bank robbery, rape and murder etc. The witnesses to offence may also be sometimes allowed to question during hypnotic session.

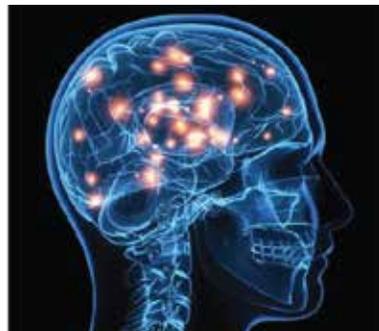
The hypnotist must have adequate training of hypnosis, knowledge of human behavior and medicine. While using hypnosis the Federal Bureau of Investigation (FBI) follows the rule of the government (Department of Justice) strictly for selective cases. The coordinators of hypnotists are trained personnel. The



hypnotists are very well qualified in the requisite area. They also make video tape the whole procedure. The hypnosis is carried out phase wise. The hypnotist himself applies the procedure in the first phase; while in the second phase the witnesses also participate to ask questions from the criminal by mentioning the sight and scene of offence other circumstantial matters. The third phase is concerned with real induction followed by regression. The rate of success in obtaining the confession is 60-70%.

## 11. Forensic Hypnosis

According to [22] hypnosis is extensively being used in the criminal investigation producing positive outcome in various fields of criminology. One of the drawbacks of this method is loss of memory during the hypnotic process. The experimental results on patients are reported in [22]. The important issue is how much of outcome of hypnosis results are used in court as evidence.



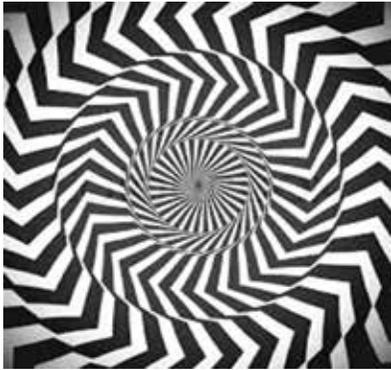


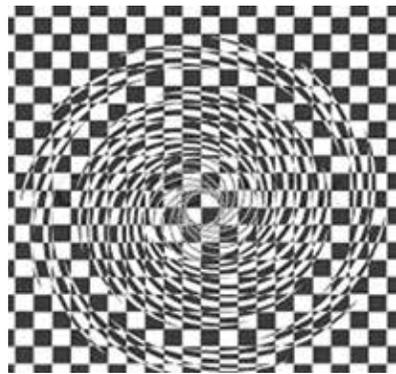
Figure 3: Hypnosis Techniques

## 12. Conclusions

The confessional statement from accused must be procured without using brutal and third degree methods by police. The confession obtained forcefully by these methods and by use of intoxication is not admissible in court. However, hypnosis may be helpful to Police to further probe the matter, in spite of inherent drawbacks of hypnosis such as occasional memory loss and control of person performing hypnosis induction, it produces favorable results. Visualization, relaxation, eye cues and eye contact techniques of hypnosis are effective in criminal investigation and obtaining a confessional statement to support other investigation conducted by Police. Hypnotic approaches strengthen and protect the case witnesses and the victims. Forensic hypnosis technique is used successfully for restoration of memory of the witnesses or victims of serious crime.

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