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Critical Analysis of Section 27 of the Indian Evidence Act 1872

Trivikramaadithya K P^a

^aKLE Society's Law College, Bengaluru, India

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The article discusses discovery statements under section 27 of the Indian Evidence Act, of 1872. Section 27 of the Evidence Act acts as an exception to its preceding three sections and Section 162(1) of the CrPC. This section is based on the doctrine of subsequent confirmation. It lays down that any statement made by an accused in police custody related to the discovery of a fact, the part of that statement that distinctly relates to the discovery, irrespective of whether it was made during a confession or not, will be admissible. Besides discussing all these aspects, the Article also discusses the constitutional validity, the applicability of the section to persons outside police custody, the evidentiary value of the section, and joint disclosure statements. The criticisms and needed recommendations for the section are also included. The paper adopts a doctrinal research methodology to provide a detailed understanding of section 27 of the Indian Evidence Act. The research is based on a secondary data analysis and thus it contains observations from the Books, Statutes, Law Commission reports, and Case laws.

Keywords: *section 27, discovery statements, facts discovered, accused, police custody.*

SECTION 27 IN THE INDIAN EVIDENCE ACT, 1872

“How much of information received from the accused may be proved- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in

the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”¹

INTRODUCTION

Section 27² of the Indian Evidence Act directly starts with the word ‘Provided’ which implies that it is an exception to Section 26³ of the Act. Section 26⁴ lays down that any confession made during police custody is inadmissible in the Court of law. Section 27 acts as a Proviso; thus, the statement made during police custody under Section 27 would be rendered admissible. Section 27 talks about the ‘disclosure’ or ‘discovery statements.’ In general, a discovery statement refers to a piece of information provided by a person to a police officer regarding an object concealed somewhere. But Section 27 defines and construes discovery statements more specifically.

Section 27 says that any statement made by the accused in police custody related to the discovery of an object, the part of the statement exclusively related to the discovery of such object specified will be relevant and admissible in a court of law, provided, the object was ultimately discovered based on such statements. It does not matter whether such statements were told during a confession or not for Section 27. There is a clear mention here that only those parts of the statement which distinctly relate to discovery would be proved and the rest of the part has no admissibility.

This section applies when a person in police custody discloses objects, such as a dead body, a weapon, etc., that are thought to be connected with the crime that he or she has been charged with. It was once disputed whether the section applied only to Section 26, which immediately precedes it, or to Sections 25 and 26, or to Sections 24, 25, and 26. Section 27 is quite unique not just because it is an exception to all these preceding sections, but also because it deals with additional information, whereas the preceding sections only talk about confessions.⁵

¹ Indian Evidence Act 1872, s 27

² *Ibid*

³ Indian Evidence Act 1872, s 26

⁴ *Ibid*

⁵ *Deoman Upadhyaya v State* (1960) SC 1125

Section 5 of the Indian Evidence Act lays down that evidence can be given about the existence or non-existence of a fact in an issue and a relevant fact.⁶ Thus, evidence of the discovery of a fact is not admissible under Section 27, it must be admissible under Section 5 of the Act. An accused's statement that leads to the discovery of a fact is what is admissible under Section 27.⁷

THE RATIONALE BEHIND SECTION 27

Section 25 of the Indian Evidence Act lays down that any confession made to a police officer would be rendered inadmissible.⁸ Section 26 of The Indian Evidence Act says that any confession made during police custody is inadmissible in a court of law.⁹ In these sections, irrelevancy is not the basis for exclusion. To protect criminal defendants from ill-treatment by police, who in their effort to secure a conviction might try to extort a confession, is necessary to protect them from ill-treatment by the police. By making the confession inadmissible in court, the temptation is averted. There are many cases where the ill-treatment has been so extreme as to cause innocent persons to confess themselves guilty of crimes. Thus, confessions made to police officers or while a person was in police custody are generally regarded with suspicion and therefore inadmissible. This logic would not apply to Section 27 as it is based on the theory of confirmation by a subsequent finding of a fact.

The doctrine of confirmation by the subsequent finding of a fact:

Section 27 is based on the doctrine of confirmation by subsequent events, since every part of the statement, made at the instance of the accused in police custody, must be confirmed by an event of discovery, later on, to be admissible at trial.¹⁰

Example: A police officer received a discovery statement from an accused stating where the alleged dead body was hidden. The discovery of the dead body that the accused informed police

⁶ Indian Evidence Act 1872, s 5

⁷ Deoman Upadhyaya (n 5)

⁸ Indian Evidence Act 1872, s 25

⁹ Indian Evidence Act 1872, s 26

¹⁰ *Selvi & Ors v State of Karnataka* [2010] 7 SCC 263

about, confirms that the accused's statement was true and reliable, despite being given to a police officer.

The question is how the accused knew exactly where the object was present. Based on this logic, it can be assumed that the accused was involved in the commission of a crime or knows something about it. An object is found at the same location the accused pinpointed, and the same object being found about which the accused provided information, all lead to confirmation that the discovery statement was true.

In *R v Warickshall*,¹¹ it was held that, whether knowledge of facts is derived from an extorted confession or any other source, the principle concerning confessions does not apply to the admission and rejection of facts. Thus, in this case, the Rule of Confirmation of facts was first established. In the case of *State of Maharashtra v Damu, S/o Gopinath Shinde and Ors.*,¹² the court held that the doctrine of confirmation by subsequent events is a fundamental concept in Section 27 of the Evidence Act. It holds that if a fact is discovered during a search based on information obtained from an accused, then that fact guarantees that the accused's information was accurate. If the information leads to the discovery of a fact, it becomes reliable information, regardless of whether it is confessional or non-inculpatory. The legislature has allowed such statements to be used as evidence by limiting the admissible segment to as minimum as possible.

Therefore, a valid justification for Section 27 will be, whether the confession from which the discovery statement was derived was true or false, the discovery fact will invariably exist in the same way.

SECTION 27 OPERATES AS AN EXCEPTION:

- a) Proviso to Section 26 of The Indian Evidence Act: In *Pakala Narayanaswami's case*,¹³ the Privy Council noted that "Section 27 appears to be intended as a proviso to Section 26".

¹¹ *R v Warickshall* [1783] 1 Leach CC 298, 168 ER 234

¹² *State of Maharashtra v Damu, S/o Gopinath Shinde & Ors* (2000) SC 1691

¹³ *Pakala Narayana Swami v Emperor* (1939) PC 47

It was also decided by the Supreme Court in *Udai Bhan v The State of UP*,¹⁴ that Section 27 is a Proviso to Section 26.

- b) Proviso to Section 25 of the Indian Evidence Act: In *Pulukuri Kottaya v King-Emperor*¹⁵ and *Mohmed Inayatullah v The State of Maharashtra*,¹⁶ it was observed, 'provided that' along with 'whether it amounts to a confession or not' in Section 27 indicates that the Section is an exception to the preceding provisions that is Sections 25 and 26. Both Section 25 and Section 26 have the same spirit and thus Section 27 is a Proviso to both these Sections.
- c) Proviso to Section 24 of The Indian Evidence Act: Confessions caused by inducement, threat, or promise are irrelevant under Section 24.¹⁷ However, the discovery part of the statement should be relevant and admissible, even if the overall statement under Section 24 is irrelevant since it is based on confirmation by the subsequent finding of a fact. This was observed in *Aghnoo Nagesia v the State of Bihar*¹⁸ and *Deoman Upadhyaya v the State*.¹⁹
- d) An exception to Section 162(1) of CrPC: Section 162(1) of the CrPC says that any statement made to the police officer in the course of the investigation will not be used for any purposes.²⁰ A court cannot admit such statements as evidence.

But clause (2) of Section 162 of CrPC lays down that the provisions of Section 162(1) do not apply to any statement falling within clause (1) of Section 32 of the Indian Evidence Act or to Section 27 thereof.²¹ Thus, a discovery statement is an exception to Section 162(1) of CrPC and therefore admissible. Although Sections 24, 25, and 26 of The Indian Evidence Act and Section 162(1) of CrPC exclude the statements given to a Police Officer, a discovery statement under Section 27 of The Indian Evidence Act is an exception to all of them.

¹⁴ *Udai Bhan v The State of UP* (1962) SC 1116

¹⁵ *Pulukuri Kottaya v King Emperor* (1946) PC 67

¹⁶ *Mohmed Inayatullah v The State of Maharashtra* (1975) SC 483

¹⁷ Indian Evidence Act 1872, s 24

¹⁸ *Aghnoo Nagesia v the State of Bihar* (1965) SC 119

¹⁹ *Deoman Upadhyaya* (n 5)

²⁰ Code of Criminal Procedure 1973, s 162(1)

²¹ Code of Criminal Procedure 1973, s 162(2)

USE OF THREAT OR COMPULSION WHILE OBTAINING DISCOVERY STATEMENTS

In *Deoman Upadhyaya v the State*, it was observed that Section 162(2) of the CrPC does not prohibit the use of incriminating statements made by accused persons. However, Article 20(3) of the Indian Constitution prohibits self-incriminating statements obtained by threat.²² A reference to '162(2) of the CrPC' in the judgment implies Section 27 of the Evidence Act since Section 162(2) CrPC specifies Section 27 of the Evidence Act to be an exception. Thus, the court impliedly said that the discovery statement obtained under threat would be inadmissible.

In *State of Bombay v Kathi Kalu*,²³ it was held that the self-incriminating information provided by an accused person without any threat will be admissible in evidence and won't fall under Article 20 (3) provisions because it was not compelled. Therefore, the provisions of Section 27 of the Evidence Act are not prohibited if compulsion has not been used to obtain the information.

Therefore, if the discovery statement is obtained under any threat or compulsion, then Article 20(3) of the Indian Constitution applies. As a result, discovery statements that are obtained by compulsion cannot be proven, since an individual cannot be forced to testify against himself.

ESSENTIALS OF SECTION 27

- The person giving the information must be accused of any offence.
- The accused should be in police custody.
- Information should be about the discovery of a fact.
- Based on the consequences of the accused's information, the fact should be discovered.
- The overall statement can be confessional or non-confessional.
- Those portions of the statement which are 'distinctly' related to the discovery of fact will be permitted to be proven.²⁴

²² Deoman Upadhyaya (n 5)

²³ *State of Bombay v Kathi Kalu* (1961) SC 1808

²⁴ Indian Evidence Act 1872, s 27

THE PERSON GIVING THE INFORMATION MUST BE ACCUSED OF ANY OFFENCE

As used in Section 27, the phrase ‘accused of any offence’ describes the individual concerned, that is, one accused of an offence. A person accused of any offence is the person against whom evidence is sought in a criminal proceeding.²⁵ In Section 27, it is not intended to mean that the information received from a person accused of any offence must be an accused at the time of giving it, but would include a person who becomes an accused at the time the statement is alleged to have been accepted as evidence against him.²⁶

Example: An individual committed murder and immediately went to the police station and made a statement about the murder and the hidden knife. He was not an accused at the time of making such a statement, yet his discovery statement can be used against him.

THE ACCUSED SHOULD BE IN POLICE CUSTODY

On the order of a magistrate, a person may be detained by the police for a period of 15 days. Normally, this is what is considered police custody.²⁷ But for the purpose of Section 27, this restricted, technical interpretation of the word ‘police custody’ holds no good.

It was previously observed that Section 27 is an exception for Section 26 of the Evidence Act. Section 26 of the Evidence Act says that any confession made in police custody would be rendered inadmissible. The question was raised regarding the interpretation of the word police custody in *Lay Maung v Emperor*,²⁸ it was observed that the police will be able to circumvent Section 26 of the Evidence Act very easily if it is interpreted in a technical sense as beginning when the accused is formally arrested. As a consequence, the interpretation would be that as soon as a suspect or accused person is taken into the custody of a police officer, he is no longer at liberty and therefore is deemed in custody within the meaning of Sections 26 and 27 of the Evidence Act.²⁹

²⁵ *State of UP v Deoman Upadhyaya* (1960) SC 1125

²⁶ *State v Memon Mohamad Husain Ismail* (1958) Bom 534

²⁷ Code of Criminal Procedure 1973, s 167(2)

²⁸ *Lay Maung v Emperor* (1923) Rang 173

²⁹ *Paramhansa Jadab and Anr v The State* (1963) Ori 144

In the meaning of Section 27, even indirect control of suspect movement by the police would constitute custody by the police.³⁰ Suppose if the accused gave any information leading to the discovery even before his arrest, to the police officer, it shall be presumed that he was constructively in police custody, and therefore, that information also becomes admissible.³¹

INFORMATION SHOULD BE ABOUT THE DISCOVERY OF A FACT

It becomes crucial to know what exactly the term 'discovery of a fact' means. In most cases, the term 'discovery of a fact' means when a person in police custody produces from a place of concealment an object tied to a crime, such as a dead body, a weapon, or ornaments.³² The term 'discovery of a fact' is not exhaustively defined anywhere. Thus, the question arises whether it is referring to the definition under Section 3 of the Evidence Act or if it is referring only to physical objects. It is important to note that Section 3 of the Evidence Act covers psychological facts or mental conditions that may be recognized, in addition to physical facts and conditions that can be physically perceived.³³

In *Sukhan v Emperor*,³⁴ the restriction was made to the term 'fact' in Section 27 to only apply to material objects. This view was set aside in *Emperor v Ramanuja Ayyangar*,³⁵ and it was held that the word 'fact' as contemplated by Section 27 is not restricted to physical material objects. It means to say that any material thing concerning a place or the locality where the material object is found will also come under the ambit of the term 'fact'.

In *Mohmed Inayatullah v The State of Maharashtra*,³⁶ it was held that the term 'discovery of facts' in Section 27 does not refer only to physical or material facts, but also to mental facts. The reason for including mental facts is that the discovery of facts was ultimately the result of the informant's knowledge of a particular fact at a particular place.³⁷ Therefore, it is the object found,

³⁰ *Pharho Shahwali v Emperor* (1932) Sind 201

³¹ *State of Rajasthan v Vinod Malhotra* (1996) CriLJ 1488

³² Pulukuri Kottaya (n 16)

³³ The Indian Evidence Act 1872, s 3

³⁴ *Sukhan v Emperor* (1929) Lahore 344

³⁵ *Emperor v Ramanuja Ayyangar* (1934) Madras 528

³⁶ *Mohmed Inayatullah* (n 17)

³⁷ *State (NCT of Delhi) v Navjot Sandhu* (2005) SC 3820

the place it is produced, and the knowledge of it by the accused that constitutes a discovery of a fact.³⁸ Thus, for Section 27, the accused should have given a statement or information about any of these or all of these.

Note: A pure and simple mental fact or state of mind that is disassociated from the recovery of the physical object is not considered a discovery of the fact. The Discovery of a plain mental fact is not admissible if there is no discovery of a physical fact. Therefore, a physical object has to be recovered to make the knowledge of the accused, admissible.³⁹

BASED ON THE CONSEQUENCES OF THE ACCUSED'S INFORMATION, THE FACT SHOULD BE DISCOVERED

The 'fact', upon the accused's statement, should and must be discovered. When a 'fact' is discovered as a result of the information provided by the accused, then it lends some assurance that the information is true, and can therefore be admitted to evidence incriminating the accused. Thus, unless the 'fact' is discovered upon the accused's information, his statement becomes inadmissible since it cannot be verified as true.⁴⁰ The 'fact' discovered becomes relevant when it is proved that the 'fact' was used in the commission of the offence or when it is proved that the 'fact' was related to the offence somehow.⁴¹ Only when the 'fact' discovered is proven to be relevant, the discovery statement becomes relevant.⁴² Example: An accused in police custody stated that he will produce the knife concealed in his house. After discovering the knife, if the knife is proven to have been used in the commission of the offence, only then the knife discovered would become relevant, thereby making the discovery statement also relevant.⁴³

All parts of the statement, made at the instance of the accused in police custody, must be confirmed by an event of discovery later on.⁴⁴ This is the sole intention for making the discovery

³⁸ *Ibid*

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ *Mustkeem v State of Rajasthan* (2011) 11 SCC 724

⁴² *Anter Singh v State of Rajasthan* (2004) SC 2865

⁴³ *State (NCT of Delhi)* (n 38)

⁴⁴ *Selvi and Others* (n 10)

statements admissible under Section 27 as there is a subsequent confirmation.⁴⁵ If the fact or the object hidden was known to a person other than the accused, beforehand, then it is quite possible that he would have informed the police regarding the location and place of the hidden fact, thereby the chances of bypassing the intention of Section 27 become likely. Thus, it is a necessity for Section 27 that the fact should be discovered upon the information given by the accused only. For ensuring it, the courts have strictly ruled and interpreted the term 'information received from an accused.'

The 'fact' discovered should not be in an open place:

*Mohmed Inayatullah v The State of Maharashtra:*⁴⁶ According to the charges, in this case, the accused stole three drums of chemicals. They were found in a courtyard that was accessible to the public. Ultimately, they were discovered through the discovery statement of the accused. The court held that in no way does it appear that the accused had any control or occupation over the location where the drums were deposited. Since the location was a courtyard, it, by its very nature, was accessible to all. It draws a possibility that the 'fact' may have been discovered for the first time by somebody else and the accused is possibly innocent. Thus, the discovery statement cannot be conclusive.

*Trimbak v State of Madhya Pradesh:*⁴⁷ In this case, it was observed that it would be difficult to establish that the accused had possession of the object when the place from which the object was recovered was an open place, and accessible to all. Therefore, the fact that the accused recovered the object is compatible with the possibility that another party placed them there and the accused somehow learned about their location. As such, this discovery cannot be viewed as conclusive evidence that the accused had that object in his possession.

⁴⁵ State of Maharashtra (n 12)

⁴⁶ Mohmed Inayatullah (n 17)

⁴⁷ *Trimbak v State of Madhya Pradesh* (1953) SC 39

The 'fact' discovered should not ordinarily be visible to others:

State of Himachal Pradesh v Jeet Singh:⁴⁸ A different view was taken in this case and the previous rulings regarding the discovery of 'facts' in an open place being inadmissible were set aside. The court held that the Indian Evidence Act, Section 27, does not make inadmissible a statement by an accused who recovers the 'fact' from a public place or a place that is easily accessible to others. Places that are open to the public or accessible to others can be used to conceal objects of any kind. As long as the 'fact' is not disinterred, its hidden state remains unaffected. Until someone else discovers where it is, the person who hides it alone knows where it is. Therefore, the key question isn't whether the place was generally accessible to others, but whether it was usually visible to them. Hence, whether or not the concealed place is accessible to others is immaterial.

Nisar Khan alias Guddu and Ors. v State of Uttaranchal:⁴⁹ The accused had hidden the crime weapon on the banks of the river, behind gravel. They were discovered through the accused's statement. The question again was whether such a statement could be considered to be a discovery statement or not as the 'fact' was in a place that was accessible to everyone. The court held that although it was in an accessible place, the place where the accused had hidden, behind the gravel, was peculiar and only known to him. Thus, it can be assured that the 'fact' was discovered for the first time through the accused's information only. Therefore, the court considered it to be a piece of good evidence.

Discovery should result only from the accused's information, not from any other source or person:

Surendra Prasad v State of Bihar:⁵⁰ The court held that a statement made by someone other than the accused leading to the discovery cannot be used as evidence against the accused. The

⁴⁸ *State of Himachal Pradesh v Jeet Singh* (1999) 4 SCC 370

⁴⁹ *Nisar Khan alias Guddu & Ors v State of Uttaranchal* (2006) 9 SCC 386

⁵⁰ *Surendra Prasad v State of Bihar* (1991) CriLJ 2190

statements that are admissible under Section 27 of the Indian Evidence Act are not admissible against anyone else other than the person who made the statement.

Ramakrishnan v State of Kerala:⁵¹ The court, in this case, ruled that the discovery conducted following a disclosure statement made by one of the accused cannot be used against a co-accused.

THE OVERALL STATEMENT CAN BE CONFSSIONAL OR NON-CONFSSIONAL

An accused's discovery statement to a police officer is usually accompanied by a confession, but sometimes it is not. Section 26 of the Evidence Act prohibits the admissibility of confessional statements made by an accused in police custody.⁵² Section 27 of the Indian Evidence Act comes as an exception to section 26 and thus, the discovery part of the confessional statement will be held to be admissible.⁵³

In *Aghnoo Nagesia v the State of Bihar*,⁵⁴ it was observed that, in addition to the actual commission of the crime, confessions may reveal the motive, the preparation, the opportunity, the weapons used, the intention, the concealment of the weapon, etc. In law, it is not permissible to separate parts of a confession and introduce each part as a non-confessional statement in evidence. There is, however, an exception to this rule under Section 27 of the Evidence Act, which allows a discovery statement to be separated from the confession and admitted separately.

Suppose the statement is non-confessional but is made to a police officer in the course of an investigation. It will be hit by section 162(1) of the CrPC and becomes inadmissible.⁵⁵ But, Section 27 is an exception to this provision as well, as section 162(2) of the CrPC clarifies it as such.⁵⁶ Thus, a discovery part of any statement made to a police officer becomes admissible. Therefore,

⁵¹ *Ramakrishnan v State of Kerala* (1987) 1 Ker LT (SN) 21

⁵² Indian Evidence Act 1872, s 26

⁵³ Udai Bhan (n 15)

⁵⁴ *Aghnoo Nagesia* (n 19)

⁵⁵ Code of Criminal Procedure 1973, s 162(1)

⁵⁶ Code of Criminal Procedure 1973, s 162(2)

by employing the words ‘whether it amounts to a confession or not,’ Section 27 of the Evidence Act makes even incriminatory statements given to a police officer admissible in evidence, but only to the extent of the information related to the fact discovered.⁵⁷

THOSE PORTIONS OF THE STATEMENT WHICH ARE ‘DISTINCTLY’ RELATED TO THE DISCOVERY OF FACT WILL BE PERMITTED TO BE PROVEN

A crucial condition of Section 27 is that only that much information as is distinctly connected to the ‘fact’ discovered is allowed to be proved. The remaining information in the discovery statement has to be eliminated completely.⁵⁸ “The word ‘distinctly’ means directly, indubitably, strictly, or unmistakably.” This term refers to the information provided by the accused that directly contributed to the discovery.⁵⁹

The rationale for involving the word ‘distinctly’: Section 27 of the Evidence Act operates behind the principle of subsequent confirmation. When the ‘facts’ are discovered due to information provided by the accused, the information that led to the discovery offers a guarantee of truth for that part and only that part of the information. That part of the information for which the guarantee is being assured is nothing but the information that led to the direct and immediate cause of the discovery. Apart from that specific information, the remaining information provided by the accused has no assurance.⁶⁰ Thus, Section 27 seeks admissibility for only that part of the information which directly relates to the discovery.

The need for specifying the term ‘distinctly’: Without the presence of the word ‘distinctly’, the ban imposed on confessions made by the accused in police custody would have no meaning and purpose. A ban on confession under police custody was imposed in response to legislators' fear that undue pressure could induce someone under the influence of the police to confess. Suppose that the entire wording in the statement of discovery was admissible, it would be quite possible for the police to tack on incriminating elements to it by threatening the accused. Ultimately, the

⁵⁷ State of Himachal Pradesh (n 49)

⁵⁸ Mohmed Inayatullah (n 17)

⁵⁹ *Ibid*

⁶⁰ *Ibid*

police's compelling powers would have proven sufficient enough to overcome the ban in practice.⁶¹

Example: An accused made a statement to the police officer that 'I stabbed the victim with a spear, I hid the spear in a yard in my village. I will show you the place.' The admissible part here will be 'The spear is found to be in a yard in my village. I will show you that place.' Nothing other than these words will be admissible as they are not distinctly related to the 'fact' discovered.⁶²

CONSTITUTIONALITY OF SECTION 27

State of U.P v Deoman Upadhyaya:⁶³

The lower court had acquitted an accused because, at the time of disclosure, the accused was said to be not in police custody. Thus, the matter came before the Apex court as an appeal. The court declared the lower court's view to be an error and held that Section 27 does not establish a formal accusation against the accused at the time of making the discovery statement. Therefore, the accused was in deemed police custody at the time of making the statement, and thus, accordingly, the court in this case convicted the accused. In this same case, the constitutional validity of Section 27 was challenged to be violative of Article 14 of the Constitution. The basis for this challenge was, that Section 27 is discriminatory as it applies only to accused persons under police custody and not to any person outside the police custody.

Through the interpretation of 'deemed custody', Section 27 covers almost every possible manner of giving a discovery statement to a police officer, though it implies only for those who are in actual police custody. One can only imagine exceptional situations where a person may give information without appearing before a police officer, for example, he may have written a letter to the police officer or may have made a telephone conversation with the police officer. Thus, the question would be whether it is sufficient to strike down a complete section of the Evidence

⁶¹ Pulukuri Kottaya (n 16)

⁶² *Ibid*

⁶³ State of UP (n 26)

Act merely because there is a theoretical possibility of some levels of inequality between those in custody and those not in custody.⁶⁴

The court held that the distinction between people in custody and those outside custody cannot be construed as arbitrary. Legislators have made an explicit distinction between these two classes and have enacted separate rules about the admissibility of confessions.⁶⁵ It is not sufficient to hold that there has been attempted discrimination just because the rule of admissibility of evidence does not extend to an unusual group of persons.⁶⁶ It was also observed that the reason, the Legislature might not have included the persons outside the police custody was, probably due to an accidental omission.⁶⁷ If a law makes provision for circumstances where it is most needed, it cannot be struck down merely because it could have been applied to other instances also. Therefore, a mere contention, that the Legislature has not extended the rule or simply because a group of persons are not included, will not make the entire section unconstitutional.⁶⁸ Thus, the court held Section 27 of the Indian Evidence Act to be constitutionally valid. It is also to be noted in this case, Justice Subba Rao gave a dissenting opinion.

DISCOVERY STATEMENTS OF PERSONS NOT IN CUSTODY

As it was held in *State of UP v Deoman Upadhyaya* that the concept of ‘persons outside custody’ is possible to exist but extremely rare. Nevertheless, numerous authorities support the relevance of the ‘persons outside custody’ concept. Section 27 was declared an exception to Section 25 of the Evidence Act by the court in *Chinnaswamy's case*⁶⁹ and *Aghnoo Nagesia's case*.⁷⁰ This implies that Section 27 applies to persons outside custody also, as Section 25 of the Evidence Act does not limit its operation only to police custody.

⁶⁴ *Ibid*

⁶⁵ *Ibid*

⁶⁶ *Ibid*

⁶⁷ *Ibid*

⁶⁸ *Ibid*

⁶⁹ *K Chinnaswamy Reddy v State of Andhra Pradesh* (1962) SC 1788

⁷⁰ *Aghnoo Nagesia* (n 19)

The history behind the drafting of Section 27: Sections 148-150 of the CrPC of 1861 contained provisions now covered by sections 25-27 of the Evidence Act and Section 150 of the CrPC of 1861 related to discovery statements. According to James Stephen, the framer of the Act, section 27 was copied word for word from section 150 of the CrPC of 1861.⁷¹ Section 150 of the CrPC as amended in the year 1869 laid down the provision of discovery statements to the persons outside custody also.⁷² The word 'or' was omitted from Section 150 when it was transferred to Section 27 of the Evidence Act in 1872, making it applicable only to persons within police custody.⁷³ The 185th Law Commission report claims that an accidental omission might have prevented the Legislature from including persons outside of police custody and thus seeks to make necessary changes.⁷⁴ Eminent Jurist Vepa P. Sarathi, however, maintains that the omission was made deliberately and therefore the changes are not needed to be made.⁷⁵

EVIDENTIARY VALUE OF SECTION 27

In *Babboo v the State of Madhya Pradesh*,⁷⁶ it was observed, that there is no probative value attached to recoveries made through a disclosure statement. In the absence of any substantive evidence, recovery would be of no use to the prosecution.

In *Dharam Pal v the State of HP*,⁷⁷ it was held that an accused person's disclosure statement is not a piece of substantive evidence that could be used to convict him, rather it is only a piece of corroborative evidence.

Therefore, a discovery statement alone cannot be held to be the sole basis for the conviction of an accused. Yet, a discovery statement would remain a strong piece of evidence and can be used for corroboration purposes.

⁷¹ Sarkar, *Law of Evidence* (15th edn, 1999) 526

⁷² Law Commission (n 13) 147

⁷³ *Ibid*

⁷⁴ *Ibid*

⁷⁵ *Ibid*

⁷⁶ *Babboo Alias Kalyandas & Ors v State of Madhya Pradesh* (1978) SC 1047

⁷⁷ *Dharam Pal & Anr v State of HP* (2015) CrLJ 4598

JOINT DISCLOSURE STATEMENTS

In *Prem Bahadur Rai v State of Sikkim*,⁷⁸ whether a joint statement attributed to the two accused was admissible in evidence arose. The court held that Section 27 of the Evidence Act does not permit joint statements by more than one accused. However, the discovery statement can be used against the accused who first made the statement, in such cases.

The court also in *Oudh Ram v the State*,⁷⁹ held that Section 27 does not allow multiple accused persons' joint disclosure statements.

In *State (NCT of Delhi) v Navjot Sandhu*,⁸⁰ the court recognized the concept of simultaneous joint disclosure statements. It observed that earlier, there was no concept of simultaneous joint disclosures; thus, discovery statements could be used only against the accused who first made the statement.

The court held that though simultaneous joint disclosures are rare, such disclosure statements do not fall outside the purview of Section 27 entirely. It decided, that in the event the two accused both make their discovery statements almost simultaneously without any interruptions and pinpoint the material object, then their discovery statements can be used equally against them.⁸¹ Generally speaking, unless it is a simultaneous joint disclosure statement, a joint disclosure statement by accused persons cannot be used against both of them. The possibility of contamination of evidence exists in cases of normal joint disclosure statements, which might be the reason for its inadmissibility.

PINPOINTING BY THE ACCUSED

In the event of a discovery statement, the accused normally leads the police officer to the exact location of the hidden object and points it out. This is not an essential criterion to be fulfilled for

⁷⁸ *Prem Bahadur Rai v State of Sikkim* [1977] 1978 CriLJ 945

⁷⁹ *Oudh Ram & Ors v the State* [1982] 1982 CriLJ 1656

⁸⁰ *State (NCT of Delhi)* (n 38)

⁸¹ *Ibid*

Section 27. It still counts as discovering a 'fact' under Section 27 even if the police officer goes to the place described by the accused and discovers the material object without taking him there.⁸²

CRITICISMS

In the landmark case of Pulukuri Kottaya, the court made inadmissible the part of a discovery statement of the accused wherein he confessed to killing and held that only those parts of the discovery statement which distinctly relate to discovery would be admissible,⁸³ as a result, the court took a very sound stance to prevent any kind of tainted evidence from being produced by the police. But in contrast, it also leaves an open loop for an accused to escape easily, and the court needs to blindside itself from seeing such incriminating shreds of evidence. Anyhow, it may be possible to criticize such points theoretically, but in reality, such parts of statements should be excluded from consideration in order to appreciate what goes into proving beyond a reasonable doubt. Furthermore, if a discovery statement that contains a confessional part was introduced into court, even though such confessional portions aren't admissible, Judges might develop preconceived notions as a result.

The provisions of Section 27 do not specify that a police officer must always be accompanied by an independent witness when taking discovery statements. Also, the recovery does not need to be made instantly after the discovery statement is made.⁸⁴ Thus, it implies that there is a risk of police authorities misusing the leniency provided in Section 27 and that this will undermine the credibility of the evidence provided in the discovery statement. The useful purpose really served by Section 27 is shown to be less than what it appears from a mere reading of it. A discovery statement cannot be admitted under Section 27 if an object is recovered from a place that is ordinarily visible to the public or simply because a third party is also aware of the hidden object. Article 20(3) of the Constitution also applies in cases where discovery statements are obtained under compulsion, all of which concludes that the admissibility of discovery statements may be challenged in several ways.

⁸² *Ibid*

⁸³ Pulukuri Kottaya (n 16)

⁸⁴ *Praveen Kumar v State of Karnataka* (2003) 12 SCC 199

LAW COMMISSION'S RECOMMENDATION

The 185th Law Commission report suggests modifying the section in order to clarify it, which is lacking at present. Following its analysis, the Commission recommends redrafting Section 27 as: *“Notwithstanding anything to the contrary contained in sections 24 to 26, when any relevant fact is deposed to as discovered in consequence of information received from a person accused of any offence, whether or not such person is in the custody of a police officer, the fact so discovered may be proved, but not the information, whether it amounts to a confession or not. Provided that facts so discovered by using any threat, coercion, violence or torture shall not be provable.”*⁸⁵

Here in this recommended definition, it is clearly mentioned that Section 27 is an exception to Sections 24, 25, and 26. This definition also includes a person outside of police custody. There is also a proviso attached to Section 27 limiting its admissibility where the facts were discovered from statements made under Section 24 under threat, coercion, violence, or torture.⁸⁶ It can also be noticed that the words “so much of such information” is excluded here in this definition, the reason is, to confine the section to ‘facts’ discovered only, in order to avoid arguments as to how far the words “so much of such information” extend and to prevent the police from violating Sections 25 and 26 indirectly.⁸⁷

CONCLUSION

Among the most significant provisions of the Indian Evidence Act is Section 27, which is said to be the only piece of evidence that is admitted even though it is given to a police officer while in custody. It is admitted for the only reason that it offers a guarantee of truth through subsequent confirmation. For the sake of its purity, the shreds of evidence under Section 27 are always viewed strictly and the credibility of the evidence is always looked into. In spite of many criticisms, its usage in prosecution cases is to be highly admired. Section 27 ultimately ensures that the rights of an accused are balanced with the goal of achieving criminal justice.

⁸⁵ Law Commission (n 13)

⁸⁶ *Ibid*

⁸⁷ *Ibid*