

False Confession and Innocence: An Analytical Study of the Legal Systems Existing Around the World

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Abstract

Primarily, people are convicted for crimes like murder, rape, dacoit, fraud etc., but have you heard of a person being punished for the crimes they did not commit, appalling right? But this is true and happens in almost every country now. Indeed, justice shall always prevail but more often than not it seems that there is miscarriage of justice due to some reasons in which one of the main reasons is "False confessions". This paper elaborately discusses the meaning of false confessions, psychological reasons for admitting to false confessions, people who are vulnerable to police and all the methods used by the interrogators to derive the false confession out of a suspect. The causes of false confession, predominantly, misclassification, coercion and contamination are also deliberated in this paper. A study of false confessions existing in different countries has been taken up to have an unblemished understanding of the ways of dealing with false confessions. The prominent facts and studies have also been reflected in this paper to make it captivating and thought-provoking so that it would highlight how false confessions are making blunder in the way of justice. All the countries are evolving to handle this in a better way so that justice can be served more efficiently. It is crucial to substantially decrease the rate of false confessions as this problem is causing numerous innocent people to be penalized for the crimes they never committed and also justice is not served. The following paper discusses the main reasons behind false confessions around the world. To understand the study of false confessions existing in different countries and their ways of dealing with it. Further to understand whether the increasing documentation of false confessions and the interrogative influences promote them and ultimately lead to the conviction of the innocent?

Keywords: False Confession; Interrogation; Justice; Prosecution; Guilty; Potent Weapon.

Introduction

False confessions are one of the major reasons in the miscarriage of justice these days. Almost every country is facing the problem of a high number of such confessions and it needs to be handled. False confessions are easily taken out of the suspect's mouth because police have many techniques and tricks to do so, also, they make the environment of the interrogation so harsh and enthralling that the suspect is drawn towards it. Interrogators use psychological tricks to make the suspect vulnerable and strike them on their minds, to let their nervousness get the best of them, sometimes they lure them by giving offers like they will reduce their sentence or give them psychological help if they cooperate with them, and by this they leave no choice for the suspect but to do as directed and they make the suspect believe that there is no escape to this but to surrender to the interrogators wishes. Today, almost every country is fighting to eliminate this disease out of the way of justice so that no innocent is convicted.

There are many reasons due to which false confessions are made. Firstly, police may identify the wrong person as a suspect and then interrogate him on that belief. (Kassin, 2014) This happens because sometimes the suspect may match the description of the criminal or his mugshots make police believe that, there are many factors but this is the first mistake police make.

Secondly, they once believe that the suspect has done something they force confession out of him by using severe methods, and also they use psychological tricks like manipulation and all and then they sometimes make aware of some case related facts as well. Thirdly, police contaminate the post admission narrative, it means that not only saying "I did it" is enough after that

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all the details are to be confessed and the police contaminates it by telling facts or making him answer the questions they think might be asked.

Review of Literature

Confessions are the most incriminating and persuasive evidence of guilt that the state can bring against a defendant. A suspect's confession sets in motion a seemingly irrefutable presumption of guilt among justice officials, the media and the public. In this paper, the reasons for false confessions will be explored through an analysis of Psychological Foundations with respect to different countries. The review will draw on research conducted on interrogations in the context of exonerations, misconduct and bad practices in false confessions. In a research Charles Zapata found that a large number of studies have investigated criminal interrogation techniques and the elicitation of confessions, which are controversial topics within law enforcement.¹

In Lauren Morehouse's research, the Norfolk Four case reveals that the police sometimes obtain false confessions from innocent suspects during interrogations. In the case of the Norfolk Four, the police used a number of tactics to elicit the false confessions. Danial Williams explained that the lead detective "treated him like a criminal from the outset, poking him in the chest, yelling in his face, calling him a liar and telling him, falsely, that he'd failed a polygraph test and that a witness saw him go into the [victim's] apartment."² Hence, the findings of this review support the notion that false confessions lead.

Meaning of Confession

A confession is admitting one's fault for being guilty of a crime or agreeing to the fact of doing a crime. Confessions are said to be one of the most important features or part of a case. Confessions make any case more solid and fallible; they also make the case solid against the culprit. It is one of the highly potent weapons with the prosecution to prove someone guilty of a crime. In over a century confessions have played a vital role in controlling crime and therefore spreading peace. Although sometimes they are also the reason for a lot of controversies. It falls under the pattern of whether the confession was voluntary, without any force or anything else like authentic.

Meaning of False Confession

When a confession is taken under coercion or any other physical or mental force then the confession is said to be a false confession. In other words, when the person wrongfully admits the crime which he or she has not committed then the confession is said to be false. Also, there are many reasons behind false confessions, mainly coercion, mental issues, or the person is incompetent to the accused. The confessor is not responsible for the crime he just admitted to be done by him. According to the surveys it is said that juveniles are tested to be higher in number for the false confessions than in significant adults. To fight and maintain the law and order, the jurisprudence has made a set of rules called- the "confession rules" to detect and reject the false plea.

Psychological Foundations for False Confessions

The study behind the psychological foundations of false confessions has been going on for over a century. The research has been going on since the 1980s and the scientists are incessantly working hard to find the psychological reasons behind admitting to the crimes which the person who makes a confession has not done i.e., false confessions. Major focus in this is on the reinforcement and decision making, social influence, obedience etc

Principles of Reinforcement and Decision Making

According to the studies, a person shows behaviour or is more influenced by the consequences of short term rather than the consequences of the long term which are very easily and strategically manipulated by the police investigators after they are trained in that way and hence turning the investigation on their side. After researching hundreds of the investigations it can be seen that the theory of operant conditioning on animals; studies of punishment causes; reinforcement methods etc., have worked. The principles derived from this theory are the behaviour of various people in different places such as schools, hospitals, workplaces and other assisted places or setups. So, it can be said that in the interrogations the police narrate the situation and make the confessor confess in the narrative as if they were the lab rats.

Similarly, through the analysis, it can be concluded to the fact that at the time of interrogation the people tend to choose or decide the ways they see their well-being in and they maximize the possibility of virtuous scenarios in future; in all the constraints they face they ensure their well-being they make the most of the situation they are in.

Social Influence Effects

According to the psychologists, human beings are social beings and they tend to be affected or prejudiced by lots of people and more likely when they are in higher authorities, and so they decide to be in the situation most likely to preserve their well-being. According to Latané, the social model predicts on the account of police investigators- their impact on people who have power, basically an above hand over people and also the number to bear over their suspects.

Fundamentally, the police investigators are trained in a way that they use the social ways as a psychological tool for convincing the people in this they that the confessions gathered by them can be scrutinized from the range of psychological perspective.

Approaches to study False Confessions

Over the years, study has shown that false confessions lead to a whole new direction of the case. There are many possibilities for a person giving false confessions, but mainly there are few questions that arise in our minds. How are the innocent people put under investigation, factors which affect the interrogation risking them to confess falsely, and how does the perception of the police, judge, lawyers affect it.

There are many ways of researching the confessions, there are newspapers, televisions, several documentaries, books, case studies can be used in analysing the false cases other than that various natural methods have also been used to study the tactic of false confession, use of live recording during the interrogation has been done in many countries. Also, the correlations between the suspects characteristics; the vulnerability of the suspect, mental health, compliance of the interrogation and also the suggestions of the police and the suspect are duly considered.

The main problem lies in conducting the meaningful experimentation, as there are many factors that affect it. Also, it is a little hard to depict all the scenarios in exactly the same way without disturbing the ethical standards of the case and covering the minute details of the case. Also, the mock elements were to be eliminated to meet the criteria of the mist realism that can be shown in the experiment. Still for example, there was a case in which the suspects were told to handle the computer and then the computer crashed so they were told to sign the confession saying that the computer crashed by the certain key they were told not to press. All the suspects first resisted but then eventually they were made to sign it. However, in this case it is seen that the computer crash was an accident and still the participants were told to confess falsely although the fault was not theirs. This shows the alleged behaviour of making people confess false by following certain protocols although, the action was not wilful and true as all the participants were innocent but still targeted and made it hard to recognise or measure the confessions rates of true and false confessions.

So, in order to have more clarification in this case the participants were paired with someone while they were to be alone in finding the solution to the problems. Violating the terms of the experimentation, the participants were represented by the confederate(partner) to help them, basically leading to cheating as they were provided assistance. This introduces the similarities between the pairs to find the solution to the problem as they were accused of cheating as they tried to extract the signed confession. This demonstrated two tactics (methods) to derive false confessions mainly by promising leniency in the case and minimization of leniency as well. This has also helped in the study of false confessions by distinguishing the bluffing of the accused from the lies told by the accused. By this method researcher came to the conclusion of this experiment.

Causes of False Confessions

1. The Misclassification Error.
2. The Coercion Error
3. The Contamination Error.

To begin with, there is no specific reason or lucidity for false confessions. All that matters is that there are several factors under which police make the confessor confess false confessions. Certain experiments have shown that mainly the psychological behaviour of a person makes them confess falsely. Police mostly elicit false confessions under influence, persuasions and else depending on the personality traits of the person and its psychological health. It is said that a certain set of people with some certain psychological traits can be pressurized easily to falsely confess. So, if we want to comprehend false confessions, we need to understand how police investigators, investigate with the criminal suspects to derive the confessions from them and the psychological pattern they follow in order to fulfil their sole purpose.

There are mainly three errors for false confessions which are done by the police which may lead to wrong conviction and by which an innocent can be convicted and punished for the things they haven't done. The police classify the wrong person as guilty. Then they accuse them of the crimes done and then the investigation is carried out on false measures also they present false accusations for them to confess. Then sometimes they make false promises or use threats to lead out the investigations and make the suspect confess false. Once they have their hands on the confession, the suspect is pressured for a post admission narrative often led with providing them with the facts of the crime which after then they shape themselves and make the innocent suspect perfectly accused for the crime. They are generally classified into the above methods.

The Misclassification Error

The starting of the false confessions starts from police constraining an innocent as a guilty person and then moulding the case as they please. "The path to false confessions begins, as it must, when police target an innocent suspect.... Once specific suspects are targeted, police interviews and investigation is thereafter guided by the presumption of guilt. After that whether to further investigate or not depends on the police. It all starts from police classifying an innocent as their suspect, this is the first and the most important mistake done by the police in the starting only. If the police did not go to interrogate the innocents in the first place, there would be no false confessions and therefore no false convictions. There are many errors done by the police which leads to errors in the conviction as well, perhaps there must be some part of their training gone wrong.

Innocent persons may be suspected for many other reasons. Sometimes the innocent matches the profile, maybe very close to the scene of crime, or circumstantially connected to the case or maybe there maybe eye witnesses for him, maybe someone falsely identified him from the photos circulated by the police or thought the mugshots that may convince the police that he must be somehow connected to the crime and hence they fall under the radar of doubt. Sometimes maybe the innocent are targeted under various schemes such as motive. This is how police are most likely to identify an innocent as a suspect and then maybe they are led to false confessions and then falsely convicted. If the police do not make this first and very common mistake, then maybe they can save an innocent person going to jail.

The Coercion Error

So, after the innocent person is misclassified as a suspect then the only thing left is a confession and so then the police take the suspect for accusatorial interrogation and force confession out of them. This all happens when there is no more evidence against the suspect, mostly this happens in high profile cases where the police are under a lot of burden to close the case as soon as possible and technically speaking why would there be evidence against an innocent and misclassified suspect. So, no doubt most of the documented false confessions occur in high profile cases.

After this when the suspect is taken under interrogation the policed starts to take out confessions from the suspect's mouth. There are two psychological methods by which coercion on the suspect is applied, first is that police use

psychological techniques which are not against the law or police uses methods that involve making the suspect realise and perceive that he has no other choice but to confess falsely, usually both lead to the same results. Psychological coercive techniques some of the old methods like making the suspect depreciate for common important things like food, water, bathroom usage, sleep etc. but these all are old methods. In the new era, police use other psychological methods that are promising the suspect of leniency in the interrogation otherwise threatens for harsher treatments. These threats are elaborated and stated continuously during the interrogation. According to the documents, false confessions mostly are done under the influence of threats and pressure by the police.

In the second case scenario, the police use other psychological techniques like they put the suspect in an environment where they make them think that they have no other option or choice but to comply with the interrogating officer. There is no specific technique for this type of investigation but the results are the same. If one understands the environment made at the time of investigation, they can easily detect the effect it produces. The environment of the investigation is so stressful and hard that it becomes very unpleasant and hard for the suspect to survive in it. The more stressful and unpleasant the custodial environment becomes the more it is supposed to last and the suspect loses it. They make the suspect perceive that he has no choice but to surrender to the wishes of the investigator as his guilt has been detected and now nobody would believe the theory of his innocence and by delaying and denying the fact that he is guilty will only worsen the situation and he could get into more trouble. Also, they explain them other problems he may avoid by accepting the fact that he is guilty like homosexual rape, being robbed, being exploited in jail etc., so it makes the suspect that he has now no choice left and he is out of options and hence his resultant confession is not voluntary and is then got under coercion.

The Contamination Error

The coercion method of the police is shown on the face of the suspect. But confession is more than just saying "I did it", it consists more of a narration rather than just saying these three words, which the scientist calls as post admission narrative. It is very important to have a full confession by the suspect so after then just saying I did it the suspect tells the whole story of the crime and then turn it into a fully-fledged confession, and the guilt at least reflects on their face. Then the court decides whether the suspect is guilty or not because the look on his face tell a lot about the guilt suffered by him for the crime he committed, but when the suspect has not committed any crime, it makes the confession useless and also the post admission narrative shows how important the confessions are the evidence of guilt on the face and it also impacts the trial as then the conviction of the innocent depends on it. The importance of post admission narrative is known by the police³ and hence they shape the narration and mould it in the way that the suspect admits it and is directly led to conviction. Sometimes they even script it to make it more reliable and believable.

For example, in false confessions the police are used to inventing, making stories so they use things to motivate the suspect. Also they introduce motive on the scenario-based tools to impact the motivation of the suspect. They make the suspect accept the least culpability and make him admit things that are totally inaccurate and false. The interrogators then make the suspect admit to his guilt. Then they make him aware of some case related scenes making the confession more remorse and proving his culpability and so he confesses everything in full conscience. Interrogators try to make the confession voluntary and make everyone believe that he admits all his mistakes and they are mere listeners to the guilty confession of the suspect.

In the case of Lowery vs. County of Riley, who was accused and finally convicted of raping an elderly woman who was then after many years released of the charges on the bases of found DNA samples. The police made him admit to this crime by providing him with the motive that he just found out about the affair of his wife and was promised by the police to be treated for

psychological problems in the prison only if he admitted to committing the crime.

Interrogators create false confession by pressurizing the suspect confessing to false facts and hence contaminating the suspect's post admission narrative. They tell him some facts of the crime and then the suspects know other details of the crime by the media, newspaper, and innocent person will also know the details of the crime. The innocent's post admission narrative is then recited in the confession and when there are new questions asked whose answers are not easy to guess, unless the answers are already narrated to the suspect by the interrogator which happens in most of the false confessions. Only if the confessions are recorded in the audio video tapes then it might be easy to identify that when the interrogator had made the suspect answer the questions and then identify the contamination in the post admission narrative of the suspect.

False Confessions in Israel Legal System

An Israeli Legal System is a western system which is very similar to the United States legal system. They have a lot of laws related to different things including civil law. They don't have a jury but elected judges from the profession under the guidance of the supreme court. The Supreme court there is very accessible and also, they hear all the pleas and they also give all the judgement on state related matters. The confession is stated as 'Queen Evidence' in Israeli legal system.

In the 90's many cases have been proven as wrongful convictions due to the reason of false confession and in these confessions, it was found that the reason behind this was police using unpleasant methods of investigation including physical violence and threats. The Israeli court allows expert testimony in certain cases and does it rarely, such a psychologist can testify on the behalf as to what are the effects of investigation on the minor and they can give the confessions on the general and specific facts of the case. The court can challenge this testimony on the basis of studies, which experts rely on as well. In Israel, unlike the U.S., they don't have a jury because they think they are capable enough to deliver the right decision and they can understand the subject of false confessions better so they don't need any experts, that is why it is rare.

The issue of false confession is being studied by the knowledgeable and successful lawyers and judges in Israel and so they have introduced a system of presenting additional evidence with the confession that will lead to conviction and that evidence should not be something related to the confession but something more.

According to Jewish law a person cannot be convicted for his or her own confession. In order to do justice, there should be two witnesses to the crime. However Israeli law has not adopted this system of conviction or the state of mind.

Baranes vs Israel

Amos Baranes, who spent 8.5 years in jail for the murder of Rachel Heller was then declared not guilty for confessing falsely to the crime. He then filed a case against Israel Legal System and received a compensation of \$350,000 for the time he spent in jail and for the behaviour of police which made him confess falsely.

False Confessions in American Legal System

The American legal system is home to convictions due to false confessions. According to the Innocence Project 25% out of the total confessions turned out to be false. In 1987 the study of false confessions was the third major reason for wrongful conviction in America. The interrogation there starts by giving Miranda warning to the suspect which I guess most of us have heard in American Tv Shows as "*U have a right to remain silent. Anything u say can and will be used against you in the court of law.....*" This warning was unfolded in the landmark case of Miranda VS Arizona.

American legal system allows the interrogator to use sham or bluffs during the investigation, they are also allowed to make use of having false evidence against the suspect leading him to believe his association with the crime.

Research by Kassin and Keichel in 1996 found that false evidence maximizes the possibility of False confession. Another technique used by the interrogator is giving them suspect false promises of leniency in the interrogation, also making promises of reduced sentences in their judgement just in return they should help the police and confess their relation to the crime. These are the techniques basically used by the American interrogators to draw out false confessions.

False Confession in Japanese Legal System

In Japanese Legal System, Article 38 states that no person shall be convicted solely on the basis that the only proof against a suspect is his or her own confession. As the suspects are put through harsh environments during their interrogation with or without access to family, lawyer etc, and so it is believed that confessions can easily be forced.

Other than mere confession the Japanese court require the verification of the facts of the case that can only be admitted by the person who committed the crime, such as time, location or place of the body or the murder weapon. To further fully ensure that the case does not lead towards the wrong direction the prosecutor must ensure that the details were not disclosed to the police as they might already contaminate the confession by telling the suspect these details.

The Japanese legal system is claimed as one of the good ones by the activists as they consider that the isolation of a suspect for a long term without the access to family and lawyer ensures that the justice prevails. Other than this, the Japanese legal system states that the revelation of the facts of the crime scene should not be given to the police and this must be ensured by the prosecutor so this also ensures a one more safeguard layer in the way of justice.

Onishi, Norimitsu Case

In this case there were 13 men and women of old age, mainly early 50s to 70s who were said to have taken bribes in the form of cash, liquor and other things for their vote. But then the court found out that their confession was totally false and it was taken out by the police by harsh treatment and also one of them died during the trial because of the pressure. The judge said that they confessed as they went through marathon questions.

False confession in Indian legal system

The court employs a variety of techniques to handle and detect false confessions. The term "confession rules" refers to a set of rules that are commonly used for this purpose. If someone is caught making a false confession, the subsequent steps against him are often taken: "Contempt of Court Act, 1971" occurs when a suspect's false confession disrupts or threatens to obstruct court proceedings and ends up in an absence of cooperation from the opposing party. The confessor could also be held in contempt by the Judge at any time. Criminal charges could also be filed. Someone who makes a false confession is also charged with additional offences, reckoning on when and where the confession was made, in addition on whom it had been made. a personal-faces the subsequent charges:

Perjury (lying to the court)

"Perjury is defined as an offence of lying under an oath. Perjury means to be a court of law. The Indian legal code, 1860 defines 'Perjury' in Chapter IX "of false evidence and offences against public justice" under Section 191. The punishment for the offence of perjury is defined under Section 193 of Indian legal code, 1860 as seven years of imprisonment."

Lying to a law officer

“Section 182 of the Indian legal code, 1860” – “False information, with intent to cause employee to use his lawful power to the injury of another person. Whoever gives to any employee any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

To do or omit anything which such employee ought to not do or omit if truth state of facts respecting which such information is given were known by him, or to use the lawful power of such a employee to the injury or annoyance of somebody shall be punished with imprisonment of either description for a term which can reach six months, or with fine which can be one thousand rupees, or with both.”

Conclusion

Confessions are one of the most important and essential parts of any case. This can decide whether a criminal will be punished and justice will prevail or an innocent might be punished by wrong use of the laws and regulations of a country. Confessions are an important piece of evidence they serve a great role in the decision of judges and jury as well. In many countries false confessions are the subsets of wrongful conviction. Confessing to a crime one didn't commit is insane and suffering the punishment where you should not be in the first place is wrong in the eyes of law. There are many other causes for wrongful conviction such as eye witness's misidentification, junk science, government misconduct, snitches et cetera. These cases of false confessions have led us to many questions about whether the police officers should be trusted for interrogation or they should be provided with more training or not, whether their credibility should be trusted or not and whether they can be trusted with the suspect or not. The interrogators, officers, and detectives in the course of targeting or framing a guiltless person, are themselves dwindling inside the nadir of filth and squalor. Consequently, it is horribly bewildering to witness that the ones who should be shielding our society, are setting the traps for their suitability, convenience and pleasure. The actual felonious criminal is still on the loose, probably wandering in search of ruining someone else's lives, discharging his crimes, while an honest, ethical, and righteous individual is rotting and dying behind the bars, both literally and figuratively. All these questions can be answered by having proper debates and discussions on these topics. The psychologists and other researchers have now understood the process that the suspect undergoes at the time of the investigation which makes it difficult for the police to differentiate between the truth telling suspects and the liars. Now, as we are very much aware of these false confessions, the researchers can find measures to reduce the possibility of these and suggest some improvements. This will take a collaborative force to improve the situation, it will require all the legal people, police, judges to give solutions for effective interrogations and the process after that.

Innocents who fall prey and confess are treated within the worst of cruel ways. Interrogation should be done only of these suspects who have an affordable cause and intent to commit malpractices. Differentiating false confessions. Investigators should have the specified evidence to differentiate unreliable and false confessions from truth and reliable ones. A good and decent analysis of police interrogations of the suspect, incriminated and false statements, other vital facts and evidence of the case could be a must. Since human-like detection techniques aren't uptight, it's imperative to depend upon a scientific analysis of evidence. Proper and complete analysis of the interrogations. There are two essential factors to this:

1. Whether the interrogation process involved any coercive/forceful methods, leading the suspect to allow a false confession;
2. Where the suspect could have acknowledged the small print of the statements he made;
3. Each minute of the confession should be recorded properly.

Interrogation time should be reduced, because it increases the probabilities for the suspects to convey false statements. Most false confessions are given a minimum of six hours after the continual process of interrogation. There is a requirement for expert witnesses within the fields of psychology, criminology, or sociology. They need to be called at the interrogation to review the whole process so should be present at the hearing as a witness. Requirement of

evidence to the confession. evidence is that the evidence that tends to support some initial evidence.

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