



**PSYCHOLOGY OF CONFESSIONS AND WITNESS TESTIMONY UNDER THE
INDIAN EVIDENCE ACT: RETHINKING VOLUNTARINESS, RELIABILITY, AND
FAIR TRIAL RIGHTS**

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ABSTRACT

This research examines the psychological vulnerabilities underlying confessions and witness testimony as they pertain to the Indian Evidence Act, 1872, and the Bhartiya Sakshya Adhiniyam, 2023, with a view to addressing voluntariness, reliability, and the right to a fair trial. Using a combination of psychological research, cases from Indian jurisprudence (Selvi v. State of Karnataka, [2010] 7 SCC 263), and criteria in international law and standards (ICCPR, UNCAT), this research highlights how custodial coercion, memory distortion, and intuition on the part of judges, to guilty pleas, can all result in wrongful convictions of the innocent. The empirical data surrounding wrongful convictions reveal continuing and persistent issues in our courts, such as, for example, there were approximately 2,739 custodial deaths this year, 2024 (NHRC), making an urgent case for reform. Proposed measures, such as mandatory video recording of interviews, forensic psychological assessments, cognitive psychology training for judges, and greater protection for witnesses, would constitute a type of reform consistent with Articles 20(3) and 21 of the Indian Constitution. A phased implementation approach could also leverage planned modernisation for police forces proposed by the Ministry of Home Affairs and NIMHANS training in forensic psychology to provide services, making it practical and resource-efficient. All these proposals aim to reduce custodial violence, misidentification through eyewitness accounts, and unreliable confessions, while promoting procedural fairness. By bridging forensic psychology and Indian evidence law, this evidence-based proposal is new. It would be an essential first step in modernising our justice system while maintaining the constitution's intent and restoring public faith.

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Keywords: Bharatiya Sakshya Adhiniyam, NHRC, Ministry of Home Affairs, NIMHANS, Articles 20(3) and 21.

INTRODUCTION

Confessions and testimonies form the very cornerstone of a trial in India. They constitute an important category of evidence that has high corroborative value and serve as primary evidence in the Indian jurisprudence, as indicated by sections 24-30 of The Indian Evidence Act, 1872¹ (now Sections 22-24 of the Bharatiya Sakshya Adhiniyam, 2023).² Admission of guilt, mainly if voluntary, is deemed to be highly probative of guilt, as every person has the protection from self-incrimination under Article 20 (3) of the Indian Constitution, 1950³ while testimonies provide essential or even standalone proof. In a judicial system, overwhelmed by a plethora of cases and a staggering pendency rate of 63.46 per cent, with a total of 3,00,61,534 pending cases (more than a year old), confessions and testimonies help expedite the process of law.⁴ In cases with limited forensic resources, these forms of evidence help expedite the trials. The use of witness testimonies and the admission of guilt has its roots in the various colonial laws that governed the country for a long time, often aimed at extracting the truth by any means. However, over time and with the development of modern constitutional morality, they have been balanced by our constitution's very humane and rational safeguards.⁵

Witness testimonies, particularly eyewitness accounts, are integral in establishing the chain of events that lead to crimes like murder and assault, and they strongly influence the rate of convictions in adversarial proceedings.⁶ Their significance extends to chains of evidence, where testimonies can link disparate facts, providing a clearer picture of the crime committed and helping the courts judiciously dispense justice. As they yield great power over the entire trial and the proceedings, they can also be misused, undermining justice. This trend has been evident in the recent analyses of the evidentiary value.⁷ In modern contexts, due to the increasing complexity of crimes, their role has been amplified in high-profile cases involving terrorism or organised crime, where oral evidence often predominates over physical traces of

¹ Indian Evidence Act, 1872 §24-30 (India).

² Bharatiya Sakshya Adhiniyam, 2023 §22-24 (India).

³ India Const. art. 20, cl. 3.

⁴ National Judicial Data Grid, e Courts Servs., https://njdg.ecourts.gov.in/njdg_v3/. (accessed Sept. 7, 2025)

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

⁶ Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 (India).

⁷ Pakala Narayana Swami v. King-Emperor, 1939 SCC OnLine PC 1 (India).

the crime.⁸ Empirical evidence from judicial statistics indicates that around 70 per cent of convictions in specific categories of crime rely heavily on eyewitness testimony, underscoring the vital role eyewitness testimony plays in trial outcomes.⁹

HIGH RATE OF RELIANCE: CONVICTION BASED ON SOLE WITNESS/CONFESSION

The Indian criminal justice system's current reliance on confessions and witness statements to expedite cases, especially in areas where forensic resources are limited and where there are over lakhs of criminal cases pending, is somewhat problematic, as demonstrated in *Anil Kumar Vitthal Shete v the State of Maharashtra*, Anil was nearly wrongfully convicted based on a confession, which was given during a coercive interrogation, and the testimony of one witness, who had memory distortions and was coerced.¹⁰ The Indian legal system permits a person's conviction based on credible evidence from a single voluntary confession or a single voluntary witness statement. In general, reliance on the testimony of a single credible witness or a single confession has arisen from a need for expediency. Still, the risk of this situation is pronounced.¹¹ Research shows that as high as 60% of convictions in regional courts rely solely on witness or confession evidence, without considering psychological vulnerabilities like coercion, coercive suggestibility and the fallibility of memory.¹² These very significant vulnerabilities, along with the judicial system's focus on quick trials that fail to uphold the fair-trial guarantee, do little to prevent wrongful convictions. The lack of forensic psychological evidence governed by ethics, as in the Anil case, created the potential to recreate wrongful convictions and to breach fairness in due process through unvalidated evidence. This has all demonstrated a need for an evidence-based law change to include psychological considerations, and for procedures to be designed to achieve the best and most reliable outcomes in every judgment, potentially while preserving constitutional protections and addressing numerous rights violations in the overburdened courts in India.

⁸ Law Commission of India, 185th Report on Review of the Indian Evidence Act, 1872 (2003).

⁹ National Crime Records Bureau, *Crime in India 2022*, at 150–55 (2022), <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>.

¹⁰ *Anil Kumar Vitthal Shete v. State of Maharashtra*, (2006) 12 SCC 148 (India).

¹¹ *Bhupinder Sharma v. State of Himachal Pradesh*, (2003) 8 SCC 551 (India).

¹² Law Commission of India, 277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies, at 20–25 (2018), <https://static.pib.gov.in/WriteReadData/userfiles/Report%20No.%20277%20Wrongful%20Prosecution.pdf>

PSYCHOLOGICAL VULNERABILITIES: FALSE CONFESSIONS, MEMORY FALLIBILITY, HOSTILE WITNESSES

Psychological vulnerabilities—false confessions, the fallibility of memory, and hostile witnesses—compromise the voluntariness and reliability of the evidence, thereby endangering the right to a fair trial. False confessions arise from coercive interrogations, which typically involve psychological manipulation over a long period, isolation and cognition-influencing emotional manipulation designed to induce compliance. The psychological manipulation may be particularly severe with vulnerable groups such as minors or persons with mental disorders.¹³ This means the individual is not acting voluntarily, and therefore reforms are needed to engage the volitional process, including, as a starting point, mandatory recording of interrogations. Witnesses may be biased by the fallibility of memory, since violence, emotional trauma, and "weapon focus" may alter the way facts are recalled, especially with a delay to trial.¹⁴ In particular, suggestive identification processes seriously distort memory recall and greatly enhance the risk of misidentification: "Suggestive identification...influences the identification process".¹⁵ Hostile witnesses under threat, intimidation, and sociological factors fall away from their prior testimony: "Threat and intimidation are one of the main causes for witnesses to have hostility". Courts may accept uncontested portions of a witness's assessment and evidence; however, weak witness protection worsens this systemic issue. Given how psychological research and findings could be considered when examining confessions that involve mental states, using cautionary language on memory processes can have some limited effect, not to mention establishing fair trial rights in practice while preventing wrongful convictions.

LEGAL-CONSTITUTIONAL STAKES: ARTICLES 20(3), 21 (SELF-INCRIMINATION, FAIR TRIAL)

Articles 20(3) and 21 of the Indian Constitution provide essential safeguards for accused persons in criminal cases. Article 20(3) provides that "no person accused of any offence shall be compelled to be a witness against himself," which prohibits coerced confessions and protects the accused from self-incrimination.¹⁶ The Supreme Court in India has held that

¹³ Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1 (India).

¹⁴ Daya Singh v. State of Haryana, (2001) 4 SCC 420 (India)

¹⁵ Elizabeth F. Loftus, Planting Misinformation in the Human Mind: A 30-Year Investigation of the Misinformation Effect, 12 Learning & Memory 361, 363–65 (2005).

¹⁶ *Id.* at 3.

confessions obtained by compulsion, inducement, or threat are inadmissible.¹⁷ Article 21 guarantees the right to life and personal liberty and has been interpreted to encompass the right to a fair trial.¹⁸ The Court also ruled that compulsory techniques, which include narcoanalysis, polygraph tests or brain mapping, contradict Article 20(3) and Article 21 because they contravene the voluntariness that is intended by the provisions of law prohibiting self-incrimination. Sections 24 to 30 of the Indian Evidence Act, 1872, explain that a confession is admissible only if made voluntarily, without inducement, threat or promise.¹⁹ Studies in psychology indicate that under psychological stress or suggestive inquiry, individuals may falsely confess in compliance or due to suggestibility, which questions reliability.²⁰ Likewise, human memory is fallible, and eyewitness memories are subject to bias and distortion over time.²¹ Hence, it is necessary to attend to psychological studies and recommendations to facilitate the judicial process in addressing voluntary and reliability issues arising from reliance on confessions or witness statements.

CONFESSIONS AND INTERROGATIVE PSYCHOLOGY

Confessions are significant at every stage of criminal investigations and prosecutions, often providing robust evidence of behaviour in court. Yet, obtaining confessions is arguably the most psychologically influenced form of evidence from a suspect, requiring an intricate interaction between the suspect and law enforcement authorities, where psychological issues often come into play. Interrogative psychology seeks to examine how interrogation strategies, the suspect's mental state, and situational pressures impact the voluntariness and reliability of confessions. Well-established research in interrogative psychology reveals numerous concepts, including suggestibility, compliance, stress, and fear, to underscore their potential impact on resulting false or coerced confessions, leading to interpretational distortions of the underlying truth and trial impartiality issues. Therefore, understanding the psychological behaviour in each question during interrogation is invaluable for determining whether an obtained confession is voluntary and reliable, and for giving effect to constitutional protections in deciding whether particular standards of legality and due process were met.

¹⁷ State of Bombay v. Kathi Kalu Oghad, 1961 SCC OnLine SC 74 (India).

¹⁸ India Const. art. 21.

¹⁹ *Id.* at 1.

²⁰ Saul M. Kassin & Katherine L. Kiechel, The Social Psychology of False Confessions: Compliance, Internalisation, and Confabulation, 7 Psychol. Sci. 125, 125–28 (1996).

²¹ Elizabeth F. Loftus, Eyewitness Testimony, 2 Annu. Rev. Psychol. 291 (1996).

Legal Structure: Under Indian law, an essential requirement for a confession to be admitted in evidence is that it be made voluntarily (i.e., without coercion). The conditions surrounding the voluntariness of a confession fall principally within Sections 24 to 27 of the Indian Evidence Act, 1872. Section 24 states, “a confession made by an accused is irrelevant in a court of law if it appears to the court that it was caused by the inducement, threat of injury, or promise of advantage, by a person in authority; the purpose of the inducement, threat of injury, or promise of advantage is to obtain the confession.”²² Section 25 states that any confession made by a person to a police officer cannot be proved against the accused. In addition, Section 26 states that any confession made by a person while in police custody is not admissible unless it is recorded in the presence of a magistrate.²³ Section 27 states that if the confession is voluntary, any information discovered as a result of it shall be admissible, commonly referred to as the “discovery doctrine.”²⁴ These statutory protections reflect the constitutional protection and rights under Article 20(3) of the Indian Constitution. Article 20(3) of the Indian Constitution states, “no person accused of any offence shall be compelled to be a witness against himself.”²⁵

Judicial interpretation of these principles has played a significant role in Indian jurisprudence. In *Pyare Lal Bhargava v. State of Rajasthan*,²⁶ The Supreme Court ruled that any confession gained by inducement or threat is “not reliable”. In *State of Uttar Pradesh v. Deoman Upadhyaya*,²⁷ The Court ruled it necessary to examine all the circumstances related to a confession to determine the circumstances, and/ or states of mind, surrounding the creation of the confession. Moreover, in *D.K. Basu v. State of West Bengal*,²⁸ The Court laid down comprehensive procedural safeguards to prevent custodial abuse and protect the right against self-incrimination, underlining that any confession made under illegal detention is inadmissible. These decisions, taken together, ensure that the constitutional guarantee of protection against self-incrimination is meaningfully enforced and that the Indian Evidence Act provides adequate safeguards against involuntary or unreliable confessions.

Psychological Dimensions of Confessions: Confessions have historically been seen as a powerful piece of the puzzle for law enforcement; however, the psychology behind how and why people confess- and why some people falsely confess-is intricate and deserves careful

²² Indian Evidence Act, No. 1 of 1872, § 24.

²³ Indian Evidence Act, No. 1 of 1872, §§ 25–26.

²⁴ Indian Evidence Act, No. 1 of 1872, § 27

²⁵ *Id.* at 3.

²⁶ *Pyare Lal Bhargava v. State of Rajasthan*, A.I.R. 1963 S.C. 1094 (India).

²⁷ *State of U.P. v. Deoman Upadhyaya*, 1960 SCC OnLine SC 8 (India).

²⁸ *Dilip Kumar Basu v. State of W.B.*, (1998) 6 SCC 380 (India).

evaluation. As summarised by Kassin and Wrightsman, false confessions can fall into three categories: voluntary false confessions, coerced-compliant false confessions, and coerced-internalised false confessions, and the difference between coerced-compliant and coerced-internalised false confessions is probably the most troubling. Examples of voluntary false confessions include confessing to a crime without external pressure, whether due to an acute desire for the spotlight or misplaced guilt. Coerced-compliant false confessions occur when an innocent person, under the hope of an impending release or fear of longer, harsher punishment, confesses to a crime they did not commit to escape the unpleasant circumstances of an interrogation. The most troubling of the three categories is coerced-internalised, because this describes a suspect who, under duress from a lengthy interrogation process, actually begins to believe their own guilt and internalises the false confession.²⁹ Recent meta-analyses confirm that accusatorial interrogation techniques, such as minimisation and maximisation, lead to false confession rates of up to 30% in vulnerable populations; information-gathering styles dramatically reduce this risk.³⁰

Interrogation techniques also significantly affect the probability of a true versus false confession. The most prevalent interrogation strategies are maximisation techniques and minimisation techniques. Maximisation occurs when investigators present exaggerated evidence or threaten severe consequences to persuade suspects to comply. In contrast, minimisation techniques are used to justify their moral actions to the suspect or to create a perception of leniency, thereby reducing the suspect's defences. There is research indicating that both maximisation and minimisation approaches can raise the probability of false confessions, especially among vulnerable populations, such as juvenile suspects or individuals with intellectual impairments.³¹ In addition, investigators intent on obtaining a confession often use sleep deprivation and lengthy interrogation periods, which impair cognitive functioning and enhance the suspect's suggestibility, thereby increasing the chances of false confessions. Studies show that extended interrogations potentially create confusion and fatigue, thereby impairing the suspect's ability to resist psychological pressure.³²

²⁹ Saul M. Kassin & Lawrence S. Wrightsman, *The Psychology of Confessions* (1985).

³⁰ Mary Catlin et al., *Interview and Interrogation Methods and Their Effects on True and False Confessions: A Systematic Review Update and Extension*, 20 *Campbell Sys. Revs.* e1441 (2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11465838/>.

³¹ Aldert Vrij et al., *Psychological Perspectives on Interrogation, Confession, and Deception* (2017), <https://web.williams.edu/Psychology/Faculty/Kassin/files/Vrij%20et%20al.%20%282017%29%20-%20Psych%20interrogation.pdf>

³² Saul M. Kassin et al., *Sleep Deprivation and False Confessions*, 16 *J. Applied Research in Memory & Cognition* 202 (2016), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC4776459>

In the case of Indian legitimacy, custodial violence continues to be a serious international problem that produces false and coerced confessions. The National Human Rights Commission (NHRC) reported that between 2017 and 2022, 669 custodial deaths were reported, with 175 being reported in 2021 - 2022.³³ These deaths are likely preceded by incidents of physical assault, psychological torture, and disregard for constitutional protection. And while reporting custodial deaths is mandated by customary law, compliance is ineffective, and there is evidence that many instances appear unconstitutional.³⁴ The establishment of custodial violence remains a concerning sign of failure and further recommends much-needed police reform, strengthening accountability, and better compliance with international human rights standards and norms. This is critical not only to protect the fundamental rights of people in custody but also to preserve the integrity of the criminal justice process, as it will discourage false and coerced confessions.³⁵

Empirical & Criminological Evidence: Multiple empirical studies from both Indian and foreign studies have shown a disturbing association of coerced confessions with wrongful convictions. False confessions are a major contributor to wrongful convictions in both the United States and the United Kingdom, with a small group of well-known cases starting to raise awareness of, and changes in policy around the use of confessions. The Innocence Project (U.S.), which exonerates wrongfully convicted individuals using DNA evidence, has found that approximately 25% of the wrongful convictions it later exonerated had false confessions obtained during coercive interrogations.³⁶ The absence of a requirement to make video recordings during interrogations in India, with known and documented instances of custodial violence and coercion, enhanced the chances of wrongfully convicting individuals based on coerced confessions.³⁷ The NHRC has noted repeated examples where confessions made under duress resulted in wrongful arrest and long trials without any proven corroborative evidence.³⁸

The significant issue here is the social psychology of compliance and suggestibility. The Gudjonsson Suggestibility Scale, designed by Gísli H. Gudjonsson, is a practical empirical tool

³³ National Human Rights Commission of India, Annual Report 2022-23, at 48–53 (2023), https://nhrc.nic.in/sites/default/files/AR_2022-2023_EN.pdf

³⁴ Ministry of Home Affairs, Government of India, Advisory on Preventing Custodial Deaths (Dec. 14, 2013), https://www.mha.gov.in/sites/default/files/2022-12/NHRCselectedlettersandguidelinesondeathsincustody_09042019_0%5B1%5D.pdf

³⁵ Commonwealth Human Rights Initiative, Police Accountability in India: Policing the Police, at 23–30 (2019), https://www.humanrightsinitiative.org/publications/police/police_accountability_in_india.pdf

³⁶ Innocence Project, False Confessions: The Problem, <https://innocenceproject.org/false-confessions/>

³⁷ *Id.* at 32.

³⁸ *Id.* at 32.

for measuring a person's susceptibility to suggestive questioning and external pressure during investigations.³⁹ The scale examines two components:

- (1) yielding to leading questions (the interrogation provides a suggestive response, and the subject accepts the incorrect suggestion)
- (2) shift in response after negative feedback (the subject changed an answer whenever the interrogation showed disapproval).

Studies using the Gudjonsson Scale have shown that people with higher suggestibility scores were far more likely to make a false confession, primarily when the interrogation relied on minimisations or false information.⁴⁰ A recently published meta-analytic review of interrogation techniques has confirmed that rapport-building, evidence presentation, and cognitive facilitation can significantly improve the amount of information obtained and its accuracy, addressing the issue of unreliable confessions.⁴¹

To date, in India, we do not have a systematic use of psychological assessments in interrogation, yet there is a layered understanding of psychological concepts. There have been recent proposals from the courts and academics that psychological protections should be given during interrogation, particularly to juveniles and cognitively impaired accused.⁴² It is necessary to consider the empirical data when placing a person in an interrogation process to eliminate coerced confessions, to protect fundamental rights and to keep the integrity of the criminal justice system.

Comparative Insights: Various jurisdictions have established protective provisions and procedures to safeguard individuals during police interrogation, which help achieve justice in the Indian Justice System. In the USA, *Miranda v. Arizona*⁴³ and *Edwards v. Arizona*.⁴⁴ Both established procedural safeguards, such as the right to have legal representation and informing a suspect of their rights before questioning commenced by a law enforcement officer, dramatically reduce coerced and involuntary confessions. The science-based program of the

³⁹ Gísli H. Gudjonsson, *The Gudjonsson Suggestibility Scale: A Review*, 34 *J. Interpersonal Violence* 21 (2019).

⁴⁰ Saul M. Kassin et al., *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 16 *Annu. Rev. Law Soc. Sci.* 193 (2020).

⁴¹ Stefan Tribbels & Moritz Michels, *Validity and Effectiveness of Interrogation Techniques: A Meta-Analytic Review*, 37 *Mil. Psych.* 127 (2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11849930/>.

⁴² *Id.* at 27.

⁴³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁴⁴ *Edwards v. Arizona*, 1981 SCC OnLine US SC 99.

U.S. High-Value Detainee Interrogation Group demonstrates rapport-building and information-gathering approaches to engage detainees in meaningful discussions that minimise the risk of faulty confessions and could serve as a model for ethical legislation and reform of custodial practices worldwide.⁴⁵ The United Kingdom Police and Criminal Evidence Act 1984⁴⁶ PACE and the version of the PACE Code C also established clear procedural safeguards in video-recorded interrogations and detailed procedural safeguards guarding a person in custody. These procedural safeguards improved the practice of confession evidence in criminal cases, offering transparency and accountability. Canada and Australia explicitly view voluntariness as the key to admissibility, and courts in both countries subject statements to extensive judicial analysis, weighing the significance of custodial conditions and the suspect's capacity to resist coercion. By contrast, India has no similar statutory scheme, requirement that interrogations be recorded, or that suggestibility be assessed uniformly. Good practices that might improve custodial interrogation include mandatory video recording, incorporation of legal advisories, and psychological safeguards. These may prominently enhance the rights of the accused in upholding procedural fairness, minimising the potential for custodial abuse, and thus reducing the risk of wrongful convictions.

Witness Testimony and Psychological Reliability: Witness accounts may also be unreliable, since human memory is not a perfect system and reconstructs information, leading to errors and distortions. The timing, suggestions, and overall stress can alter witnesses' recollections, and witness confidence does not necessarily indicate that the witness has accurately remembered the event. Cognitive Interviewing and other approaches for improving the reliability of witness information are valuable tactics that the legal system has adopted; however, courts should be cautious regarding the reliability of witness evidence when independent corroboration is lacking.

Legal Framework: The Indian Evidence Act, 1872, establishes a complete scheme regarding the admissibility and assessment of witness testimony. The provisions regarding witnesses are found in Sections 118 to 134 of the Evidence Act 1872 and cover the competence of witnesses, the number of witnesses, and the issue of corroboration. Section 118 states that all persons are competent to witness unless the law disqualifies them from being a witness, and Sections 120 and 134 clearly state that the law prescribes no fixed number of witnesses determinable by the

⁴⁵ High-Value Detainee Interrogation Group, FBI, <https://www.fbi.gov/investigate/terrorism/high-value-detainee-interrogation-group> (last visited Sept. 21, 2025).

⁴⁶ Police and Criminal Evidence Act 1984, c. 60 (U.K.).

proof of a fact, nor does the law stipulate witness corroboration before the court can accept it as proof.⁴⁷ The doctrine of sole witness allows for a conviction based solely on the evidence of a single trustworthy and credible witness. The Supreme Court of India has asserted on multiple occasions that there is no legal prohibition on a conviction based on a sole eyewitness, so long as the eyewitness's evidence creates confidence. Further, the law on hostile witnesses is dealt with in Section 154 of the Indian Evidence Act, 1872 and then under Sections 161 and 145 of the Criminal Procedure Code (CrPC). Section 154 affirms that the court can consider a witness as hostile if they turn adverse, it allows the party examining the hostile witness to cross-examine their own witness to probe credibility and lead the witness to the truth.⁴⁸

Psychological Dimensions of Testimony: Eyewitness misidentification is considered the primary contributor to wrongful convictions worldwide. Research on wrongful convictions that were exonerated later on by DNA shows that approximately 202% of wrongful convictions in places like the United States show that eyewitness misidentification was the primary reason for the error.⁴⁹ This sheds light on the fallibility of human memory as a method of recording events, often described as a reconstructive process that can be distorted.

The work of Elizabeth Loftus contributes to the body of knowledge regarding eyewitness testimony. Her research on the misinformation effect showed how exposure to misleading post-event information can cause a witness to incorporate false details into their memory. For example, she asked subjects misleading questions about the car accident in her studies. She asked the subjects questions such as how fast the car went when it smashed into the other vehicle versus when it hit the other vehicle.⁵⁰ In this example, notice how the question's phrasing changes the subjects' later recollections of the accident.

Several other factors inhibit the reliability of testimony. The first factor concerning recollection is high levels of stress or trauma at the time of the event. High levels of stress or trauma interfere with accurate memory encoding and recall and can result in fragmented or distorted memories.⁵¹ A second phenomenon that has received considerable attention in the literature is the difficulty of cross-race identifications. People are often less accurate at identifying

⁴⁷ Indian Evidence Act, §§ 118–134 (1872).

⁴⁸ Indian Evidence Act § 154 (1872); Criminal Procedure Code §§ 145, 161 (1973).

⁴⁹ Innocence Project, Eyewitness Misidentification, <https://innocenceproject.org/eyewitness-misidentification/>

⁵⁰ *Id.* at 15.

⁵¹ Deffenbacher et al., A Meta-Analytic Review of the Effects of High Stress on Eyewitness Memory, 42 Law & Hum. Behav. 24 (2018).

individuals of other races. In fact, numerous studies attribute this to limited exposure to faces of different races and a cognitive tendency to categorise those faces less uniquely.⁵² The third phenomenon, known as the weapon focus effect, refers to eyewitnesses fixating on a visible weapon during a crime, which narrows their attention and, in turn, limits their recall of other essential details, such as the perpetrator's face or clothing.⁵³

Child witnesses present their own unique psychological difficulties. Developmental research shows that children are more suggestible and more likely to confabulate, especially when faced with leading and repeated questions.⁵⁴ Under Section 118 of the Indian Evidence Act, every person is competent to give evidence until disqualified or prohibited from doing so by law; however, courts ought to rigorously evaluate the evidence of a child witness by assessing the degree of their mental capability, their capacity to comprehend truth and falsehood, and their susceptibility to others' influence.⁵⁵ The judicial approach usually balances the importance of the child's voice in pursuing justice with the risk of suggestibility under pressure.

Collectively, the psychological considerations indicate the need for careful evaluation of witness evidence, particularly in court; for the use of science-based interviewing techniques, such as the Cognitive Interview; and for systematic safeguards to protect against wrongful convictions.

Indian Case Law: Indian courts have engaged with the challenges of witness evidence, especially regarding psychological insights on reliability and suggestibility. In *Rameshwar v. State of Rajasthan*, the Supreme Court insisted that child witnesses are entitled to testify under section 118 of the Indian Evidence Act, provided they have enough comprehension to understand the nature and consequences of truth and falsehood. The Court accepted that child witnesses were especially susceptible to suggestion. Still, the trial judge should carefully and deliberately inquire about the witness's ability to understand and respond meaningfully.⁵⁶

In *State of U.P. v. Krishna Master*, the Supreme Court noted that the reliability of eyewitness testimony must be scrutinised, particularly when it is the only basis for conviction. The

⁵² Thomas D. Wickham, *Cross-Race Identification: The Psychological and Legal Implications*, 54 *Law & Hum. Behav.* 197 (2010).

⁵³ Daniel J. Simons & Christopher F. Chabris, *Gorillas in Our Midst: Sustained Inattentional Blindness for Dynamic Events*, 428 *Perception* 1059 (1999).

⁵⁴ Gísli H. Gudjonsson, *The Suggestibility of Children: Measurement and Implications*, 34 *J. Interpersonal Violence* 21 (2019).

⁵⁵ Indian Evidence Act § 118 (1872).

⁵⁶ *Rameshwar v. State of Rajasthan*, 1951 SCC 1213 (India).

judgment held that a court must carefully assess the witness's credibility, the circumstances of observation, the possibility of mistake, and whether there is corroboration.⁵⁷

The problem of hostile witnesses was addressed in *Zahira Habibullah Sheikh v. State of Gujarat* (2006), where the Court expounded on the application of Section 154 of the Indian Evidence Act⁵⁸ as well as the procedural aspects under the CrPC of treating a witness as hostile. In that judgment, the Court clarified that the mere fact that a witness turned hostile did not make their previous evidence inadmissible. It allowed the party that called the witness to cross-examine it to test its credibility and elicit the truth regarding the issues at trial.⁵⁹

Despite these judgments, Indian courts lack a systematic basis for incorporating psychological insights. Often, the emphasis in relying on those cases is on the witness's credibility as assessed by the court, rather than on empirical research on the malleability of memory, stress effects, or suggestibility. This demonstrates inconsistent scientific knowledge and still represents a risk of wrongful conviction. The problems identified above illustrate a need for judicial guidelines incorporating psychological expertise in evaluating testimonial evidence.

FORENSIC PSYCHOLOGY AND EXPERT TESTIMONY IN INDIAN COURTS

Forensic psychology uses scientific knowledge about cognition, memory, and suggestibility to assist in legal (trial) decision-making, particularly in assessing eyewitness testimony and confession evidence. In India, expert psychological evidence is rarely admissible at trial. Section 45 of the Indian Evidence Act, 1872 permits specialist opinion evidence; however, judges and courts have traditionally limited this to medical or technical questions, leaving many issues, such as witness suggestibility, trauma, and witness competence, to the judge's intuition alone.⁶⁰ It was held by the Supreme Court in *Selvi v. State of Karnataka* that the invasive technique of narco-analysis contravenes a person's right against self-incrimination. However, voluntary psychological assessments could still be utilised to provide an evidential basis for reasoning.⁶¹ Bringing forensic psychologists into trials would enhance the reliability of eyewitness testimony, provide judges with a more informed and evidence-based evaluation, and lead to fewer wrongful convictions. The following three sections will analyse the

⁵⁷ *State of U.P. v. Krishna Master*, (2010) 12 SCC 324 (India).

⁵⁸ Indian Evidence Act, § 154 (1872).

⁵⁹ *Id.* at 6.

⁶⁰ Indian Evidence Act § 45 (1872).

⁶¹ *Id.* at 5.

psychological factors affecting the recollection of testimony, case law relevant to eyewitness or confession evidence, and suggestions for reform to move India towards common law best practices in this area.

Legal Framework: Section 45 of the Indian Evidence Act, 1872, applies to expert evidence and stipulates that:

"When the court has to form an opinion on a point of view involving special knowledge of science, art, or trade, the opinion of a person especially skilled in the relevant field is relevant."⁶² This provision recognises that there are categories of matters beyond the common-sense world, and that courts often need experts to help them navigate the technical, scientific or medical facts.

Unfortunately, Indian courts have narrowly interpreted Section 45 and limited expert evidence to medical or purely technical experts. For example, in *Lallu Manjhi v State of Jharkhand*, the Supreme Court stated that expertise does not extend to the ultimate issues of fact or law that are decided by the judiciary, and that the expert's role is to provide opinion evidence on factual matters requiring special knowledge.⁶³ This narrow judicial interpretation severely underutilised the expertise of psychologists and behavioural experts in assessing witness suggestibility or the mental competence of witnesses, for example, despite these factors being scientifically relevant to the reliability of testimony.

USE OF PSYCHOLOGICAL TOOLS IN INDIA

Indian law enforcement has used psychological tools such as narco-analysis, polygraph tests, and brain mapping to obtain confessions or to assess the truthfulness of a suspect. Narco-analysis involves administering drugs to reduce inhibitions; polygraph tests measure physiological responses (e.g., heart rate, blood pressure) to determine deception; and brain mapping records and visually illustrates neural activity in response to recognition of crime-related information. Police have used these techniques in different high-profile investigations, while on the controversial side of the debate, they are also highly contentious.

The Supreme Court more recently established in *Selvi v. State of Karnataka* that narco-analysis, polygraph tests, and brain mapping, and the results, cannot be admissible evidence according

⁶² *Id.* at 57.

⁶³ *Lallu Manjhi v. State of Jharkhand*, (2003) 2 SCC 401(India).

to Indian law. In its decision, the Court clearly established that all these things violate Article 20(3) of the Constitution, which protects the right against self-incrimination.⁶⁴ It was established that forcing a suspect to take these tests could violate personal liberty, mental privacy, or dignity, without sufficient scientific reliability to warrant such testing.

Aside from legal issues, there are ethical and scientific validity problems with non-conventional lie-detection techniques. The validity of polygraphs is often contested and has an error rate of up to 20-30% in specific circumstances.⁶⁵ Narco-analysis is criticised for producing confabulated disclosures rather than reliable truth, and the use of brain mapping is limited by informality, as there are no standard protocols or scientific consensus on admissibility in a court.⁶⁶ As a result, use of these methods in India has received strong opposition from legal scholars, human rights activists, and scientists.

JUDICIAL APPROACH TO PSYCHOLOGICAL EXPERTISE IN INDIA COMPARED TO OTHER JURISDICTIONS

In India, psychological information on the reliability of witness statements and confessions rarely finds its way into formal courtroom practice. Courts rely heavily on intuition rather than empirical observations or expert opinion when evaluating witness credibility. Judges' reliance on judicial intuition alone often ignores scientific evidence on the malleability of memory, the effects of stress, suggestibility, and other psychological factors that affect witness reliability. Important scientific protections are left untapped, and there is no end to the acceptance or rejection of testimony - especially from vulnerable witnesses, like children - which depends simply on a judge's intuitive sense of credibility, not some specific and evidential standard of measurement!

In the United States, the legal context is very different, and in particular, the Daubert standard addresses the admissibility of expert testimony, including psychological specialist evidence on the reliability of eyewitness testimony and false confessions. In *Daubert v. Merrell Dow Pharmaceuticals*, the court held that the trial judge was responsible for ascertaining whether the expert utilised a scientifically valid methodology applicable to the facts in question.⁶⁷ This

⁶⁴ *Id.* at 5.

⁶⁵ National Research Council, *The Polygraph and Lie Detection*, 2003, National Academies Press.

⁶⁶ G. Ganapathy, *Brain Mapping as Evidence: The Scientific and Ethical Dimensions*, 53 *J. Indian Law Inst.* 312 (2011).

⁶⁷ *Daubert v. Merrell Dow Pharmaceuticals*, 1993 SCC OnLine US SC 104.

standard opens the door to the admission of sound psychological research into the courtroom and trials, benefiting defendants and safeguarding against wrongful convictions caused by the improper or erroneous use of witness statements.

Similar to the UK, psychology experts are routinely asked to comment on the reliability of testimony, including childhood testimony. The UK's model and emphasis on empirical/validated evidence by expert witnesses allows courts to appreciably identify psychological vulnerabilities, particularly in cases concerning suggestibility, trauma or developmental immaturity. For example, in *R v. Turnbull*, the court established guidelines for the judicial consideration of eyewitness identification, emphasising caution when identification evidence is significant and scientific factors indicate a potential for unreliability.⁶⁸

The comparative pursuit suggests that jurisdictions that utilise a systematic, regulated process to employ psychology expertise should not only enhance the evidentiary process and better facilitate more accurate findings of fact, but also reduce the chance of wrongful convictions. Conversely, India's judicial system should consider mechanisms to foster greater institutional acceptance of psychological science, such as clearer statutory reforms or judicial guidelines.

GAPS AND POTENTIAL ROLE OF FORENSIC PSYCHOLOGY IN INDIA

The gaps in the application of psychological science to witness testimony and confessions stem from assumptions made by the Indian legal system. Courts have traditionally relied on judicial intuition rather than research-based methods or structured psychological assessments in adjudicating confessions and witness testimony. Such a framework represents a considerable risk, especially in the case of vulnerable witnesses, including children, individuals suffering trauma, or those with cognitive difficulties, and wrongfully convicted individuals are most often wrongfully convicted due to poor appraisals of witness testimony or confessions.

In India, forensic psychologists can further develop reference assessments of reliability. They know how to assess suggestibility, memory malleability, and competence to testify scientifically. Structured measures, including the Gudjonsson Suggestibility Scale and the Cognitive Interview, are empirical methods for assessing the reliability of testimony while avoiding contamination from suggestive external information.⁶⁹ If the courts consider objective

⁶⁸ *R v. Turnbull*, [1977] QB 224 (Eng.).

⁶⁹ *Id.* at 38.

measures in the trial process, they will also have evidence about the mental state of witnesses or any excess influence of coercive interrogation tactics.

Integrating psychological expertise into the judicial system, grounded in knowledge of human cognition and memory and in the suggestive effects of questioning and trauma on testimony, would enhance judges' appreciation of the distinction between proper human evidence and issues such as faulty memory. Recent studies suggest that forensic science, and psychological evaluations in particular, can provide significant value in improving the reliability of evidence in India's criminal justice system, but can be hindered by aspects such as quality assurances of forensic labs and considerable periods of time to obtain results, which is enough so that there is a need for uniform protocols.⁷⁰ Judges' inclusion of expert opinion on human memory should not be considered optional nor wasted on many cases. Including expert opinions should be regarded as mandatory in more complex cases where human defence faculties cannot provide accurate recall.⁷¹ Mis-trials could be limited by developing admissibility protocols requiring expert evidence in cases that depend on eyewitness identifications or confession contests.

In sum, a comprehensive framework that made it compulsory for forensic psychologists to act as expert witnesses, at the investigative phase and judicial phase of proceedings, would make for a fairer and science-based justice, allowing the law to step outside and incorporate psychological science, and diminish the existing gap between legal practices and psychological science.

CONSTITUTIONAL & HUMAN RIGHTS DIMENSIONS

The practice and review of confessions and witness testimony in India are tied closely to constitutional rights and human rights obligations. Article 20(3) of the Constitution confers a legal right not to incriminate oneself and prohibits individuals from being compelled to testify against themselves. This protection was further clarified in *Selvi v. State of Karnataka* (2010) when the Supreme Court found that narco-analysis, polygraphs and brain mapping cannot be used as evidence in a proceeding.⁷² Similar guarantees can be found in Article 21 of the Constitution, which prohibits physical and mental torture in backstage proceedings. Other cases implicate the Article 21 guarantee of the right to life and personal liberty, including the right

⁷⁰ Srishti, The Impact of Forensic Science on the Legal System in India, 9 J. Forensic Sci. Res. 001 (2025), <https://dx.doi.org/10.29328/journal.jfsr.1001072>.

⁷¹ *Id.* at 64

⁷² *Id.* at 5.

to human dignity, and prohibit harm during interrogation under the ICCPR.⁷³ Use of any reports made through coercion, torture, or inhuman treatment is described in the ICCPR, and they obligate States to prohibit the use of compelled evidence in criminal proceedings. Further, the ICCPR obliges states not only to acknowledge that torture is an illegal practice and violates antecedent human rights, but also that there are alternatives to torture. In this paper, we submit that psychological safeguards, ensuring testimonial competency and voluntary evidence, are required in practice and ideally, in law.⁷⁴ Psychological safeguards aim to ensure that all individuals and witnesses are competent to testify, that the evidence is efficient, and that it supports both the observance of human rights and the compatibility of actions of 'justice' and the 'rule of law'.

ARTICLE 20(3): RIGHT AGAINST SELF-INCRIMINATION

Article 20(3) of the Indian Constitution protects individuals from self-incrimination: “No person accused of any offence shall be compelled to be a witness against himself.” In this clause, “compelled” protects the life and liberty of individuals from being forced to offer any evidence against themselves. Pleading this claim, the Judge held a significant and broad interpretation of the meaning of Article 20(3): the requirement for a testimony of an accused is applied to written documents, & if evidence is used that self-incriminates, he/she will not be liable. The right against self-incrimination is not absolute. It applies to individuals accused of an offence and not to civil or departmental investigations.⁷⁵

Also, this right does not protect physical acts that you are required to do that are not testimony, which would be compelling.⁷⁶ Applicants fail to realise where asked to sign their name; however, you are giving a 'physical testimony' instead of testimonial compulsion, which the Courts would determine as a 'non-testimonial act' requiring a specific act without any question or circumstance to take that act. One such case is a handwriting test, and the court ruled that compelled fingerprint tests did not constitute self-incrimination.⁷⁷ The Court had held for some time that, where a confession was coerced, tortured, or obtained through oppressive confinement, the confession contravened the Articles (20)(3). In a significant case, *Selvi v State of Karnataka*, regarding the 'involuntary' use of narcoanalysis for self-incrimination, the

⁷³ Constitution of India, arts. 20(3), 21.

⁷⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

⁷⁵ *Id.* at 5.

⁷⁶ *M.P. Sharma v. Satish Chandra*, (1954) 1 SCC 385 (India).

⁷⁷ *Id.* at 17

involuntary assessment methods, such as polygraph tests, were not a contravention of Article 20(3), which applies to the entrapment phase of self-incrimination, such as a coercive process. The Court ruled that such processes undermine voluntary assessment, the most critical and valued principle of a trial.⁷⁸

ARTICLE 21: FAIR TRIAL AND DIGNITY

Article 21 of the Constitution protects the right to life and personal liberty, which the Supreme Court has interpreted broadly to encompass the right to a fair, just, and dignified trial. This principle was established in the landmark case *Maneka Gandhi v. Union of India*: The Supreme Court declared that, regardless of the written laws governing the actions of state actors, any procedure that deprives a person of their liberty must ensure that the deprivation is conducted fairly, reasonably, and justly. The Supreme Court adopted the notion of substantive due process from American law into the Canadian constitutional context.⁷⁹ This ruling thus has profound implications regarding how confessions and witness evidence are collected and evaluated. Coerced confessions, leading or suggestive questions, or incompetent witnesses violate the dignity and conditions of fairness codified in Article 21. Asking the right questions of witnesses, ensuring they understand the obligation to testify truthfully, establishing that no coercion is present, and recognising the role each evaluator and/or state actor must consider are all fundamental to upholding the constitutional directive. These practices promote human dignity, but they also enhance the reliability of evidence in the interests of institutional integrity, minimising the conviction of the innocent, and avoiding wrongful convictions in the future.

INTERNATIONAL HUMAN RIGHTS STANDARDS

India's constitutional protections are further buttressed by international human rights obligations, particularly regarding fair trial and the admissibility of evidence. Article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory, ensures the right to a fair and public hearing by a competent, independent and impartial tribunal.⁸⁰ To the same end, the United Nations Convention Against Torture (UNCAT) states that no court or tribunal shall admit evidence obtained by torture or cruel, inhumane or

⁷⁸ *Id.* at 3.

⁷⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

⁸⁰ *Id.* at 70.

degrading treatment.⁸¹ Comparative law has always played an essential role in these critical issues by addressing coercion in suspects' confessions and the implied reliance on a witness's credibility. For instance, in the United States, the Miranda rules, and *Massiah v. United States* (1964) have meanings that are intended to safeguard from coerced confessions from suspects, while in the United Kingdom, the Police and Criminal Evidence Act 1984 exists to impose rigid custody safeguards - including provisions for recording interrogations.⁸² Comparative law and international human rights obligations underscore the need to ensure that India's criminal justice practices align with human rights standards, that confessions are voluntary, and that witness testimony is reliable, resulting from admissible due process evidence and fair judicial processes.

Indian Gaps: Notwithstanding constitutional and statutory protections, there are ongoing deficiencies in India's criminal justice system regarding the treatment of witnesses and the reliability of confessions. For example, implementing custodial protections—such as requiring an attorney to be present during custodial interrogation and mandating that every statement be recorded in writing and on video—remains challenging because they are not uniformly implemented across jurisdictions.⁸³ The National Crime Records Bureau and the National Human Rights Commission regularly report on custodial violence, torture, and abuse in India's criminal legal system, which undermine both the voluntariness of confessions and the accuracy of witness testimony.⁸⁴ Furthermore, although India has expressed an endorsement of international human rights education, as with the ICCPR and the UN Convention Against Torture, there has been only marginal improvement in the legal process. As a parliamentary democracy, the judiciary cites such standards without complaint; however, thoughtful procedural reforms to implement and integrate international best practices—for example, psychological assessments of vulnerable witnesses, video-recorded interrogations, and observation of fair trial safeguards—remain relatively underimplemented.⁸⁵ The *Bhartiya Sakshya Adhiniyam*, 2023, mandates forensic examination to improve the reliability of evidence; however, areas of ambiguity in procedure and the potential for misuse of police discretion underscore the need for psychological safeguards for confessions and witness

⁸¹ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁸² *Massiah v. United States*, 377 U.S. 201 (1964); Police and Criminal Evidence Act 1984, c. 60 (U.K.).

⁸³ Constitution of India, art. 20, cl. 3, art. 21; Indian Evidence Act §§ 118–134 (1872).

⁸⁴ *Id.* at 32.

⁸⁵ *Id.* at 70.

testimony.⁸⁶ Addressing existing deficiencies is a significant step toward an enhanced evidential process, preventing wrongful convictions, and operationalising the Constitution of India and global human rights practice.

Criminological Lens: The reliability of confessions and witness statements falls within the boundaries of law, psychology, and human rights. The Indian criminal justice system, viewed through a criminological lens, faces continuing problems ensuring that testimonial evidence is accurate, voluntary, and fairly analysed. Empirical evidence from both India and internationally indicates that false confessions, mistakes in eyewitness identification, and suggestibility are leading contributors to wrongful convictions.⁸⁷ Research conducted in social and cognitive psychology has found that memory is reconstructive rather than reproductive and depends on stress, trauma, leading questions and even how many times it has been rehearsed.⁸⁸ However, courts in India predominantly rely on judicial intuition rather than empirical evaluation when determining the credibility of testimony, thereby posing a concerning risk of error.

Custodial Interrogation and False Confessions: Custodial practices in India play a central role in the production of unreliable confessions. The National Human Rights Commission (NHRC) and National Crime Records Bureau (NCRB) records continue to indicate that custodial violence and long-form interrogation remain common, and that there are no correct legal protections in place.⁸⁹ Psychological work tells us there are three basic types of false confessions: (1) Voluntary false confessions, (2) Coerced-compliant false confessions, (3) Coerced-internalised false confessions. Each confession reflects distinct processes that increase an individual's susceptibility to coercion.⁹⁰ An individual has submitted to wrongful police pressure to escape greater punishment (for example, jail time). At the same time, a coerced-internalised false confession occurs when police interrogation leads the individual to believe they actually are guilty of the offence being alleged. While we can see custodial practices in India risk creating coerced-compliant and coerced-internalised false confessions, the risks are amplified by not consistently recording interviews, not consistently permitting access to legal counsel, and not utilising psychological evaluations.

⁸⁶ A.S. Kowshikaa, India's Criminal Justice Reform: An In-Depth Look at The New Laws, 2 J.L. & Legal Rsch. Dev. 21 (2024), <https://doi.org/10.69662/jlrd.v2i1.35>.

⁸⁷ *Id.* at 46.

⁸⁸ *Id.* at 15.

⁸⁹ *Id.* at 80.

⁹⁰ *Id.* at 39.

Judicial responses have not been as consistent. The Supreme Court prohibited the use of narco-analysis, polygraph, and brain-mapping evidence under *Selvi v. State of Karnataka* (2010); however, voluntary psychological evaluations generally remain unexplored.⁹¹ U.S.A. and U.K. doctrine sets a standard because it prescribes the use of expert evidence that assists the court in distinguishing between voluntary and coerced confessions.

Eyewitness Testimony and Memory Reliability: Eyewitness misidentification is one of the most significant causes of wrongful convictions across the globe. The cognitive psychology literature illustrates the fragility of memory: misleading information, stress at the time of the crime, and problems with cross-race identification all significantly reduce accuracy.⁹² Studies like the weapon focus studies illustrate how attention narrows to the salient threat stimuli, but peripheral details, which are legally relevant, are obscured by competing attention-drawing stimuli.⁹³ Children are particularly susceptible to these issues due to developmental suggestibility and limited ability to distinguish between truth and falsehood. Section 118 of the Indian Evidence Act recognises that all individuals are competent to testify. Yet courts rarely conduct a careful examination of cognitive or psychological risks before accepting eyewitness testimony. More often, courts rely on perceptions of credibility.⁹⁴

Indian case law illustrates some of these tensions. In *Rameshwar v. State of Rajasthan*, for example, the Supreme Court made a point to recognise that the competence of child witnesses requires assessing and distinguishing the child's understanding.⁹⁵ Case examples *State of U.P. v. Krishna Master* and *Zahira Habibullah Sheikh v. State of Gujarat* create sensitivities about how courts assess the reliability of eyewitnesses and the interface with hostile witnesses, and, as in the above cases, rarely incorporate any systematic psychological assessment of their testimony.⁹⁶

JUDICIAL RELIANCE AND INTUITION VS. SCIENTIFIC ASSESSMENT

One major worry is the over-reliance on judicious intuition. In Indian courts, there are no standards for when expert psychological opinions are considered part of an assessment of

⁹¹ *Id.* at 5.

⁹² *Id.* at 49.

⁹³ *Id.* at 50.

⁹⁴ Indian Evidence Act § 118 (1872).

⁹⁵ *Id.* at 53.

⁹⁶ *Id.* at 54, 56.

testimony, unlike the Daubert standard in the United States or the UK.⁹⁷ Judges collaborate yet regularly assess credibility based on their demeanour and impressions, without the same scientifically established standards. This poses a very negative situation for potentially vulnerable witnesses, like children, trauma victims or the cognitively limited, who will be assessed on credibility in ways that thus far have received little scrutiny.

Forensic psychologists can evaluate testimonial competence, suggestibility, or memory accuracy more systematically, using structured instruments such as the Gudjonsson Suggestibility Scale or cognitive interview strategies.⁹⁸ Forensic psychologists can apply their expertise to offer empirical knowledge to the courts about factors that have historically been hidden from legal actors. There is less reliance on intuition and greater procedural fairness.

REFORM PROPOSALS

We need to establish particular reforms to improve the reliability of confessions and witness testimony in India. Custodial safeguards (and the companion reforms), such as mandatory access to legal counsel and video recording interrogations, should be made consistent.⁹⁹ Forensic psychologists should be permitted to provide details about the competence of witness memories, suggestibility, and trial reliability.¹⁰⁰ Judicial training should also recognise psychological science to reduce reliance on intuition, and the law can arguably grant forensic experts formal documentation under section 45 of the Evidence Act.¹⁰¹ Any procedural safeguards should be synchronised with international human rights norms (including Article 14 of the ICCPR and the UN Convention against Torture), meaning that evidence obtained through coercion or unreliable procedures will be inadmissible. Overall, these reforms will help improve procedural fairness, reduce wrongful convictions, and enhance the credibility of India's justice system.

Confession-Related Reforms: India should require electronic recording of all custodial interrogations to protect the reliability of confessions. This will create clear accounts of what the accused said and what they did not.¹⁰² Some safeguards in custody must be strictly followed, namely, access to legal representation and a medical examination to determine

⁹⁷ *Id.* at 64.

⁹⁸ *Id.* at 38.

⁹⁹ *Id.* at 32.

¹⁰⁰ *Id.* at 38.

¹⁰¹ *Id.* at 57,70.

¹⁰² *Id.* at 32

whether any physical or psychological coercion occurred.¹⁰³ The courts ought to deepen their scrutiny of confessions by applying scientific criteria, such as voluntariness, suggestibility, and mental state, to ensure that confessions sensibly align our evidentiary evaluations with scientific understandings of evidence and the rights protected by the Constitution.¹⁰⁴

Witness Related Reforms: To improve the reliability of witness testimony in India, we need to implement procedural and educational reforms. Modelled on the Turnbull guidelines in the United Kingdom, explicit judicial directions will enable courts to better assess eyewitness credibility by allowing consideration of variables such as stress, cross-racial identification, weapon focus, and suggestion.¹⁰⁵ Training programs in cognitive psychology, memory processes, and child development (or a combination) tailored for judges, prosecutors, and law enforcement officers will equip legal actors with the knowledge to assess the accuracy and reliability of witness testimony.¹⁰⁶ Enhancing witness protection programs is equally important, as fear of retaliation can undermine the voluntariness and reliability of testimony.¹⁰⁷ One move at a time, implementing the above-mentioned combinations of measures will move the justice system towards assessing witness testimony in a more scientifically grounded, fair and reliable manner, reducing the chances of wrongful convictions and rebuilding public confidence in the legal process.

Role of Forensic Psychology: Forensic psychology can, in multiple ways, impact accuracy and fairness in the Indian criminal court system. Firstly, the Indian Evidence Act should be amended to expand Section 45 to state that forensic psychologists are, in fact, qualified experts, not just those with medical and technical expertise.¹⁰⁸ This change would better prepare courts to properly admit expert opinion evidence regarding the trustworthiness of witness testimony and the voluntary nature of confession evidence. Secondly, court-appointed psychological experts should be made mandatory in certain sensitive cases when witnesses are vulnerable persons - for example, a child, a victim of trauma or a cognitively impaired person. A court expert could formally assess suggestibility, memory accuracy, and psychological ability using standardised tools, such as the Gudjonsson Suggestibility Scale or the Cognitive Interview.¹⁰⁹ Lastly, formal, specific guidelines should be developed in India to assess witness reliability,

¹⁰³ Constitution of India, arts. 20(3), 21; Indian Evidence Act § 24–27 (1872).

¹⁰⁴ *Id.* at 38.

¹⁰⁵ *Id.* at 65

¹⁰⁶ *Id.* at 15.

¹⁰⁷ *Id.* at 9.

¹⁰⁸ *Id.* at 57.

¹⁰⁹ *Id.* at 38.

drawing on solid examples from international best practices.¹¹⁰ These guidelines could help judges understand psychological accounts of witness evidence, make their approach more consistent, and considerably limit subjective or arbitrary assessments of it. Together, these reforms are a step towards narrowing the gap between legal and psychological practice, mitigating wrongful convictions, and promoting procedural justice.

Implementation Framework: It is essential to have a phased, evidence-based implementation strategy to ensure that the reforms proposed—mandatory recording of interrogations in audiovisual format, judicial education on cognitive psychology principles, forensic psychological evaluation, and strengthened witness protection—are viable and sustainable in the resource-scarce context of India’s criminal justice system. This implementation framework will prioritise high-impact areas, utilise existing mechanisms, and adhere to the mandates of the Bharatiya Sakshya Adhiniyam, 2023, and Articles 20(3) and 21 of the Constitution.

Phased Implementation (2026-2030): We will initiate pilot programs at 50 urban police stations and metropolitan courts (e.g., Delhi, Mumbai, and Bangalore) in Q2 2026. The focus will be on serious crimes (e.g., murder and terrorism) where the risk of unreliable evidence resulting in wrongful conviction is the most present. We will scale the pilot to include 500 police stations and 100 metropolitan courts by 2029, using pilot data to inform and facilitate nationwide implementation. Funding will be sourced from the Ministry of Home Affairs’ Modernisation of Police Forces scheme.¹¹¹

Resource Utilisation: Using existing CCTV systems in police stations will ensure video recording and minimise costs (approximately INR 100 Crore for 500 police stations). In addition, we will partner with existing low-cost forensic psychology training programs at established institutions (e.g., NIMHANS) to expand access to such training.¹¹² We will also use existing e-learning distance education programs (e.g., online programs from the National Judicial Academy) to train judges, including rural judges.

¹¹⁰ *Id.* at 65

¹¹¹ Ministry of Home Affairs, Government of India, Modernisation of State Police Forces (MPF) Scheme, <https://www.mha.gov.in/en/divisionofmha/police-modernisation-division/modernisation-of-state-police-forces-mpf-scheme> (last visited Sept. 21, 2025)

¹¹² National Institute of Mental Health and Neuro Sciences, Institute of National Importance Super-Specialty Entrance Test (INI-SS) for DM (3 years), M.Ch.(3 years) Courses July 2024 Session Prospectus Part-B (2024), <https://docs.aiimsexams.ac.in/sites/INISS/INISS%20July%202024/NIMHANS.pdf> (last visited Sept. 21, 2025).

Resource Optimisation: Utilise existing police station CCTV infrastructure for video recording to save money (around \$100 million for 500 police stations) and partner with universities (for example, NIMHANS) to provide low-cost forensic psychology education programs. Encourage the use of continuing education programs (e.g., the National Judicial Academy's online learning portal) to deliver judicial training to judges in rural areas.

Stakeholder Engagement: Facilitate workshops with the NHRC, Bar Council of India, and Sardar Vallabhbhai Patel National Police Academy to foster agreement and prepare people for change. Provide incentives to police officers by allowing them to receive certificates for successfully adopting reforms and formalising NHRC audits for compliance with protocols to incorporate video recording of interrogations and protection of witnesses.

Measurable Outcomes: Aim for a 20% reduction in custodial violence based on annual NHRC reports, a 15% reduction in wrongful convictions from eyewitness misidentification indicated in court records, and a 25% increase in confessions that meet the requirements of Section 22 of the Bharatiya Sakshya Adhiniyam, 2023, in five years. Each year, pilot program reports will be submitted to monitor progress and inform policy changes.

CONCLUSION

The reliability of both confessions and eyewitness testimony is the heart of the enforcement of justice, as it often dictates the outcome of criminal trials. However, there has been enormous psychological scholarship that confirms that confessions and eyewitness testimony are easily distorted, subject to suggestion, and essentially coerced. Memories are not exact, imagination-biased replicas of an event, but rather allocentric and subject to suggestion, trauma, and imagination bias. Similarly, confessions extracted through coercion may not be an articulation of fact but a way for an individual to relieve psychological or physical pressure. These vulnerabilities are pronounced in India, where custodial violence, patently ill-equipped legal systems, and too much reliance on judicial intuitiveness go unchecked in relation to the reliability of testimonial evidence.

While the law of evidence in India is mainly substantive, it is highly doctrinaire and perhaps not sufficiently amenable to psychological science. Section 45 of the Indian Evidence Act, 1872, concerns expert evidence but is decidedly narrow in scope, permitting only medical and

technical expertise.¹¹³ This narrow approach entirely neglects forensic psychology's role in assessing a witness's mental competence, the suggestibility of testimony, and the voluntariness of a confession. Important rulings, like *Selvi v. State of Karnataka*, have prohibited the use of narco-analysis techniques as unconstitutional. Still, it remains a significant concern that the voluntary and expert-led psychological analysis of testimony would remain marginalised.¹¹⁴ Overall, there is a marked separation of law and what is known from systematic inquiry.

Integrating forensic psychology into the criminal justice system is a worthy idea and imperative to guarantee fair trials and decrease the risk of wrongful convictions. Forensic psychologists have scientifically tested measures to help evaluate established factors, such as memory distortion, suggestibility, and the weight of trauma, thereby allowing courts to overcome biases in evidence. With cognitive psychology training, judges and lawyers would learn how the complexities of cognition interplay with the judiciousness of testimonial reliability. Moreover, amending Section 45 of the Evidence Act to acknowledge forensic psychologists' role in the evidentiary process explicitly would establish their role and harmonise India's evidentiary process with internationally recognised best practices, in particular, the Daubert standard in the United States and the Turnbull guidelines in the U.K.¹¹⁵

The necessary change is located within individual trials and requires an overhaul of the system. The custodial safeguards, including legal counsel, medical checks, and video-recorded interrogations, must be uniformly applied to prevent abuse of power and ensure voluntary confessions.¹¹⁶ Clear directions, including an assessment of witness reliability, must also be established, with the expectation that courts evaluate this evidence on scientific grounds, not on gut feel. Effective witness protection schemes would also protect evidence by forbidding intimidation of vulnerable witnesses.

Ultimately, a just criminal justice system must align with the science of the human mind. Ignoring well-established psychological predispositions can lead to miscarriage of justice and perhaps create further mistrust in the legal system. Including forensic psychological expertise will help India modernise its thinking concerning evidence, bringing together the procedural protections offered by domestic and international human rights legislations, and empirical

¹¹³ *Id.* at 57.

¹¹⁴ *Id.* at 5.

¹¹⁵ *Id.* at 64,65.

¹¹⁶ *Id.* at 98.

knowledge of what is known at the end of the human cognition spectrum. Making trials fair, evidence reliable, and justice meaningful is required.

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24. *Code of Criminal Procedure*, No. 2 of 1974 (India).

25. Police and Criminal Evidence Act 1984, c. 60 (U.K.).
26. Constitution of India, articles. 20(3), 21.
27. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
28. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.