

RIGHT AGAINST SELF-INCRIMINATION

Written by Syed Fahad Saeed

2nd Year B.A. L.L.B. Student, Institute of Law, Nirma University

ABSTRACT

In this paper, the researcher deeply analyses the right against self-incrimination & its various aspect. The research paper starts by into consideration the history in various countries relating to the right against self-incrimination which has led to the framing of such a law. The golden rule in criminal justice system i.e. the prosecution has to prove the guilt of the accused is one of the basic foundations of the right against self-incrimination. The research paper also deals with the 5th amendment in U.S. Constitution which was taken from Locke's Bill of Rights & which introduced the right against self-incrimination in the U.S. Article 20(3) of the Constitution of India deals with the right against self-incrimination which states that "no person shall be compelled to be a witness against himself". The research paper also contains the views of various jurists on the right against self-incrimination. In this paper, the researcher has also made an attempt to clarify the meaning of compulsion as mentioned in Article 20(3). Further, this research paper tries to answer questions such as-Which scientific Techniques cannot come under the ambit of medical examination as mentioned in sections 53 & 54 of the CrPC & the difference between 'furnishing evidence' & 'to be a witness'.

INTRODUCTION

The golden rule of criminal justice is that the prosecution has to prove the guilt of the accused beyond reasonable doubt. Article 20(3) gives the accused the right to remain silent. No person is bound to testify against himself although if the person voluntarily confesses of the offence then he cannot take the protection of Article 20(3).

The privilege against self-incrimination goes with the maxim “nemo tenetur seipsum accusare” which means that “no man, not even the accused can be compelled to be to answer any question which proves him guilty of a crime, of which he is accused”. Also, if the confession is derived from the accused by means of any physical compulsion, then the Court should disregard such confession.

Section 161(2) of C.R.P.C. also gives an accused the right to remain silent with regard to the questions which may prove his guilt.

HISTORY

U.S.A.

The Right against self-incrimination is provided through the Fifth Amendment in the U.S. Constitution. It covers all the written & oral evidence, which by themselves are incriminatory in nature. It gives an accused the privilege to remain silent in criminal proceedings which he thinks that the answer to them is incriminatory in nature.

U.K.

The Right to silence dates all the way back to the 17th Century in English Law. It is one of the Fundamental Principles of Common Law in Britain to not compel an accused to not compel an accused to produce any documents or objects which can prove his guilt.

“The privilege is based on the policy of encouraging persons to come forward with evidence in Courts of Justice, by protecting them as far as possible, from injury or needless annoyance in consequence of so doing.”¹

India

In India, the right against self-incrimination is based on three characteristics, which are-

- a. Accused is presumed to be innocent.*
- b. Prosecution has to establish hi guilt.*
- c. Accused need not make any statement against his will.*²

HOW IS THE RIGHT AGAINST SELF-INCRIMINATION A PRIVILEGED RIGHT?

According to Hofheld “A privilege is one’s freedom from the right or claim of another.”³ On interpretation Hofheld’s words, he means to say that the right given under article 20(3) give an accused the right to be silent & the prosecution cannot pressurize him to give answers to incriminatory questions.⁴

In the case of *Nandini Satpathy V. P.L. Dani*, the Supreme Court held that any kind of pressure by the police to obtain information from the accused is compulsion. But, if accused refuses to answer truthfully the answers which does not prove guilt then the said act will not come under compulsion.⁵

The right against self-incrimination is a privileged right in the sense that it is only available to a person who is accused of any offence & no other person can take protection under article 20(3).

¹ M.P. Jain, *Indian Constitutional Law* (8th ed.).

² M.P. Jain, *Indian Constitutional Law* (8th ed.).

³ Ketki Pramod Jha, *Jurisprudence-Article 20(3) of the Constitution*, *International Journal of Law & Legal Jurisprudence*, 1-2.

⁴ Ketki Pramod Jha, *Jurisprudence-Article 20(3) of the Constitution*, *International Journal of Law & Legal Jurisprudence*, 1-2.

⁵ *Nandini Satpathy v. P.L. Dani*, (1978) 2 S.C.C.474 (India).

A deep analysis by the Supreme Court of India of article 20(3) in the case of Balkishan A. Devidayal⁶ stated that-

1. *The Right is only available to a person accused of any offence.*

Only a person who is accused of an offence in criminal proceedings can claim the protection of Article 20(3).

2. *Protection is available against compulsion to be a witness.*

Here, the word Duress or compulsion is of importance. A compulsion should be physical act & not the state of mind of the person making the statement.⁷ But, if an accused voluntarily confesses of the commission of the offence then this protection is not available.

3. *Protection for giving evidence against himself.*

If any of these 3 elements are missing then article 20(3) cannot be invoked.

HOBBS' VIEWS ON THE RIGHT AGAINST SELF-INCRIMINATION

Hobbes in his book 'Leviathan' talks about the aspects of the social contract which the people have entered with the sovereign to establish a state. Sovereign has the power of monopoly over his subjects & under no circumstance can the people go against the state. But Hobbes believe that if any decision of the sovereign goes against the principle of self-preservation then the people ought to go against the sovereign as he took a very rigid stand on the principle of self-preservation in his book. He believed that one should resist testifying against himself as it may lead to punishment which may threaten one's life.⁸

⁶ Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 S.C.C.600 (India).

⁷ M.P. Jain, Indian Constitutional Law, 1147 (8th ed.).

⁸ Ketki Pramod Jha, Jurisprudence-Article 20(3) of the Constitution, International Journal of Law & Legal Jurisprudence, 2-3.

JOHN LOCKE'S VIEWS ON RIGHT AGAINST SELF-INCRIMINATION

John Locke belonged to the natural law school which determines what law ought to be & that law has to have some moral considerations attached to it.⁹

The U.S. derived its fifth amendment from John Locke's Bill of rights.

WHAT IS THE MEANING OF COMPULSION UNDER THE PRIVILEGE AGAINST SELF-INCRIMINATION

The literal meaning of compulsion is 'Duress' or that a person has coerced another into making of the statement which is self-incriminatory. Compulsion has to be the physical act & not the state of mind of the person making such statement except in cases where the mind of the accused has been exposed to such process where he makes the statement involuntarily.¹⁰

Usage of certain scientific techniques:

1. In the case of Smt. Selvi VS. State of Karnataka, the Supreme Court held that the administration of certain scientific techniques, namely narcoanalysis, polygraph test & brain electrical activation profile (BEAP) have a character which is incriminatory in nature & therefore trigger the protection under article 20(3).¹¹
2. Medical examinations under Sections 53, 53-A and 54 of the CrPC does not include narcoanalysis, BEAP & Polygraph test because Firstly, the general words in question, i.e. 'and such other tests' should ordinarily be read to include tests which are of the same kind as the other forms of medical examination that have been specified. Since all the explicit references are to the examination of bodily substances, we cannot readily construe the said phrase to include the said scientific techniques because they seem to

⁹ Ketki Pramod Jha, Jurisprudence-Article 20(3) of the Constitution, International Journal of Law & Legal Jurisprudence, 1-2.

¹⁰ M.P.Jain, Indian Constitutional Law,1147 (8th ed.).

¹¹ Smt. Selvi vs. state of Karnataka, A.I.R. 2010 S.C. 1974 (India).

involve testimonial evidence.¹² Secondly, the compulsory administration of the said scientific techniques is not the only means for ensuring an expeditious investigation.¹³

3. The involuntary administration of such scientific techniques is violative of article 20(3) but such techniques can be voluntarily administered provided that some safeguards are in place. Any information discovered is admissible under section 27 of The Evidence Act.¹⁴

DISTINCTION BETWEEN FURNISHING EVIDENCE & TO BE A WITNESS

In the case of *M.P. Sharma V. Satish Chandra*, the Supreme Court tried to make it clearer that what all comes under the ambit of being a witness & under what circumstances can an accused take protection of article 20 (3). The Court held that “to be a witness” means “imparting knowledge in respect of relevant facts by an oral statement or statement in writing made or given in court or otherwise while furnishing evidence means the production of some document that might be relevant to the case.”¹⁵ Therefore, the giving of thumb impressions, impression of foot or palm or fingers or sample of handwriting or exposing body for the purpose of identification are not covered by the expression ‘to be a witness’ under Article 20(3).¹⁶

CONCLUSION

This article, first talks about the of various jurists like Hofhel, Hobbes etc. on the right against self-incrimination & how some jurists are in support of the right against self-incrimination & some are not. Hofheld terms this right as a privilege because this right is only available to the accused & not to other people. This article also talks about the different interpretations of the

¹² *Smt. Selvi vs. state of Karnataka*, A.I.R. 2010 S.C. 1974 (India).

¹³ *Smt. Selvi vs. state of Karnataka*, A.I.R. 2010 S.C. 1974 (India).

¹⁴ *Smt. Selvi vs. state of Karnataka*, A.I.R. 2010 S.C. 1974 (India).

¹⁵ Kudrat Dutta Choudhary, Immunity Against self-incrimination, Lawoctopus (Nov. 5th,2018.3:01PM), <https://www.lawctopus.com/academike/immunity-self-incrimination/>.

¹⁶ Kudrat Dutta Choudhary, Immunity Against self-incrimination, Lawoctopus (Nov. 5th,2018.3:01PM), <https://www.lawctopus.com/academike/immunity-self-incrimination/>.

See also- Fred E. Inbau, Self-incrimination- What can an accused be compelled to do, 89 J. Crim. L. & Criminology 1329 (1999).

right against self-incrimination given by the Supreme Court. For this, the researcher takes into consideration some of the landmark cases on right against self-incrimination which could help the readers in better understanding of the right.

- In the case of Balkishan A. Devidayal, the Court gave an analysis of Article 20(3) so that the ambit of the article could become clearer.
- The second case that the researcher deals with is the landmark case of Smt. Selvi V. State of Karnataka in which the Court held that the statements obtained with the help of some specific scientific techniques like narcoanalysis, polygraph test & brain electric activation profile (BEAP) are not admissible but if such techniques are voluntarily administered provided that some safeguards are in place then any information discovered while such tests are being conducted is admissible in the Courts under section 27 of The Evidence Act.
- The case of M.P. Sharma gave a distinction between 'furnishing evidence' & 'to be a witness' as mentioned in article 20(3).