

PROTECTION AGAINST SELF-INCRIMINATION AS A FUNDAMENTAL RIGHT IN INDIA

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Abstract

The Latin adage "Nemo tenetur seipsum accusare"—which translates to "No man is required to accuse himself"—is the earliest example of the right against self-incrimination in mediaeval Roman Catholic law. Through objections against the inquisitorial and blatantly unfair techniques employed to question suspects in the mediaeval times in England, the right gradually developed in common law. One of the cornerstones of the British System of Criminal Law was "no person shall be compelled in any case to be a witness against himself," which the United States of America adopted and included in their Constitution. This principle was later incorporated into the Indian Constitution under Article 20(3). The Constitution (Fourth Amendment) Act of 1978 gave Article 20 of the Indian Constitution non-derogable status.

This means that under no circumstances, not even in an emergency, can the state fail to protect this right. "This exemplifies the importance that our Constitution has placed on it. Throughout the early years of our Constitution, there has been considerable misunderstanding over what evidence is protected, and there has appeared to be a conflict between Article 20(3) and the provisions of the Indian Evidence Act, 1872. be a witness against himself and thereafter under Article 20 of the Indian Constitution."¹ The Apex Court received these judgments and referred them to an eleven-judge panel after clubbing them.

Keywords: Self-incrimination, Fundamental Rights, Ex Post Facto Laws, Article 20

Introduction

The Indian Constitution's Article 20 is composed of three clauses. Ex post facto laws, double jeopardy, and the right of an accused person against self-incrimination are each addressed in one of the three clauses.

We must first comprehend why the Constitution's authors chose to include these three particular clauses in the document when they could have simply done so in one of the laws. The premise is that a person is already in a highly precarious position and the scales are strongly stacked against him when they are being tried in a court of law, particularly in criminal cases when the State is the prosecutor. These few fundamental rights should be made available to the accused in this situation in an effort to strike a compromise between the parties.

It's interesting to note that these ideas are not specific to the Indian Constitution when it comes to Article 20. "These have also been acknowledged in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which are found in the constitutions of most civilised nations."²

Statement of Problem

This research study aims to provide an outline of the advantages that Article 20 grants to those who are being tried and primarily clarifies the concept of self-incrimination. This essay offers a thorough study of the many legal rulings that influenced the development of the self-incrimination concept and highlighted its significance as a fundamental constitutional right.

¹ Kumar Pandey, P. and Raza, A., 2015. 'Protection Against Self-Incrimination' as a Fundamental Right in India: A Critical Appraisal. *Indian Bar Review*, 42(4), pp.133-159.

² Sundaram, S. and Rajavenkatesan, P.R.L., 2022. Protection against Self-Incrimination—Principles and Practice—A Comparative Analysis.

Objective

The significance of self-incrimination as a fundamental right of our Indian Constitution is one of the paper's goals and objectives. A comprehensive grasp of what this right comprises and the different justifications for it may be gained from examining its evolution and inception as a fundamental right.

Review of Literature

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3. Jain, A., 2022. An Overview of the Right against Self-Incrimination. *Supremo Amicus*, 28, p.34.
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8. Sarvankar, S., 2017. Key Disclosure Laws and the Right Against Self-Incrimination in India. Available at SSRN 3063854.
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Features of Right to Self-Incrimination

No one accused of a crime may be forced to testify against themselves, according to Clause 3 of Article 20 of the Indian Constitution. Therefore, to put it simply, clause 3 of Article 20 discusses the privilege against self-incrimination that everyone in the Union of India who is accused of a crime gets.

“The Indian Constitution is not the only one that recognises this specific privilege against self-incrimination. In actuality, it was an integral component of the common law system that was later adopted by the American criminal justice system, from which it eventually made its way into the American Constitution.”³ The justification for this right to self-incrimination comes from the reality that if mandatory examination were allowed, authorities would frequently employ force to coerce an accused person into confessing. This right so safeguards, human privacy and the humane principles of criminal law.

There are three of these elements if we examine the parts that make up clause 3 of Article 20. It first refers to the privilege accorded to a person who is accused of committing a crime. Second, it discusses the protection against being forced to be a witness, and third, it discusses the protection against being forced to testify against himself. For the benefit of the privilege of the right against self-incrimination, all three of these elements must coexist.

Important Judicial Pronouncements

Regarding the jurisprudence on this topic, we observe a vacillating stance taken by the Supreme Court that is centred on the fact that there have been very few discussions of this particular topic in the Constitutional Assembly. As a result, it was entirely up to the courts to construct the jurisprudence on this particular subject.

“The well-known case of *State of Bombay vs. Kathi Kalu Oghad* will be our first case study on this subject. The 11-judge bench was asked whether it breached Art. 20(3) when the accused was required

³ Jain, A., 2022. An Overview of the Right against Self-Incrimination. *Supremo Amicus*, 28, p.34.

to provide his handwriting, thumbprint, fingerprint, palmprint, etc.”⁴ According to the Court, how one interprets the words "to be a witness" will determine how this question should be interpreted. According to the court, Article 20(3) only protects individuals who are suspected of committing a crime; it does not apply to those who are questioned as witnesses. The court further declares that requesting fingerprints, handwriting, etc. does not infringe Article 20(3).

According to the court, the protection provided by Article 20(3) only applies when the accused provides information that is based on his own knowledge. It states that something offered from the accused's own free will that would modify the circumstances in a particular case would be covered by protection under 20. (3).

After this ruling, the court's stance on what constitutes an Article 20 violation has been rather consistent (3). It states that when an accused person is instructed to stand up and present his face for identification, Article 20 is not regarded to have been violated (3).

When reading the clause literally, one question that comes to mind is what was meant by "compulsion." According to the court, compulsion in this case would include coercion or a physically aggressive conduct. Normally, it wouldn't contain the state of mind unless the mind has been conditioned that way by an outside process, making the remark unintentional.

In this regard, it must be highlighted that the idea of compulsion does not automatically apply simply because a person is in police custody; rather, it only applies when the state utilises force during an interrogation procedure. Over time, this idea of coercion has undergone tremendous adjustment, with judges today taking a far more lenient stance.

The court determined in *Vidya Verma v. Shiv Narain* that the protection provided by article 20(23) only applies to criminal proceedings. In all processes, the American constitution permits this protection (criminal and civil). The declaration made might be referenced in subsequent procedures.

Kalawati v. State of HP The Indian Supreme Court ruled that Article 20(3) cannot be used in situations where a statement was provided voluntarily and without the use of coercion, threats, or promises. Retracted confessions are not incompatible with this condition, even when they offer very little in the way of evidence.

“In *V.S. Kuttan Pillai vs. Ramakrishnan and Others*, the court determined that a search warrant might be issued to look for a document, and if it is discovered in that person's possession, it may be recovered even though the court was not aware that the person had the document.”⁵

Giving Evidence Against One-self

There are many perspectives on the right to silence. On the one hand, it places the onus of proof on the prosecution or the state to establish the guilt of the defendant. On another, it holds that a person is presumed innocent until and unless proven guilty. The third viewpoint is where the accused is given the opportunity to keep mute and is prevented from cremating himself. There are some situations where the accused is not permitted to use this privilege to defend himself. The accused may be forced to consent to having his portrait taken, giving a DNA sample, or giving other bodily parts for examination during an investigation.

Examples of Self-Incrimination

The obligation of the accused is to honestly respond to all of the police officer's questions when the accused is brought in for oral questioning. However, if the officer uses force or threatens him, he has the right to refuse to answer questions because doing so could result in criminal charges being brought against him. “Since the prosecution has the burden of proving guilt, no one should be viewed with guilty eyes unless that is demonstrated, this right exists to shield him. The background of anybody who testifies at trial must be investigated.”⁶ Nothing in the facts and circumstances should indicate that

⁴ State of Bombay vs. Kathi Kalu Oghad, 1961 AIR 1808.

⁵ Sekhri, A., 2019. The right against self-incrimination in India: the compelling case of Kathi Kalu Oghad. *Indian Law Review*, 3(2), pp.180-211.

⁶ Choo, A., 2014. The privilege against self-incrimination and criminal justice. A&C Black.

force was used to extract the confession that would negatively affect him. The purpose of this provision is to balance the requirement to administer criminal justice with the need to protect individual privacy.

Right to Silence

The Indian Constitution guarantees everyone's citizens the right to silence as one of their fundamental rights. Because it provides security to the wronged, this adjustment is included in Article 20(3). Unless a person is found guilty of the alleged offence, they cannot be denied their rights or punished unfairly under Indian law.

because of D.K. Legal guidelines and a process were established in *Basu v. State of West Bengal* to make that the denounced. The court further ruled that it is important to explicitly inform people when they have violated Article 20(3)'s right to quietness. Spreading mindfulness is necessary, and each person has the choice to acknowledge that his kindness needs improvement. As a result, it demonstrates that no one has the authority to provide an explanation that will have an impact on the individual and leave them with the option to remain silent. It combines the right to expression and free speech.

Narco Analysis and Self Incrimination

The admissibility of tests like DNA and narcotics analysis in court has always been a subject of discussion. The question of whether these tests violate the Article 20 right against self-incrimination always comes up (3). The court ruled in *Gobind Singh v. Status of Madhya Pradesh* that a person's mental state falls under the definition of their "Right to Privacy." Later developments in this area showed that a state cannot force someone to give details about their lives that they prefer to keep private because doing so would violate their rights under Articles 20(3) and 21.

"In *Selvi v. State of Karnataka*, which involved this question, the Supreme Court rejected the High Court's reliance on the usefulness, dependability, and legitimacy of narco examination tests and other similar tests as methods for criminal examination."⁷ The Court determined that a person's motivation to submit to narco-examination, polygraph exams, and cerebrum planning is a necessary urge. Since the acceptable responses provided during these tests are not given knowingly and purposefully so that the subject cannot decide whether to answer a question or not, it amounts to an act of impulse and qualifies for insurance under Article 20(3).

"The narco-investigation test, according to the Court, is a callous and cruel treatment that disregards the right to protect a person. Aside from circumstances when it is necessary for the public good, courts cannot permit the organisation of drug tests against a person's wishes."⁸

Is waiver of privilege being given under 20(3) of the Indian Constitution valid?

A basic right cannot be waived, that much is certain. The privilege granted by Article 20(3) of the Constitution is subject to the accused using it; it is a privilege, and the person being accused of a crime has the option of not using it. The accused is granted the right to testify, but he is not required to do so. As a result, the accused is free to testify if he so chooses. The concession of privilege, however, must be genuine and substantial. For instance, a person cannot be deemed to have waived a right in a real and substantial sense if they are ignorant of the privilege under Article 20(3) yet knowingly waive it. When presented to an adjudicating authority or court in such a situation, the statement would be subject to Article 20(3) of the Constitution and could be rejected. Additionally, if an officer in charge threatens an accused person with section 108, which does not apply to instances covered by article 20(3), when the person is brought in, the statement made in response to the threat will be viewed as having been forced and will not be accepted.

When necessary, the Custom and Central Excise officials must advise the person that he has this protection under Article 20(3) of the Constitution. The Supreme Court ruled in *Kartar Singh v. State of Punjab* that the officials who brought the accused in must inform him of this privilege while taking

⁷ Mittal, A. and Mishra, A., 2021. Right against Self-Incrimination: A Detailed Study & Analysis of Laws Prevailing in India. Issue 2 Int'l JL Mgmt. & Human., 4, p.1868.

⁸ Morgan, E.M., 1949. The Privilege Against Self-Incrimination. Minn. L. Rev., 34, p.1.

his statement and maintain an acknowledgement with them. There does not appear to be any justification for this directive not to apply to Customs and Central Excise.

Conclusion

According to the law, an accused person is deemed innocent until proven guilty, and the clause under Article 20(3) is necessary for this to happen. The Indian Constitution's Article 20(3) preserves the accused's rights and shields him from any cruel treatment. "To activate this part, there are three requirements listed. Only an accused individual is eligible to employ this right, and only in criminal rather than civil procedures. Similar rights are safeguarded for the accused by Section 161(2) of the Criminal Procedure Code."⁹ It would be allowed in proceedings if a person voluntarily and legally made a statement that may be used against him. Second, it is the responsibility of the authorities to scare the subject by claiming that he has a legal right to remain silent.

To put it another way, each accused person needs to be made aware of his rights. Throughout the course of the criminal case, the accused may exercise this right at any time. A person should not be forced to speak negatively about themselves; this is a factor that should not exist. Thirdly, the person making the statement must be a witness against him. Nobody should be compelled to cremate themselves, so everyone on the planet is granted this right. It is frequently questioned if scientific testing are in violation of Article 20(3). Everything that aids in drawing conclusions about the facts is valid, barring any coercion to take a certain action.

I believe there should be a distinction made between an individual's right and the judicial process. The right to remain silent is a crucial clause that protects an accused person's interests while an inquiry is being conducted. Nobody should be pushed to commit suicide by speaking words that could be used against them. But gathering evidence is not the same as pressuring someone to speak, thus these scientific tests are not unlawful.

⁹ Sarvankar, S., 2017. Key Disclosure Laws and the Right Against Self-Incrimination in India. Available at SSRN 3063854.