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RIGHT AGAINST SELF INCRIMINATION AND FORENSIC SCIENCES: “BALANCING JUSTICE AND ETHICAL VALUES”

AUTHORED BY: TANAYA GANDHI & ADITYA KUMAR

CHAPTER 1: GLANCE

1.1 ABSTRACT

Right against Self Incrimination is one such prodigy in the area of criminal offences that not just marks as one of the great landmarks in man's struggle to make himself civilized but also considered as a lone sure rock in the times of storm. Governed under the constitutional principles of India and various other countries, it has acted as one of the integral rights resting with the accused further protecting the morality and integrity of an individual. However, the prolonged controversies subsiding the right have been recalled time and again with the advancement in the technology with regards to forensic studies and analogies. In the growing era of the 21st century, the branch of Forensic sciences and practice are yet considered as one controversial exception to the Right against self-incrimination. The extent of the right and reasonable restrictions is yet to be determined in the course of law and beyond the juristic perspective. Hence, this paper talks about the legal foundation of right against self-incrimination by determining the international perspectives and exceptions over Judicial Interpretations. It also essentially defines the role of forensic sciences in the Self Incrimination by creating a contrast between testimonial and non- testimonial evidence and determining reasonable restrictions upon the same. The conduct of this research is done by keeping in mind the ethical interest and human right considerations over the controversial issue in hand and is backed up with case laws having contrasting opinions and judicial perspectives. At last challenges and future directions are also shed light upon in the said paper. After all the motive of this paper revolves around the wise words of Greg Iles, where he once said that *“you yourself are guilty of a crime, when you do not know how to punish a crime”*.

1.2 KEY WORDS

Right against Self - Incrimination, Forensics, Narco Analysis Text, Accused, Fundamental Rights, Heinous offences, Testimonial, Non - testimonial

1.3 INTRODUCTION

The right against self-incrimination lays down the foundation for a fair criminal justice system throughout the world. The legal provision that ensures the right against self-incrimination in India is Article 20(3)¹, it provides that no person accused of an offence shall be forced to become a witness against himself. This provision is very crucial in protecting the liberty of individuals and preventing any misuse of power by the state. The right against self-incrimination is further reinforced in Bhartiya Nagarik Suraksha Sanhita and Bhartiya Sakshya Adhinyam which does not allow any coercive methods for investigation or forced confessions, which is why statements given in the police station are not recognized as admissible evidence in the court of law. However, the recent development of forensic science has challenged the traditional interpretation of self-incrimination and has raised different legal and ethical questions regarding the extent of this right.

The development of forensic science has completely transformed criminal investigations by providing various scientific techniques and technology to ascertain the truth. Various techniques like DNA profiling, polygraph, have gained popularity in crime investigation procedures. In India polygraph tests are only allowed with the voluntary consent of the accused. These techniques are powerful tools in determining the truth regarding any crime, however use of these techniques also raises concerns regarding the right against self-incrimination. A major concern in this regard is whether compelling an accused person to undergo various forensic tests would amount to violation of their fundamental right against self-incrimination. Unlike physical evidence, which are admissible in court, forensic techniques like narco-analysis and polygraph tests directly affect the right against self-incrimination. There have been a lot of controversies regarding this subject.

Apart from these legal aspects of these questions, forensic science also raises concerns regarding ethics and human rights. Many concerns have been raised regarding the legal and ethical aspects of the admissibility of forensic techniques, but looking at the current scenario of the criminal justice system, the need for forensic science is imperative. Criminals have evolved with time and it is crucial for the justice system to evolve with them, which is why the development of forensic science is so crucial. This paper will critically analyses the interaction between forensic science and the right against self-incrimination. It will explore and study the various judicial precedents, legislative frameworks and the ethical concerns regarding forensic

¹India Const. art. 20, cl. 3

science in criminal investigation. The paper will also focus on assessing whether the advancement in forensic science aligns with the constitutional provisions and aims at contributing to the ongoing debate on the limits of forensic science in a constitutional framework.

1.4 RESEARCH OBJECTIVE

The concept of forensic science in self-incrimination has never been much explored by the analyst and the researchers. As much as the concept in itself is niche it is equally controversial. This research paper has been made with an intention of making folks aware of the exclusive right given to the accused under the name of Right against Self Incrimination which is considered as a Fundamental Right under the course of Indian Constitution. However, the over use of leverage that has been exercised by the accused under the name have also created a confusion whether there shall be any limit to this right and whether studies under Forensic Sciences come under the said ambit. Keeping in mind Juristic perspective within the case commentaries and international regulations this paper curtails few suggestions and recommendations to grow with the modern technology for investigation of crimes within the nation. This paper has shed specific emphasis on non-testimonial evidence and Narco analysis test with special reference to the ethical persona of the said topic.

1.5 RESEARCH METHODOLOGY

The research paper comprises various sources such as Books, Articles, Case Commentaries etc in order to deduce the facts, crux and rationale of the research so made. Certainly, quantitative and analytical research has been conducted in order to understand and correspond to the circumstantial facets of the research topic and questions in hand. The study is inclusive and detailed as well as crisp for better understanding of the readers and contemplators. Certainly, there has been a thorough analysis conducted on the laws and juristic perspectives of forensic science and its correlation to that with the right against self-incrimination. Both qualitative and quantitative data have been sabotaged, while quantitative data is used more than the other. The study has been done to ensure the findings are trustworthy, valid, and pertinent to their goals. The current research is analytical, descriptive, and doctrinal however not empirical.

1.6 RESEARCH QUESTION/ HYPOTHESIS

The following are the research questions upon which this search Paper has been based: -

- 1) What is the extent of right against self-incrimination?

- 2) Can the right against self-incrimination be set aside when a person is accused of a heinous offence?
- 3) How important are Forensic Science techniques with regard to criminal Jurisprudence?
- 4) Should there be exceptions upon Article 20(3)² of the Indian Constitution similar to reasonable restrictions mentioned in Article 19 of the Indian Constitution?

1.7 LITERATURE REVIEW

1. Indian Journal of Integrated Research in Law RIGHT AGAINST SELF-INCRIMINATION: A COMPREHENSIVE STUDY

In the aforementioned research paper, the author has given justice to the topic but furnishing the nexus between Rights against self-incrimination and the modern forensic techniques used by the forensic expert. It has also dealt with the controversial aspect of Narco analysis test and the intricacies of it being an exception within the ambit of Right against self-Incrimination. The research paper has proved to draw inferences from various domestic cases and juristic perspectives over Forensic investigation as an exception to Right against Self Incrimination.

2. Impact of DNA evidence in criminal justice system: Indian legislative perspectives

The aforesaid research paper deals specifically with the DNA investigation and Non-Testimonial Evidences which are exceptions to the Right against Self-incrimination. The conditions and hypothesis are backed with conventional case analysis and situations that are substantive in nature.

3. Right to Self-Incrimination and Forensic Science: A critical study

The said article deals with the holistic approach over right to self-Incrimination in nexus with that of Forensic Science. It has dealt with the controversial situation such as DNA sampling, Forensic studies and other branches that have created deadlock over the decades with respect to the principle of Right to self-incrimination. This paper has indeed proven to add a holistic approach pondering over the topic by highlighting ethical concerns with regards to Right to Self-Incrimination and has discussed the exclusive rights of the same.

4. Indian Journal of Law and Legal Research FORENSIC SCIENCE IN INDIA: A CONSTITUTIONAL PERSPECTIVE

This paper explores the nexus between constitutional law and forensic science with

²India Const. art. 20, cl. 3

regards to the Indian Legal framework, emphasizing the key constitutional principles in order to shape the ethical and lawful correspondence within forensic techniques. It has examined the key constitutional provisions like Article 20(3)³ which indeed protects the principles against self-incrimination. The paper also shed light on Article 21⁴ of the constitution which guarantees the right to privacy and protection from the mishap as a key foundation that safeguards in criminal investigation. The paper also highlights how forensic evidence must align itself with the constitutional mandates to ensure fairness, ethical reasoning and human dignity.

5. Impact of DNA evidence in criminal justice system: Indian legislative perspectives

This aforesaid research article highlights the modern scientific technological advances along with the changing socio-economic standards of the society that has imposed new challenges in the criminal judicial system. This paper has highlighted the key and potential role of forensic in terms of criminal investigation and shadow of reasonable doubt over matters involving heinous offenses. Essentially this paper deals with the DNA discovery and coercive nature of the same. And has certainly opened avenues and advancement in DNA technological research. Even Though this paper has vaguely highlighted the nexus between forensic study and Self-incrimination, the paper has guided research over the growth of forensic techniques and methodology in modern India and the growth of the same witnessed so far.

6. Changing dimensions of right against self-incrimination: one of the fundamental rights under the constitution of India is the right against self-incrimination provided under article 20(3)⁵ of the constitution. “*Nemo tenetur seipsum accusare*” is the legal maxim on which this fundamental right is based upon which literally means that no person should be obliged to become a witness against himself, it is also recognized by multiple international declarations and conventions. The Supreme Court of India has emphasized many times the importance of the right in various judgments pronounced by it. However, with the development of science and technology, specifically forensic science, the overall dimensions have undergone various changes, as it has raised various issues of violation of rights of the accused with regard to forensic examinations and testimonial compulsion. The paper examined the overall impact of the fast-growing technologies with regard to right against self-incrimination. The paper also analyzed if

³India Const. art. 20, cl. 3

⁴India Const. art. 21.

⁵India Const. art. 20, cl.3

the growth of forensic science has in fact resulted in violation of fundamental rights or not.

CHAPTER 2: ANALYSIS

2.1 LEGAL FOUNDATION OF THE RIGHT AGAINST SELF - INCRIMINATION

Right against self- Incrimination is indeed a fundamental legal principle as per Indian Constitution that protects individual or a citizen of India from being forced to provide evidence or testimony that could be further affixed at the time of trial. This legal principle is governed in India under Art 20(3)⁶ of the Indian constitution which presents that no person shall be forced to be the witness against himself. The right against self-incrimination is not just restricted to Indian but other parts of Nations as well. In the United States, the fifth amendment⁷ explicitly governs the states in similar lines to that of Art 20(3)⁸ of Indian governance. Similarly, the federation of Canada in their charter of rights of freedoms (section 11(c)) protects individuals to testify themselves in their own trial. Even though this right has not been uncommon within the nations, the exclusivity of this principle has always been raised at attention amongst the jurists across nations. There being no proper demarcation and extent of the right against self-incrimination had definitely questioned its viability⁹.

As argued within the 5th Amendment of the United States¹⁰ it was defined that the right against self-incrimination shall primarily apply upon testimonial evidence and not upon non - testimonial evidence. However, the distinction between the two is a crucial affair under legal contexts. Testimonial Evidence refers to a statement made verbally or in a written form which further reveals beliefs, thoughts, or knowledge of the accused person. This includes confessions made by the accused during police investigations as well as statements made in the court or during legal proceedings. This is where the right against self-incrimination comes in place where the accused person has a protected right to remain silent¹¹. However, at the time of non-

⁶India Const. art. 20, cl.3

⁷U.S. Constitution - Fifth Amendment | Resources | Constitution Annotated | Congress.gov | Library of Congress, <https://constitution.congress.gov/constitution/amendment-5/> (last visited March 19, 2025).

⁸ India Const. art. 20, cl. 3

⁹(PDF) "Protection Against Self-Incrimination" as a Fundamental Right in India: A Critical Appraisal, https://www.researchgate.net/publication/305656462_'Protection_Against_SelfIncrimination'_as_a_Fundamental_Right_in_India_A_Critical_Appraisal (last visited March 3, 2025).

¹⁰U.S. Constitution - Fifth Amendment | Resources | Constitution Annotated | Congress.gov | Library of Congress, <https://constitution.congress.gov/constitution/amendment-5/> (last visited March 19, 2025).

¹¹180 The Report On Article 20(3) Of Constitution Of India And The Right To Silence, <https://indiankanoon.org/doc/10337889/?type=print> (last visited March 3, 2025).

testimonial evidence which certainly consist of physical or biological traces or evidences are generally allowed by the courts to compel the accused person to sign for the same, be it fingerprints, DNA samples, Blood Tests or Handwriting samples. In the case of *State v/s M Krishnan Mohan*¹² the court ruled that collection of fingerprints, DNA testing, and handwriting does not fall under the protection of Art 20(3)¹³ as they are considered as non-testimonial evidence.

Moreover, it is to be noted that in the usual instances non testimonial evidences are required for heinous offences for which the punishment lies up to 7 years and more. Considering the gravity of the offenses and the need for speedy trial it is certainly essential to bend down the right against self-incrimination to achieve free and fair justice to the victim.

It has been stated by various jurists that the privilege of the right to self-incrimination shall rest with the accused person against whom a formal accusation has been levelled which may further result in prosecution. In India, a formal accusation can be made for an instance by lodging an FIR and it is not necessary that the trial or an enquiry should have commenced before a formal court sitting. Moreover Art 20(3)¹⁴ operates only on the making of such a formal accusation. Furthermore, it is imperative to take into consideration that “a person cannot claim the protection if at the time of him making a statement, he was not considered as an accused but became one thereafter”. Additionally, it is to be noted that the Art 20(3)¹⁵ does not apply to the departmental inquiries into allegations against a government servant since there is no formal accusation of an offence. In the case of *Nandini Satpathy v/s P.L. Dani*¹⁶ the SC highlighted the objective of the Art 20(3)¹⁷ of the Indian Constitution by stating that the provision is meant to protect an accused from the unnecessary harassment of the Police and investigation officer and not undermine the process of Investigation to provide fair justice. Hence even though the principle has no specific extent, it shall not be misused under the name of Fundamental Right and with the growing era of crimes and forensic investigations, there shall be a certain amount of inclusivity towards forensic investigations including narco analysis tests.

¹² *State v. M. Krishna Mohan, (2008) 6 S.C.C. 368 (India).*

¹³ *India Const. art. 20, cl.3*

¹⁴ *India Const. art. 20, cl.*

¹⁵ *India Const. art. 20, cl.3*

¹⁶ *Nandini Satpati v. P.L. Dani, (1978) AIR 1025 (SC) (India).*

¹⁷ *India Const. art. 20, cl.3*

2.2 ROLE OF FORENSIC SCIENCE IN SELF-INCRIMINATION

Forensic science plays a very crucial role in criminal investigation by providing scientific evidence that helps in establishing the guilt or innocence of a person. The overall implementation and advancement of forensic science has positively impacted the general perception of justice in the country. Moreover, scientific techniques used in order to gather evidence in a criminal assault must meet three main criteria i.e. validity, reliability and legality. These standards are certainly influenced by the methods that are used and thereby the consistency of results is obtained¹⁸.

There has been an increase in conviction rate due to the implementation of forensic science in criminal trials and has ensured that the convictions are accurate, fair and efficient. DNA testing can be taken as an example here, as it is treated as a conclusive proof which can confirm or even refute testimonies by the witnesses. Moreover, DNA tests have been widely accepted as one of the most accurate methods of uncovering the truth behind a criminal offence. Irrespective of that the question of whether it violates Art 20(3)¹⁹ has been raised time and again. One such instance has been marked in the case of *Kharak Singh v/s State of UP*²⁰ and in the case of *Govind Singh v/s State of MP*²¹, where the court discovered that fundamental rights are subject to reasonable restrictions with respect to the interest under public welfare. Subsequently, the courts ordered that DNA tests shall not be violative of Article 20(3) of the constitution.

It is a known fact that any person can be corrupted by money or even coerced into doing or saying something they do not want to, which is why witness statements and circumstantial evidence can always be tampered. This is where forensic science comes into play as it has introduced scientific methods and techniques in criminal investigation which are much more reliable as they are not vulnerable to any kind of manipulation. Scientific examinations including forensic sciences are considered to be a vital source in establishing facts and facets of the case, however their compliance with Article 20(3)²² has been one of the subjects of debate.

¹⁸*Woolmington v. DPP, [1935] A.C. 462 (H.L.).*

¹⁹*India Const. art. 20, cl.3*

²⁰ *Kharak Singh v. State of U.P., (1963) AIR 1295 (SC) (India)*

²¹ *Govind Singh v. State of M.P., (1975) AIR 1378 (SC) (India).*

²²*India Const. art. 20, cl.3*

As said earlier the overall perception of criminal justice is also impacted by forensic science because high profile cases investigated by forensic techniques like DNA profiling often receive huge media coverage. Therefore, the general public is usually well acquainted with the investigation. As stated earlier, forensic science has always been in conflict with the right against self-incrimination, as in the case of *Selvi v. State of Karnataka & Anr Case*²³, the Supreme Court had stated that involuntary administration of Narco or polygraph tests disregards a person's mental privacy. The Supreme court had also held that these Narco tests are in violation of the fundamental right against self-incrimination under article 20(3) of the Indian Constitution. Another case that can be referred to here is the case of *D.K. Basu v. State of West Bengal*²⁴, where the Supreme Court had ruled that involuntary administration of Narcos or polygraph tests amounts to cruelty and degrading treatment with regard to article 21 of the Indian constitution, which ensures right to life. After all these challenges, the question "why do we need forensic science?" arises. It's true that the fundamental rights provided by the constitution of India are absolute, but we also cannot ignore the graveness of heinous crimes. What is being suggested here is the defense provided by Article 20(3)²⁵ should include certain reasonable restrictions. Reasonable restrictions are also given in article 19 of the Indian Constitution, which guarantees various freedoms to the citizens of India. The reasonable restriction being suggested here is that the right against self-incrimination must be subject to the nature of the offence²⁶. Meaning in the cases of heinous offences i.e offences punishable with imprisonment for more than 7 years the accused does not get the absolute right to refuse any forensic test on the defense of article 20(3)²⁷, including Narco analysis or polygraph tests.

2.3 ETHICAL AND HUMAN RIGHT CONSIDERATION UNDER SELF - INCRIMINATION

Unlike any other fundamental rights governed under Indian provinces, the concept of self-incrimination has also acquired an ethical and human right perspective across the state. Even though ethical principles in the society dictate that a person is considered innocent until proven guilty and that forcing a person to self-incriminate undermines their fundamental right, there

²³ *Selvi v. State of Karnataka*, (2010) AIR 1974 (SC) (India).

²⁴ *D.K. Basu v. State of West Bengal*, (1997) AIR 610 (SC) (India).

²⁵*Id.at 18*

²⁶ *Right of Self-Incrimination in Digital Age: Whether Compelled Disclosure of Password/Biometrics is Unconstitutional?* | SCC Times, <https://www.scconline.com/blog/post/2023/03/18/right-of-self-incrimination-in-digital-age-whether-compelled-disclosure-of-password-biometrics-is-unconstitutional/#> (last visited March 10, 2025).

²⁷*Id.at 18*

shall be certain sets of reasonable restrictions codified within the law. With the growing advancement in technology and medical sciences the stream of forensics has grown with time. Scientific methodologies or tests such as DNA, fingerprint examination, Pornography or Narcotics test are few branches that come under the forensic examination. In the case of heinous offenses that are punishable beyond seven years of imprisonment involves critical examination of a witness, crime scene or an accused for that matter. For an instance a rape case which is supposing a heinous offence such as that of *Arushi Talwar* was called up on by the investigators that finger print examination at the crime scene was the most competent part of the case, where the finger print at the crime scene were tallied with that of the parents and other prime suspect. This is where the defense or right against self-incrimination doesn't fall in place as be it parents or any other X person, anyone could be considered as the prime suspect before the eyes of law, until proven guilty. The ethical dilemma of examining the parents were questioned by the protagonist in the said case, however it is to be noted that when a heinous offence is committed the only way to reach out to justice is undergoing forensic examination. There is nothing more right or wrong when it comes to giving justice to the victim or crime bearer.

The visuals of torture in order to extract confessions by the accused have been a common practice in India over the decades. And that is where the right against self-incrimination was subjudice, however it has also not been hidden that the accused have escaped from undergoing forensic examination over exercising the defense provided to them under the Ethical principles. Hence striking a balance between right against self-incrimination and utilization of forensic evidence in the criminal examination shall be an integral part of Indian courts. Where the courts must ensure appropriate usage of forensic tools that are ethically feasible preventing coercion. Practices such as fingerprint examination; Handwriting text or DNA testing shall be conducted in fair and just manner and proper transparency shall be maintained between examining officer and the accused. It is the basic principle of life that what is more or excessive for one shall not be the same for another. Hence conducting forensic examination shall be ethically right over the heinous crimes such as murder, rape, assault etc. at the cost of violating the right against self-incrimination. The courts shall be given the full consent to decide over the ethical aspect of the bylaws and shall be kept loose for the accused to manipulate the same.

2.4 CHALLENGES AND CONTROVERSIES

Law provisions are based on interpretation, and the fundamental right against self-incrimination is no exception to this. While article 20(3)²⁸ of the Indian Constitution does ensure right against self-incrimination, it does not consider the fact that forensic science has become an integral part of criminal investigation in the current scenario. The Indian Constitution came into force in a time when forensic science did not exist in its modern form, which is why there is no consideration for its existence in the provisions. In many cases article 20(3)²⁹ is interpreted in such a manner that it goes against forensic science, this defense and interpretation can be misused by people in denying any forensic examination. This is a loophole which can be used by people to escape criminal liability, which defeats the entire purpose of the criminal justice system. Human ethics also comes in this situation as a challenge as there is always a conflict between the two. The most asked question in this regard is whether the modern forensic techniques are in contravention of the human ethical values, the most controversial forensic technique in these cases has been narco-analysis. This technique has always been riddled and surrounded with controversies, as forced or coerced narco analysis completely goes against bodily integrity and personal autonomy. In Fact, the risk of violation of rights and autonomy is a lot more in marginalized communities who are in custody where they may be forced to take such tests. It is very important to treat the accused with respect and their mental and physical privacy shall always be considered. The same was said by the courts in cases like *Kishore Singh v. State of Rajasthan*³⁰ and *Gobind Singh v. State of M.P.*³¹. Lack of infrastructure is a very common problem in many sectors in India and forensic science is no exception to that, as it suffers from inadequate infrastructure and financial resources. The problems faced by forensic science in India also include outdated technologies and lack of funding in many forensic labs, including inadequate number of forensic professionals. Political influence is also a major challenge faced by forensic science as there may be cases where the evidence has been tampered due to external influence and it raises serious questions regarding impartiality and fairness. Even today many forensic laboratories do not get complete recognition from various agencies, whether national or international, leading to various concerns being raised regarding the credibility of their findings, due to which it also becomes difficult for the courts to completely rely on the evidence and conclusions found by these forensic laboratories.

²⁸*Id.at 18*

²⁹*Id.at 18*

³⁰ *Kishore Singh v. State of Rajasthan, (1954) AIR 264 (Raj.) (India)*

³¹ *Govind Singh v. State of M.P., (1975) AIR 1378 (SC) (India).*

2.5 CONCLUSION AND SUGGESTIONS

It is very important for the courts to balance the interests of the victim and rights of the accused; only then can justice be truly delivered. It is the duty of the state to protect and safeguard the fundamental rights of the citizens and ensure that nobody is subjected to an unjust trial. This is where forensic science steps in, as it plays a very pivotal role in administering justice and enabling the state to achieve this goal of balancing the rights of the accused and interests of the victims. Many times forensic evidence have been heavily relied upon in high profile criminal cases, like the *Nirbhaya Case (Delhi Gang Rape)* where DNA testing, which is a forensic technique played a pivotal role in conviction of the accused by collecting the blood samples and other bodily fluids from the crime scene that helped in confirming the victim's companions testimony and established the guilt of the accused beyond reasonable doubt, Additionally in the case of *Priyadarshini Mattoo v. State*³² forensic science played a very important role in linking the DNA evidence with the accused and ensured the accused's conviction. These cases prove how important forensic science is for administering justice, but because of the ethical dilemma it is not used up to its utmost potential, because people accused of committing various offences often take the defense provided by article 20(3)³³ of the Indian Constitution. This paper suggests that "reasonable exceptions", similar to reasonable restrictions under Article 19 of the Indian Constitution should be added to article 20(3)³⁴ of the Indian Constitution. The reasonable exception being in cases of heinous offences, meaning if a person is accused of committing a heinous offence, then the accused cannot deny forensic examination on the basis of article 20(3), because in order to administer justice it is important to balance the rights of the accused and interests of the victim. It is to be noted that this exception shall only apply in cases of heinous crimes and not in serious or petty offences. Other suggestions regarding the development of forensic science would definitely be to increase the overall funding of the various forensic laboratories and increase the number of forensic professionals in the country. In conclusion, in the words of William Scott Downey "*Law without justice is a wound without cure*".

³² *Priyadarshini Mattoo v. State* 2007 CRI. L. J. 964

³³ *Id.* at 18

³⁴ *Id.* at 18