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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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A CRITICAL ANALYSIS OF ARTICLE 20(3) IN INDIA'S LEGAL LANDSCAPE BALANCING JUSTICE AND SELF-INCRIMINATION

AUTHORED BY - SANSKRITI KAPRI & SUBHASHISH KUMAR SAHU

BBA LLB Hons., 4th Semester

KIIT SCHOOL OF LAW

Abstract:

Article 20 of the Indian Constitution Act, 1950 deals with the protection in respect of conviction of offences that is laid down in three principles mentioned in each clause and the third clause of the article pertaining to the protection wherein no person accused of a crime can be forced to give evidence against themselves based on the Latin phrase of *nemo tenetur scipsum accusare*. These protections come as a right guaranteed under Part III of the act where these rights cannot be curtailed and are equally guaranteed to all the persons. This Article has conceptualised the concept of right against self-incrimination diving into a deeper analysis starting from the history going through the evolution down these years backed by the landmark cases and reasoning given in various judgements. It outlines to what extent is the scope and applicability of the article in circumstances. Following with a critical analysis and situations where this particular right cannot be extended and is curtailed to a limit so as to ensure complete justice. This article also classifies between the civil and criminal approach in judiciary discussing how it is interpreted in these courts. It also discusses about specific scenarios in the case of freedom to remain silent, discussing the validity in waiver of this privilege, in the narco-analysis as well as the DNA test. It also compares with various international practices and the methods adopted in foreign countries. The objective of this article is to elongate this specific clause of the article holding utter importance in the procedural aspect in any case along with being an instrumental key for protecting basic fundamental rights. Here the author has interpreted each and every detail of the clause and all its potential angles of usage in legal field in a positive way to uphold justice in the country. The primary data referred here includes various articles by advocates, all the case laws' judgements come up as the secondary data source for fuelling this research article.

Keywords: *Protection, Self-incrimination, Judiciary, Narco-analysis, Fundamental-right.*

Section 173(8) of CrPC, 1973***Introduction:***

The Constitution of India was enacted in 1950 which held a supreme set of laws governing India for all the people residing in India which guarantees them Justice, Equality, Liberty to the utmost reasonable extent upholding the unity and integrity of the nation protecting the rights of citizens along with providing them with suitable remedies in form of various Articles and schedules mentioned wherein forms as a basis for all other laws being consistent with it.

The part III of the Indian Constitution Act, 1950 talks about the various Fundamental Rights granted to all the citizens of India. The fundamental rights lie in the brackets of borrowed constitution from the American Constitution. Fundamental rights are the supreme legislation to protect the constitutional right of a person that safeguards individuality of a person and makes him feel his rights are secured so as to feel to have some liberty of their own.

The Article 20 is a fundamental right regarding protection of a person in respect of conviction of offences construing of 3 major laws which safeguards innocent people from not falling into the legal trap. Clause 1 is for protection against ex post facto laws, following next Clause 2 is the rule of double jeopardy and the final Clause 3 is the Right against Self incrimination which is the main subject matter that will be dealt in an all-round manner about its use.

‘*Nemo tenetur scipsium accusare*’, a Latin phrase on which the whole Article 20(3) is based upon, in a literal sense means that No man has to accuse himself. From a layman perspective we can say that no person is/must be compelled to be a witness against himself that signifies that even if he is accused of some offence that he might have committed or not, he must not be forced that he needs to give any compelling or any kind of evidence against himself provided some reasonable restrictions to such freedom that basic proofs might be obtained from so as to also maintain the justice on stake along with the maintenance of a civil liberty or we can say for upholding the rights of person which is the primary objective of part III of the constitution.

The quintessential substance behind every law bestowed upon citizens is to maintain justice, but in order to achieve that we must not forget about the rights that are conferred with a person and must not exploit it to such an extent just in the means of attaining justice for a victimised person that the accused, falsely or correctly loses all the hopes for justice and falls by himself.

So, in order to keep the same and balance both the criteria to equal level so that the stakes don't fall to such an extent on either of the sides that it proves a failure to mankind.

The Article 20 has been established for the very same reason and there have been very significant changes throughout history since its enactment via various amendments through the judiciary in the legislative aspect and the interpretation of this article by landmark case laws which would be discussed in detail in this paper which would give a clear and comprehensive data of the uses, implementation and exploitation of this law.

Concept:

According to Article 20(3) of the Indian Constitution, the right to self-incrimination is not just a legislative one but also a constitutional one. Its foundation is the idea that no one can be coerced into testifying against themselves. The individual facing criminal charges is not subjected to coercion or force. It is known as a "Fundamental Right" and it protects individuals or businesses that are being accused of crimes. They also have some rights included to safeguard their interests. The Indian Constitution incorporates the aforementioned paragraph by drawing upon the tenets established by English and American jurisprudence.

To expose oneself, often by giving a statement "to an accusation or charge of crime; to involve oneself or another [person] in a criminal prosecution of danger thereof," is known as self-incrimination in legalese. To put it another way, it's the act of putting oneself at danger of being charged with a crime.

It is possible to produce self-incrimination directly or indirectly. Interrogation is an example of a direct method, as is the voluntary disclosure of self-incriminating information in the absence of outside coercion.

From a judicial system perspective, suspected offenders are not allowed to be forced to confess to crimes. They are free to choose whether or not to communicate with law enforcement, but they cannot be penalised for doing so. It should be mentioned that while the majority of nations have laws pertaining to the right to counsel and the right to stay silent, these rules vary widely.

Definition:

The Constitution of India initially contained 395 Articles, 22 Parts, 8 Schedules but thereafter through further amendments down the years it rose up to 395 Articles, 25 Parts and 12 Schedules wherein the fundamentals and originality of constitution is maintained but some of the articles were severed down and some new enactments were added upon further. But, past all these years the Fundamental rights conferred in Part III of the Indian Constitution has not been changed and the matter of the paper Article 20(3) has not been changed as written in statute but vide various case laws it has been interpreted further better understanding.

The Article 20(3) falls under part III, Fundamental rights states that “No person accused of any offence shall be compelled to be a witness against himself” that falls under the bracket of Protection in respect of conviction for offences. This in simpler word means that any person who is accused of any offence when under trial must not be answerable to anyone in such a manner that he testifies against himself. No one can force or compel him to do so. The police, counsel, jury or any other person are also included in this ambit. This article and the clause in matter is made applicable to any person residing in the territory of India.

Evolution of Article 20(3):

Historical Context and Emergence - Article 20(3) of the Indian Constitution enshrines the right against self-incrimination, a fundamental protection ensuring that an accused person cannot be compelled to testify against themselves. Rooted in the principles of justice and fairness, this article reflects the framers' intent to safeguard individual liberty against coercive state practices. Its evolution through judicial interpretation has been pivotal in fortifying the criminal justice system in India.

Ancient and Medieval roots - The concept of protection against self-incrimination can be traced back to ancient Roman law, where the maxim “nemo tenetur se ipsum accusare” ("no man is bound to accuse himself") was first articulated. During the medieval period, the inquisitorial systems prevalent in Europe often subjected individuals to harsh interrogations and torture to extract confessions, highlighting the absence of protections against self-incrimination.

The English Common Law Influence - The evolution of the right against self-incrimination in the English common law system marked a significant turning point. The Star Chamber,

notorious for its coercive interrogation techniques, was abolished in 1641, leading to the development of legal safeguards. The case of John Lilburne in the 17th century is particularly noteworthy; his refusal to take the oath *ex officio* laid the groundwork for the recognition of the right against self-incrimination.

Development in the United States - The right against self-incrimination gained constitutional recognition in the United States with the adoption of the Fifth Amendment in 1791. The landmark case of *Miranda v. Arizona (1966)*¹ further solidified this right by establishing the requirement for Miranda warnings, ensuring that individuals are aware of their right to remain silent and the consequences of waiving this right.

Adoption in India - The framers of the Indian Constitution borrowed the protection against self-incrimination from the Fifth Amendment of the U.S. Constitution. Article 20(3) states: "No person accused of any offence shall be compelled to be a witness against himself." This concise yet powerful provision ensures that an accused person has the privilege to remain silent, thus preventing the prosecution from coercing them into providing incriminating evidence.

The interpretation of Article 20(3) by the Indian judiciary has significantly shaped its application. Several landmark cases have elucidated the scope and limits of this right:

1. *M.P. Sharma v. Satish Chandra (1954)*²

- The Supreme Court held that the protection against self-incrimination extends to both oral and documentary evidence. It ruled that the phrase "to be a witness" includes any form of testimony that may incriminate the accused.

2. *State of Bombay v. Kathi Kalu Oghad (1961)*³

- This case clarified that obtaining physical evidence from an accused, such as fingerprints or handwriting samples, does not violate Article 20(3). The Court distinguished between compulsion to produce physical evidence and compulsion to testify against oneself.

3. *Nandini Satpathy v. P.L. Dani (1978)*⁴

- The Supreme Court expanded the protection of Article 20(3) to cover police interrogations, stating that the right against self-incrimination is applicable at all stages of criminal

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

² *M.P. Sharma v. Satish Chandra*, [1954] 1 S.C.R. 1077; AIR 1954 SC 300.

³ *State of Bombay v. Kathi Kalu Oghad*, 1962 SCR (3) 10; AIR 1961 SC 1808.

⁴ *Nandini Satpathy v. P.L. Dani*, 1978 AIR 1025, 1978 SCC (2) 424, 1978 SCR (3) 608.

proceedings. It emphasized that any form of pressure to obtain information from the accused amounts to compulsion.

4. *Selvi v. State of Karnataka (2010)*⁵

- This landmark ruling held that involuntary administration of certain scientific techniques like narco-analysis, polygraph tests, and brain-mapping violates Article 20(3). The Court underscored that such techniques infringe upon the individual's right to remain silent and not to be compelled to incriminate themselves.

The Fifth Amendment of the U.S. Constitution provides broader protection against self-incrimination, covering all forms of testimony that may be incriminatory. It allows the accused to refuse to answer any questions during criminal proceedings if the answers may incriminate them.

The right to silence in the UK dates back to the 17th century and is a fundamental principle of Common Law. It ensures that an accused cannot be compelled to produce any documents or objects that may prove their guilt. The UK approach is more aligned with the protection of personal liberty against coercive state practices.

Contemporary framework - Today, the right against self-incrimination is protected by various legal instruments. In the United States, the Fifth Amendment provides this protection, while the European Convention on Human Rights, through Article 6, offers similar safeguards. The Indian Constitution's Article 20(3) also enshrines this right, prohibiting compelled testimony.

Legal provisions - Courts have grappled with issues such as the scope of the right, the definition of "testimonial" evidence, and the applicability of the right to non-citizens. Cases like *Griffin v. California (1965)*⁶ have established that the prosecution cannot comment on the defendant's silence, reinforcing the protective nature of this right.

Proposed Changes and Need for Reform - Despite the robust judicial interpretation, certain aspects of Article 20(3) require re-evaluation and potential reform to address contemporary challenges:

There is a need for a clear legislative or judicial clarification on the scope of Article 20(3), particularly concerning modern forms of evidence like digital data. As technology evolves, so

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

⁶ *Griffin v. California, 380 U.S. 609.*

do the methods of obtaining evidence, necessitating a redefinition of what constitutes "testimonial" evidence.

Protection during Investigations - Strengthening protections during the investigative stage is crucial. While the judiciary has expanded the right against self-incrimination to cover police interrogations, there is a need for stricter guidelines and oversight to prevent any form of coercion or undue influence by law enforcement agencies.

Scientific Techniques - Although the Supreme Court has ruled against the involuntary use of scientific techniques, there should be a comprehensive framework governing the voluntary administration of such tests. This framework should ensure that the accused is fully informed of their rights and the implications of undergoing these tests.

Awareness and Legal Aid - Increasing awareness about the right against self-incrimination among the general public and law enforcement officers is essential. Additionally, providing adequate legal aid to accused persons, particularly those from marginalized sections, can ensure that this right is effectively exercised.

Article 20(3) of the Indian Constitution embodies a fundamental protection against self-incrimination, reflecting a commitment to individual liberty and justice. Its evolution through judicial interpretation has fortified this right, ensuring that the accused are protected from coercive practices. However, with changing times and evolving legal landscapes, there is a need for continuous re-evaluation and reform to address new challenges and ensure that this right remains robust and effective. By harmonizing international standards and expanding protections, India can uphold the principles of justice and fairness enshrined in its Constitution, ensuring that the rights of the accused are protected in all circumstances.

Scope of Article 20(3):

Article 20(3) specifically talks about Protection in respect of conviction more specifically with regard to being witness against own self being accused but has various aspects which is seen through various case laws moreover it must fulfil these three essentials-

The first essential element is that a person must be accused of any offence that is criminal in nature. The other kinds of offences under various laws are not covered. This concerned article can specifically offer protection to those who are accused for the said offence and not in relation

to any of either previous convictions, accusations or in any form of anticipatory action.

The second element necessary to fall under this article and secure protection is that the proceeding or prosecution of the offence must take place in front of any court else it will not be taken into account. Until and unless there has been any sort of formal proceedings initiated against the accused person to fall under the scope of protection via this article he has to be prosecuted on some grounds and not any type of informal inquiry will be considered.

The third binding condition for this clause to take effect is that the defendant must also be aware of his rights and no person can compel him or put him under duress, torture him to give any sort of evidence that can be used against. But nonetheless the defendant by himself can produce any kind of material evidence that he wishes to before the court to prove a point.

If the person or defendant in such case if has given some evidence under a pressurised situation that evidence will not be admissible in the court of law as it violates the basic principle of liberty guaranteed by constitution as mentioned in its preamble itself.

The goal of Article 20(3) is to further the ideas of "natural justice" and "fair trial." In the case of *Kanti Kumari v. State of Jharkhand*⁷, it was decided that no one may be forced to provide a statement. While interpreting Article 20(3), the Honourable Supreme Court noted that in order to be entitled to use this specific Article, a few prerequisites must be properly met. Three requirements must be met in order to be eligible for the privilege or advantage of Article 20(3), according to this article.

There was a number of confusions among the jurists regarding the distinction between accused person for the matter to get protection under the article which was further narrowed down to precision for a detailed clarifications in a number of cases regarding that at what time one can avail this right. In the landmark case of *K. Joseph v. Narayana*⁸, the apex court had pronounced that a person is put in as an accused when the accusation of the concerned offence is up against him and can lead to any further consequence of prosecution against the accused.

⁷Kanti Kumari and ors. V. The State of Jharkhand., 2013 (1) Crimes 212 (Jhar.)

⁸K. Joseph v. Narayana, 1964 AIR 1552, 1964 SCR (7) 137.

The case of *Vera Ibrahim v State of Maharashtra*⁹ lead to a small yet significant element of a 'formal accusation' that is also attached to this article saying that the sole benefit arising from this article is available to the person accused or who is on mere suspicion in absence of a filed FIR against him else if any irrelevant information is mentioned in Pancha Nama Report so as it would not come under the umbrella of any of Formal Accusation. If so, is the case they would be exempted from this. So, the high court just intended to say that it is the right which is only granted to the purview for persons against which a formal accusation has been levied upon.

A concept of 'Contemnors no accused' was clarified in the case of *Delhi Judicial Service Association v State of Gujrat*¹⁰ whereby an alleged party was charged with a contempt of court and the court had subsequently ruled out that it will not come under an 'accused person' for any benefit mentioned to an accused in Article 20(3). The contempt proceedings are treated separate from that of criminal proceedings when initiated, said the concerned court.

The stage of accusation will also be performing an important role in its application was duly explained by the hon'ble Supreme court in the case of *R. B. Shah vs D. K. Guha*¹¹ where the point was at which stage he can avail such privilege under the provision of Article 20(3). The court clarified regarding the aforesaid contention that when the name of person accused of offence is added or entered into the FIR and an order for investigation has been passed, it takes effect from that moment when investigation has commenced post registration of FIR.

The matter in contention to an accused being witness in the same matter was described in the landmark case of *Balasaheb v State of Maharashtra*¹² where it was seen that in a similar matter where a person was witness in one and accused in the other, the court had ruled that while being an accused he can rightly avail the rights conferred by Article 20(3) and erstwhile being presented as a witness he may exempt to answer such questions which potentially tend to incriminate him for such matter. Here court had discrete and narrower ambit for its application. The system failed to comply with the probing that witnesses used to face and only looked upon the benefit as of accused to avail neglecting safeguard to subjects for witness.

rm by choice or by force under a compulsion. Now, a further deeper clarification for the term

⁹ *Vera Ibrahim v State of Maharashtra* (1976) 2 SCC 302; 1976 AIR 1167; 1976 SCR (3) 672.

¹⁰ *Delhi Judicial Service Association V. State of Gujrat*, 1991 (4) SCC 406; 1991 AIR 2176; 1991 SCR (3) 936.

¹¹ *R. B. Shah vs D. K. Guha*, (1973) 1 SCC 696; 1973 AIR 1196, 1973 SCR (3) 438.

¹² *Balasaheb v State of Maharashtra*, 2011 (1) SCC 364.

witness associated with the article in a number of case laws with the primary one being the historical case of *M.P. Sharma v Satish Chandra*¹³, wherein it said that an accused may also be a witness by submitting any document forth the court with accordance to the Indian Evidence Act, 1872. The same was overruled and was scoped down in various case laws-

The memorial case of *State of Bombay v Kathi Kalu Oghad*¹⁴ the supreme court had ruled out that the article's protection would be only based on their self-knowledge and not on the process of document production unless it contains some personally related element. Only in this scenario based on a personal information basis the right of self-incrimination can be granted.

The forensic evidences such as Finger prints, specimen writings were duly clarified by the hon'ble court in *State v M. Krishna Mohan*¹⁵ detailing out and explaining all the requisite principles that would be compulsorily taken were of finger, thumb, foot, palm impressions, specimen writings and photographs would not be covered under the scope of 'to be a witness'. Hence these cannot be assured any sort of protection under self-incrimination Article 20(3) and can be compelled to accused to furnish it in order to ascertain certain facts.

In regard to whether a statement of accused was admissible in court or not the court had a discrete view in *Pershadi v State of UP*¹⁶ that eventually the accused's statements revealed incriminatory article that were admissible in court which was duly substantiated by Section 27 of IEA, 1872. Its applicability mostly depends on facts and circumstances of respective case.

This provision only applies to a person when all the conditions are fulfilled simultaneously as to, he must be an accused for an offence and he be compelled to make such a statement likely to incriminate him. So, the penultimate essential of Compulsion that arises so as to give evidence against yourself was taken a closer view by the Judiciary which required certain attention to provide with clarifications that has been duly discussed in the following cases.

In the case of *Mohd. Dastagir v State of Madras*¹⁷, the court had held that only and when a person in accusation of the said offence is put under duress following it to put him in a peculiar operation, this protection is available to protect his own liberty.

¹³ *M.P. Sharma v. Satish Chandra*, [1954] 1 S.C.R. 1077; AIR 1954 SC 300.

¹⁴ *State of Bombay v. Kathi Kalu Oghad*, 1962 SCR (3) 10; AIR 1961 SC 1808.

¹⁵ *State v M. Krishna Mohan*, (2007) 14 SCC 667.

¹⁶ *Pershadi v State of UP*, AIR 1957 SC 211; 1957 Cri LJ 328.

¹⁷ *Mohd. Dastagir v State of Madras*, 1960 AIR 756, 1960 SCR (3) 116.

The Psychological interrogation which involved basic compliance to threats, beatings or undue influence, all in a casual way was dealt in the historical case of *Nandini Satapathy v P.L.Dani*¹⁸ which had opined regarding the psychological interrogation suffered by the accused gave the verdict that a mental abuse is in syngamy as to a physical abuse though it involved tiring interrogations, an intimidation and any sort of atmospheric or environmental pressure.

The subtle application of this Article only extends to criminal proceedings along with some clarifications that have been as to why the civil court does not grant this in favour of the parties in any civil proceedings. The same stands for administrative proceedings.

Sharda v Dharpal case involved a critical question before the court of law questioning the applicability of Section 151 of CPC, whether any person can be forced to provide with an information which was in derogation to Article 20(3) of Indian Constitution. The civil litigant party is apodictic. Hence, civil court though not having any specific provision but has powers clear, axiomatic that under Section 151, CPC the civil court has full powers to pass all orders adequate to ensure justice. So, the power is 'Suo moto' and hence banal in nature.

Since no one is involved in the inquiry process, administrative processes are not covered by Article 20(3) protection. Documents and facts serve as the foundation for the entire process. Therefore, in order to claim the protection afforded by Article 20(3), none of the requirements can be met. Thus, it is reasonable to draw the conclusion that the prohibition on self-incrimination exists and is only applicable in criminal proceedings, i.e., crimes pertaining to the Indian Penal Code, 1860, or any other particular penal statute. It is not applicable in administrative or civil processes.

The interesting aspect comes into picture when we substantiate the following Article along with Section 161 CRPC when the person accused of any offences are under examination by police, in contrary to judiciary limiting the scope of person being duly discussed in the case of *Pakala Narayan Swami v Emperor*¹⁹ which said that the persons who are questioned must to their extent answer truthfully in good faith but it also provides due protection against any sort of questions which would be likely incriminating them.

¹⁸ *Nandini Satapathy v P.L.Dani*, 1978 AIR 1025, 1978 SCC (2) 424, 1978 SCR (3) 608.

¹⁹ *Pakala Narayan Swami V Emperor*, AIR 1939 PC 47.

Critical Analysis of Article 20(3):

Article 20(3) of the Indian Constitution stands as a bulwark against self-incrimination, ensuring that no person accused of an offense can be compelled to be a witness against themselves. This provision is a cornerstone of fair legal proceedings, ensuring that the burden of proof lies with the prosecution and protecting individuals from coercive practices that could lead to false admissions of guilt. By safeguarding against self-incrimination, Article 20(3) helps maintain the integrity of the judicial process, promoting justice and fairness.

The scope of Article 20(3) is specifically confined to criminal proceedings, making it inapplicable in civil or administrative contexts. This distinction is crucial as it delineates the boundaries within which the protection operates, ensuring that individuals are not unduly shielded in non-criminal matters. The protection is also extended only to those who are formally accused of an offense, thereby excluding witnesses and other parties not directly implicated in the criminal case. This targeted application ensures that the provision is not misused to obstruct justice in cases where an individual's testimony is vital for uncovering the truth.

Section 161 of the CrPC concerns the examination of witnesses by police officers. The term "persons" in this context, as clarified in *Pakala Narayan Swami v. Emperor*²⁰, includes anyone who may later be accused. While individuals are required to answer truthfully, Section 161 also protects them from self-incrimination, in line with Article 20(3) of the Indian Constitution.

The distinction between a regular person and an accused was highlighted in *K. Joseph v. Narayana*²¹, where an accused is defined as someone against whom accusations have led to prosecution or conviction. Conversely, in *Vera Ibrahim v. State of Maharashtra*²², it was determined that a person arrested on mere suspicion, without an FIR or substantial evidence, does not hold the status of an accused under this article.

The right to remain silent is a fundamental right, ensuring that an accused cannot be compelled to give statements that might lead to their conviction. Thus, Section 161(2) of the CrPC, read with Article 20(3), protects individuals from compulsory oral testimony.

²⁰ *Pakala Narayan Swami V Emperor*, AIR 1939 PC 47.

²¹ *K. Joseph v. Narayana*, 1964 AIR 1552; 1964 SCR (7) 137.

²² *Vera Ibrahim v State of Maharashtra* (1976) 2 SCC 302; 1976 AIR 1167; 1976 SCR (3) 672.

A critical aspect of Article 20(3) is its emphasis on compulsion. The protection against self-incrimination is triggered only when there is an element of coercion, whether direct or indirect. This means that voluntary statements or confessions made without any form of pressure do not fall under the purview of this provision. This distinction underscores the importance of consent and volition in legal testimonies, ensuring that individuals are not compelled to incriminate themselves against their will.

The term "testimonial compulsion" is central to understanding the breadth of Article 20(3). This protection is limited to oral or written statements that could incriminate the accused. It does not extend to physical evidence such as fingerprints, blood samples, or DNA, which can be obtained without infringing on an individual's right against self-incrimination. This limitation ensures a balanced approach, allowing law enforcement to gather necessary evidence while respecting the constitutional rights of the accused.

Judicial interpretations of Article 20(3) have clarified its application and scope. Courts have consistently held that any form of coercion, whether physical or psychological, that leads to self-incrimination violates this constitutional protection. This judicial oversight ensures that the provision is not circumvented in an indirect manner, reinforcing its role in protecting the rights of the accused. Furthermore, the judiciary has played a critical role in interpreting this article in accordance with evolving legal standards and human rights norms.

Article 20(3) of the Indian Constitution provides a fundamental safeguard against self-incrimination in criminal proceedings. Its targeted application ensures that only those formally accused of an offense are protected, balancing individual rights with the pursuit of justice. By emphasizing the element, the provision strikes a balance between law enforcement needs and individual rights by eliminating compulsion and limiting the scope to testimonial evidence. Judicial interpretations have strengthened its applicability, ensuring that it remains an effective safeguard against coercive practices in the legal system.

Applicability under Article 20(3):

No one who is suspected of a crime may be forced to testify against themselves, according to Article 20(3). This implies that no one may be coerced into giving testimony or supplying evidence that may implicate herself. It is a fundamental right that shields people from being forced to testify against themselves in court.

The prohibition against incriminating oneself could only be applied in the event that the subject is charged with a crime. The application of this theory was limited to criminal matters. Additionally, as the Honourable Supreme Court declared in *Raja Narayanlal Bansilal v. Maneck Phiroz*²³ *Mistry*, a formal charge against the accused is required in order to assert immunity from self-incrimination; a simple inquiry and investigation do not qualify.

These protections afforded by Article 20 are fundamental elements of an equitable and just legal framework. Fairness, the avoidance of arbitrary or disproportionate punishment, and the prohibition against self-incrimination are values they preserve. It's crucial to remember that these defences apply in criminal cases and act as a barrier against specific rights abuses. However, in the sake of maintaining public order, state security, or the effective administration of justice, reasonable limits and limitations may be put in place.

In *Vidya Verma v. Shiv Narain*²⁴, the court decided that article 20(23) protections are limited to criminal proceedings. The American Constitution allows for this protection in all proceedings (criminal and civil).

In the landmark case of *Kalawati v. State of HP*²⁵, according to the Indian Supreme Court, circumstances in which a statement was given willingly and without the use of threats, coercion, or promises are ineligible for the application of Article 20(3).

Even when retracted confessions provide very little in the way of proof, they are nonetheless acceptable under this criterion. In the case of *V.S. Kuttan Pillai v. Ramakrishnan*²⁶, the court decided that even if the court was unaware that the individual possessed the document, a search warrant may be issued to hunt for it and the document, if found in that person's possession, might be seized.

Exceptions:

Article 20(3) of the Indian Constitution provides protection against self-incrimination wherein it has been prescribed that no person accused of an offense shall be compelled to be a witness against himself. However, with interpretations by courts of law over a period of time, this ambit

²³ *Raja Narayanlal Bansilal v. Maneck Phiroz*, 1961 AIR 29;1961 SCR (1) 417.

²⁴ *Vidya Verma v. Shiv Narain*, AIR 1956 SC 108;1955 SCR (2) 983.

²⁵ *Kalawati v. State of HP*, 1953 AIR 131;1953 SCR 546.

²⁶ *V.S. Kuttan Pillai v. Ramakrishnan*, 1980 (1) SCC 264; 1980 AIR 185;1980 SCR (1) 673.

has been clarified and brought down, especially with regard to admissibility relating to physical evidence such as handwriting, fingerprints, and other bodily samples. While the provision is meant to protect an accused from furnishing testimonial evidence against himself, yet there have emerged certain exceptions wherein courts may force an accused to furnish non-testimonial evidence without infringing Article 20(3).

1. Non-Testimonial Physical Evidence

Article 20(3) shields a person only against compulsion to testify or to make self-incriminating statements. It does not apply in the case of production of physical or material evidence: 1. Fingerprints 2. Blood samples 3. Voice samples 4. Handwriting or signature samples 5. DNA testing by far, the most important exception to Article 20(3) relates to non-testimonial evidence. In *State of Bombay v. Kathi Kalu*²⁷, the Supreme Court distinguished between testimonial evidence—given on the basis of an accused's personal knowledge—and physical evidence like fingerprints, handwriting or body samples. It held that the obtaining of such physical evidence did not fall within the meaning of 'being a witness' as explained in Article 20(3). The rationale behind this was that this kind of evidence is objective and therefore independent of the will and consciousness of the accused, hence not amounting to testimonial self-incrimination. Because giving a thumb impression or a specimen of handwriting are physical acts, hence mechanical acts, and that too involuntary ones, since an individual act of the will of the accused cannot prevent such acts. Therefore, forcing an accused to give such evidence does not abrogate the protection conferred by Article 20(3).

2. Compulsion for Handwriting and Fingerprints

An important explanation came in the case of *Jaspal Singh v. State of Punjab* (1979)²⁸ when the Supreme Court explained that fingerprint comparison being an exact science, the compelling of an accused to give his fingerprints did not amount to self-incrimination. The court held that fingerprints, by their very nature, are inculpatory evidence of physical characteristics and reveal nothing from the knowledge or thoughts of the accused, thereby distinguishing them from testimonial evidence. In another case, *Murari Lal v. State of M.P.* (1980),²⁹ it was held that even without expert testimony,

²⁷ Supra Note 5

²⁸ *Jaspal Singh v. State of Punjab*, 1998 (7) SCC 289.

²⁹ *Murari Lal v. State of M.P.*, 1980 AIR 531, 1980 SCR (2) 249.

courts can examine handwriting evidence themselves without any violation of Article 20(3). These decisions establish the principle that the compulsion of physical evidence, which is not testimonial, is beyond the reach of protection against self-incrimination.

3. The Scope of 'Accused' in Article 20(3)

Another important limit to the operation of Article 20(3) has to do with the stage and status of the accused. The protection is extendable only to persons who have been formally accused of an offence. The protection accorded to a person against self-incrimination by Article 20(3) does not, therefore, extend to one who has not been accused nor to one who furnishes the evidence before he is accused. For instance, the protection against self-incrimination will not be extended if one gives a statement or physical evidence before he is accorded an accused status and later makes claims that such evidence infringes his rights against self-incrimination. SC, while deciding a number of cases, has reiterated that protection afforded by Article 20(3) extends strictly to persons accused when giving testimony, not those who become accused subsequently.

4. Voluntariness of Testimony

The crucial ingredient of protection under Article 20(3) is the requirement of compulsion. It is not attracted if testimony or evidence has been given by the accused voluntarily. The court in *M.P. Sharma v. Satish Chandra*³⁰, 1954 held that the protection against self-incrimination extends only to compelled testimony, and not to evidence volunteered by an accused. Thus, the protection under Article 20(3) cannot be invoked by an accused if the accused had furnished any statement or presented any evidence without any compulsion. This limitation prevents individuals from abusing this privilege who cooperate voluntarily with investigations and later try to withdraw the information they provided.

5. Statutory Exceptions

Some statutes may legally require a defendant to disclose certain facts, such as income, assets, or other monetary information, under regulatory laws. Income Tax Act. - Thereunder the appellant is compelled to disclose his income which may be used as

³⁰ Supra Note 14

evidence against him in cases falling under income tax evasion. As it does not involve any 'testimonial compulsion', and hence, there is no infringement of Article 20(3) within the meaning of the said provision. The Supreme Court in *K.T.M.S. Mohd. v. Union of India*³¹. The Supreme Court held that the compulsion to disclose financial information under the Income Tax Act did not amount to testimonial compulsion as so protected under Article 20(3). The underlying reasoning was that the right against self-incrimination applies to testimonial evidence, i.e., evidence which involves personal knowledge or volition of the accused. However, the disclosure of financial documents or information that may be required by a statutory obligation does not fall within the purview of 'testimonial compulsion'.

6. Facts Discovered Under S. 27 of Evidence Act

Art. 20(3) does not prohibit discovery of facts, leading to recovery of documents, provided recovery was through the procedure under S. 27 of the Indian Evidence Act, 1872. Under this section, any statement made by the accused, if it leads to the discovery of a fact, the said fact can be proved in a court of law even if the accused person had incriminated themselves. This exemption was followed in the case of *Selvi v. State of Karnataka*³², wherein in the year 2010, the Supreme Court held that whatever detection through such a method may be admissible into evidence, even though such a statement may not have been voluntarily made.

7. Witnesses in Civil or Administrative Proceedings:

The protection afforded by Article 20(3) extends only in criminal proceedings. The person may be compelled to testify or provide information in any civil or administrative proceedings; this, however, does not prevent the testimony given or such information from being used as evidence in a criminal case against the person providing such testimony or information.

Comparison with International Practices

In recognizing such exceptions to Article 20(3), Indian courts have harmonized their interpretations with international legal standards. In so doing, the exclusion of physical evidence from the ambit of self-incrimination echoes the position in various other jurisdictions,

³¹ *K.T.M.S. Mohd. v. Union of India*, 1992 (3) SCC 178.

³² Supra Note 7

such as that of the United States, where projectiles of physical evidence, such as fingerprints and DNA samples, are held not to be covered under the protection against self-incrimination accorded by the Fifth Amendment. The Indian judiciary has used such comparative legal frameworks to sustain the need to balance individual rights with the imperatives of effective investigation into crimes. The aim, of course, is a proper balancing between ensuring that law-enforcement authorities are not unduly hampered in securing evidence, and equally protecting the accused against being compelled to give incriminating testimony. In fine, the jurisprudence on Article 20(3) has defined explicit exceptions to its privilege. Non-testimonial physical evidence, for instance, handwriting, fingerprints, and bodily samples fall outside the purview of 'being a witness' as they have no relation whatsoever with volition or personal knowledge of the accused person. Protection under the right against self-incrimination extends only to formal accused of an offense and only in case of compulsion. These exceptions ensure that Article 20(3) does not become an impediment in the way of legitimate collection of evidence in the process of criminal investigation and yet uphold the essential spirit behind the protection of an individual against self-incriminating testimony."

Civil and Criminal approach to Article 20(3):

Procedural law is intended to assist in putting parties in litigation on an equal footing so that the court can administer justice. It accomplishes this by eliminating privilege and secrecy, presenting all relevant information to the Court, and granting each party an equal chance to present their case. Consequently, it is obvious what procedural law should do when in doubt: choose the route that facilitates the advancement of the action.

Criminal procedure is the moon, if civil procedure is the planet Earth. By definition, there are never two equal parties in a police inquiry. The cops have all the cards till the matter is being investigated. The police have the authority to obtain information by making arrests, questioning suspects, and conducting searches virtually anywhere if there is a case that can be prosecuted. Furthermore, there is no need to provide this information to the target of a subsequent investigation: the accused is not even entitled to a copy of the FIR that was filed against her.

In this situation, procedural law is not a handmaiden of justice; rather, it is the sole weapon available to the common citizen to fend off the State's genuinely formidable strength. It is the only thing I have left to hold to in order to maintain some sort of control over the State when it embarks on the ruthlessly intrusive course of a criminal inquiry. It is, also, the golden thread

that protects an individual from being condemned unfairly to a conviction and the badge of guilt and shame that it must carry.

But in its earnest efforts at “doing complete justice”, the Supreme Court seems to have ignored these differences. If not, then the Court seems to have imagined a different criminal justice system from the one that most ordinary Indians are subject to. Perhaps it would help if rather than only quote prior precedent, the Court resume past practices of actively engaging with the various facets of the criminal justice system by doing surprise inspections at prisons and police stations. Maybe then the Court might see the police practices that coerce an innocent person to implicate herself falsely just to end the brutal harassment of interrogation.

The Physical and Mental barrier of evidence in Article 20(3):

The determination of right to self-incrimination under Article 20(3) can be determined only correctly confirming the accused's answer to three questions, those being - First, that the individual in question is charged with a crime. Secondly, this individual must provide proof against herself. Lastly, that the individual needs to be forced to confess to wrongdoing. Post confirming these questions one can be ascertained of its infringement.

According to me, it is not an accurate decision or properly suitable to put all these in a single bracket. Instead of relying on bodily reactions to stimuli, the substance of question, as is the case with polygraph testing, people who are under the influence of drugs make statements during narco-analysis. Regarding polygraph examinations, the Court decided that a bodily response of this kind was equivalent to a statement. The reaction included a special communication value that would not be present in regular "physical evidence."

In limiting the scope of Selvi by implying that "psychiatric evidence" was the only factor taken into consideration. The extent to which Selvi's findings were drawn is actually the issue. The reasoning used to bring polygraph testing within Article 20(3) is not convincing, notwithstanding its attempt to set Kathi Kalu Oghad apart. This is due to the fact that bodily reactions are compared even during a polygraph exam. When someone answers to questions that seem innocuous, a standard set of readings is obtained. The difficult questions are then posed, and the readings from the two sets of answers are contrasted. Maybe there's a method to maintain Selvi and Kathi Kalu Oghad together. This would examine how, in contrast to situations such as blood samples, when information is collected entirely independently, preliminary results from polygraph exams are also obtained under duress.

Comparative Analysis of Article 20(3) in various countries:

The Article 20(3) may be forced to give evidence but only in certain cases. There are other constitutions that acknowledge this particular guarantee against self-incrimination besides the Indian one. Actually, it was a crucial part of the common law system, which the American criminal justice system subsequently embraced and from which the American Constitution was derived. Authorities would often use force to coerce an accused person if obligatory examinations were permitted, which provides justification for the right to self-incrimination.

USA - The United States Constitution's Fifth Amendment states that "no person shall be compelled to be a witness against himself in any criminal case."

The aforementioned privilege has been given a broad interpretation after being interpreted by judges in several situations. This protection against self-incrimination can be used to witnesses as well as parties in both civil or criminal proceedings. It includes all disclosures, including those that by themselves confirm a criminal conviction or provide a link in the chain of evidence required for a conviction. It also encompasses both oral and written evidence.

Britain - A fundamental tenet of common law is that no one accused of a crime may be forced to find records or items that implicate herself. With rare exceptions, no witness a party or stranger may be forced to provide information or provide documents that might lead to a criminal investigation, fine, or forfeiture against the witness or their spouse. By shielding individuals from harm or unnecessary inconvenience as a result of providing testimony in court, this privilege aims to induce people to testify in favour of the government.

Indians endured several injustices and frequent restrictions on their rights during British administration in India. It was crucial to stop these abuses of authority against those who are suspected of committing crimes, which is why Article 20 was included to the Constitution as a basic right. The right to protection against conviction for crimes is still highly important in today's society since it shields people from self-incrimination and guarantees that the law will be applied fairly. Furthermore, in the digital age, Article 20 has gained greater significance due to the police's use of novel techniques like the Brain Electrical Activation Profile (BEAP) and NARCO Analysis Test to coerce confessions or other information out of accused people and use it against them in court. Article 20 serves as a crucial constitutional protection that upholds the rule of law and guarantees a fair society.

Narco-analysis Test regarding self-incrimination

The admissibility of scientific techniques such as narco-analysis tests, brain mapping tests, and so on for improving investigations has been debated, with some claiming that these tests violate the right against self-incrimination guaranteed by Article 20(3). In *Gobind Singh v. State of Madhya Pradesh*³³, the Court ruled that an individual's mental state falls under the 'Right to Privacy'. Later developments in this area revealed that the State's authority to compel an individual to expose aspects of his life that he wishes to keep private is unconstitutional because it violates the rights guaranteed by Articles 20(3) and 21.

This issue was raised before the Supreme Court in the case of *In Selvi v. State of Karnataka*³⁴, the Supreme Court rejected the High Court's reliance on the utility, reliability, and validity of narcoanalysis tests and other similar tests as methods of criminal investigation. The Court determined that forcing an individual to undergo narco-analysis, polygraph, and brain mapping tests is a necessary compulsion. The answers provided during these tests are not consciously and voluntarily given, so the individual is unable to decide whether or not to answer a question, resulting in testimonial compulsion and protection under Article 20(3). The Court stated that the narco-analysis test is a cruel and inhuman treatment that violates an individual's right to privacy. Courts cannot allow the administration of narco-analysis tests against the will of the individual, except in cases where it is necessary for the public interest.

DNA Test and Article 20(3)

Courts are hesitant to accept evidence based on DNA tests because it violates an individual's right to privacy and freedom from self-incrimination. According to Article 21, the right to privacy is inherently linked to the right to life and personal liberty. However, in some cases, the Supreme Court ruled that the Right to Life and Personal Liberty is not absolute and may be subject to certain limitations. In *Kharak Singh v. State of Uttar Pradesh*³⁵, the Supreme Court ruled that the right to privacy is not guaranteed by the Constitution. On rare occasions, the courts have allowed DNA tests to be used as evidence in an investigation.

The case of *Kanchan Bedi v. Gurpreet Singh Bedi*³⁶, the question of the infant's parentage arose, and the mother filed an application to conduct a DNA test, which the father opposed, arguing

³³ *Gobind Singh v. State of Madhya Pradesh*, AIR 1975 SC 1378;(1975) 2 SCC 148.

³⁴ *Supra* Note 7.

³⁵ *Kharak Singh v. State of Uttar Pradesh*, 1963 AIR 1295; 1964 SCR (1) 332.

³⁶ *Kanchan Bedi v. Gurpreet Singh Bedi*, (AIR 2003 Delhi 446).

that his rights would be violated. The Court ruled that when a child's parentage is in doubt, ordering a DNA test does not constitute a violation of fundamental rights. The Court cited *Geeta Saha v. NCT of Delhi*³⁷, where Division Bench ordered DNA test on foetus of rape victim.

The freedom to remain silent

The right to silence is one of the fundamental rights guaranteed to all citizens of India by the Constitution. This adjustment is included in Article 20(3) because it gives the harmed party security. Under Indian law, no one can be deprived of their rights or subjected to unjust punishment unless they are proven to be guilty of the alleged offence due to D.K. To make that the denounced, *Basu v. State of West Bengal*³⁸ established legal guidelines and a procedure. The court further decided that it is critical to notify individuals in writing when they have infringed upon their right to quiet under Article 20(3). It is vital to promote mindfulness, and everyone has the option to admit when their kindness could use some refinement. Consequently, it shows that nobody possesses the authority to provide a clarification that will affect the person and give them the choice to say nothing. It blends free speech with the right to express oneself.

Validity of waiver of privilege granted under Article 20(3)

There is no way to waive a fundamental right. The right to use the privilege provided by Article 20(3) of the Constitution is conditioned on the accused using it; the accused is free to decline the privilege. The accused is allowed to testify, but he is not compelled to. The accused is therefore free to testify if he so desires. Nonetheless, the concession of privilege needs to be real and significant. For example, if someone knows they are waiving a privilege under Article 20(3) but is unaware of it, that person cannot be considered to have waived the right in a real and substantial sense. In this kind of scenario, the statement would be vulnerable to rejection under Article 20(3) of the Constitution if it were brought before a court or adjudicating body.

Furthermore, if an accused person is threatened with section 108 by an officer in charge—a section that does not apply to situations covered by article 20(3)—their statement in response to the threat will be seen as coerced and will not be accepted when the accused person is brought in. The individual must be informed that he is entitled to this protection under Article 20(3) of the Constitution by Customs and Central Excise officials when needed. In *Kartar Singh v. State*

³⁷ *Geeta Saha v. NCT of Delhi*, 1999 (1) JCC 101.

³⁸ *Basu v. State of West Bengal*, (1997) 6 SCC 642.

of *Punjab*³⁹, the Supreme Court decided that the individuals who brought the accused in had to notify him of this privilege while accepting his words and continuing to show them respect. There doesn't seem to be any explanation as to why Customs and Central Excise are exempt from this directive.

DNA Test and Article 20(3)

In the recent landmark case of *Tofan Singh v State of Tamil Nadu*⁴⁰, whose ruling was made out in 2020, The Supreme Court of India had ruled out that confessions recorded under Section 67 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) are inadmissible as evidence because they violate the right against self-incrimination under Article 20(3) and the right to privacy under Article 21 of the Indian Constitution. In this case, the National Crime Bureau (NCB) arrested the Appellant on narcotics charges and obtained a confessional statement under Section 67 of the NDPS Act. Despite the Appellant's retraction of the confession, the Additional Special Court convicted him on the basis of the statement. The Supreme Court ruled, by a 2:1 majority, that officers under the NDPS Act as 'police officers' under the Indian Evidence Act, rendering the confessions inadmissible. The Court stressed that statutes such as The NDPS Act must be interpreted in a way that protects fundamental rights, such as the right to be free from self-incrimination and privacy.

In this case, the Supreme Court extended this protection to confessions made under Section 67 of the NDPS Act, treating the officers as police officers under the Evidence Act. Because these officers could force people to make self-incriminating statements, using those confessions as evidence would violate the accused's right under Article 20(3). The Court reinforced this interpretation by linking it to Article 21's broader right to privacy, which ensures that an individual's autonomy and choice are protected from coercion. Thus, confessions made under duress to investigating officers should not be admissible in order to protect the integrity of the Individuals' constitutional rights.

Conclusion:

As greatly quoted by Mahatma Gandhi that, “*The true measure of any society can be found in how it treats its most vulnerable members*” which signifies and symbolises the importance of Article 20 in the Indian legislature which is a very constructive form of right granted to each

³⁹ Kartar Singh v. State of Punjab, 1994 SCC (3) 569; JT 1994 (2) 423.

⁴⁰ Tofan Singh v State of Tamil Nadu, (2021) 4 SCC 1.

and every individual in lieu of his personal right and liberty conferred within him.

Article 20(3) of the Indian Constitution protects the accused from brutal treatment and upholds his rights. "There are three prerequisites to meet in order to activate this section. This privilege may only be invoked by the accused, and exclusively in criminal cases as opposed to civil ones. If someone freely and lawfully made a statement that may be used against him, it would be admissible in court. Secondly, it is the duty of the authorities to intimidate the subject by asserting that he is legally entitled to silence. The statement's source needs to be a witness against him. Everyone on the earth is entitled to the freedom to cremate himself; nobody should be forced to do so. The scientific experiments under ambit of Article 20(3) have some sort of force to do something, everything that helps with inferences about the facts is legitimate.

The accused is shielded from self-incrimination by Article 20(3), which also grants him the right to silence on any subject that might be used against him. This article includes those who are forced to testify as well as searches and seizures in which neither the accused nor the subject of the search is required to participate. Any remark made based on a finding will not be covered by Article 20(3) protection. According to the law, an accused person cannot be subjected to torture, coercion, or pressure in order to extract information from him. The privilege under Article 20(3) would apply in these circumstances.

Scientific procedures that violate the right to privacy, such as polygraph examinations and narcoanalysis tests, are deemed to be in violation of Article 20(3) and should only be used in extreme cases. Nonetheless, the validity of these tests has grown with the development of medical sciences, and these tests can, in my opinion, prove to be useful instruments for providing evidence for the prompt resolution of situations.

Important protections against capricious and unjust treatment by the state are afforded to Indian people by Article 20 of the Indian Constitution. This implies that you cannot be tried and punished twice for the same crime, you cannot be forced to testify against yourself, and you cannot be found guilty of an act that you did not perform at the time of the offence. You cannot be penalised for violating the rights that are granted. These measures are critical to preserving people's fundamental freedoms and rights in India.

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