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Rights Against Self-Incrimination

Authored By - Drithi Rajashekar

Introduction:

According to the law, self-incrimination is the act of exposing oneself to an accusation or charge of crime, frequently by making a statement "to an allegation or charge of crime; to involve oneself for another [person] in a basically criminal prosecution or danger thereof." To put it another way, it is the act of accusing or exposing oneself to criminal prosecution that is particularly crucial. In particular, contrary to popular assumption, it can occur either directly or indirectly. Interrogation, in particular, is an example of a direct method in which self-incriminating information is offered voluntarily and without any external pressure. Accused offenders cannot be forced to testify against themselves in legal systems.

Article 20(3) of the Indian Constitution grants an accused immunity from self-incrimination: 'No person accused of a crime will be compelled to be a witness against himself.' It is founded on the legal rule "nemo tenetur prodere accusare seipsum," which translates "No man is compelled to testify against himself." The Supreme Court expanded the breadth of this protection by understanding the term "witness" to include both oral and documentary evidence, ensuring that no one can be forced to testify against themselves. When an accused's possession of an object or document is searched or seized, this prohibition does not apply. For the same reason, the clause does not exclude the accused from being medically checked or having his thumbprint or specimen signature collected. This immunity is only applicable in criminal proceedings. The Supreme Court has made it plain that a formal accusation against the individual must have been made at the time of interrogation in order to claim this immunity from being compelled to deliver a self-incriminating statement. In a broad inquiry or investigation, he cannot claim immunity because his statement may lead to an accusation later on. The compelled supply of the narco-analysis technology is 'testimonial coercion,' triggering the protections of Article 20(3) of the Convention on the Rights of the Child.

Body:

Article 20(3) of the Indian Constitution grants an accused immunity against self-incrimination: 'No person accused of a crime will be compelled to be a witness against himself.' It is founded on the legal maxim "nemo tenetur prodere accusare seipsum," which translates "No man is compelled to testify against himself." The Supreme Court expanded the scope of this protection by defining the term "witness" to include both oral and documentary evidence, ensuring that no one can be forced to testify against themselves. When an accused's possession of an object or document is searched or seized, this prohibition does not apply. For the same reason, the clause does not exclude the accused from being medically checked or having his thumbprint or specimen signature collected. This immunity is only applicable in criminal proceedings.

Article 20 (3) protects the accused from self-incrimination and grants him the right to keep silent on any matter that may incriminate him. This article applies to those who are compelled to testify as well as searches and seizures in which an accused or the person being searched is under no duty to participate in the search. If a statement is made based on a finding, it is not protected under Article 20. (3). According to the law, an accused cannot be tortured or coerced to make a confession, nor may he be subjected to duress in order to obtain information from him. The privilege under Article 20(3) would be used in such instances. Scientific methods that violate the Right to Privacy, such as narco-analysis tests and polygraph analysis, are deemed violations of Article 20(3) and can only be used in exceptional circumstances. However, as medical research advances, the reliability of these tests has grown, and in my opinion, these tests can be helpful tools for providing evidence for the timely disposition of cases. This paper will be mainly focusing on Article 20 (3) of the Indian Constitution and the case laws such as, M.P Sharma v Satish Chandra, Selvi v State of Karnataka, Kharak Singh v State of Uttar Pradesh and Kanchan Bedi v Gurpreet Singh Bedi.

Article 20 (3) of the Indian Constitution stipulates that the defendant has the right against self-incrimination. However, witnesses are not afforded the same level of protection.

The following are the safeguards provided by Article 20 (3):

- Before making any statements that could incriminate him or her, a defendant must be notified of his or her rights.
- No statements can be compelled from a defendant.

- In the event that a defendant is coerced into making a self-incriminating statement, it will not be admitted in court.

The Code of Criminal Procedure (CPC) gives defendants the Right to Remain Silent. It basically means that the defendant has the right to withhold information which can be self-incriminating from the authorities.

To invoke their right to remain silent, the defendant must announce their intent verbally and clearly. A defendant, for example, can state, "I am exercising my right to remain silent and will not answer any further inquiries."

Article 20 (3) does not apply to people who made a voluntary confession without pressure or intimidation.

The Supreme Court expanded the breadth of this protection by understanding the term "witness" to include both oral and documentary evidence, ensuring that no one can be forced to testify against themselves.

This ban does not apply when an accused's possession of an object or document is searched or seized.

Features of Article 20 (3):

1. Protection of a Person Accused of an Offense:

Article 20(3) protects a person convicted of an offense. In this context, it refers to a person who is the subject of a formal accusation and charge. When an F.I.R. is filed, a formal charge is filed. A formal complaint is also acceptable. Because Article 20(3) will only become effective upon the filing of a formal accusation, the trial or investigation will not be required to commence.

This right to silence is not confined to the case in which the person is being investigated, but also to other matters pending against him/her that may incriminate him in other situations.

2. Witness compulsion is prohibited:

Witness compulsion constitutes duress, and any testimony made under duress is not admissible in court. Duress implies a physical act and cannot be a mental state. Beating, threatening, and imprisoning close relatives are examples of physical acts. Anyone can be persuaded to testify under duress. The scope of such compulsion is prohibited under Article 20(3). This was the case in *State (Delhi Administration) v. Jagjit Singh*.

3.It prevents Compulsion resulting in evidence against oneself:

An accused can be compelled to submit to investigation by providing thumb imprints or specimens for handwriting or exposing the body for identification purposes.

Compulsion is required, however if a confession is made without any incentive, threat, or promise, Article 20(3) does not apply. The accused may forgo his or her right to self-incrimination by voluntarily making an oral statement or producing incriminating documentary proof.

The court ruled that if an accused is given pardon under Section 306 of the CPC, he or she will no longer be an accused and will instead become a witness for the prosecution.

Essentials of Article 20 (3):

1. The person accused of an offense:

This privilege is only available to a person accused of an offense, which is defined as "a person against whom a formal accusation relating to the commission of an offense has been leveled, which may end in prosecution." In India, a formal accusation can be made by filing an F.I.R. or a formal complaint against a person accusing him of committing a crime; the trial or investigation does not have to begin before a court. Article 20(3) only applies when such a formal accusation is made. It is critical to remember that "a person cannot claim the protection if he was not an accused at the time he made the statement but later becomes an accused."

M.P. Sharma v. Satish Chandra stated that a person whose name appears as an accused in the first information report can seek protection under Article 20. (3). The privilege against self-incrimination is accessible at both the trial and pre-trial stages, i.e. when the police investigation is ongoing and the person is considered an accused, or even if his name is not named as an accused in the FIR.

The appellant in Nandini Satpathy v. P.L. Dani was a former Chief Minister who was summoned to the Vigilance Police Station for an examination in connection with a complaint brought against her under the Prevention of Corruption Act, 1947. During the investigation, she was served with an extensive list of written questions, which she refused to answer and claimed Article 20 protection (3). The Supreme Court ruled that the purpose of Article 20(3) is to shield the accused from unwarranted police harassment, and that the right against self-

incrimination is available to both witnesses and defendants in the same way, and that it applies at all stages where information is provided. The privilege under Article 20(3) applies during the stage of a police investigation when the information is obtained.

This right to silence is not confined to the case in which the individual is being investigated, but also to other things pending against him that may incriminate him in other situations. It was also determined that the protection may be employed by a suspect.

It was held in the case of *Balasaheb v. State of Maharashtra* that a witness in a police case who is also an accused in the complaint for the same incident cannot claim absolute immunity from testifying in the case. He may, however, refuse to answer inquiries that are likely to incriminate him.

2. Compulsion to be a witness:

The use of the narco-analysis test as an investigative technique raises concerns about violations of human rights. The court concluded in *State of Bombay v. Kathi Kalu Oghad* that it must be demonstrated that the individual was coerced into making a statement that was likely to incriminate him. Compulsion is duress: it should be a tangible objective act, not a state of thought, such as beating, threatening, or imprisoning a person's wife, parent, or child. Art.20(3) is not applicable if a confession is made without any enticement or intimidation.

The court concluded in *State (Delhi Administration) v. Jagjit Singh* that if an accused is granted pardon under section 306 of the Criminal Procedure Code, he ceases to be an accused and becomes a witness for the prosecution, and his evidence cannot be used against him in subsequent instances. Section 132 of the Indian Evidence Act safeguards a witness from being prosecuted based on information he provided in a criminal process that tends to incriminate him.

3. Compulsion as a factor of self evidence:

An accused may be compelled to submit to investigation by providing thumb impressions or specimens for handwriting, or by exposing his or her body for identifying purposes. In *Kathi Kalu's* case, the court ruled that it must be proven that the witness was coerced into making a statement that could incriminate him. Compulsion is required, however if a confession is made without any incentive, threat, or promise, Article 20(3) does not apply. The accused may forgo

his right against self-incrimination by providing a voluntary oral confession or producing incriminating documentary proof.

The accused in *Amrit Singh v. State of Punjab* was charged with rape and murder of an eight-year-old girl. When the deceased's body was discovered, some strands of hair were discovered in the child's closed fist. The police sought to analyse the accused's hair, but the accused refused to provide a sample. The accused was ruled to be shielded from self-incrimination by the court, hence he had the right to decline to provide a hair sample. However, if the right against self-incrimination is viewed in such a broad sense, the accused may abuse this right.

The divorce procedures for *X v. Y* were underway at the Delhi High Court on the basis of adultery. Because the preserved fetus was no longer a part of the wife's body, the Court approved the paternity test. She was not compelled because the right against self-incrimination does not apply to the search and seizure of documents and other objects pursuant to a search warrant.

Narco Analysis Test for self incrimination:

The admissibility of scientific procedures such as narco-analysis tests, brain mapping tests, and soon for improving investigations has been a source of contention about whether these tests breach Article 20's right against self-incrimination (3). In *Gobind Singh v. State of Madhya Pradesh*, the Court ruled that an individual's mental state is protected 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 desires to keep private is unconstitutional since it violates the rights provided by Articles 20(3) and 21.

In the case of *Selvi v. State of Karnataka*, the Supreme Court dismissed the High Court's reliance on the utility, reliability, and validity of narco analysis tests and other such tests as means of criminal inquiry. The Court determined that forcing an individual to undergo narco-analysis tests, polygraph exams, and brain-mapping constitutes a necessary compulsion. Because the responses supplied during these examinations are not given knowingly and voluntarily, the subject is unable to determine whether or not to answer a question, resulting in testimonial compulsion, which is protected under Article 20. (3). According to the Court, the narco-analysis test is a cruel and inhuman treatment that violates an individual's right to

privacy. Except in circumstances when it is necessary in the public interest, courts cannot allow the administration of narco-analysis tests against the will of the subject.

DNA Test and Article 20 (3):

The courts are cautious to accept DNA evidence since it breaches an individual's right to privacy and right against self-incrimination. The right to privacy is an inherent right in the right to life and personal liberty, according to Article 21. However, the Supreme Court has found in a number of cases that the right to life and personal liberty is not absolute and can be limited.

In *Kharak Singh*

v. State of Uttar Pradesh, the Supreme Court declared that the right to privacy is not guaranteed by the Constitution. In rare cases, the courts have allowed DNA tests to be used as evidence in an investigation.

In *Kanchan Bedi v. Gurpreet Singh Bedi*, the question of the infant's parentage arose, and the mother filed an application for a DNA test, which the father objected to, claiming 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 basic rights. The Court relied on the decision in *Geeta Saha v. NCT of Delhi*, in which the Division Bench ordered a DNA test on the rape victim's foetus.

Right to remain Silent:

The right to remain silent is one of the important rights guaranteed by the Indian constitution to all people. This rectification exists as Article 20(3) because it provides security to those who have been blamed. Under the Indian legal system, no one can be denied rights or treated inhumanely unless he is proven guilty of the offense charged.

According to *D.K. Basu v. State of West Bengal*, legitimate norms and techniques were established to ensure the denounced. The court also decided that when an individual has grasped the privilege of stillness granted by Article 20(3), he or she shall be clearly educated. Mindfulness must be spread, and each person has the ability to recognise that a corrective to his kindness exists. As a result, it demonstrates that no one has the authority to provide an explanation that will influence the individual himself and reserve the option to remain silent. It combines the freedom of expression and articulation.

Conclusion:

Article 20 (3) secures the provision of the Constitutional Right against Self-Incrimination and allows the accused the right to remain quiet on any matter that may incriminate him/her.

It also applies to people who are coerced to testify and renders any evidence gathered as a result inadmissible in court. The law also states that an accused cannot be tortured or coerced into confessing. Methods such as narco-analysis and polygraph examinations contradict article 20(3) and the right to privacy. Such procedures should only be utilised in extreme circumstances. The law states that an accused is presumed innocent unless proven guilty, and the clause in Article 20(3) is essential to accomplish this. Article 20(3) of the Indian Constitution preserves the accused's rights and protects him from cruel treatment. This section is triggered by three essentials. The right is only available to an accused person, and it can only be used in criminal procedures, not civil ones. The accused has identical rights under Section 161(2) of the CrPC. If a person delivers a statement that constitutes evidence against himself lawfully and freely, it will be admissible in court. Second, it is the officials' responsibility to convince the person that he has a right to remain silent. In other words, every accused person must be made aware of his or her legal rights. This right is available to the accused at any moment during the criminal proceedings. A person shall not be compelled to talk against himself; the coercion factor shall not exist. Third, the statement must be used as a witness against himself. Nobody should be forced to cremate oneself, so this privilege is extended to everyone on the planet.

The topic of whether scientific testing violates Article 20(3) is frequently raised. Unless there is a compelling reason to do anything, anything that aids in the deduction of evidence is acceptable.

A distinction should be made, in my opinion, between an individual's right and the process of justice. The right to quiet is an important clause that protects an accused's rights during the inquiry process. No one should be forced to cremate himself by saying anything that may come back to haunt him. However, there is a distinction between gathering evidence and compelling someone to speak, and hence these scientific tests are not illegal. It is critical to acquire evidence, and in many circumstances, DNA tests aid in the pursuit of justice.