

# Protection against Self-Incrimination under the Constitution of India

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**ABSTRACT:** *In rule, self-incrimination is the provision of proof that can appear to subject the witness to criminal punishment. In relation to the right of refusing to supply such evidence, the term is commonly used. An individual fearing self-incrimination could make his own decision in some continental European countries as to whether or not he will testify. On the other hand, a person other than a convict does not refuse to testify under Anglo-American practice; he can only cite his right against self-incrimination, and the judge decides whether to testify. He would answer all questions if asked to testify, except those he finds to be self-incriminating. As a consequence of investigation, self-incrimination may occur or may be voluntarily carried out. The Constitution's Fifth Amendment prevents a citizen from being coerced to incriminate themselves. It is also appropriate to refer to self-incrimination as self-crimination or self-inculpation.*

**KEYWORDS:** *Self-incrimination, Civil rights, Humans, Life, Rules, Guidelines, Laws.*

## INTRODUCTION

The Constitution's Fifth Amendment provides the right against self-incrimination. This avoids requiring the government to compel a citizen to testify against himself. While the authors were especially concerned with the torture of individuals in order to incriminate themselves, the courts applied the right to all coercive testimony. The consequence of the right against self-incrimination is that without the defendant's support, the state must prove its point. He wins if the criminal is silent, until the state can provide ample proof of his guilt [1]. The defendant may fail to take the stand and appear at trial, and the prosecution may not comment on the silence of the defendant; that is, no comments as to whether the defendant won't take the stand to justify what actually happened.

In prosecuting a lawsuit, the right against self-incrimination still applies. A suspect may refuse to meet with the police, but may not refuse to testify in front of the grand jury. The defendant may refuse to answer questions that he feels will incriminate him, which is called "taking the Fifth." The right extends to any felony, state or federal, but when he is prosecuted by the state, the defendant will take the Fifth because he is worried about engaging himself in a federal crime [2]. However, witnesses, who are not defendants or future defendants, cannot refuse to appear and, if they refuse, can even be punished for contempt of court. In certain cases, by giving the defendant protection for the offences he may list in testifying, the prosecutors can get around the defendant's right against self-incrimination. When immunized against the prosecution possibility, by using the right against self-incrimination, the witness can no longer refuse to testify.

Testimony is limited to the right of self-incrimination. Defendants may be required to send samples of hair, samples of blood, and other bodily fluids. They will be required to produce writing samples and, in some situations, to supply details such as secure combinations or bank account positions. They are regulated by, rather than those regulating self-incrimination, the laws on searches and seizures [2]. The right against self-incrimination is available, under Indian jurisprudence, against disclosures that may associate an accused with the committing of a crime. The Supreme Court was necessary in its landmark case of *Bombay v. Kothi Kalu Oghad* (1961) to describe the extent of the defence and to determine whether forcing an accused to provide samples of handwriting, signature or thumb impression violates Article 20 (3)[3].

The Court observed, it rationalized that, holding against the convicted, that a witness gives testimonial and non-testimonial (physical) evidence, and that an accused can be called a witness against himself only in the former [3]. "Self-incrimination must mean the transmission of personal knowledge-based information and cannot include merely the mechanical process of producing court documents that may shed light on any of

the points in the dispute but that do not contain any personal knowledge-based statement of the accused” The Court ruled, applying the logic, that handwriting is non-testimonial evidence that does not express personal information that is likely to contribute to self-incrimination or to have a link in the chain of evidence. Only for corroboration or connection with other facts in the investigation can it be used. Therefore, a suspect could be required to produce a handwriting sample [4].

This theory was used to persuade a convicted party to create a thumb impression, breath sample, speech sample, DNA, etc. The Supreme Court later ruled many methods such as brain imaging, narco-analysis and lie detector tests illegal in *Selvi vs. State of Karnataka* as they intrude into an individual's privacy to collect emotions and thoughts for self-condemnation. It further reiterated the defence by maintaining that Article 20(3) provides an environment of mental privacy that cannot be compelled by the State to yield in order to gain personal knowledge of a related fact [5]. Thus, under Article 20(3) of the Indian Constitution, any information that emerges from personal knowledge is covered. The same theory of self-incrimination is applicable to the jurisprudence of the United States. In India, the courts are yet to address the implementation of this theory in order to protect the passcode. On this subject, numerous US courts have delivered conflicting verdicts [5].

## DISCUSSION

There's no one bound to criminate himself. Therefore, although a convicted person can make a voluntary declaration as to the accusation against himself, before obtaining such a statement from him, a justice is required to warn him that he is not obligated to say anything and that what he says will be offered against himself in testimony. Therefore, there is also the provision that proof of the accused's testimony is not admissible until it is shown that the confession was free and voluntary [6]. In the enforcement of criminal justice, the right against self-incrimination thereby requires the maintenance of human privacy. It also goes with the *Nemo Tenetur Seipsum Accusare* maxim, i.e., 'No person, not even the accused himself, should be coerced to answer any question that might appear to prove him guilty of a crime, he has been accused of.' If the accused's confession is extracted from any physical or moral coercion, the court should refuse it.

The right to coerced self-incrimination is enshrined in the Code of Criminal Procedure (CrPC) and the Indian Constitution, generally recognised as the Right to Silence. The legislature has guarded the freedom of an individual to self-incrimination in the CrPC. S.161 (2) of the Code of Criminal Practice specifies that a person is obliged to answer any questions posed to him by a police officer truthfully, rather than questions regarding the responses to which that person may have a propensity to face a criminal offense, imprisonment or forfeiture. However, whether the suspect makes a confession without any inducement, intimidation or guarantee, Article 20(3) does not apply [7].

The implementation of the test for narco-analysis covers the basic issue of judicial matters as well as civil rights. The legal role of applying this methodology as an investigation help poses real concerns such as infringement of the rights, liberty and freedoms of a person. In the case of *State Bombay v. Kathikalu*, it must be seen that the accused has been coerced to make a declaration that is likely to be self-incriminating. Compulsion means compulsion, which entails assaulting, beating or imprisoning a partner, parent or infant of an entity. Therefore, Art 20(3) should not extend when the accused makes a confession without any inducement, intimidation or pledge [7]. There are diverse facets of the right to secrecy. One is that to show that the perpetrator is responsible, the responsibility is on the state or rather the prosecutor. Another is that it is assumed that an accused is innocent unless he is found guilty. A third is the accused's right to self-incrimination, including the right to be quiet and not to be coerced to incriminate himself. Exceptions to the law also apply. By allowing his photos taken, speech captured, his blood sample checked, his hair or other body substance used for DNA testing, etc., an accused could be required to apply for examination [8].

Article 20(3) prevents the accused from self-incrimination and grants the accused the right to remain quiet on any matter which threatens to incriminate him. This article refers to people who are obliged to be a witness and therefore covers searches and arrests where there is no requirement to be part of the hunt for a suspect or the person being sought. If any comment is made on a result, then under Article 20 it will not be covered (3). The law notes that it is unlikely for an innocent to be tortured or coerced to make a confession and no

compulsion should be placed on him to extract evidence from him [8]. In those instances, the right alluded to in Article 20(3) may have been gained. Scientific procedures such as examinations for narco-analysis, polygraph analysis, etc. that conflict with the right to privacy are deemed to be in violation of Article 20(3) and can only be carried out in special circumstances. However, the efficacy of these tests has improved with the progress of medical sciences and, in my view, these tests will prove to be useful instruments for supplying evidence for the timely disposal of cases [9].

The courts are hesitant to consider DNA test-based data because it threatens an individual's right to privacy and the right to self-incrimination. The right to privacy is a right inherent in Article 21 of the Right to Life and Personal Liberty. However, the Supreme Court has ruled, in some circumstances, that the right to life and personal liberty is not unconditional and can be subject to certain limits. In *Kharak Singh v. State of Uttar Pradesh*, the Supreme Court ruled that the Constitution would not grant the right to privacy. In some occasions, the courts have approved DNA testing to be used in an investigation to provide evidence [10]. In the case of *Kanchan Bedi v. Gurpreet Singh Bedi*, the parentage of the child was the subject of a question, and the mother filed an application for a DNA test, to which the father objected, alleging that his rights would be infringed. The Court held that, where a child's parentage is at stake, ordering a person to take a DNA test does not constitute a breach of constitutional rights. The Court relied on the decision of *Geeta Saha v. NCT of Delhi*, where a DNA test was ordered by the Division Bench to be performed on the victim's foetus[10].

### CONCLUSION & IMPLICATION

An analysis of the existing legislation in different countries shows that the courts have allowed the prosecutor to show guilt beyond reasonable doubt in the USA, Canada and India, in view of the constitutional provisions against self-incrimination, and there has been no invasion of the right of silence vested in the defendant or convicted, whether at the point of investigation or trial. It is well known that in the case of *Nandini Sathpathy vs P.L. Dani*, the right to silence has been given to the accused by way of the pronouncement, no one can physically extract statements from the accused, who has the right to stay silent throughout the course of the questioning (investigation). Forcible interference into one's mind is returned by the administration of these examinations, thus nullifying the validity and integrity of the Right to Silence. Law is a living phenomenon that varies in culture, research, ethics and so on due to the changes. As long as they do not contradict basic legal values and are for the benefit of humanity, the Legal System should incorporate innovations and advancements that take place in technology. The criminal justice system should be based on values which are just and equal.

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