
**ANALYSIS OF RIGHT AGAINST SELF-INCRIMINATING
UNDER ARTICLE 20 (3) OF THE CONSTITUTION AND ITS
COMPARISON WITH RESPECT TO THE 5TH AMENDMENT
OF THE AMERICAN CONSTITUTION**

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ABSTRACT

The following paper seeks to analyse the right against self-incrimination through the eyes of the constitution of india and the various constitutional provisions which enforce and enact this right and compare it to the American 5th amendment and analyse their difference in implementation and enforceability in terms of their strictness.

The paper also seeks to highlight the important case laws in regards to right against self-incrimination and how the provision which is article 20 (3) is enacted and enforced in various cases in the Indian judicial system while also analysing the historical development and interpretation of this privilege and how the privilege became a mainstay in most judicial systems.

Introduction

the early origin of this legal right or privilege had originated from the legal maxim called *Nemo Tenetur Seipsum Accusare* which means “No man, not even the accused himself can be compelled to answer any question, which may tend to prove him guilty of a crime, he has been alleged against”¹ or “no one is obliged to blame himself”, this right was originally influenced by the American constitution which is the 5th amendment which in turn was influenced by British jurisprudence of criminal procedure.²

The right was ultimately borrowed by the makers of the Indian constitution and enacted under article 20 clause 3 of the constitution where this sort of a privilege or right was limited only to criminal activities or procedures.

Scope of article 20 clause 3

Article 20 clause 3 states that “no person accused of any offence shall be compelled to be a witness against himself”, in the case of *M.P. Sharma v. Satish Chandra* (1954) 1 SCR 1077, the court held that the right and the privilege against protection did not just extend to oral testimony, but would include and extend in regards to presentation of documentation in regards to the case³, therefore it was held that the privilege would extend to oral testimony and the presentation of documentations.

The scope of the privilege was also included in the following case where the court held that

- 1) The right extends to the individual accused of the crime
- 2) Provides protection to compulsion against being a self-witness against oneself
- 3) Provides privileges to not give evidence against oneself or herself

The reason for the enactment of this article was for providing a fair and a reasonable trial to all individuals involved in the proceedings.

Right to remain silent

The right to remain silent is a common law principle where the court is said to give the privilege to the accused or the defendant that the mere silence or lack of answers does not amount to

¹ Right-against-Self-Incrimination-A-Detailed-Study-Analysis-of-Laws-Prevailing-in-India.pdf

² Langbein_Privilege_Against_Self_Incrimination.pdf (yale.edu)

³ M.P. Sharma & Ors. vs. Satish Chandra and Ors. (ccgnlud.org)

guilt of the defendant or the accused, the Indian constitution under article 20 (3) obliges any individual who is arrested to be given the knowledge that he has the right to remain silent in response to any question, that the police or any individual can put forward to him or her.

The principle of guilt being proved beyond a reasonable doubt or apprehension is a common law principle which is being followed also in the Indian judicial sphere , in the case of D. K. Basu v. State of West Bengal AIR 1997 SC 610) , it was held by the supreme court that every individual who is arrested needs to be informed of his or her right , which also includes the right to remain silent under article 20 clause 3 of the constitution , here the court also held that every individual must have the right to know his privileges in case of his arrest and they need to be informed of such.

Similarities to the case of Miranda vs Arizona

The court's judgement in the D. K. Basu v. State of West Bengal AIR 1997 SC 610 case was similar to the judgement held by the American supreme court in the case of Miranda vs Arizona where the American court held that every suspect must be informed of his or her right specific legal rights at the time of their detainment or arrest which includes the right to take the 5th amendment or the right to remain silent , in the united states , it is mandatory for the officers to read the Miranda rights of the alleged convicts when they are under police custody , otherwise the case could be dismissed by the court

The Miranda rights are the rights which are given in the courts judgement of Miranda vs Arizona and are as follows:

- 1) You have the right to remain silent.
- 2) Anything you say can and will be used against you in a court of law.
- 3) You have the right to an attorney.
- 4) If you cannot afford an attorney, one will be provided for you

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court also held that "when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized," therefore finding self-incrimination protections in the Fourth Amendment. If the individual is not made aware of his rights (including the right to an attorney and the right to remain silent), then self-incriminating statements the individual makes will be inadmissible in

court.⁴

In india , it was further held that in the case of Kartar Singh vs State Of Punjab 1961 AIR 1787, 1962 SCR (2) 395⁵ , that the police officer in charge of questioning the accused has to bring forward the knowledge of the accused that he has the right to remain silent and the right not to self-incriminate himself , unlike the united states where the waiving of this right or privilege can be done either expressly or impliedly , in india this sort of waiver can only be done through voluntary means which is through implied means , thus an express waiver is not provided under the Indian law where a written agreement is made between the accused and the officer in charge that he or she is waiving her rights⁶

Constitutionality of narco test

A narco test is a test which involves an injection of a drug to either neutralize the person and extract the true set of facts and information by the accused, there is an injection of a sodium drug which makes the person in question go into a hypnotic state, which in turn leads him to reveal the truth of the correct set of facts this matter has been extensively debated by the courts whether such practice violates right to privacy as guaranteed under article 21 of the constitution and more importantly the right or privilege against self-incrimination and right to remain silent as enshrined under article 20 (3) in a landmark judgement , in the case of Selvi & Ors vs State Of Karnataka & Anr⁷ AIR 2010 SC 1974, (2010) 7 SCC 263 , the supreme court extensively debated the constitutionality of the narco case , no lie detectors need to be administered and forcefully used unless there is a prior consent which is given by the accused to the crime that such a test could take place , the court further clarified that the right to self-incrimination was enacted to ensure individuals give a fair and a just testimonial while also treating the accused with dignity and respect⁸ , the court also further clarified that Guidelines for the Administration of Polygraph Test on an Accused should be followed when a narco case is done.

Comparison and similarities to the 5th amendment of the American constitution

The 5th amendment was the factor which was ultimately influenced in the enactment process of article 20(3) , the 5th helps defendants to the crime get the privilege or the right to refuse to

⁴ Self-incrimination | Wex | US Law | LII / Legal Information Institute (cornell.edu)

⁵ Kartar Singh vs State Of Punjab on 26 April, 1961 (indiankanon.org)

⁶ Waiving Miranda Rights - What Does It Mean? (shouselaw.com)

⁷ Selvi & Ors vs State Of Karnataka & Anr on 5 May, 2010 (indiankanon.org)

⁸ Selvi vs. State of Karnataka (ccgnlud.org)

answer any question which might incriminate him or her in the proceedings , this of course also has the right to remain silent and refusal to answer the question , in American the fifth amendment can also be used by individuals only and business corporation or business enterprises have no right or privilege to invoke this right during their trial or proceedings , the 5th amendment also helps the defendant to enact his right in cases which includes:

- 1) Criminal
- 2) Civil
- 3) Administrative hearing
- 4) Formal hearing
- 5) Informal hearing

In the united states in a criminal proceeding, a jury or a bench cannot infer guilt from a refusal to answer a question and taking the 5th while in terms of civil cases the jury has the right to infer guilt from the defendant in terms of taking the 5th , refusal to answer any question or the right to remain silent⁹.

Conclusion

Thus we can conclude by the following, that right against self-incrimination guaranteed under article 20 (3) of the constitution includes right to remain silent and right against giving testimony against one's self.

The article was borrowed by the American constitution which is the 5th amendment and which was originally influenced by British criminal jurisprudence which was later influenced by the roman era where the maxim of *Nemo Tenetur Seipsum Accusare* was first formed which mean on one can be obliged to blame himself or herself.

In india, the right went through various judicial decisions and ultimately went through a period of change , through various case laws in india , it is seen that that the court held that the waiving of these privileges can only be done voluntary upon the individuals knowledge of his or her rights and has to be done through implied means rather than voluntary means as seen in the united states of America where the waiving of this privileges can be done either through express or implied means which is either through implicit action or through a written statement and a document signed

⁹ Fifth Amendment Privilege Against Self-Incrimination | Practical Law (thomsonreuters.com)

In india, narco test are supposed to be done through voluntary means only when the individual knows that he has waived off his rights to self-incrimination, in various judicial decisions, it has also been held that individuals can only use this privilege and not anyone else such as business corporation or enterprises, etc. The right can be availed in cases of criminal and civil proceeding and a right not to answer a question or silence does not amount to guilt as per the Indian context.