INCORPORATION OF ARTICLE 20(3) OF THE INDIAN CONSTITUTION: A GLIMPSE OF STUDY

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Introduction

Article 20(3), an accused person cannot be compelled to testify in his defence. The concept that no one may be coerced to give evidence that may expose him to criminal prosecution is enshrined in Article (20)3, which is also included in English and American law. The presumption of innocence is the cornerstone of the English legal system and the first rule of criminal procedure. The onus of proof is with the state in a criminal proceeding. The accused need not make any involuntary statements or confessions. Article 20 (3) of the constitution makes the traditional criminal law rule of self-incrimination a constitutional guarantee.[2]

1. *Scope of Article 20(3) of the Indian Constitution*

Since Article 20(3) of the Indian Constitution[3] has never been construed as meaning that a suspect cannot be compelled to turn over evidence based on his own knowledge of the crime, the doctrine of the prohibition against self-incriminatory statements, which is celebrated in the United Kingdom and America, has never been accepted in India.A person's right under Article 20(3) of the Charter not to be compelled to be a witness against oneself is lost if that person voluntarily answers questions from the witness stand. Since in this case he or she is not a witness against themselves but against others.[4] A broad inquiry and investigation of a company's operations cannot be characterized as an investigation under Article 20 if it begins with an allegation (3).[5] The primary goal of Article 20(3) is to safeguard an accused person from being forced to implicate himself. To be protected against testimonial coercion under Article 20(3), it must be shown that the witness was 'accused of any offence' and that he delivered the testimony under pressure. It is already well known that Article 20 applies only to those who have been officially accused of the commission of a crime that may, in the

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[2]M. H SEERVAI.CONSTITUTION LAW OF INDIA (Universal Law Publication, 2015).
[3] AIR 1965 SC 1251.
[4] AIR 1968 SC 938.
[5] AIR 1961 SC 29.

ordinary run of events, lead to such prosecution. Multiple supreme court rulings have focused on the meaning of the term 'accused of any crime' (3).[6]

The assumption that a seizure of property or search should be understood as the need to provide such property or information is not supported by Indian law. However, the individual in question is given the notice to produce, and his compliance with it becomes a testimony. The constitutional safeguard inherent in Article 20(3) would not be violated if a search was conducted on evidence possessed by a suspect without the suspect's presence or permission.[7]

An accused person cannot be subjected to a section 94(1) Cr.P.C., 1898, order to appear and provide documents. When the accused confesses devoid of provocation, threat, or pretext, Article 20(3) does not apply.[8] A recanted confession is of limited help in supporting a conviction, and a co-confession accused cannot be used against them, despite attempts to hide the genuine nature and inherent character of the accused, handwriting. Thus, presenting a finger imprint, a sample of writing, or a signature on behalf of a defendant is not considered "to be a witness," even if these actions may provide evidence in a broader sense.[9] A clause requiring an accused person to provide their defence is not the same as ordering the accused to testify against themselves.[10]

A person who has committed an offence may be tortured physically or mentally. He may be tortured or starved, and a confession might be coerced. In order to get him to say anything that might be used against him, they may trick him into thinking that his kid is being tortured in a neighbouring room.But even if a tape recording is made without the accused's knowledge, Article 20 does not apply (3).[11] A police officer is someone in a position of power, and requiring an answer—especially in the setting of a police stationis pressure unless specific precautions are taken to prevent stress.

The need for the accused to testify to support his defence would not trigger Article 20. (3).[12] In certain situations, the presence of a lawyer is a constitutional right in India as well, and Article 20(3)'s context provides assurance that the right to quiet is known about and observed. In a manner, Articles 20(3) and 22(1) may be telescoped by requiring the police to consider it reasonable to allow the accused's attorney, if there is one, to be present while he is

[6] AIR 1976 SC 1167.
[7] AIR 1980 SC 185.
[8] AIR 1953 SC 131.
[9]AIR 1978 SC 1770.
[10](1964) 1, Cri.L.J. 224.
[11]AIR 1973 SC 147.
[12]AIR 1968 SC 1050.

interviewed. This condition prevents overreaching of Article 20(3)[13] Section 161(2) Cr.P.C. Suppose an accused individual requests to have his or her attorney present throughout the course of the examination. In that case, this request cannot be granted without subjecting the defendant to the severe reprimand of forced self-incrimination.

a. *Person accused of an offence,*

In the event of an accusation of a crime, a person and an incorporated corporation are eligible for the privilege under Article 20(3). To qualify for the right against self-incrimination, the person making a claim must be "accused of a crime" when he makes the statement. The individual in question has been officially charged with doing a crime; although the trial itself may not have begun, they will likely face prosecution as part of the normal course of events.[14] Of course, the privilege indicated in Article 20(3) may be utilized during the trial itself, but it can also be invoked before the trial, during the police inquiry, provided the individual being questioned has reasonable cause to be deemed an accused. It is clear that Section 240 of the Companies Act, which governs the disclosure of documents and the taking of evidence, is not subject to Article 20(3) of the Constitution.

The term "accused of an offence" only refers to someone who has been the subject of a formal allegation about committing a crime, which in the usual course might lead to prosecution. The phrase "person accused of an offence" was interpreted more logically, and it was decided that if a person who is not charged with any crime is forced to testify and the testimony, he provides is ultimately used to charge him, that situation would not fall under the purview of Art. 20(3).[15] The court ruled explicitly that this section only protects individuals suspected of committing a crime, not those being questioned as witnesses. By answering queries in the witness box, a defendant waives his 5th Amendment right not to be obliged to provide evidence in his trial.[16]

Finally, to assert a guarantee against testimonial compulsion, a formal allegation must be levelled against a person. A notice seeking explanation is issued when an authority that must by law request one does so before filing a complaint; it is regarded to have made a formal allegation.[17] The Supreme Court extended protection to an authorizer from being prosecuted based on his evidence in previous instances while further explaining the right against testimonial coercion. After receiving a pardon in Sec. 306 of the Cr.P.C., the court declared

[13] (1966) 384 U.S. 436.
[14](1963) SC 285.
[15](1964) SC 412.
[16](1967) SC 393.
[17](1968) SC 2.

in State Delhi Administration vs Jagjit Singh that he could no longer be considered an accused person and must testify as a prosecution witness instead. The Indian Evidence Act's caveat to Section 132 affords him further protection by stating that his evidence can't be used against him in later proceedings. Any statements made by a witness during a criminal procedure that may be used against him either directly or indirectly are immune from prosecution under this Act. If the prosecution questions him while playing the approver position, his testimony will safeguard him from potential criminal charges.

Since the contemnors were not charged with any crimes, the mere issue of a notice or the pending status of contempt trials does not trigger Art. 20(3). Criminal contempt differs from regular offences in numerous ways and is penalized by a fine or prison period. A defendant is not an accused because the court issued a notice[18].

Following the existing requirements of the Indian Evidence Act, the accused receives the full benefit of Art. 20(3)'s protections. In the M.P. Sharma vs Satish Chandra Chandra case[19], the Supreme Court examined the whole theory of self-incrimination and how it was contained in Art. 20, where the question was whether or not searching and seizing a suspect's belongings constitutes coercing him to be a witness against himself under Art. 20 (3). Speaking for the majority, Hon. Jagannadhdas J. believed that Article 20(3) includes the protection from self-incrimination concept, which is one of the tenets of the British criminal law system and which the American system has embraced and integrated into an article of its Constitution. By being included in numerous legislative laws, it has also been significantly acknowledged in this nation's Anglo-Indian criminal justice administration. The claim here is that searching someone's home or office in order to acquire evidence for an investigation of a crime amounts to the compulsory acquisition of damning material from the accused, which is forbidden under Art. 20(3). It is undisputed that the questionable article contains nothing at first glance to suggest that it has the ban of seizures and searches of papers from an accused's possession within its purview. However, some liberal construction principles relevant to the interpretation of constitutional guarantees are encouraged to show that this is inherently included in those principles. Much reliance has been put on American court rulings that addressed concerns comparable to those in this line of reasoning. The petitioners' defense is laid forth in the manner that is described below. The basic protection outlined in Article 20(3) includes evidence of any kind coerced from a person who is or is likely to be implicated as a defendant and oral testimony provided by a person in a criminal case still ongoing. Therefore,

[18](1991) SC 99
[19] AIR 1954 SC 300.

it only covers the forced production of papers from an accused's possession and the forced production of oral or written evidence from anybody else who could be implicated as an accused as a result of subsequent proceedings.

Assuming that this interpretation of Article 20(3) is acceptable, the next stage in the argument is to show that a person's papers are constitutionally protected against unauthorized disclosure if they have been subjected to a forced search and seizure if this line of reasoning is adopted in its entirety, then all laws and regulations on the search and seizure of papers are void and invalid since they violate Article 20 (3). This way posed, the issue is significant in many ways and deserves serious thought. To properly assess the breadth and substance of the concept and determine whether or not our constitutional framers intended for it to be acknowledged in Article 20 (3). It is vital to have a quick overview of the development and application of this concept as well as its ramifications in English, American, and Indian law.

b. *against compulsion to be a witness*

There is no reason to limit the safeguard against testimonial coercion in Art. 20(3) to oral testimony given by a person facing criminal charges when brought to the witness stand. The defense afforded a suspect when the phrase "to be a witness" is used well beyond protecting them from being forced to testify against themselves and may very well include coerced evidence previously acquired from him.

When someone makes a statement under pressure, sometimes known as "compulsion," the statement is deemed extorted, even if the individual is not in a compelled state of mind. Art. 20(3) does not apply to routine demands made by a officer looking into a crime made against a specific person. Just because the suspect was in police detention when they made the statement doesn't mean it was made under duress.

Hon. Justice V. R. Krishna Iyer argued for a general meaning of the term "compelled testimony" in *Nandini Satpathy v P. L. Dani*. He claims that "not merely via physical violence or threats" but also " environmental coercion, psychological torture, exhausting interrogatory prolixity, atmospheric strain, intimidating and overwhelming approaches, and the like," the proof was collected. Any form of pressure used by authorities to get information from an accused person that is highly indicative of guilt constitutes compulsion, whether it is " crude or subtle, physical or mental, indirect or direct but sufficiently significant." To add insult to injury, "repeated warnings of punishment if there is failure to react may take on the character of excessive pressure," which is a violation of the right to self-incrimination?

The court ruled in *Nandini Satpathy v P.L. Dani*[20] that it was inclined to interpret "compelled testimony" as proof taken not only through physical violence or threats but also through psychological exertion, pressure from the tiring interrogative prolixity, environment, intimidatory and overbearing approaches, and similar tactics—rather than as a result of legal punishment for a violation. So, failing to respond has legal repercussions. Sincerity in response is not permissible as coercion under Article 20 (3). The threat of punishment may cause legal stress when a constitutional right is exercised, but remaining silent runs a calculated risk. As opposed to voluntary testimony, "compelled testimony" in breach of Article 20 (3) occurs when police use any pressure (overt or covert, physical or mental, indirect or direct) to coerce a suspect into providing information that is strongly suggestive of guilt[21].

The two key words in this context are "compelled" and "to be a witness," The Court has given both authoritative interpretations in several previous verdicts. The use of the phrase "compelled" implies that coercion is prohibited. No constitutional prohibition prevents the accused from testifying on his behalf. Therefore, the rules of Article 20(3) are not violated if an accused provides freely self-incriminating evidence against himself. The word “compelled” suggests that the prohibition is against compulsion. There is no constitutional bar against the accused being a witness on his behalf. So, if an accused voluntarily gives self-incriminatory evidence against himself, the clauses of Art. 20(3) are not hit. The phrase "compelled to be a spectator against oneself" doesn’t apply to an accused who voluntarily makes an incriminating statement or is forced to do so due to external circumstances. Courts have encountered this issue in several situations, and in a number of them, they have agreed that:

1. There is no compulsion in a simple direction to the accused, which he obeyed without protest. There is no question of being compelled to ask or directed to do merely.
2. When the accused willingly confessed without being coerced, threatened, or given a benefit, there was no coercion.
3. When the accused tried to bribe the Dy. S.P. was requested to show the envelope holding the cash and the Dy. S.P. confiscated and sealed them; the accused was under no obligation to do so.

[20] AIR 1978 SC 1025
[21] JAGDESSH SWARUP, CONSTITUTION OF INDIA (Vol.1 Edition 2nd reprint 2007)

Protected from "standing as a witness" but not "to be a witness" is the third phrase in Art. 20. Under *M.P. Sharma v Satish Chandra*[22], the Court generally said that the protection in Art. 20(3) is against testimonial coercion. It is argued that limiting this constitutional protection to simple testimonial coercion would deprive it of its important function and miss the point made in several American court rulings.The term "to be a witness" are utilized in Art. 20(3). A person may testify not just orally but also by providing papers or making gestures that can be understood, such as in the case of dumb witnesses or others of a comparable kind. Being a witness means giving evidence, whether orally, by producing objects or documents, or through any other means. This protection is not confined to what happens within the Courtroom but is available outside the Court also.

Although the expression "to be a witness" was first interpreted differently by different courts, the landmark case State of Bombay vs Kathi Kalu Oghad established the proper interpretation after our Supreme Court heard three opposing arguments from Mr Sikri, the Advocate General of Punjab, Mr S. P. Sharma, an Advocate and the Attorney General of India, laid down the law giving an authoritative interpretation to the constitutional protection under Article 20(3). The seven principles enunciated by their lordships of our Supreme Court, as have been dealt with afore, have taken into consideration the importance of bringing criminals to justice in the public interest and avoiding hurdles to a thorough and successful inquiry of crimes.

c. *Against himself*

An individual suspected of committing a crime cannot be compelled to testify against himself under Art. 20(3). The wording makes it clear that making forced incriminating remarks against oneself is covered by Article 20(3) protection. Therefore, the accused is free to make statements incriminating the third party. It does not matter if the accused is himself or the agent of such party. The Court ruled in *State of Bombay v Kathi Kalu Oghad* that presenting an accused person's sample handwriting or imprints of his fingers, palms, or feet does not constitute offering evidence against oneself.

In *Nandini Satpathy v P.L. Dani case*[23], the Supreme Court answered most queries about the extent, applicability and scope of Article 20 (3). The complainant, in this case, is a former Chief Minister of Orissa who was summoned to a police station to answer written questions as part of investigations being conducted against her. This was done despite the express prohibition in Sec. 160(1), proviso, of the Cr.P.C., which states that “no woman will be

[22] AIR 1954 SC 300
[23] AIR 1978 SC 1025.

compelled to attend at a site other than her residence". That fact was also relevant to the appellant's mental condition when asked to answer questions. The appellant declined to respond to inquiries, citing Article 20's protections (3). She was taken before a magistrate and accused of violating Section 179 of the IPC for refusing to respond to inquiries from a person in an individual of authority. The High Court refused her argument that she was not had to respond to inquiries because they were incriminating, and the Court heard the case.

Speaking for the majority, Krishna Iyer J. explained the two important phrases, "incriminatory statement" and "compelled testimony", used in Article 20(3). In his opinion, not every pertinent response is incriminatory and not every confessional response is incriminatory. A criminal charge's potential exposure is greater than its actual exposure. The spirit of the American judgments and the findings of this Court support this "wheels within wheels" understanding of self-accusatory comments. There is a wide circle of relevance. Every piece of information that is related to any aspect of the case is pertinent. However, despite its relation to the case, the accused is not adversely affected by it.Relevancy and innocence are compatible, and only when inference and an incriminatory inference are insufficient to constitute a confession and the response establishes guilt without further evidence does it constitute a confession subject to constitutional punishment. Confessions are responses that, by themselves, would support a conviction, but incriminating responses are those that reasonably tends to suggest that the accused is guilty. A pertinent response that provides a crystal-clear relation in the chain of evidence might implicate the suspect in the offence and violate Art. 20(3) if it is coerced from the accused's mouth. Only if the criminal admits all the facts that made the offence, in words or significantly, does a response take on the character of a confession. His remark no longer qualifies as a confession if it also includes self-exonerating information. Confessions and self-incrimination are prohibited under Article 20(3), but other pertinent facts are unaffected. In addition, he referred to the Court's ruling in *Hoffman v the United States*[24], that the court automatically assumed the right's scope and chose to find that it would apply to responses that would, on their own, support a conviction and to responses that would give a link in the chain of evidence sufficient to prosecute the claimant. Clearly, the connection needed to be fairly strong for the accused to see risk in such responses. He could not use the right to keep quiet only because he believed that by responding in this way, he would implicate himself. The Court must conclude that answering the question or explaining why it cannot be answered poses an unacceptable risk of harmful

[24] (1950) 341 US 479.

disclosure due to the nature of the inquiry and the context in which it is posed. The fear of being implicated as a result of the answer should also be real and substantial as opposed to the risk posed by improbable scenarios or fanciful lines of inference. We should emphasize two points. The context of the specific cases, the environment, other factors, or the totality of the conditions must inform the Court's perspective in determining whether an act is incriminating. In cases where there is reasonable doubt, a liberal interpretation of the Article must favour the right to keep quiet.

Art. 20(3) returns to level of police questioning, not simply beginning in court. In terms of interrogation by law enforcement, the clauses of this Art. and Sec. 161 (1) of Cr.P.C. in this ruling essentially cover the same ground. Self-incrimination is forbidden, and witnesses have the right to keep quiet during a trial or investigation, which safeguards the accused in relation to other crimes that are ongoing or impending, which would discourage him from voluntarily disclosing incriminating information. The legal repercussions of refusing to respond or answering honestly can't be viewed as coercion within the definition of Art. 20 (3). Legal tension may arise when exercising a constitutional right under penalty of punishmentyet keeping quiet carries a calculated risk. On the other side, if police exert pressure on an accused that strongly suggests guilt, whether overt or subtle, physical or mental, indirect or direct, that information becomes "compelled testimony," which is illegal under Article 20 (3).

CONCLUSION

By reviewing the history and application of the right against self-incrimination, it is evident that this right has evolved over time from its early origins in the English common law, through its enshrinement in the Fifth Amendment, and on to the present. It is equally evident that this right is now at a point where it may either evolve to address the "criminal case" in its modern form or keep plugging along in its traditional form. While allowing the right to continue to evolve best suits the needs of defendants in modern criminal cases, only time will tell whether the courts will continue to allow the right against self-incrimination to growor force it to remain a relic of late 18th Century criminal procedure.