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Doctrine of self-incrimination: A conceptual framework

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Abstract

Nemo tenetur seipsum accusare' The duty of the judiciary is to do justice to the victim of an offence and punish the offender. In India, there is a well-established procedure for this, which has to be followed by the police and the court during investigation, inquiry and trial. Sometimes circumstances also arise in which the principles of natural justice and human rights appear to be violated in order to prove the charges framed against the accused. Since the offender is considered an abominable person, a discriminating behavior is possible against him. Therefore, to prevent the injustice done against the criminals, some rules have been formulated, one of which is the "principle of self-incrimination". This principle provides protection to the accused during the investigation, inquiry and trial of an offence. The general rule is that the prosecution, with the help of its evidence, witnesses, should prove the offender guilty and not expect the accused to confess his offence himself. Thus, this principle states that no accused can be compelled to give any evidence against himself which would put him in grave danger, nor can any undue pressure be exerted on him for this purpose. So far, on many occasions, the Supreme Court has given historic decisions on this issue.

Keywords: Fundamental rights, doctrine of self-incrimination

Introduction

Apart from English and American law, the *principle of self-incrimination* has been taken prominently in the context of criminal matters in India also. That is why Article 20(3) of the Indian Constitution encapsulates this principle. Its place in the Fundamental Rights means that the law assumes that *until the charges against a person are proved, he will be considered innocent*. Therefore, it becomes clear that even an accused of an offense cannot be deprived of his fundamental rights. If an accused is tried in a corrupt manner, it will be unfair to him because he may be guilty and thus be liable to punishment, but it would not be justified to do so without prejudice to law and procedure.

Components

The question of self-incrimination has come up time to time before the Supreme Court. Through various judgments, the Court has broadened the nature of this principle and has on many occasions taken it in a limited sense to prevent its abuse and misinterpretation. For example, *the meaning of the expression "accused" in Article 20(3) and whether witnesses can also enjoy the benefit of this principle, does this principle apply in civil cases also, the actual and practical meaning of being a witness against himself etc.*

Right as an accused: The benefit of this principle is available only to the accused person and not to anyone else. According to a decision of the Kerala High Court^[1], the protection of Article 20(3) will be available only to the accused. Whether a person is an accused or not is determined by his status in a certain case. The accused is not the only person against whom any inquiry or trial is pending in the Court, but also a person against whom the Magistrate has ordered an inquiry. When a person is taken into custody for interrogation, such person shall also be an accused even if his name does not appear in the First Information Report. The person who has been summoned under the *Foreign Exchange (Regulation) Act, 1947* has also been deemed to be the accused^[2]. Therefore, the word accused cannot be included in a fixed range, the status of the accused is decided on the basis of the facts and circumstances of each case.

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Whether a witness falls under the category of an accused: Witnesses are not treated as accused in Indian law. That is, the Witnesses will not be protected under **Article 20(3)**. Here Indian law appears to limit the concept of the accused, while the principle of self-incrimination in English and American law applies on witnesses too.

Doctrine of self-incrimination and civil cases: The term "accused" used in Article 20(3) indicates that this principle is confined to criminal cases only. It does not apply to civil proceedings.

Witness against himself: Compelled to be a witness against himself means to make any *written or oral statement* against himself in court or outside the court. Such statement must be made by a person accused of an offence. Thus, when a person makes a statement etc. against his own interest, it is presumed that he is giving evidence against himself, which is prohibited by Article 20(3).

Initially, apart from the statements, some other things were included in it like *fingerprints, handwriting, signature, documents* etc. Cause could not be found resulting in justice being denied. So it was limited to personal knowledge. Personal knowledge means facts which are within the knowledge of the accused and no other person knows those facts. At present, the accused cannot be compelled to disclose facts, information based on his personal knowledge. There are some criminal cases in which only *handwriting, fingerprints, documents* etc can be decisive, such as *forgery, identification of fingerprints found on pistol or knife etc, prosecution for possessing a forged document* etc. In these cases, if the *signatures, fingerprints* of the accused are not taken or no *forged documents* are ordered to be produced, then it will not be possible to meet the decision. Disclosure of such *signature, fingerprint or document* may prove the charge against the accused but it does not amount to self-incrimination. Therefore, it is only appropriate to exclude them from the purview of Article 20(3).

Undue pressure: Article 20(3) forbids an accused to give evidence against himself, but does not forbid to accept the evidence if produced without any undue pressure. So it is clear that any person can give evidence against himself voluntarily. There is a feeling of atonement within every person and if the conscience of an accused says that he should accept the charge and face the punishment, then he should be allowed to do so. In this situation there is no justification to prevent him from giving any conclusive evidence against him. Even for such a confession it is necessary that it should be free from undue pressure. If the confession is also made by means of fear, coercion, temptation etc., then it will not have any tangible value.

Section 164 of the Code of Criminal Procedure, 1973: This section deals with the confession of offense by the accused. Under which an accused can lawfully admit to the offense committed by him, but for this certain conditions have been prescribed.

Under Section 164, only an accused can make confession and it must be related to the offence. It is necessary to its lawful value that it must be made voluntarily i.e. without any threat, pressure or inducement. So, Section 164 clearly states that there should be no essence of undue pressure on the accused making confessional statement.

It has often been seen that the police officers, misusing their power, have recorded the confession by intimidating, coercing or luring the accused because they want to get the solid evidence in their hands by whatever means and they complete the investigation. Keeping this in view, the above conditions have been included in Section 164 of the Code.

Exceptions

In order not to create any obstacle before the judiciary, the Supreme Court has clarified in various judgments that the accused cannot be allowed to take unjust advantage of this principle. Where any act of the police or the execution of any process of the court leads to such fact as is necessary for the investigation, inquiry or trial in the case, it should be excluded from the purview of Article 20(3). Like –

Execution of a warrant under Section 96 of Cr. PC [3]:

When a warrant for a search is issued by a court under section 96 of the *Code of Criminal Procedure, 1972*, no person can claim that any material obtained during such search would lead to an indictment against him. Therefore, where there is a question of execution of a search warrant, it will not be treated as giving evidence against himself.

Section 27 of the Indian Evidence Act, 1872 [4]:

Section 27 makes a provision on which questions have been raised time and again. Whereas this section acts as a deterrent to problems in investigation due to Section 24, 25 and 26. If any accused, during the police custody admits that he has committed an offence, then it'll be proved against him in the court but where any object is recovered at the instance of the accused, it can be produced as evidence against the accused in court.

Example: During custody, an accused who is accused of theft is asked where the stolen money is hidden and he gives information about that place. According to his knowledge, the police recover that money. Here this recovery can be proved in the court against the accused and he can also be convicted on that ground. Even if the information about such money has been given by the accused during custody where there was a possibility of fear but it will not be treated as evidence given against himself under threat, inducement or promise.

Taking specimen fingerprints and handwriting: As explained before, handwriting, signature and fingerprints play a very significant role in certain offences. So, an investigation officer, when he is conducting investigation under the Code of Criminal Procedure, 1973, may order a person to give his handwriting etc. It is not as being witness against himself.

New dimensions of article 20(3)

The concept of self - incrimination has expanded in this age of technology. Therefore, the effect of Article 20(3) cannot be restricted to signatures, handwriting, fingerprints or documents only. In modern times, many such scientific tests are being conducted whose reports seem to be capable of leading the court to the conclusive position in criminal cases. Such as - *DNA test, Narco test, Polygraph test* etc. These tests are needed for investigation of criminal cases. However, these tests must also meet the criteria of the principle contained in Article 20(3). These tests before the

Court in various cases have been claimed to be self-incriminating in nature and it was fit to claim so. Even though it is forbidden in law to be convicted on the sole ground of these tests, the accused can be punished if other facts which are proved.

Article 20(3) and DNA test: A leading case involving DNA test is *Mr. X vs. Mr. Z*^[5]. The question in this case was whether ordering a woman to undergo a DNA test would be in violation of Article 20(3), whether it violates the woman's right to privacy. The case was that the wife filed a petition for divorce against the husband on the ground of cruelty and adultery. The husband accuses the wife of having been in an immoral relationship before marriage and has also performed an abortion once whose slides of tubular gestation are safe and can be seen through DNA test. Thus the husband demanded DNA test of the wife. Rejecting the opposition to DNA test here, the Delhi High Court said - *The order for DNA test neither violates the right to privacy nor the provisions of Article 20(3). Here the test is not of any particular part of the woman nor she has to be present anywhere, only the slide is to be examined which is not against Article 20(3).*

The case of Selvi vs State of Karnataka^[6]: This is a landmark judgment in relation to the lie detector test. In this case, a three-judge bench of the Supreme Court held that *lie detector test cannot be conducted without the consent of the accused*. The court also said that those who voluntarily opt for this test should have the right to meet a lawyer and the police administration is required to provide all information about that test to such persons. In the year 2000, the guidelines on *lie detector test* published by the National Human Rights Commission were asked to be strictly followed. In this case the Supreme Court extended the principle of consent even more. Therefore, the scope of consent includes not only the accused but also the witnesses, the victim and the family members.

Tape Recorded Statement: In the case of *RS Malkani vs State of Maharashtra*^[7], it has been clarified that if the statement of an accused is taken on tape record, that statement can be used as evidence. The contravention of Article 20(3) was not held because that statement was made without the knowledge of the accused. Hence the accused was not under any undue pressure etc.

Nandini Satpathy Vs P L Dani^[8]: This is a famous case relating to police investigation under Cr. PC and Article 20(3). In this case, the former Chief Minister of Orissa Nandini Satpathy was accused of corruption. He was brought to the police station to investigate the allegations and asked to answer some written questions. But he refused to answer those questions, citing the principle of self-incrimination. Because of this, he was prosecuted under section 176 of the IPC. The Court held that Nandini Satpathy could not be compelled to give evidence against herself. During the course of investigation, police officers may ask general questions but no questions which may involve indulging in any offence, may be asked. The protection of Article 20(3) is available not only before the court but also outside the court.

Conclusions

The nature of the doctrine of self-incrimination does not obstruct justice but prevents the accused from being punished illegally. Article 20(3) requires procedure recognized by law to be followed.

Article 20(3) does not impose absolute restraint. Its purpose is mainly that by putting undue pressure on the accused, no such information should be obtained which can be taken as evidence against him, it can also be called the rule of the accused not to give evidence against himself.

It is the duty of the prosecution and not the accused to prove the charges against the accused beyond doubt. The accused proves the charges leveled against him to be groundless and not guilty.

The essence of Article 20(3) is - Undue pressure, within which comes threat, inducement, harassment etc. Where an accused has made a self-incriminating statement and it was done without undue pressure, the same may be given in evidence against him. There is no such prohibition in the law.

In conclusion, it can be said that the principle of self-incrimination contained in Article 20(3) is helpful in fulfilling the objective of complete justice. To punish the accused by conviction is to do justice to the aggrieved party, but in pursuance of this, if injustice cannot be done to the accused. Therefore, the principles of natural justice are required to be followed by law.

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