

# Privileges & Self-incriminating evidence Article 20(3) The Constitution of India

Pranav Ranga

Research Scholar, Department of Law, Kurukshetra university, Kurukshetra

**Abstract:** Whether it is legal or fundamental a Right is a Right also whether it is expressly stated or not and only be taken away by the procedure establish by law. The scope of article 20(3) is not limited merely to the court trial as it extends to “any compulsory process which force an individual to produce evidence which are likely to support production against him. It also includes the exclusion of previous obtain testimony.

**Keywords:** Constitution of India, Article 20(3), Privileges & Self-incriminating evidence

## I. INTRODUCTION

The constitution of India expressly provides privilege against self incrimination under article 20 (3) and also provides that no person can be deprived of his life and liberty except by the procedure establish by law. Article 20 (3) embodies the three main components to make it a fundamental right:-

1. The person must be accused of a offence
2. Forced to be a witness against himself
3. Such compulsion is likely to provide evidence against him

Evidence is the core element of criminal justice system and it cannot be taken lightly especially when it is self incriminating. The provision under 20(3) has been very broadly interpreted to include other parties to the proceeding too under the ambit of its protection. Fort the purpose of justice administration system Evidence means and includes all the statements that the permits or allows to made before it by witnesses and all documents including electronic.<sup>1</sup> Under article 20 (3) it extend to all disclosers which supports a conviction, It is to be noted that all these above ingredients must necessarily be present to invoke the protection under constitution otherwise it cannot be invoked. However as per the language of the article the privilege is available only for testimonial Compulsion but the Hon’ble Supreme court has taken its broader aspect by expressing its views as in order to treat a right as a fundamental right, it is not necessary that it should be expressly stated as fundamental right. Moreover, the right can be access only in criminal proceeding and for the offences defined under Section 3 (38) of the General Clause Act. But

unfortunately is not available in all proceedings of civil nature.<sup>2</sup>

## II. EVIDENCE COVERED UNDER ARTICLE 20 (3)

The Supreme Court as a guardian of fundamental rights thus gave a broader view to its interpretation and provides that though the immunity under the Article applies to “testimonial compulsions” which means and relates the oral testimony of an accused but it is not justifiable to restrict it there only rather it includes not only oral and written but also includes production of things and all other evidences which can be gathered by different modes.<sup>3</sup>

### 1. “To be a witness:

Under the law the witness is itself is evidence through this testimony which can be oral or written. Explaining the term Self incrimination The courts in the country has stated that it means sharing of information based upon personal knowledge which only covers personal testimony. But the personal knowledge based information cannot be equated in larger sense to include thumb impression, specimen of writing or disclosing any part of human body for identification. In case where the accused is in possession of a documents and such document will not create a charge against him upon its production and is not within his personal knowledge then in such situation he may be called to produce such document before the court. However, in order

<sup>1</sup> Section 3 , The evidence Act, 1872

<sup>2</sup> Shyan Sunder Chowkhain v Kajal Kanti Biswas, AIR 1999 Gau 101

<sup>3</sup> Sharma v Satish, AIR 1954 SC 300

draw a balance between the necessities of investigation there are many classes of evidences which have been ruled out from the preview of Article 20 (3). Evidences relating to signature, finger, palm & foot prints, specimen of handwriting and asking accused to show off her body part for identification are not covered under the privilege of Article 20 (3) as all these act does not fall within the ambit of the term "to be a witness"<sup>4</sup> but at the same time it is also warranted that an individual shall also be protected from being subjected to 3<sup>rd</sup> degree. Where the permission has been obtained by the police officer from the court during the investigation for having examined the suspect in relation to his finger prints, blood, saliva, hair, voice, semen etc, it is permissible for investigation officer to do so.<sup>5</sup> Also production of other evidences by the accused for the inspection of the court to compare his writing or signature does not fall under the category of statement of the accused. Providing finger expression or signature does not amount to personal testimony because these evidences are fall within the category of mechanical process and are not a matter of individual's personal knowledge.

2. **The Testimonial Compulsion:** Testimonial compulsion relates to the pressure either mental or physical, inflicted upon an individual, suspect or an accused at the time of recording his oral or written statement and which compelled him or her to record a statement totally out of his willingness. Though it has been contended that compulsion does not include the state of mind except in extra ordinary circumstances where the mental condition of the person making the statement has been so conditioned by extraneous way to render the statement involuntary. Compulsion under the law is said to be the "Duress". It is not so easy to ascertain that what thing actually implies the compulsion and what not. Being in police custody while statement is provided or recorded by the accused does not itself make incriminating and statement given under compulsion. And whether such compulsion is made or not is a question of fact which is to be decided by putting due weightage upon fact and

circumstances placed in form of evidence before it. An expansive interpretation has been provided to the phrase "Compelled testimony" by Justice Iyer in Nandini Satpathy case,<sup>6</sup> as compelled testimony is an evidence which is procured not only by physical threat and violence but also carried upon by psychic torture, atmospheric pressure, tiring interrogative prolixity, or like any other mode of subtle or crude, direct or indirect, but sufficient to sustain through methods adopted by police to gather information from an accused which is in every manner is suggestive of his guilt becomes compulsion. This is also to be noted that though the accused have his right to remain silent but failure to answer may also be taken on the complexion of undue pressure. Statutory guidelines have been incorporated under POTA as under:-

- I. It is the mandatory responsibility of the police officer to warn the suspect or the accused that is not bound to make any confession if he does not want to do so but if he does so by his own virtue then such statement or the confession may be used against him.
- II. It is the duty of the police office to provide a coercive free environment and atmosphere and record the statement of the accused in the language preferred by the accused

Where one of the parties to a telephonic conversation agreed to police for recoding their conversation it was ruled out that such a conversation can be used in evidence as it was voluntary without any duress or compulsion, the stand that it was recorded and attached without the knowledge of appelland will not make the tape record and the conversation inadmissible.<sup>7</sup>

3. **Evidences gathered from Search and Seizures:** In India privilege against self incrimination is not available in cases of evidences gathered from the search of the places or property of the accused raided with a search warrant. A search with a warrant in course of investigation under the code of criminal procedure is thus is not a compelled production for the purpose of evidence.<sup>8</sup> Moreover, if there are some documents that are within the knowledge of the accused and are present at the premises of the accused and are taken in to custody

<sup>4</sup> State of UP V Boota Singh, AIR 1978 SC 1770

<sup>5</sup> State of Bombay v Kathi Kalu Oghad, AIR 1961 SC 1808

<sup>6</sup> AIR 1978 SC 1025

<sup>7</sup> R.M Malkani v State of Maharashtra, AIR 1973 SC 157

<sup>8</sup> Section 94 , The Code of Criminal Procedure, 1973

by investigating officer upon a search warrant and information contained in such document is of the nature to incriminate the accused, when proved will not provide him the protection under Article 20 (3).

<sup>9</sup> It is so because the act of search and seizure cannot be said to be the act of occupier of the premises rather it a course of investigation and the authority of court which empowers the I.O to conduct the same and it is the duty of the occupier of the premise to obliged the order and authority and thus the act of another cannot be consider as acts of the occupier.<sup>10</sup> Also the passive submission to the search cannot be said or styled as compelled testimony. Protection under Article 20 (3) is not available for voluntary self incrimination. It is also to be noted that an accused cannot be a witness on Oath, therefore when the answer given by the accused in reply of the question on prosecution evidence, clearly explains the material placed before the court then the accused can be convicted if there is no rebuttal of prosecution evidence. The basic objective behind providing protection under article 20(3) is that in a diverse nation like ours it become prime obligation under the theory of welfare state make people feel secure and confident in respect to their individuality and dignity. Therefore, the judiciary has widened the interpretation of human life and its nature and it was thought that it is necessary for welfare state to secure its citizens with some basic rights of which they can seek enforcement against the arbitral action of the government at times. The Hon'ble Supreme Court itself recognizes its responsibility to enlarge the scope and meaning of human right jurisprudence.<sup>11</sup> On the other side the executive of the state has also the prime responsibility to protect the society against offenders but such a responsibility must be adhere with the principle that no one should be punished without a fair trial and no one will be compelled to give evidence against himself except by the procedure established by law. And if they fail to do so then it is difficult for them to achieve the constitutional mandate fundamental rights. The scope of article 20(3) is not limited merely to the court trial as it extends to "any compulsory process which force an individual to produce evidence which are likely to support production ageist him. It also includes the exclusion of previous obtain testimony. It has been ruled out that an individual is entitled to remain with mouth shut if answer sought has prospect of

exposing him to in some other accusation actual or imminent.

### III. CONCLUSION

In India we are suffering from high rates of criminal activities and law rate of conviction and there are several hundred of reasons for such criminal and conviction rates. On the other hand explaining the scope of the Article 20 (3) the court has stated that it can only be claimed by person who is an accused of an offence at the time he is compelled to make the incriminating statement. Under the procedural rules the investigator was told to bear in mind that "for a successful prosecution the evidence in support of a charge must be clear, tangible, and cogent". But unfortunately this direction is culled with negative implications and it became a routine practice I the country criminal justice system that investigator start fishing out the evidence rather achieving the same through formal criminal proceeding and the evidence collected thereof can be used against the person concerned and this loses much efficacy of the privilege against self – incrimination.

<sup>9</sup> V.S Kuttan Pillai v Ramakrishan, AIR 1980 SC 185

<sup>10</sup> MP Sharma V Satish, AIR 1954 SC 300

<sup>11</sup> Ajay Hasia v Khalid Mujid,, 1981 SCR (2) 79