

# LEGALFOXES LAW TIMES

## THE RIGHT TO REMAIN SILENT- A BOON FOR THE ACCUSED

By Bahnidipa Roy

The right to remain silent is enshrined in Article 20(3) of the Indian Constitution. It is a right which protects the accused against becoming a witness against himself. Right to remain silent which is also known as right against self-incrimination acts as armour against testimonies which are given with respect to coercion or duress. Procedures like Narco analysis and brain mapping invades the privacy of an individual which leads to violation of article 21 and Article 20(3) of the Indian Constitution. Hence steps have been taken accordingly. Right to fair trial is an important constituent which highlights that an accused is innocent until he is proved guilty. Thus, right to remain silent is an absolute necessity to prevent miscarriage of justice.

Keywords- self-incrimination, innocent, accused, fair trial, Narco analysis.

### INTRODUCTION

Martin Luther King, Jr. had asserted, "As long as the mind is enslaved, the body can never be free. Psychological freedom, a firm sense of self-esteem, is the most powerful weapon against the long night of physical slavery." Freedom has no value, if an individual is not permitted to utilise their mind with liberty, thus exists the right against self-incrimination. This right came into existence, after unfair procedures were utilised to extract the truth dating back to the middle ages in England, which was adopted by USA. The Latin maxim '*Nemo tenetur seipsum accusare*' means that, no individual is bound to accuse himself, forms the foundation for the right against self-incrimination. India also recognises the right against self-incrimination, Article 20(3) of the Indian Constitution states that, 'No person accused of an offence shall be compelled to be a witness against himself' and was assigned a non-derogable status under the 44<sup>th</sup> amendment act, 1978. Article 20(3) acts as a protective shield against testimonies given under coercion, with respect to the individuals accused of offences to be witness against themselves. Article 20(3) is reserved for an individual who is accused of committing an offence. A person can be called an

accused, if FIR or a complaint has been filed against a person which would lead to prosecution. The protection against self-incrimination will begin even before appearing before court. Such protection begins from the stage when the individual is considered as an accused in a FIR or any formal complaint which would lead to prosecution.

The need for a judicial provision against the tactics utilised for extracting involuntary confessions was already observed even before our Constitution came into existence. *Saunders v United Kingdom*<sup>1</sup> is considered to be a foundation stone of the protection against self-incrimination. It elucidated that an accused had such right against unfair measures taken by authorities which would cause self-incrimination, as it would amount to miscarriage of justice. It is necessary to eliminate a compelled testimony, else the investigators would be keen to extract information with force instead of choosing a difficult path wherein they have to collect independent evidence. There is another issue underlying the compelling testimonies, sometimes the accused make false statements under duress, which would make the officials suspicious even if the accused was fully or partially innocent. At times, if the individual is guilty, it works as armour from aggravating his offence by covering up evidence or misrepresentation. The right against self-incrimination mentioned in Article 20(3) will not be available in case the statement is made voluntarily or production of documents and other materials. The Constitution makers had contrary opinion with respect to this right, but eventually they understood the harm lying behind the easy procurement of evidence and how the investigators would resort to unfair means for such easy collection of evidence. As mentioned in *Michigan v Tucker*<sup>2</sup> it was asserted that right against self-incrimination serves the aim of reliability. An accused person making a statement under duress or threat, there is a high probability that the statement made by the individual is false, incomplete because of fear or anxiety. Such statement shall mislead the judges which in turn shall lead to miscarriage of justice. There are three elements which should be present that will allow an individual to exercise their right against self-incrimination: *Firstly*, this right is available to a person who is accused of an offence. *Secondly*, this protection lies when an individual is compelled to become witness against oneself. *Thirdly*, the protection lies against such compulsion which would lead the accused to give evidence against himself.

---

<sup>1</sup> (1997)23 EHRR 313.

<sup>2</sup> 417 US 433 (1974).

## ACCUSED OF AN OFFENCE

In the case of *Nandini Satpathy v PL Dani*<sup>3</sup>, Nandini Satpathy was a former chief minister of Odisha, was instructed to appear before Vigilance Police station. A case was registered against her under the Prevention of Corruption Act, 1947 under sections 161/165 and 120-B and 109 of the Indian Penal Code hence she was directed to the station for the examination of such charges against her. She was interrogated with numerous questions which were given to her in writing. She refused to answer any such questions and asserted protection under Article 20(3) of the Indian Constitution. The Supreme Court ruled in her favour and reiterated the importance of such right against unnecessary police harassment. Thus such right extends even to the stage of police investigation apart from trial.

## COMPULSION TO BECOME WITNESS AGAINST ONESELF

Article 20(3) is a protection against compulsion to become a witness against oneself as in the case of *M.P Sharma v Satish Chandra*<sup>4</sup>, it was held that a person whose name is mentioned in the FIR by the police and investigation is ordered by the magistrate, then the accused can claim such right against self-incrimination. The right against self-incrimination is available in the trial as well as the pre-trial stage. Countries like USA provide right against self-incrimination to witness, this is not followed in India. But in the case of *Nandini Satapathy v P.L Dani*<sup>5</sup> it was mentioned that this right extends to witness and accused alike and it applies at every stage at which furnishing of details and collection of materials takes place. In the case of *Delhi Administration v Jagjit Singh*<sup>6</sup>, the accused was pardoned and he turned approver, it was held that his statements cannot be used against him as he is protected under Section 132 of the Indian Evidence Act. Section 132 of the Act safeguards witnesses from being prosecuted since the answers given tends to incriminate the individual directly or indirectly.

## GIVE EVIDENCE AGAINST HIMSELF

An accused person can be compelled to submit to investigation by permitting his photograph to be taken, his voice recorded, his blood samples collected, hair and other material for DNA tests

---

<sup>3</sup> AIR 1978 SC 1025.

<sup>4</sup> AIR 1954 SC 300.

<sup>5</sup> Supra note 3.

<sup>6</sup> AIR 1989 SC 598.

etc. The mere asking by the police officer during an investigation of a crime will not fall within the scope of Article 20(3) of the Indian Constitution. Compulsion is supposed to be a physical act, except in situation where the mind has been conditioned in a manner which would render such making of statements involuntarily. The accused may willingly waive off his right against self-incrimination by stepping in the witness box or providing evidence voluntarily when requested. In the case of *Amrit Singh v State of Punjab*<sup>7</sup>, the accused was charged for raping and murdering an eight year old girl. When the body of the deceased was recovered, it was discovered that the deceased had some strands of hair in her closed fists. The police wanted to examine the hair strands discovered but the accused denied to submit the hair sample, the Supreme Court's stated that the accused had such right. But in such similar cases, if the court starts to consider the usage of right against self incrimination against such cases then it has a high probability that the accused can take advantage of such rights. In the case of *V.S Kuttan Pillai v Ramakrishnan & Others*<sup>8</sup>, the court stated that a general warrant could be issued to procure a document or an item. Article 20(3) is not violated when an accused is asked to show his face for identification or disclose any scar on his body for the same.

### SELF INCRIMINATION AND NARCO-ANALYSIS

Narco-analysis is a DDT( Deception detection test) similar to polygraph and brain mapping, is effective in extracting the concealed information. The term Narco analysis was introduced in 1936 which would allow the usage of narcotics to induce trance like situation and certain questions were posed to that individual. The concept behind the usage of Narco analysis is that a person usually can lie when he is in his complete senses but in this test a person is in his sub conscious state of mind and is incapacitated from imagining and hence he will not be able to lie. The first Narco analysis test was conducted in 2001 in the case related to Veerapan. Previously, in some cases the results collected after Narco analysis were accepted by various courts. But in the case of *Selvi v State of Karnataka*<sup>9</sup>, the Supreme Court of India gave the verdict that Narco analysis breaches the right to privacy of an individual and led to inhuman treatment. It violates Article 21 of the Indian Constitution. The evidence shall be admitted only if consent for such

---

<sup>7</sup> AIR 2007 SC 132.

<sup>8</sup> AIR 1980 SC 185.

<sup>9</sup> (2010)7 SCC 263.

Narco analysis is given and can be utilised to support an evidence for proving a fact under Section 27 of the Indian Evidence Act.

Laws are set of rules to govern people, give justice to the deserving and punish those who breach it. An individual whose guilt is not yet proved has the right against self incrimination. The Latin maxim '*Nemo tenetur seipsum accusare*' means that, no individual is bound to accuse himself, forms the foundation for the right against self incrimination. A person is considered to be innocent until he is proved guilty and has a right to remain silent against a question which agreed upon can make him guilty. Thus, the state has duty to ensure that every individual's right is protected and he receives an opportunity to fair trial otherwise it shall cause miscarriage of justice. Hence, the right to remain silent is a boon for the individuals whose guilt is not yet proved.



• LEGAL FOXES •

"OUR MISSION YOUR SUCCESS"