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Article 20(3) And Beyond: The Scope Of Protection Against Self-Incrimination In India

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ABSTRACT

The right against self-incrimination is a cornerstone of criminal justice system, aimed at protecting individuals from being compelled to testify against themselves. Article 20(3) of the Indian Constitution provides for the right against self-discrimination and this right has been interpreted and reinforced by the Indian judiciary to uphold the principles of personal liberty, due process, and fairness in criminal trials. This study explores the constitutional and statutory framework governing the right against self-incrimination in India, with a particular focus on recent legislative developments under the Bharatiya Sakshya Adhiniyam, 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023. The research delves into key statutory provisions such as Sections 137 and 23 of the BSA and Sections 181 and 183 of the BNSS, analysing how they align with or diverge from constitutional protections. It further examines judicial interpretations that have shaped the contours of this right, especially in the context of scientific investigative techniques like narco-analysis, polygraph tests, and brain mapping. The study also identifies pressing challenges, including the testimonial vs. physical evidence dichotomy, inadequate procedural safeguards, and emerging threats from digital surveillance. Through doctrinal and case law analysis, the study concludes that while the Indian legal system offers robust constitutional guarantees against self-incrimination, statutory implementation and enforcement remain inconsistent and underdeveloped. The paper offers a set of practical suggestions for legislative reform and judicial clarity to strengthen the protection against involuntary self-incrimination in both conventional and emerging investigative contexts.

Keywords: *Self-incrimination, Right to silence, Liberty, Scientific evidence, Testimonial compulsion, Digital privacy, Custodial interrogation, Narco-analysis, Polygraph tests, Brain mapping*

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1. INTRODUCTION

Right to fair trial is the key aspect of natural justice principle. Hence, the privilege against self-incrimination is crucial in criminal justice system, in order to avoid coerced testimonies. Self-incrimination is the act of making a statement that exposes oneself to an accusation of criminal liability or prosecution (Black's Law Dictionary, 1979). The principle is rooted in the maxim *nemo tenetur se ipsum accusare* means no one is bound to accuse himself, which finds its historical origins in English common law and has been universally recognized as a fundamental right (Dhirajlal, 2023).

It is a fundamental right in many legal countries, prohibiting individuals from being compelled to give evidence that would expose them to criminal liability. The Fifth Amendment of US Constitutions provides protection to individuals from being compelled to incriminate themselves. According to this Constitutional right, individuals have the privilege against self-incrimination. They can refuse to answer questions, refuse to make potentially incriminating statements, or refuse to testify at a trial in any criminal case.

This right is applicable to the States through the Fourteenth Amendment (Cornell Law School, n.d.). The right against self-incrimination is intrinsically linked to the concept of a fair trial. Article 6 of the European Convention on Human Rights delineates the contours of a fair trial, which includes the protection against self-incrimination, particularly during custodial interrogation by police authorities (Arora, 2020).

The idea of self-incrimination is adopted in our Constitution under Article 20(3) as a critical component of the rights of the accused in order to ensure that the State would not abuse its investigative powers. This Article protects individuals from being compelled to testify against themselves in a criminal proceeding. It is a fundamental component of the right to a fair trial under Article 21 and serves as a safeguard against forced confessions. The constitutional safeguard under Article 20(3) has been judicially interpreted to include not only the prohibition against testimonial compulsion but also protections against coercive investigatory practices, custodial confessions, and forced disclosures (Seervai, 2019). The Indian jurisprudential approach to the privilege against self-incrimination, enshrined under Article 20(3) of the Constitution, is founded upon the same cardinal principle and has been authoritatively affirmed in the landmark judgment of the Apex Court (Mohammed Ajmal Mohammed Amir Kasab v. State of Maharashtra). In the Indian legal framework, Article 20(3) of the Constitution expressly provides that no person accused of any offence shall be compelled to be a witness against himself. Consequently, neither oral statements nor documentary evidence can be forcibly procured from an accused by compulsion. This constitutional safeguard has been reinforced by judicial interpretation in landmark decisions (State of Kerala v. Sankaran Nair, 1960), wherein the Hon'ble Supreme Court held that the constitutional guarantee under Article 20(3) serves to restrain the investigative powers of the police and precludes the use of coercive or unethical methods for obtaining self-incriminatory evidence (M.P. Sharma v. Satish Chandra, 1954). In M.P. Sharma, the Court opined that the protection under Article 20(3) is wide enough to encompass compelled production of documents and statements, thereby emphasizing that any compelled act that has the potential to furnish evidence against the accused falls within the mischief of the constitutional

prohibition. Reiterating the principle laid down in M.P. Sharma's case, the Hon'ble Supreme Court affirmed that the right against self-incrimination is a fundamental right guaranteed under Article 20(3) of the Constitution of India (State of Bombay v. Kathi Kalu Oghad, 1961). The Court held that an accused person possesses the right to remain silent and cannot be compelled to be a witness against himself in any manner whatsoever.

Over time, courts have expanded the scope of this right to encompass related procedural rights such as the right to silence, right to counsel, and right to fair interrogation, particularly in custodial settings (Gaur, 2022). The goal of this safeguard is to uphold an individual's autonomy and dignity in the face of governmental power and to prevent erroneous convictions. The Supreme Court of India has often underlined that this right is a substantive guarantee based on the principles of justice, equity, and liberty rather than just a procedural formality. Self-incrimination is possible in two ways, either directly or indirectly: directly when someone discloses information that is self-incriminating during questioning, or indirectly when someone willingly discloses information that is self-incriminating without coercion (Siegel, 2017).

Over the past few decades, significance of this right has grown considerably. Traditional notions of what qualifies as testimonial evidence have been called into question by the emergence of scientific inquiry techniques like narco-analysis, polygraph testing, brain fingerprinting, and the gathering of biometric and digital data. The recent enactment of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeks to overhaul India's colonial-era criminal laws and introduce modern evidentiary and procedural standards (Report No. 185 on Review of the Indian Evidence Act, 1872, Chapter 7., 2003).

This article examines the constitutional and statutory protections against self-incrimination within the Indian legal system, situates them within the international context, explores the impact of scientific developments, and analyses judicial trends and limitations that continue to shape its practical application.

2. RIGHT AGAINST SELF-INCRIMINATION AND INTERNATIONAL SCENARIO

The Universal Declaration of Human Rights, 1948 includes some aspect of 'right to silence' in Article 11 para 1. It provides that, *"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."* Similarly, The International Covenant on Civil and Political Rights, 1966 to which India is also a party, provides that in Article 9 (1), *"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law (ICCPR , 1966)."* It also guarantees clearly that everyone has a right not to be compelled to testify against himself or to confess guilt. The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, which entered into force in September 1953, similarly provides that in the determination of civil rights and obligations, or of any criminal charge against him, Art. 6(1) says, *"Everyone is entitled to a fair and public hearing within*

a reasonable time by an independent and impartial tribunal established by law” (ECHR, 1950), and that “everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”. Although Article 6 of ECHR makes no explicit reference to the right against self-incrimination, but the European Court of Human Rights has held that the right to remain silent is an essential component of the fair-trial guarantee, thereby safeguarding against the use of coercion in custodial interrogation.

The *American Convention on Human Rights*, which entered into force on 11 July 1978, likewise enshrines the right of all persons subject to its jurisdiction to a fair trial. Finally, the *African Charter on Human and Peoples’ Rights*, adopted on 27 June 1981 and in force from 21 October 1986, guarantees that “every individual shall have the right to have his cause heard,” including the right to be presumed innocent until proven guilty.

3. CONSTITUTIONAL SAFEGUARDS IN INDIA

Article 20(3) of the Constitution of India in the form of protection against self-incrimination. It provides, “No person accused of an offence shall be compelled to be witness against himself.”

The Article has the following three essential ingredients:

1. The individual must be accused of an offence,
2. There must be compulsion,
3. The compulsion must relate to being a witness against oneself.

This provision applies only to criminal matters and does not extend to civil or administrative proceedings. Additionally, it is available exclusively to a person who is formally accused of an offence and not to witnesses or suspects who are yet to be charged (Saksena, 2008). The underlying rationale for this right was emphasised by the court that, the need to protect the accused from improper compulsion, ensuring that justice is not miscarried (*Saunders v. the United Kingdom*, 1997). Another key rationale for this right is the reliability of evidence. When an accused is pressured to provide self-incriminating testimony, their mental state can be compromised, resulting in unreliable evidence that may mislead the court (Tripathi). This concern was aptly addressed by the Hon’ble Supreme Court in *State of Bombay v. Kathi Kalu Oghad*, wherein the Court cautioned that in the absence of the protection against self-incrimination, investigative authorities may be inclined to adopt coercive methods to secure evidence, thereby undermining the integrity of the investigative process and the reliability of the evidence so obtained.

The right against self-incrimination must be interpreted dynamically in light of technological advances and evolving legal standards. The traditional physical-testimonial divide must now accommodate cognitive intrusions and digital disclosures. Scholars argue that the purpose of the right is to maintain the moral legitimacy of the adversarial system, where the burden of proof rests entirely on the prosecution (Ashworth, 2009).

Indian jurisprudence has a cautious and a conservative attitude to striking a balance between the requirements of criminal investigations and individual rights. The Supreme Court has often highlighted the fundamental principles of voluntariness, dignity, and privacy that form the basis of Article 20(3).

4. CONTEMPORARY LEGAL FRAMEWORK

Despite Article 20(3) of the Indian Constitution offers the general protection against self-incrimination, statutory procedures are used to facilitate the actual implementation of this right. The Bharatiya Sakshya Adhiniyam and the Bharatiya Nagarik Suraksha Sanhita represent important reforms meant to bring India's procedural and evidential laws up to date. These laws replace the colonial legislations Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 respectively. These new laws protect the right against self-incrimination, and its implications are interpreted in accordance with constitutional norms and court decisions.

4.1 Section 137 of the Bharatiya Sakshya Adhiniyam, 2023.

Section 137 of the BSA, 2023 is modelled on the old Section 132 of the Indian Evidence Act, 1872, with certain structural and linguistic updates. It states that *A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will incriminate, or may tend directly or indirectly to incriminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind. Provided that no such answer which a witness is compelled to give shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding.*

Key elements of Sec 137 are:

1. Protection of Compelled Testimony: The witness must respond to all inquiries, even those that could implicate them. Nevertheless, the witness cannot be prosecuted in a criminal case using any such forced response.
2. Reinforcement of Article 20(3): While Article 20(3) protects an accused, Section 137 expands statutory protection to witnesses, which Article 20(3) does not explicitly cover. This makes it broader in one dimension.
3. Interpretation by Judges: The Supreme Court affirmed that this kind of protection aligns with constitutional mandates, ensuring that the witness does not suffer criminal liability from truthful testimony (State of U.P. v. Deoman Upadhyaya , 1960).

4.2 Section 23 of the Bharatiya Sakshya Adhiniyam, 2023

Section 23 of the BSA deals with Confession to police officer. According to this Section, *no confession made to a police officer shall be proved as against a person accused of any offence and no confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate shall be proved against him: provided that when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact discovered, may be proved.*

This Section mirrors sections 25, 26 and 27 of the Indian Evidence Act, 1872. It reaffirms the inadmissibility of confessions made to police officers unless made in the presence of a Magistrate. This is consistent with longstanding jurisprudence that confessions to police are inherently suspect unless subject to judicial oversight (*Nandini Satpathy v. P.L. Dani*, 1978).

4.3 Section 181 of the Bharatiya Nagarik Suraksha Sanhita, 2023

Section 181 deals with statements to police and use thereof. It mirrors Sections 161 and 162 of the old CrPC, 1973 which explains the examination of witnesses and suspects during investigation. It empowers police officers to question individuals during an investigation. This provision prohibits the signing of written statements made by individuals to police officers during investigations. Statements or records of such statements are only allowed for use at an inquiry or trial concerning an offence. However, if a witness is called for prosecution, a part of their statement can be used to contradict them, with court permission. This section does not apply to statements falling within 26(a) or the proviso to 23(2).

Safeguards and Rights under Section 181

1. *Right to Silence Maintained:* Unlike Section 137 of the BSA, Section 181 allows the person being examined to refuse to answer questions that may incriminate them.
2. *Reflection of Article 20(3):* The wording directly aligns with the constitutional provision. It mirrors the doctrinal protection established by the honourable Supreme Court that an accused or suspect retains the right to remain silent during police interrogation.
3. *Codification of Judicial Mandate:* Section 181 statutorily affirms judicial guidance that individuals cannot be compelled to answer self-incriminatory questions during investigations, ensuring procedural compliance by law enforcement (*Nandini Satpathy v. P.L. Dani*, 1978).

4.4 Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023

This provision deals with Recording of confessions and statements. It mandates that confessions must be recorded voluntarily and by a Magistrate. It derives from Section 164 of the CrPC, 1973 and ensures that custodial confessions are not extracted through coercion. The section outlines the procedure for recording confessions and statements in criminal cases, ensuring that the Magistrate has jurisdiction and can record

them in the course of an investigation. The confessions must be signed by the person making the confession and must be recorded in the manner provided in section 316 for the examination of an accused person. The Magistrate must also make a memorandum at the foot of the record, stating that the person is not bound to make a confession and that any confession they may make may be used as evidence against them. In cases punishable under sections 64, 65, 66, 67, 68, 69, 70, 71, 74, 75, 76, 77, 78, 79, or section 124 of the Bharatiya Nyaya Sanhita, 2023, the Magistrate must record the statement of the person against whom the offence has been committed. If the person making the statement is temporarily or permanently, mentally or physically disabled, the Magistrate must take the assistance of an interpreter or special educator in recording the statement. As per Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the statement must be considered a statement in lieu of examination-in-chief, as specified in section 142 of the Bharatiya Sakshya Adhiniyam, 2023.

The provisions of BSA and BNSS guarantees that confessions made voluntarily are admissible, but any indication of force makes them inadmissible and no person; whether an accused or witness; may be forced to provide testimonial evidence against their will. Forced non-testimonial evidence, such as voice samples or fingerprints, may still be obtained as long as it does not affect mental capabilities.

Despite these robust statutory protections, India faces persistent custodial abuse and coercion during investigations. The lack of awareness among marginalized communities and the judiciary's burden in determining voluntariness and duress of confessions contribute to this issue. The relevance of digital and technological contexts, such as testimonial compulsion and data extraction without consent, is also a concern, as digital forensics becomes central to modern investigations. It is noted that while the statutory framework in India is comparatively protective of individual rights, implementation is inconsistent and often subject to arbitrary police practices (Pillai, 2017). Similarly, the distinction between compulsion and voluntariness is often blurred in the real world, especially when suspects are detained without legal counsel (Pande, 2012).

5. SCIENTIFIC TESTS AND SELF-INCRIMINATION

The methods used in criminal investigations have been transformed by the development of forensic science and neurotechnology. In contemporary policing, techniques including brain fingerprinting, polygraph (lie detector) testing, narco-analysis, and biometric device access have gained popularity. These methods pose serious questions about the right against self-incrimination under Article 20(3) of the Indian Constitution, even though they promise increased investigative efficiency.

The following techniques are often used in criminal investigation in India

1. Narco-Analysis – It involves the injection of barbiturates (typically sodium pentothal) to induce a semi-conscious state in the subject. In this state, the person's capacity to fabricate lies is believed to be diminished, making them more likely to speak the truth (Chaudhry, 2010).

2. Polygraph Tests – it measures physiological indicators like heart rate, respiration, blood pressure, and skin conductivity in response to a series of questions and the deviations in readings are presumed to signal deception (APA, 2004).
3. Brain Electrical Oscillation Signature (BEOS)/Brain Mapping – It involves measuring brain waves to determine whether the subject has “experiential knowledge” of specific stimuli presented during the test. The technique is based on the premise that the brain reacts differently to known and unknown stimuli (Cotha).
4. Biometric/Digital Unlocking - Law enforcement agencies often seek to compel suspects to unlock digital devices using fingerprints, facial recognition, or even voice patterns. Here, a related concern is whether compelling the disclosure of passwords or digital passcodes amounts to testimonial compulsion (Ankur Mody, 2023).

However there arise a critical constitutional question whether these techniques amount to being a witness against oneself. The Supreme Court clarified that only testimonial evidence, not physical or mechanical extraction, is protected by Article 20(3) (*State of Bombay v. Kathi Kalu Oghad*, 1961). Providing fingerprints, handwriting, voice samples, etc., is not considered testimonial. Accordingly, the police can legally compel such evidence without violating Article 20(3) (*R.M. Malkani v. State of Maharashtra*, 1973).

The issue of scientific techniques vis-à-vis self-incrimination was examined in *Selvi v. State of Karnataka*. The Supreme Court considered whether the involuntary administration of narco-analysis, polygraph tests, and brain mapping violates Articles 20(3) and 21. The Court ruled that tests involving testimonial compulsion violate Article 20(3) and Article 21, highlighting the intrusion into mental privacy and bodily autonomy. Coerced administration without consent infringes on life and personal liberty. The Court emphasized the need for informed consent and the need for modern technology's complexities to evolve protections under Article 20(3) (*Selvi v. State of Karnataka*, 2010). However, the principle of testimonial compulsion applies to digital devices, potentially activating the subject's mental faculties, leading to testimonial compulsion in situations involving password disclosure or encryption keys.

The Supreme Court's nine-judge bench recognized the right to privacy as a fundamental right under Article 21. This recognition carries deep implications for digital privacy and self-incrimination. For instance, compelling access to private emails, social media history, location data from phones, or personal photographs or documents stored in cloud servers etc. could violate the mental and informational privacy of the individual (*Justice K.S. Puttaswamy (Retd.) v. Union of India*, 2017).

While looking into the global scenario, the U.S. Supreme Court held that compelling the accused to produce documents from memory constitutes testimonial self-incrimination (*United States v. Hubbell*, 2000). Similarly, the U.S. court ruled that providing a fingerprint to unlock a phone was not testimonial, but disclosing a passcode was (*Commonwealth v. Baust*, 2014).

Modern police techniques use AI-based surveillance and data profiling, raising questions about passive data collection and the state's indirect motivation to reveal personal traits. Voluntary consent may be invalid in

custody contexts, and compelled disclosure breaches international human rights norms, including the ECHR and UN Human Rights Committee. The judgment in *Selvi v. State of Karnataka* protects constitutional rights, but digital compulsion and privacy-based interpretation of self-incrimination in India require further judicial and legislative clarity. The intersection of informational privacy and self-incrimination will be the next frontier for Indian constitutional jurisprudence (Chandra, 2018).

6. JUDICIAL APPROACH

The Indian judiciary has played a pivotal role in interpreting and expanding the scope of the right against self-incrimination. Since Article 20(3) is a fundamental right, its enforcement and limitation have been shaped primarily through constitutional interpretation. The courts have addressed a range of issues from the meaning of accused, to the boundaries of testimonial compulsion, and the admissibility of statements under police investigation.

6.1 Early interpretation and foundational cases

The first significant case interpreting Article 20(3) was *M.P. Sharma v. Satish Chandra*. In relation to alleged embezzlement, a Special Police Establishment attempted to search documents. It was questioned if such forced document submission was against Article 20(3). The Court concluded that search and seizure of papers did not amount to compelled testimony, but it also adopted a broad reading of "self-incrimination," covering both oral and documentary evidence. It made clear that Article 20(3) only comes into play in the following situations where there is coercion, the individual is formally charged and there is incriminating testimony. The accused and compulsion tests were established by this case (*M.P. Sharma v. Satish Chandra*, 1954).

The Supreme Court reconsidered the scope of testimonial compulsion. In this case, the Court narrowed the interpretation from *M.P. Sharma*, holding that only testimonial acts are protected. Giving fingerprints, voice samples, handwriting specimens, etc., was not considered testimonial in nature. The decision also introduced the testimonial vs. physical evidence dichotomy, which remains the dominant interpretive framework (*State of Bombay v. Kathi Kalu Oghad*, 1961). This marked a restrictive phase in the Court's interpretation.

6.2 Expanding the protection: right to silence

The landmark judgment *Nandini Satpathy* case broadened the scope of Article 20(3) and linked it to human dignity and personal liberty under Article 21. The former Odisha Chief Minister, Nandini Satpathy, was interrogated and refused to answer police questions. The court held that the right against self-incrimination includes the right to silence during interrogation. Even a suspect (not formally accused) enjoys Article 20(3) protection. The Court linked Article 20(3) to international human rights norms, including the ICCPR. This case harmonized constitutional protection with due process and international standards of fair trial. In this case Justice Krishna Iyer stated that *no person shall be compelled to answer questions which have a*

reasonable tendency to expose him to a criminal charge (Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424, 1978).

In Selvi's case, the honourable Supreme Court struck down the involuntary administration of narco-analysis, polygraph tests, and brain mapping (Selvi v. State of Karnataka, 2010). It deepened the doctrine by emphasizing;

- The cognitive privacy of an individual,
- That extracting knowledge from a suspect's brain without consent is a violation of Article 20(3) and Article 21.

The judgment reflects the judiciary's adaptation to new scientific developments in criminal justice.

6.3 Procedural and evidentiary safeguards

In D.K. Basu v. State of West Bengal, though not directly a self-incrimination case, it mandated custodial safeguards including;

- The right to remain silent.
- The right to consult a lawyer.
- Notification of arrest to family members.

This case operationalized Article 20(3) through procedural protections against abuse (D.K. Basu v. State of West Bengal, AIR 1997 SC 610, 1997).

The recent judgment in Tofan Singh case held that confessions made to officers under the NDPS Act are not admissible as they are not police officers under the Evidence Act. Such confessions, being involuntary and made to an investigative officer, attract Article 20(3) and Section 25 of the Evidence Act. This case further strengthens the admissibility threshold of confessions in light of self-incrimination (Tofan Singh v. State of Tamil Nadu, 2020).

The judicial trend has evolved from a narrow interpretation to a broader application, extending protection to suspects, witnesses, and potential accused. Challenges include courts' reliance on testimonial/physical dichotomy and lack of authoritative rulings on biometric phone unlocking. The Indian judiciary has aligned Article 20(3) with ICCPR and European Court of Human Rights, promoting mental autonomy, privacy, and due process. However, the legal system needs to address emerging challenges like digital evidence, biometric surveillance, and coercive investigation practices.

7. LIMITATIONS OF THE RIGHT AGAINST SELF-INCRIMINATION IN INDIA

Despite its constitutional status, the right against self-incrimination under Article 20(3) has certain restrictions, both in theory and in practice. The legal ideal and the actual reality of criminal justice

administration differ in practice. These restrictions result from structural problems in the law enforcement and investigative systems, legislative ambiguities, judicial inconsistencies, and technology advancements.

7.1 Formal Accusation Requirement

The protection under Article 20(3) is available only to an “accused of an offence.” This has been reaffirmed in *M.P. Sharma and Kathi Kalu Oghad*, and limits the applicability of the right. Witnesses and suspects lack Article 20(3) protections, despite vulnerability to coercive tactics, limiting their right at pre-FIR or pre-arrest stage. In *Nandini Satpathy* case, the Court attempted to expand this scope to potential accused, but no statutory amendment followed to institutionalize this view. Thus, the accused status remains a limiting procedural barrier.

7.2 Testimonial vs. Physical Evidence Dichotomy

The distinction between testimonial compulsion and physical evidence is blurring, especially in the digital age. For example, unlocking a phone using a fingerprint may seem physical, but accessing stored data reveals mental associations, possibly implicating the accused. Courts in India have yet to address this complexity, as treating biometric access as non-testimonial ignores the cognitive nature of digital evidence retrieval (Narain, 2020).

7.3 Lack of Procedural Safeguards

Despite landmark rulings like *D.K. Basu*, custodial interrogations often lack legal oversight, leading to:

- Involuntary confessions.
- Verbal and physical coercion.
- Recording of statements in a non-neutral setting, without legal counsel.

Section 161 CrPC statements are frequently recorded by police, which affects investigations and the perception of the courts. Forced disclosures and accusations of assault against inmates are frequent. Interrogation videography is used occasionally (*People’s Union for Civil Liberties v. Union of India*, 2004).

7.4 Admissibility and Evidentiary Gaps

While the right against self-incrimination is protected under Article 20(3), the *Bharatiya sakshya Adhiniyam*, 2023, particularly, the discovery rule under Sec 23 undermines its effectiveness. It allows admissibility of information from a person in police custody if it leads to a material discovery. This exception to the exclusionary rule has been used to validate otherwise coerced statements. The Supreme Court admitted a statement made in custody since it led to discovery, despite the dubious voluntariness of the statement (*Pandurang Kallu Patil v. State of Maharashtra*, 2002). Such evidentiary loopholes dilute the principle of non-compulsion.

7.5 Weak Enforcement of Consent Norms

The Supreme Court insists on informed consent before administering narco-analysis or polygraph tests. However, the consent is often illusory, especially in custodial settings. There is no standard procedure to record or verify voluntariness. Lower courts frequently admit such results as corroborative evidence, contrary to the decision of the Supreme Court (Math, 2011). Neither the Bharatiya Nagarik Suraksha Sanhita, 2023, nor the Bharatiya Sakshya Adhiniyam, 2023 has codified the Supreme Court guidelines (Selvi v. State of Karnataka, 2010). This enables investigative agencies to circumvent protections through procedural gaps.

7.6 Digital Surveillance and Compelled Evidence

In the era of data surveillance, self-incrimination concerns extend to;

- Compelling suspects to share cloud credentials, passwords, or device access.
- Extraction of chat histories, photos, and location data through third-party apps.

India lacks a comprehensive data protection regime. Law enforcement has broad discretion, but the judiciary lacks a uniform doctrine for determining what digital disclosures constitute compelled testimony.

7.7 Institutional Limitations

Rights are often unenforced due to public and police ignorance, overburdened judiciary, and impunity for violations, with few officers punished for involuntary confessions. The “culture of confession” in Indian policing undermines constitutional safeguards (Grover, 2017).

8. CONCLUSION

The right against self-incrimination, guaranteed by Article 20(3) of the Indian Constitution, serves as a major barrier to coercive investigative tactics. This privilege, founded on the concept that no one should be forced to testify against themselves, has changed greatly via judicial interpretation, particularly in reaction to technological, investigative, and regulatory changes. The Indian judiciary has consistently affirmed that Article 20(3) is a constitutional guarantee that applies to accused persons facing formal charges, and its interpretation has gradually expanded to include safeguards such as the right to silence, voluntary confessions, and protection against custodial coercion.

The enactment of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) and Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) represents a significant legislative attempt to modernize India’s criminal procedure and evidentiary rules. Sections such as Section 137 BSA and Sections 181 and 183 BNSS address the procedural dimensions of self-incrimination, including the admissibility of confessions and the protection of rights during investigation. However, the incorporation of scientific techniques such as narco-analysis, polygraph, and brain mapping into criminal investigations has raised complex legal and ethical questions regarding the

involuntariness of consent, invasiveness, and reliability of results, which challenge the traditional boundaries of testimonial compulsion (Dhirajlal, 2023).

Despite these safeguards, the study identifies significant flaws in the existing legal system. These include ambiguity in distinguishing between testimonial and physical evidence, insufficient procedural safeguards during informal interrogation, inadequate enforcement of consent norms in scientific testing, and growing concerns about forced access to digital data, which are not adequately addressed by current legislations (Srikrishna, 2018). The Indian legal system must constantly change to combat the new types of coercion enabled by surveillance technologies and digital data retrieval methods.

References

1. ICCPR . (1966). *Article 9 para 1*.
2. Ankur Mody, S. S. (2023, March 18). *SCC Online Times*. Retrieved from www.scconline.com.
3. APA. (2004, August 5). *The Truth About Lie Detectors*. Retrieved from www.apa.org.
4. Arora, N. M. (2020). I Reserve the Right to Remain Silent. *Supremo Amicus*, 217.
5. Ashworth, A. (2009). *Principles of Criminal Law* (6 ed.). Oxford University Press.
6. Black's Law Dictionary. (1979). 690.
7. Chandra, A. (2018). Self-Incrimination and Digital Evidence. *NUJS Law Review*.
8. Chaudhry, S. (2010, October 4). Constitutionality of Narco Analysis in India. *SSRN*.
9. Commonwealth v. Baust, No. CR14-143 (US 2014).
10. *Cornell Law School*. (n.d.). Retrieved from www.law.cornell.edu.
11. Cotha, R. D. (n.d.). *Brain Electrical Oscillation Signature*. Retrieved from www.legalserviceindia.com.
12. D.K. Basu v. State of West Bengal, AIR 1997 SC 610 (SC 1997).
13. Dhirajlal, R. &. (2023). *The Law of Evidence* (27 ed.). LexisNexis.
14. ECHR. (1950). *Art. 6(1)*.
15. Gaur, K. (2022). *Criminal Law: Cases and Materials* (9 ed.). LexisNexis.
16. Grover, V. (2017). Confessions and Coercion in India's Criminal Justice System. *Economic and Political Weekly*, 52(16).
17. Justice K.S. Puttaswamy (Retd.) v. Union of India (SC 2017).
18. M.P. Sharma v. Satish Chandra (SC 1954).
19. M.P. Sharma v. Satish Chandra (SC 1954).
20. Math, S. B. (2011). Supreme Court judgment on polygraph, narco-analysis & brain-mapping: A boon or a bane. *Indian Journal of Medical Research*.
21. Mohammed Ajmal Mohammed Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1.
22. Nandini Satpathy v. P.L. Dani (SC 1978).

23. Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424 (SC 1978).
24. Narrain, A. (2020). *The Body and the State: Surveillance, Digital Evidence, and the Constitution*. Oxford University Press.
25. Pande, B. (2012). Right Against Self-Incrimination: A Case for Robust Implementation. *Criminal Law Journal*.
26. Pandurang Kallu Patil v. State of Maharashtra (SC 2002).
27. People's Union for Civil Liberties v. Union of India (SC 2004).
28. Pillai, K. C. (2017). *R.V. Kelkar's Criminal Procedure* (6 ed.). EBC.
29. R.M. Malkani v. State of Maharashtra (SC 1973).
30. (2003). *Report No. 185 on Review of the Indian Evidence Act, 1872, Chapter 7*. New Delhi: Law Commission of India.
31. Saksena, K. (2008). *Criminal Jurisprudence in India*. Eastern Book Company.
32. Seervai, H. (2019). *Constitutional Law of India* (4 ed., Vol. 1). Universal Law Publishing.
33. Selvi v. State of Karnataka (SC 2010).
34. Selvi v. State of Karnataka (SC 2010).
35. Siegel, L. J. (2017). *Essentials of criminal justice*. Australia: Worrall, John L.
36. Srikrishna, J. B. (2018). *Justice B.N. Srikrishna Committee Report on Data Protection*. Government of India.
37. State of Bombay v. Kathi Kalu Oghad (SC 1961).
38. State of Bombay v. Kathi Kalu Oghad (SC 1961).
39. State of Bombay v. Kathi Kalu Oghad (SC 1961).
40. State of Kerala v. Sankaran Nair (SC 1960).
41. State of U.P. v. Deoman Upadhyaya (SC 1960).
42. Tofan Singh v. State of Tamil Nadu (SC 2020).
43. United States v. Hubbell (Federal Court 2000).