

Evolution of Criminal Jurisprudence on Interpretation of Art.20(3) of Constitution of India held by Indian Judiciary

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Abstract: Indian Judiciary is the guardian of human right [2] of every citizen in India. The human rights violations are derecognized, disregarded and contempt in a civilized society. Such rights are inalienable and foundation for freedom, justice includes criminal justice and peace of all members of the world [3]. According to a famous criminologist Durkheim says that even in an angelic quality of society is not free from violation of rules because fault is appearing in an ordinary situation and does an offence in an ordinary consciousness [4]. In the cardinal principles of criminal jurisprudence that Indian Constitution has given privilege to any person accused of an offence [5] against his extorting or incriminating statement received or recorded by police shall have no relevance and might be within the realm of Art.20(3) of the Constitution of India. In Raghbir Singh's Case [6] the Supreme Court held that in order to get confession the police officer should not act under terrible and diabolical manner. Moreover, when they using of torture or third degree method resulting fear in the mind of the common citizen. Yet another principle of criminal jurisprudence in the criminal justice system provides that every person accused of any offence shall be presumed to be an innocent [7] so there shall not be subjected to torture or cruel, inhuman act in the name of investigation. Any person accused of an offence before the investigation conducted by police he is offered to depose his statement at his own free will and there shall not be any compulsion or duress might be offered to get his statement [8]. Access to justice to the accused person against his human right violations the judiciary has interpreted the privilege of accused against his incriminating statement shall be one of the human right protections held by Indian Judiciary in various judgements [9].

Keywords: Constitution of India, Self-incrimination, Judiciary, Confession, Privilege, Criminal Justice

1. Introduction

In the Indian context, Constitution of India is the unique document suit for functioning machinery of the state. Indian Constitutional law is as Written Constitution will be applicable in a different political, socio and economic conditions of Indian culture. The Constitution of India (herein after referred as COI) has drafted and framed in removing anomalies without any hindrance functioning of the state, guaranteed basic rights and needs of an individual as well society in the country [10]. In the Indian Legal System, COI governs the affairs of the State and its citizen whereby there are in certain platform through

which the state acts. In thus organs like Legislative, Executive and Judiciary particularly the Judiciary is playing an important role in interpreting and implementing the law, adjudication makes upon certain controversies between organs of one another. The right of an individual is being protected by the provisions of the Constitutional Law, in crime nature the rights of the accused is also guaranteed under the ambit of Indian Constitution. According to Justice Untwalia in Sankalchand Himatlal Sheth (Respondent) [11] has observed that Judiciary is a watching tower above all of big structure of other limbs of the state and it has to monitor whether the other organs are working in accordance with rule of law and the provisions of COI. It is being as supreme document in Indian administrative machinery governing and regulating all these organs.

The Supreme Court of India (herein after referred as SCI) and all other High Courts are as an apex court such courts has interpreted the COI and safeguarding Indian subjects as well the fundamental rights. In Yusuf Khan Case [12] the SCI has laid down certain propositions that any violent or torture indulged by the state against their citizen, it is the duty of the judiciary to preserve and protect the citizen within the rule of law [13]. The COI and its fundamental rights cannot permit any torture or violent act which may negate the rule of law. In the administration of criminal justice system, detention is a state matter. In order to probe and control the criminal behaviour of an accused the criminal law in the aspect of any person accused of any offence has free will to depose regarding the commission of any offence. In the evolution of judicial intervention and pronouncement land mark verdicts are tracing and forming a new trend of criminal jurisprudence.

The apex court has played a vital role in order to conduct in enquiry and interpret a law relating to privilege against self-incrimination. Conducting enquiry of ascertaining a fair trial has been given not only to the people but also of any person who has committed any offence and compulsion of recording statement resulting an unfair trial and it is contrary to the principles of access to justice to the accused person [14]. In a criminal prosecution the right to fair trial is enshrined under art.21 of the COI but the concept of privilege of self-incrimination enumerated under the COI as well the Indian Evidence Act, 1872 [15]. Where courts are interpreting a

provision of law as if such provision of law relates to individual rights rather than restrictions it is to be interpreted broadly and purposively what it has been construed in such nature [16].

In this research the concept of protection of self-incrimination is more than a right of such accused person rather than that is privilege of the accused person which has been analyzed hereunder. The judiciary has interpreted the concept of right against self-incrimination in various cases. In the study of criminal law and criminal jurisprudence, it has been evolved through judicial pronouncements. In a plain study, a person accused of any offence is to be investigated or interrogated for collecting evidences and to trace the fact finding of the circumstances of a case. The police officer may use certain means of force for adducing evidences from the culprit but he should not be compelled to give evidence against himself which will operate negativity in further proceedings of the case. Hence the Constitution of India has guaranteed the privilege against his incriminating statement extracted by the police officer. This paper will analyse the judicial intervention against inhuman or torture used in the police officer in the name of investigation process. The Law provides that no involuntary statement made and used against the accused person in any manner in his criminal proceedings.

2. The Meaning of self-incriminating statement

In an etymology, the term self-incrimination means 'an incriminating statement that one who refuses to answer questions or give statement if such statement is used against him'. Which means and includes 'any statement that tends to increase the danger that the person making the statement will be accused, charged or prosecuted even if the statement is true, and even if the person is innocent of any crime'. Thus, even a person who is innocent of prosecuting in any crime who testifies truthfully and he can be incriminated by that prosecution testimony [17]. The meaning of the term of incriminating statement might be used by threat or compulsion of the person who in possession to deliver such statement during interrogation. So in early stages the meaning was applicable to an innocent person of a crime. The court interpreted only limited scope of meaning that 'any person accused [18] of an offence or to be charged, provided that he avails privilege to self-incriminating statement. The Privy Council set a standard meaning of incriminating statement that a statement is containing incriminating matter and made to a magistrate by accused person when he is in custody of the police that cannot be an admissible evidence. If so as an admission, it is to be shown to be voluntary statement. The term of incrimination statement shall come into the picture that where the statement or confession has been given before the authority that would be possibility of self-incrimination by the authority [21].

This concept is originally originated from common law procedure of English Law and later it is changed as right to be silent such right as a right in any criminal investigation or

inquiry or trial under Criminal Justice and Public Order Act, 1994 in England and Wels. According to Justice Mahmood that he made a bitter comment on role of police officers practicing investigation technique under malpractices to extort statement from the accused person so called positive torture always helping the fact finding of a case and no doubt in tracing rule of evidence to be drawn under untrustworthy manner [22]. The same concept has been traced from the Fifth Amendment of Constitution United States of America which has provided that 'no person shall be compelled in any criminal case, to be a witness against himself' if such witness statement is infringing the privilege against self-incrimination of that witness it would be violation of due process of law [23]. The fundamental principle of common law also confirms that a person accused of any offence shall not be compelled to discover documents or objects which incriminate him and adduced as evidence [24].

3. Privilege of self – incrimination Vis-à-vis criminal proceedings/Investigation

The privilege against self-incrimination is a fundamental canon of common law in criminal jurisprudence. Under the Constitutional Law the right to have a fair trial procedure laid down under article 20(3) that the privilege against self-incrimination has been characterized as under,

- i) the accused presumed to be an innocent;
- ii) the burden of proof lies on the prosecution to establish his guilt;
- iii) the accused need not make any statement against his will [25].

Firstly, the accused shall be presumed to be an innocent is that why it is to be called as fair trial because the liability to prove the guilt lies on the prosecution. Secondly, The Law of Evidence has provided safeguard to the accused person in whom investigation is being conducted by the police officer, the officer is not permitted to use coercion, inducement, threat or promise of secrecy held in any manner [26]. In view of criminal jurisprudence, right against self-incrimination provided to the accused against his apprehension of compulsory examination of accusation by authority using the force or torture hence such privilege enables protection of privacy to all including accused person and observation of civilized standards in criminal proceeding in administration of criminal justice system in India.

The Constitution of India under article 20(3) embodies the above said privilege to any person accused of any offence and no compulsion shall be practiced by the police while investigation inducting the fact of the case from the accused person to be a witness that is extracting confession in the custody of the police. During such investigation of a case, no police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise made against an accused person given confession [27] in a criminal proceeding such evidence is irrelevant. But no police officer shall prevent any person including the accused from making a statement on his own free will in the course of

investigation [29]. Where the confessing accused before Magistrate under section 164(4) of Criminal Procedure Code, 1973 has provided that the Magistrate has duty to explain that he is not bound to make the confession anything shall be established incriminating in nature.

The Supreme Court of India has held in *Raghubir Singh v. State of Haryana* [30] has observed that in a police investigation the police officer is conducting investigation he used investigation technique by third degree treatment that is violent act or torture might be violation of human rights by the police arm of the State instead whose function to protect the common citizen making terrible scare in the minds of the people. The privilege of self-incrimination available to the accused against the police torture is deeply condemned by the apex court in several judgements. In *Sheela Barse case* [31] the Supreme Court has laid down certain guidelines for protection of women and other prisoners against torture and maltreatment in a police lock-up. The interrogation of female accused should be carried out only in the presence of women police officers and the arrest of such female accused must be done by the woman police officer. When a person accused of any offence is produced before Magistrate for judicial custody he shall be enquired that the accused person whether he has any complaint of torture or maltreatment in the at the arrest of the person during police custody or lock-up. Those guidelines are protecting the right against self-incrimination of an accused.

4. Interpretation of the Privilege Under Art.20(3) of the Constitution of India

The application of the provision of constitutional safeguard that is privilege against self-incrimination guaranteed to the person accused of an offence in the same line of SCI has held in *M. P. Sharma V. Sathish Chandra's case* [32] that a person who has been named as an accused in the first information report of the police and investigation was ordered then only he can claim such privilege guaranteed by the constitution [33]. So a suspicious arrest or detention of an accused might be an unclaimed right of that person and no fair trial principles shall apply in such case. The police brutality might be used against in certain case in the name of fact finding or investigation technique.

The SCI Eleven Judges Bench held in *Kathi Kalu Oghad's (Respondent) case (1961)* [34] when the accused is directed to give his specimen handwriting or signature or impression of his palms and fingers is a violation of the privilege of self-incrimination and it depends upon he might be a witness in his case such furnishing evidence shall not be equivalent to incriminating statement. It is a detention law for which the investigation process may be in different with ordinary case of arrest of a person. Where an accused person activity would endanger to security of state the judiciary would not intervene the investigation process until any unfair practice or an abuse of process of law is practiced. The word 'self-incrimination' is meant that conveying information based upon the knowledge of

the person giving information it also covers only a personal testimony which violates his privacy. In *Boota Singh's (Respondent) case (1978)* [35] the same supreme court over ruled the *Kathi Kalu's case* and held that art.20(3) would not include signature or impression of his palms and fingers, specimen handwriting, or exposing parts of his body by an accused for the purpose of identification [36]. The earlier case dealt with preventive detention aspects of law hence the court has restricted its limit of interpretation though art 20(3) be a privilege. In the criminal justice administration investigation in a preventive detention laws are different from the normal course of investigation.

According to Justice Krishna Iyer J., observed that art.20(3) ought to extend to police investigation also since enquiries under criminal statutes with quasi-criminal investigation are of an accusatory nature and are sure to end prosecution, if the offence is grave and the evidence gathered is good held in *Nandini Satpathy case* [37]. Justice Krishna Iyer J., opinion is accepted in *Kartar Singh's Case* [38] by Supreme Court of India that there is a lot of custodial violence and abuse of police power in India. In this case the Supreme Court held that the right against self-incrimination said to be a right of silent under Art.20(3) of Constitution of India the accused has freedom from police and his apprehension of inducement by police or anybody else. The object of the provision is that to protect the innocent from conviction and the needy society has ensured that the offender should be punished [39].

In a landmark verdict of the Supreme Court that in *Selvi V. State of Karnataka* [40] held that the Indian Evidence Act, 1872 permits the derivative use of custodial statements in the ordinary course of events but in this case any statement extracted through any scientific method of techniques would be irrelevant and inflicts the right of the accused person moreover affects the privilege of right against self-incrimination of that person. In *Mohammed Ajmal Mohammad Amir Kasab* [41] case held that confessional statement confirms the findings of the investigation that should go to the credit of the investigation. Hence the court turned its view on offence against the state and security of the state cases.

In one step ahead the privilege against self-incrimination includes that right to silence recommended by 180th Law Commission Report 2002. The common law procedure and United States constitution upheld the above said principles. *Maneka Gandhi v. Union of India case* [42] the Supreme Court of India made a strong impact on Art.21 of the Constitution of India that the right to be fair, just and equitable procedure in a criminal trial to be followed. The accused who appears before the trial the privilege of self-incrimination under Art.20(3) should be read with inconsonance with Art.21 of the Constitution of India and the provisions of Code of Criminal Procedure, 1973 [43]. The privilege against self-incrimination has its provided clause that the accused can be compelled to submit to investigation by allowing his photographs taken, voice recorded, his blood sample tested, his hair or other bodily

material used for DNA testing etc.

5. Conclusion

In the application of the provision of protection against self-incrimination during the investigation by the Investigating officer (IO) in a criminal proceedings is purely an unclaimed right or eye wash. Though the Supreme Court of India has made several guidelines for the protection of accused rights the Investigation has its own course. The Criminal Procedure Code, 1973 provides that no proceedings of a police officer in any case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under section 156 of CrPC to investigate. Hence the police officer is empowered to investigate a case with free from all judicial hindrance. The court cannot issue directions to investigate a case from a particular angle or by a particular agency [44] by this advantage of privilege exercised by the Investigating agency in its own course the accused privilege of right against self-incrimination has been merely silent and unclaimed. Though the fair justice principles insisted that the police should not use any cruel, inhuman or degrading treatment would amount to arbitrary interference with his privacy [45]. The Constitutional guarantees including right or protection of self-incrimination is on the other side force to get information or fact finding of the circumstances of a case. In grave offences these rights are unusual and unclaimed. The authority has to change their mind set to proceed the interrogation and preserve the Human rights.

References

- [1] Assistant Professor (SS), the Department of Criminal Law and Criminal Justice Administration, The Tamilnadu Dr. Ambedkar Law University, Chennai
- [2] The Protection of Human Rights Act, 1993 in its definition clause provides that an individual right (right to life, liberty, equality and dignity) guaranteed not only by the Constitution of India or International Conventions but also includes such rights are enforceable by courts of India.
- [3] The Preamble of Universal Declaration of Human Rights, 1948 (UDHR 1948)
- [4] S. M Afzal Qadri, Ahmad Siddique's Criminology: Problems and Perspectives, Eastern Book Company, V Edition, Lucknow, page 1.
- [5] The Supreme Court of India has held an observation in Balkrishnan A. Devidayal v. State of Maharashtra (1980) 4 SCC page 600 that the term 'any person accused of an offence' means that he has committed an offence or alleged to have been committed an offence.
- [6] Raghbir Singh v. State of Haryana; (1980) 3 SCC 70
- [7] Under Article 11 of UDHR states that everyone charged with a penal offence has a right to be presumed innocent until proved guilty according to law in public trial at which he has had all guarantees necessary for his defence.
- [8] Under section 163 of Criminal Procedure Code, 1973.
- [9] Shela Barse case, Nandini Satpathy case, M.P.Sharma case etc.
- [10] M. P. Jain Indian Constitutional Law Lexis Nexis Butter Worth Publisher Wadhwa V Edition P 9 and also See VII Constituent Assembly Debate page 32-35.
- [11] Union of India v. Sankalchand Himatlal Sheth, AIR 1977 SC 2328
- [12] Yusuf Khan v. Manohar Joshi, (1999) SCC (Crimes) 577
- [13] The rule of law is the anti thesis to arbitrariness it is a balancing power between individual liberty and public order and reconciling the human rights.
- [14] State of Punjab v. Baldev Singh, AIR 1999 SC 2378
- [15] Varkey Joseph v. state of kerala, AIR 1993 SC 1892; the supreme court has held that when the provision of section 142 of Indian Evidence Act in deviance with and infringes the right of the accused to have a fair trial and which is not a curability of irregularities.
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- [19] R. V. Bhairab, 2 CWN 702,708 and also see M.C. Sarkar, K.C. Sarkar and P.C. Sarkar 'Sarkar Law of Evidence' Wadhwa publications, XVI Edition, p. 589.
- [20] The authority means that an officer who exercises his powers to extract a statement for fact finding of a case which includes that a police officer.
- [21] Phida Hussain v. State of Madhya Pradesh, 2009 Cri.L.J 3277 (MP).
- [22] Empress v. Babulal, 6 All. 509 and also see Dr. V. Krishnamachary Law of Evidence, Narender Gogia and company Hyderabad, 2016, page 174
- [23] The U.S. court has held in McCarthy v. Arndstain, 266 US 34 and also see M. P. Jain Indian Constitutional Law Lexis Nexis Butter Worth Publisher Wadhwa V Edition 2009 page 1098-99
- [24] Criminal Justice and Public Order Act, 1994
- [25] M. P. Jain Indian Constitutional Law Lexis Nexis Butter Worth Publisher Wadhwa V Edition 2009 page 1065
- [26] Under section 24 of Indian Evidence Act, 1872, this incriminating statement was prohibited even before invoking the Indian Constitutional Law.
- [27] The term confession means that admitting a guilt voluntary, truthful, reliable and beyond reproach statement by the person accused of an offence held in Pakalanarayanasaamy v. Emperor; Laxman v. State of Rajasthan
- [28] Under section 24 of Indian Evidence Act, 1872 and section 163(1) of Code of Criminal Procedure, 1973
- [29] Under section 163(2) Code of Criminal Procedure, 1973
- [30] (1980) 3 SCC 70
- [31] Sheela Barse v. State of Maharashtra, AIR 1983 SC 378 and also See Shailender Malik, Tandon's the Code of Criminal Procedure, Allahabad Law Agency, Faridabad, XVIII Edition, 2011 page 217-18
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- [45] Art.12 of the Universal Declaration of Human Rights, 1948