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# The Right of Privilege against the Self-Incrimination

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## ABSTRACT

*Self-incrimination privilege is an essential legal principle that protects individuals from being compelled to provide evidence or testify against themselves in criminal proceedings. The privilege against self-incrimination derives from the belief that a person should not be required to testify against themselves, as this violates the principles of equity and the presumption of innocence. Article 20(3) of the Constitution of India recognises and protects the privilege against self-incrimination in India. This provision states that no person accused of a crime shall be required to testify against themselves. This constitutional protection guarantees that no one can be compelled to make self-incriminating statements or produce evidence that could be used against them in a criminal trial. In the Code of Criminal Procedure, 1973 the concept of privilege against self-incrimination is strengthened and elaborated. By Section 161 of the Criminal Procedure Code, individuals are not required to answer incriminating questions posed by a police officer during an investigation. In addition, Section 313 of the Criminal Procedure Code grants the accused the right to remain mute during the trial and not be compelled to answer any inquiries that could incriminate them.*

**Keywords:** *Testify, Article 20(3) of the Constitution of India, Section 161 of the Criminal Procedure Code, Section 313 of the Criminal Procedure Code.*

## I. INTRODUCTION

Every individual is endowed with the fundamental right against self-incrimination by the Indian Constitution. The principal provision safeguarding this freedom is Article 20(3)<sup>2</sup>. The primary objective of the right against self-incrimination is to safeguard individuals from being coerced into testifying against themselves. This means that a person cannot be compelled to provide evidence or divulge information that could implicate them in a criminal act<sup>3</sup>.

The scope of protection encompasses not solely verbal declarations but also written statements, testimonies, and even bodily evidence obtained from the accused. It is crucial to acknowledge

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<sup>2</sup> Article 20(3) of the Constitution of India, 1950.

<sup>3</sup> <https://www.law.cornell.edu/wex/self-incrimination>

that this entitlement remains valid throughout both the investigative phase and the trial proceedings. However, it is crucial to also contemplate the constraints associated with the right against self-incrimination. This privilege is not absolute, according to the Supreme Court of India, and is subject to specific exceptions. An accused may be required to provide a voice sample or biometrics, for instance, in cases where there is no potential for self-incrimination associated with such actions.

In addition, if ordered by a qualified medical officer, the court has determined that providing a blood sample or undergoing a medical examination may be mandatory. Regarding the interpretation of the Constitution, the courts have always affirmed the critical nature of safeguarding the right against self-incrimination. A broad interpretation of this right has been adopted, guaranteeing that any coercion to produce evidence that could implicate the defendant would be an infringement upon their fundamental rights.

Notably, under their writ jurisdiction, the higher judiciary, primarily the Supreme Court of India and the respective High Courts, has the authority to interpret and enforce the right against self-incrimination.

Concerning the limitations and scope of the constitutional interpretation of the right against self-incrimination in India, the following are some further considerations:

- **Scope of the Right:** The right against self-incrimination encompasses documentary and oral testimony, guaranteeing that an individual who is accused cannot be coerced into providing any statement or submitting any document that could be used to their detriment.
- **Right to Remain Silent:** An element of the right against self-incrimination is the entitlement to maintain silence. A defendant is not subject to coercion in response to inquiries presented throughout the investigative or trial processes.
- **Safeguarding Against Torture and Coercion:** The right against self-incrimination additionally functions as a protective measure against law enforcement authorities engaging in any type of torture, oppression, or coercion. The use of physical or mental force to coerce a confession is strictly prohibited.
- **Applicability in Judicial Proceedings:** The principle of self-preservation of evidence is not limited to criminal proceedings; it also encompasses civil and administrative proceedings that may carry penal ramifications.

- **Exceptions to the Right:** The right against self-incrimination is subject to specific exceptions. An instance of an exception to this rule is the obligatory provision of evidence or witness testimony under specific conditions with reasonable restrictions. However, an accused cannot be compelled to provide evidence that explicitly incriminates them in a criminal offence, even in such circumstances.
- **Privilege against Self-Incrimination:** The privilege against self-incrimination is not restricted to the accused alone; it encompasses all individuals, including witnesses, who might be compelled to provide testimony that could expose their guilt. The aforementioned interpretations and clarifications concerning the extent and constraints of the right against self-incrimination have been formulated by the Supreme Court of India in many judicial decisions.

This fundamental right has been consistently upheld by the courts, which have also underscored its significance in safeguarding individual liberties and establishing a legal system that is equitable and impartial. The right against self-incrimination is subject to the jurisdiction and enforcement of the High Courts and the Supreme Court of India, by their respective writ jurisdiction.

## **II. ELABORATED IN THE CODE OF CRIMINAL PROCEDURE, 1973**

In Chapter II of the Code of Criminal Procedure, 1973, "General Provisions Regarding Inquiries and Trials" is addressed. While the right against self-incrimination is not explicitly addressed in this chapter, it does encompass several provisions that pertain to safeguarding this right during criminal proceedings. Section 161<sup>4</sup> of the 1973 Code of Criminal Procedure confers upon law enforcement the authority to interrogate witnesses in the course of an investigative proceeding.

Nevertheless, this section establishes a crucial precaution in that the individual under examination is not obligated to respond to any inquiries that could potentially expose their guilt. This safeguard prevents the coercion of an individual to produce potentially self-incriminating evidence. This provision implicitly safeguards the right against self-incrimination, despite its omission in the explicit language.

By Section 313<sup>5</sup>, the accused may be examined in court. In this segment, the defendant is afforded the chance to explain any circumstances that may be implicated in the evidence against them. Nevertheless, it also specifies that the defendant is not obligated to respond to any inquiry

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<sup>4</sup> The Code of Criminal Procedure, 1973.

<sup>5</sup> The Code of Criminal Procedure, 1973.

that could potentially expose their guilt. This provision underscores the significance attributed to the right against self-incrimination.

In Code of Criminal Procedure, 1973, contains numerous additional provisions about arrest, search, seizure, and the production of documents and witnesses, in addition to the provisions mentioned above. Upon careful interpretation by Article 20(3) of the Indian Constitution, these provisions guarantee that no individual shall be coerced into submitting self-incriminating evidence. It is noteworthy to mention that while the Code of Criminal Procedure, 1973, does not explicitly stipulate protection against self-incrimination, this right is derived from the constitutional guarantee outlined in Article 20(3) of the Constitution of India, 1950.

Therefore, the highest judiciary, specifically the Supreme Court of India and the relevant High Courts, which have the authority to interpret and enforce constitutionally protected fundamental rights, have the primary responsibility for interpreting and applying the right against self-incrimination.

Concerning Chapter II of the Code of Criminal Procedure, 1973, and its implications for the right against self-incrimination, the following are some further considerations:

- **Protection during Investigation:** Chapter II of the Code of Criminal Procedure, 1973, establishes safeguards to prevent individuals from being coerced into providing evidence or making statements that could potentially incriminate them while under investigation. This safeguard is especially pertinent in the context of law enforcement interrogations and evidence gathering.
- **Protection against Forced Confessions:** The safeguard against coercion, torture, or duress that could lead to a forced confession is provided for in Chapter II of the Code of Criminal Procedure, 1973. Any evidence acquired using such methods is considered inadmissible by the right against the self-incrimination principle.
- **Right to Legal Representation:** The significance of the right to legal representation throughout police interrogations and court proceedings is further underscored in Chapter II. This measure guarantees that individuals who are being accused are aware of their rights, which include the right against self-incrimination and are provided with appropriate legal counsel to safeguard their interests.
- **The Right to Cross-Examine Witnesses:** the right to cross-examine witnesses throughout a trial is outlined. This enables the defence to examine discrepancies in the testimonies of witnesses and contest any evidence that could implicate oneself. This right may be

invoked by the defendant or their attorney to fortify their defence and safeguard themselves against possible infringements of the right against self-incrimination.

- **Admissibility of Confessions:** The admissibility of confessions made by an accused is addressed in Chapter II. It specifies the conditions that determine whether a confession is voluntary or involuntary. In general, confessions obtained under duress or in contravention of the right against self-incrimination are rejected as admissible in court. It is critical to acknowledge that although Chapter II Code of Criminal Procedure<sup>6</sup> contains significant procedural provisions, constitutional principles and the higher judiciary are primarily responsible for interpreting and enforcing the right against self-incrimination. By constitutional rights, the Supreme Court of India and the respective High Courts have been instrumental in interpreting and clarifying the scope and limitations of the right against self-incrimination.

### **III. KEY COMPONENTS AND ELEMENTS OF THE PRIVILEGE AGAINST THE SELF-INCRIMINATION**

The privilege against self-incrimination is comprised of several essential elements and components that are vital to its safeguarding. These elements and components assist in delineating the boundaries and scope of the privilege. The following are fundamental elements of the presumption against self-incrimination:

- **Non-Compulsion:** The principle of self-incrimination guarantees that individuals cannot be coerced into offering statements or providing evidence that could potentially incriminate them. This provision affords individuals the prerogative to maintain silence and refrain from responding to inquiries or disclosing data that could potentially implicate them in wrongdoing.
- **Voluntary Intention:** By this privilege, any testimony or statement offered by an individual must be given voluntarily, devoid of any influence, duress, or other form of compulsion. The person in question must be behaving autonomously and devoid of any external coercion or impact.
- **Protection Scope:** Oral and documentary evidence are eligible for the privilege against self-incrimination. This principle applies to various types of evidence, including documents, testimonies, admissions, confessions, and anything else that may conceivably implicate the subject in a criminal act.

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<sup>6</sup> Chapter II Code of Criminal Procedure, 1973.

- **Criminal Proceedings:** The presumption or accusation that an individual has committed a crime constitutes the primary context in which the privilege is applicable. It safeguards them against coercion to reveal information that could potentially result in their acquittal.
- **Applicability at Diverse Phases:** The presumption against self-incrimination extends beyond the trial to encompass police investigations, pre-trial proceedings, court hearings, and other stages of the criminal justice system. It guarantees individual protection against self-incrimination for the duration of the legal proceedings.
- **Burden of Proof:** The prosecution, not the accused, bears the burden of establishing the culpability of the accused. The principle of the privilege against self-incrimination functions to transfer the onus of proof to the prosecution and protects any endeavours to coerce the defendant into demonstrating their innocence.
- **Restrictions and Exceptions:** Although the privilege against self-incrimination holds significant value, it is not without its limitations. Exceptions and restrictions apply to its implementation. An example of this would be when a person is required to provide biometrics, voice samples, or handwriting samples of evidence, provided that such evidence does not directly implicate them in the offence. The privilege against self-incrimination is comprised of these essential elements and components, which collectively safeguard an individual's fundamental rights and ensure a legal process that is fair and impartial. They contribute to the maintenance of individual liberties while looking out for the interests of justice.

Certainly indeed! Further elements and facets to contemplate when deliberating on the privilege against self-incrimination are as follows:

- **Constitutional Protection:** Article 20(3)<sup>7</sup> of the Indian Constitution<sup>8</sup>, which provides an explicit safeguard against coercion to testify against oneself, is a prime example of how the presumption against self-incrimination frequently rests on constitutional assurances.
- **Extent of Interpretation:** The judiciary has adopted a broad interpretation of the privilege against self-incrimination, which extends beyond explicit confessions or admissions and includes any evidence that could potentially implicate the individual.

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<sup>7</sup> Article 20(3) of the Indian Constitution.

<sup>8</sup> The Constitution of India, 1950.

- **Adverse Inferences:** Adverse inferences may constitute limitations on the privilege against self-incrimination in certain circumstances. Consequently, the court may form an unfavourable conclusion regarding the defendant if they opt to maintain silence or decline to respond to narrow inquiries. However, as emphasised by the Supreme Court, such inferences should not automatically result in the presumption of guilt against the accused, and the prosecution remains obligated to establish their case with certainty.
- **Privilege of Attorney-Client:** The safeguard against self-incrimination that applies to the relationship between a person and their legal counsel may be invoked. Due to the potential for incrimination of the accused, the attorney-client privilege guarantees that any confidential communications between them cannot be compelled to be disclosed.
- **Safeguard against Prejudicial Inquiries:** The individual is afforded protection against inquiries that are intended to harass, humiliate, or prejudice them, by the privilege against self-incrimination. Questioning that is deemed irrelevant, vexatious, or designed to incite prejudice is subject to disallowance by the court.
- **Waiver of the Privilege:** An individual may waive the privilege against self-incrimination by providing a statement or evidence that potentially implicates themselves voluntarily. The waiver should be explicit, unambiguous, and executed with a complete comprehension of the repercussions.
- **Protection from Double Jeopardy:** The privilege against self-incrimination is intricately linked to the principle of double jeopardy, which prohibits an individual from facing trial or punishment for the same offence twice. A person who has been found guilty or acquitted of a specific offence is not obligated to provide testimony or evidence in a subsequent proceeding that could implicate them in the same offence. The significance and subtleties of the privilege against self-incrimination in preserving individual rights and ensuring a fair and equitable legal system are further illuminated by these supplementary elements.

#### **IV. INVESTIGATE THE IMPACT OF THE PRIVILEGE AGAINST SELF-INCRIMINATION ON THE FAIRNESS OF CRIMINAL TRIALS**

The subject matter of Chapter IV of the Code of Criminal Procedure, 1973<sup>9</sup>, is “Arrest of Persons.” Although it does not explicitly manifest the privilege against self-incrimination, this privilege’s influence on the impartiality of criminal proceedings can be examined in the context

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<sup>9</sup> Chapter IV of the Code of Criminal Procedure, 1973.



of criminal procedure as a whole.

In multiple ways, the privilege against self-incrimination is vital to guaranteeing the integrity of criminal proceedings:

- **Preservation of Individual Rights:** The privilege against self-incrimination serves to protect the fundamental right of an individual to maintain silence and abstain from supplying evidence that could potentially implicate them. This safeguard prevents defendants from being coerced into providing testimony that is detrimental to their interests or from inadvertently exposing evidence that could be used against them. Defendants can preserve their innocence without apprehension of persecution by exercising their right to remain silent.
- **Mitigating Coercion and Forced Confessions:** The presumption of innocence against self-incrimination serves as an inhibitory force against coercive strategies and compelled confessions. It establishes a prohibition on the use of physical or psychological coercion by law enforcement to obtain incriminating statements. The privilege safeguards against the admission of such evidence obtained under duress, thereby encouraging the use of convictions founded on trustworthy and voluntary statements rather than coercive means.
- **Presumption of Innocence:** The privilege against self-incrimination is consistent with the fundamental principle of criminal law known as the presumption of innocence. It establishes that the prosecution bears the burden of proof and protects the accused's right to remain silent without an automatic inference of guilt. By stipulating that the prosecution must establish the culpability of the accused beyond a reasonable doubt, this presumption enhances the integrity of criminal proceedings.
- **Equality of Arms:** The safeguard against self-incrimination contributes to the maintenance of arms equality between the opposing party and the prosecution. This provision grants defendants the prerogative to suppress information that the prosecution may utilise to their detriment and could potentially incriminate them. The establishment of an equitable environment enables the defence to effectively contest the prosecution's arguments and fosters a sense of equilibrium among all parties.
- **Promoting Open Communication with Counsel:** The protection against self-incrimination fosters an environment that encourages defendants and their legal counsel to engage in candid and transparent communication. Defendants are not apprehensive about potential retaliation in court arising from discussions regarding their case, facts,

or prospective strategies. By allowing defendants to present their strongest defence, this practice promotes the integrity of criminal proceedings and guarantees access to competent legal counsel.

In general, the privilege against self-incrimination serves to uphold the integrity of the legal process, safeguard the rights of defendants, and prevent any form of coercion during criminal trials, thereby ensuring their fair conduct. Through the maintenance of privilege, the criminal justice system ensures the protection of individual rights and the interests of justice are maintained in a balanced manner. Include more of this.

- **Preventing Unreliable Evidence:** The privilege against self-incrimination serves as a protective measure to exclude evidence that has been coerced or is unreliable. The preservation of credible and voluntary evidence in court is facilitated by the privilege, which forbids the admission of evidence obtained under duress or against the will of an individual. This enhances the dependability and credibility of the adjudication process.
- **Prevention of Power Abuse:** The privilege against self-incrimination functions as a mechanism to deter law enforcement authorities from potentially abusing their authority. It prevents the coercion of individuals into providing self-incriminating evidence by authorities and contributes to the maintenance of the state-accused power balance. The preservation of individual rights and liberties during criminal trials, when they are confronted with the state's immense authority and resources, is a critical function of this protection.

The safeguard against self-incrimination is established upon the fundamental tenet of upholding human dignity. By permitting individuals to exercise their right to remain silent, the privilege acknowledges and respects the intrinsic value and independence of every person. This measure guarantees that no one is forced to divulge incriminating details, which is a dehumanising practice, thus maintaining the dignity of the accused throughout the criminal trial proceedings.

- **Promotion of Veracity and Dependability of Testimony:** The safeguard against self-incrimination serves as an incentive for witnesses to offer testimony that is both truthful and dependable. In the presence of potential criminal liability, witnesses may exhibit reluctance to provide truthful testimony due to apprehensions regarding self-incrimination. The preservation of witness privileges, which prevent the coercion of witnesses to provide self-incriminating evidence, encourages more individuals to come forward and offer accurate information, thereby contributing to the advancement of the objectives of truth-seeking and impartial criminal trials.

- Protection of Public Trust in the Judicial System The safeguard against self-incrimination is a factor in preserving the public's faith in the judicial system's impartiality and ethical standards. It signifies a dedication to safeguarding individual liberties and preventing any individual from being coerced into self-incriminating statements. This further solidifies the notion that criminal trials are predicated on the safeguarding of individual liberties, principles of justice, and due process.

The fundamental right to the privilege against self-incrimination significantly influences the impartiality of criminal proceedings. It safeguards against power abuse, prevents self-incrimination, and upholds essential values including human dignity, the credibility of evidence, and public confidence in the justice system.

## **V. EXPLORATION OF CASE LAWS AND PRECEDENTS THAT HAVE SHAPED THE UNDERSTANDING AND APPLICATION OF THE PRIVILEGE AGAINST SELF-INCRIMINATION IN INDIA**

The safeguard against self-incrimination is a fundamental freedom enshrined in the Indian Constitution. It guarantees that an individual who is facing charges for an offence cannot be coerced into testifying against himself. Throughout the entirety of the legal proceedings, including the investigation, trial, and even after the conviction, the privilege may be invoked. By way of numerous case laws and precedents, the interpretation and application of the privilege against self-incrimination in India have been moulded. Listed below are several notable cases:

The Supreme Court, in the case of *Nandini Sathpathy v. P.L. Dani*<sup>10</sup>, ruled against the police coercion of an accused into providing vocal samples against his will. Invoking the defendant to testify against himself would infringe upon his right against self-incrimination, the court determined.

In the case, *State of Bombay v. Kathi Kalu Oghad*<sup>11</sup>, the Supreme Court determined that the presumption against self-incrimination encompasses identification parades and personal inquiries in addition to oral and written testimony.

In the case *Selvi v. State of Karnataka*<sup>12</sup>, the admissibility of narco-analysis, brain-mapping, and polygraph examinations was at issue. Invoking these tests on an accused individual constitutes a violation of their right against self-incrimination, as determined by the Supreme

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<sup>10</sup> 1978 SCR (3) 608

<sup>11</sup> 1962 SCR (3) 10

<sup>12</sup> AIR 2010 SC 1974

Court.

*State of Bombay v. Kathikalu Vithilayya* (1961)<sup>13</sup>: This seminal legal case established that witnesses may invoke the privilege against self-incrimination throughout the trial phase, not exclusively on behalf of the accused. It is crucial to acknowledge that the presumption against self-incrimination is not an unqualified right. In specific situations, such as when an individual is compelled to provide fingerprints, DNA samples, or handwriting specimens, this ability may be restricted.

The court shall evaluate the legitimacy of said infringements in each case. The preceding cases have had a substantial impact on the interpretation and implementation of the privilege against self-incrimination in India. These judgements are critical to preserving the rights of the accused and ensuring a fair and just legal process. The jurisdiction of such cases would differ contingent upon the court hearing the case—namely, the Sessions Court, the Magistrate's Court, or the Supreme Court of India.

## **VI. CONCLUSION & SUGGESTIONS**

Article 20(3) of the Indian Constitution safeguards, in conclusion, the privilege against self-incrimination as a fundamental right. Numerous case laws and precedents have influenced the interpretation and implementation of this privilege in India throughout the years. These cases have established that the privilege extends to other procedures, including identification parades and personal searches, in addition to oral and written testimony.

Additionally, they have specified that the privilege is available to both the defendant and witnesses at various points throughout the legal process. It is imperative to comprehend that although the privilege against self-incrimination holds considerable importance, it is not without restrictions and may be restricted under specific conditions. The judiciary conducts a meticulous evaluation of every circumstance to ascertain the legitimacy of such restrictions on an individual basis.

In essence, these decisions are of the utmost importance in safeguarding the rights of the defendants and establishing an equitable and impartial legal system in India. Moreover, the aforementioned cases serve as evidence of the Indian judiciary's forward-thinking approach to protecting the privilege against self-incrimination. The court's analysis of Article 20(3) demonstrates a dedication to safeguarding the right of an individual to remain mute and avoid self-incrimination. These precedents underscore the significance of upholding the privilege

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<sup>13</sup> 1962 SCR (3) 10

against self-incrimination throughout the different phases of legal proceedings.

In all proceedings, including investigations, prosecutions, and post-conviction proceedings, the judiciary has consistently maintained the fundamental tenet that no individual ought to be coerced into testifying against themselves. Furthermore, these cases have highlighted the need to outlaw coercive methodologies like narco-analysis, brain mapping, and polygraph tests. The stance taken by the court on this matter functions as substantial protection against possible misuse of authority and emphasises the criticality of upholding the accused's dignity and autonomy. It is pertinent to mention that the court's jurisdiction regarding the privilege against self-incrimination is subject to variation contingent upon the phase of the legal proceedings.

The jurisdiction of the Magistrate's Court extends to offence investigation matters, whereas the Sessions Court is entrusted with the conduct of trials. The jurisdiction to adjudicate appeals and resolve constitutional inquiries about the privilege against self-incrimination resides with the Supreme Court of India. In general, the examination of legal precedents and case laws demonstrates the progressive development of comprehension and implementation of the privilege against self-incrimination in India. These decisions function as guiding lights, providing direction to the legal system to maintain the fundamental tenets of justice, equity, and safeguarding individual liberties. In an evolving society, the legal system must adjust and react to the shifting dynamics to adequately protect the privilege against self-incrimination.

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