

## “RIGHT TO SILENCE”:- AN ANALYTICAL APPROACH TOWARDS THE LIMITED PERMISSIBILITY FOR APPLICATION OF SCIENTIFIC MEASURES DURING INVESTIGATION

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### Abstract

The right to silence is governed by the theory called ‘nemo debet prodere ipsum’, i.e. the freedom against self-incrimination. In other words an accused person has got the call in his hands to remain silent either at the time of trial or during police interrogation to safeguard his interest so as to protect him from the liability of self incrimination. The aforesaid right finds constitutional recognition under the banner of Article 20(3) of the Constitution of India, which confers immunity upon the accused from being compelled to become a witness in opposition to oneself by giving self-incriminating evidence in a case. With the passage of time, the periphery of this constitutional guarantee has extended to a considerable extent by virtue of the extensive interpretation of its compass done by the courts. However looking at the need of the hour, it was also taken care that the basic scientific techniques necessary to conduct a successful investigation from the end of the investigating agencies are also given their valuable place so that the genuineness and the merits of a case seldom suffer owing to the technical lacuna left behind. A harmonious juxtaposition of the judgments in contrast to the need for scientific techniques are discussed by the author keeping the paper within the ambit of the constitutional mandate laid down by the Courts.

**Keywords:** Right to Silence, Compulsion, Scientific Investigation, Self-Incrimination.

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### INTRODUCTION

The Indian justice system presupposes the innocence of an accused till the time his fault is proved away from any instance of sensible hesitation in a competent court of law by means of adhering to the due process of criminal justice system. Being said so, there lies an extremely important role to be played by the courts of law at the time of trial of such an accused person. Noteworthy to mention that the balance of justice to be imparted upon the victim as well as the rights conferred upon an accused by the humanitarian laws should be harmoniously brought down to its effect so that the victim gets assurance of justice after the completion of a prolonged trial without the valuable rights conferred upon an accused getting infringed in the said process. The society being dynamic in nature has advanced from the stage of traditional mode of commission of offence towards the stage of implementation of modern scientific gadgets during its commission. As such, it is desirable for investigating agency to take aid of the modern scientific means so as to keep themselves at par with the changing phases of commission of offence. However care is to be taken that the accused person is not subjected to unjustified force or other undue influence at the time of his interrogation by the investigating officer. As regards the implementation of scientific techniques of investigation are concerned, if the same are conducted upon the accused person such as the Narco-analysis test, the polygraph test and the Brain-mapping test etc. it is utmost necessary to obtain his prior consent keeping in consonance with the mandate laid down by the Apex Court in **Selvi versus State of Karnataka**. Article 20(3) of the Constitution of our Country lays down a mandate to be ensured that the accused person has got his right against becoming a witness with respect to himself which is also clarified by the various interpretations of different judgments thereby forbidding compulsion to be imposed upon an accused in order to extract the testimony from him during the investigation process. To be more specific, the different judgments of various courts have clarified the testimonial compulsion to be violative of Article 20(3) of the Constitution of India.

The instant paper deals with the right of an individual to remain silent after standing in the shoes of an accused as per the provisions of our Constitution by tracing its origin and development throughout the years. Moreover the report of the Law Commission is reflected after highlighting the need to ensure the right of an individual to remain silent as an accused. Also the provision of law with reference to the presumption of innocence of an individual as an accused is noted down during the process of investigation. However care is taken to ensure that the scientific methods needed for carrying out the investigation is justified by means of analysing the harmonious interpretation ruled out by the Courts by means of its judgments from time to time. Furthermore the paper is attempted to justify the need of the provision of law which casts an implied power upon the court to rely on the basic scientific techniques in order to carry out the successful implementation of the investigation process.

To put it in a nutshell, the indefeasible rights vested upon an individual as an accused person to remain quiet is explored under the banner of the different judgments of the Apex Court and various other respective High Courts in consonance with the implied power given to the lower courts as well as the investigative agencies to rely on the scientific procedures of conducting investigation without affecting the humanitarian rights of the accused person.

### ORIGIN AND DEVELOPMENT

The reasons behind the cause of the right to remain silent by a person at any of time point are yet to be clarified, since its root is not precisely referenced at anyplace with a supported instance. However, a trace can be made towards the 16th century, during which a practice was adopted by the English Courts of Star Chamber and High Commission by convincing the strict and political protesters to make a vow which was otherwise called the "ex-officio oath" and, they were constrained to address queries, without even an appropriate accusation being put upon them by the appointed authority and the investigator. The

practice was savage to such an extent that if in case an individual used to decline to be controlled by the pledge, he was tormented. In this procedure the dissidents were constrained either to pick the human sin of submitting prevarication or were constrained to quit for a brutal discipline to be dispensed upon them for submitting towards contempt of court or, more than likely they were constrained to be an witness against themselves. However, at a later point of time the Star Chambers and Commissions were annulled. Incidentally the right to silence got its existence and the same was established as a response of the individuals to the parliamentary unrests of the late seventeenth century. Despite the fact that the said right got its reality, yet there was no codification as for the privilege of suspects to decline to answer the queries being put to them at the time of trial as result of which although the torture was banned yet the refusal by a suspect to answer questions which were put to them was used as a piece of evidence against them.

#### REPORT OF LAW COMMISSION

The law commission of India in its 180<sup>th</sup> report on Article 20(3) of the Constitution of India and the right to silence had suo-moto taken up the aforesaid subject, keeping into account certain advancements which occurred in United Kingdom and different nations where the right to silence of an accused was compromised at the stage of interrogation and also at the stage of trial in a Criminal Court. As regards the position of India is concerned, the right against self-incrimination is incorporated clearly in clause (3) to Article 20 of the Indian Constitution. Moreover after the landmark judgment of the Apex Court in the case of **Maneka Gandhi versus Union Of India** it was apparently made clear that a just, and reasonable procedure is to be followed in cases of criminal nature keeping in view about the provision of Article 21 of the Constitution of India.

The aforesaid report of the Law Commission of India was prepared on the basis of an analysis as well as a comparative study on the issue of 'right to silence' with respect to its position prevailing in various countries like U.S.A., Australia, Canada, U.K. and China and also an analysis was made on the basis of the decided cases in the English and European Courts prevailing at that time. In addition, the pertinent arrangements of Universal Declaration of Human Rights, 1948, The International Covenant on Civil and Political Rights, 1966, and The European Convention for the Protection of Human Rights and Fundamental Freedoms were mulled over at the hour of confining the report.

As regards the American and the Canadian Courts are concerned, they have not allowed any infringement into the 'right to silence' while the English and the European Courts just as the Australian Courts have concurred authorization to the jury and the Courts to take the quietness of a person into thought before they show up at a finding of blame of the person. It is pertinent to mention that the American and Canadian Courts of law prohibit the consideration of silence before arriving at a final finding with respect to establishment of guilt beyond reasonable doubt. However the question of silence was to be viewed as simply after the Court alluded above shows up at a finding as for foundation of blame past sensible uncertainty and that too after inquiries were being put to the accused seeking explanation in case he has got any with reference to the same.

Striking to make reference that the report had referenced China to have presented a guideline in a portion of its districts which gives the privilege to an accused to stay quiet and that too in a circumstance when majority rule governments like United Kingdom and Australia have presented certain laws that have strayed from the deep rooted convention of the option to stay quiet. The commission has also made a survey of the prevailing law in various countries after which it was revealed that in view of the constitutional safeguards against self incrimination in a few countries like the USA, Canada and India, it was found that

the Courts have ensured that the prosecution was to prove the fault of an accused beyond sensible doubt and moreover it was found that there has been no encroachment into the right to silence that is vested upon the accused even at the stage of interrogation or the trial.

The report has likewise referenced that the right to silence has different features out of which one lies as a weight upon the State or in actuality upon the indictment to demonstrate that the blame is of the accused. Another is that there is consistently an assumption that a accused is honest until and except if he end up being liable according to the arrangements of law. The third right of the accused is in the form of his privilege against self implication wherein the right vested upon the accused to remain silent coupled with his right that there cannot be any compulsion to incriminate the accused.

The Commission after a thread bare discussion of the various prevailing laws that are in existence in different nations of the world had held that the law in India appears to be same as the law existing in the nations like the USA and Canada. Moreover the Commission had considered the provisions of clause (3) of Article 20 of the Indian Constitution and also the dire requirement of a free and fair procedure under the provision Article 21 coupled with the provisions of ICCPR to which India is a signatory and also after taking into account about the problems being faced by the Courts of law in United Kingdom it was opined that it would not only be unfeasible to bring in the changes which are being introduced in United Kingdom, rather introduction of such changes would be divergent to the constitutional protections which are referred by the Court from time to time.

The Commission had concluded by providing their recommendation that no changes were found necessary in the law describing to silence of the charged individual and it was also stated that in case the changes are made, the same will be against the principles of Article 20(3) as well as Article 21 of the Indian Constitution.

#### INTERNATIONAL RIGHTS AND COVENANT

The idea of right to silence has got its underlying foundations even in the International Rights and Covenants. To talk around a couple, the Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, The European Convention for the Protection of Human Rights and Fundamental Freedoms and so forth are the leaders in this perspective. The significant arrangements of the previously mentioned rights and agreements are as per the following:

Article 11.1 of the Universal Declaration of Human Rights, 1948 states that every person that is charged for an offence having penalty should be given the right to be presumed as innocent till the time he is proved as a guilty individual as per the practice recognized by the law and that too in a trial which is public in nature so that he gets all the rights and justifications forwarded from his side in order to prove his point.

Similarly, Article 9.1 of The International Covenant on Civil and Political Rights, 1966 to which India is a gathering states that no person should be dispossessed from his freedom without the use and application of those grounds or by the means of those procedures which are recognized by law. Also Article 14(3)(g) refers to the various "minimum guarantees" which are made applicable to a person and reinforces that every individual must be given the right of not being put under compulsion to speak up against himself or being compelled to confess with reference to his guilt.

As far as the European Convention for the Protection of Human Rights and Fundamental Freedoms is concerned, it is mentioned in Article 6(1) that every individual who is being alleged as liable

for the commission of a crime has got his precious right to be allowed to stand for a due and fair trial and Article 6(2) states that everyone who is alleged with the commission of an offence shall be presumed not to be guilty till the time his guilt is proved as per the due procedure and rules that are established by the law.

#### RIGHT TO SILENCE UNDER THE INDIAN CONSTITUTION

The doctrine of self-incrimination finds its place as per the provision of Article 20(3) of the Indian Constitution which states that no individual who is charged of commission of any offence shall be forced to become a witness against oneself. A careful perusal of the aforesaid provision make one analyze the following ingredients:

- i. Firstly, it is a valuable right available to a person who is charged of an offence.
- ii. Secondly, it is a guaranteed safety against the coercion to become a witness.
- iii. Thirdly, it is a security conferred to an individual against such compulsion which induces a person to give evidence against himself.

A brief analysis of the aforesaid aspects is as follows:

#### Accused of a Crime

The privilege conferred under Article 20(3) of the Constitution of India is only with respect to an individual against whom there is a formal charge regarding commission of an offence. Such an accusation may be of such a nature that there is every possibility for a subsequent result of prosecution due to the consequence of lodging an FIR or by means of a formal complaint. The provision of law is very much clear with its terms and visibly indicates that mere accusation is sufficient to get the privilege of the aforesaid provision of law and does not require the commencement of trial or the inquiry. However the protection granted under Article 20(3) does not extend to a person who is not a charged individual at the time of making the statement.

#### Coercion to become a Witness

The periphery covered by Article 20(3) also extends its protection to an individual who is compelled to become a witness so as to make an incriminating statement against himself. The aspect of compulsion or duress must be present in order to get the protection under the aforesaid provision of law. A mere statement made by an accused without any compulsion being administered upon him does not attract the provision of law.

#### Compulsion Inducing a Person to Adduce Evidence against himself

In order to draw the provision contained in the article 20(3), there must be a compulsion to an accused to adduce evidence against himself. There is a necessity that the witness must be compelled to make a statement which has a like nature to incriminate him in a criminal charge. As such, mere putting of thumb impressions or specimen signature or exhibiting any part of his body for the purpose of recognition does not make the charged individual at liberty to grasp the advantage of Article 20(3) of the Constitution of India.

There are many landmark judgments which clarify the entitlement of the right of self incrimination depending on different circumstances. A few of them are as follows:

- i. In **Balasaheb versus State of Maharashtra** it was held that a witness cannot take the privilege of absolute immunity or that of blanket protection under Article 20(3) to testify in a police case even if he turns out to be an accused in a complaint case related to the same incident. However although blanket protection cannot be accorded to the witness yet it was held that the witness may refuse to

reply all those questions which may tend to incriminate him in an offence.

- ii. In **State Bombay versus Kathi Kalu Oghad and Others** it was held that where a statement is made by a charged person without any enticement, warning or pledge on the part of the police then in those circumstances the immunity under Article 20(3) does not come into operation. In other words an accused person cannot be held to have been forced to become a witness against oneself simply because he had made a statement at the time of being in police custody, without revealing anything else from his side.
- iii. **V.S. Kuttan Pillai versus Ramakrishnan & Others** it was discussed that the immunity conferred to an charged individual against self- incrimination extends to any piece of inculpatory evidence which the individual may be forced to depose. However, it fails to cover such a situation in which the information capable of conferring an individual as an accused is obtained from him without forcing him in any manner or telling him to be a part to the collection of such evidence. Accordingly it was concluded that the search which is made of the premises that is occupied by the accused person without the charged individual being forced to be a part to such search, would fail to be in violation of the constitutional privilege conferred by Article 20(3) of the Constitution of India.
- iv. In **Ritesh Sinha versus State of U.P** it was held that the basic right to isolation cannot be construed as unqualified and as such but must bow down to persuasive community concern. Accordingly a direction given by a Magistrate to the charged individual to give voice sample during the course of enquiry of a crime does not infringe his right conferred by Article 20(3) of the Constitution of India as because such authority is conferred on a Magistrate by a process of legal elucidation and in exercise of control vested to the Court under Article 142 of the Constitution of India.

#### PRESUMPTION OF INNOCENCE AND THE PROPOSITION OF LAW

One of the important facets of Criminal Law is that there is always a assumption in favour of the accused person rendering him to be innocent during and until the completion of trial before a competent court of law thereby providing a safeguard to the rights of the accused. Moving at par with the aforesaid presumption there is another legal safeguard being provided to the accused in the form of burden of proof which ensures that the entire burden lies in the prosecution side to prove the fault of the accused person during the trial. Moreover, during the period of investigation, it applies like a shield in favour of the accused person by providing him the immunity to be compelled as a witness against himself so that there cannot be any coercive measure or compulsion being adopted against him from the side of the investigation officer. This is in accordance with the fundamental principle of criminal jurisprudence which presupposes that every person is supposed to be blameless until he is proved to be guilty beyond sensible element of doubt in harmony with the provision of law by a competent court.

Moreover the concept of presumption with respect to innocence of an individual has been discussed in the matter of **Govindaraju @ Govinda versus State By Srirampuram** wherein it is expressed that the Court has also to keep in mind certain important values in harmony with law under the Criminal Jurisprudence apart from complying with the rules governing appreciation of evidence, which are in the form of right to just trial and supposition of blamelessness as because both of them are the requisite essentials for the purpose of management of criminal justice. It was also discussed that a person is presumed to be not guilty till the time he is proven at fault by a proficient court of law and once an accused is not held to be guilty of a charge, then he enjoys the payback of such assumption which can

be only interfered with by the courts for convincing justifications and not merely because a different view was feasible with respect to the appreciation of evidence. Moreover the supposition of blamelessness is also considered to be a human right.

As far as the criminal jurisprudence is concerned, a fundamental aspect of the same is the presumption of innocence wherein that a person is presumed to be innocent until he is found guilty.

#### SCIENTIFIC METHODS OF INVESTIGATION AND ITS LEGAL STATUS

Due to the advancement of science and technology, the present society has got different modes of collection of scientific evidence which can help the investigating officer attend illustrious result. A few of them are as follows:

- a. Nacro Analysis
- b. Polygraph
- c. Brain Electrical Activation Profile (BEAP) Test

**Nacro Analysis:** The term nacro-analysis is used to describe a diagnostic and psychotherapeutic technique that uses psychotropic drugs, particularly barbiturates, to include a stupor in which mental elements with strong associated affects come to the surface, where they can be exploited by the therapist. The main principle behind nacro analysis is that a person may be smart enough to deceive another by resorting to a lie in a normal situation and as such if he is administer psychotropic drugs and is brought under the influence of certain barbiturates, the person is brought in a semi conscious state thereby blocking his capacity of imagination so as to deceive other person. During the test drugs such as sodium, pentothal, Scopolamine and Sodium amytal are being administered to a person which brings him to a state of aesthesia thereby making him divulge information which he would otherwise not reveal in case it he is in a conscious state.

As far as the implementation of the Nacro Analysis test is concerned, there was variance in the interpretation of judgments dealing with the question of applicability and validity of Nacro Analysis test until in the year 2010 it was setteled by the Apex Court in the case of **Selvi versus State of Karnataka** by rejecting the utility, reliability and validity of the Nacro Analysis test wherein it was held that the application of the same upon an individual to be unconstitutional.

**Polygraph:** Polygraph as the name spells signify about a test during which the parameters of heart rate, blood pressure, skin pressure etc are analysed by conducting scientific techniques. As such, no matter how much smart a person is, it is presumed that he is not capable of controlling the parameters of his heart rate, blood pressure, skin conductance and respiratory rate in case if he resorts to lie with respect to a relevant fact of an offence to which he is related either as a witness or as an offender. The instant test is based on the principle that a guilty person shall more or less resort to a lie with respect to a relevant fact related to crime which shall positively produce a hyper-arousal state that can be easily noticed and caught by a person expert in reading the polygraph results.

Although much has been debated regarding the application of this technique, yet the legal status behind its applicability is setteled by the Apex Court in the landmark case of **Selvi versus State of Karnataka** wherein it was held that laid down that no Polygraph test should be conducted upon an accused without his consent and in case if any such test is conducted upon the accused by the authorities without his consent then it would amount to be a clear violation of the rights guaranteed to him under Article 20(3) of the Indian Constitution. It is pertinent to mention that a few guidelines have also been laid down by the said Court with respect to the application of polygraph test upon an accused person.

**Brain Electrical Activation Profile (BEAP) Test:** The brain of an individual reacts to certain activities which are triggered due to the spotlight to a certain stimuli. Brain Electrical Activation Profile (BEAP) Test is the process of detecting as to whether an individual is recognizable with a definite piece of facts by measuring the action of the brain after it is exposed in the stimuli. The fundamental presumption of this test is that when guilty suspects, are out in the open to the material probes, then the same leads to the emission of P300 wave mechanism which gets duly recorded by the instruments so that the truth behind the statement of an individual can be ascertained by the expert conducting the test. Although it is used to study the brain, yet it has got a limitation of measuring only the memory or awareness of the crime scene and nothing else.

As far as the place secured by Brain Electrical Activation Profile (BEAP) Test or P300 Waves test in the eyes of law is concerned, the Supreme Court vide its judgment delivered in **Selvi versus State of Karnataka** had made it ample clear that the implication of brain mapping upon an accused person violates his right against self-incrimination under Article 20(3) of the Indian Constitution as well as his right to life and personal liberty enshrined under Article 21 of the Constitution.

To put it in a nutshell it can be inferred that the judgment pronounced by the Apex court in **Selvi versus State of Karnataka** has made it clear that the application of involuntary deception detection tests (DDTs) has no place as far as the judicial process is concerned, as because there is every possibility that it will disrupt the proceedings, cause delays, and would also lead to numerous complications which will result in ambiguity in the existing procedure of investigation.

#### COURTS ON RIGHT TO SILENCE VIS-À-VIS THE LIMITED PERMISSIVE NATURE OF RESORTING TO SCIENTIFIC TECHNIQUES OF CARRYING OUT INVESTIGATION WITHOUT AFFECTING THE RIGHTS OF AN ACCUSED

The proposition of law which is set by the Apex Court is crystal clear as for the subject of Constitutional legitimacy of the various laws being in force are concerned and a significant case of shielding the ambit of established legitimacy of a law is the judgment articulated on account of **Olga Tellis versus Bombay Municipal Corporation** wherein it was propounded that if a law seems to have been coordinating the commission of a act that is stated to be illegal as per the provisions of the Constitution or if the said law propels the exhibition of an act concerning the appropriation of a method which is not feasible as per the provisions of the Indian Constitution, then the equivalent law is at a risk of being struck down by the watch dog of the Constitution.

Keeping itself inside the ambit of the preeminent archive of the land, the Apex Court on account of **Kartar Singh versus State of Punjab** has ruled out by holding that the terms used in Article 20(3) of the Indian Constitution are "to be a witness" and not "appear as a witness". As such the protection accorded to an accused with respect to the phrase "to be a witness" is not only in terms of the testimonial compulsion which is obtained from him inside the court room but may also extend to the extent of a compelled testimony that is previously obtained from him. In like manner the Constitutional assurance that was presented for this situation was, accordingly, held to incorporate not just the oral declaration which was given in a Court or outside the Court premises, yet additionally it also covered within its ambit the statements which are recorded as a hard copy which is used to incriminate the maker at the time of subjecting him as an accused person.

In addition to the same, a couple of noteworthy inquiries were being raised under the steady gaze of the Apex Court on account of **Nandini Satpathy versus P. L. Dani** where the purpose of

activity of bar against self-incrimination was examined in the balance of police examination regarding a specific allegation when contrasted with that other pending or potential allegations outside the particular examination. Pertinent to mention that the question of constitutional right to silence and its periphery with respect to police investigation as well as trial was also discussed in the said case and in the wake of thinking about a length of detailed and outstanding decisions it was examined that Section 161(2) of the Code of Criminal Procedure may cover not simply the allegations that have just been enlisted in the police stations yet will likewise cover those which are probably going to be the reason for presenting an individual to a criminal accusation. It was additionally discussed about that the articulation "expose himself to a criminal charge" would mean, not just the situations where an individual is already being exposed to a criminal accusation yet in addition incorporates occurrences which will unavoidably open an individual to criminal accusations in near future. It was also discussed that Article 20(3) would grasp even the examination at the police level as because during examination the transferring of data and collection of materials takes place.

In fact, a different angle with respect to the testimonial compulsion was explored by the Supreme Court in the case of **M. P. Sharma And Others versus Satish Chandra** where the term testimonial compulsion was evaluated with respect to the question of a notice to produce a document and accordingly it was discussed about that production of a thing in consistence with the order to deliver the same falls inside the ambit of testimonial compulsion while the search and seizure by method for a warrant that is routed to an official of the Government, by and large a cop are the demonstrations of another to which such an official is obliged and being so does not fall within the ambit of testimonial compulsion.

Moreover it was also discussed that the constitutional protection under Article 20(3) would not be vanquished by the legal arrangement of search as in light of the fact that a request for search is made under the authority of a Magistrate and as such when such a legal capacity is mediated between the individual and the authority of the official to do the search, there gives off an impression of being no intercession with the major privileges of a person.

Besides the Court in the case of **State versus Navjot Sandhu** had discussed that the examination of an accused person at the police level is secured by Article 20(3) and furthermore is also secured inside the ambit of section 161(2) of the Code of Criminal Procedure. It was likewise discussed that the protection presented to an witness is not simply with respect to the testimonial compulsion inside the court, yet in addition grasps its ambit to the compelled testimony which is previously obtained from him.

Although it was ensured that testimonial compulsion was very much detrimental to right to silence, yet the proposition of law has been well explained by the different respective High Courts including the Apex Court by outlining the periphery of Article 20(3) containing right to silence wherein scientific techniques of investigation are justified after drawing a harmonious construction between the interpretation of Article 20(3) of the Constitution to that of the dire need of applicability of scientific techniques adopted at the time of investigation. The landmark judgement with respect to testimonial compulsion as well as the right to remain silent being a witness was delivered by the Apex Court in the case of **The State Of Bombay versus Kathi Kalu Oghad And Others** in which it was held that an accused person cannot be said to be subject himself to compulsion so as to depose against himself merely because of the fact that he had said something at the hour of being in police care, without uncovering much. Furthermore it was held that an accused

person cannot be said to be compelled merely because of the questions being put to him in the form of an accused person by a police officer as a result of which he makes a voluntary statement and the same ultimately turn out to be incriminatory in nature. Likewise it was held that a simple giving of thumb impressions or impressions of foot or palm or fingers or specimen in writings or demonstrating a piece of the body by way of identification is not to be included in the expression "to be a witness". The Court also dealt in details about the term "witness" as well as the voluntary nature of the statement which is made by a witness after which the Court analysed the same in relation to the term compulsion and opined that a mere question being put to an accused person by a police officer in consequence of which the accused makes a voluntary statement may ultimately turn out to be incriminatory, however the same cannot be termed as compulsion. Besides it was additionally discussed that although the term 'To be a witness' in its common syntactic sense implies giving oral declaration in Court, yet its understanding has been expanded excessively far by methods for Case laws which incorporates both declaration made in the Court or out of Court by an accused person for an offense whether the same might be made orally or recorded as a hard copy in writing.

There are many instances in which the courts have dealt with an exhaustive meaning of the term witness and had broadened its periphery so as to facilitate many other relevant inclusions within its ambit. A case related to the same is the situation of **State of U.P versus Boota Singh** wherein it was discussed that just by giving impressions or specimen handwriting, the accused person does not outfit proof against himself and as such when a charged individual is constrained to give specimen handwriting or impressions of his finger, palm or foot, in spite of the fact that it very well may be expressed that he is constrained to be an witness yet it can't be expressed that he has been constrained to turn into an witness against himself. It was likewise held merely obtaining specimen handwriting of an accused person does not amount to be giving a statement from his side so as to be hit by the terms of Section 162 Cr. P.C. As such, mere directions issued to the accused person in order to make him give his specimen signatures and handwriting does not amount to him to undergo testimonial compulsion. Comparative view was propounded in the case of **Sailendra Nath Sinha versus The State** wherein it was examined by a Division Bench by expressing that a mere direction given under Section 73 of the Indian Evidence Act to take specimen writings of an accused person doesn't negate or counter against Article 20(3) of the Indian Constitution, for a mere direction does not add up to urge him to give proof against himself.

At this juncture, it is noteworthy to mention that taking note of the advancement of scientific methods of commission of crime, there has been an urge many a times in the judgments delivered by different courts seeking the need to introduce scientific methods of investigation or scientific methods of collection of evidence during the investigation process. This is solely because of the reason that the age old traditional methods carried out to expedite the investigation process are unable to cope up with the modern techniques adopted by the criminals. An exemplary case of the equivalent is the judgment of the Apex Court in **D.K. Basu versus State of West Bengal** wherein it was communicated that there is a need to create scientific strategies and techniques for examination and cross examination of charged individual. Moreover in **Dinesh Dalmia versus State** the court encouraged the need of scientific methods of investigation after its application by the investigating agency was found to be justified in the case in order to inculcate the truth from the accused person and also it was noted down that such an implementation does not amount to testimonial compulsion.

Another instance in which the need of scientific methods to carry out investigation was felt was in the case of **Rojo Gorge versus**

**State of Kerala** wherein it was discussed that the conventional method of putting questions to an accused person may not prompt any productive outcome since advanced and present day methods are applied by the crooks for the commission of an offense. Being so the need of scientific tests like polygraph, brain mapping, narco analysis, etc., were supported during the examination of a case. In addition it was examined that there can't be supposed to be infringement of the central privileges of an individual owing to the reason that the scientific tests like polygraph, brain mapping, narco analysis, etc. are directed under severe management of the expert. Moreover, the Court in the case of **Ramchandra Reddy and Ors. versus State of Maharashtra** had maintained the legitimacy behind the administration of P300 or Brain mapping, lie-indicator/polygraph test by rendering that no statements comes out of the scientific tests and the ends coming out from such tests are not statements as the conclusions are not demonstrated in any way to probably implicate to the producer of such statement. It was likewise held that the protection given by Article 20(3) of the Indian Constitution is from compelled testimony or compulsion and as such the same is not applicable to these two tests. Appropriately it was held that such statement will draw in the bar of Article 20(3) only if it is inculcating or in case the same incriminates the maker and being so in order to ascertain the same the test is needed to administered since there are sufficient securities accessible under the Indian Evidence Act, Code of Criminal Procedure just as under Article 20(3) of the Constitution of India so as to prevent the inclusion of any incriminating statement in the event that it comes out after organization of the test. To be more specific, as far as the Narco Analysis (Truth Serum Test) concerned, it was held that where it is considered to be a statement and until and unless it is shown to be incriminating with respect to a person making it or the maker of the statement, the protection under Article 20(3) cannot be raised till that time.

In corroboration to the aforesaid aspect, the Court in **H.M. Prakash Alias Dali versus State Of Karnataka** had apprised the periphery as well as ambit of section 53 and 54 of the Code of Criminal Procedure in contrast to the protection laid down for the society during investigation by means of use of scientific techniques and discussed that the modern community requires modern scientific techniques of investigation so as to protect the society from the wrongdoers. It was discussed that collection of blood sample is well recognised in the world and there is nothing offensive or shocking in that process when it is carried out. Most definitely, it gives powers upon the investigating agency to get the accused person analyzed and furthermore forces a commitment upon the captured individual to subject himself for medical examination at the insistence of Police Officer in order to support the examination. Moreover, section 53 of the Code of Criminal Procedure provides the power to use such amount of force which is reasonably necessary for such examinations and in the process of such examination even if the accused undergoes some short of discomfort yet the same cannot be said to be unjustified. Also, in **Ananth Kumar Naik versus State of Andhra Pradesh** the extent of section 53 of the Code of Criminal Procedure was considered by the Court and accordingly observed that the medical examination of a person in its logical terms includes testing of his semen, blood, urine etc. Also the language of section 53 of the Code of Criminal Procedure provides for the use of such force which is necessary for making such examination. As such the annoyance or discomfort caused at the hour of taking the samples of blood and semen would be supported under the provisions of sections 53 and 54 of the Code of Criminal Procedure since it forms a part of the examination procedure. Justification is likewise observed to have been sent by the Court in the case of **Jamshed versus State of Uttar Pradesh** wherein the Court was of the view that although there is no particular arrangement under the Indian law permitting the

conducting of blood test, yet, in a criminal case, "examination of a person" incorporates an assessment of any organ inside the body, and taking of blood test. In addition it was seen that in present day society, taking of blood couldn't be supposed to be something offensive or against the sense of decency and that there is repulsive or shocking to the soul in taking the blood test. Being so, it was expressed that regardless of whether there is causing of some agony during the time spent in assortment of blood test, yet the same is admissible under Section 53 of the Code.

Furthermore the Court in the case of **Neeraj Sharma versus State of Uttar Pradesh** had investigated the extent and ambit of the section 53 of the Code of Criminal Procedure in reference to the power accessible to a Judicial Magistrate and along these lines had expressed that if a confined meaning is given to the term examination alluded in section 53 of the Code the same would not fulfil its need as because the term examination of the accused person would mean a total examination by methods for utilization of scientific apparatuses accessible to a medical practitioner and not constrained to any shallow assessment of the accused by just taking a glance at the body of the charged individual. Additionally it was discussed about that the Legislature being conscious has made a particular arrangement allowing utilization of power while enacting Section 53 in the Code of 1974. Accordingly it was discussed that a Magistrate has full capacity to coordinate the exhibition of medical examination of the accused person and furthermore the ability to coordinate the assortment of tests of his hairs, nails, and so forth, after taking a look at the nature and conditions of the case. Likewise in the case of **Halappa versus State of Karnataka** the order passed by the preliminary court permitting the prosecution to obtain the blood test, open hairs and so on of the accused was upheld after it was held that drawing of the blood test for discovery of the offense of sexual assault wherein the researching organization needs to set up its case past sensible uncertainty, cannot be named as violative of Article 20(3) of the Constitution.

Notable to mention that the Apex Court in **Usufalli versus Territory of Maharashtra** had ruled out that when an individual is given the freedom to talk just as the freedom not to talk, combined with the circumstance where there is nonappearance of the component of pressure, intimidation or compulsion against him or apparently there is no case where his statements were seen as removed from him in any abusive way or forcibly or against his desires, it can't be said that he was compelled to be a witness against himself and as such cannot claim the protection conferred by Article 20(3) of the Constitution.

#### CONCLUDING REMARKS

Although it is seen that scientific techniques such as Narco-analysis, Brian-Mapping and polygraph, that are adopted by the investigating agencies are held to be violative of the fundamental rights of an individual to a certain extent, yet room is left for the application of minimum scientific measures as could be seen from the interpretation of various judgments laid down by the respective courts of the land. To put it more precisely, application of scientific measures as well as techniques are allowed to a limited permissible extent without affecting the fundamental right of an individual to remain silent during the course of investigation. The protection conferred by article 20(3) is only with respect to compelled testimony and assumes its application in so far when the accused is compelled to testify before or during a criminal investigation so as to incriminate the maker of the statement. However care is to be taken that the same loses its hold in case of voluntary statement made by the accused person.

Although precedence is given to the fundamental rights of an individual, yet time has come for the society to consider such

techniques which give precedence to the application of scientific measures of investigation so as to achieve an illustrious result.

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