

ARTICLE 20 PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

- Article 20 provides the following safeguards to the persons accused of crimes
- **No Ex Post facto law** that means no retrospective effect of criminal law. Art 20(1)
- **No Double jeopardy** that means no person shall be prosecuted and punished for the offence more than once. Art 20(2)
- **Prohibition against self incrimination** it means that no person accused of any offence shall be compelled to be a witness against himself. Art 20(3)

EX POST FACTO LAW

- Article 20 clause 1 declares that criminal law should not have retrospective effect. An accused cannot be convicted for Greater punishment than that was prescribed in the statute at the time of commission of crime. but the accused can take benefit of it that means if punishment of any crime is reduced during trial period then the benefit of it must be given to the accused but if the punishment is increased after the date of commission of crime then accused will not be subjected to such enhanced punishment.

Ratan Lal versus State of Punjab 1965

- A boy of 16 years was convicted for committing an offence of house trespass and outraging the modesty of a girl. The magistrate sentenced him for 6 months rigorous imprisonment and also fine. After the judgment of magistrate the “probation of offenders Act, 1958” came into force which provides that a person below 21 years of age should not ordinarily be sentenced to punishment. Supreme Court ruled that **Ex Post facto law could be applied to reduce the punishment.** This rule of beneficial interpretation was applied in this case.

DOUBLE JEOPARDY

- The person must be accused of an offence.
- The proceedings must have taken place before a court or Judicial Tribunal
- The person must have been prosecuted and punished in the previous proceedings
- The offence must be the same for which he was prosecuted and punished in the previous proceedings.
- Proceedings before departmental and administrative authorities cannot be a proceeding of Judicial nature.

PROHIBITION AGAINST SELF INCRIMINATION

- No person accused of any offence shall be compelled to be a witness against himself.
- The term 'self-incrimination' means the act of accusing oneself of a crime for which a person can then be prosecuted. Self-incrimination can occur either directly or indirectly: directly, by means of interrogation where information of a self-incriminatory nature is disclosed; indirectly, when information of a self-incriminatory nature is disclosed voluntarily without pressure from another person.
- Based on a legal maxim: *Nemo tenture prodere accusare seipsum*- *no man bound to accuse himself*.

- Explaining the scope of article 20 clause 3 the supreme court observed that this right embodies the following Essentials
- Person must be **accused of an offence**
- It is a protection against "**compulsion to be a witness**"
- It is a protection against giving **evidence against himself**

- **State of Bombay vs. Kathi Kalu 1961**, this Art will not be attracted while seizure made under search warrant ,compulsory taking of photograph , finger print or specimen writing of accused .what is forbidden under this clause is to compel a person to say something from his personal knowledge relating to charge against him.

Nandini Sathpathy vs P.L.Dani (1978)

- the appellant, a former Chief Minister of Orissa was directed to appear at Vigilance Police Station, for being examined in connection to a case registered against her under the Prevention of Corruption Act, 1947 and under S. 161/165 and 120-B and 109 of The Indian Penal Code, 1860. Based on this an investigation was started against her and she was interrogated with long list of questions given to her in writing. She denied to answer and claimed protection under Article 20(3). The Supreme Court ruled that the objective of Article 20(3) is to protect the accused from unnecessary police harassment and hence it extends to the stage of police investigation apart from the trial procedure.

Selvi v. State of Karnataka(2010)

- In this case the Hon'ble Chief Justice, Justice K.G Balakrishnan spoke of behalf of the Apex Court, and drew the following conclusions:
- The right against self-incrimination and personal liberty are non-derogable rights; their enforcement therefore is not suspended even during emergency.
- The right of police to investigate an offence and examine any person do not and cannot override constitutional protection in Article 20(3)
- The protection is available not only at the stage of trial but also at the stage of investigation;

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- That the right protects persons who have been formally accused, suspects and even witnesses who apprehend to make any statements which could expose them to criminal charges or further investigation
- Article 20(3) proceedings cannot be that cannot invoked by witnesses be characterized as during criminal proceedings
- Compulsory narco-analysis test amounts to 'testimonial compulsion' and attracts protection under Article 20(3);

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- Conducting DNA profiling is not a testimonial act, and hence protection cannot be granted under Article 20(3);
- That acts such as compulsory obtaining signatures and handwriting samples are testimonial in nature, they are not incriminating by themselves if they are used for the purpose of identification or corroboration
- That subjecting a person to polygraph test or narco-analysis test without his consent amounts to forcible interference with a person's mental processes and hence violates the right to privacy for which protection can be sought under Article 20(3);
- Those courts cannot permit involuntary administration of narco-tests, unless it is necessary under public interest.