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**SECTION 132 AND THE RIGHT AGAINST SELF INCRIMINATION: A
CRITICAL ANALYSIS**

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ABSTRACT

The implementation of an endless number of significant concepts and legislative provisions at every level is indispensable on the road to achieve a sustainable justice system. One of the most essential principles among these doctrines is the protection against self-incrimination. However as compared to other common law countries the Indian scope to view this principle through Article 20(3) of Indian Constitution is very restricted as it only encompasses the accused and excludes the aspect of witnesses. Subsequently section 132 of Indian Evidence Act which may not seem in direct consonance of fundamental rights as it takes away the right to silence by compelling the witness to answer the questions regardless of whether such questions have the tendency to incriminate him or expose him to any penalty or forfeiture, however, indirectly protects the witness by cancelling out the effects generated through self-incrimination but it is not free from the ambiguity regarding certain aspects related to it. The researchers in the present study attempt to analyse Section 132 through the lens of Article 20(3) of Indian Constitution and various related concepts, in order to comprehend the balanced approach used in respecting the rights of witnesses and the mechanisms used to attain the ends of justice.

Keywords: Self-incrimination, Testimonial Compulsion, Article 20(3) of Indian Constitution, Witness, Evidence Act.

1. INTRODUCTION

The principle of self-incrimination is one of the more perplexing rules of the criminal justice system.¹ It provides that no person is bound to testify against itself.² By granting the privilege

¹ Mike Redmayne, *Rethinking the Privilege Against Self-Incrimination*, 27 OXFORD J. OF LEGAL STUD. 209 (2007).

² Claude R. Sowle, *The Privilege against Self-Incrimination: Principles and Trends*, 51 THE J. OF CRIMINAL L., CRIMINOLOGY & POLICE SCIE. 131 (1960).

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against self-incrimination, the right to privacy is kept intact while enforcing criminal justice. However, it primarily deals with persons formally accused of an offence.

On the other hand, Sec 132 of the Evidence Act provides for testimonial compulsion of the witness.³ Being a witness means furnishing evidence –oral documentary or testimonial. It means to make an oral or written statement in or out of the court by a person who is accused of an offence.⁴ Sec 132 mandates a witness to answer the questions being asked to him irrespective of such questions bearing the tendency of exposing him to incrimination or other kind of penalty or forfeiture.⁵ Compulsion herein, if put into other words, it can be said that the witness is left with no option but to answer such incriminating questions.⁶ The aforementioned statutory provision takes away the right to silence inherited in principle of self-incrimination. In section 132, “witness” refers to both a person who is an accused in case at hand and a person who is a witness “simpliciter”.⁷ Thus, when contemplating Sec 132 from the perspective of the principle of self-incrimination, a question arises whether the former violates the latter, which is also a fundamental right u/a 20 of the Indian Constitution?⁸ However, the proviso of Sec 132 grants witnesses subjected to such compulsion the immunity from any criminal action taken against him on the basis of such answers.⁹ Also, there has been inconsistencies in terms of interpreting the application of Sec 132 by the judiciary. An attempt has been made in this paper to analyse these aspects.

The present study is divided into six parts. The first part deals with the introduction, second part of the study describes the principle of self-incrimination, third part deals with the scope of Sec 132, fourth part examines the provision from the perspective of right against self-incrimination, fifth part analyses the legal position in other common law countries and sixth part concludes the paper and proposes viable solutions.

1.1 Scope

The scope of the present study is limited to the analysis of Sec 132 of the Evidence Act through the prism of principle of self-incrimination granted under Art. 20(3) of the Indian Constitution. The research focuses on the legal position on the subject matter primarily in

³ Indian Evidence Act, No. 1 of 1872 § 132, India Code (1993).

⁴ MAHENDRA PAL SINGH, CONSTITUTION OF INDIA, 195-201 (EBC Publishing (P) Ltd., 13th ed., 2017)

⁵ *Supra* note 3.

⁶ R Dineshkumar @ Deena v State rep by The Inspector of Police, (2015) 2 MLJ (CrI) 129 (India).

⁷ V NAGESWARA RAO, THE INDIAN EVIDENCE ACT, (LexisNexis Publication, 3rd ed., 2019).

⁸ INDIA CONST, art. 20(3).

⁹ *Supra* note 3.

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India though position of law in other common law countries, such as US and UK are referred to be able to employ a comparative approach in order to gain a better understanding of the subject.

1.2 Research Objectives

- To study the principle of privilege against self-incrimination.
- To analyse the scope of Sec 132 of Evidence Act.
- To examine Sec 132 through the lens of privilege against self-incrimination.
- To study the judicial interpretation on the concerned subject.
- To study the position of law pertaining to the subject-matter in other common law countries.

1.3 Research Questions

- What is the fundamentality of privilege against self-incrimination?
- Does the principle of self-incrimination extend its application to Sec 132 of Evidence Act?
- What is the judiciary's standpoint on the subject?
- What is the position of law regarding the same in other common law countries?

1.4 Research Methodology

The present study is based on the doctrinal, comparative and analytical methods of research. The sources of data are both primary and secondary. Primary sources include Indian Constitution, Indian Evidence Act, 1872 and the judgements on the concerned topic. Accessed mainly through virtual libraries, the secondary sources of data such as books, case studies, statutes, journals, articles, websites, research papers, reports, etc. have been used to construct the firm standing of the research. So, the researcher can use the previously researched data and can become deliberately aware of it while compromising with the contemporary issues associated with the subject matter.

1.5 Literature Review

The book "Ratanlal & Dhirajlal: Law of Evidence"¹⁰ is a remarkable piece of writing that embodies the subject of law of evidence, however the researchers attempted to use the concerned material from the book in order to understand the interpretation, specifically

¹⁰RATANLAL & DHIRAJLAL, LAW OF EVIDENCE (LexisNexis Publication, 23rd ed., 2014).

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regarding section 132 of the Indian Evidence Act. It aids the researchers in grasping the subject matter at a fundamental level in a productive manner because it has viewed the section from various perspectives and easily interpreted it through various case laws, resulting in an overall understanding of the concerned aspect of the topic, but it lacks the progressive viewpoint of what ought to be done which is necessary to appreciate the subject matter's underlying interest.

Another book, V Nageswara Rao's *The Indian Evidence Act*,¹¹ examines the subject's developmental elements and conducts a thorough investigation into the subject matter, which was incredibly helpful to the researchers in learning the issue and getting insight into court interpretations. Even the author's foreign perspective aided the academics in gaining a new perspective on the issue. However, it is unable to determine if such developmental characteristics are applicable in India.

The book *Constitutional Law* by Mamta Rao¹² focuses on gaining a constructive understanding of the subject matter in regards to self-incrimination from a global historical, international, and implementation standpoint, but it also briefly discusses theoretical perspectives as well as application in civil and criminal proceedings.

"A Comparative Discussion of the Privilege against Self-Incrimination,"¹³ a research paper, examines the international viewpoint on the issue of self-incrimination. It seeks to incorporate the subject's practical features. It is vital to comprehend the basic concepts of the doctrine of self-incrimination protection. It did, however, only encapsulate the information in a restricted manner.

Another magnificent piece of art is Dr. J N Pandey's *Constitution Law of India*,¹⁴ which deals with the explanation of self-discrimination protection and its link to law, criminology, doctrine, and the criminal justice system. It helped the researchers analyse the theoretical portions of self-awareness, as well as evaluate the concept of criminal activity, its impact, and learn about how the environment, external, and psychological factors influence a criminal.

The book titled "Textbook on the Law of Evidence" by CJ M Monir,¹⁵ tries to involve practical aspects of section 132 of Indian Evidence Act and gave an significant insight into

¹¹*Supra* note 7.

¹²MAMTA RAO, *CONSTITUTIONAL LAW*, 254-260 (EBC Publishing (P) Ltd., 2nded., 2021).

¹³ Jeffrey K. Walker, *A Comparative Discussion of the Privilege against Self-Incrimination*, 14 N.Y.L. SCH. J. INT'L & COMP. L. 1 (1993).

¹⁴DR. J N PANDEY, *CONSTITUTION LAW OF INDIA*, 247- 250 (Central Law Agency, 53rd ed., 2016)

¹⁵M MONIR, *TEXTBOOK ON THE LAW OF EVIDENCE*, (LexisNexis Publication, 12th ed., 2021).

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the procedural aspects followed in Indian courts, however it was very concise regarding the subject matter.

The article titled "Right against Self-Incrimination: A Detailed Study & Analysis of Laws Prevailing in India",¹⁶ is the significant literature encompassing the international perspective related to implementation of the principle of self-incrimination.

2. PRINCIPLE OF SELF INCRIMINATION

The fundamental criminal law doctrine that a person is presumed innocent until proven guilty by the prosecution is centred on another indispensable component of the Criminal Justice System: the right to not speak against himself, as well renowned as the right against self-incrimination, which is a fundamental form of right for citizens under Article 20(3) of our Indian constitution,¹⁷ 1949.¹⁸ Our constitutional framers gave the right a 'derogable status,' which implies it will be available even in times of emergency, as a result of an Indian constitutional amendment passed in 1978.¹⁹

The right against self-incrimination has its origins in the Latin maxim '*Nemo tenetur seipsum accusare*', which has been embodied in general principles of English and American jurisprudence, both implying towards the right of a person to be shielded from the compulsion of incriminating himself in the course of a criminal prosecution.²⁰ In *King Emperor v. Kazi* it was expressed that "It is against all canons to compel an accused to submit evidence that incriminates him".²¹ As it is a violation of the fundamental principle of criminal law that a person be forced to produce evidence and then be prosecuted based on that evidence, or such evidence or any statement made under oath while on trial is used to show his own guilt.²² Subsequently, indicating the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt as he is presumed to be innocent.²³ This prerogative was originally acknowledged in the mid-eighteenth century. The justification for the principle was further examined in *Saunders v. United Kingdom*, where it was said that it is required for the protection of the accused and to avoid miscarriages of justice due to undue compulsion by

¹⁶ Akshat Mittal, *Right against Self-Incrimination: A Detailed Study & Analysis of Laws Prevailing in India*, 4 IJLMH1868, 1870 (2021).

¹⁷ *Supra* note 8.

¹⁸ *Supra* note 4.

¹⁹ INDIA CONST., art. 20(3), amended by The Constitution (Forty-fourth Amendment) Act, 1978.

²⁰ *Supra* note 14.

²¹ *King emperor v. Kazi*, 1925 SCC Online Bom 23 (India).

²² *Id.*

²³ *Supra* note 12.

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the concerned authorities.²⁴ Certain criminal justice tenets complement this protection against self-incrimination, one of which is the right to remain silent and not to give any information against his will that might lead to self-incrimination.

Correspondingly, instituting this principle at the Indian constitutional level it has been observed with three essential elements in the case of *M. P. Sharma v. Satish Chandra*²⁵ by the SC that firstly “the right pertaining to person who is accused of an offence”; secondly, protection against “compulsion to be a witness”; thirdly, “protection against such compulsion resulting in his giving evidence against himself.” Article 20(3) was recognized as a crucial protection in criminal proceedings in *Santosh v. State of Maharashtra*.²⁶ It mostly serves to protect against ‘extorted confessions’²⁷ and ‘involuntary confessions’.²⁸ In India, this right is constitutionally confined to the accused, but the indirect application of this notion has been employed to partially safeguard the right against self-incrimination of witnesses in other vital legal rights by cancelling out the effects of self-incrimination.

2.1 Application of Art. 20(3) other than criminal proceedings

The text of Article 20(3) indicates that the guard against self-incrimination can be only used in criminal proceedings, but throughout time, judicial interpretation has attempted to broaden the reach of the following concept of self-incrimination outside of criminal law.

In the case of *Sharda v. Dharmpal*, where the court endeavoured to ascertain the question whether a person may be forced to submit information under section 151 of the Code of Civil Procedure 1908 or not? In response to which the court stated that “the basic function of a court is to ensure that truth is arrived at. It is self-evident that a party to a civil lawsuit is not entitled to constitutional protections under Article 20 of the Indian Constitution.”²⁹ Thus, while the CPC and the Evidence Act may not include explicit rules, the civil court has an inherent competence under Section 151 of the CPC to issue any orders necessary to provide complete justice to the parties to the matter. As a result, the only way to safeguard the interest is to apply article 151, since there is no such protection for witnesses in civil cases. In the

²⁴ *Saunders v. United Kingdom*, 23 EHRR 313 (1997).

²⁵ *M. P. Sharma v. Satish Chandra*, AIR 1954 SC 300 (India).

²⁶ *Santosh v. State of Maharashtra*, (2017) 9 SCC 714 (India).

²⁷ W BURR, GARD JONES & A SPENCER, LAW OF EVIDENCE: CIVIL AND CRIMINAL, 1603-1607 (Bancroft-Whitney Company., 5th ed.).

²⁸ *Selvi v. State of Karnataka*, (2010) 7 SCC 263 (India).

²⁹ *Sharda v. Dharmpal*, (2003) 4 SCC 493 (India).

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event of an administrative procedure, the fundamentals of article 20(3)³⁰ are not met since any investigating authority or persons were not engaged in the process, and the proceeding is entirely based on facts and documents.³¹

3. SCOPE OF SEC 132 OF IEA

Sec 132 of the Act provides:

“A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind.”³²

The words "shall not be excused" herein mean that the Court may issue a warning to the witness that refusing to answer the questions could attract a charge of contempt of court or other punitive action. Further such refusal may even lead to the court drawing an adverse inference that the reason behind witness unwillingness to answer is the same would be detrimental to his favour or interests as per the illustration (h) of Sec 114 of the Evidence Act.³³ Thus, it suggests that there lies an implied compulsion to answer. The compulsion of witness to answer was interpreted in R Dineshkumar case, whereupon, the Madras HC held that the witness is compelled to answer and has no choice but to do so; thereby he is unable to refuse to respond. The compulsion to answer can be classified under two branches: statutory compulsion and judicial compulsion. The compulsion imposed by Sec 132 falls under the sphere of compulsion by statute.³⁴

The application of this section extends on only questions which are relevant to the case at hand. The general perception is that irrelevant questions are not to be asked at all and if, are being asked, witnesses shall not be compelled to answer them. Further, refusal on the part of the witness to answer would be subjected to punishment under sec 179 of IPC.³⁵

However, statements made during criminal investigations pursuant to section 161 of the CrPC does not fall under the ambit of Sec 132 of Evidence Act. Although investigation

³⁰Supra note 8.

³¹Supra note 16.

³²Supra note 3.

³³Supra note 3 § 114.

³⁴Supra note 6.

³⁵Supra note 15.

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herein Sec 161 can be referred to as proceedings, yet it certainly does not fall within the meaning of suit or a civil or criminal proceeding. Thus, a person being interrogated under sec 161 of CrPC, not being someone who has entered the witness box and been sworn in, does not qualify as a witness under Sec 132.³⁶

3.1 Immunity from self-incrimination

Sec 132 in its proviso states that except in the case of a prosecution for furnishing false evidence by such response, no such coerced answer shall subject him to arrest or prosecution or be used against him in any criminal process.³⁷ The privilege is conceived on an approach of encouraging people to step forward with evidence in Courts of Justice by ensuring that they are protected as much as possible from harm or unnecessary inconvenience as a result of doing so. Several current legislations, on the other hand, have established a sensible balance by requiring the disclosure while also indemnifying the witness in myriad ways against the consequences.³⁸

However, if such incriminating statement given by a witness on his own volition, he is not entitled to protection under this section as specific refusal to answer and specific compulsion by the court are the prerequisites to claim protection under the proviso of Sec 132 as held in *Emperor v. Cunna*.³⁹ The Court in another instance stated that objection on the part of witness to answer the questions is required, the proviso does not grant protection to relevant statements made under oath or by solemn affirmation during a judicial proceeding.⁴⁰

With regard to the scope of this section, despite the fact that Section 161(2) of the Criminal Procedure Code draws a wide protective net during the investigation stage to shield accused, suspects, and witnesses, the protection is restricted only to the witnesses as stipulated by Sec 132. The legislature, through this provision intended to keep the fact-finding function of criminal trials intact.⁴¹

4. ANALYSIS OF SEC 132 W.R.T. PRINCIPLE OF SELF-INCRIMINATION

³⁶*Supra* note 10.

³⁷*Supra* note 3.

³⁸PHIPSON ON EVIDENCE, 314 (Sweet & Maxwell, 13th ed., 1982).

³⁹ *Emperor v. Cunna*, AIR 1920 Bom 270(FB) (India).

⁴⁰ *Bai Shanta v. Umrao Amir*, AIR 1926 Bom 141 (India).

⁴¹ *Selvi v State of Karnataka*, AIR 2010 SC 1974 (India).

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The right against self-incrimination granted to an accused under Art 20(3) of the Constitution of India also entails the right to refuse to answer questions. Even if such an incriminating answer is not being used against such a person in any criminal proceeding, the privilege granted under the said constitutional provision is manifestly violated. On the other hand, the right to refuse to answer is not vested with the witness as stipulated under Sec 132 of Indian Evidence Act. However, the prerequisites of bringing Art 20(3) into play includes the existence of formal accusation of an offence at the time of making disposition or tendering evidence,⁴² which implies that this privilege against testimonial compulsion does not extend to the witnesses.⁴³

Further, interpreting sec 132 through the of Art 20(3), the SC held the latter to have a narrower extent of application in India as the legal system here is such that the Constitution does not touch the rights of witnesses and they are still governed by Section 132 of the Evidence Act.⁴⁴

Moreover, it is noteworthy that the principle of self-incrimination only has its application extended to criminal proceeding while Sec 132 also entails testimony in civil cases as the provision also entails penalty of forfeiture of any kind apart from attracting incrimination due to relevant statements made by such witnesses.

4.1 Right to Silence w.r.t. witness

Another question that may arise here is whether the right to silence granted under Art 20(3) of the Constitution extends to the witness or not?

Article 20(3) also encompasses the right to silence, which is affirmed by the judiciary on various occasions. J. Krishna Iyer in the famous Nandini Satpathy case stated, “He is entitled to keep his mouth shut if the answer sought has a reasonable prospect of exposing him to guilt in some other accusation actual or imminent, even though the investigation underway is not with reference to that.”⁴⁵

⁴² G. Sadasivan Nair, *Problem of Self-incrimination in Summons, Search and Seizure*, COCHIN UNIV. L. REV. 14, 19 (1980).

⁴³ 18 HALSBURY'S LAWS OF INDIA: EVIDENCE (LexisNexis Publication, 2nd ed., 2016).

⁴⁴ Subedar v. State of Allahabad, AIR 1957 All 396 (India).

⁴⁵ Nandini Satpathy v. PL Dani, 1978 AIR 1025 (India).

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Taking into account the SC deliberation in the Subedar case, it would not be wrong to conclude that Sec 132 deprives a witness of the privilege of right to silence while simultaneously conferring a qualified privilege.

4.2 Judiciary's standpoint on Sec 132

The rationale behind Sec 132 was explained in *LaxmipatChoraria v State of Maharashtra*, whereupon the apex court held that taking away the privilege of refusing to answer was necessary in India to avoid the temptation of telling a lie. However, the protection granted under the proviso of Sec 132 was indispensable. Article 20(3) further strengthens this protection by saying that no person accused of an offence may be compelled to testify against himself.⁴⁶ One can infer from the aforementioned case that sec 132 is along the lines of constitutional provision of right against self-incrimination under Art 20(3).

In *R Dineshkumar* case, the Madras HC, drawing reference from the apex court judgement of *KathiKaluOghad* case,⁴⁷ did not allow the prosecution witness to claim privilege of self-incrimination under Art. 20(3) of the Constitution on the grounds of him not being the accused. Further, the findings of the court suggests that since compulsion under sec 132 is compulsion by statute, the question of witness answering voluntarily does not persist, the witness would in any case be entitled to the privilege granted by the proviso of this section.⁴⁸ Further the Allahabad HC in *Emperor v Chatur Singh*, held that objection is immaterial while ascertaining whether the incriminating questions answered by the witness is within the protection afforded by Sec 132 even though relevant statement made by a witness on his own volatile may stand on a different footing.⁴⁹

If the accused agrees to testify as a prosecution witness and answers questions having the tendency to incriminate him without objecting, he must be regarded to have done so willingly and without compulsion.⁵⁰ However, despite the fact that he voluntarily appeared as a witness does not, on its own, imply that he waived his privileges and is willing to answer incriminating questions.⁵¹

⁴⁶ *Laxmipat Choraria v State of Maharashtra*, AIR 1968 SC 938 (India).

⁴⁷ *Bombay v Kathi Kalu Oghad*, AIR 1961 SC 1808 (India).

⁴⁸ *Supra* note 6.

⁴⁹ *Emperor v Chatur Singh*, AIR 1921 All 362 (India).

⁵⁰ *Kunhappan v State of Kerala*, (1987) 2 Ker LT 222 (India).

⁵¹ *Supra* note 11.

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A mere perusal of the judicial interpretation of the concerned provision suggests that what the prosecution witness herein the case lost not being qualified to claim privilege of self-incrimination, the proviso of sec 132 itself granted him that protection that his statement will not be used against him in any criminal proceeding. It is more in keeping with reality and common sense that the Indian system of compulsion combined with immunity is used since the so-called privilege against self-incrimination is more of an empty construct and hypothetical in nature. The witness claiming that he will be incriminated by answering a particular question is not conclusive, and while trying to convince the court, he is likely to inadvertently reveal the very incriminating fact that the privilege is meant to shield.⁵² Despite having immunity against any criminal action taken against the witness on the basis of such testimony, his answers to incriminating questions can nevertheless subject him to other repercussions like impact on their social life and mental well-being.

5. APPLICATION OF PRINCIPLE OF SELF-INCRIMINATION ON WITNESS IN OTHER COMMON LAW COUNTRIES

Irrespective of any legal system a country follows, the main goal is to protect the innocent man from being punished for a crime he did not commit, especially if the man has somehow convicted himself via his own statements in an involuntary manner.⁵³

If we look at the application of the right against self-incrimination from the perspective of a witness in nations other than India, such as the United Kingdom and the United States, we can see that the rationalizations are quite broad. Because the Fifth Amendment to the United States Constitution, ratified in 1793⁵⁴, ensures the right against self-incrimination, the scope of that protection has been extensively interpreted by the courts. Its scope extends not just to the accused, but also to witnesses and parties in criminal and civil processes, taking into account both oral and recorded evidence. In the case of *United States v. Hubbell*, the Supreme Court of the United States held that the right does not apply just to the accused, but also to anybody who provides evidence.⁵⁵ However, there are occasional exceptions, such as the voluntary renunciation of such protection, as in the case of *Crooker v. California*, when

⁵² S. A. Adesanya, *Voluntary Confession and the Privilege Against Self-Incrimination in Nigeria*, 4 NIGERIAN L.J. 64 (1970).

⁵³ *Supra* note 13.

⁵⁴ STEPHAN A. SALTZBURG, *AMERICAN CRIMINAL PROCEDURE: CASES AND COMMENTARIES* 406 (West Academic Press, 3d ed. 1988).

⁵⁵ *United States v. Hubbell*, 530 U.S. 27, 49 (2000).

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the court found that the defendant willfully waived his Fifth Amendment rights after using the due process method.⁵⁶

Conversely, the UK adopts the paradigm of American jurisprudence on subject matter, where the right against self-discrimination was extended not only to the accused but also to witnesses, albeit exceptions were made in certain circumstances, as opined in *Lam & Chi-Ming v The Queen*.⁵⁷ As a result, such protection of rights is not available to the individual in an absolute form, as it is susceptible to exceptions under a few instances, as decided in *Brown v Stott*, such as for critical and basic questions concerning investigation.⁵⁸ In the case of *Customs and Excise v Harz* regarding exceptions, the UK court also decided that the goal of the legislation or special law might override the right to self-incrimination protection.⁵⁹

We can observe that the right to self-incrimination in both systems has a greater scope than in India, but it is also limited with some exceptions as in order to maintain a balance between the principle of self-incrimination and the process of carrying out criminal justice procedures to serve the purposes of justice.

6. CONCLUSION & SUGGESTIONS

In India, the principle of self-incrimination is primarily applied through Article 20(3) of the Indian constitution and it is a significant principle of the criminal justice system that tries to protect the rights of the accused in criminal cases along with other underlying essentials such as the right to silence. However, it has narrower scope surpassing the aspects of witness and its applicability in civil proceedings.

Testimonial compulsion is incorporated in the statute to keep the wheels of the fact finding of the court turning. Sec 132, ostensibly, may not seem to be in the consonance of fundamental right, however, it does confer a qualified privilege to the witnesses, through its proviso, by safeguarding them from any action taken against him in any criminal proceeding. Also, privilege of self-incrimination, having its scope confined to the person accused of an offense, cannot be said to be directly applying on Sec 132 which only deals with the witnesses. At the same time, the inference of the statutory provision being along the lines of FRs provided under Art 20(3) can be drawn from the intent of the legislature as affirmed by the judiciary as

⁵⁶ *Crooker v. California*, 357U.S. 433 (1958).

⁵⁷ *Lam & Chi-Ming v The Queen*, (1991) 2 AC 212 (UK).

⁵⁸ *Brown v Stott*, (2003) 1 AC 681 (UK)

⁵⁹ *Customs and Excise v Harz*, (1967) 1 AC 760 (UK).

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well. However, there lies an ambiguity in protection provided by Sec 132 itself regarding its applicability in certain circumstances such as objection or voluntariness on the part of the witness while giving such testimony out of compulsion. To bridge these gaps, the researchers have come up with the following suggestion:

1. The scope of article 20(3) is very limited as its protection is viewed through the narrower perspective which fails to encompass the witness as there is the need to maintain the balanced approach between the rights of the witness and the steps or way to achieve criminal or civil justice.

Furthermore, the ambit of Art 20(3) is restricted to criminal cases; nevertheless, it is now necessary to consider its use in civil matters as well. Since, the proposed amendment to article 20(3) does not change the basic structure of the article, its purview should be widened to include aforementioned aspects as done effectively by other common law countries.

2. If the constitutional amendment is not plausible at the moment, the balance can be restored by strengthening other legislatures. Sec 132 of the Evidence Act is not very precise in terms of its extent of applicability with regard to voluntariness and objection to answer incriminating questions and there lies a disparity in the judicial viewpoint. The legislature should clear the air as to the ambit of Sec 132.

These amendments are the need of the hour as a balanced approach to resolving the issue of encroachment on witness rights and interpreting Article 20(3) in a way that does not jeopardise the principles and processes that constitute the basics of the criminal justice system.