**CASE ANALYSIS OF NANDINI SATPATHY V/S DANI (P.L.) AND ANR**



BY

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**BACKGROUND OF THE CASE**

Article 20(3) of the Constitution guarantees the right against self-incrimination to a person accused of an offence. While under section 161(1) of Cr. P. C., every person questioned by the police are required to answer truthfully, sub-clause (2) of the same section provides the right against self-incrimination to the person questioned. In this case, the legality of initiating proceedings under section 179 of IPC which provides for punishment for failing to truthfully answer a question asked by a public officer was questioned.

**BRIEF FACTS OF THE CASE**

Smt. Nandini Satpathy, a former Chief Minister of Orissa and one time minister at the national level was directed to appear at the Vigilance Police Station, Cuttack for being examined in connection with a case registered against her by the Deputy Superintendent of Police, Vigilance, Cuttack, Under Section 5(2) read with Section 5(1)(d) & (e) of the Prevention of Corruption Act and Under Section 161/165 and 120-B and 109 I.P.C. During the course of the investigation, she was interrogated with reference to a long string of questions, given to her in writing. The dimensions of the offences naturally broadened the area of investigation, and to do justice to such investigation, the net of interrogation had to be cast wide. Inevitably, a police officer who is not too precise, too sensitive and too constitutionally conscientious is apt to trample underfoot the guaranteed right of testimonial tacitness. This is precisely the grievance of the appellant, and the defence of the respondent is the absence of the ‘right of silence’. The Deputy Superintendent of Police (Vigilance), Cuttack, filed a complaint against the appellant, the former Chief Minister of Orissa, under section 179 of IPC before the Sub-divisional Judicial Magistrate, Sadar, Cuttack. The Magistrate took cognizance of the offence and issued summons for appearance to the appellant. Aggrieved by this, the appellant moved the High Court challenging the validity of the proceedings on the grounds that the charges against her were because of the appellant’s failure to police interrogation and that the appellant’s refusal to do so was covered under Article 20(3) of the Constitution and section 161(2) of Cr.P.C. The High Court dismissed the petition and the appellant preferred an appeal to the Supreme Court.

Setting the perspective of  and Sec. 161 (2). Back to the constitutional quintessence invigorating the ban on self-incrimination. The area cove-red by  and  is substantially the same. So much so, we are inclined to the view, terminological expansion apart, that  of the Cr.P.C. is a parliamentary gloss on the constitutional clause. The learned Advocate General argued that  unlike , did not operate at the anterior stages before the case came to court and the accused's incriminating utterance, previously recorded, was attempted to be introduced. He relied on some passages in American decisions but, in our understanding, those passages do not so circumscribe and, on the other hand, the land mark Miranda v. Arizona(1) ruling did extend the embargo to police investigation also. Moreover,  which is our provision, warrants no such truncation. Such a narrow meaning may emasculate a necessary protection. There are only two primary queries involved in this clause that seals the lips into permissible silence, (i) Is the person called upon to testify ,accused of any offence', (ii) Is he being compelled to be witness against himself ? A constitutional provision receives its full semantic range and so it follows that a wider connotation must be imparted to the expressions 'accused of any offense' and 'to be witness against himself. The learned Advocate General, influenced by American decisions rightly agreed that in express terms  of the Code might cover not merely accusations already registered in police stations but those which are likely to be the basis for exposing a person to a criminal charge. Indeed, this wider construction, if applicable to  approximates the constitutional clause to the explicit statement of the prohibition in . This latter provision meaningfully uses the expression 'expose himself to a criminal charge. Obviously, these words mean, not only cases where the person is already exposed to a criminal charge but also instances which will imminently expose him to criminal charges. In Art.20(3), the expression 'accused of any offence, must mean formally accused in not in future-not even imminently as decisions now stand. The- expression 'to be witness against himself' means more than the court process. Any. give of evidence, any furnishing of information, if likely to have an incriminating impact. answers the description of being witness against oneself. Not being limited to the forensic stage by express words in  we have to construe the expression to apply to every stage where furnishing of information and collection of materials takes place. That is to say, even the investigation at the police level is embraced by [.](https://indiankanoon.org/doc/366712/) This is precisely what Section 161(2)means. That sub-section relates to oral examination by police officers and grants immunity at that stage. Briefly, the Constitution and the Code are coterminous in the protective area. While the Code may be changed the Constitution is more enduring. Therefore, we have to base our conclusion not merely upon  but on the more fundamental protection, although equal in ambit, contained in [.](https://indiankanoon.org/doc/366712/)

In a way this position brings us nearer to the Miranda mantle of exclusion which extends the right against self- incrimination, to police examination and custodial interrogation and takes in suspects as much as regular accused persons. Under the Indian Evidence Act, the Miranda exclusionary rule that custodial interrogations are inherently coercive finds expression (section 26), although the Indian provision confines it to confession which is a narrower concept than self-crimination. We halve earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America, Since Miranda there has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting lawbreakers. Currently, the trend in the American jurisdiction according to legal journals, is that 'respect for (constitutional) principles is eroded when they leap their proper bounds to interfere with the legitimate interests of 'society in enforcement of its laws........ (78) Couch v. United States, 409 U.S.322, 336 (1972). Our constitutional perspective has, therefore, to be relative and cannot afford to be abso- lutist, especially when fortune technology crime escalation and other social variables affect the application of principles in producing humane justice. Whether we consider the Talmudic law or the Magna Carta, the Fifth Amendment, the provisions of other constitutions or Article 20, the driving force- behind the refusal to permit forced self-crimination is the system of torture by investigators and Courts from medieval times to modern days. Law is a response to life and the English rule of the accused's privilege of silence may easily be traced as a sharp reaction to the court of Star-Chamber when self- incrimination was not regarded wrongful. Indeed, then the central feature of the criminal proceedings, as Holdsworth has noted, was the examination of the accused. The horror and terror that then prevailed did, as a reaction give rise to the reverential principle of immunity from interrogation for the accused. Sir James Stephen has observed :

"For at least a century and a half the (English) Courts have acted upon the supposition that to question a prisoner is illegal This opinion arose from a peculiar and accidental state of things which has long since- passed away and our modem law is in fact derived from somewhat questionable source though it may no doubt be defended (Sir James Stephen (1857)."

Two important considerations must be placed at the forefront before sizing up the importance and impregnability of the anti-self-incrimination guarantee. The first is that we cannot afford to write off the fear of police torture leading to forced self-incrimination as a thing of the past. Recent Indian history does not permit it, contemporary world histor y does not condone it. A recent article entitled 'Minds behind Bars', published in the December, 1977 issue of the Listener, tells an awesome story : "The technology of torture all over the world is growing ever more sophisticated-new devises can destroy a prisoner's will in a matter of hours-but leave no visible marks or signs of brutality. And government-inflicted terror has evolved its own dark sub-culture. All over the world, torturers seem to feel a desire to appear respectable to their victims There is an endlessly inventive list of new methods of inflicting pain and suffering on fellow human beings that quickly cross continents and ideological barriers through some kind of international secret-police net work.

**ISSUES FRAMED**

1. Whether a suspect accused, is entitled to the sanctuary of silence as one ‘accused of any offence? Does the bar against self-incrimination operate not merely with reference to a particular accusation in regard to which the police investigator interrogates, or does it extend also to other pending or potential accusations outside the specific investigation which has led to the questioning?
2. Does the constitutional shield of silence swing into action only in Court or can it barricade the ‘accused’ against incriminating interrogation at the stages of police investigation?
3. What is the ambit of the cryptic expression ‘compelled to be a witness against himself occurring in Article 20(3) of the Constitution? Does being ‘a witness against oneself’ include testimonial tendency to incriminate or probative probability of guilt flowing from the answer?
4. What are the parameters of Section 161(2) of the Cr. Procedure Code? Does tendency to expose a person to a criminal charge embrace answers which have an inculpatory impact in other criminal cases actually or about to be investigated or tried?
5. Does ‘any person’ in Section 161 Cr. Procedure Code include an accused person or only a witness?
6. Does mens rea form a necessary component of Section 179 I.P.C., and, if so, what is its precise nature? Can a mere apprehension that any answer has a guilty potential salvage the accused or bring into play the exclusionary rule?
7. Does the right to remain silent extend to a person likely to be accused of an offence?
8. Where do we demarcate the boundaries of benefit of doubt in the setting of Section 161(2) Cr. P. Code and Section 179 I.P.C.?

**CONTENTIONS**

BY APPELLANT

* The term ‘any person’ in section 161(1) of Cr. P.C excludes an accused person.
* Questions which form links in the chain of the prosecution case are prone to expose the accused to a criminal charge or charges since several other cases are in the offing or have been charge-sheeted against the appellant.
* The right against self-incrimination protects the accused from revealing any information that he might apprehend to be incriminating.

BY RESPONDENT

* Article 20(3), unlike S.161(2), does not operate until the case goes to court.

**SUPREME COURT OBSERVATIONS**

Article 20 (3) of the Constitution lays down that no person shall be compelled to be a witness against her/himself. Section 161 (2) of the Code of Criminal Procedure, 1973 [CrPC], casts a duty on a person to truthfully answer all questions, except those which establish personal guilt to an investigating officer.  
The Supreme Court accepted that there is a rivalry between societal interest in crime detection and the constitutional rights of an accused person. They admitted that the police had a difficult job to do especially when crimes were growing and criminals were outwitting detectives. Despite this, the protection of fundamental rights enshrined in our Constitution is of utmost importance, the Court said. In the interest of protecting these rights,we cannot afford to write off fear of police torture leading to forced self incrimination.  
While any statement given freely and voluntarily by an accused person is admissible and even invaluable to an investigation, use of pressure whether ?subtle or crude, mental or physical, direct or indirect but sufficiently substantial? by the police to get information is not permitted as it violates the constitutional guarantee of fair procedure. The Supreme Court affirmed that the accused has a right to silence during interrogation if the answer exposes her/him into admitting guilt in either the case under investigation or in any other offence. They pointed out that ground realities were such that a police officer is a commanding and authoritative figure and therefore, clearly in a position to exercise influence over the accused.  
**Supreme Court Directives**  
1. An accused person cannot be coerced or influenced into giving a statement pointing to her/his guilt.  
2. The accused person must be informed of her/his right to remain silent and also of the right against self incrimination.  
3. The person being interrogated has the right to have a lawyer by her/his side if she/he so wishes.13  
4. An accused person must be informed of the right to consult a lawyer at the time of questioning, irrespective of the fact whether s/he is under arrest or in detention.  
5. Women should not be summoned to the police station for questioning in breach of Section 160 (1) CrPC.14  
An essential element of a fair trial is that the accused cannot be forced to give evidence against her/himself. Forcing suspects to sign statements admitting their guilt violates the constitutional guarantee against self incrimination and breaches provisions of the Code of Criminal Procedure, 1973 (CrPC). It is also inadmissible as evidence in a court of law. In addition, causing hurt to get a confession is punishable by imprisonment up to seven years.

**JUDGMENT**

The Privy Council and this Court have held in numerous cases that the scope of Section 161 does include actual accused and suspects and the court in the present case was in agreement with the decided cases. ‘Any person supposed to be acquainted with the facts and circumstances of the case’ includes an accused person who fills that role because the police suppose him to have committed the crime and must, therefore, be familiar with the facts. The supposition may later prove a fiction but that does not repel the section. Nor does the marginal note ‘examination of witnesses by police’ clinch the matter. A marginal note clears ambiguity but does not control meaning. Moreover, the suppositious accused figures functionally as a witness. ‘To be a witness’, from a functional angle, is to impart knowledge in respect of a relevant fact, and that is precisely the purpose of questioning the accused Under Section 161, Cr. P.C. The dichotomy between ‘witnesses’ and ‘accused’ used as terms of art, does not hold good here.

If the police can interrogate to the point of self-accusation, the subsequent exclusion of that evidence at the trial hardly helps because the harm has been already done. The police will prove through other evidence what they have procured through forced confession. So it is that the foresight of the framers has preempted self-incrimination at the incipient stages by not expressly restricting it to the trial stage in court. True, compelled testimony previously obtained is excluded. But the preventive blow falls also on pre-court testimonial compulsion. The condition, as the decisions now go, is that the person compelled must be an accused. Both precedent procurement and subsequent exhibition of self-criminating testimony are obviated by intelligent constitutional anticipation.

Not all relevant answers are criminatory; not all criminatory answers are confessions. Tendency to expose to a criminal charge is wider than actual exposure to such charge. The orbit of relevancy is large. Every fact which has a nexus to any part of a case is relevant, but such nexus with the case does not make it noxious to the accused. Relevance may co-exist with innocence and constitutional censure is attracted only when inference of nocence exists. And an incriminatory inference is not enough for a confession. Only if, without more, the answer establishes guilt, does it amount to a confession. The setting of the particular case, the Context and the environment i.e., the totality of circumstances, must inform the perspective of the Court adjudging the incriminatory injury, and where reasonable doubt exists, the benefit must go in favour of the right to silence by a liberal construction of the Article. We, however, underscore the importance of the specific setting of a given case for judging the tendency towards guilt. Equally emphatically, we stress the need for regard to the impact of the plurality of other investigations in the offing or prosecutions pending on the amplitude of the immunity. ‘To be witness against oneself is not confined to particular offence regarding which the questioning is made but extends to other offences about which the accused has reasonable apprehension of implication from his answer. This conclusion also flows from ‘tendency to be exposed to a criminal charge’. ‘A criminal charge’ covers any criminal charge than under investigation or trial or imminently threatens the accused.

The policy of the law is that each individual, accused included, by virtue of his guaranteed dignity, has a right to a private enclave where he may lead a free life without overbearing investigatory invasion or even crypto-coercion. The protean forms gendarme duress assumes, the environmental pressures of police presence, compounded by incommunicado confinement and psychic exhaustion, torturesome interrogation and physical menaces and other ingenious, sophisticated procedures the condition, mental, physical, cultural and social, of the accused, the length of the interrogation and the manner of its conduct and a variety of Eke circumstances, will go into the pathology of coerced para confessional answers. The benefit of doubt, where reasonable doubt exists, must go in favour of the accused.

Section 161 enables the police to examine the accused during investigation. The prohibitive sweep of Article 20(3) goes back to the stage of police interrogation-not, as contended, commencing in court only. The provisions of Article 20(3) and Section 161(1) substantially cover the same area, so far as police investigations are concerned. The ban on self-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. ‘Compelled testimony’ as evidence includes evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like-not legal penalty for violation. “So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Article 20(3). The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk.

A police officer is clearly a person in authority. Insistence on answering is a form of pressure especially in the atmosphere of the police station unless certain safeguards erasing duress are adhered to. Frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Article 20(3). Legal penalty may by itself not amount to duress but the manner of mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering near compulsion. Self-incrimination or tendency to expose oneself to a criminal charge is less than ‘relevant’ and more than ‘confessional’. Irrelevance is impermissible but relevance is licit but when relevant questions are loaded with guilty inference in the event of an answer being supplied, the tendency to incriminate springs into existence. The accused person cannot be forced to answer questions merely because the answers thereto are not implicative when viewed in isolation and confined to that particular case. 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.

Section 179 I.P.C. has a component of mens rea and where there is no wilful refusal but only unwitting omission or innocent warding off, the offence is not made out. When there is reasonable doubt indicated by the accused’s explanation he is entitled to its benefit and cannot be forced to substantiate his ground lest, by this process, he is constrained to surrender the very privilege for which he is fighting. What may apparently be innocent information may really be nocent or noxious viewed in the wider setting.

The right to consult an advocate of his choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Article 22(1) is that it is fundamental to’ the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near custodial interrogation. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a-legal practitioner of his choice. Article 20(3) and Article 22(1) may, in a way, be telescoped by making it prudent for the Police to permit the advocate of the accused, if there be one, to be present at the time he is examined. Over-reaching Article 20(3) and Section 161(2) will be obviated by this requirement. If an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied. The symbiotic need to preserve the immunity without stifling legitimate investigation persuades to indicate that after an examination of the accused, where lawyer of his choice is not available, the police official must take him to a magistrate, doctor or other willing and responsible non-partisan official or non-official and allow a secluded audience where he may unburden himself beyond the view of the police and tell whether he has suffered duress, which should be followed by judicial or some other custody for him where the police cannot teach him. This is not mandated but strongly suggested.

**SUPREME COIRT HELD THAT**

In this case, the extent and applicability of article 20(3) of the Constitution and section 161(2) of Cr. P. C was in question. The Supreme Court while deciding the same held that the right against self-incrimination is available not only to a person who is accused of an offence but also to a person likely to be accused of an offence. The Hon’ble Court further held that the right becomes effective even at the stage of police interrogation.

**CONCLUSION**

Article 20 (3), invokes protection against self-incrimination and gives an accused the right to remain silent over any issue which tends to incriminate him. This protection by the Indian Constitution is also extended to suspects. Article 20 clause 3, has been carefully crafted to protect the accused from further self-incriminating himself only if any statement of his might result in prosecution. For the benefit of the Courts, the Supreme Court has distinguished between the terms “witness” and “furnish evidence”, the former including furnishing statements from one’s own knowledge and the latter referring to simply presenting documents required by the court under which protection under Article 20(3) cannot be sought.

This article also stretches its privileges to a person who is compulsorily being made a witness and also covers searches and seizures wherein, an accused or the person being searched is under no obligation to be a part of the search. If any confession or a mere statement is made based on which some material corroboration is found then that statement cannot be protected under Article 20(3). Under the law, an accused cannot be tortured to make a statement or a confession and no duress can be exercised in order to obtain some information out of him, in such a case the statement would be void and the privileges under Article 20(3) would be applicable. Narco-analysis tests, polygraph analysis etc. which refer to involuntary administration of mental processes, are considered violative of Article 20(3) and can only be done in a few cases as it disrupts the right to privacy.

But with the advancement in medical sciences, the certainty of such scientific tests has increased and the author thinks that they provide an effective tool to furnish evidence which help in speedy disposal of cases. By balancing the harmony between the protective rights and the need for speedy disposal.

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**SUGGESTIONS**

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**BRIEF ABOUTAUTHOR**

Akshat garg ,2nd year law student at Panjab University Swami Sarvanand Giri Regional centre, Hoshiarpur having a keen interest in the field of constitution and criminal law, and I am always ready to explore the different field of law in any way possible.