

Giving voice sample does not violate privacy

August 8, 2019

Source: *The Hindu*

Manifest pedagogy: The article below on the rights under article 20 of the Constitution- though may not be an issue in Mains but it has higher relevance with respect to prelims. Questions surrounding the issue may be asked!

In news:

- In a significant judgment, the Supreme Court recently held that a judicial magistrate is empowered to order a person to give a sample of his voice for the purpose of investigation

Placing it in syllabus:

- Fundamental rights

Static dimensions:

- Fundamental rights under article 20 (more focus on right to self incrimination)
- Right to privacy and Puttaswamy case

Current dimensions:

- What is the case and the judgement?

Content:

Recently a three-judge Bench, led by Chief Justice of India (CJI) Ranjan Gogoi, has said that directing a person to part with his voice sample to police was not a violation of his fundamental right to privacy and self-incrimination. The judgment said “the fundamental right to privacy cannot be

construed as absolute and must bow down to compelling public interest”

Article 20 (3) of the Constitution mandated that “no person accused of any offence shall be compelled to be a witness against himself”. CJI reasoned that a voice sample was given for the reason of comparison with other voices in order to see if they matched and were of the same person. A voice sample by itself is not incriminating evidence

The judgment came in an appeal filed by Ritesh Sinha against a 2010 order of a magistrate court in Uttar Pradesh allowing police to get his voice sample. The police wanted to compare the voice sample with his alleged telephone conversations with his co-accused

The **87th Report of the Law Commission of India** in 1980 describes a voice print as a “visual recording of voice”. Voiceprints resemble fingerprints, in that each person has a distinctive voice with characteristic features dictated by vocal cavities and articulates

CJI opined that voice sample along with other impressions like specimen handwriting, or impressions of his fingers, palm or foot collected by police during investigation, by themselves, do not incriminate the accused person, or even tend to do so

Fundamental rights under article 20:

- Article 20 is one of the pillars of fundamental rights guaranteed by the Constitution of India.
- It mainly deals with protection of certain rights in case of conviction for offences.
- When an individual as well as corporations are accused of crimes, the provisions of Article 20 safeguard their rights.
- The striking feature of the Article 20 is that it can't be suspended during an emergency period
- The Article has set certain limitations on the

legislative powers of the Union and State legislatures

Ex Post Facto Legislation

- The clause (1) of Article 20 protects individuals against ex post facto legislation, which means no individual can be convicted for actions that were committed before the enactment of the law.
- When a legislature declares an act to be an offence or provides a penalty for an offence, it can't make the law retroactive so as to prejudicially affect the individuals who have committed such acts prior to the enactment of that law

Immunity from Double Punishment

- Clause (2) of Article 20, safeguards an individual from facing multiple punishments or successive criminal proceedings for the same crime.
- According to this clause, no person shall be prosecuted and punished for the same offence more than once.
- Although Article 20 disapproves of the doctrine of 'Double Jeopardy', it does not give immunity from proceedings before a court of law or tribunal.
- Hence, a public servant who has been punished for an offence in a court of law may yet be subjected to departmental proceedings for the same offence.
- It is to be noted that Article 20 provides protection against double punishment only when the accused has been 'prosecuted' and 'punished' once.
- Also, the Article does not prevent subsequent trial and conviction for another offence even if the two offences have some common aspects

Immunity from Self-Incrimination

- Article 20(3) of the constitution states that the accused can never be compelled to be a witness against himself. In short, no individual can be forced to accuse

himself.

- The scope of this immunity has been widened by the Supreme Court by interpreting the word 'witness' as inclusive of both oral and documentary evidence.
- Hence, no person can be compelled to furnish any kind of evidence, which is reasonably likely to support a prosecution against him.
- The right against forced self-incrimination, widely known as the **Right to Silence** is enshrined in the Code of Criminal Procedure (CrPC) and the Indian Constitution.
- Section 161 (2) of the Code of Criminal Procedure states that every person is bound to answer truthfully all questions put to him by [a police] officer, other than questions the answers to which would have a tendency to expose that person to a criminal charge, penalty or forfeiture.
- But where the accused makes a confession without any inducement, threat or promise Article 20(3) does not apply.
- This 'Right to Silence' is not called upon in case any object or document is searched and seized from the possession of the accused.
- Hence the clause does not bar the medical examination of the accused or the obtaining of thumb-impression or specimen signature from him.
- This immunity is only limited to criminal proceedings.
- The privilege against self-incrimination thus enables the maintenance of human privacy in the enforcement of criminal justice.
- If the confession from the accused is derived from any physical or moral compulsion (be it under hypnotic state of mind) it should stand to be rejected by the court

Right to privacy and Puttaswamy case:

The case was brought by 91-year old retired High Court Judge

Puttaswamy against the Union of India (the Government of India) before a nine-judge bench of the Supreme Court to determine whether the right to privacy was guaranteed as an independent fundamental right following conflicting decisions from other Supreme Court benches

The nine-judge bench of the Supreme Court unanimously recognized in 2017 that the Constitution guaranteed the right to privacy as an intrinsic part of the right to life and personal liberty under Article 21

The right to privacy was reinforced by the concurring opinions of the judges in this case which recognized that this right includes autonomy over personal decisions (e.g. consumption of beef), bodily integrity (e.g. reproductive rights) as well as the protection of personal information (e.g. privacy of health records)

It explicitly overrules previous judgements of the Supreme Court in *Kharak Singh vs State of UP* and *M.P Sharma vs Union of India*, which had held that there is no fundamental right to privacy under the Indian Constitution

The judgment was interpreted as paving the way for the eventual decriminalisation of homosexuality in India in *Navtej Singh Johar v. Union of India* (2018) and abolishing the provisions pertaining to crime of Adultery under the Indian Legal System in the case of *Joseph Shine v. Union of India* (27th September, 2018)