

## THE DIFFERENCE BETWEEN CONFESSION AND SELF-INCRIMINATION

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### ABSTRACT

*In India, there are many rights and privileges given to the citizens for making their life easier and more efficient. There are many laws and statutes which protect these rights of an individual. Even though a person who is deemed as an accused has several rights to protect himself. Nobody has to incriminate themselves. Therefore, even though an accused person may voluntarily speak out about the charge against himself, a justice must warn him before receiving such a statement that he is under no obligation to speak and that anything he does say could be used as evidence against him. As a result, the rule that states that a confession by the accused cannot be utilised as evidence unless it can be demonstrated that the confession was voluntary and free also comes into play. Thus, the right against self-incrimination permits the preservation of individual privacy in the administration of criminal justice.*

**Keywords:** Self-Incrimination, Confession, Criminal Law, Indian Laws, Article 20(3), Etc.

### INTRODUCTION

It is a general principle of law that until the guilt is proved against a person he is not deemed as a criminal.<sup>1</sup> It is one of the main principles of natural justice that each person must have the right to defend himself and put forth his side before the court of law. On the other hand, a confession is a declaration made by an accused individual acknowledging the commission of an offence. It is possible to utilise confessions as evidence in court, but they must be voluntary and free from coercion.<sup>2</sup> An overview of the legal distinctions between self-incrimination and confession, including their definitions, how they are viewed in criminal law, and the numerous legal standards applied to determine whether they can be admitted as evidence, will be given in this article. We will also go over the numerous difficulties the Indian judicial system faces in balancing the rights of the accused with the necessity to provide justice for crime victims.

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<sup>1</sup>Protection against Self Incrimination as a Fundamental Right in India: A Critical Appraisal | The Law Communicants' <<https://thelawcommunicants.com/critical-appraisal-on-protection-against-self-incrimination-as-a-fundamental-right-in-india/>> accessed 26 June 2023.

<sup>2</sup>Ibid.

## WHAT IS RIGHT AGAINST SELF-INCRIMINATION?

A fundamental rule of criminal law known as the right against self-incrimination shields people from being forced to divulge information that could be used against them. Art. 20(3) stipulates that "No person accused of an offence shall be compelled to be a witness against himself." This privilege is protected by this clause. The right's application is fairly broad and encompasses all aspects of criminal procedures, including inquiries, trials, and appeals. This means that at any point during the criminal justice process, an accused individual cannot be made to testify against themselves. For instance, if it is deemed required for the investigation or trial, the accused individual may be forced to produce a sample of their handwriting, blood, or other bodily fluids. The accused individual also has the option to voluntarily forgo this right, so if they so want, they may present evidence that incriminates them.<sup>3</sup>The right's application is fairly broad and encompasses all aspects of criminal procedures, including inquiries, trials, and appeals. This means that at any point during the criminal justice process, an accused individual cannot be made to testify against themselves.<sup>4</sup>

## SUPREME COURT'S VIEW

The Supreme Court has made it plain that an official allegation must have been made against the individual at the time of questioning in order for them to be eligible for this exemption from being forced to give self-incriminating testimony. The argument that his statement might eventually result in an allegation prevents him from claiming immunity during a broad inquiry or investigation.<sup>5</sup>Only natural beings are covered by the clause's protection; it does not apply to businesses or labour unions.

If an investigation would implicate the group but not the individual member, they cannot claim the group's advantages. He is the only one who can gain from it; others are not eligible.<sup>6</sup> The language is broad in certain aspects because a person might testify against himself.<sup>7</sup>

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<sup>3</sup>John H Langbein, 'THE HISTORICAL ORIGINS OF THE PRIVILEGE AGAINST SELF-INCRIMINATION AT COMMON LAW' 92 Michigan Law Review.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>'Right Against Self-Incrimination | Encyclopedia.Com'

<<https://www.encyclopedia.com/politics/encyclopedias-almanacs-transcripts-and-maps/right-against-self-incrimination>> accessed 26 June 2023.

<sup>7</sup>Ibid.

## WHAT IS CONFESSION?

A confession means a statement given by a person who is deemed to be an accused admitting to committing a crime, as defined under the Indian Evidence Act.<sup>8</sup> The use of confessions as evidence against the accused in court can have a substantial impact on Indian criminal law. There are various forms of confessions in India, including coercive and voluntary confessions.<sup>9</sup> The accused gives a voluntary confession of their own accord, free from any pressure or compulsion from law enforcement. Contrarily, coerced confessions are those that are produced under stress or pressure, such as through bodily or psychological harm, threats, or assurances of leniency.

Coerced confessions are not acceptable as evidence in court under Indian law; however, voluntary confessions are. The circumstances of the confession, the accused person's mental condition, and whether or not they were aware of their right against self-incrimination are all important considerations in determining whether a confession is admissible.<sup>10</sup>

At any point in the criminal justice process, including the investigation, trial, or appeal, confessions can be made. However, a confession must be voluntary and free from any compulsion or inducement from law enforcement officials for it to be accepted as evidence. This means that the accused individual must freely confess while fully conscious of their right to refrain from self-incrimination.

## DISTINCTION BETWEEN CONFESSION AND SELF INCRIMINATION

An accused individual makes a statement in which they confess to committing an offence. Confessions may be received verbally or in writing and at any point throughout the investigation or trial. Self-incrimination, on the other hand, is prohibited as per Art. 20(3)<sup>11</sup> of the Indian Constitution and is the act of supplying evidence that could lead to one's incrimination. This means that a person cannot be compelled to produce information that could be used against them. In Indian culture, it can occasionally be difficult to tell the difference between self-incrimination and confession.

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<sup>8</sup>'Iea\_1872.Pdf' <[https://www.indiacode.nic.in/bitstream/123456789/15351/1/iea\\_1872.pdf](https://www.indiacode.nic.in/bitstream/123456789/15351/1/iea_1872.pdf)> accessed 20 June 2023.

<sup>9</sup>'WHAT ARE THE RIGHTS OF VICTIMS OF SELF-INCRIMINATION? - Legal Vidhiya' <<https://legalvidhiya.com/what-are-the-rights-of-victims-of-self-incrimination/>> accessed 26 June 2023.

<sup>10</sup>Ibid.

<sup>11</sup>'Article 20(3) in The Constitution of India 1949' (n 3).

Furthermore, there are various connections between the two ideas. For instance, a confession made by the accused individual may be seen as giving up their right to remain silent. It may be construed as a statement made against their interests if an accused individual admits to committing an offence.

## INDIAN LAW

In India, the right to self-incrimination has a value of basic freedom according to Art. 20(3)<sup>12</sup> of the Indian Constitution. This privilege, however, is not unrestricted and may be subject to some restrictions. “A person can be required to provide fingerprints, voice samples, or other body fluids to aid in an inquiry.”<sup>13</sup> A witness may also receive immunity from prosecution in certain circumstances, which means that their testimony cannot be used against them in any criminal proceedings. The rights and privileges given in the constitution have different weightage compared to any other laws or statutes. Because the Constitution of India is a living document and can be rightly said a protector or saviour of people’s rights.

## FACTORS OF ART. 20(3)

The factors of the privileges provided by Article 20(3)<sup>14</sup> of the Indian Constitution. The following are this provision's essential components:

- The accused is granted the privilege which prevents the accused from being coerced into testifying against oneself.
- Relates only to criminal cases: The privilege against self-incrimination does not apply in civil or other actions; it only applies in criminal proceedings.
- The accused cannot be coerced into giving any information that could be used against them, including comments made under duress, threats, or coercion.
- Protection from torture or other cruel treatment: The accused cannot be forced to confess to a crime using coercion, torture, or any other cruel treatment.
- The prohibition against self-incrimination extends to the trial as a whole, not merely at the moment of arrest or interrogation.

An accused person may be forced to cooperate with an inquiry by providing thumbprints, writing samples, or body parts for identification. In the instance of **Kathi Kalu**<sup>15</sup>, it was

<sup>12</sup>Article 20(3) in The Constitution of India 1949’ (n 3).

<sup>13</sup>‘Privilege Against Self - Incrimination’ <<https://www.legalserviceindia.com/article/1466-Privilege-Against-Self---Incrimination.html>> accessed 26 June 2023.

<sup>14</sup>Article 20(3) in The Constitution Of India 1949’ (n 11).

clearly stated that no person can be forced to give a statement or confession that can be made hardship to himself.

## FUNDAMENTAL PRINCIPLE OF CRIMINAL LAW

The prohibition against self-incrimination is a cornerstone of criminal law that shields people from being forced to testify against themselves in court. It is seen as a fundamental human right in numerous nations and is frequently shielded by legal or constitutional measures. To guarantee that people are treated fairly and justly in the criminal justice system, the right to self-incrimination is essential. Nevertheless, problems with self-incrimination might occur, including compelled confessions, a lack of legal counsel, and abusive interrogation techniques. Governments can resolve these problems by granting people the right to stay silent, access to legal counsel, restrictions on how they are interrogated, immunity or leniency, or constitutional or legislative reform.<sup>16</sup>

## CONCLUSION

The legal distinctions between self-incrimination and confession in India's legal system have been discussed in this article's conclusion. We started by describing the privilege against self-incrimination and confession and outlining how Indian law influenced both. The different forms of confessions and their admissibility in court were then covered. Finally, we contrasted self-incrimination and confession and looked at how Indian law views their interrelationship.

The legal distinctions between self-incrimination and confession in India's legal system are crucial to comprehend since they have major effects on criminal procedures. Although it can restrict the effectiveness of investigations, the privilege against self-incrimination is a crucial defence against coerced confessions.

Conversely, confessions may be useful evidence but are only admissible under specific legal conditions. Overall, it is crucial to have a clear awareness of the legal distinctions between self-incrimination and confession to guarantee that criminal processes are conducted fairly, justly, and legally. India's judicial system can promote justice and safeguard the rights of all individuals by striking the requirement for trustworthy proof.

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<sup>15</sup>'The State of Bombay vs Kathi Kalu Oghad And Others on 4 August 1961' <<https://indiankanoon.org/doc/1626264/>> accessed 26 June 2023.

<sup>16</sup>'Right against Self-Incrimination: Analysis of Laws in India - IJLMH' <<https://www.ijlmh.com/paper/right-against-self-incrimination-a-detailed-study-analysis-of-laws-prevailing-in-india/>> accessed 26 June 2023.