
(1960) 02 MAD CK 0008

In the Madras High Court

Case No : Criminal Appeal No's. 294 and 295 of 1959

Bhagwandas Goenka

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-02-1960

Acts Referred:

Constitution of India, 1950 — Article 20(3)

Foreign Exchange Regulation Act, 1947 — Section 19, 4(1), 9

Citation : AIR 1961 Mad 47 : (1961) CriLJ 273 : (1960) ILR (Mad) 586 : (1960) 2 MLJ 458

Hon'ble Judges : Ramaswami, J;Anantanarayanan, J

Bench : Division Bench

Advocate : Advocate General and V.P. Raman, for the Appellant; C.K. Venkatanarasimhan, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayanan, J.

. These are two connected appeals instituted by Bhagwandas Goenka, against the convictions and sentences of the learned Chief Presidency

Magistrate in C. C. Nos. 6910 and 6911 of 1956, convicting this appellant u/s 4(3) read with Section 23, and Sections 4(1) and 9 read with

Notification No. 12(13) F-1/47 dated 25-3-1947 and Section 23 respectively of the Foreign Exchange Regulation Act, 1947, and sentencing him

to pay a fine of Rs. 1,000/- upon each charge. The cases were tried and dealt with by the learned Magistrate separately, but, as a matter of fact,

the transactions are inter-related and have to be viewed as a whole. They mainly occurred within the period 26-7-1951 and 14-9-1951, when the,

appellant visited the United States along with his wife Saroj Goenka, who was a co-accused in the lower Court in C. C. No. 6911 of 1956, but

was discharged. Before proceeding into the facts, it will be convenient to set out the charges, and also to scrutinise, in this context itself, the

relevant provisions of the Foreign Exchange Regulation Act which the appellant is supposed to have infringed.

. In C. C. No. 6910 of 1958 in the Court below, the charge against the appellant was that he failed to Utilise a portion of the foreign exchange

allowed to him for his visit to the United States, namely, 500 dollars out of the 1800 dollars sanctioned, and that, instead of selling or transferring

without delay this unutilised sum to an authorised dealer in foreign exchange in India, he deposited this amount of 500 dollars in the joint account of

himself and his wife with the National City Bank of New York, and thus committed an offence u/s 4 (3) of the Foreign Exchange Regulation Act,

read with Section 23 of the Act.

In C. C. No. 6911 of 1956, the charge against the appellant was that, during his visit to the United States, between 26-7-1951 and 14-9-1951

(on or about 7-9-1951), he borrowed a sum of 4000 dollars from a person other than an authorised dealer in foreign exchange, which he

deposited in the joint account of himself and his wife, and thus contravened Section 4(1) of the Foreign Exchange Regulation Act. The second

charge was that he failed to surrender the aforesaid sum or 4000 dollars to an authorised dealer in foreign exchange in India for conversion into

Indian currency, within the period of one month from the date of acquisition, and thereby contravened the provisions of Section 9 of the Foreign

Exchange Regulation Act read with Notification 12 (13) F-1/47 dated 25-3-1947, both these contraventions being punishable u/s 23 of the Act.

(3) Section 4(1) of the Foreign Exchange Regulation Act (VII of 1947) runs as follows:--

Except, with the previous general or special permission of the Reserve Bank no person other than an authorised dealer shall in the States, and no

person resident in the States other than an authorised dealer shall outside the States, buy or borrow from, or sell or fend to, or exchange with, any

person not being an authorised dealer, any foreign exchange.

Similarly, Section 4(3) of the same Act is to the following effect:--

Where any foreign exchange is acquired by any person other than an authorised dealer for any particular purpose, or where any person has been

permitted conditionally to acquire foreign exchange, the said person shall not use the foreign exchange so acquired otherwise than, for that purpose

or, as the case, may be, fail to comply with any condition to which the permission granted to him is subject, and where any foreign exchange so

acquired cannot be so used or, as the case may be, the conditions cannot be complied with, the said person shall without delay sell the foreign

exchange to an authorised dealer"".

Section 9 of the Act, which is titled "Acquisition by Central Government of Foreign Exchange, runs as follows:--

""The Central Government may, by notification in the Official Gazette, order every person in, or resident in, the States (a) who owns or holds such

foreign exchange as may be specified in the notification, to offer it, or cause it to be offered for sale to the Reserve Bank on behalf of the Central

Government or to such person, as the Reserve Bank may authorise for the purpose, at such price as the Central Government may fix.."". We are

not concerned with the rest of this Section, inclusive of the two provisos which relate to certain exemptions. But we may note that, originally,

Section 9(a) ran as ""who owns such foreign exchange"", and the words ""owns or holds"" were substituted by Act 39 of 1957. We may also note

that the notification in the official gazette referred to in the Section is Notification No. 12 (13) F-1/47 dated 25-3-1947 set forth in the charge. The

indisputable effect of this is that, after the date of the Notification, any person owning or holding such foreign exchange has to surrender the same

to an authorised dealer in foreign exchange in India for conversion into Indian currency within a period of one month from the date of acquisition.

4. Section 23 is the punitive Section under the Act, and. as amended, Section 23(a) runs as follows:--

If any person contravenes the provisions of Section 4, Section 5, Section 9 or Sub-section (2) of Section 12 or of any rule, direction or order

made thereunder, he shall

(a) be liable to such penalty not exceeding three times the value of the foreign exchange....

(b) upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, Or with both"".

In this context itself, we might also note three other relevant provisions. u/s

19(2), the Reserve Bank is clothed with the power to require any person, by order in writing, to furnish, Or to obtain and furnish, to the Bank with such information, book or other document as may be required.

u/s 22 of the Act, it is specified that no person should give any information or make any statement which he knows or has reasonable cause to

believe to be false, or not true in any material particular, when complying with any order or direction u/s 19. Failure to comply with such order or

direction is made specifically punishable u/s 23(1A) (a) of the Act.

In brief, the directives issued by the Reserve Bank u/s 19 are, undeniably, interrogatories or demands for submission of documentary material,

which have to be complied with in terrorem, without concealment Or misrepresentation. Lastly, we might refer to Section 24(2) of the Act, which

states that where a person is prosecuted for contravening the provisions of Section 4(3) which we have earlier set forth, the burden of proving that

the foreign exchange required by such person was used for the purpose for which permission to acquire it was granted, lies upon him.

5. We are now in a position to examine the facts of the record, in a clearer manner. In spite of the seemingly confused and intricate pattern of those

facts, we shall see that the matter is really simple, as far as the gravamen of the charges is concerned. The learned Solicitor-General for the State

has attempted to argue that the discrepancies, the irreconcilable statements and inexplicable lacunae in proof of facts appearing in the version of the

accused and in the defence demonstrate beyond doubt that the accused has attempted to evade and conceal the truth.

But, in fairness to the appellant, the matter Is best approached from the point of view of his own evidence and version, and the material bearing

upon this. It will then be seen that, upon two of the charges at least, the appellant has no defence in fact, his true defence being one of legal

interpretation. We are here setting forth only the admitted facts, and the version of the appellant, and we shall later see how far that version is

supported upon the probabilities. We shall also examine how far, assuming that the version contains elements of substantial truth, it can suffice as

an answer to the specific charges.

6. The facts are that the appellant visited the United States, along with his wife, on 26-7-1951, being himself a Director of the Express

Newspapers Limited, and the trip clearly being one which combined business with pleasure. Excluding the cost of passages, an amount of 1800

dollars of foreign exchange was sanctioned as far as the appellant was concerned. There was no such sanction for his wife, the American embassy

granting the visa in her respect, upon being satisfied that certain friends in the United States would meet her actual expenses. The appellant and his

wife were in the United States between 26-7-1951 and 14-9-1951, on which latter date they left America.

The version of the appellant is that, while in that country, he decided to purchase a Splicer Roll Winder from Messrs. Cameron Machine Company

for the use of Express Newspapers Limited. The price was 9000 dollars, and, since the machine could also be sold at option to an Australian Firm

for which it had been originally reserved, the Cameron Machine Company and Mr. Farrel insisted upon cash payment or a letter of credit in the

Company's favour. The appellant cabled to the Madras Office about the transaction, and the Madras Office applied for a licence and obtained it,

but there was delay in the despatch of the letter of credit for 9000 dollars, and hence at least 50 per cent of the amount had to be kept as earnest

money with the Cameron Machine Company.

From this point of time onwards, there are divergent versions. According to one version of the appellant, (his letter in response to the directive Ex.

P-6, which is Ex. P-7) Mr. Tom Beck, who was the President of a large publishing concern, a multi-millionaire and the host of the appellant and

his wife, agreed to help him with 4000 dollars which he, (appellant) could place as deposit with the Agent of the Cameron Machine Company, until

the letter of credit was received. According to the oral evidence of the appellant (as D.W. 1 u/s 342(a) Crl. P. C.), this amount of 4000 dollars

was really given by Mr. Torn Beck as an hospitality gift the understanding being that appellant and his wife could spend what they wanted out of

the moneys, recognising a moral obligation to return the unexpended money. However this might be, this amount of 4000 dollars was, according to

the appellant, deposited with Mr. Farrel, Agent of the Cameron Machine Company, as earnest money.

7. In the meanwhile, according to the appellant Mr. Vishwa Bandhu Gupta (Writer of Ex. P-27) from India, learnt that the appellant was in need of

this sum to purchase the machine, and advised one Mr. Leeclark to advance a sum of 4000 dollars to the appellant. The appellant claims that he

did not know Mr. Leeclark personally, but admits that the amount of 4000 dollars was received from Mr. Leeclark and that he deposited it in the

joint names of himself and his wife in the National City Bank of New York. According to the appellant, he treated, this amount as a substitute for

the hospitality gift of 4000 dollars made by Mr. Tom Beck, and issued several cheques from this sum.

We may here state that the accounts of the National City Bank (Ex. P-8 series) establish beyond doubt that one sum of 4000 dollars was credited

in the account of the appellant on 7th September, 1951. It is also not in dispute that, subsequently, the letter of credit was received from India, and

that Mr. Leeclark was repaid his temporary loan of 4000 dollars. According to Vishwa Bandhu Gupta (Ex. P-27), it was the appellant who repaid

this sum, and he specifically states "What I understand is that Mr. Leeclark was reimbursed by Mr. Goenka himself". After stating on more than

one occasion that the amount was given to him as a loan, the appellant states "I was under no obligation to repay 4000 dollars to Mr. Leeclark

when the amount was placed at my disposal". But it is crystal-clear from the letter of Mr. Farrel dated 22nd June 1953 (Ex. D-1), proved in

defence, that Mr. Leeclark was repaid after the letter of credit was received.

8. Upon this part of the transactions, what the learned Solicitor-General urges is this. He admits that such a Splicer Roll Winder machine was

acquired for Express Newspapers Limited, on the initiative of the appellant, in the "United States. He concedes that a licence was duly obtained, a

letter of credit obtained later, and that the cost of the machine (9000 dollars) was paid. It is the case for the prosecution, again, that a sum of 4000

dollars was acquired by the appellant from Mr. "Leeclark as a loan or advance, and put into his account. It is the common case that this amount

was ultimately repaid; the appellant does not pretend, and has not claimed at any stage; that Mr. Leeclark made a gift of 4000 dollars, expecting

no repayment.

According to the prosecution, this is sufficient to show that the appellant contravened the Act by obtaining this temporary advance of 4000 dollars,

which he appears to have used for his additional private expenses in America.

But the prosecution claims that, though Mr. Tom Beck might have truly existed, and might even have been a friend of the appellant's father, as the appellant claims, the entire story of the "hospitality gift" of a further 4000 dollars is a myth. It is opposed to the probabilities, and it is totally unproved by the kind of evidence which we might reasonably expect, it that story had any vestige of truth.

9. Regarding the charge in C. A. No. 294 of 1959, the case of the appellant is this. He admits that Ex. P-2 series are travellers' cheques issued by

Thomas Cook and Son for 500 dollars, forming part of the 1800 dollars sanctioned to the appellant. He further admits that he did not utilise these

cheques during his stay in America or Canada. On the contrary, he took them with him to Switzerland, and from that country he deposited them in

his bank account in the National City Bank, New York, by negotiating this through a Bank at Switzerland. The appellant actually returned to India

not bringing this sum with him, on 10-10-1951, while the amount was credited in the New York Bank on 17-10-1951.

But the reply of the appellant to, the charge u/s 4(3) set forth already is this. Though 1800 dollars alone had been sanctioned for his expenses, he

had actually spent much more, nearly a total sum of 3500 dollars. There are at least two cheques in the account totalling 1995-73 dollars

respectively cashed on 18-9-1951 and 27-9-1951, which themselves exceed 1800 dollars, though the difficulty here is that the "paid" cheques

were never produced. However this might be, the defence of the appellant is that he cannot be taxed with having retained 500 dollars out of the

foreign exchange granted to him, without due surrender, when he had actually spent more than 1800 dollars.

The gravamen of this charge, according to the learned Advocate-General for the appellant, merely amounts to the highly technical argument that the

appellant retained this amount in specie, while he could easily have disposed of these particular travellers' cheques earlier. But, here again, the

great difficulty is in believing the version of the appellant upon the probabilities. As the learned Solicitor-General stresses, this explanation for the

retention of the 500 dollars, and deposit of this sum in the New York Bank, is inseparable from the account given of the "hospitality gift by Mr.

Tom Beck.

It is admitted for the appellant that this 500 dollars formed part of 2300 dollars which had to be returned to Mr. Tom Beck, at least as a moral

obligation, deducting the expended amount. But did the appellant return this sum at all? The case of the appellant is that he sent a cheque for 2300

dollars to his brother-in-law Sashi Chand Jain, and this is very probably true. But there is not an iota of evidence to prove or probabilise the theory

that this sum was intended for Mr. Tom Beck at all. Mr. Tom Beck died, unfortunately for the appellant, sometime during the pendency of the

proceedings.

The attempted explanation is that Mr. Sashi Chand Jain, the brother-in-law of the appellant, who has not been called to give evidence, has not so

far been able to ascertain or to contact the true heirs of the deceased multi-millionaire. The learned Solicitor-General argues, it must be conceded

with, great plausibility, that neither the sum of 500 dollars nor the larger sum of 2300 dollars of which it should have been intended to form a part,

was ever meant in reality to reach Mr. Tom Beck or his heirs, the story of the "hospitality gift", or the alternate version of an advance by Mr. Tom

Beck for the purchase of machinery, being quite mythical. In other words, the learned Solicitor-General stresses that this is merely a deliberate

sequestration of certain foreign exchange resources.

10. We are unable to deny the force of the argument that, had the story relating to Mr. Tom Beck been true, we should have expected very

different material in support of it. Not a single cheque, letter or memorandum is forthcoming to probabilise either the story bringing in Mr. Tom

Beck into the picture of these transactions, or the theory that Mr. Leeclark's advance of 4000 dollars was actually meant for the purchase of the

machine. With regard to the latter part of the advance, at least, there is the letter from Mr. Farrel, Ex. D-1. But with regard to the part played by

Mr. Tom Beck, there is no support in the evidence, excepting the uncorroborated version of the appellant, who has also put forward contradictory

versions at different stages.

11. But, however this might be, we may take it as indisputable that Mr. Leeclark did advance a sum of 4000 dollars, obviously not as a gift, and

that this amount was placed by the appellant in his American Banking account, and utilised by him. As we observed earlier, the appellant definitely

concedes that he used this amount. But, in this case, it is very difficult to see how the appellant has any answer to the charges u/s 4(1) and u/s 9,

upon this aspect, in C. C. No. 6911 of 1958. These may be technical offences, in a certain sense, and it may be that the appellant was not guilty of

any moral turpitude in obtaining such accommodation; quite probably he found that the sum of 1800 dollars was insufficient to meet the expenses

and purchases of himself and his wife. Admittedly, the appellant did not surrender this sum to an authorised dealer in foreign exchange in India for

conversion into Indian currency within a month of the acquisition, u/s 9 read with the Notification earlier referred to. What is the answer to these

charges?

12. The answer attempted by the learned Advocate-General for the appellant is one that can hardly be termed convincing. Upon Section 4(1), in

the strict sense, and as far as we have been able to follow the arguments of the learned Advocate-General on this part of the case, the answer

seems to be that, formally this does not fall within the scope of the words ""borrow from"" employed in Section 4(1) of the Act. The learned

Advocate-General stresses that Section 4(1) does not employ a general or comprehensive word such as ""to acquire"". Obviously, gifts per se are

not excluded, since the intendment of the Section and of the Act itself is not to allow any depletion of rupee resources against the foreign exchange,

particularly in dollars.

But since Mr. Leeclark was admittedly repaid, and never intended his advance to be a gift, the argument does not carry us far. But the further

argument is that the words ""to borrow"" necessarily imply a "lender" and a "borrower", and a jural relationship resulting from the loan. The learned

Advocate General stresses the dictum of Buckley, J. in *Re Southern Brazilian Rio Grande Do Sul Rly. Co. Ltd.*, 1905 2 Ch 78 to the effect that

borrowing necessarily implies repayment at some time, and under some circumstances"". It is argued upon the material in record, that the advance

was made entirely at the instance of Mr. Vishwa Bandhu Gupta, and upon his initiative (Ex. P-27).

Hence, the borrower could only be Mr. Vishwa Bandhu Gupta, since the appellant did not know Mr. Leeclark at all, or, at the worst, the

borrower could only be the jural entity of the Express Newspapers Limited. We

consider that this argument is patently fallacious, and that it ignores the realities of the situation. The appellant, as a Director of the Express Newspapers Limited, negotiated for the purchase of machinery on its behalf, and required this amount either for himself or for the machinery. Mr. Vishwa Bandhu Gupta explicitly states:--

The payment was not made on my behalf. The payment was given to Mr. Goenka as he was in need of money to purchase certain machinery in

AmericaNo question of my reimbursement to Mr. Goenka arises. What I understand is that Mr. Leeclark was reimbursed by Mr. Goenka

himself."" (Ex. P-27 para (1v) (b)).

Not merely this. The appellant has stated, again and again, that he was accommodated with a loan, in this respect. He stated in Ex. P-7:--

Mr. Leeclark at the instance of Mr. Vishwa Bandhu Gupta loaned me 4000 dollars while I was in the United States of America in 1951.

In his evidence, the appellant stated (D. W. 1) the word "loaned" has been loosely used. But, in cross-examination he stated:

The statement that at the instance of Vishwa Bandhu Gupta his friend Mr. Leeclark loaned me 4000 dollars in 1951 while I was in U. S. A. is

correct. I used the word ""loaned"" in a loose sense."" We are certainly conscious of the fact that, upon a technical point of interpretation, we cannot

use an admission of this kind against the appellant, ignoring what could be said for an opposite view of the transaction, (vide Kalidas Dhanjibhai

Vs. The State of Bombay, . But we are quite unable to see how the appellant, an educated man and a businesss man, is not to be taken at the face

value of his assertion that he did obtain this accommodation from Mr. Leeclark, though Mr. Vishwa Bandhu Gupta might have obliged the

appellant by helping the appellant to secure the loan. The fact that A writes to B to grant a loan to C, and that B grants the loan, depending upon

the assurance of A, does not make the transaction any the less a borrowing as between B and C. Upon this charge, therefore, (here is really no

answer.

13. Equally, we are quite unable to see that the appellant has any answer with reference to the charge u/s 9(a) read with the relevant Notification

and Section 23 of the Act. The argument of the learned Advocate-General here is that we must look, in these matters, to the purpose of the

enactment. The enactment seeks to preserve rupee resources against foreign exchange in dollars, and the present facts did not involve any real

depletion of those resources. The learned Advocate-General emphasised that, otherwise, the strict enforcement of such technical provisions would

constitute a grave hardship, particularly to Indians abroad who might have to obtain foreign exchange for maintaining themselves, and for other

essential purposes.

But we do not think that we would be justified in interpreting and enforcing an Act of this nature, not with reference to its clear and explicit

language, and to the situation of facts to which such language applies, but with reference to some other subjective test, of the degree to which we

think that the real intention behind the Act has been frustrated or otherwise. The learned Solicitor-General rightly stresses that there are very many

adequate safeguards in the Act, in the shape of provisos, particularly the proviso 5(2)(b) exempting salaries or payments for services abroad, etc.

The further argument of the learned Advocate-General is that Section 9 can only apply to "every person in, or resident in, the States". This is

sought to be interpreted as applicable to an Indian citizen like the appellant, only while he actually resides in India. We have carefully considered

this interpretation, and we are quite unable to sustain it. On the contrary, the distinction between "in" and "resident in" clearly implies that what is

intended is a description of quality, namely, of ordinarily continuous residence, and that a purely temporary stay abroad will not make the section

less applicable.

This part of the section will therefore, apply to all persons who can be justifiably described as permanent residents of India, though they might be

abroad at the particular time of a transaction, while the earlier part will apply to those who are in the country, whatever might be the quality of their

permanent residence. It is important to note here that, u/s 1(2), the Act specifically applies "to all citizens of India outside India". Since the foreign

exchange acquired by the appellant in the United States by way of accommodation, whether 4000 dollars or 8000 dollars, inclusive of another

4000 dollars obtained from Mr. Tom Beck, was never surrendered in any part, an offence as de-fined u/s 9 is technically complete and proved.

14. The last charge relates to the matter of 500 dollars already referred to. Here,

we would not uphold the conviction upon this charge, if it had merely rested upon a highly technical view that the appellant retained and did not surrender these particular travellers' cheques in specie. But, as we understand the facts, the appellant seems to have retained not merely these 500 dollars, but an actual total sum of 2300 dollars, now in the possession of his brother-in-law Mr. Sashi Chand Jain. There is absolutely nothing to prove that these dollars related to Mr. Tom Beck at all, or were genuinely intended for repayment to that individual. The conclusion is irresistible that the appellant has sequestered 500 dollars out of the foreign exchange granted to him, in addition to obtaining dollars abroad which he has never accounted for. The charge must be held fully proved.

15. Before passing on to the point of law argued in these appeals, which is of significance as it relates to a fundamental right guaranteed under the Constitution, and which deserves to be separately dealt with, we desire to notice two other minor points urged for the appellant, upon the question of sanction. Here, the learned Solicitor-General has legitimately urged that these points were never taken in the trial Court, nor even specified in the memoranda of appeals. They are highly technical, and, had they been urged at the trial, or at any earlier stage, the prosecution might well have been able to meet them by adducing the necessary particulars from Official witnesses examined in the case.

As regards the sanction proved by B. P. Ca-poor (P. W. 3) the argument is that this gentleman, who is an Under-Secretary in the Ministry of Finance might not be a "finance officer" within the scope of paragraph 5 of S. R. O. 167 (Ex. P-43). We have no reason to assume that he is not a

"Finance Officer" who is thereby competent to sign the necessary order, within the scope of the notification, and he was never asked any question

about this. This ground of objection must therefore be rejected. As regards Ex. P-45, signed by Mr. G. L. Mehta, then Ambassador of India in the

United States, though the signature has been proved and is not disputed, the argument is that the exercise of ½ discretion by the Ambassador has

not been proved. But ex facie, the document bears inherent evidence that the matter was fully considered by the Ambassador before sanction for

prosecution was granted. This ground of objection must also therefore fail.

16. The final ground urged by Mr. V. P. Baman, for the appellant is of

considerable interest and importance, and may be first formulated as follows: The record of evidence clearly shows, and, indeed, it is indisputable, that certain vital portions of the material in the case consist of the I directives of the Reserve Bank u/s 19, and 1 the replies thereto. As already noticed by us, these replies certainly fall within the ambit of testimonial compulsion, since the very directives refer to Sub-section (1) of Section 23 of the Act, rendering a failure to comply with the directive an offences punishable under the Act, and also to Section 22 which imposes a similar obligation, upon pain of penalties, to make a true answer.

The question is whether these replies are therefore inadmissible in evidence, under Article 20(3) of the Constitution, as incriminating answers furnished by a party in the virtual position of an accused, under testimonial compulsion. The matter also came up before Balakrishna Ayyar, J., in W. P. Nos. 291 and 292 of 1957 (Mad), arising out of these very proceedings, and the learned Judge held, after an elaborate survey of the authorities, that the fundamental right was not infringed. The learned Judge also pointed out that a different view, upon facts of this character, would produce surprising results, and render inadmissible the most reliable and significant pieces of evidence obtained even at the stage of an exploration into facts, in order to determine whether an offence or offences had been committed at all. The learned Judge then remarked, "Article 20(3) surely could not have been intended to produce such results.

17. The argument for the appellant, as advanced by Mr. V. P. Raman, could be expressed in the following form: According to the decision of the Supreme Court in M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, , though the decision itself is authority for a widely different proposition that a certain seizure of documents under the provisions of Sections 94 and 96 Cr. P. C., will not be a compelled production thereof within the meaning of Article 20(3), the guarantee under Article 20(3) would be available to persons against whom a First Information Report had been recorded showing them as accused therein. It is urged, that upon, parity of reasoning, a similar point of time should be demarcated or fixed with reference to authorities like the Reserve Bank, making enquiries for the purpose of ascertaining whether offences had been committed against Foreign Exchange Regulations.

That point of time cannot be the formal institution of a complaint, or a formal decision to institute a complaint. It must relate to the stage of investigation itself, provided that the Reserve Bank authorities are conducting that investigation, placing the concerned individual in the virtual position of an accused. In the present case, the Officer on special duty, Mr. G. Suhramaniam (P. W. 1) has sworn that the Bank ""received information that the accused unauthorisedly acquired dollars in U. S. and the Bank issued a directive u/s 19(2)"". It is urged that this is sufficient to clothe this directive, and all subsequent directives, with the character of testimonial compulsion aimed against an accused, rendering his replies inadmissible by virtue of Article 20(3) of the Constitution.

18. This argument appears to us, upon careful consideration and analysis, to be totally inadmissible. We may, indeed, dispose of it in a very simple manner, upon the present facts, without proceeding into the larger or more intricate questions of principle involved. The present record clearly shows that not merely was no accusation levelled against the appellant, but that even the Reserve Bank had no justification whatever for holding, or even believing, that the appellant had committed an offence or offences. They had merely some information about dollars acquired by the appellant in the United States, in addition to the foreign exchange specifically granted to him. The Act itself shows that there is a variety of contingencies under which such acquisition may not offend the law. In order to ascertain this, the Bank issued a number of directives, at several stages, the questions themselves being dependent upon the explanations furnished by the accused and clearly fashioned in order to test the truth of those explanations. Is it possible to argue that, at that stage, the appellant, even by the most liberal parity of reasoning, was in the virtual position of an accused as named in a Report of First Information? If he ever was in that position, it could only be as and from the date of the notice to show cause why action should not be taken against him under the Act, namely, Ex. P-33.

It is here, for the first time, that the authorities intimate that, as a result of their enquiries, they are satisfied that certain offences had occurred, and they were proposing to take action. They then state ""However, before doing so, you are hereby given an opportunity to show whether you had

any general or special permission". This obviously had reference to the burden of proof, as laid down in Section 24 of the Act. But, even assuming that Article 20(3) would be applicable not merely to judicial proceedings of any character, but to a multiplicity of situations in which judicial proceedings might be in prospect, it is still impossible to hold that, when certain facts are ascertained, it may be under an obligation to furnish an answer, an order to explore and determine if a person had committed an offence, this exploration itself already places him in the situation of a virtually accused person, and thus renders his explanations inadmissible in evidence.

This element of an obligation to furnish replies to certain questions by authorities is present in various enactments, as the learned Chief Presidency

Magistrate has himself pointed out. For Example: The Indian Income Tax Act (Act XI of 1922) Sections 19-A, 20-A, 21, 22(2), 22(4), 38 and

51 (c); the Madras Co-operative Societies Act (VI of 1932) Sections 37(4), 38(2) (b) and 55; the Madras General Sales Tax Act, IX of 1939,

and the Rules framed thereunder, Sections 14(1), 15(2) (d) and 19(2) (h) Rules 6(9), 6(10) and 82; the Madras Buildings (Lease and Rent

Control) Act, XXV of 1949, Sections 15 and 16; the Muslim Wakfs Act XXIX of 1954, Sections 4(4) and 41(1); the Indian Standards Institution

(Certification Marks) Act XXXVI of 1952, Sections 9 and 14; the Plantations Labour Act LXIX of 1951, Sections 5 and 36; the Requisitioning

and Acquisition of Immovable Property Act XXX of 1952, Sections 13 and 20; the Factories Act LXHI of 1948, Sections 9(b), 90(2) and 92;

the Forward Contracts Regulation Act LXXIV of 1952, Sections 8(2), 8(3), 8(3)(d) and 20(1). It is a means whereby efficient administration is

furthered, and abuse or corruption prevented. As Balakrishna Ayyar, J. has set forth in his judgment in W.P. Nos. 291 and 292 of 1957 (Mad),

numerous instances might be given where such a view would virtually stultify the administration of justice. We agree, with respect, with the

reasoning of the learned Judge that Article 20(3) could never have been intended for such a purpose.

19. Even upon the wider aspect, we do not think that the observations in M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi

and Others, justify the extension of the principle in the manner now contended for. No doubt, Jagan-nadhadas, J. has stated that:

It follows that the protection afforded to an accused in so far as it related to the phrase ""to be a witness" is not merely in respect of testimonial

compulsion in the Court room but may well extend to compelled testimony previously obtained from him. It is available therefore to ""a person

against whom a formal accusation relating to the commission of an offence has been levelled, which in the normal course may result in prosecution"".

But these dicta obviously cannot support an inference that the principle should be extended to cover a case in which there is no formal accusation

at all, but an attempted ascertainment of facts as a preliminary exploratory procedure, so that it may be known whether there is an offence, and

there is an offender. On the contrary, we have the clear authority of two decisions of the Supreme Court, namely, (i) Maqbool Hussain Vs. The

State of Bombay, , where the relevant observations are to be found in the judgment of Bhagwati, J. at p. 738 (of SCR) : (at p. 328 of AIR), to the

effect that, construing Article 20 as a whole, it related to the starting of proceedings of a criminal nature, before a court of law or a judicial tribunal.

Similarly, (ii) we have the authority of the Supreme Court in S.A. Venkataraman Vs. The Union of India (UOI) and Another, wherein Mukherjea,

J. has observed that -

the words actually used in it (Article 20) afford a clear indication that the proceedings in connection with the prosecution and punishment of a

person must be in the nature of a criminal proceeding, before a court of law or judicial tribunal"".

The entire matter was considered very fully and elaborately by a Bench of the Bombay High Court, Chagla C. J. and S. T. Desai, J., in Narayanlal

Bansilal Vs. Maneck Phiroze Mistry and Another, , and with respect, we are wholly in accord with the analysis and the conclusions to be found in

this decision. It may be, as observed by Balakrishna Ayyar, J. in W. P. Nos. 291 and 292 of 1957 (Mad), that the immunity conferred by Article

20(3) will have to be extended to a point of time further back than when a person accused of an offence is formally before court. But that point of

time must, undoubtedly, relate to a situation in which that person is, virtually and substantially, one against whom an accusation of a criminal offence

has been levelled, and who has furnished replies to interrogations in such a context.

Logically speaking, the present argument would take us to the position that, where the element of testimonial compulsion is alone present, no

answer given by any citizen in any context of enquiry into alleged facts, even though there may be no decision whatever at that stage to regard him

as an accused, would ever be subsequently available in evidence, if he happens to become an accused even in a remote future. This, as

Balakrishna Ayyar, J. has emphasised, would lead to startling results, and paralyse a variety of administrative procedures designed to safeguard the

interests of the public, and to make enquiries feasible in order to prevent abuse or crime. We do not think it necessary to examine several other

decisions which have been cited, and we would merely add that some of these have been examined in detail by Balakrishna Ayyar, J. in W. P.

Nos. 291 and 292 of 1957 (Mad). We can see no support in any of the judicial authorities cited for the view that the appellant was in the position

of an accused when he furnished replies to the directives u/s 19, which have been proved in evidence. This objection to the reception of a part of

the evidence in these criminal appeals must, therefore, fail.

20. In result, we must unhesitatingly confirm the convictions of the appellant upon the respective charges, as the charges were established beyond

any reasonable doubt. It is true that the element of mens rea may not be present with regard to offences of this character, and we do not desire to

be understood as holding that the appellant has been guilty of infringements of the law involving any grave element of moral turpitude. But, even so,

it is essential that an enactment of this character should be rigidly enforced, whoever might be the offender, in the wider interests of the public, and

of this country in achieving its programme of the abolition of poverty and of planned national production. The sentences are no doubt those of

heavy fine, but, considering all the circumstances, we cannot regard them as excessive.

Actually, the learned counsel for the appellant have urged no plea before us upon this score. We hence confirm the sentences also, and dismiss the

appeals. Finally, we desire to record our sense of obligation to the learned Solicitor-General for the State, and the learned advocate Mr. C. K.

Venkatanarasimhan who has been throughout in the case and who has been assisting us throughout and the learned Advocate-General and other

counsel for the appellant, who have lightened our task by careful elucidation of the law and the facts in this matter.

Ramaswami, J.

21. I entirely agree with my learned brother and on account of the importance of the subject I wish to add the following in regard to the point

raised under Article 20(3) of the Constitution of India.

22. The point raised on behalf of Mr. Goenka is that his answers to the directives issued to him by the Reserve Bank of India u/s 19(2) of the

Foreign Exchange Regulation Act, 1947 (Act VII of 1947) and for the non-compliance of which penal-ties have been provided thereunder, are

not admis-sible against him at the trial because (a) he was at the time of giving his answers a person accused of an offence and (b) that the answers

were self-incriminatory and therefore hit at by Article. 20(3) of the Constitution which states:

No person accused of any offence shall be compelled to be a witness against himself, This point was examined by Balakrishna Ayyar, J. in his

judgment in W. P. Nos. 291 and 292 of 1957 (Mad), filed by Mr. Goenka at an earlier stage. Balakrishna Ayyar, J. came to the conclusion that at

the time Mr. Goenka delivered the answers to the directives issued by the Reserve Bank, he was not a person accused of an offence and that the

answers were not compelled testimonial utterances and that Article 20(3) of the Constitution has no application here.

23. We find ourselves in entire agreement with those conclusions of Balakrishna Ayyar, J. but I would like to set out my own reasons in view of

the arguments addressed before us by the learned counsel Mr. V. P. Raman and by the learned Solicitor-General.

24. Article 20(3) of the Constitution of India follows the language of the Fifth Amendment of the American Constitution, but their scope differs.

Hence a Bench of the Bombay High Court in Narayanlal Bansilal Vs. Maneck Phiroze Mistry and Another, has pointed out how, whereas under

the American Constitution the Fourth Amendment safeguarded the privacy of the home and made it unconstitutional for the issue of searches and

seizures unless they were on reasonable grounds, and the Fifth Amendment dealt with what is known as testimonial compulsion, our Constitution-

makers in Article 20(3) did not deal with the Fourth Amendment but only dealt

with testimonial compulsions leaving searches and seizures to be dealt with under the general law, unless searches and seizures constitute a contravention of Article 20(3) as being testimonial compulsion for the production of documentary evidence.

The difference between the language used in Article 20(3) and the Fifth Amendment is patent. The American Constitution limits the right of immunity from compulsory testimonial to a criminal case. In Article 20(3) of our Constitution that limitation does not appear. The protection against

this compulsion under our Constitution is general. It is not confined to any particular criminal case as would appear if Article 20(3) were to be read

by itself. But in construing Article 20(3) we must adopt some canons of constructions. The first and the obvious one is to read the Article as a

whole and not to divorce Clause (3) of that Article from the rest of it. The second is that we must not overlook the fact that the Constitution-

makers in India had knowledge not only of the American Constitution but also the principles of English Common Law and also the exceptions

engrafted upon those principles.

Finally, we must give to this Article an interpretation which is for, the greatest good of the people. We are not dealing with an ordinary statute or

with an ordinary piece of legislation; we are dealing with the Constitution of India and in interpreting the provisions of the Constitution we must not

overlook the fact that the Constitution was enacted for the purposes set out in the preamble to the Constitution. Therefore, any interpretation which

advances the good of the people must be preferred to an interpretation which would retard the interest of the people of our country.

25. Therefore, Article 20(3) of the Constitution should be read in the context of the second clause which precedes it and this Article should not be

read in the light of the American Constitution or American decisions but more in the light of our own legislative provisions, our own legislative

history, the background of English law, and the Constitution looked upon as an organic whole's.

26. Analysing the terms in which this fundamental right has been declared in the Constitution, it may be said to consist of the following components:

(1) It is a right pertaining to a person "accused of an offence"; (2) it is a protection against "compulsion to be a witness" and (3) it is a protection

against such compulsion resulting in his giving evidence "against himself".

27. The words ""accused of any offence"" seem to indicate, according to the common usage of the words, as well as by an examination of the

relevant sections of the Code of Criminal Procedure, which has been made by Balakrishna Ayyar, J., an accusation made in a criminal prosecution

before the Court of law or judicial tribunal where a person is charged with having committed an act which is punishable under the Indian Penal

Code or any special or local law. The protection afforded to a person under Article 20(3) is available to a person against whom a formal

accusation relating to the commission of an offence has been levelled, which in the normal course may result in prosecution. In short, before the

label of an ""accused"" can be stuck on a person, there must be a charge against him that he had committed an offence and there must be some

proceedings against him under the Criminal Procedure Code. If the proceedings are dropped or abandoned, he will cease to be an accused.

28. Thus, the guarantee under Article 20(3) of the Constitution would be available to a person against whom a first information report has been

recorded. This was the case in *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, . In that case the Registrar of

Joint Stock Companies lodged information with the Inspector-General of Police, Special Police Establishment, New Delhi, to the effect that

offences under various sections of the Indian Penal Code had been committed in connection with the affairs of Dalmia Jain Airways Ltd. the

Registrar of Joint Stock Companies also stated that to determine the extent of the fraud it was necessary to seize the books not only of Dalmia Jain

Airways Ltd. but also of various other allied concerns, a list of which he furnished.

On the basis of this information an application was made to the District Magistrate, New "Delhi, for the issue of search warrants u/s 96 of the

Code of Criminal Procedure. Permission to investigate the non-cognizable offences mentioned in the report was also asked for. On the same day

the District Magistrate ordered investigation and also issued search warrants. The persons concerned then went to the Supreme Court and applied

for a writ to quash the search warrants and for return of the documents that had been seized in execution of the search warrants that had been

issued. It was argued that the fundamental right guaranteed in Article 20(3)

comprehends within its scope not merely oral testimony given by an accused in a criminal case pending against him, but also evidence of whatever character compelled out of a person who is or is likely to become incriminated thereby as an accused. It therefore extends not only to compelled production of documents by an accused from his possession, but also to such compelled production of oral or documentary evidence from any other who may become incriminated thereby as an accused in future proceedings.

The Supreme Court held that the phrase "to be a witness" is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him, that it is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution and that considered in this light the guarantee under Article 20(3) would be available to the petitioner therein against whom a first information report had been recorded as an accused therein and that it would extend to any compulsory process for "production" of evidentiary documents which are reasonably likely to support a prosecution against them.

29. It is on the foot of these observations viz., that the immunity conferred by Article 20(3) is not confined to statements made in Court and that the immunity extends further backwards, it is argued that this protection of immunity extends backwards indefinitely and that it does not matter at what point of time the statements in question had been compulsorily obtained and that if they had been compulsorily obtained they cannot be used against the person who made them if he is eventually brought to trial. But there is no warrant for this contention on the language used in the decision of the Supreme Court wherein it has been categorically stated that the protection or immunity is available only to a person against whom a formal accusation relating to the commission of an offence has been levelled.

30. Therefore, we have got to see whether in the instant case when Mr. Goenka delivered his answers to the directives issued by the Reserve

Batik, he was a person accused of an offence and for which two conditions must be satisfied viz., that there must be an allegation that he has

committed an offence and secondly, that the proceedings must be initiated

against him under the Code of Criminal Procedure in respect of the offence he is alleged to have committed. This label of "accused" could not have been certainly stuck on Mr. Goenka at the stage of the directives.

31. Two recent decisions have clarified this matter. In *In Re: Central Calcutta Bank Ltd. (in Liqn.)*, which arose under the Banking Companies

Act, it was held that an examination corresponding to the directives issued by the Reserve Bank was only an exploratory examination to discover

what had happened, that the person examined or interrogated is not a person accused of an offence and that a past evidence likely to be used for

a future accusation of an offence does not infringe the constitutional right that a person accused of an offence shall not be a witness against himself

and that to attract that constitutional right the person must first be accused of an offence and thereafter he shall not be a witness against himself, that

this constitutional protection begins with the accusation of an offence and not before, and that the language of Article 20(3) of the Constitution

means that the evidence must come after and not before the accusation of an offence to come within the constitutional prohibition. This is precisely

the case here.

32. In *Narayanlal Bansilal Vs. Maneck Phiroze Mistry and Another*, which arose under the Indian Companies Act, the scope and nature of the

enquiry under the said Act was considered. It was held that such an enquiry was not an investigation into an offence but an investigation into the

affairs in order that appropriate action may be taken and which may take different forms, that there was no question, at that stage of a formal

accusation and that inasmuch as there was no accusation, the compulsion introduced by the provisions in Section 240 of the Companies Act is not

a compulsion which can be struck down by Article 20(3) of the Constitution.

33. Bearing these principles in mind if we examine the facts of this case, Mr. Goenka was certainly not a person accused of an offence at that

stage. The object of the Reserve Bank was nothing more than to find out whether the grape-vine information or bush-telegraph information that

Mr. Goenka had unauthorisedly acquired dollars in the United States of America, had any foundation or not. It is obvious that much information

comes to the Reserve Bank, like in the case of most departments of Government, through anonymous petitions, pseudonymous petitions and

whispering campaign by disgruntled employees or traitorous friends. Much of the information on the face of it would be so absurd and incredible as

it will have to be consigned to the waste-paper basket.

In the case of a percentage, the Bank may like to know whether there is any truth at all in such allegations and whether the concerned person may

not have a perfectly reasonable explanation to offer. On behalf of the Reserve Bank it is stated by the learned Solicitor-General that it happens

every day that a number of directives are issued and if satisfactory explanations are forthcoming, the matter is dropped, or the person is advised to

be careful in future or some regularisation is made. In fact Mr. Goenka himself has understood the directive only in that light. In his communication

Ex. P-7, he concludes: ""If any further information or proof of the above statements is required by you I shall be-only too glad to furnish it, If in

accepting the assistance of my friends in the manner mentioned above, I have unwittingly transgressed any of the provisions of the Exchange

Control Order, I request the same may be condoned"". In Ex. P-9 he states:

I have been trying to collect the information required by you I shall therefore be obliged if you will give me, say, two months time for sending a

comprehensive reply to your questions. If, however, I am able to do it earlier, I shall certainly do so"".

In Ex. P-35, he concludes;

I trust that in view of the foregoing you will find the explanation satisfactory and see your way to drop the matter"".

Therefore, the first ingredient for invoking Article 20(3) is not present in this case.

34. On that conclusion that Mr. Goenka at the stage when he delivered the answers to the Reserve Bank, was not a person accused of an offence,

it follows that the statements which he made under fear of penalties prescribed by the Act would not be hit by Article 20(3) and cannot be

excluded from being used in evidence against him after he has become an accused and when he is on trial. In fact in M.P. Sharma and Others Vs.

Satish Chandra, District Magistrate, Delhi and Others, referred to above, the argument was that the fundamental right guaranteed under Article

20(3) comprehends within its scope not merely oral testimony given by an accused in a criminal case pending against him -- ""testimonial

utterances"" -- Vide underbills Criminal Evidence Fifth edn. (U. S. A.) Vol. II at p. 905 -- but also evidence of whatever character compelled out

of a person who is or is likely to become incriminated thereby as an accused and it therefore extends not only to compelled production of

documents by an accused from his possession but also to such compelled, production of oral or documentary evidence from any other who may

become incriminated thereby as an accused in future proceedings. The judgment of the Supreme Court does not show that this argument was

accepted. In fact in none of the numerous cases cited before Balakrishna Ayyar, J., or before us has it been held that a statement which a person

has been compelled to make before he became a person accused of an offence could not be tendered against him at his trial, subject of course to

the relevant provisions of the Indian Evidence Act. Therefore, we have also come to the conclusion that in the circumstances the documents

marked by the prosecution, to which exception has been taken, were properly received in evidence.

35. In coming to this conclusion, the circumstances under which the protection of an accused against self-incrimination came into existence may be

borne in mind. There are two contrasted systems of criminal jurisprudence viz., the Anglo-Saxon and Continental. The Anglo-Saxon Criminal

Jurisprudence is described as accusatorial system and the Continental Criminal Jurisprudence is described as the inquisitorial system.

36. In the accusatorial system the principle is that no accused shall be compelled to incriminate himself. The history of this rule in the Anglo-Saxon

system, that a man shall not be compelled to furnish evidence against himself or against self-incrimination is a long one, and is elaborately dealt with

in the monumental work on Evidence by Wigmore, Third Edition, Volume VIII, Chapter LXXX, pages 276-304 and by Professor Glanville

Williams in his ""The Proof of Guilt"" (The Hamlyn Lectures), page 36 and following.

37. The sale did not exist under the Tudors and early Stuarts. In fact it was the whole process of compulsion practised by the Star Chamber and

High Commission which led to such revolution that the doctrine that an accused should not be compelled to self-incriminate himself came to be

established in England, and has subsequently been one of the cherished rights of the English citizens and became part of the English Common Law.

38. So far as the United States of America was concerned, the early colonial settlers brought over the practice of compulsory questioning at least to Massachusetts. In the 18th century this practice disappeared and the contemporary English Common Law protecting the silence of the accused came to be adopted. Thirteen of the Original States insisted on prohibition of self-incrimination in the Federal Bill of Rights of 1791 and in their own revolutionary constitutions, excepting in Iowa and New Jersey. The Fifth Amendment of the Constitution of the United States of America lays down that no person shall be compelled in any criminal case to be a witness against himself. That this has been subsequently developed by Courts far beyond the confines of Article 20(3) of our Constitution, will be evident from, the American decisions cited at the bar and in the standard treatises on American Constitutional Law (see *Boyd v. United States* (1884) 116 U.S. 616; *Wilson v. United States*, (1892) 149 U.S. 60; *United States v. Rabinowich*, (1914) 238 U.S. 78 ; *Betts v. Brady*, (1941) 316 U.S. 455; *Holt v. United States*, (1909) 218 U.S. 245 ; *Burdick v. United States*, (1914) 239 U.S. 79 ; *Fitzpatrick v. United States*, (1899) 178 U.S. 304; *Rottschaefer's Handbook on American Constitutional Law* (Horn-book series) pp. 800-801; *Willoughby Principles of the Constitutional Law of the United States*, Second Edition pp. 473-477; *Cooley on Constitutional Law*, Fourth Edition Section 19 (pp. 367-368); *Willis Constitutional Law* (1935) at pages 520 and following; *Emerson and Haber Political and Civil Rights in the United States* p. III and following.

39. This invaluable privilege against self-incrimination conferred by Article 20(3) will be recognised at its true worth when we consider the inquisitorial system emanating from France and spread over the Continent. Sir James Fitzjames Stephen's *History of the Criminal Law of England*, page 535 and following, gives a graphic description of the searching preliminary enquiries of an accused person by an examining Magistrate and the subsequent records of examination and confrontations with the contents of the dossier practised by the Presidents of the trial Courts and concludes:

This appears to me to be the weakest and most objectionable part of the whole system of French Criminal Procedure, except parts of the law as to the functions of the jury" (page 543).

40. Therefore, it is not surprising that there have been endeavours in France as well as in other Continental countries to which the French

inquisitorial procedure has extended to divest the system of its more objectional features, the latest being the U.S.S.R. Though the provisions of the

Soviet Union Codes never stated that the confession is the queen of evidence, nevertheless the student of official public records of the Soviet trials

is struck by the fact that self-incrimination was the only evidence on which the defendant's guilt has been founded. That this was true at many trials

was frankly recognised by N. Khrushchev in his famous speech to the 20th Party Congress of the Communist Party of the Soviet Union (February

25, 1956). Therefore, the subsequently enacted Criminal Procedure Code recognised that the looking upon self-incrimination as the Queen of

Evidence has oriented the investigative and judicial agencies in obviously wrong ways and created the possibility of rendering unfounded sentences.

(See the two-volume work of Government Law and Courts in the Soviet Union and Eastern Europe by Dr. Vladimir Gsovski and Dr. Kazimierz

Grzybowski (1959) published by Stevens and Sons Ltd. (London); Bulletin No. 9 of the International Commission of Jurists, and Journal of the

International Commission of Jurists (Sep. 1959), page 285 and following).

41. Therefore, to sum up, while we must vigilantly guard against the inquisitorial procedure invading our criminal jurisprudence, we must equally be

on our guard against the abuses of the accusatorial system. This golden mean is set out by Professor Wigmore on Evidence, Third Evidence,

Volume VIII, page 386. The policy of the privilege against self-incrimination is plain. It exists mainly in order to stimulate the prosecution to a full

and lair search for evidence procurable by their own exertions, and to deter them from a Jazy and pernicious reliance upon the accused's

testimony extracted by force of law. But at the same time the privilege cannot be extended beyond protecting the accused in his testimonial status

from the time he is accused of an offence and must be confined to the limits laid down in M.P. Sharma and Others Vs. Satish Chandra, District

Magistrate, Delhi and Others, . To loosely extend the privilege would not be in the public interest, because as Bentham wittily pointed out ""if all the

criminals of every class had assembled, and framed a system after their own wishes, is not this exclusion the very first which they would have

established for their security?" In fact modern textbook writers on American Constitutional Law and Criminal Evidence (U.S.A.) (Mayer American

Legal System pp. 110-111; Wigmore on Evidence Third edition Vol. 8 p. 386 etc: Underbill Criminal Evidence 5th Edn. Vol. 2 p. 905) condemn

such loose extensions and say that it will one day be incredible that Judges would have descended as far as they sometimes have here gone on the road to logical absurdity.