



Right against Self Incrimination and Constitutional Remedies

For Prelims: Article 32, Article 20, Fundamental Rights.

For Mains: Scope and Limitations of Right against self-incrimination, Constitutional remedies.

Why in News?

The [Supreme Court](#) refused to hear a bail plea by the Deputy CM of Delhi in the excise policy case, as he had approached the court directly under Article 32 of the Constitution instead of first seeking remedy in the High Court under Section 482 of the CrPC.

- SC argued that though in previous cases petitions were entertained directly under [Article 32](#), those cases involved free speech issues while this case is about [Prevention of Corruption act](#).

What is the Background?

- Previously, Special CBI Judge had granted [Central Bureau of Investigation\(CBI\)](#) custody of Deputy CM on the ground that he **'failed to provide satisfactory answers.'**
 - The court had rejected the argument that it was a violation of **right against self-incrimination**.

What is an Individual's Right against Self-incrimination?

- **Constitutional Provisions:**
 - [Article 20](#) grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction:
 - It contains provisions related to **No ex-post-facto law, No double jeopardy, No self-incrimination**.
 - **No self-incrimination: No person** accused of any offence **shall be compelled to be a witness against himself**.
 - The protection against self-incrimination **extends to both oral evidence and documentary evidence**.
 - However, it **does not extend to**
 - compulsory production of material objects,
 - compulsion to give thumb impression, specimen signature, blood specimens, and
 - compulsory exhibition of the body.
 - Further, it extends **only to criminal proceedings** and **not to civil proceedings** or proceedings which are not of criminal nature.

Note

- **No ex-post-facto law:** No person shall be
 - convicted of any offence except for violation of a law in force at the time of the commission of the act, nor
 - subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
 - However, this **limitation is imposed only on criminal laws and not on civil laws or tax laws.**
 - Also, this provision **cannot be claimed in case of preventive detention** or demanding security from a person.
- **No double jeopardy:** No person shall be prosecuted and punished for the same offence more than once.
- **Judicial Rulings:**
 - In 2019, the SC in its ruling in *Ritesh Sinha versus State of Uttar Pradesh* broadened the parameters of **handwriting samples** to include **voice samples**, adding that this **would not violate the right against self-incrimination.**
 - Earlier in 2010, in *Selvi v State of Karnataka*, the SC held that a **narcoanalysis test without the consent of the accused would amount to violation of the right against self-incrimination.**
 - However, **obtaining a DNA sample from the accused is permitted.** If an accused refuses to give a sample, the court can draw adverse inferences against him **under** Section 114 of the **Evidence Act.**

What is Right to approach SC under Article 32?

- **Article 32** confers the **right to approach SC for remedies for the enforcement of the fundamental rights of an aggrieved citizen.** It is a **basic feature of the Constitution.**
- In this regard the jurisdiction of the Supreme Court is **original but not exclusive. It is concurrent with** the jurisdiction of the **high court under Article 226.**
- Rights other than Fundamental rights are not entertained under article 32 but are within the scope of HC under Article 226.
- Since the right guaranteed by Article 32 is in itself a fundamental right, **the availability of alternate remedy is no bar to relief under Article 32.**
 - However, the Supreme Court has ruled that where relief through high court is available under Article 226, **the aggrieved party should first move the high court.**

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