RIGHT AGAINST SELF INCRIMINATION: USA SCENARIO

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The Bill of Rights lays down the foundation of self-incrimination in the United States. The Fifth Amendment of the US Constitution w.e.f December 15, 1791provides for right against self incrimination and contains, more or less, the same language as in Article 20(3) of our Constitution.

The Fifth Amendment states that *"no person…shall be compelled in any criminal case to be a Witness against himself in any criminal case."*[1]

However this privilege has also been evolved and strengthened by virtue of a lot of judicial pronouncements. Initially, in *Adamson vs. California* [2], the question relating to the right to silence came to be considered. The majority did not refer to the Fifth Amendment. But the minority laid down, while referring to the Fifth Amendment, that the right to silence was absolute in US. Subsequently, in *Griffin Vs. California* [3]the Supreme Court of United States refused to permit prosecuratorial or judicial comment to the jury upon a defendant's refusal to take the 'stand' in his own behalf. The Court stated that the defendant had an absolute right not to take the "stand" and that no adverse inference of guilt can be drawn if the defendant exercises his right to silence. An innocent defendant may want to avoid taking the "stand" because he feels that he is likely to perform badly, being uninformed about the law as compared to an experienced prosecutor who is skilled in the artificial rules governing court rooms and that the prosecutor may be able to trip him up. [4]

However, American courts, have laid down a different principle, namely that, at a later stage the silence of the accused can be taken into consideration by the court while deciding about the quantum of punishment. The Courts held that the pressure to take the 'stand' in response to the 'sentencing issue' was not so great as to impair the policies underlying the self-incrimination clause [5]

The very famous case of **Miranda vs. Arizona**[6] broadened the horizon of the Fifth Amendment of USA and after which right against self incrimination have started being popularly referred as "Miranda Rights". It was held in this case that statements obtained from defendants during

[1] United States Constitution Amendment V
[2] (1947) 332 US 46
[3] (1965) 380 US 609,
[4] ibid
[5] *"ARTICLE 20(3) OF THE CONSTITUTION OF INDIA AND THE RIGHT TO SILENCE"*. [ONLINE] Available at:http://lawcommissionofindia.nic.in/reports/180rpt.pdf. [Accessed 16th October 2015].
[6] Miranda v. Arizona, 384 U.S. 436 (1966).

interrogation in a police-dominated atmosphere, without full warning of constitutional rights, were inadmissible as having been obtained in violation of the Fifth Amendment privilege against self-incrimination.[7]Unless other fully effective means are devised to inform an accused person of the right to silence, and to assure continuous opportunity to exercise it, a person must, before any questioning, be warned that he has right to remain silent, that any statement he does make may be used as evidence against him, and that he has right to presence of attorney, retained or appointed.[8]If an individual states that he wants an attorney, interrogation must cease until the attorney is present; at that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning. The mere fact that the accused may have answered some questions or volunteered some statements on his own does not deprive him of his right to refrain from answering any further inquiries until he has consulted with his attorney and thereafter consents to be questioned.[9]. It is also important to note that the US Supreme Court has nowhere laid down that on account of the silence of the accused, an adverse inference can be drawn or that the silence can be treated as a piece of corroboration for inferring of guilt.

In the United States, the privilege against self-incrimination is a personal one and it applies to

- Natural, as opposed to corporate, "persons;"
- Only in criminal cases (a witness cannot keep silent or withhold information in civil proceedings, which are not criminal in nature)
- It only applies to cases where the phenomenon of "compulsion" is present.[10]

"In order for something to be incriminating, it must not simply reveal criminal activity, but produce the real likelihood or risk of imprisonment.[11]Likewise, something is compelled only if there is a risk of imprisonment for refusal to testify or produce documents.[12] The privilege in the United States also preserves some interesting features of the American adversarial system.[13]" When a defendant refuses to testify in their own trial, neither the prosecutor nor the judge can make any adverse comments about the failure to testify (the jury must also be cautioned not to make any inferences from this fact).

[7] ibid
[8] ibid
[9] ibid
[10] Larry Glasser, "*The American Exclusionary Rule Debate: Looking to England and Canada"*, 35 GWILR 159, 177 (2003).
[11] Id
[12] Id
[13] Ibid

Over, the course of over 100 years, the United States Supreme Court has held that an individual is not required to produce self-incriminating documents,[14] to make self-incriminating statements during grand jury investigations,[15] to keep records that single out certain illegal activity,[16]or to be forced to testify under threat of "substantial economic sanction."[17]

The 5th Amendment applies to both federal, and state proceedings.[18] The Fifth Amendment was properly invoked in *Malloy v. Hogan*[19] The court held that the disclosure of who ran the pool-selling operation might furnish a link in a chain of evidence sufficient to connect the prisoner with a more recent crime for which he might still be prosecuted. However, in *Chavez v. Martinez*[20], The United States Supreme Court held there was no violation of respondent's constitutional rights because the circumstances warranted the intense questioning to preserve respondent's version of events and thus the respondent was not compelled to be a witness against himself.

In *Portuondo v. Agard* [21]the court held that a prosecutor's comments during summation did not affect the jury or the defendant's case, even though the defendant had an opportunity to hear other witnesses testify, which enabled the defendant to tailor his testimony accordingly and that evidence can be excluded if the right to self-incrimination is violated.

In *Withrow v. Williams*[22], it was reiterated that statements made by a prisoner during an interrogation after threats of imprisonment by police officers, and before being given Miranda warnings, could not be used in determining his guilt.

However, the United States has a public safety exception to the right against self-incrimination.[23] In *New York v. Quarles*, the Court held that there was a "public safety" exception to the requirement that Miranda warnings be given before a suspect's answers could be admitted into evidence, and that the availability of that exception did not depend upon the motivation of the individual officers involved.

Thus it can be said that the Fifth Amendment expressly conferred on the citizens of USA the privilege against self incrimination ensuring the protection and the rights of an accused. Along with the Fifth Amendment a lot of judicial pronouncements have also been instrumental in

[14]Boyd v. United States, 116 U.S. 616 (1886)
[15] Counselman v. Hitchcock, 142 U.S. 547, 562 (1892)
[16] Marchetti v. United States, 390 U.S. 39, 57, 60-61 (1968)
[17] Leftkowitz . Turley, 414 U.S. 70, 82-83 (1973)
[18] Malloy v. Hogan, 378 U.S. 1, 3 (1964
[19] ibid
[20] Chavez v. Martinez, 538 U.S. 760 (2003)
[21] 120 S.Ct. 1119 (2000)
[22] Withrow v. Williams, 507 U.S. 680
[23] New York v. Quarles, 467 U.S. 649 (1994)

strengthening the legal position over this right and this right is as of today the bedrock principle of the criminal jurisprudence of American legal system