

CHAPTER X

CONCLUSION

From the previous discussion, it will be clear that most of the modern methods of obtaining physical and medical evidence from an accused person do not involve testimony by him and for that reason do not violate the privilege against self-incrimination. The present statutory provisions in India with regard to criminal investigations and evidence lag behind modern scientific developments in the detection of crimes. New statutory provisions would have to be adopted to make full use of such developments. However, the enactment of such provisions should be accompanied by the development of well equipped forensic laboratories, independent of the police and staffed by qualified personnel. If the statutes authorising examinations and extraction of physical and medical evidence were enacted without these accompanying measures, there would be danger of the conviction of innocent persons through inept gathering and interpretation of data. There is also a necessity for continuous research and publication of studies relating to methods of crime detection.

Specifically, new statutory provisions on the following lines would be desirable.

I. *Trial Stage : Amendment of the Indian Evidence Act, 1872. Section 73 may be replaced by the following :*

(1) Subject to the conditions mentioned in clauses (2) and (3) the court may order the accused to submit his body to such examination and tests as it deems appropriate and to do any act in the presence of the court as evidence in the case, other than to testify to, or discuss, the crime.

(2) Any medical examination of the accused shall be conducted only by competent and qualified medical practitioners.

(3) The court shall not order any bodily examination of the accused which, in its view, is dangerous to life or health, unduly painful, or which is excluded by rules under clause (4) of this section.

(4) The government may, by rules, exclude such bodily examination of the accused as it considers undesirable, dangerous to life or health, unduly painful, or for which competent administering or interpreting personnel or equipment is not available.

Comment on clause (1)

This provision is in line with the previous analysis that most of the evidence obtained from the accused by physical and medical examination of his body does not violate Art. 20 (3) of the Constitution. The words "other than to testify" used in the clause will give protection of Art. 20 (3) of the Constitution to the psychological or physiological tests discussed in chapter IX *supra*.

Comment on clause (2)

This provision is necessary to ensure that the health of the accused will not be endangered by inexperienced and unqualified examiners, and to secure reliable results.

Comment on clause (3)

This clause would afford judicial protection against the hazards stated without reference to the privilege against self-incrimination. In the United States, the due process clause affords protection in these matters, but in India legislative provision has to be made.

Comment on clause (4)

Because of the variety and changing character of the techniques involved, it is difficult to enumerate in legislation the methods which should be forbidden. Future developments, scientific or other, may modify or eliminate present conditions in relation to the methods. Scientific developments may also introduce new ways of detecting crimes which nevertheless should be excluded for the reasons stated. Therefore, the power stated should be delegated to the government. Rules under this section will have to be made after the advice of, and consultation with, the medical men, lawyers and other individuals, and after proper hearings.

II. *Investigation or other proceedings under the Code of Criminal Procedure: Amendment of the Identification of Prisoners Act 1920.*

(a) *Section 5 of the Act may be replaced by the following¹ :*

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1. If the amendment is accepted, other consequential changes will have to be made in the Act. Certain details may also have to be worked out, e.g., it may be necessary to provide that only a magistrate of a particular class may order certain bodily examination.

(1) Subject to conditions mentioned in clauses (2) and (3) the magistrate may order the accused to submit his body to such examination as he deems appropriate and relevant and to do any act, either in his presence or in the presence of a police officer, other than to testify to, or discuss, the crime, for the purposes of any investigation or proceedings under the Code of Criminal Procedure.

(2) Any medical examination of the accused shall be conducted only by competent and qualified medical practitioners.

(3) The magistrate shall not order any bodily examination of the accused which is dangerous to life or health, unduly painful, or which is excluded by rules under clause (4) of this section.

(4) The government may, by rules, exclude such bodily examination of the accused as it considers undesirable or dangerous to life or health, unduly painful, or for which competent administering or interpreting personnel or equipment is not available.

Comment

All the observations made, with regard to the preceding amendment to the Evidence Act apply to this proposal also.

(B) *Section 4 of the Act may be replaced by the following² :*

(1) A police officer may physically examine the body of the accused for the purpose of (i) finding out certain marks, scars or other identifying characteristics, or (ii) removing any incriminating evidence from outside of the body of the accused.

(2) A police officer may order the accused to permit taking of his bodily measurements.

(3) A police officer may also order the accused to do the following positive acts for purposes of identification :

- (a) Appear at an identification parade dressed in specified attire subject to decency;
- (b) To put on wearing apparel as directed;
- (c) To give a specimen of his handwriting;
- (d) To put his foot in a track or a footprint; and
- (e) To sit, stand, walk or run.

Comment

To avoid any possible misuse it is advisable that the powers of the police be enumerated specifically.

2. In this case also certain consequential changes will have to be made in the Act, if the amendment is accepted.