

INTRODUCTION

Article 20 (3) of the Constitution of India embodies the rule of the privilege against self-incrimination. Modern scientific developments in the detection of crimes have brought to the forefront the question whether compelling an accused person to subject himself to tests and to physical and medical examination violates the privilege. Irrespective of the existence of any specific constitutional provision in this regard even under the general law there must be statutory provisions which authorise the police or the court to require examination of the accused. In *Bhondar v. Emperor*,² the accused was medically examined by the police against his will to find out whether he raped a girl. The court held the evidence so obtained to be inadmissible. William, J. pointed out:

“Any such examination without the consent of the accused would amount to an assault and I am quite satisfied that the police are not entitled without statutory authority to commit assaults upon prisoners for the purpose of procuring evidence against them. If the legislature desires that evidence of this kind should be given, it will be quite simple to add a short section to the Code of Criminal Procedure expressly giving power to order such a medical examination.”³

In *Deoman v. State* the Bombay High Court also pointed out that “in the absence of positive legislative enactment a general power to interfere with individual rights and liberties

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1. It reads: “No person accused of any offence shall be compelled to be a witness against himself.”
 2. A. I. R. 1931 Cal. 601. See also *Gounder v. Bhoopala*, A. I. R. 1959 Mad. 396; *Polavarapu v. Polavarapu*, A. I. R. 1951 Mad. 910. In *Tarini Kumar v. State*, A. I. R. 1960 Cal. 318, the Calcutta High Court stated that there was no provision in the Criminal Procedure Code of India which permitted police to take a specimen of handwriting of an accused person in the course of investigation and when the accused was in the custody of the police.
 3. *Ibid.*, p. 602.
 4. A. I. R. 1959 Bom. 284.

cannot be simply assumed.” The court went on to say that the “law on the contrary assumed—and this was so even before the commencement of the Constitution—the existence of individual rights and liberties, and steps in for regulating those rights and liberties in the interest of social living.”⁵ The court held that Section 157^a of the Criminal Procedure Code does not authorise the police to take the accused to a doctor for medical examination to determine whether he was intoxicated. Therefore, a police officer in his zeal to investigate a crime cannot curtail human liberty more than what is expressly permitted by the statutory provisions.

In India statutory provisions relating to physical and medical examination of the accused are meagre and there is no comprehensive statute which provides for various types of examination made possible by modern scientific advancement. The various statutory provisions providing for physical and medical examination of the accused as enacted by the central legislature and which are of general applicability are given in the appendix of this study. These provisions apply to offences falling under the Indian Penal Code, and offences falling under other laws so long as contrary procedure is not provided by those laws.

This study has been undertaken with a view to find out the constitutionality of various types of examinations pertaining to the body of the accused, and to recommend the enactment of new provisions with necessary safeguards which may give power to the police and the courts to require the accused to undergo different types of bodily examination and tests.

In analysing the problem American authorities have been frequently referred to. This is because, besides their availability, the constitutional problem arising in India is more similar to that in the United States than to that in England. It has been observed:

“In American legal writing, the concept of the privilege against self-incrimination has been applied to medical examinations of accused persons by police surgeons, the use of stomach-pumps, and such like. In England we should not

5. *Ibid.*, p. 285.

6. This section along with Section 156 gives to the police a general power of investigation into cognizable offences.

7. *Cf.* Section 5 (2) of the Criminal Procedure Code.

think of these problems as raising the issue of self-incrimination; they relate merely to the limits on the powers of the police in relation to detained persons. Although there is little authority, it can be said with some confidence that the use of force against the body of a detained person for the purpose of obtaining evidence is an illegal battery. There is, however, a common-law power to search arrested persons (the police have not tried to assert that this extends to a search of the body, as distinct from a search of the clothes or exterior); and magistrates have statutory power to authorise the taking of fingerprints."⁸

Therefore, English authorities have not been referred to in this study.

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8. Glanville L. Williams, *The Privilege Against Self-Incrimination: An International Symposium (England)*, 51 *J. of Cri. Law, Criminology and Police Science* 166, 169 (1960-61).