A

NANDINI SATPATHY

v.

DANI (P.L.) AND ANR.

April 7, 1978

B [V. R. KRISHNA IYER, JASWANT SINGH AND V. D. TULZAPURKAR, JJ.]

Penal Code, (Act V). 1860—*S.*179—*Whether mens rea forms a necessary component of S.* 179—*Defences open under Section* 179 *I.P.C. r/w Section* 161 *Criminal Procedure Code.*

Criminal Procedure Code, 1973, *S.* 161(2)—*Parameters of Section* 161(2), *what are—Whether the tendency to expose a person to a criminal charge em-*
C *brance answers which have an inculpatory impact in other criminal cases* in posse *or* in esse *elsewhere,—"Any person supposed to be acquainted" in S.* 161 (1) *Whether includes an accused person or only a witness—When does an answer acquire confessional status within the meaning of S.* 27 *of Evidence Act.*

"Right to silence", when applicable—Constitutional right under Art. 20(3) *examined, explained and made explicit—Meaning of the word "accused" occur-*
D *ring in Art.* 20(3) *whether it includes a suspect-accused—Constitution of India,* 1950, *Art.* 20(3).

Examination of a witness by Police under S. 161—*Effect of proviso and marginal note, Crl. P C.,* 1973.

The appellant, a former Chief Minister of Orissa and one time Minister at the National level was directed to appear at the Vigilance Police Station, Cuttack, in September, 1977 for being examined in connection with a case
E registered against her by the Deputy Superintendent of Police, Vigilance, Cuttack u/s 5(2) read with s. 5(1)(d) and (e) of the Prevention of Corruption Act and u/s. 161/165, 120B and 109 I.P.C. On the strength of the first information, in which the appellant, her son and others were shown as accused persons investigation was commenced. During the course of the investigation it was that she was interrogated with reference to a long string of questions, given to her in writing. The gravamen of the accusation was one of acquisition of assets disproportionate to the known, licit sources of income and probable
F resources over the years of the accused, who occupied a public position and exercised public power for a long spell during which the appellant by receipt of illegal gratification aggrandised herself. Exercising her right of silence guaranteed under Art. 20(3) of the Constitution, the appellant refused to answer, with the result a complaint was filed by the Deputy Superintendent of Police, Vigilance (Directorate of Vigilance) Cuttack, against the appellant, under s. 179 I.P.C. before the Sub-Divisional Judicial Magistrate, Sadar, Cuttack. The Magistrate took cognizance of the offence and issued summons of appearance against the appellant-accused. Aggrieved by the action of the Magistrate and
G urging that the complaint did not and could not disclose an offence, the accused-appellant moved the High Court under Art. 226 of the Constitution as well as under s. 401 of the Cr. P. Code, challenging the validity of the Magisterial proceeding. The broad submission, unsuccessfully made before the High Court, was that the charge rested upon a failure to answer interrogations by the police but this charge was unsustainable because the umbrella of Art. 20(3) of the Constitution and the immunity under Section 161(2) of the Cr. P. Code were wide enough to shield her in her refusal. The plea of un-
H constitutionality and illegality, put forward by this pre-emptive proceeding was rebuffed and so the appellant appealed to this Court by certificate granted under Art. 132(1) resulting in two appeals.

Allowing the appeals and quashing the prosecution proceedings the Court

HELD : 1. When a woman is commanded into a police station violating the commandment of Section 160 of the Code when a heavy load of questions is handed in some permissible some not, where the area of constitutional protection against self-crimination is (until this decision) blurred in some aspects, when, in this Court, counsel for the accused unreservedly undertakes to answer in the light of the law herein laid down, when the object of the prosecution is to compel contrite compliance with Section 161 Cr. P.C. abandoning all contumacy and this is achieved by the undertaking, when the pragmatic issues involved are so complex that effective barricades against police pressure to secure self-incrimination need more steps as indicated in this judgment that persistence in the prosecution is seeming homage to the rule of law and quashing the prosecution secures the ends of justice and the right thing to do is to quash the prosecution as it stands at present. That this dimension of the problem has escaped the Executive's attention for reasons best left unexplored is regrettable. [650 H, 651 A-C]

It is quite probable that the very act of directing a woman to come to the police station in violation of section 160(1) Cr. P.C. may make for tension and negate voluntariness. It is likely that some of the questions are self-criminatory. More importantly, the admitted circumstances are such that the trying magistrate may have to hold an elaborate enquiry about other investigations, potential and actual, to decide about the self-accusatory character of the answers. And, finally, the process of proving proneness for self-incrimination will itself strike a below on the very protection under Art. 20(3). [649 G-H, 650 A]

(a) S. 161 enables the police to examine the accused during investigation; [644 C]

(b) The prohibitive sweep of Art. 20(3) goes back to the stage of police interrogation not, as contended commencing in Court only; [644-C].

(c) The provisions of Art. 20(3) and section 161(1) substantially cover the same area so far as police investigations are concerned; [644-C]

(d) The ban on self-accusation and the right to silence, while on investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter; [644 C-D]

(e) 'Compelled testimony' must be read as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion tiring interrogative prolixity, overbearing and intimidatory methods and the like not legal penalty for violation. So the legal perils following upon refusal to answer or answer truthfully cannot be regarded as compulsion within the meaning of Art. 20(3). The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt it becomes compelled testimony violative of Art. 20(3); [644 D-F]

(f) A police officer is clearly a person in authority. Insistence on answering is a form of pressure especially in the atmosphere of the police station unless certain safe guards erasing duress are adhered to. Frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Art. 20(3). Legal penalty may by itself does not amount to duress but the manner of mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering near compulsion; [644 F-G]

(g) Self incrimination or tendency to expose oneself to a criminal charge is less than 'relevant' and more than 'confessional'. Irrelevance is impermissible; while relevance is licit if the relevant questions are loaded with guilty inference in the event of an answer being supplied the tendency to incriminate springs into existence; [644 G-H]

A (h) The accused person cannot be forced to answer questions merely because the answers thereto are not implicative when viewed in isolation and confined to that particular case. He is entitled to keep his mouth shut if the answer sought has a reasonable prospect of exposing him to guilt in some other accusation actual or imminent, even though the investigation under way is not with reference to that. In determining the incriminatory character of an answer the accused is entitled to consider and the Court while adjudging will take note of the setting, the totality of circumstances, the equation, personal and social which have a bearing on making an answer substantially innocent but in effect B guilty in import. However, fanciful claims, unreasonable apprehensions, and vague possibilities cannot be the hiding ground for an accused person. He is bound to answer where there is no clear tendency to criminate.

[644 H, 645 A-B]

(i) Section 179 I.P.C. has a component of *mens rea* and where there is no wilful refusal but only unwitting omission or innocent warding off, the offence is not made out. [645-C]

C (j) Where there is reasonable doubt indicated by the accused's explanation he is entitled to its benefit and cannot be forced to substantiate his ground lest, by this process, he is constrained to surrender the very privilege for which he is fighting. What may apparently be innocent information may really be nocent or noxious viewed in the wider setting. [645 C-D]

(k) The right to consult an advocate of this choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of D Art. 22(1) is that it is fundamental to the rule of law that the service of a lawyer shall be available for consultation to any accused person under circumstances of near-custodial interrogation. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice. Lawyer's presence is a constitutional claim in some circumstances in our country also, and, in the context of Art. 20(3), is an assurance of awareness and observance of the right to silence. Art. 20(3) and Art. 22(1) may in a way be telescoped by making it prudent for the police to permit the advocate of the accused, if there be one, to be E present at the time he is examined. Over-reaching Art. 20(3) and S. 161(2) will be obviated by this requirement. It is not that the police must secure the services of a lawyer. That will lead to police-station-lawyer system, an abuse which breeds other vices. But if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-crimination secured in secrecy and by coercing the will was the project. A lawyer cannot harangue the police but may help his client and complain on his behalf although his very presence will ordinarily remove the implicit menace F of a police station. No doubt the presence of a lawyer is asking for the moon in many cases until a public defender system becomes ubiquitous. The police need not wait more than for a reasonable while for an advocate's arrival. But they must invariably warn and record that fact about the right to silence against self-incrimination: and where the accused is literate take his written acknowledgment. [645 G-H, 646 A-E]

(l) 'Third degree' is an easy temptation where the pressure to detect is G heavy, the cerebration involved is hard and the resort to torture may yield high dividends. [646 F]

[Keeping in view the symbiotic need to preserve the immunity without stifling legitimate investigation after an examination of the accused, where a lawyer of his choice is not available, the police official should take him to a magistrate, doctor or other willing and responsible non-partisan official or non-official and allow a secluded audience where he may unburden himself beyond the view of the police and tell whether he has suffered duress, which should be followed by H judicial or some other custody for him where the police cannot teach him. That collocutor may briefly record the relevant conversation and communicate it not to the police but to the nearest magistrate Pilot projects on this pattern may yield experience to guide the practical processes of implementing Art. 20(3). These are not mandates but strong suggestions.] [64 D-E]

(m) Many of the questions put by the police are not self-incriminatory, remote apprehensions being wholly irrelevant. To answer is citizen's duty; failure is asking for conviction. The appellant shall undertake to answer all questions put to her which do not materially incriminate her in the pending or imminent investigations or prosecutions. If she claims immunity regarding any questions she will, without disclosing details, briefly state in which case or offence in the offing makes her reasonably apprehend self-incrimination by her refused answers. If, after the whole examination is over, the officer concerned reasonably regards any refusal to answer to be wilful violation under pretence of immunity from self-incrimination, he will be free to prosecute the alleged offender after studying the refusal to answer in the light of the principles earlier set out, Section 179 I.P.C. should not be unsheathed too promiscuously and teasingly to tense lay people into vague consternation and covert compulsion although the proper office of Section 179 I.P.C. is perfectly within the constitutional limits of Art. 20(3). [651 C-F] A B

2. The rule of law becomes a rope of sand if the lawful authority of public servants can be defined or disdained by those bound to obey. The might of the law, in the last resort guarantees the right of the citizen and no one, be he minister or higher, has the discretion to disobey without running a punitive risk. Chapter X of the Indian Penal Code is designed to penalise disobedience of public servants exercising lawful authority. S. 179 is one of the provisions to enforce compliance when a public servant legally demands truthful answers but is met with blank refusal or plain mendacity. [620 F-G] C

3. A break down by S. 179 I.P.C. yields the following pieces (a) the demanding authority must be a public servant; a police officer is obviously one; (b) the demand must be to state the truth on a subject in the exercise of legal powers; and, *indubitably,* an investigating officer enjoys such powers under the Cr. P. Code, and, in the instant case, requisition was precisely to tell the truth on matters supposedly partinent to the offence under investigation. S. 161 of the Cr. P. Code obligates "any person supposed to be acquainted with the facts and circumstances of the case" to answer truthfully "all questions relating to such case other than questions the answers to which would have a tendency to expose him to a criminal charge". [621 A-B] D

In the present case, admittedly oral answers to written interrogations were sought, although not honest speech but 'constitutional' silence greated the public servant. And this refuge by the accused under Art. 20(3) drove the disenchanted officer to seek the sanction of section 179 I.P.C. If the literal force of the text governs the complex of facts, the Court must convict, lest the long arm of the investigatory law should hang limp when challenged by the negative attitude of inscrutability worn by the interrogatee unless within the text and texture of the section-built-in defences exist. [621 B-C] E F

4. The area covered by Art. 20(3) of the Constitution and section 161(2) of the Criminal Procedure Code is substantially the same. So much so, terminological expansion apart, sec. 161(2) is a parliamentary gloss on the constitutional clause. [623D]

A constitutional provision receives its full semantic range and so it follows that a wider connotation must be imparted to the expressions 'accused of any offence' and 'to be witness against himself'. Art. 20(3) of the Constitution warrants no such truncation as argued by Counsel but, as in *Miranda* v. *Arizona,* 384 U.S. 436 (1966) ruling extends the embargo to police investigation, also. A narrow meaning may emasculate a necessary protection. There are only two primary queries involved in this clause that seals the lips into permissible silence (i) Is the person called upon to testify 'accused of any offence' and (ii) is he being compelled to the witness against himself ? [623 E-F] G

Miranda v. *Arizona,* 384 U.S. 436 (1966); referred to.

A wider construction viz. that s. 161(2) of the Code might cover not merely accusations already registered in police stations but those which are likely to be basis for exposing a person to a criminal charge, if applicable to Art. 20(3), approximates the constitutional clause to the explicit statement of H

A the prohibition in s. 161(2). S. 161(2) meaningfully uses the expression 'expose himself to a criminal charge'. Obviously, these words mean, not only cases where the person is already exposed to a criminal charge but also instances which will imminently expose him to criminal charges. In Art. 20(3) the expression (accused of any offence' must mean formally accused *in praesenti* not *in futuro*—not even imminently as decisions now stand. The expression "to be witness against himself" means more than the court process. Any giving of evidence, any furnishing of information, if likely to have an incriminating impact ensures the description of being witness against himself. Not being B limited to the forensic stage by express words in Art. 20(3) the expression must be construed to apply to every stage where furnishing of information and collection of materials takes place. That is to say, even the investigation at the police level is embraced by Art. 20(3). This is precisely what s. 161(2) means. [623 G-H, 624 A-B]

Sub-section (2) of S. 161 Cr. P. C. relates to oral examination by police officers and grants immunity at that stage. Briefly, the Constitution and the C Code are coterminous in the protective area. While the Code may be changed, the Constitution is more enduring. [624 B-C]

6. Under the Indian Evidence Act the *Miranda* exclusionary rule that custodial interrogations are inherently coercive finds expression (s. 26), although the Indian provision confines it to confession which is a narrower concept than self-incrimination. [624 D]

D 7. Speaking pragmatically, there exists a rivalry between societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America. Our constitutional perspective has, therefore, to be relative and cannot afford to be absolutist, especially when torture technology, crime escalation and other social variables affect the application of principles in producing humane justice. [624 E-G]

Couch v. *United States,* 409 U.S. 322, 336 (1972) referred to.

E 8. Two important considerations must be placed at the forefront before sizing up the importance and impregnability of the anti-self-incrimination guarantee. They are (i) not to write off the fear of police torture leading to forced self incrimination as a thing of the past and (ii) never to forget that crimes, in India and internationally are growing and criminals are outwriting the detectives. [625 C, G]

The first obligation of the criminal justice system is to secure justice by seeking and substanciating truth through proof. The means must be as good as F the ends and the dignity of the individual and the freedom of the human person cannot be sacrificed by resort to improper means, however worthy the ends. Therefore. 'Third degree' has to be out-lawed and indeed has been. [626 F-G]

The cherished principle behind the Maxim *'nemo tenetur sceipsum tenetur'* meaning "a man cannot represent himself as guilty" which proscribes compulsory self-accusation, should not be dangerously over broad nor illusorily whittled down. And it must openly work in practice and not be a talismatic symbol. If Art. 20(3) is not to prove a promise of unreality the Court must G clothe it with flesh and blood. [626 H, 627 B-C]

Miranda v. *Arizona,* 384 U.S. 436 (1966), *Brown* v. *Walker,* 40 L. Ed. 819 referred to.

A moral from the *Miranda* reasoning is the burning relevance of erecting protective fenders and to make their observance a police obligation so that the angelic Art. 20(3) may face upto Satanic situations. [630 F-G]

H 9. The framers of our Constitution have cognised certain pessimistic poignancies and mellow life meanings and obligated Judges to maintain a 'fair state-individual balance' and to broaden the fundamental right to fulfil its purpose, lest frequent martyrdoms reduce the article to a mock formula. Even silent approaches, furtive moves, slight deviations and subtle ingenuities

may erode the article's validity unless the law outlaws illegitimate and unconstitutional procedures before they find their first firm footing. The silent cause of the final fall of the tall tower is the first stone obliquely and obliviously removed from the base. [631 E-F] A

And Art. 20(3) is a human article, a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic ante-chamber of a police station. And in the long run, that investigation is best which uses strategems least, that policeman deserves respect who gives his fists rest and his wits restlessness. B

10. Sec. 161(2) is a sort of parliamentary commentary on Art. 20(3) of the Constitution. The scope of s. 161 does include actual accused and suspects and therefore the police have power under sections 160 and 161 of the Cr. P.C. to question a person who then was or in the future may incarnate as an accused person. 'Any person' in s. 161 Cr. P.C. would include persons then or ultimately accused. [632 E-F] C

Any person supposed to be acquainted with the facts and circumstances of the case includes an accused person who fills that role because the police suppose him to have committed the crime and must, therefore, be familiar with the facts. The supposition may later prove a fiction but that does not repel the section. Nor does the marginal note 'examination of witnesses by police' clinch the matter. A marginal note clears ambiguity but does not control meaning. Moreover, the supposititous accused figures functionally as a witness. To be a witness, from functional angle, is to impart knowledge in respect of a relevant fact, and that is precisely the purpose of questioning the accused under section 161 Cr. P.C. The dichotomy between 'witnesses' and 'accused' used as terms of art. does not hold good here. The amendment, by Act XV of 1941, of Sec. 161(2) of the Cr. P. Code is a legislative acceptance of the *Pakala Narayana Swami* reasoning and guards against a possible repercussion of that ruling. The appellant squarely fell within the interrogational ring. To hold otherwise is to fold up investigative exercise, since questioning suspect is desirable for detection of crime and even protection of the accused. Extreme positions may boomerang in law as in politics. [633 F H, 634 A-B] D E

M. P. Sharma v. *Satish Chandra, Dist, Magistrate, Delhi* [1954] S.C.R. 1077, *Jakala Narayanaswami* v. *Emperor,* A.I.R. 1939 PC 47, *Mahabir Mandal and Ors.* v. *State of Bihar,* [1972] 3 SCR 639, 657; followed.

11. Suspects, not yet formally charged but embryonically are accused on record, also may swim into the harbour of Art. 20(3) and therefore a person formally brought into the police diary as an accused person is eligible for the prophylactic benefits of Art. 20(3) of the Constitution. [635 B-G] F

State of Bombay v. *Kathi Kalu Oghad,* [1962] 3 SCR 10 reiterated.

Raja Narayan Lal Bansilal v. *Manek Phiroz Mistry and Ors.* [1961] 1 S.C.R. 417; *Ramesh Chandra Mehta* v. *State of W. B.* [1969] 2 S.C.R. 461 and *Bhagwandas Goenka* v. *Union of India,* Crl. A. 131-132 of 1961 S.C. dated 20-9-63; referred to.

12. It is plausible that where realism prevails over formalism and probability over possibility. the enquiries under criminal statutes with quasi-criminal investigations are of an accusatory nature and are sure to end in prosecution when the offence is grave and the evidence gathered good. And to deny the protection of a constitutional shield designed to defend a suspect because the enquiry is preliminary and may possibly not reach the Court is to erode the substance while paying hollow homage to the holy verbalism of the Article. [637 H, 638A] G

Ramesh Chandra Mehta v. *State of W.B.* [1961] 2 S.C.R. 461 and *Raja Narayan Lal Bansilal* v. *Manak Phiroz Mistry and Ors.,* [1961] 1 S.C.R. 417, referred to. H

13. The view that the bar in Art. 20(3) operates only when the evidence previously procured from the accused is sought to be introduced into the case

A at the trial by the Court will be sapping the juice and retaining the rind of Art. 20(3) doing interpretative violence to the humanist justice of the proscription. The text of the clause contains no such clue, its intendment is stultified by such a judicial amendment and an expansive construction has the merit of natural meaning, self-fulfilment of the 'silence zone' and the advancement of human rights. The plea for narrowing down the play of the sub-article to the forensic phase of trial cannot be accepted. It works where the mischief is, in the womb, i.e. the police process. [638 B-D]

B 14. Both precedent procurement and subsequent exhibition of self criminatting testimony are obviated by intelligent constitutional anticipation. If the police can interrogate to the point of self-accusation, the subsequent exclusion of that evidence at the trial hardly helps because the harm has been already done. The police will prove through other evidence what they have procured through forced confession. So it is that the foresight of the framers has preempted self-incrimination at the incipient stages by not expressly restricting it to the trial stage in Court. True, compelled testimony previously obtained is C excluded. But the preventive blow falls also on pre-court testimonial compulsion. The condition is that the person compelled must be an accused. [639 B-D]

15. Not all relevant answers are criminatory; not all criminatory answers are confessions. Tendency to expose to a criminal charge is wider than actual exposure to such charge. The spirit of the American rulings and the substance of this Court's observations justify this 'wheels within wheels' conceptualization of self-accusatory statements. The orbit of relevancy is large. Every fact D which has a nexus with the case does not make it noxious to the accused. Relevance may co-exist with innocence and constitutional censure is attracted only when inference of nocence exists. And an incriminatory inference is not enough for a confession. Only if, without more, the answer established guilt, does it amount to a confession. [639 E-G]

Answers that would, in themselves, support a conviction are confessions but answers which have a reasonable tendency strongly to point out to the guilt of the accused are incriminatory. Relevant replies which furnish a real and E clear link in the chain of evidence indeed to bind down the accused with the crime become incriminatory and offend Art. 20(3) if elicited by pressure from the mouth of the accused. An answer acquires confessional status only if, in terms of substantially, all the facts which constitute the offence are admitted by the offender. If his statement also contains self-exculpatory matter it ceases to be a confession. Article 20(3) strikes at confessions and self-incriminations but leaves untouched other relevant facts. [640 A-C]

16. The claim of a witness of privilege against self-incrimination has to be F tested on a careful consideration of all the circumstances in the case and where it is clear that the claim is unjustified, the protection is unavailable. [640C]

Merely because he fancied that by such answer he would incriminate himself he could not claim the privilege of silence. It must appear to the court that the implications of the question, in the setting in which it is asked, make it evident that a responsive answer or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result. The apprehension of incrimination from the answer sought must be substantial and real as distin- G guished from danger of remote possibilities or fanciful flow of inference. Two things need emphasis. The setting of the particular case, the context and the environment i.e. the totality of circumstances, must inform the perspective of the Court adjudging the incriminatory injury, and where reasonable doubt exists, the benefit must go in favour of the right to silence by a liberal construction of the Artcle. [640 D-F]

But the true test is; could the witness (accused) have reasonably sensed the peril of prosecution from his answer in the conspectus of circumstances ? H The perception of the peculiarities of the case cannot be irrelevant in proper appraisal of self-incriminatory potentiality. [640G]

Hoffman v. *United States* 341 U.S. 479 and *Malloy* v. *Bagan*, 12 L.Ed. 2d. 653 quoted with approval.

17. The policy behind the privilege under our scheme, does not swing so wide as to sweep out of admissibility statements neither confessional *per se* nor guilty in tendency but merely relevant facts which viewed in any setting, does not have a sinister import. To spread the net so wide is to make a mockery of the examination of the suspect, so necessitous in the search for truth. Over-breadth undermines, and such morbid exaggeration of a wholesome protection must be demurred. [640 H, 641 A-B] A

On the bounds between constitutional proscription and testimonial permission Art. 20(3) could be invoked only against statements which had a material bearing on the criminality of the maker of the statement. "By itself does not exclude the setting or other integral circumstances but means something in the fact disclosed a guilt element. The setting of the case is an implied component of the statement. [641 B-D] B

State of Bombay v. Kathikalu Oghad, [1962] 3 SCR P. 10 referred to.

18. Relevancy is tendency to make a fact probable. Crimination is a tendency to make guilt probable. Confession is a potency to make crime conclusive. The taint of tendency, under Art. 20(3) and s. 161(1) is more or less the same. It is not a remote, recondite, freak or fanciful inference but a reasonable, real, material or probable deduction. This governing test holds good, it is pragmatic, for one feels the effect, its guilty portent fairly clearly. [641 E-F] C

19. There is need for regard to the impact of the plurality of other investigations in the offing or prosecutions pending on the amplitude of the immunity. 'To be witness against oneself' is not confined to particular offence regarding which the questioning is made but extends to other offences about which the accused has reasonable apprehension of implication from his answer. This conclusion also flows from tendency to be exposed to a criminal charge. 'A criminal charge' covers any criminal charge than under investigation or trial or imminently threatens the accused. [641 G-H, 642 A] D

20. The setting of the case or cases is also of the utmost significance in pronouncing on the guilty tendency of the question and answer. What in one milieu may be colourless, may, in another be criminal. While subjectivism of the accused may exaggeratedly apprehend a guilty inference lingering behind every non-committal question, objectivism reasonably screens nocent from innocent answers. Therefore, making a fair margin for the accused's credible apprehension of implication from his own mouth, the Court will view the interrogation objectively to hold it criminatory or otherwise without surrendering to the haunting subjectivism of the accused. The dynamics of constitutional silence cover many interacting factors and repercussions from speech. [642 A, C-D] E

21. The policy of the law is that each individual accused included, by virtue of his guaranteed dignity has a right to a private enclave where he may lead a free life without over-bearing investigatory invasion or even crypto-coercion. The protean forms gendarme duress assumes, the environmental pressures of police presence, compounded by incommunicado confinement and psychic exhaustion, torturesome interrogation and physical menances and other ingenious, sophisticated procedures—the condition, mental, physical, cultural and social—of the accused, the length of the interrogation and the manner of its conduct and a variety of like circumstances, will go into the pathology of coerced paraconfessional answers. The benefit of doubt where reasonable doubt exists, must go in favour of the accused. [643 C-D] F G

State of Bombay v. *Kathikalu Oghad,* [1962] 3 SCR 10, referred to.

Observation

[Such deviance as in this case where a higher level police officer, ignorantly insisted on a woman appearing at the police station, in fragrant contravention of the wholesome proviso to Section 160(1) of the Cr. P.C. must be visited with prompt punishment, since policemen may not be a law unto themselves expecting others to obey the law. The wages of indifference is reprimand, of intransigence disciplinary action. If the *alibi* is that the Sessions Court had directed H

A the accused to appear at the police station, that is no absolution for a police officer from disobedience of the law. There is public policy, not complimentary to the police personnel, behind this legislative proscription which keeps, juveniles and females from police company except at the former's safe residence. May be, in later years, community confidence and consciousness will regard the police force as entitled to better trust and soften the stigmatising or suspicious provisions now writ across the Code].

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 315 of 1978.

From the Judgment and Order dated 30-1-1978 of the Orissa High Court in C.D.C. No. 961/77.

AND

CRIMINAL APPEAL NO. 101 *of* 1978

C From the Judgment and Order dated 30-1-1978 of the Orissa High Court in Criminal Revision No. 397 of 1977.

G. Rath, S. K. Bagga, (Mrs.) S. Bagga and *Indu Talwar* for the Appellant.

B. M. Patnaik, A. G.. Orissa, Vinoo Bhagat and *R. K. Mehta* for Respondent No. 1.

D The Judgment of the Court was delivered by

A pensive preface :

KRISHNA IYER, J.—Every litigation has a touch of human crises and, as here, it is but a legal projection of life's vicissitudes.

E A complaint was filed by the Deputy Superintendent of Police, Vigilance (Directorate of Vigilance), Cuttack, against the appellant, the former Chief Minister of Orissa under section 179 I.P.C., before the Sub-divisional Judicial Magistrate, Sadar, Cuttack, alleging offending facts which we will presently explain. Thereupon the Magistrate took cognizance of the offence and issued summons for appearrance against the accused (Smt. Nandini Satpathy). Aggrieved by the F action of the Magistrate and urging that the complaint did not and could not disclose an offence, the agitated accused-appellant moved the High Court under Art. 226 of the Constitution as well as under section 401 of the Cr. P. Code, challenging the validity of the Magisterial proceeding. The broad submissions, unsuccessfully made before the High Court, was that the charge rested upon a failure to answer interrogations by the police but this charge was unsustainable because G the umbrella of Article 20(3) of the Constitution and the immunity under section 161(2) of the Cr. P. Code were wide enough to shield her in her refusal. The plea of unconstitutionality and illegality, put forward by this pre-emptive proceeding was rebuffed by the High Court and so she appealed to this Court by certificate granted under Article 132(1), resulting in the above two appeals, thereby taking a calculated risk which might boomerang on the litigant if she failed, H because what this Court now decides finally binds.

Every appeal to this court transcends the particular *lis* to incarnate as an appeal to the future by the invisible many whose legal lot we

decide by laying down the law for the nation under Article 141; and, so, we are filled with humility in essaying the task of unravelling the sense and sensibility, the breadth and depth, of the principle against self-incrimination enshrined in Art. 20(3) of our Constitution and embraced with specificity by Section 161(2) of the Cr. P. Code. Here we must remember, concerned as we are in expounding an aspect of the Constitution bearing on social defence and individual freedom, that humanism is the highest law which enlivens the printed legislative text with the life-breath of civilized values. The judge who forgets this rule of law any day regrets his nescient verdict some day.

Now, we move on to the riddle of Art. 20(3), the range of the 'right to silence' and the insulation of an accused person from police interrogation under section 161(2) of the Cr. P. Code. Counsel on both sides have presented the rival viewpoints with utmost fairness some scholarship and we have listened to them, not as an abstract intellectual exercises peppered by lexical and precedential erudition but as deeper dives into the meaning of meanings and the exalted adventures in translation of twinkling symbols. Our Constitutional guarantees are phrased like the great *sutras*—pregnant brevities enwombing founding faiths.

The basic facts which have given rise to this case need to be narrated but the law we have to settle reminds us, not of a quondam minister, the appellant, but of the numerous indigents, illiterates and agrestics who are tensed and perplexed by police processes in station recesses, being unversed in the arcame implications of Art. 20(3) and unable to stand up to rough handling despite section 161(2). Law-in-action is tested by its restless barks and bites in the streets and its sting in hostile camps, especially when the consumers are unaware of the essential contents of the protective provisions,—and not by its polished manners and sweet reasonableness in forensic precincts. The pulse of the agitated accused, hand-cuffed and interrogated, the rude voice and ready rod of the head constable and the psychic strain, verging on consternation, sobbing into involuntary incriminations, are part of the scenario of police investigation which must educate the Court as it unveils the nuances of Art. 20(3) and its inherited phraseology. A people whose consciousness of rights is poor, a land where legal services at the incipient stages are rare and an investigative personnel whose random resort to third degree technology has ancient roots—these and a host of other realistic factors must come into the Court's ken when interpreting and effectuating the constitutional right of the suspect accused to remain silent. That is why quick surgery, when constitutional questions affecting the weaker numbers are involved, can be successful failure. We are cognizant of the improved methods and refined processes of the police forces, especially the Vigilance wings and Intelligence squads with special training in expert investigation and use of brains as against brawn. This remarkable improvement, in Free India, in police practices has not unfortunately been consistent and torture tactics have not been transported for life from our land as some recent happenings have regrettably revealed.

A Necessarily, the Court must be guided by principled pragmatism, not cloud-cuckoo-land idealism. This sets our perspective.

The facts :

Back to the facts. Smt. Nandini Satpathy, a former Chief Minister of Orissa and one time minister at the national level, was directed to B appear at the Vigilance Police Station, Cuttack, in September last year, for being examined in connection with a case registered against her by the Deputy Superintendent of Police, Vigilance, Cuttack, under section 5(2) read with section 5(1)(d) & (e) of the Prevention of Corruption Act and under section 161/165 and 120-B and 109 I.P.C. On the strength of this first information, in which the appellant, her son and others were shown as accused persons, investigation was com- C menced. During the course of the investigation it was that she was interrogated with reference to a long string of questions, given to her in writing. Skipping the details of the dates and forgetting the nicieties of the provisions, the gravamen of the accusation was one of acquisition of assets disproportionate to the known, licit sources of income and probable resources over the years of the accused, who occupied a public position and exercised public power for a long spell D during which, the police version runs, the lady by receipt of illegal gratification aggrandised herself—a pattern of accusation tragically and traumatically so common against public persons who have exercised and exited from public power, and a phenomenon so suggestive of Lord Acton's famous dictum. The charge, it is so obvious, has a wide-ranging scope and considerable temporal sweep, covering activities and acquisitions, sources and resources private and public dealings E and nexus with finances, personal and of relatives. The dimensions of the offences naturally broadened the area of investigation, and to do justice to such investigation, the net of interrogation had to be cast wide. Inevitably, a police officer who is not too precise, too sensitive and too constitutionally conscientious is apt to trample under foot the F guaranteed right of testimonial tacitness. This is precisely the grievance of the appellant, and the defence of the respondent is the absence of the 'right of silence', to use the familiar phrase of 20th century vintage.

Our Approach

G Counsel's submissions have zeroed in on some basic questions. Speaking broadly, there are two competing social interests a reconciliation of which gives the clue to a balance between the curtailed or expanded meaning for the sententious clause against self-incrimination in our Constitution. Section 161(2) Cr. P.C. is more concrete. We may read both before venturing a *bhashyam* on their text :

> "Art. 20(3)—No person accused of any offence shall be compelled to be a witness against himself".

H "Section 161(2) Cr. P.C. enjoins :

> "Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than

questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."

The elucidation and application of these provisions will be better appreciated in the specific setting of the points formulated in the course of the arguments. And so we now set down the pivotal issues on which the submissions were focussed, reminding ourselves that we cannot travel beyond the Atlantic to lay down Indian law although counsel invited us, with a few citations, to embark on that journey. India is Indian, not alien, and jurisprudence is neither eternal nor universal but moulded by the national genius, life's realities, culture and ethos of each country. Even so, humanist jurists will agree that in this indivisible human planet certain values, though divergently expressed, have cosmic status, spreading out with the march of civilization in space and time. To understand ourselves, we must listen to voices from afar, without forsaking our identity. The Gandhian guideline has a golden lesson for judges when rulings and text books outside one's jurisdiction are cited :

> "I do not want my house to be walled in on all sides and my windows to be stuffed. I want the cultures of all lands to be blown about my house as freely, as possible. But I refuse to be blown off my feet by any."
>
> (Young India 1-6-1921)".

To build bridges of juridical understanding based on higher values, is good; to don imported legal haber-dashery, on meretricious appeal, is clumsy.

The Issues

The points in controversy may flexibly be formulated thus :

1. Is a person *likely* to be accused of crimes i.e. a suspect accused, entitled to the sanctuary of silence as one 'accused of any offence' ? Is it sufficient that he is a potential—of course, not distant—candidate for accusation by the police ?

2. Does the bar against self-incrimination operate not merely with reference to a particular accusation in regard to which the police investigator interrogates, or does it extend also to other pending or potential accusations outside the specific investigation which has led to the questioning ? That is to say, can an accused person, who is being questioned by a police officer in a certain case, refuse to answer questions plainly non-criminatory so far as that case is concerned but probably exposes him to the perils of inculpation in other cases *in posse* or *in esse* elsewhere ?

3. Does the constitutional shield of silence swing into action only in Court or can it barricade the 'accused' against incriminating interrogation at the stages of police investigation ?

4. What is the ambit of the cryptic expression 'compelled to be a witness against himself' occurring in Article 20(3) of the Constitution ?

A Does 'compulsion' involve physical or like pressure or duress of an unlawful texture or does it cover also the crypto-compulsion or psychic coercion, given a tense situation or officer in authority interrrogating an accused person, armed with power to insist on an answer ?

5. Does being 'a witness against oneself' include testimonial *tendency* to incriminate or probative probability of guilt flowing from the B answer ?

6. What are the parameters of Section 161(2) of the Cr. Procedure Code ? Does tendency to expose a person to a criminal charge embrace answers which have an inculpatory impact in other criminal cases actually or about to be investigated or tried ?

C 7. Does 'any person' in Section 161 Cr. Procedure Code include an accused person or only a witness ?

8. When does an answer self-incriminate or tend to expose one to a charge ? What distinguishing features mark off nocent and innocent, permissible and impermissible interrogations and answers ? Is the setting relevant or should the answer, *in vacuo,* bear a guilty badge D on its bosom ?

9. Does *mens rea* form a necessary component of section 179 I.P.C., and, if so, what is its precise nature ? Can a mere apprehension that any answer has a guilty potential salvage the accused or bring into play the exclusionary rule ?

10. Where do we demarcate the boundaries of benefit of doubt in E the setting of section 161(2) Cr. P. Code and Section 179 I.P.C. ?

Section 179 *I.P.C.*

This formulation does focus our attention on the plural range of jural concerns when a court is confronted with an issue of testimonial compulsion followed by a prosecution for recusancy. Preliminarily, let us see the requirements of section 179 I.P.C. since the appeals F directly turn on them. The rule of law becomes a rope of sand if the lawful authority of public servants can be defied or disdained by those bound to obey. The might of the law, in the last resort, guarantees the right of the citizen, and no one, be he minister or higher, has the discretion to disobey without running a punitive risk. Chapter X of the Indian Penal Code is designed to penalise disobedience of public servants exercising lawful authority. Section 179 is one of the pro- G visions to enforce compliance when a public servant legally demands truthful answers but is met with blank refusal or plain mendacity. The section reads :

> "179 : Whoever, being legally bound to state the truth on any subject to any public servant refuses to answer any question demanded of him touching that subject by such pub- H lic servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

A break-down of the provision yields the following pieces : (a) the demanding authority must be a public servant; a police officer is obviously one, (b) The demand must be to state the truth on a subject in the exercise of legal powers; and, indubitably, an investigating officer enjoys such powers under the Cr. P. Code, and here, the requisition was precisely to tell the truth on matters supposedly pertinent to the offences under investigation. Section 161 of the Cr. P.C. obligates 'any person supposed to be acquainted with the facts and circumstances of the case' to answer truthfully 'all questions relating to such case ....other than questions the answers to which would have a tendency to expose him to a criminal charge'. In the present case, admittedly, oral answers to written interrogatories were sought, although not honest speech but 'constitutional' silence greeted the public servant. And this refuge by the accused under Art. 20(3) drove the disenchanted officer to seek the sanction of section 179 I.P.C. If the literal force of the text governs the complex of facts. the court must convict, lest the long arm of the investigatory law should hang limp when challenged by the negative attitude of inscrutability, worn by the 'interrogatee'—unless within the text and texture of the section built-in defences exist. They do, is the appellant's plea; and this stance is the subject of the debate before us.

What are the defences open under Section 179 I.P.C. read with section 161(1) Cr. P. C. ? Two exculpatory channels are pointed out by Sri Rath, supplemented by a third paramount right founded on constitutional immunity against testimonial self-incrimination. To itemise them for ready reference, the arguments are that (a), 'any person' in section 161(1) excludes an accused person, (b) that questions which form links in the chain of the prosecution case—these include all except irrelevant ones—are prone to expose the accused to a criminal charge or charges since several other cases are in the offing or have been charge-sheeted against the appellant and (c) the expansive operation of the benignant shield against self-accusation inhibits elicitation of any answers which the accused apprehends may throw inculpatory glow. This wide vindication, if valid, will be the biggest interpretative bonus the court can award to criminals as it foredooms to failure of criminal justice and police truth tracking, says the learned Advocate General. True, courts self-criminate themselves if they keep the gates ajar for culprits to flee justice under the guise of interpretative enlargement of golden rules of criminal jurisprudence.

The Constitution and the criminal

The inherent quandary of the penal law in this area springs from the implanted dilemma of exacting solicitude for possible innocents forced to convict themselves out of their own lips by police tantrums and the social obligation of the limbs of the law and agencies of justice to garner truth from every quarter, to discover guilt, wherever hidden, and to fulfil the final tryst of the justice system with society. Which is to shield the community against criminality by relentless pursuit of the culprit, by proof of guilt and punishment of crime, not facilitation of the fleeing criminal from the chase of the appointed authorities of the State

A charged with the task of investigating, testing, proving and getting punished those whose anti-social exploits make citizens' life vulnerable.

The paradox has been put sharply by Lewis Mayers : "To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of B statecraft. The pendulum over the years has swung to the right. Even as long ago as the opening of the twentieth century, Justice Holmes declared that 'at the present time in this country there is more danger that criminals will escape justice than that they will be subject to tyranny. As the century has unfolded, the danger has increased.

Conspiracies to defeat the law have, in recent decades, become C widely and powerfully organized and have been able to use modern advances in communication and movement to make detection more difficult. Lawbreaking tends to increase. During the same period, an increasing awareness of the potentialities of abuse of power by law-enforcement officials has resulted, in both the judicial and the legislative spheres, in a tendency to tighten restrictions on such officials, and to safeguard even more jealously the rights of the accused, the suspect, and D the witness. It is not too much to say that at mid-century we confront a real dilemma in law enforcement.

In consequence, there is clearly discernible a tendency to re-examine the assumptions on which rest our complex of rules and doctrines which offer obstacles, perhaps wisely, to the discovery and proof of violations of law. In such a re-examination, the cluster of rules commonly E grounded under the term 'privilege against self-incrimination', which has for many decades been under attack, peculiarly calls for restudy. In the words of Wigmore, 'Neither the history of the privilege, nor its firm constitutional anchorage need deter us from discussing at this day its policy. As a bequest of the 1600's, it is but a relic of controversies and convulsions which have long since ceased.....Nor does its constitutional sanction, embodied in a clause of half a dozen words, relieve F us of the necessity of considering its policy..... A sound and intelligent opinion must be formed upon the merits of the policy."

Justice Douglas made this telling comment:

> "As an original matter it might be debatable whether the provision of the Fifth Amendment that no person "shall be compelled in any criminal case to be a witness against himself" serves the ends of justice" (1952).

G

These prologuic lines serve as background to a balanced approach to the crucial question posed before us.

A police lapse

H Before discussing the core issues, we wish to note our regret, in this case, at a higher level police officer, ignorantly insisting on a woman appearing at the police station in flagrant contravention of the wholesome proviso to Section 160(1)

of the Cr.P.C. Such deviance must be visited with prompt punishment since policemen may not be a law unto themselves expecting others to obey the law. The wages of indifference is reprimand, of intransigence disciplinary action. If the alibi is that the Sessions Court had directed the accused to appear at the police station, that is no absolution for a police officer from disobedience of the law. There is public policy, not complimentary to the police personnel, behind this legislative proscription which keeps juveniles and females from police company except at the former's safe residence. May be, in later years, community confidence and consciousness will regard the police force as entitled to better trust and soften the stigmatising or suspicious provisions now writ across the Code.

It is necessary, to appreciate the submissions, to remember the admitted fact that this is not the only case or investigation against the appellant and her mind may move around these many investigations, born and unborn, as she is confronted with questions. The relevance of this factor will be adverted to later.

Setting the perspective of Art. 20(3) and Sec. 161 (2).

Back to the constitutional quintessence invigorating the ban on self-incrimination. The area covered by Art. 20(3) and Section 161(2) is substantially the same. So much so, we are inclined to the view, terminological expansion apart, that Section 161(2) of the Cr.P.C. is a parliamentary gloss on the constitutional clause. The learned Advocate General argued that Art. 20(3), unlike Section 161(1), did not operate at the anterior stages before the case came to court and the accused's incriminating utterance, previously recorded, was attempted to be introduced. He relied on some passages in American decisions but, in our understanding, those passages do not so circumscribe and, on the other hand, the land mark *Miranda* v. *Arizona*(1) ruling did extend the embargo to police investigation also. Moreover, Art. 20 (3), which is our provision, warrants no such truncation. Such a narrow meaning may emasculate a necessary protection. There are only two primary queries involved in this clause that seals the lips into permissible silence, (i) Is the person called upon to testify 'accused of any offence', (ii) Is he being compelled to be witness *against* himself? A constitutional provision receives its full semantic range and so it follows that a wider connotation must be imparted to the expressions 'accused of any offense' and 'to be witness against himself'. The learned Advocate General, influenced by American decisions rightly agreed that in express terms Section 161(2) of the Code might cover not merely accusations already registered in police stations but those which are likely to be the basis for exposing a person to a criminal charge. Indeed, this wider construction, if applicable to Art. 20(3), approximates the constitutional clause to the explicit statement of the prohibition in section 161(2). This latter provision meaningfully uses the expression 'expose himself to a criminal charge'. Obviously, these words mean, not only cases where the person is already exposed to a criminal charge but also instances which will imminently expose him to criminal charges. In Art.

(1) 384 U.S. 436 (1966).

20(3), the expression 'accused of any offence, must mean formally accused *in praesenti* not *in futuro*—not even imminently as decisions now stand. The expression 'to be witness against himself' means more than the court process. Any giving of evidence, any furnishing of information, if likely to have an incriminating impact, answers the description of being witness against oneself. Not being limited to the forensic stage by express words in Art. 20(3), we have to construe the expression to apply to every stage where furnishing of information and collection of materials takes place. That is to say, even the investigation at the police level is embraced by Art. 20(3). This is precisely what Section 161(2) means. That sub-section relates to oral examination by police officers and grants immunity at that stage. Briefly, the Constitution and the Code are coterminous in the protective area. While the Code may be changed the Constitution is more enduring. Therefore, we have to base our conclusion not merely upon Section 161(2) but on the more fundamental protection, although equal in ambit, contained in Art. 20(3).

In a way this position brings us nearer to the *Miranda* mantle of exclusion which extends the right against self-incrimination, to police examination and custodial interrogation and takes in suspects as much as regular accused persons. Under the Indian Evidence Act, the *Miranda* exclusionary rule that custodial interrogations are inherently coercive finds expression (section 26), although the Indian provision confines it to confession which is a narrower concept than self-crimination.

We have earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America, Since *Miranda* there has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting lawbreakers. Currently, the trend in the American jurisdiction according to legal journals, is that 'respect for (constitutional) principles is eroded when they leap their proper bounds to interfere with the legitimate interests of society in enforcement of its laws.....' (78 *Couch* v. *United States,* 409 U.S.322, 336 (1972). Our constitutional perspective has, therefore, to be relative and cannot afford to be absolutist, especially when torture technology, crime escalation and other social variables affect the application of principles in producing humane justice.

Whether we consider the Talmudic law or the Magna Carta, the Fifth Amendment, the provisions of other constitutions or Article 20(3), the driving force behind the refusal to permit forced self-crimination is the system of torture by investigators and Courts from medieval times to modern days. Law is a response to life and the English rule of the accused's privilege of silence may easily be traced as a sharp reaction to the court of Star Chamber when self-incrimina-

tion was not regarded wrongful. Indeed, then the central feature of the criminal proceedings, as Holdsworth has noted, was the examination of the accused. A

The horror and terror that then prevailed did, as a reaction.... give rise to the reverential principle of immunity from interrogation for the accused. Sir James Stephen has observed :

> "For at least a century and a half the (English) Courts have acted upon the supposition that to question a prisoner is illegal..... This opinion arose from a peculiar and accidental state of things which has long since passed away and our modern law is in fact derived from somewhat questionable source though it may no doubt be defended (Sir James Stephen (1857)." B C

Two important considerations must be placed at the forefront before sizing up the importance and impregnability of the anti-self-incrimination guarantee. The first is that we cannot afford to write off the fear of police torture leading to forced self-incrimination as a thing of the past. Recent Indian history does not permit it, contemporary world history does not condone it. A recent article entitled 'Minds behind Bars', published in the December, 1977 issue of the Listener, tells an awesome story : "The technology of torture all over the world is growing ever more sophisticated—new devises can destory a prisoner's will in a matter of hours—but leave no visible marks or signs of brutality. And government—inflicted terror has evolved its own dark sub-culture. All over the world, torturers seem to feel a desire to appear respectable to their victims..... There is an endlessly inventive list of new methods of inflicting pain and suffering on fellow human beings that quickly cross continents and ideological barriers through some kind of international secret-police net work. D E

....."What is encouraging in all this dark picture is that we feel that public opinion in several countries is much more aware of our general line than before. And that is positive. I think, in the long run, governments can't ignore that. We are also encouraged by the fact that, today, human rights are discussed between governments—they are now on the international political agenda. But, in the end, what matters is the pain and suffering the individual endures in police station or cell." F

Many police officers, Indian and foreign, may be perfect gentlemen, many police stations, here and elsewhere, may be wholesome. Even so the law is made for the generality and Gresham's Law does not spare the Police force. G

On the other hand, we must never forget that crimes, in India and internationally, are growing and criminals are outwitting the detectives. What holds good in the cities of the United States is infecting other countries, including our own. An American author in a recent book(1) has stated : "What do you think the city of tomorrow will H

(1) Roger Lamphear, J.D.'s book entitled 'To Solve the Age-Old Problem of Crime'.

A be ? In 1969 the National Commission on the Causes and Prevention of Violence made alarming predictions. You will live in a city where everyone has guns Houses will be protected by grils and spy equipment. Armed citizen patrols will be necessary. The political extremes will be small armies. Buses will have to carry armed guards. There will be hatred and war between the races, and between the rich and the poor. (63, Pg. 44) In other words, your city will be a place of
B terror.

"From 1969 to 1974 the number of crimes for each hundred thousand people is up 38%. (48, pg. 12) Violent crimes rose 47%. (48, pg. 23) Robbery increased 48%. (48, pg. 25) Burglary went up a whopping 53%. (48, pg. 29) Theft rose 35%. (48, pg. 32) The chances are becoming better and better that you or someone
C dear to you will be a victim. The chances are also better that a close relative will be involved in crime as criminal.

".....In only 12% of the serious crimes is there a suspect arrested. Half of those are convicted. (Serious crime includes homicide, burglary, aggravated assault, larceny over $ 50, forcible rape, robbery, and auto theft.) (63 pg. XVIII).
D

"The situation is so discouraging that only half the people bother to report serious crime. (63, pg. XVIII) Even then, in 1974, 82% of the known burglaries went unsolved. (48, pg. 42) That means only 18% of the half known to the police were solved.

".....President Johnson's message to Congress March 8, 1965 is
E as true today as it was then :

> 'Crime has become a malignant enemy in America's midst.....We must arrest and reverse the trend towards lawlessness .... We cannot tolerate an endless, self-defeating cycle of imprisonment, release, and reimprisonment which fails to alter undesirable attitudes and behaviour. We must
F find ways to help the first offender avoid a continuing career to crime.'"

The first obligation of the criminal justice system is to secure justice by seeking and substantiating truth through proof. Of course, the means must be as good as the ends and the dignity of the individual and the freedom of the human person cannot be sacrificed by resort to improper means, however worthy the ends. Therefore, 'Third degree'
G has to be outlawed and indeed has been. We have to draw up clear lines between the whirl-pool and the rock where the safety of society and the worth of the human person may co-exist in peace.

We now move down to the role of the Latin Maxim *'nemo tenetur sciepsum tenetur'* which, literally translated means, a man cannot represent himself as guilty. This rule prevailed in the Rabbinic
H courts and found a place in the Talmud (no one can incriminate himself). Later came the Star Chamber history and Anglo-American revulsion. Imperial Britain transplanted part of it into India in the

Cr. P.C. Our Constitution was inspired by the high-minded inhibition against self-incrimination from Anglo-American sources. Thus we have a broad review of the origins and bearings of the fundamental right to silence and the procedural embargo on testimonial compulsion. The American cases need not detain us, although *Miranda* v. *Arizona* (supra) being the Lodestar on the subject, may be referred to for grasping the basics of the Fifth Amendment bearing on oral incrimination by accused persons.

We have said sufficient to drive home the anxious point that this cherished principle which proscribes compulsory self-accusation, should not be dangerously over-broad nor illusorily whittled down. And it must openly work in practice and not be a talismatic symbol. The *Miranda* ruling clothed the Fifth Amendment with flesh and blood and so must we, if Art. 20(3) is not to prove a promise of unreality. Aware that the questions raised go to the root of criminal jurisprudence we seek light from *Miranda* for interpretation, not innovation, for principles in their settings, not borrowings for our conditions. The spiritual thrust of the two provisions is the same and it is best expressed in the words of *Brown* v. *Walker*.(1)

"Over 70 years ago, our predecessors on this Court eloquently stated :

'The maxim *nemo tenetur sceipsum accusare* had its origin in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons, which (have) long obtained in the continental system, and, until the expulsion of the Stuarts from the British throne in 1688, and the erection of additional barriers for the protection of the people against the exercise of arbitrary power, (were) not uncommon even in England. While the admissions or confessions of the prisoner when voluntarily and freely made, have always ranked high in the scale of incriminating evidence, if an accused person be asked to explain his apparent connection with a crime under investigation, the case with which the questions (384 US 443) put to him may assume an inquisitorial character, the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions, which is so painful evident in many of the earlier state trials, notably in those of Sir Nicholas Throckmorton, and Udal, the Puritan Minister, made the system so odious as to give rise to a demand for its total abolition. The change in the English criminal procedure in that particular seems to be founded upon no statute and no judicial opinion, but upon a general and silent acquiescence of the courts in a popular demand. But, however adopted, it has become firmly embedded in English, as well as in American jurisprudence. So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists that the States, with one accord, made a denial of the right to question an accused person a part of their fundamental law, so that a maxim, which in England was a mere rule of evidence, became clothed in this country with the impregnability of a constitutional enactment."

(1) 40 L.Ed. 819.

A Chief Justice Warren mentioned the setting of the case and of the times such as official overbearing, 'third degree', sustained and protracted questioning incommunicado, rooms cut off from the outside world, methods which flourished but were becoming exceptions. 'But', noted the Chief Justice, 'they are sufficiently widespread to be the object of concern'. The *Miranda* court quoted from the conclusion of the Wickersham Commission Report made nearly half a century ago, B and continued —words which ring a bell in Indian bosoms and so we think it relevant to our consideration and read it;

> "To the contention that the third degree is necessary to get the facts, the reporters aptly reply in the language of the present Lord Chancellor of England (Lord Sankey) : 'It is not admissible to do a great right by doing a little wrong C .....It is not sufficient to do justice by obtaining a proper result by irregular or improper means.' Not only does the use of the third degree involve a flagrant violation of Law by the officers of the law, but it involves also the dangers of false confessions, and it tends to make police and prosecutors less zealous in the search for objective evidence. As the New York prosecutor quoted in the report said, 'It is D a short cut and makes the police lazy and unenterprising.' Or, as another official quoted remarked : 'If you use your fists, you are not so likely to use your wits. (384 US 448)' We agree with the conclusion expressed in the report, that 'The third degree brutalizes the police, hardens the prisoner against society, and lowers the esteem in which the administration of justice is held by the public.' "

E [IV National Commission on Law Observance and Enforcement, Report on Lawlessness in Law Enforcement 5(1931).]

> (7) 'Again we stress that the modern practice of in custody interrogation is psychologically rather than physically oriented, As we have stated before, "Since *Chambers* v. F *Florida,* 309 US 227 (84 L.Ed. 716), this Court has recognized that coercion can be mental as well as physical and that the blood of the accused is not the only hallmark of an unconstitutional inquisition." *Blackburn* v. *Alabama,* 4 L.Ed. 2d 242. Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interro- G gation rooms. A valuable source of information about present police practises, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics. These texts (384 US 449) are used by law enforcement agencies themselves as guides. It should be noted that these texts professedly present the H most enlightened and effective means presently used to obtain statements through custodial interrogation. By considering these texts and other data, it is possible to describe procedures observed and noted around the country."

The officers are told by the manuals that the 'principal psychological factor contributing to successful interrogation is privacy —being alone with the person under interrogation.' (Inbau & Reid, Criminal Interrogation and Confessions (1962, at 1.) The efficacy of this tactic has been explained as follows :

'If at all practicable, the interrogation should take place in the investigator's office or at least in a room of his own choice. The subject should be deprived of every psychological advantage. In his own home he may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and more (384 US 450) reluctant to tell of his indiscretions or criminal behaviour within the walls of his home. Moreover his family and other friends are nearby, their presence lending moral support. In his own office, the investigator possesses all the advantages. The atmosphere suggests the invincibility of the forces of the law.' [O'Hara, Fundamentals of Criminal Investigation (1956) at 99].

To highlight the isolation and unfamiliar surroundings, the manuals instruct the police to display an air of confidence in the suspects guilt and from outward appearance to maintain only an interest in confirming certain details. The guilt of the subject is to be posited as a fact. The interrogator should direct his comments toward the reasons why the subject committed the act rather than court failure by asking the subject whether he did it. Like other men, perhaps the subject has had a bad family life, had an unhappy childhood, had too much to drink, had an unrequited desire for women. The officers are instructed to minimise the moral seriousness of the offense, (Inbau & Reid, supra at 34-43, 87) to cast blame on the victim or on society. These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already —that he is guilty. Explanations to the contrary are dismissed and discouraged.

The texts thus stress that the major qualities an interrogator should possess are patience and perseverence. One writer (384 US 451) describes the efficacy of these characteristics in this manner :

'In the preceding paragraphs emphasis has been placed on kindness and stratagems. The investigator will, however, encounter many situations where the sheer weight of his personality will be the deciding factor. Where emotional appeals and tricks are employed to no avail, he must rely on an oppressive atmosphere of dogged persistence. He must interrogate steadily and without relent, leaving the subject no prospect of surcease. He must dominate his subject and overwhelm him with his inexorable will to obtain the truth. He should interrogate for a spell of several hours pausing only for the subject's necessities in acknowledgment of the need to avoid a charge of duress that can be technically substantiated. In a serious case, the interrogation may continue for days, with the required intervals for food and sleep, but with no respite from the atmosphere of domination. It is possible in

this way to induce the subject to talk without resorting to duress or coercion. The method should be used only when the guilt of the subject appears highly probable. (O'Hara, Supra at 112)

The manuals suggest that the suspect be offered legal excuses for his actions in order to obtain an initial admission of guilt. Where there is a suspected revenge-killing, for example, the interrogator may say :

'Joe, you probably did not go out looking for this fellow with the purpose of shooting him. My guess is, however, that you expected something from him and that's why you carried a gun—for your own protection. You know him for what he was, no good. Then when you met him he probably started using foul, abusive language and he gave some indication that (384 US 452) he was about to pull a gun on you, and that's when you had to act to save your own life. That's about it, isn't it, Joe ?' (Inbau & Reid, supra, at 40).

> Having then obtained the admission of shooting, the interrogator is advised to refer to circumstantial evidence which negates the self-defense explanation. This should enable him to secure the entire story. One text notes that "Even if he fails to do so, the inconsistency between the subject's original denial of the shooting and his present admission of at least doing the shooting will serve to deprive him of a self-defense 'out' at the time of trial." (Ibid).

> When the techniques described above prove unavailing, the texts recommend they be alternated with a show of some hostility. One ploy often used has been termed the "friendly-unfriendly" or the "mutt and Jeff" act.

A thorough and intimate sketch is made of the versatility of the arts of torture developed officially in American country calculated to break, by physical or psychological crafts, the morale of the suspect and make him cough up confessional answers. Police sops and syrups of many types are prescribed to wheedle unwitting words of guilt from tough or gentle subjects. The end product is involuntary incrimination, subtly secured, not crudely traditional. Our police processes are less 'scholarly' and sophisticated, but ?

Another moral from the *Miranda* reasoning is the burning relevance of erecting protective fenders and to make their observance a police obligation so that the angelic article [20(3)] may face upto satanic situations. Says Chief Justice Warren :

> "In these cases, we might not find the defendants' statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect precious Fifth Amendment right is, of course, not lessened in the slightest. In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. The potentiality for compulsion is forcefully apparent, for example, in Miranda, where the

indigent Mexican defendant was a seriously disturbed individual with pronounced sexual fantasies, and in Stewart, in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth grade. To be sure, the records do not evince overt physical coercion or patent psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice. (8,9). It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carried its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. [Professor Sutherlands recent article, Crime and Confession, 79 Harv I. Rev 21, 37 (1965)]. The current practice of incommunicado interrogation is at odds with one of our Nation's (384 US 458) most cherished principles—that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice."

We feel that by successful interpretation judge-centred law must catalyze community-centred legality.

There is one touch of nature which makes the judicial world kin —the love of justice-in-action and concern for human values. So, regardless of historical origins and political borrowings, the framers of our Constitution have cognised certain pessimistic poignancies and mellow life meanings and obligated judges to maintain a 'fair state-individual balance' and to broaden the fundamental right to fulfil its purpose, lest frequent martyrdoms reduce the article to a mock formula. Even silent approaches, furtive moves, slight deviations and subtle ingenuities may erode the article's validity unless the law outlaws illegitimate and unconstitutional procedures before they find their first firm footing. The silent cause of the final fall of the tall tower is the first stone obliquely and obliviously removed from the base. And Art. 20(3) is a human article, a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic antechamber of a police station. And in the long run, that investigation is best which uses strategems least, that policeman deserves respect who gives his fists rest and his wits restlessness. The police are part of us and must rise in peoples' esteem through firm and friendly, not foul and sneaky strategy. The police reflect the State, the State society. The Indian legal situation has led to judicial concern over the State v. individual balance. After tracing the English and American developments in the law against self-incrimination, Jagannadhadas, J., in *M. P. Sharma's*(1) case observed :

(1)[1954] S.C.R. 1077, at 1085, 1086.

A "Since the time when the principle of protection against self-incrimination became established in English law and in other systems of law which have followed it, there has been considerable debate as to the utility thereof and serious doubts were held in some quarters that this principle has a tendency to defeat justice. In support of the principle it is claimed that the protection of accused against self-incrimi-
B nation promotes active investigation from external sources to find out the truth and proof of alleged or suspected crime instead of extortion of confessions on unverified suspicion.... On the other hand, the opinion has been strongly held in some quarters that this rule has an undesirable effect on social interests and that in the detection of crime, the State is confronted with overwhelming difficulties as a result of
C this privilege. It is said this has become a hiding place of crime and has outlived its usefulness and that the rights of accused persons are amply protected without this privilege and that no innocent person is in need of it...."

"In view of the above background, there is no inherent reason to construe the ambit of this fundamental right as
D comprising a very wide range. Nor would it be legitimate to confine it to the barely literal meaning of the words used, since it is a recognised doctrine that when appropriate a constitutional provision has to be liberally construed, so as to advance the intendment thereof and to prevent its circumvention....."

E *Issues Answered. 'Any person' in Sec. 161 Cr.P.C.*

We will now answer the questions suggested at the beginning and advert to the decisions of our Court which set the tone and temper of the 'silence' clause and bind us willy nilly. We have earlier explained why we regard Section 161(2) as a sort of parliamentary commentary on Article 20(3). So, the first point to decide is whether the police
F have power under Sections 160 and 161 of the Cr. P.C. to question a person who, then was or, in the future may incarnate as, an accused person. The Privy Council and this Court have held that the scope of section 161 does include actual accused and suspects and we deferentially agree without repeating the detailed reasons urged before us by counsel.

G The Privy Council, in *Pakala Narayana Swami* v. *Emperor*(1) reasoned at p. 51 :

"If one had to guess at the intention of the Legislature in framing a Section in the words used. one would suppose that they had in mind to encourage the free disclosure of
H information or to protect the person making the statement from a supposed unreliability of police testimony as to alleged statements or both. In any case the reasons would apply as

(1) A.I.R. 1939 P.C. 47.

might be thought *a fortiori* to an alleged statement made by a person ultimately accused. But in truth when the meaning or words is plain it is not the duty of the Courts to busy themselves with supposed intentions.

I have been long and deeply impressed with the wisdom of the rule, none I believe universally adopted, at least in the Courts of law in Westminster Hall, that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instruments, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther: Lord Wensleydale in (1875) 6 HLC 613 at p. 106.

My Lords, to quote from the language of Tindal C.J. when delivering the opinion of the Judges in (1844) 11 CL & F 85 at page 143, 'The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the law-giver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble which according to Dyer C.J. (1562) 1 Plowd 353 at p. 369 is a key to open the minds of the makers of the Act, and the mischiefs which they are intended to redress.: Lord Halsbury LC in (1891) AC 531 at p. 542.'

They reached the conclusion that 'any person' in s. 161 Cr. P.C.; would include persons then or ultimately accused. The view was approved in *Mahabir Mandal* v. *State of Bihar.*(1) We hold that 'any person supposed to be acquainted with the facts and circumstances of the case' includes an accused person who fills that role because the police *suppose* him to have committed the crime and must, therefore, be familiar with the facts. The supposition may later prove a fiction but that does not repel the section. Nor does the marginal note 'examination of *witnesses* by police' clinch the matter. A marginal note clears ambiguity but does not control meaning. Moreover, the suppositious accused figures functionally as a witness. 'To be a witness', from a functional angle, is to impart knowledge in respect of a relevant fact, and that is precisely the purpose of questioning the accused under section 161, Cr. P.C. The dichotomy between 'witnesses' and 'accused' used as terms of art, does not hold good here. The

(1) [1972] 3 S.C.R. 639 at p. 657.

A amendment, by Act XV of 1941, of sec. 162(2) of the Cr.P.Code is a legislative acceptance of the *Pakala Narayana Swamy* reasoning and guards against a possible repercussion of the ruling. The appellant squarely fell within the interrogational ring. To hold otherwise is to fold up investigative exercise, since questioning suspects is desirable for detection of crime and even protection of the accused. Extreme positions may boomerang in law as in politics. Moreover, as the B *Miranda* decision states (p. 725, 726) :

> *"It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement.*
>
> C *Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence.* The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel but whether he can D be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today. (emphasis added)

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A recurrent argument, made in these cases is that society's need for interrogation out-weighs the privilege. This argument is not unfamiliar to this Court. See. e.g., *Chambers* v. *Florida,* 309 US 227, 240-241, 84 L ed 716, 724, 60 S Ct 472 (1940). The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of F Government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged. As Mr. Justice Brandeis once observed :

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct G that are commands to the citizens. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omni-present teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself, it H invites anarchy. To declare that in the administration of the criminal law the end justified the means... would bring terrible retribution. Against that pernicious doctrine this

Court should resolutely set its face." *Olmstead* v. *United States,* 277 US 438, 485, 72 L ed 944, 959, 48 S Ct 564, 66 ALR 376 (1928) (dissenting opinion)." A

In this connection, one of our country's distinguished jurists has pointed out : *"The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of the criminal law."* (emphasis added) B

Art. 20(3) 'Accused of an offence'

It is idle to-day to ply the query whether a person formally brought into the police diary as an accused person is eligible for the prophylactic benefits of Art. 20(3). He is, and the learned Advocate General fairly stated, remembering the American cases and the rule of liberal construction, that suspects, not yet formally charged but embryonically are accused on record, also may swim into the harbour of Art. 20(3). We note this position but do not have to pronounce upon it because certain observations in *Oghad's* case [1962 (3) SCR 10] conclude the issue. And in *Bansilal's* case [1961 (1) SCR 417] at p. 438, this Court observed : C

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"Similarly, for invoking the constitutional rights against testimonial compusion guaranteed under Art. 20(3) it must appear that a formal accusation has been made against the party pleading the guarantee and that it relates to the commission of an offence which in the normal course may result in prosecution. Here again the nature of the accusation and its probable sequel or consequence are regarded as important. E

Thus we go back to the question which we have already posed, was the appellant accused of any offence at the time when the impugned notices were served on him ? In answering this question in the light of the tests to which we have just referred it will be necessary to determine the scope and nature of the enquiry which the inspector undertakes under s. 240; for, unless it is shown that an accusation of a crime can be made in such an enquiry, the appellant's plea under Art. 20(3) cannot succeed. Section 240 shows that the enquiry which the inspector undertakes is in substance an enquiry into the affairs of the company concerned. F

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If, after receiving the report, the Central Government is satisfied that any person is guilty of an offence for which he is criminally liable, it may, after taking legal advice, institute criminal proceedings against the offending person under s. 242(1); but the fact that a prosecution may ultimately be launched against the alleged offender will not retrospectively change the complexion or character of the proceedings held by the inspector when he makes the investigation. Have irregularities been committed in managing the affairs of the H

company; if yes, what is the nature of the irregularities ? Do they amount to the commission of an offence punishable under the criminal law ? If they do who is liable for the said offence ? These and such other questions fall within the purview of the inspector's investigation. The scheme of the relevant sections is that the investigation begins broadly with a view to examine the management of the affairs of the company to find out whether any irregularities have been committed or not. In such a case there is no accusation, either formal or otherwise, against any specified individual; there may be a general allegation that the affairs are irregularly, improperly or illegally managed; but who would be responsible for the affairs which are reported to be irregularly managed is a matter which would be determined at the end of the enquiry. At the commencement of the enquiry and indeed throughout its proceedings there is no accused person, no accuser and no accusation against anyone that he has committed an offence. In our opinion a general enquiry and investigation into the affairs of the company thus contemplated cannot be regarded as in investigation which starts with an accusation contemplated in Art. 20(3) of the Constitution. In this connection it is necessary to remember that the relevant sections of the Act appear in Part VI which generally deals with management and administration of the companies."

In *Raja Narayanlal Bansilal* v. *Maneck Phiroz Mistry and Anr.* (supra), the admissibility of a statement made before an Inspector appointed by the Government of India under the Indian Companies Act, 1923, to investigate the affairs of a Company and to report thereon was canvassed. It was observed at p. 436 :

".....one of the essential conditions for invoking the constitutional guarantee enshrined in Art. 20(3) is that a formal accusation relating to the commission of an offence, which would normally lead to his prosecution, must have been levelled against the party who is being compelled to give evidence against him."

Sinha, C. J., speaking for the majority of the Court in *Kathi Kalu Oghad's case,*(1) stated thus :

"To bring the statement in question within the prohibition of Art. 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made."

Further observations in *Bansilal's* case make it out that in an enquiry undertaken by a Inspector to investigate into the affairs of a company, the statement of a person not yet an accused, is not hit by Art. 20(3).

(1) [1962] 3 S.C.R. 10 at 37.

Such a general enquiry has no specific accusation before it and, therefore, no specific accused whose guilt is to be investigated. Therefore, Art. 20(3) stands excluded.

In *R. C. Mehta* v. *State of West Bengal*(1) also the Court observed :

> ".....Normally a person stands in the character of an accused when a First Information Report is lodged against him in respect of an offence before an Officer competent to investigate it, or when a complaint is made relating to the commission of an offence before a Magistrate competent to try or send to another Magistrate for trial of the offence. Where a Custom Officer arrests a person and informs that person of the grounds of his arrest, (which he is bound to do under Art. 22(1) of the Constitution) for the purpose of holding an enquiry into the infringement of the provisions of the Sea Customs Act which he has reason to believe has taken place, there is no formal accusation of an offence: In the case of an offence by infringement of the Sea Customs Act and punishable at the trial before a Magistrate there is an accusation when a complaint is lodged by an officer competent in that behalf before the Magistrate."

Reliance was placed on *Ghagwandas Goenka* v. *Union of India*(2) where this Court has said :

> "The information collected under s. 19 is for the purpose of seeing whether a prosecution should be launched or not. At that stage when information is being collected there is no accusation against the person from whom information is being collected. It may be that after the information has been collected the Central Government or the Reserve Bank may come to the conclusion that there is no case for prosecution and the person concerned may never be accused. It cannot therefore be predicted that the person from whom information is being collected under s. 19 is necessarily in the position of an accused. The question whether he should be made an accused is generally decided after information is collected and it is when a show cause notice is issued, as was done in this case on July 4, 1955, that it can be said that a formal accusation has been made against the person concerned. We are therefore of the opinion that the appellant is not entitled to the protection of Art. 20(3) with respect to the information that might have been collected from him under s. 19 before July 4, 1955."

It is plausible to argue that, where realism prevails over formalism and probability over possibility, the enquiries under criminal statutes with quasi-criminal investigations are of an accusatory nature and are,

(1) [1969] 2 S.C.R. 461.

(2) Crl. Appeals Nos. 131 & 132/61 dt. 20-9-63 (Unreported judgement).

A sure to end in prosecution, if the offence is grave and the evidence gathered good. And to deny the protection of a constitutional shield designed to defend a suspect because the enquiry is preliminary and may possibly not reach the court is to erode the substance while paying hollow homage to the holy verbalism of the article. We are not directly concerned with this facet of Art. 20(3); nor are we free to go against the settled view of this Court. There it is.

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At what stage of the justice process does Art. 20(3) *operate* ?

Another fatuous opposition to the application of the constitutional inhibition may be noted and negatived. Does the ban in Art. 20(3) operate *only* when the evidence previously procured from the accused is sought to be introduced into the case at the trial by the court? This C submission, if approved, may sap the juice and retain the rind of Art. 20(3) doing interpretative violence to the humanist justice of the proscription.

The text of the clause contains no such clue, its intendment is stultified by such a judicial 'amendment' and an expensive construction has the merit of natural meaning, self-fulfilment of the 'silence zone' and the D advancement of human rights. We over-rule the plea for narrowing down the play of the sub-article to the forensic phase of trial. It works where the mischief is, in the womb, i.e. the police process. In the language of *Miranda*.

> "Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceed- E ings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves."

The constitutional shield must be as broad as the contemplated danger. The Court in *M.P. Sharma's* (supra) case took this extended view.

> F "Indeed, every positive volitional act which furnishes evidence is testimoney, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. *Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room.* The phrase G used in article 20(3) is "to be a witness" and not to "appear as a witness": It follows that *the protection afforded to an accused* in so far as it is 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* H *of an offence has been levelled which in the normal course may result in prosecution.* Whether it is available to other persons in other situations does not call for decision in this case. (emphasis, added)

> Considered in this light, the guarantee under article 20(3) would be available in the present cases to these petitioners against whom a First Information Report has been recorded as accused therein. It would extend to any compulsory process for production of evidentary documents which are reasonably likely to support a prosecution against them." [P. 1088]

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We have to apply this rule of construction, an off-shoot of the *Heydon's case* doctrine, while demarcating the suspect and the sensitive area of self-crimination and the protected sphere of defensive silence. If the police can interrogate to the point of self-accusation, the subsequent exclusion of that evidence at the trial hardly helps because the harm has been already done. The police will prove through other evidence what they have procured through forced confession. So it is that the foresight of the framers has pre-empted self-incrimination at the incipient stages by not expressly restricting it to the trial stage in court. True, compelled testimony previously obtained is excluded. But the preventive blow falls also on pre-court testimonial compulsion. The condition, as the decisions now go, is that the person compelled must be an accused. Both precedent procurement and subsequent exhibition of self-criminating testimony are obviated by intelligent constitutional anticipation.

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(i) *What is an incriminatory statement?*

(ii) *What is compelled testimony?*

Two vital, yet knotty, problems demand solution at this stage. What is 'being witness against onself'? Or, in the annotational language of sec. 161(2), when are answers tainted with the tendency to expose an accused to a criminal charge? When can testimony be castigated as 'compelled'? The answer to the first has been generally outlined by us earlier. Not all relevant answers are criminatory; not all criminatory answers are confessions. Tendency to expose to a criminal charge is wider than actual exposure to such charge. The spirit of the American rulings and the substance of this Court's observations justify this 'wheels within wheels' conceptualization of self-accusatory statements. The orbit of relevancy is large. Every fact which has a nexus to any part of a case is relevant, but such nexus with the case does not make it noxious to the accused. Relevance may co-exist with innocence and constitutional censure is attracted only when inference of nocence exists. And an incriminatory inference is not enough for a confession. Only if, without more, the answer establishes guilt, does it amount to a confession. An illustration will explicate our proposition.

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Let us hypothesize a homicidal episode in which A dies and B is suspected of murder; the scene of the crime being 'C'. In such a case a bunch of questions may be relevant and yet be innocent. Any one who describes the scene as well-wooded or dark or near a stream may be giving relevant evidence of the landscape. Likewise, the medical evidence of the wounds on the deceased and the police evidence of the spots where blood pools were noticed are relevant but vis-a-vis B may have no incriminatory force. But an answer that B was seen at or near

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A the scene, at or about the time of the occurrence or had blood on his clothes will be criminatory, is the hazard of inculpatory implication. In this sense, answers that would, in themselves, support a conviction are confessions but answers which have a reasonable tendency strongly to point out to the guilt of the accused are incriminatory. Relevant replies which furnish a real and clear link in the chain of evidence indeed to bind down the accused with the crime become incriminatory and offend
B Art. 20(3) if elicited by pressure from the mouth of the accused. If the statement goes further to spell in terms that B killed A, it amounts to confession. An answer acquires confessional status only if, in terms or substantially, all the facts which constitute the offence are admitted by the offender. If his statement also contains self-exculpatory matter it ceases to be a confession. Article 20(3) strikes at confessions and self-incriminations but leaves untouched other relevant facts.

C

In *Hoffman* v. *United States* (341 US 479) the Supreme Court of the United States considered the scope of the privilege against self-incrimination and held that it would extend not only to answers that would in themselves support a conviction but likewise embrace those which would *furnish a link in the chain of evidence* needed to prosecute the claimant. However, it was clarified that the link must be reasonably
D strong to make the accused apprehend danger from such answer. Merely because he fancied that by such answer he would incriminate himself he could not claim the privilege of silence. *It must appear to the court that the implications of the question, in the setting in which it is asked, make it evident that a responsive answer or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result. The apprehension of incrimination from the ans-*
E *wer sought must be substantial and real as distinguished from danger of remote possibilities or fanciful flow of inference.* Two things need emphasis. The setting of the particular case, the context and the environment i.e., the totality of circumstances, must inform the perspective of the Court adjudging the incriminatory injury, and where reasonable doubt exists, the benefit must go in favour of the right to silence by a liberal construction of the Article. In *Malloy* v. *Bogan,* (12 L.Ed. 2d
F 653), the Court unhesitatingly held that the claim of a witness of privilege against self-incrimination has to be tested on a careful consideration of all the circumstances in the case and where it is clear that the claim is unjustified, the protection is unavailable. We have summarised the *Hoffman* standard and the *Malloy* test. *Could the witness (accused) have reasonably sensed the peril of prosecution from his answer in the conspectus of circumstances?* That is the true test. The perception
G of the peculiarities of the case cannot be irrelevant in proper appraisal of self-incriminatory potentiality. The cases of this Court have used different phraseology but set down substantially the same guidelines.

Phipson, it is true, has this to say on self-incrimination : 'The rule applies to questions not only as to direct criminal acts, but as to perfectly innocent matters forming merely links in the chain of proof'. We
H think this statement too widely drawn if applied to Indian Statutory and Constitutional Law. Cross also has overstated the law going by Indian provisions by including in the prohibition even those answers *'which might be used as a step towards obtaining evidence against him'*. (The

policy behind the privilege, under our scheme, does not swing so wide as to sweep out of admissibility statements neither confessional *per se* nor guilty in tendency but merely relevant facts which, viewed in any setting, does not have a sinister import. To spread the net so wide is to make a mockery of the examination of the suspected, so necessitous in the search for truth. Overbreadth undermines, and we demur to such morbid exaggeration of a wholesome protection. Neither *Hoffman* nor *Malloy* nor *Manes* (42 L.Ed. 2s 574) drives us to this devaluation of the police process. And we are supported by meaningful hints from prior decisions. In *Kathi Kalu Oghad's*(1) case, this Court authoritatively observed, on the bounds between constitutional proscription and testimonial permission :

> "In order that a testimony by an accused person may be said to have been self-incriminatory, the compulsion of which comes within the prohibition of the constitutional provisions, *it must be of such a character that by itself it should have the tendency of incrimination the accused,* if not also of actually doing so. In other words, it should be *a statement, which makes the case against the accused person at least probable,* considered by itself".

Again, the court indicated that Art. 20(3) could be invoked only against statements which 'had a *material bearing on the criminality* of the maker of the statement'. 'By itself' does not exclude the setting or other integral circumstances but means something in the fact disclosed a guilt element. Blood on clothes, gold bars with notorious marks and presence on the scene or possession of the lethal weapon or corrupt currency have a tale to tell, beyond red fluid, precious metal, gazing at the stars of testing sharpness or value of the rupee. The setting of the case is an implied component of the statement.

The problem that confronts us is amenable to reasonable solution. Relevancy is tendency to make a fact probable. Crimination is a tendency to make guilt probable. Confession is a potency to make crime conclusive. The taint of tendency, under Art. 20(3) and section 161(1), is more or less the same. It is not a remote, recondite, freak or fanciful inference but a reasonable, real, material or probable deduction. This governing test holds good, it is pragmatic, for you *feel* the effect, its guilty portent, fairly clearly.

We, however, underscore the importance of the specific setting of a given case for judging the tendency towards guilt. Equally emphatically, we stress the need for regard to the impact of the plurality of other investigations in the offing or prosecutions pending on the amplitude of the immunity. 'To be witness against oneself' is not confined to particular offence regarding which the questioning is made but extends to other offences about which the accused has reasonable apprehension of implication from his answer. This conclusion also flows

(1) [1962] (3) S.C.R. 10 at P. 32.

A from 'tendency to be exposed to *a* criminal charge'. 'A criminal charge' covers *any* criminal charge than under investigation or trial or imminently threatens the accused.

The setting of the case or cases is also of the utmost significance in pronouncing on the guilty tendency of the question and answer. What in one milieu may be colourless, may, in another be criminal. 'Have B you fifty rupees in your pocket ?' asks a police officer of a P.W.D. engineer. He may have. It spells no hint of crime. But if, after setting a trap, if the same policeman, on getting the signal, moves in and challenges the engineer, 'have you fifty rupees in your pocket?' The answer, if 'yes', virtually proves the guilt. 'Were you in a particular house at a particular time?' is an innocent question; but in the setting of a murder at that time in that house, where none else was present, an affirmative C answer may be an affirmation of guilt. While subjectivism of the accused may exaggeratedly apprehend a guilty inference lingering behind every non-committal question, objectivism reasonably screens nocent from innocent answers. Therefore, making a fair margin for the accused's credible apprehension of implication from his own mouth, the court will view the interrogation objectively to hold it criminatory or otherwise, without surrendering to the haunting subjectivism of the D accused. The dynamics of constitutional 'silence' cover many interacting factors and repercussions from 'speech'.

The next serious question debated before us is to the connotation of 'compulsion' under Art. 20(3) and its reflection in Section 161(2). In *Kathi Kalu Oghad's* case (supra), Sinha, C.J., explained :

E "In order to bring the evidence within the inhibition of cl. (3) of Art. 20 it must be shown not only that the person making the statement was an accused at the time he made it and that it had a material bearing on the criminality of the maker of the statement, but also that he was compelled to make that statement. 'Compulsion' in the context, must mean what in law is called 'duress'. In the Dictionary of English Law by Earl Jowitt, 'duress' is explained as follows :

F

> 'Duress is where a man is compelled to do an act by injury, beating or unlawful imprisonment (sometimes called duress in strict sense) or by the threat of being killed, suffering some grevious bodily harm, or being unlawfully imprisoned (sometimes called menace, or duress *per minas*). Duress also includes threatening, beating G or imprisonment of the wife, parent or child of a person.

The compulsion in this sense is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore, extorted. Hence, the mere asking by a H police officer investigating a crime against a certain individual to do a certain thing is not compulsion within the meaning of Art. 20(3). Hence, the mere fact that the accused person,

when he made the statement in question was in police custody would not, by itself, be the foundation for an inference of law that the accused was compelled to make the statement. Of course, it is open to an accused person to show that while he was in police custody at the relevant time, he was subjected to treatment which, in the circumstances of the case, would lend itself to the inference that compulsion was, in fact, exercised. In other words, it will be a question of fact in each case to be determined by the Court on weighing the facts and circumstances disclosed in the evidence before it."

This question of fact has to be carefully considered against the background of the circumstances disclosed in each case.

The policy of the law is that each individual, accused included, by virtue of his guaranteed dignity, has a right to a private enclave where he may lead a free life without overbearing investigatory invasion or even crypto-coercion. The protean forms gendarme duress assumes, the environmental pressures of police presence, compounded by incommunicado confinement and psychic exhaustion, torturesome interrogation and physical menaces and other ingenious, sophisticated procedures—the condition, mental, physical, cultural and social, of the accused, the length of the interrogation and the manner of its conduct and a variety of like circumstances, will go into the pathology of coerced para-confessional answers. The benefit of doubt, where reasonable doubt exists, must go in favour of the accused. The U.S. Supreme Court declared, and we agree with it, that '.....our contemplation cannot be only of what has been of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognized. The meaning (384 US 444) and vitality of the Constitution have developed against narrow and restrictive construction.' (54 L.Ed. 793, 810).

Making Art. 20(3) *effective in action*

Impregnability of the constitutional fortress built around Art. 20(3) is the careful concern of the Court and, for this purpose, concrete directives must be spelt out. To leave the situation fluid, after a general discussion and statement of broad conclusions, may not be proper where glittering phrases pale into gloomy realities in the dark recesses where the law has to perform. *Law is what law does and not what law says.* This realisation obligates us to set down concrete guidelines to make the law a working companion of life. In this context we must certainly be aware of the burdens which law enforcement officials bear, often under trying circumstances and public ballyhoo and amidst escalating as well as novel crime proliferation. Our conclusions are, therefore, based upon an appreciation of the difficulties of the police and the necessitities of the Constitution.

The functional role and practical sense of the law is of crucial moment. "An acre in Middlesex," said Macaulay, "is better than a principality in Utopia." (Introduction of 'Law in America' by Bernard Schwartz.) This realism has great relevance when dealing with interrogation, incrimination, police station, the Constitution and the code.

Now we will first formulate our findings on the various matters argued before us and discussed above. Then, we will fortify the observance of the legal requirements by the police through practical prescriptions and proscriptions.

We hold that section 161 enables the police to examine the accused during investigation. The prohibitive sweep of Art. 20(3) goes back to the stage of police interrogation—not, as contended, commencing in court only. In our judgment, the provisions of Art. 20(3) and section 161(1) substantially cover the same area, so far as police investigations are concerned. The ban on self-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. We are disposed to read 'compelled testimony' as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like—not legal penalty for violation. So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Art. 20(3). The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes 'compelled testimony', violative of Art. 20(3).

A police officer is clearly a person in authority. Insistence on answering is a form of pressure especially in the atmosphere of the police station unless certain safeguards erasing duress are adhered to. Frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Art. 20(3). Legal penalty may by itself not amount to duress but the manner of mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering near compulsion.

We have explained elaborately and summed up, in substance, what is self-incrimination or tendency to expose oneself to a criminal charge. It is less than 'relevant' and more than 'confessional'. Irrelevance is impermissible but relevance is licit but when relevant questions are loaded with guilty inference in the event of an answer being supplied, the tendency to incriminate springs into existence. We hold further that the accused person cannot be forced to answer ques-

tions merely because the answers thereto are not implicative when viewed in isolation and confined to that particular case. He is entitled to keep his mouth shut if the answer sought has a reasonable prospect of exposing him to guilt in some other accusation actual or imminent, even though the investigation underway is not with reference to that. We have already explained that in determining the incriminatory character of an answer the accused is entitled to consider—and the Court while adjudging will take note of—the setting, the totality of circumstances, the equation, personal and social, which have a bearing on making an answer substantially innocent but in effect guilty in import. However, fanciful claims, unreasonable apprehensions and vague possibilties cannot be the hiding ground for an accused person. He is bound to answer where there is no clear tendency to criminate.

We have no doubt that section 179 I.P.C. has a component of *mens rea* and where there is no wilful refusal but only unwitting omission or innocent warding off, the offence is not made out. When there is reasonable doubt indicated by the accused's explanation he is entitled to its benefit and cannot be forced to substantiate his ground lest, by this process, he is constrained to surrender the very privilege for which he is fighting. What may apparently be innocent information may really be nocent or noxious viewed in the wider setting.

It may not be sufficient merely to state the rules of jurisprudence in a branch like this. The man who has to work it is the average police head constable in the Indian countryside. The man who has to defend himself with the constitutional shield is the little individual, by and large. The place where these principles have to have play is the unpleasant police station, unused to constitutional nuances and habituated to other strategies. Naturally, practical points which lend themselves to adoption without much sophistication must be indicated if this judgment is to have full social relevance. In this perspective we address ourselves to the further task of concretising guidelines.

Right at the beginning we must notice Art. 22(1) of the Constitution, which reads :

> "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

The right to consult an advocate of his choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Art. 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near-custodial interrogation. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice.

A Lawyer's presence is a constitutional claim in some circumstances in our country also, and, in the context of Art. 20(3), is an assurance of awareness and observance of the right to silence. The *Miranda* decision has insisted that if an accused person asks for lawyer's assistance, at the stage of interrogation, it shall be granted before commencing or continuing with the questioning. We think that Art. 20 (3) and Art. 22(1) may, in a way, be telescoped by making it pru-
B dent for the Police to permit the advocate of the accused. if there be one, to be present at the time he is examined. Over-reaching Art. 20(3) and section 161(2) will be obviated by this requirement. We do not lay down that the Police must secure the services of a lawyer. That will lead to 'police-station-lawyer' system, an abuse which breeds other vices. But all that we mean is that if an accused person ex-
C presses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-crimination secured in secrecy and by coercing the will, was the project.

Not that a lawyer's presence is a panacea for all problems of involuntary self-crimination, for he cannot supply answers or whisper
D hints or otherwise interfere with the course of questioning except to intercept where intimidatory tactics are tried, caution his client where incrimination is attempted and insist on questions and answers being noted where objections are not otherwise fully appreciated. He cannot harangue the police but may help his client and complain on his behalf, although his very presence will ordinarily remove the implicit menace of a police station.

E We realize that the presence of a lawyer is asking for the moon in many cases until a public defender system becomes ubiquitous. The police need not wait more than for a reasonable while for an advocate's arrival. But they must invariably warn—and record that fact —about the right to silence against self-incrimination; and where the accused is literate take his written acknowledgement.

F 'Third degree' is an easy temptation where the pressure to detect is heavy, the cerebration involved is hard and the resort to torture may yield high dividends. Das Gupta J, dissenting for the minority on the Bench, drove home a point which deserves attention while on constitutional construction :

G "It is sufficient to remember that long before our Constitution came to be framed the wisdom of the policy underlying these rules had been well recognised. Not that there was no view to the contrary; but for long it has been generally agreed among those who have devoted serious thought to these problems that few things could be more harmful to the detection of crime or conviction of the real culprit, few
H things more likely to hamper the disclosure of truth than to allow investigators or prosecutors to slide down the easy path of producing by compulsion, evidence, whether oral or documentary, from an accused person. It has been felt that

the existence of such an easy way would tend to dissuade persons in charge of investigation or prosecution from conducting diligent search for reliable independent evidence and from sifting of available materials with the care necessary for ascertainment of truth. If it is permissible in law to obtain evidence from the accused person by compulsion, why tread the hard path of laborious investigation and prolonged examination of other men, materials and documents? It has been well said that an abolition of this privilege would be an incentive for those in charge of enforcement of law to sit comfortably in the shade rubbing red pepper into a poor devil's eyes rather than to go about in the sun hunting up evidence'. (Stephen, History of Criminal Law, p. 442). No less serious is the danger that some accused persons at least, may be induced to furnish evidence against themselves which is totally false—out of sheer despair and an anxiety to avoid an unpleasant present. Of all these dangers the Constitution makers were clearly well aware and it was to avoid them that Art. 20(3) was put in the Constitution."

The symbiotic need to preserve the immunity without stifling legitimate investigation persuades us to indicate that after an examination of the accused, where lawyer of his choice is not available, the police official must take him to a magistrate, doctor or other willing and responsible non-partisan official or non-official and allow a secluded audience where he may unburden himself beyond the view of the police and tell whether he has suffered duress, which should be followed by judicial or some other custody for him where the police cannot teach him. That collocutor may briefly record the relevant conversation and communicate it—not to the police—but to the nearest magistrate. Pilot projects on this pattern may yield experience to guide the practical processes of implementing Art. 20(3). We do not mandate but strongly suggest.

The statement of the accused, if voluntary, is admissible, indeed, invaluable. To erase involuntariness we must erect safeguards which will not 'kill the goose'. To ensure this free will by inbuilt structural changes is the desideratum. Short-run remedies apart long-run recipes mut be innovated whereby fists are replaced by wits, ignorance by awareness, 'third degree' by civilized tools and technology. The factotum policeman who does everything from a guard of honour to traffic patrol to subtle detection is an obsolescent survival. Special training, special legal courses, technological and other detective updating, are important. An aware police man is the best social asset towards crimelessness. The consciousness of the official as much as of the community is the healing hope for a crime-ridden society. Judge-centred remedies don't work in the absence of community centred rights. All these add up to separation of investigatory personnel from the general mass and in-service specialisation of many hues on a scientific basis. This should be done vertically and horizontally. More importantly, the policeman must be released from addiction to coercion and be sensitized to constitutional values.

A The Indian Republic cannot fulfil its social justice tryst without a serious strategy of cultural and organisational transformation of police intelligence and investigation, abjuring fists and emphasizing wits, setting apart a separate, sophisticated force with special skills, drills, techniques and technology and aloof from the fossilising, sometimes marginally feudal, assignments—like V.I.P. duty, sentry duty, traffic duty, law and order functions, border security operations. They must B develop an ethos and ethic and professionalism and probity which can effectively meet the challenge of criminal cunning, the menace of macabre intricacies and the subtle machinations of white collar criminals in politics, business and professions and can do so without resort to vulgarity, violence or other vice. The methods, manners and morals of the police force are the measure of a society's cultural tolerance and a government's real refinement. C

Such a broad project is overdue. Constitutions are not self-working. Judicial fire-fighting does not prevent fires. So it is that we stress hopefully the larger changes now needed especially because the recurrent theme of police role in a Welfare State is reportedly engaging the attention of a national commission. Our observations are fragmentary being confined to the constitutional imperative of Art. 20(3). A D holistic perspective informs our suggestions. Our purpose is not to sterilise the police but to clothe the accused with his proper right of silence. Art. 20(3) is not a paper tiger but a provision to police the police and to silence coerced crimination. The dissenting words of Mr. Justice White bear quotation in this context :

> "....The Courts duty to assess the consequences of its E action is not satisfied by the utterance of the truth that a value of our system of criminal justice is 'to respect the inviolability of the human personality' and to require government to produce the evidence against the accused by its own independent labours. (Ante, at 715.) More than the human dignity of the accused is involved; the human personality of others in the society must also be preserved. Thus the values reflected by the privilege are not the sole F desideratum; society's interest in the general security is of equal weight."

> "The obvious underpinning of the Court's decision is a deep-seated distrust of all confessions. As the Court declares that the accused not be interrogated without counsel present, absent a waiver of the right to counsel, and as the G Court all but admonishes the lawyer to advise the (384 US 538) accused to remain silent, the result adds up to a judicial judgment that evidence from the accused should not be used against him in any way, whether compelled or not. This is the not so subtle overtone of the opinion—that it is inherently wrong for the police to gather evidence from H the accused himself. And this is precisely the nub of this dissent. I see nothing wrong or immoral and certainly nothing unconstitutional in the police's asking a suspect whom they have reasonable cause to arrest whether or not

he killed his wife or in confronting him with the evidence on which the arrest was based, at least where he has been plainly advised that he may remain completely silent. (see *Escobedo* v. *Illinois,* 12 L.Ed. 2d 977). Until today, 'the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence'. *Brown* v. *Walker,* 40 L. Ed. 819, see also *Hopt* v. *Utah* 28 L. Ed. 262. Particularly when corroborated, as where the police have confirmed the accused's disclosure of the hiding place of implements or fruits of the crime, such confessions have the highest reliability and significantly contribute to the certitude with which we may believe the accused is guilty. Moreover, it is by no means certain that the process of confessing is injurious to the accused. To the contrary it may provide psychological relief and enhance the prospects for rehabilitation.

This is not to say that the value of respect for the inviolability of the accused's individual personality should be accorded no weight or that all confessions should be indiscriminately admitted. This Court has long read the Constitution to proscribe compelled confessions, a salutary rule from which there should be no retreat."

The law will only limp along until the tools are tuned. We have proposed the first stone, not the last step.

A final note on the actual case on hand. While some aspects of Art. 20(3) have been authoritatively expounded, other aspects have remained obscure and unexplored. A flash flood of demands against self-incriminatory interrogation has risen now when very important persons of yesterday have got caught in the criminal investigation coils of today. And when the big fight forensic battles the small gain by the victory, if any. The fact that the scope of the protection against self-accusation has not been clarified before in this area makes it necessary for us to take a gentler view in this case, in the interest of justice. Moreover on our interpretation, the magistrate, trying the case under section 179 I.P.C. and in a setting where the accused allegedly has a number of other offenses to answer for, will be thrown into a larger enquiry than the simplistic one ordinarily needed :

We have declared the law on a thorny constitutional question where the amber light from American rulings and beacon beams from Indian precedents have aided us in our decision. It is quite probable that the very act of directing a woman to come to the police station in violation of section 160(1) Cr.P.C. may make for tension and negate voluntariness. It is likely that some of the questions are self-criminatory. More importantly, the admitted circumstances are such that the trying magistrate may have to hold an elaborate enquiry about other investigations, potential and actual, to decide about the self-accusatory character of the answers. And, finally, the process of proving proneness for self-incrimination will itself strike a blow on the

very protection under Art. 20(3). We have more reasons than one to conclude that the ends of justice will be ill-served by an endless magisterial chase of a charge the legal clarity of which is, by this judgment, being authoritatively unveiled and the factual foundation of which may have some infirmities. An the consequences of refusal to answer, if most of the questions are self-condemning and a few formal ones innocuous, were not gone into by us. So, we suggested to counsel that the authority of the law be vindicated by the accused undertaking to answer all relevant, not criminatory, interrogations and, on this pledge of compliance, the State withdraw the prosecution *pro-tempore.* If the accused went back on the undertaking a prosecution could again be launched and the party proceeded against for breach of the plighted word. The response from the State is a remarkable assertion of legal rectitude and exposition of the principles for exercise of the power to withdraw, and, finally. a conclusion couched thus :

> "After careful consideration from all angles and in the facts and circumstances on record, Government have come to the conclusion, that there are no circumstances to justify withdrawal by the State Government."

We think that a litigant, be he the highest or lowest in the State, should not lecture to the court but listen and explain its difficulties. We do not draw any inference about the prosecution as motivated, which was the appellant's recurrent theme; for that is irrelevant in court. But we confess that the statement of the State calls to mind the words of Hamlet : "The lady protests too much, methinks."

We must record our appreciation of the services of the Advocate General but in the statement put in, the State's counsel perhaps, had to 'speak the speech'. Maybe.

To conclude. We have bestowed some thought on the law and consider this case pre-eminently one where the Government, acting without ill-will or affection, should have withdrawn the prosecution. By Government we mean the complainant—public servant who is the party respondent. We do not need the Government to exercise its power to direct its subordinate to withdraw and know that it is not *eo nomine* party before us—a public servant is not a benamidar of Government but an officer, in his own right, saddled with statutory behests to execute. We note with satisfaction that this Government is moved only by legal, not extraneous, considerations in launching and refusing to withdraw the prosecution against the appellant. We have indicated some (not all) reasons, pertinent in law, for legitimately withdrawing a prosecution and the very fact that this Court suggested it is ordinarily sufficient to rule out the charge of improper grounds and yet the State argues overzealously about the proper criteria. We could have given more relevant reasons but do not do so since the correct course, at this stage, is to quash the prosecution as it stands at present.

Why do we ? To serve the ends of justice. When a woman is commanded into a police station, violating the commandment of Section 160 of the Code, when a heavy load of questions is handed in,

some permissible, some not, where the area of constitutional protection against self-crimination is (until this decision) blurred in some aspects, when, in this court, counsel for the accused unreservedly undertakes to answer in the light of the law we here lay down, when the object of the prosecution is to compel contrite compliance with Section 161 Cr.P.C. abandoning all contumacy and this is achieved by the undertaking, when the pragmatic issues involved are so complex that effective barricades against police pressure to secure self-incrimination need more steps as indicated in our judgement, we hold that persistence in the prosecution is seeming homage to the rule of law and quashing the prosecution secures the ends of justice—the right thing to do is to quash the prosecution as it stands at present. We regret that this dimension of the problem has escaped the Executive's attention for reasons best left unexplored.

The conspectus of circumstances persuades us to exercise our power under Art. 266 read with Art. 136 and section 401 of Cr.P.C. to make the following direction. We are satisfied that many of the questions put by the police are not self-incriminatory, remote apprehensions being wholly irrelevant. To answer is citizen's duty; failure is asking for conviction. The appellant shall undertake to answer all questions put to her which do not materially incriminate her in the pending or imminent invesitgations or prosecutions. If she claims immunity regarding any questions she will, without disclosing details, briefly state in which case or offence in the offing makes her reasonably apprehend self-incrimination by her refused answers. If, after the whole examination is over, the officer concerned reasonably regards any refusal to answer to be a wilful violation under pretense of immunity from self-incrimination, he will be free to prosecute the alleged offender after studying the refusal to answer in the light of the principles we have set out. Section 179 I.P.C. should not be unsheathed too promiscuously and teasingly to tense lay people into vague consternation and covert compulsion although the proper office of Sectior 179 I.P.C. is perfectly within the constitutional limits of Art. 20(3)

The appellant, through her counsel, undertakes to abide by the above directions to answer all police interrogations relevant but not self-incriminatory (as explained earlier). The police Officer shall not summon her to the police station but examine her in terms of the proviso to section 160(1) of the Cr.P.Code. The appellant shall, within ten days from today, file a written undertaking on the lines directed above, although, regardless thereof her counsel's undertaking will bind her. Indeed, we direct her to answer in accordance with the law we have just clarified.

The prosecution proceedings in complaint case No. 2(c) 388 of 1977 on the file of the Sub Divisional Magistrate Sadar, Cuttack, are hereby quashed and the appeals allowed.

S.R. *Appeals allowed.*