**The Constitutionality of giving Voice Sample vis a vis Testimonial Compulsion**

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It is aptly relevant to pose the following four questions ourselves in respect of the voice samples evidence and refusal of the accused person/s to give such specimen voice samples.

Q-1 Whether the accused person/s can be compelled to give the specimen voice samples, if so, does it not amount to self-incrimination U/Article 20(3) of the constitution?

Q-2 If the accused person/s is/are refused to give such specimen voice samples, what is the legal remedy available to the prosecution?

Q-3 Whether the adverse inference can be drawn against the accused person/s on the refusal of giving such specimen voice samples to the investigation Agency?

Q-4 Is there any legal statutary provision with regard to the voice samples

in the Indian legislative context?

The above said questions have been dealt in detail as under in seriatim:

**Q-1 Whether the accused person/s can be compelled to give the specimen voice samples, if so, does it not amount to self-incrimination U/Article 20(3) of the constitution?**

It is aptly relevant to mention herein that the **87th Report of the Law Commission of India** describes a voiceprint as a **“visual recording of voice”.** Voiceprints resemble fingerprints, in that each person has a distinctive voice with characteristic features dictated by vocal cavities and articulates.

*It is submitted that the Voice sample is like finger print impression, signature or specimen handwriting of an accused. Like giving of a finger print impression or specimen writing by the accused for the purposes of investigation, giving of a voice sample for the purpose of investigation cannot be included in the expression* ***"to be a witness".*** *By giving voice sample,the accused does not convey information based upon his personal knowledge which can incriminate him. A voice sample by itself is fully innocuous. By comparing it with tape recorded conversation, the investigator may draw his conclusion but, voice sample by itself is not a testimony at all. When an accused is asked to give voice sample, he is not giving any testimony of the nature of a personal testimony. When compared with the recorded conversation with the help of mechanical process, it may throw light on the points in controversy. It cannot be said, by any stretch of imagination that by giving voice sample, the accused conveyed any information based upon his personal knowledge and became a witness against himself. The accused by giving the voice sample merely gives* ***‘identification data'*** *to the investigating agency. He is not subjected to any testimonial compulsion.*

Further, voice prints of a person are like finger prints of a person as mentioned above. Each person has a distinctive voice with characteristic features. A Voice print expert has to compare spectrographic prints to arrive at identification of a voiceprint. A voiceprint identification of voice involves measurement of frequency and intensity of sound waves. The process of measuring frequency or intensity of the speech-sound waves falls within the ambit of the term **“measurements”** as envisaged in Section 2(a) of the Identification of the Prisoners Act. It is further submitted that in ***Central Bureau of Investigation, New Delhi v. Abdul Karim Ladsab Telgi and others reported in 2005 Crl. L.J. 2868*** the Bombay High Court has interpreted the term “measurement” appearing in Section 5 of the Prisoners Act expansively and purposefully to include measurement of voice i.e. speech sound waves

Further, a voice sample is physical non-testimonial evidence. It does not communicate to the investigator any information based on personal knowledge of the accused which can incriminate him. A voice sample is not conceptually different from physical non-testimonial evidence-like blood, semen, sputum, hair etc. It is further submitted that even if the voice sample of accused is not treated as a bodily substance, it is still physical evidence involving no transmission of personal knowledge. Therefore, the process of taking of voice sample from an accused does not involve any testimonial responses from the accused and therefore recording of voice sample of an accused cannot be said to be violative of **Art. 20(3) of the Constitution.**

The Magistrate’s power to authorize the investigating agency to record voice sample of the person accused of an offence can be traced to Section 5 of the Identification of Prisoners Act and Section 53 of the Criminal Code of procedure. The Magistrate has an ancillary or implied power under Section 53 of the Code to pass an order permitting taking of voice sample to aid investigation, in ***Sakiri Vasu v. State of Uttar Pradesh reported in (2009) 2 SCC 409***, the Hon’ble Apex Court has referred to the incidental and implied powers of a Magistrate during investigation.

In **R M Malkani Vs State of Maharashtra (SC 157 AJR 1973**. It was held by the supreme court that the tape-recorded conversation is admissible provided (1) First the conversation is relevant to the matters in issue (2) Secondly, there is identification of the voice (3) Thirdly, the accuracy of the tape- secured conversation is provided by eliminating the possibility of erasing the tape record.

**The Hon’ble High Court of Delhi in SUDHIR CHAUDHARY Vs. STATE = 2015 [2] JCC 1447 held that** giving of voice sample for the purpose of investigation cannot be included in expression ‘to be a witness’ – By giving **voice sample,** accused does not convey any information based upon his personal knowledge which can incriminate him – Accused was not asked nor expected to furnish any statement based on his personal knowledge as would be barred under Article 20(3) of the Constitution of India – Voice sample is not substantive piece of evidence – Use of such sample is limited to purposes for which it was collected – Only use of such sample is for comparison and no other – Merely because text provided to petitioners contained some inculpatory statements, it would not mean that petitioners were forced to be witness in their own case – Once accused persons had given their consent for furnishing their voice samples, they could not be allowed to shift their stand course of drawing their voice samples should contain no part of inculpatory words which are a part of disputed recorded conversation. A commonality of words, held, is necessary to facilitate a spectrographic examination.

Further, the Hon’ble Apex court in catena judgements reiterated that the voice samples of the accused persons does not fall under the category of Article 20(3) of the Constitution i.e **Mukul *Roy v State of W.B.* (2019) SCC OnLine Cal 4341; *State of Maharashtra v Suresh BaliramRane* (2021) SCC Online Bom 38; *P.C. Mishra v C.B.I.* (2021) SCC On Line Del 82.**

**Finally, the Hon’ble Apex Court has put an end to the controversy with regard to the validity of obtaining the voice samples without the consent of the accused in Ritesh Sinha Vs. State of Uttar Pradesh 2013 Crl.L.J. 1301, wherein the Hon’ble Apex Court held that** taking voice sample of an accused by the police during course of investigation is not hit by Article 20(3) of the Constitution. Investigating Officer cannot take physical samples, including voice samples, from accused without authorization from Magistrate.

It is pertinent to mention that in the recent judgement of Hon’ble Apex Court in **Union of India through National Investigation Agency Vs Roopesh @ Praveen**. held that the Voice sample of the accused could be given to the investigating Agency for the purpose of the inquiry. Thus, the decision was passed in favour of the Investigating Agency.

Further, the following are the various **Hon’ble High Courts *judgements, which have*** been pronounced in favour of the Prosecution stating that at the investigation stage, the Prosecution is at liberty to take the voice sample of the accused person as it is voice Spectrograph test which is just the comparison of the wavelength of the voices of the accused is not violative of Article 20(3) of Constitution of India

Article 20(3) of the constitution of India says that no person should be forced to become a witness against himself. In the recent case of **Raj Kumar Singh Chauhan Vs State of Rajasthan** Hon’ble High Court held that Voice samples can be taken against the choice of accused (without consent). The High Court have validated that the voice sample could be collected from the accused person without taking their permission.

Furrher, In **R K Akhande Vs Special Police establishment**, the Madhya Pradesh High Court held that the necessitating the accused person to give voice sample does not meant that he is giving evidence against himself and also in **Kamal Pal and another Vs State of Punjab,** the Punjab and Haryana High Court held that the accused, who is judicially directed to give that voice sample for the purpose of Inquiry or comparison purposes do not infringe the right to privacy

**VARIOUS HON’BLE HIGH COURT JUDGEMENTS**

* **Raj Kumar Singh Chouhan vs State Of Rajasthan on 10 September, 2021**
* **GOLLA VARA PRASAD Vs. STATE OF ANDHRAPRADESH**
* **Shahrukh vs The State Nct Of Delhi on 22 March, 2022**
* **Usha Dogra vs State Of Himachal Pradesh And Others on 2 May,2024**
* **M. R. Lohith Manohar Versus State by Rammurthy Nagar Police Station – Decided On : 2011**
* **Sri Halappa @ Harthal Halappa vs The State Of Karnataka on 27 May, 2010**
* **Mahendrakumar Kanhyalal Jain vs Shri Mahavir Urban Co-Operative on 19 June, 2013**
* **Shri Madhukar K. Farde V. Central Bureau of Investigation**
* **Singh Rana vs State Of Haryana on 18 April, 2022**
* **Ravi Parkash Sharma vs State of Punjab on 30 March, 2022**
* **Kishore vs State Rep. By on 16 November, 2017**
* **State vs Vikramjeet Singh @ Vika Virk on 23 May, 2018**
* ***P. Kishor Vs. State (2018(1) MLJ (Crl.) 208) of Madras High Court,***
* ***Ravindra Kumar Bhalotia and others Vs. State and others (2018(1) MLJ (Crl) 149 of High Court of Madras***
* ***State Vs. Vikramjeet Singh @ Vika Virka of Rajasthan High Court***
* ***Leena Katiyar Vs. State of UP and others (2015(1) ACR 989) of Allahabad High Court***
* ***Y. Ranganadh Goud vs State of Andhra Pradesh reported in (2010) 2 ALD (Cri) 538,***
* **Smt. Leena Katiyar v. State of U.P., 2015 (89) ACC 556 (HC)**

At this juncture, it is pertinent to mention that the foreign courts have also recognized the collection of voice samples from the accused persons by stating that they do not fall under the category of self-incrimination

Voice samples of the accused persons Jurisprudence in Foreign Countries are as under: -

In ***United States v. Wade*,59** **the Supreme Court of the United States** held that compulsion to speak in the presence of witnesses does not amount to self-incrimination.

**The Australian jurisprudence** has had its own set of issues with voice identification. Mostly, in controlling the admissibility of such identifications, it treated them as non-testimonial. The most significant case law on this matter is ***R v*. *Smith* (―*Smith*‖)** since it tried to impose maximum limitations of its admissibility and came up with the most unique proposition on the subject.

In view of the above judgments of the Hon’ble Apex Court as well as various Hon’ble High Courts, it is evident that the accused person/s can be compelled to give the specimen voice samples and it does not amount to self-incrimination U/Article 20(3) of the constitution.

**Q-2 If the accused person/s is/are refused to give such specimen voice samples, what is the legal remedy available to the prosecution?**

**The Hon’ble Apex Court of India in Narayan Dutt Tiwari Vs Rohit Shekar and another ( (2012) 12 SCC 554)** held that the reasonable force can be used by the Police to ensure the compliance of the Hon’ble Apex Court order for giving DNA test.

Further, the Hon’ble Apex Court has relied on in ***H.M Kamaluddin Ansari & Co. vs. Union of India ((1983) 4 SCC 417)***and ***Attorney General vs. Guardian Newspapers Ltd. ((1987) 1 WLR 1248****), which* held thatorders of the court were to be complied withand the court would not pass an order whichwould be ineffective. It also referred to ***K.A. Ansari vs. Indian Airlines Ltd ((2009) 2 SCC 164)***wherein it was held that difficulty in implementationof an order passed by the court,could not be an excuse for its non-implementation.

***Selvi vs. State of Karnataka ((2010) 7 SCC 263)****, which held that compelled extraction of blood samples in course of medical test did not amount to conduct that shocks the conscience and use of reasonable force, where necessary, was mandated by law.*

In view of the above judgments of the Apex Court, it is crystal clear that the assistance of the Police may be taken for the enforcement of the judicial orders and the same analogy applicable to obtain the voice sample from the accused persons even by using the force, the prosecution is at liberty to file a fresh application stating the reasons for the refusal of the accused person/s giving voice samples in the laboratory and assign the cogent reasons thereof and seek further direction to implement its earlier orders, if necessary by using the reasonable force with the assistance of the Police.

The Supreme Court recently in **Shimnit Utsch India Pvt. Ltd. v. West Bengal Transport Infrastructure Development Corporation Ltd. (2010) 6 SCC 303** reiterated that law on the binding effect of an order passed by a Court of law is well settled; if an order has been passed by a Court which had jurisdiction to pass it, then the error or mistake in the order can be got corrected from a higher Court and not by ignoring the order or disobeying it expressly or impliedly.

In view of the above judgments of the Hon’ble Apex Court as well as various Hon’ble High Courts, it is evident that the accused person/s can be compelled to give the specimen voice samples by using the reasonable force and it does not amount to self-incrimination U/Article 20(3) of the constitution.

**Q-3 Whether the adverse inference can be drawn on the refusal of giving specimen voice samples to the investigation Agency**?

It is pertinent to mention that the term “adverse inference rule” refers to a principle that if the accused fails to provide a witness/evidence that is within his control to provide, and should have been produced, the court may instruct the jury to infer that the absence of such witness/evidence is unfavourable to the accused’s case

Adverse inference rule is also known as empty chair doctrine or adverse interest rule, when the trial judge will almost automatically infer unfavourably from the accused’s silence or failure to provide relevant witness or evidence that is under the accused’s control.

**Section 114** of the IEA gains relevance here.

“**114. Court may presume existence of certain facts. –** The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

Thus, Section 114 allows for the courts to presume certain facts from the facts of a particular case and in aid of the Section, the Act also provides a number of illustrations to assist in the presumptions that a court may draw. Of these, Illustration (g) is of relevance to this Rule.

**“(g)** **That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.”** Supreme Court, in a catena of judgments has relied upon **Illustration (g)** to hold that it is the duty of the prosecution to lead the best evidence and adverse inference can be drawn when the best evidence is not produced before the Court.

It is submitted that in the case of **Phula Singh v. State of H.P**. the appellant, charged with bribery under prevention of Corruption Act, 1988, refused to provide any explanation as to the circumstances against him and evaded the questions with bare denials. While appreciating the right to silence, in view of the 313 statements of the accused, the court held that: "The accused has a to furnish an explanation… regarding any incriminating duty material that has been produced against him. If the accused has been given the freedom to remain silent… or even remain in complete denial…However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law**."**

**Section 27(2) of POTA** envisages that if an accused person/s refuses to give his voice samples, only an adverse inference could have been taken.

**Prahlad V. The State of Rajasthan,** wherein the court held the accused guilty by drawing adverse inference. The word **‘adverse inference’** suggests that the court is authorised to draw ‘such inferences as appear proper’ including an unfavourable decision from the defendant’s silence; in other words, the court may hold the defendant’s silence against him.

It is further submitted that the **Hon’ble High Court of Rajasthan at Jaipur Bench in Omkar Sapre Vs State of Rajasthan through his Public Prosecutor** held that and adverse inference can also be taken at the time of trial

The Apex Court undoubtedly in **Sharda Vs Dharmpal ((2004)4 SCC 493 and Bhavani Prasad Jena Vs Convenor Secretary Orissa State Commission for women and another ((2010) 8 SCC 633**) has held that "if despite an order passed by the Court, a person refuses to submit himself to such medical examination, a strong case for drawing an adverse inference" within the meaning of Section 114 of the Evidence Act would be made out.

It is further submitted the concept of adverse inference is also recognized by the foreign countries under different statues as under: -

**The Criminal Justice and Public Order Act 1994** The United Kingdom is adopting a very broad scope of adverse inferences. The Criminal Justice and Public Order Act 1994 Section 34 allows adverse inferences when a suspect is silent when questioned under caution prior to charge (section 34(1)(a)).

In view of the above judgments of the Hon’ble Apex Court as well as various Hon’ble High Courts, it is evident that the Hon’ble Courts may take an adverse inference against the accused person/s if they are reluctant to give the specimen voice samples**.**

**Q-4 The present legal position with respect to the specimen voice sample of the accused person/s?**

The recent Bhartiya Nagarik Suraksha Sanhita (BNSS) has put an end to the anomaly to the concept of obtaining voice samples of the accused person/s, which has been in question for the last 20/25 yearswith advent of the Technological developments in the commission of the crime by inserting a statuary provision in the above said Act and made a legalby making it as statutory enforceable right’. The extract of the said provision has been reproduced herein as under: -

**Section 349 BNSS| Bharatiya Nagarik Suraksha Sanhita (BNSS) Act,2023:**  
**Power of Magistrate to order person to give specimen signatures or handwriting, etc.**

If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen signatures or finger impressions or **handwriting or voice sample**, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or finger impressions or handwriting or **voice sample**:

**Provided** that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding:

**Provided further** that the Magistrate may, for the reasons to be recorded in writing, order any person to give such specimen or sample without him being arrested.

In view of the insertion of the above said provision in the BNSS Act it is crystal clear that **fourth question** is also answered in **affirmative**

The present legal status with regard to obtaining the voice samples from the accused person/s is thus clear from the existing laws and the various judgements of the Hon’ble Apex Court as well as various Hon’ble High Courts.