

**NAILING VICE WITH VOICE: CAN ACCUSED BE COMPELLED TO  
UNDERGO VOICE SPECTROGRAPHY TEST?**

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**ABSTRACT**

*This paper attempts to analyze the law related to voice spectrography test which an automatic sound wave analyzer, used as a basic research instrument in many laboratories for research studies of sound, music and speech. It is widely used for the analysis and classification of human speech sounds and in the analysis and treatment of speech and hearing disorders.*

*It identify the law revolving voice spectrography test in other jurisdictions. The purpose of voice spectrography is only to compare voice and identify the accused. The giving of finger impression or of specimen signature or of handwriting, strictly speaking, is not "to be a witness." It answers the question whether an accused can be compelled to undergo voice spectrography test in the event of no express provision provided in the Code.*

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## INTRODUCTION

### VOICE SPECTROGRAPHY TEST

The voice spectrography test, an automatic sound wave analyzer, is a basic research instrument used in many laboratories for research studies of sound, music and speech.<sup>2</sup> It has been widely used for the analysis and classification of human speech sounds and in the analysis and treatment of speech and hearing disorders.

Spectrographic analysis is the technique of voice identification (or elimination) by means of "voiceprints." A voiceprint may be defined as "a pictorial representation of the acoustical energy output of a speaker, as a function of time, frequency and amplitude."<sup>3</sup> Essentially, there are two types of voiceprint that may be produced for analysis in this technique:

- (1) bar spectrograms, " showing the resonance bars of the voice with dimensions of time, frequency and loudness" (most useful in matching known and unknown voice samples);<sup>4</sup>
- (2) contour spectrograms, "measuring levels of loudness, time and frequency in a shape much like a topographical map" (most useful in computerized spectrographic classification).<sup>5</sup>

Voice identification is accomplished by subjective visual comparison of voiceprints from known and unknown sources in much the same way as the fingerprints are compared. As Tosi has noted, "any method of identification or elimination has to be based on parameters that vary differently or less within the individual than among different persons."<sup>6</sup>

Spectrographic analysis is accordingly premised on the theory:

- (1) that the anatomical characteristics of people's speech organs differ significantly, and

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<sup>2</sup> Voice Spectrography Test, <[owenforensicservices.com/article1.html](http://owenforensicservices.com/article1.html)>.

<sup>3</sup> K. Thomas, Voiceprint - Myth or Miracle (From Scientific and Expert Evidence - Second Edition, 1981, Edward J Imwinkelried, ed.) p. 1020. ("Thomas")

<sup>4</sup> A. Moenssens, R. Moses & F. Inbau, "Scientific Evidence in Criminal Cases", <<https://www.scholars.northwestern.edu/en/publications/of-a-moenssens-r-moses-amp-f-inbau-scientific-evidence-in-crimina>> at p. 571.

<sup>5</sup> *Ibid.*

<sup>6</sup> O. Tosi, "Voice Identification (From Scientific and Expert Evidence Second Edition, 1981, Edward J Imwinkelried, ed.) at p. 973. ("Tosi")

(2) that the habit patterns with regard to the way a given individual uses his or her speech organs are different but consistent.<sup>7</sup>

Spectrographic voice identification requires nothing of the suspect beyond the furnishing of a voice sample, either in the presence of a tape recorder or, depending on the circumstances, over a telephone line to which a recording device has been connected. The suspect is required to repeat sentence by sentence (perhaps several times) the words that have been transcribed from the recording of the known voice with which his or her voice is to be compared.<sup>8</sup>

### **NEED FOR VOICE SPECTROGRAPHY TEST**

Voice recognition has started to feature prominently in intelligence investigations. Examples abound: When ISIS released the video of journalist James Foley being beheaded, experts from all over the world tried to identify the masked terrorist known as Jihadi John by analyzing the sound of his voice.<sup>9</sup> Documents disclosed by Edward Snowden revealed that the U.S. National Security Agency has analyzed and extracted the content of millions of phone conversations. Call centres at banks are using voice biometrics to authenticate users and to identify potential fraud. All these instances show the requirement to conduct voice spectrography test.

### **VOICE SPECTROGRAPHY TEST: INDIAN SCENARIO**

The question of whether an accused can be compelled to undergo voice spectrography test was first raised in the Court before the bench of *Ravindra Singh, J.* in the case of *Ritesh Sinha v State of Uttar Pradesh* and it was contested that the order is illegal, because no accused can be compelled to give the evidence against himself/herself and there is no provision permitting the I.O. for summoning the accused for taking his voice sample.<sup>10</sup> The contention was rejected and an appeal was filed before the Supreme Court. Due to difference of opinion between the two judges, the case is listed for hearing before a bench of three Judges which is not yet constituted.

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<sup>7</sup> Thomas, *supra* note 2 at p.1025.

<sup>8</sup> Tosi, *supra* note 5 at pp. 110-111.

<sup>9</sup> James Foley, <<http://edition.cnn.com/2014/08/24/world/meast/isis-james-foley/>>.

<sup>10</sup> *Ritesh Sinha v State of Uttar Pradesh*, 2011 (2) ACR 1272. (“Ritesh”)

*Desai, J.* in the case of *Ritesh Sinha v State of Uttar Pradesh* referred to Section 5<sup>11</sup> and Section 6<sup>12</sup> of the Prisoners Act which allows that if anyone resists taking of measurements and photographs, all necessary means to secure the taking of the same could be used. The Court also referred to Section 73 of the Indian Evidence Act which authorizes the court to permit the taking of finger impression or specimen handwriting or signature of a person, if necessary for the purpose of comparison.<sup>13</sup> The Court observed that self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge.<sup>14</sup> 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. A careful study of the provisions of the Code and other relevant statutes discloses a scheme which aims at strengthening the hands of the investigator. Through conjoint reading of Section 53, Section 54A, Section 311A of the Code, Section 73 of the Evidence Act and Section 5 and Section 6 of the Prisoners Act, an accused can be compelled to undergo voice spectrography test. The Court held that measuring frequency or intensity of the speech-sound waves falls within the ambit of inclusive definition of the term 'measurement' appearing in Section 5 of the Prisoners Act. The Court reiterated the distinction between physical evidence and testimonial acts. The Court also acknowledged that the substances mentioned in Explanation (a) to Section 53<sup>15</sup> are examples of physical evidence and, hence, the words "and such other tests" mentioned therein should be construed to include the examination of physical evidence but not that of testimonial acts and 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.

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<sup>11</sup> Section 5 of Identification of Prisoners Act, 1920. ("Section 5")

<sup>12</sup> Section 6 of Identification of Prisoners Act, 1920. ("Section 6")

<sup>13</sup> Section 73 of Indian Evidence Act, 1872. ("Section 73")

<sup>14</sup> *Ritesh Sinha v State of Uttar Pradesh*, AIR 2013 SC 1132. ("Sinha")

<sup>15</sup> Explanation (a), Section 53 of Code of Criminal Procedure, 1973.

*Aftab Alam, J.* in the case of *Ritesh Sinha v State of Uttar Pradesh* disagreed with the opinion of *Desai, J.* and observed that there is no provision in the Code of Criminal Procedure to compel the accused to give his voice sample.<sup>16</sup> Application of Explanation (a) to Section 53 cannot be said to include voice sample as the ratio of the decision in *Selvi* does not enlarge but restricts the ambit of the expressions 'such other tests' occurring in the Explanation. The Explanation in question deals with material and tangible things related to the human body and not to something disembodied as voice. *Aftab Alam, J.* observes that the Code of Criminal Procedure was amended in 2005 when the Explanation was added to Section 53 and Sections 53A and 311A were inserted into the Code. Voice sample was not included either in the Explanation to Section 53 or Section 311A and therefore the Court should not insist that voice sample is included in the definition of "measurements" under the Identification of Prisoners Act and in the Explanation to Section 53 of the Code of Criminal Procedure.

In *Natvarlal Amarshibhai Devani v State of Gujarat*, the Gujarat High Court dealt with this question and agreed with *Aftab Alam, J.* holding that the investigating authorities could not legally compel an accused to undergo a voice spectrography test. The Court based its judgment on statutory interpretation, finding no warrant for the taking of voice samples under the existing criminal procedural framework.<sup>17</sup>

### **VOICE SPECTROGRAPHY TEST: OTHER JURISDICTIONS**

In *Schmerber v California*, the Court observed that "both federal and state courts have usually held that it offers no protection against compulsion to submit to fingerprinting, photographing, or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture."<sup>18</sup>

In *United States v. Wade*, the Court held that a suspect could be compelled to participate in a lineup and to repeat a phrase provided by the police so that witnesses could view him and listen to his voice. Requiring his presence and speech at a lineup reflected "compulsion of the accused

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<sup>16</sup> *Sinha*, *supra* note 13.

<sup>17</sup> *Natvarlal Amarshibhai Devani v State of Gujarat*, MANU/GJ/0200/2017. ("Devani")

<sup>18</sup> *Schmerber v California*, 384 U.S.757 (1966). ("Schmerber")

to exhibit his physical characteristics, not compulsion to disclose any knowledge he might have." (suspect was "required to use his voice as an identifying physical characteristic).<sup>19</sup> To utter words purportedly uttered by the robber [and dictated to the suspect by the police] was not compulsion to utter statements of a 'testimonial' nature; [the suspect] was required to use his voice as an identifying physical characteristic, not to speak his guilt" because the words did not reflect any facts or beliefs asserted by the suspect.

In *United States v. Dionisio*, the Court held that suspects could be compelled to read a transcript in order to provide a voice exemplar, explaining that the "voice recordings were to be used solely to measure the physical properties of the witnesses' voices, not for the testimonial or communicative content of what was to be said."<sup>20</sup> Where suspects were asked to create voice exemplars by reading already-prepared transcripts, the "voice recordings were to be used solely to measure the physical properties of the witnesses' voices, not for the testimonial or communicative content of what was to be said" because the content did not reflect any facts or beliefs asserted by the suspects.

The cases upholding compelled writing and voice exemplars did not involve situations in which suspects were asked to communicate any personal beliefs or knowledge of facts, and therefore the suspects were not forced to choose between truthfully or falsely revealing their thoughts. In *Gilbert v. California*, it was noted that a "mere handwriting exemplar, in contrast to the content of what is written, like the voice or body itself, is an identifying physical characteristic outside [the privilege's] protection."<sup>21</sup> The compelled execution of the consent directive did not force the suspect to express the contents of his mind but rather forced the suspect only to make a "nonfactual statement."

In *Levack v Regional Magistrate, Wynberg*, the application of Section 37 of the Criminal Procedure Act was broadened to include voice recognition. The Court held that although the section does not expressly mention the voice it does form part of the innumerable bodily features that the wording of the section expressly contemplates. In deciding the case, Cameron JA again

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<sup>19</sup> *United States v Wade*, 388 U.S. 218 (1967).

<sup>20</sup> *United States v. Dionisio*, 410 U.S. 1 (1973).

<sup>21</sup> *Gilbert v. California*, 388 U.S. 263 (1967).

confirmed that “autoptic evidence”, evidence derived from the accused’s own bodily features, does not infringe the right to silence or the right to be compelled to give evidence. Cameron JA held in this regard as follows: “Differently put, it is wrong to suppose that requiring the appellants to submit voice samples infringes their right either to remain silent in the court proceedings against them or not to give self-incriminating evidence.”<sup>22</sup> The results of voice identification tests fall within the category of real or physical evidence.<sup>23</sup>

Pakistan has a similar law on voice samples. In fact, Pakistani interior minister Rehman Malik, while addressing a meeting hosted by the Supreme Court of India’s Bar Association recently, said that in his country voice samples cannot be taken unless the accused himself gives permission for it.<sup>24</sup> The narrow issue is whether the defendants should be compelled to speak for the voiceprint test. In light of the developments since Cary, it can be believed that it is no longer unreasonable to order these defendants to speak for purposes of this test. After this test is completed and the State indicates that it intends to offer the results of the test at trial, the trial judge shall hold an additional pre-trial hearing to determine whether any identification arrived at through the use of this method is sufficiently reliable to be admissible in light of the proofs which will be adduced as to what the test shows, and such cross-examination of the State’s experts and such opposing proofs as defendants may be able to offer.<sup>25</sup>

### ANALYSIS

A suspect asked to speak for voice identification is not subjected to the same psychological pressures said to be generated by a demand for testimony. It is no more unfair to ask a suspect to speak for voice identification than to ask him to appear in a lineup for visual identification.<sup>26</sup> The purpose of voice spectrography is only to compare voice of the suspect and to identify the accused.

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<sup>22</sup> *Levack v Regional Magistrate, Wynberg*, 2004 (5) SA 573 (SCA). (“Levack”)

<sup>23</sup> Roger J. Traynor, *People v. Ellis* 65 Cal.2d 529 (1966), <[http://repository.uchastings.edu/traynor\\_opinions/653](http://repository.uchastings.edu/traynor_opinions/653)>.

<sup>24</sup> Voice Spectrography

<[https://www.telegraphindia.com/1130102/jsp/opinion/story\\_16390549.jsp#.WNwFKPI97IU](https://www.telegraphindia.com/1130102/jsp/opinion/story_16390549.jsp#.WNwFKPI97IU)>

<sup>25</sup> *State v Andretta*, 61 N.J. 544 (1972).

<sup>26</sup> *People v Ellis*, 65 Cal. 2d 529.

### NOT A TESTIMONIAL COMPULSION

Compelling an accused to undergo voice spectrography test does not amount to *testimonial compulsion*. The Olderman court also ruled that compelling a defendant to submit his voice to spectrographic analysis did not violate his Constitutional rights. The court stated that giving a voice sample for identification purposes was not testimonial in character, nor did a person have a reasonable expectation of privacy in the sound of his voice.<sup>27</sup> In the case of *People v King*, the Court held that there is no violation of the Fifth Amendment in compelling an accused to repeat words for voice identification.<sup>28</sup> It is not testimonial compulsion but is an identification of physical characteristics.<sup>29</sup>

In *Levack, Hamilton Caesar and Ors. v. Regional Magistrate, Wynberg and Anr.*, it was observed that it is wrong to suppose that requiring the accused to submit voice samples infringes their right either to remain silent in the court proceedings against them or not to give self-incriminating evidence. It was further observed that voice falls within the same category as complexion, stature, mutilations, marks and prints i.e. 'autoptic evidence' - evidence derived from the accused's own bodily features.<sup>30</sup> It was held that there is no difference in principle between the visibly discernible physical traits and features of an accused and those that under law can be extracted from him through syringe and vial or through the compelled provision of a voice sample. In neither case is the accused required to provide evidence of a testimonial or communicative nature, and in neither case is any constitutional right violated.

In *Selvi v State of Karnataka*, it was observed that "They are only materials for comparison in order to lend assurance to the Court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of 'testimony'."<sup>31</sup>

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<sup>27</sup> *State v Olderman*, 44 Ohio App. 2d at 134-36.

<sup>28</sup> *People v King*, 60 Cal.2d 308.

<sup>29</sup> Schmerber, *supra* note 17.

<sup>30</sup> *Levack, supra* note 21.

<sup>31</sup> *Selvi v State of Karnataka*, AIR 2010 SC 1974. ("Selvi")

In *State of Bombay v Kathi Kalu Oghad*, it was observed that the scope of 'testimonial compulsion' is made clear by two premises. The first is that ordinarily it is the oral or written statements which convey the personal knowledge of a person in respect of relevant facts that amount to 'personal testimony' thereby coming within the prohibition contemplated by Article 20(3).<sup>32</sup> In most cases, such 'personal testimony' can be readily distinguished from material evidence such as bodily substances and other physical objects. The second premise is that in some cases, oral or written statements can be relied upon but only for the purpose of identification or comparison with facts and materials that are already in the possession of the investigators.

In *Ritesh Sinha v State of Uttar Pradesh*, it was observed that “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. Thus, taking voice sample of an accused by the police during investigation is not hit by Article 20(3) of the Constitution.”<sup>33</sup> By combined reading of all the above cases it can be said that compelling an accused to undergo voice spectrography test does not amount to *testimonial compulsion*. Apparently there are no appellate court decisions passing squarely upon this issue. However, in an early Pennsylvania case *Johnson v. Commonwealth*,<sup>34</sup> there is dictum to the effect that an accused person may be required to repeat certain words which had been spoken by the perpetrator of a crime, so as to assist a witness in court to form an opinion as to the identity of the accused. So long as the accused is not required to discuss the crime itself or his own possible incrimination, but merely to furnish a sample of his voice as "identification data," there appears

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<sup>32</sup> *State of Bombay v Kathi Kalu Oghad*, AIR 1961 SC 1808. (“Oghad”)

<sup>33</sup> *Sinha*, *supra* note 13.

<sup>34</sup> *Johnson v. Commonwealth*, 115 Pa. 369, 9 Atl. 78 (1887).

very little justification for considering such compulsory behavior as a violation of his privilege against self-incrimination.<sup>35</sup>

### **NO EXPRESS PROVISION**

The Supreme Court of Appeal of South Africa in Levack, *Hamilton Caesar and Ors. v. Regional Magistrate, Wynberg and Anr.*, directed the accused to give voice samples as specified by a named 'voice expert' under Section 37(3) of the Criminal Procedure Act 51 of 1977 (for short, "South African Act")<sup>36</sup> which is similar to Section 5 of the Identification of Prisoners Act, 1920.

The Supreme Court of South Africa considered the Oxford Dictionary meaning of 'voice' as:

1. Sound formed in larynx etc. and uttered by mouth, especially human utterance in speaking, shouting, singing, etc.
2. Use of voice, utterance.
3. (Phonetic) Sound uttered with resonance of vocal chords, not with mere breath'. It observed that voice is thus a sound formed in the larynx and uttered by the mouth and emanates from and is formed by the body.<sup>37</sup>

Therefore, there can be no doubt that it is a 'characteristic' (in the sense of a distinctive trait or quality) of the human body. Though voice sample was not specifically mentioned in Section 37 it was held that it fell within the scope of Section 37. It was observed that Section 37 does not expressly mention the voice because it is one of the 'innumerable' bodily features that the wording expressly contemplates. Section 37 merely contemplates bodily appearance of the accused. It was further observed that it is true that the voice, unlike palm or other prints, is not itself part of the body.<sup>38</sup> It is a sound. But, the sound is a bodily emanation. and the body from which it emanates determines its timbre, volume and distinctive modulations. It was further observed that nothing in the provision suggests that the 'distinguishing features' it envisages

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<sup>35</sup> Fred E. Inbau, Self-Incrimination-- What Can an Accused Person be Compelled To Do, 28 Am. Inst. Crim. L. & Criminology 261 (1937-1938).

<sup>36</sup> Sinha, *supra* note 13.

<sup>37</sup> Oxford Dictionary <<https://en.oxforddictionaries.com/definition/voice>>.

<sup>38</sup> Sinha, *supra* note 13.

should be limited to those capable of apprehension through the senses of touch and sight (or even taste or smell).

### **IDENTIFICATION OF PRISONERS ACT, 1920**

It is open to the investigating agency for the purpose of ascertaining identification of the voice of accused to require the accused to lend his sample voice. Moreover, reference can be usefully made to the provisions of the Identification of Prisoners Act, 1920. This Act was especially intended to make provisions regarding authorizing the taking of measurements and photographs of convicts and as to record or make note of the identity of such persons. Section 5 of the Act confers power on Magistrate to order a person to be measured or photographed.<sup>39</sup>

It provides that when the Magistrate is satisfied, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, it is expedient to direct any person to allow his "measurement" or "photographs" to be taken. Such a direction can be issued by the concerned Court, if pressed on behalf of the investigating agency, In the first place, as held by the Apex Court in Malkani's case, tape recorded conversation is comparable to photograph of the relevant incident.<sup>40</sup> The expression "measurements" has been defined in Section 2(a), which states that "measurements" include finger-impressions and foot print impressions.<sup>41</sup>

The said expression is an inclusive term, which also includes finger impressions and foot print impressions. Besides, the term measurement, as per the dictionary meaning is the act or an instance of measuring an amount determined by measuring: detailed dimensions.<sup>42</sup> With the development of Science and Technology, the voice sample can be analysed or measured on the basis of time, frequency, and intensity of the speech-sound waves so as to compare and identify the voice of the person who must have spoken or participated in recorded telephonic conversation. The expression "measurements" occurring in Section 5 can be construed to encompass even the act undertaken for the purpose of identification of the voice in the tape-

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<sup>39</sup> Section 5, *supra* note 10.

<sup>40</sup> *R.M. Malkani v State of Maharashtra*, 1973 Cri LJ 228. ("Malkani")

<sup>41</sup> Section 2(a) of Identification of Prisoners Act, 1920.

<sup>42</sup> Oxford Dictionary <<https://en.oxforddictionaries.com/definition/measure>> ("Measurement")

recorded conversation.<sup>43</sup> Such construction will be purposive one without causing any violence to the said enactment, the purpose of which was to record or make note of the identity or specified persons.

Section 6 of the said Act confers use of power to secure the taking of measurements, etc.<sup>44</sup> Also, resistance to or refusal to allow taking of measurements or photograph under this Act shall be deemed to be an offence under Section 186 of the Indian Penal Code, 1860.<sup>45</sup> As its short title and preamble suggests it is aimed at securing identification of the accused discharged.<sup>46</sup> In *Kathi Kalu Oghad*, the Court referred to the Identification of Prisoners Act as a statute empowering the law courts with legitimate powers to bring offenders to justice.<sup>47</sup> In *Telgi*, the High Court held that measuring frequency or intensity of the speech sound waves falls within the ambit of the scope of the term "measurement" as defined in Section 2(a) of the Identification of Prisoners Act.<sup>48</sup> Section 186 of the Indian Penal Code, 1860 empowers the compulsion of accused to undergo the test as obstruction of investigation is causing problem in discharging of public function as crime is always against the society so the taking of voice sample is mandatory.<sup>49</sup> Measuring the frequency or intensity of the speech-sound waves falls within the ambit of inclusive definition of the term 'measurement' appearing in the Prisoners Act.

### **CODE OF CRIMINAL PROCEDURE, 1973**

- **2(h) OF CODE OF CRIMINAL PROCEDURE**

The Code defines 'investigation'. Section 2(h) of the Code is material. It reads thus: "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.<sup>50</sup>

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<sup>43</sup> Malkani, *supra* note 39.

<sup>44</sup> Section 6, *supra* note 11.

<sup>45</sup> *Id.*

<sup>46</sup> Identification of Prisoners Act, 1920.

<sup>47</sup> Oghad, *supra* note 31.

<sup>48</sup> *Central Bureau of Investigation, New Delhi v. Abdul Karim Ladsab Telgi*, 2005 Cri. L.J. 2868. ("Telgi")

<sup>49</sup> Section 186, The Indian Penal Code, 1860.

<sup>50</sup> Section 2(h), Code of Criminal Procedure, 1973.

Section 186 of the Indian Penal Code, 1860 empowers the compulsion of accused to undergo the test as obstruction of investigation is causing problem in discharging of public function as crime is always against the society so the taking of voice sample is mandatory and taking of voice sample is merely collection of evidence.

In *Sakiri Vasu v. State of Uttar Pradesh*, it was held that to do an act under ancillary power the main power has to be conferred.<sup>51</sup> Voice sample is only a material for comparison with something that is already in possession of the investigating agency.

- **SECTION 53 OF CODE OF CRIMINAL PROCEDURE**

Section 53 of the Code could be construed expansively on the basis of presumption that an updating construction can be given to the statute.<sup>52</sup> The Court acknowledged that the substances mentioned in Explanation (a) to Section 53 are examples of physical evidence and, hence, the words "and such other tests" mentioned therein should be construed to include the examination of physical evidence but not that of testimonial acts.<sup>53</sup> Voice emanates from the human body. The human body determines its volume and distinctiveness. Though it cannot be touched or seen like a bodily substance, being a bodily emanation, it could be treated as a part of human body and thus could be called a bodily substance. Voice sample is physical non-testimonial evidence.<sup>54</sup> It does not communicate to the investigator any information based on personal knowledge of the accused which can incriminate him.

- **SECTION 54A OF CODE OF CRIMINAL PROCEDURE**

Section 54A of the Code makes provision for identification of arrested persons. It states that where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the court having jurisdiction, may on the request of the officer in charge of a police

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<sup>51</sup> *Sakiri Vasu v. State of Uttar Pradesh*, (2009) 2 SCC 412.

<sup>52</sup> Bennion on Statutory Interpretation, 5th Edition at P. 516.

<sup>53</sup> Sinha, *supra* note 13.

<sup>54</sup> Devani, *supra* note 16.

station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the court may deem fit.<sup>55</sup>

### INDIAN EVIDENCE ACT, 1872

- SECTION 73 OF THE INDIAN EVIDENCE ACT

Section 73 of the Indian Evidence Act which authorizes the court to permit the taking of finger impression or specimen handwriting or signature of a person present in the court, if necessary for the purpose of comparison.<sup>56</sup> The Court observed that self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge.<sup>57</sup>

### VOICE PRINTS TO BE TREATED AS DNA OR VISUAL PRINT

A voice print is a visual recording of voice, therefore similar treatment must be given to voice prints. The voice of the suspect is the same as that of the culprit. This sort of evidence would need to be probed extremely carefully. The court should approach it in the same sort of way as it does visual identification evidence.<sup>58</sup>

The Court in the case of *Ramkumar v The Assistant Commissioner of Police* observed that the taking of videograph per se will not make the suspect criminally liable.<sup>59</sup> The videograph should have to be compared with the one already with the police by forensic experts and the evidence and report of the experts would become relevant under Section 45 of the Evidence Act.<sup>60</sup>

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<sup>55</sup> Section 54A, Code of Criminal Procedure, 1973.

<sup>56</sup> Section 73, *supra* note 12.

<sup>57</sup> Sinha, *supra* note 13.

<sup>58</sup> Chitake 1966 (2) SA 690 (RA); Identification evidence (Zimbabwe)

<[http://defensewiki.ibj.org/index.php/Identification\\_evidence\\_\(Zimbabwe\)#Voice\\_identification](http://defensewiki.ibj.org/index.php/Identification_evidence_(Zimbabwe)#Voice_identification)>

<sup>59</sup> *Ramkumar v The Assistant Commissioner of Police*, MANU/TN/1723/2016.

<sup>60</sup> Section 45, The Evidence Act, 1872.

The Courts have ruled that the right against self-incrimination is just a prohibition on the use of physical or moral compulsion to extort testimonial evidence from a respondent, not an exclusion of evidence taken from his body when it may be material and thus, the court can compel a person male or female to submit for DNA test since the gist of the privilege is the restriction on testimonial compulsion.<sup>61</sup>

### CONCLUSION

The purpose of voice spectrography is only to compare voice and identify the accused. The giving of finger impression or of specimen signature or of handwriting, strictly speaking, is not "to be a witness." "To be a witness" means imparting knowledge in respect of relevant facts, by means of oral statements or statements in writing by a person who has personal knowledge of the fact to be communicated to a Court or to a person holding an enquiry or investigation.<sup>62</sup> A person is said 'to be a witness' to a certain state of facts which has to be determined by a Court or authority, authorities to come a decision, by testifying to what he has seen, or something he has heard which is capable of being heard and is not hit by the rule excluding hearsay, or giving his opinion, as an expert, in respect of matters in controversy.

Evidence has been classified by text writers into three categories, namely (1) oral testimony ; (2) evidence furnished by documents ; and (3) material evidence.<sup>63</sup> A specimen handwriting or signature or finger impressions by themselves are no testimony at all, being wholly innocuous because they are unchangeable except in rare cases where the ridges of the fingers or the style of writing have been tampered with. They are only materials for comparison in order to lend assurance to the Court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of testimony. Same reasoning can be applied to voice prints.

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<sup>61</sup> *Harjinder Kaur v State of Punjab*, MANU/PH/3147/2012.

<sup>62</sup> Oghad, *supra* note 31.

<sup>63</sup> Selvi, *supra* note 30.

The dictionary meaning of the term 'measurement' is the act or process of measuring.<sup>64</sup> The voice sample is analysed or measured on the basis of time, frequency and intensity of the speech-sound waves.<sup>65</sup> A voice print is a visual recording of voice. Section 5 of the Prisoners Act and submitted that it expressly confers power on the Magistrate to direct collection of demonstrative evidence during investigation. 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.<sup>66</sup> Section 53 of the Code could be construed expansively on the basis of presumption that an updating construction can be given to the statute.<sup>67</sup>

Voice sample is only a material for comparison with something that is already in possession of the investigating agency. Section 2(h) of the Code is material. Explanation to Section 53 has been given a restrictive meaning to include physical evidence. Since voice is physical evidence, it would fall within the ambit of Section 53 of the Code. The Magistrate has, therefore, ancillary or implied powers under Section 53 of the Code to direct a person to give voice sample in order to aid investigation. The administration of justice and the need to control crime effectively require the strengthening of the investigative machinery. Section 54A of the Code states that where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the court having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the court may deem fit.

Section 73 of the Indian Evidence Act which authorizes the court to permit the taking of finger impression or specimen handwriting or signature of a person present in the court, if necessary for the purpose of comparison. The same can be used for voiceprints. 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. A careful study of the provisions

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<sup>64</sup> Measurement, *supra* note 41.

<sup>65</sup> Sinha, *supra* note 13.

<sup>66</sup> Telgi, *supra* note 47.

<sup>67</sup> Telgi, *supra* note 47.

of the Code and other relevant statutes discloses a scheme which aims at strengthening the hands of the investigator. Through a conjoint reading of Section 53, Section 54A of the Code, Section 73 of the Evidence Act and Section 2(a), 5 and Section 6 of the Identification of Prisoners Act, an accused can be compelled to undergo voice spectrography test in the event of no express provision provided in the Code.