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AN ANALYSIS TO THE 5TH AMENDMENT OF THE US CONSTITUTION

Abstract- *This research paper aims to tell the people their rights, as mentioned in the US Constitution. The most important of these rights are mentioned in the Fifth Amendment and people need to understand these rights the most. This research paper gives the brief introduction of the rights mentioned in the Fifth Amendment, the history and the background in which the Fifth Amendment was adopted and the rights in the Fifth Amendment with relevant case laws.*

Keywords- *Fifth Amendment, Grand Juries, Double Jeopardy, Self Incrimination, Due Process, Just Compensation.*

Introduction: For the kids in the U.S, knowing the Fifth Amendment to the United States Constitution is important since it helps them to be aware of their rights and duties towards the state. For students of law also, it is very much important to be aware of the Fifth Amendment and its implications. Many students in and around the globe, especially in the U.S are not aware of

their rights which are prescribed in the Constitution. This research paper addresses this issue in hand and gives people the knowledge of their rights. The objectives of this research paper are to:

- i) Make aware of the rights which are given to the people
- ii) Interpret the rights and tell the citizens what they need to know
- iii) Give voice to the people and help them fight injustice

The Fifth Amendment

The Fifth Amendment was brought onto the Constitution of the United States in 1791, along with 9 more articles. It applies to every part of the government, be it local, state and federal levels. It is a part of Bill of Rights.

There are 5 provisions in the Fifth Amendment. These are:

- a) Grand juries- This states that a person who is accused of felonies must be tried upon by a grand jury before they are brought to a trial.
- b) Double jeopardy- This states that a person cannot be punished and brought to the courts for the same crime twice.
- c) Self-incrimination- You might have heard people “pleading the fifth”. This is an informal term which is used to call on this clause, which means that the witnesses refuse to answer questions that may incriminate them.
- d) Due process- This states that no person, irrespective of gender, caste, creed, etc will not be deprived of their life, personal liberty or property, without the due process of law.
- e) Just compensation- This states that the government can take the private property of any individual for public interest. It also states that the government has to compensate for the property seized.

But before we go into the depths of the 5 provisions, let us know the history of the 5th amendment clause and how it came to be in the U.S Constitution.

History

One of the main reasons for the origin of the Fifth Amendment was the American Revolutionary War, which took place in 1775. As we all know, America was colonized by the British till then. After this war, in 1783, the American colonies finally gained their freedom from the British Empire. The independent colonies now came under the terms of a document, henceforth called as Articles of Confederation. Under this document, the states kept their power, while the federal government was weak. It became apparent within a few years that it would be good in joining hands together, and that the nation formed thus would require a powerful government at the centre. Thus, the states joined hands and adopted the US Constitution in 1788, establishing a strong government in the centre, with power equally divided among the president, a legislative or law making body known as Congress and the judiciary, ie the Supreme Court. However, the new Constitution did not contain any of the people's rights and many people started to wonder whether the new government would become too powerful. To limit the government's power, a lot of amendments were brought to the Constitution and proposed immediately. These amendments were brought to give people their most basic rights. It was in this situation that the Fifth Amendment was brought.

The Fifth Amendment was brought on by Congressman James Madison on June 8, 1789. He proposed many constitutional amendments during a speech given to the House of Representatives.¹ His words that he spoke that later became the Fifth Amendment are as follows:²

No person shall be subject, except in cases of impeachment, to more than one punishment or trial for the same offense; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without just compensation.....[E]xcept in cases of impeachments, and cases arising in the land or naval forces, or the militia when actual service, in time of war or public danger... in all crimes

¹ "James Madison's Proposed Amendments to the Constitution", *Annals of Congress* (June 8, 1789).

² Obrien, David. "Fifth Amendment: Fox Hunters, Old Women, Hermits, and the Burger Court", *Notre Dame Law Review*, Vol. 54, p. 30 (1978).

punishable with loss of life, or member, presentment or indictment by a grand jury shall be an essential preliminary.....

After approval by the congress, this amendment was ratified by the required number of states ie three fourth of states on 15th December, 1791. The states which ratified this amendment are: New Jersey on 20th November, 1789; Maryland on 19th December,1789; North Carolina on 22nd December, 1789; South Carolina on 19th January,1790; New Hampshire on 25th January, 1790; Delaware on 28th January, 1790; New York on 24th February, 1790; Pennsylvania on 10th March, 1790; Rhode Island on 7th June,1790; Vermont on 3rd November, 1791; and Virginia on 15th December, 1791.

Use of the Fifth Amendment in the Judiciary

The rights and duties in the Fifth Amendment are given in a very simple language. But this leaves the application of these amendments to the judiciary ie the Supreme Court and how it applies these amendments. As per the US Constitution, the Supreme Court can interpret the laws, according to the cases in front of it. Usually, the Supreme Court hears cases that were first heard by the courts of lower stature. An appeal is made to let the Supreme Court reconsider the decision of the lower court. As the years progress by, a number of cases have helped understand the implications of the Fifth Amendment.

Grand Jury

This clause of the Fifth Amendment gives people the right that “No person shall be held responsible to answer for a crime, unless on a bill of indictment of a Grand Jury.” This means that people who are accused of doing a felony must be brought and tried before a Grand Jury before being brought to trial. A Grand Jury is composed of citizens and/or peers brought and called by the government to help settle a legal issue. A grand jury is the same as a regular jury, except for the fact that a grand jury decides the evidence against a person is enough to bring him or her to trial.

A person who is accused of a federal crime that gives rise to a grand jury can and has the right to challenge the members of a grand jury for reasons such as bias or partiality. In case of such challenge, the person who challenges a juror or jury must give reasonable proof.

After the composition of the grand jury, the lawyer of the government ie the prosecutor prepares a bill of indictment. This bill refers to a document which explains the case before the grand jury and gives the evidence which the government has found against the accused. If this jury finds that the government has enough evidence against the accused, then it can issue an indictment against the accused. However, if this jury decides that there is not enough evidence against the accused, then the person accused will not be charged with a crime.

Double Jeopardy

The second clause in the Fifth Amendment is Double Jeopardy. This does not allow the government to punish a person for the same crime twice. James Madison's original wording for this clause stated that "No person shall be subject to more than one punishment or one trial for the same offense". However, this wording caused the judiciary to wrongly implement this clause. After some time, it was altered and the wording was: "No person shall be twice put in jeopardy of life or limb for the same offense." This means that a person who is found innocent by the courts cannot be put on trial once again for the same crime.

In *Downum v. United States*³, the highest court, ie the Supreme Court gave a ruling and told that when could a person be considered in jeopardy. In this case, the court ruled that when there is case in which there is a jury present, then jeopardy begins when the jury is sworn in. However, in some trials, there is an absence of jury. So, in these trials, as soon as the first witness is sworn in, the jeopardy begins.

³ Downum v. United States, 372 U.S. 734 (1963)

In *United States v. Lanza*⁴, the Supreme Court gave the dual sovereignty principle. The court ruled in this case that any action which violates the laws of two governments or sovereigns gives rise to a separate crime against each government. Hence, a trial can be taken place for both the crimes.

In *Sattazhan v. Pennsylvania*,⁵ the Supreme Court gave a ruling that the double jeopardy clause was not violated when a second jury was called to give sentence to the defendant after the first jury had been unable to reach a verdict after some 32 hours of deliberating what punishment to be given to the defendant.

Self-Incrimination

This clause of the Fifth Amendment might be well known. It states that “No person shall be compelled in a criminal case to be a witness against himself”. This clause has been put in the Fifth Amendment to not allow the government to compel or force a person to confess to a crime.

In *Bram v. United States*,⁶ the Supreme Court addressed the issue of how far the police can go in questioning a suspect who they have in their custody. The court ruled that confession which was forced violated this clause of self-incrimination.

In *Brown v. Mississippi*⁷, the Supreme Court found the voluntariness test. They did this for deciding when and when not a confession be taken into consideration in trial. In this case, the police had taken confession from the accused forcefully and had beaten them. Thus, the Supreme Court ruled that the confession could not be taken into consideration if the circumstances surrounding it were false.

⁴ *Lanza*, United States V. 260 U.S. 377 (1922)

⁵ *SATTAZAHN V. PENNSYLVANIA* (01-7574) 537 U.S. 101 (2003)

⁶ *Bram v. United States*, 168 U.S. 532 (1897)

⁷ *Brown v. Mississippi*, 297 U.S. 278 (1936)

In *Ashcraft v. Tennessee*⁸, the Supreme Court did not allow a murder conviction since the accused confession came after 36 hours of police interrogation. The court ruled that this lengthy period of the confession was evident of the fact that the confession had been forced.

In *Escobedo v. Illinois*⁹, the police were given a confession even after refusing the accused repeated requests to talk with his attorney. In this case, the court ruled that if a suspect has been taken into custody and the suspect requests a talk with his attorney and is denied this request and the police have not warned the suspect of his constitutional right to remain silent, then everything and anything the defendant said to the police cannot be used against the accused in a trial.

In *Miranda v. Arizona*¹⁰, Ernesto Miranda, who was arrested as the police got a confession from him without telling Miranda that he had the right to an attorney now appealed in 1966, giving the argument that he had not been advised of his legal rights. Due to this, the court established procedures and conduct that police need to follow when taking an accused person in their custody. These procedures are also known as Miranda warnings. These include:

- The right to be silent
- Right to resort to Fifth Amendment protection at any time in course of the accused interrogation.
- During interrogation of accused, right to have a lawyer present.
- Right of appointment of attorney if person cannot afford one.
- Anything person says can and will be used against that person in a court of law.

Due Process

This clause gives rights to people and does not allow the government to deprive a person of their life, liberty, or property without the due process of the law. This clause is divided into two categories: procedural due process and substantive due process.

The procedural due process tries to give fairness to all the people. It does this by ensuring that:

⁸ *Ashcraft v. Tennessee*, 322 U.S. 143 (1944)

⁹ *Escobedo v. Illinois*, 378 U.S. 478 (1964)

¹⁰ *Miranda v. Arizona*, 384 U.S. 436 (1966)

A party has a right to be heard and is heard;

Parties to a case receive notification about the whereabouts of the case; and

The court in which the case has been registered is of proper jurisdiction.

This means that the government cannot start legal proceedings against people without telling that person. The government is also required to let the person speak on their behalf before any punishment is given to them.

The substantive due process has developed and is developing in the recent years. This does not allow the government to create the laws which restrict a person's fundamental or essential rights. This means that if any law which prohibits or restricts a person's essential rights is made or found to be made, then that law will not be applicable as per this process.

In *Palko v. Connecticut*¹¹, the Supreme court abided by its principle that "certain rights are implicit in the concept of ordered liberty". The court said these rights cannot be infringed upon by any law which is made or is in the process of being implemented.

Then, in *Murray's Lessee v. Hoboken Land and Improvement Co.*¹², the Court set up some standards for knowing whether a government followed this clause in their actions. The issue before the Court was the method of the government of collecting debts from the people who owed the money to government. Here, the court gave two principles and used them to decide whether this method of the government was following due process or not. The first principle the court used was whether the process which the government used was not in any conflict with terms set in the constitution. The second principle used by the court was whether this process was not in conflict with the English common law.

In this case, the court found that due process was being followed, and hence it ruled that due process in this case was being followed by the government. However, in another case, *Hurtado v. California*¹³, the court gave a ruling that if there were traditional procedures only in the due process of law, then the legal system would be found to be "incapable of progress and needing improvement". Hence, the court stated that any legal

¹¹ *Palko v. Connecticut*, 302 U.S. 319 (1937)

¹² *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272 (1856)

¹³ *Hurtado v. California*, 110 U.S. 516 (1884)

proceeding, regardless of new or old, that upholds the principles of liberty and justice, must be under due process of law.

In *Allgeyer v. Louisiana*¹⁴, the Court ruled that a Louisiana law was unconstitutional because this law gave a limit to the contracts that people could be into with insurance firms which are out of a state. This law was ruled unconstitutional because it did not allow the people to be a part of a lawful contract.

In *Lochner v. New York*¹⁵, the Court gave a ruling that a New York law was illegal under the substantive due process since this law gave a limit to the number of hours a normal baker could work. Since this law violates the freedom of the workers to make legal contracts, it was struck down by the court.

In *West Coast Hotel Co. v. Parrish*¹⁶, a law was allowed to remain in effect by the court because this law followed due process. This law required employers to send a minimum wage to its workers. The court said that the society required protection from the evils which destroy the society. These evils menace the welfare, health, safety and morals of the people. Thus, the court said that when the government regulation is reasonable and provides for the interest of the people, then due process is said to be followed.

The court found a state law to be illegal in *Griswold v. Connecticut*¹⁷. The court found that this law did not allow the use of contraception or birth control and thus, it struck it down. Here, the court ruled that this law limited the people's right to privacy.

Just Compensation

This clause gives rights to the owners of private property that the private property will not be taken by the government, without compensation in terms of that private property. This means that the government has the right to take a person's private property for public use. In retrospect, the government has to compensate the person thereof for taking the person's private property. The compensation given must be equivalent to the property of the person.

¹⁴ *Allgeyer v. Louisiana*, 165 U.S. 578 (1897)

¹⁵ *Lochner v. New York*, 198 U.S. 45 (1905)

¹⁶ *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937)

¹⁷ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

It was typical of the colonial government to take property which was private for public use without compensation. After the revolution started, property was seized for military use, again not making compensation to owner of that property. Giving up one's property was seen as public duty for the common good. Many people after the independence were worried of this fact that the government may take their property and do not give adequate compensation, and thus, this clause was put into the Fifth Amendment.

The court ruled that state governments as well as federal governments need to make adequate compensation and fair payments for the property they take in *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*¹⁸.

Now this clause does not define what public use should be justified in taking of the private property or how is adequate compensation determined.....

Due to this, the courts interpreted this clause according to their own understanding. The courts said that firstly, to give permission to take the private property, they need to first decide whether use of the taken property will benefit the public or not. The Supreme Court declared that changing the physical appearance of a place for the greater good gives rise to an adequate public use. In *Berman v. Parker*¹⁹, a ruling came that slums in an area could be cleaned to make the city look more attractive.

Secondly, the courts said that there was no particular way to determine the fair price of a property. Compensation is usually given to the owner at the price an owner could get if he or she sold the property to another person.

Research Methodology

This topic was on my mind since I wanted to explore the Fifth Amendment and wanted to know everything there was to know about it. I researched through various books and sites and saw that I needed to first know the history and the background in which the Fifth Amendment was introduced. When I got to know this, I researched more and more about the Fifth Amendment and gained knowledge while doing so.

¹⁸ *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*, 166 U.S. 226 (1897)

¹⁹ *Berman v. Parker*, 348 U.S. 26 (1954)

Literature Review

There are many people who do not know the Fifth Amendment and are really missing out on their rights which are granted to them. I believe that the Fifth Amendment is really a good topic because there are many things to research on and know about. Most people really think that the Fifth Amendment is just “pleading the Fifth”, but it is more than that. It is a multitude of rights which are given to us by the American Constitution which do not allow anyone to infringe upon our rights. There are a lot of things which are still undiscovered and are not interpreted by the Supreme Court. But with the passage of time, I believe that those parts will also be interpreted by the Supreme Court.

Conclusion and Suggestions

To conclude, I will say that the Fifth Amendment as a research topic was really insightful. I got to know about so many rights and laws which I earlier did not know and also, the application of these laws as interpreted by the Supreme Court was extraordinary. Many people still don't know about the Fifth Amendment and they are missing out on the all the laws which can help them in their lifetime. The Fifth Amendment and its clauses therein help a person to stay aware of their rights and not allow anyone to infringe upon the rights.