
THE LEGAL INADMISSIBILITY OF NARCOANALYSIS, POLYGRAPH, AND BEAP TESTS WITHOUT CONSENT IN INDIAN JURISPRUDENCE

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ABSTRACT

This paper examines the constitutional prohibition of involuntary narcoanalysis, polygraph tests, and Brain Electrical Activation Profile (BEAP) tests in light of Indian case law, focusing on the landmark judgment in *Selvi v. State of Karnataka* (2010). It analyzes the interplay of Articles 20(3) and 21 of the Constitution and discusses procedural safeguards under Section 161(2) of the Criminal Procedure Code. The study incorporates critical legal precedents and evaluates the balance between technological advancements and the protection of fundamental rights.

Keywords: Right against self-incrimination, Fundamental rights, Narcoanalysis, Polygraph tests, Brain Electrical Activation Profile Personal liberty, Mental privacy, Right to remain silent.

1. Introduction

With the evolution of forensic science, investigative techniques such as narcoanalysis, polygraph tests, and BEAP testing have gained attention as tools to aid law enforcement. While these methods promise breakthroughs in criminal investigations, they raise critical questions about the admissibility of evidence and the protection of fundamental rights under the Indian Constitution.

The landmark case *Selvi v. State of Karnataka* (2010)¹ addressed these issues and held that the involuntary administration of these techniques violates Articles 20(3)² and 21³. This paper explores the legal reasoning behind the judgment and examines its implications in light of other relevant case laws.

2. Constitutional Framework

2.1 Article 20(3): Right Against Self-Incrimination

Article 20(3) states that no person accused of an offense shall be compelled to be a witness against themselves. This right protects individuals from being forced to provide testimonial evidence that could be incriminating. Relevant cases include:

- *M.P. Sharma v. Satish Chandra*⁴ (1954): The Supreme Court emphasized that the right against self-incrimination applies to both oral and documentary evidence compelled from an accused.
- *Kathi Kalu Oghad v. State of Bombay*⁵ (1961): The Court clarified that physical evidence like fingerprints and handwriting samples are not protected under Article 20(3). However, testimonial acts, such as confessions or statements, are protected.

2.2 Article 21: Right to Life and Personal Liberty

Article 21 guarantees the right to life and personal liberty, which includes the right to privacy

¹ (2010) 7 SCC 263

² India Const. art. 20 (Right against self incrimination)

³ India Const. art. 21 (Right to life and personal liberty)

⁴ (1954) SCR 1077

⁵ AIR 1961 SC 1808

and dignity. Significant judgments include:

- *Kharak Singh v. State of Uttar Pradesh*⁶ (1963): Though the majority did not explicitly recognize privacy as a fundamental right, the Court acknowledged the sanctity of personal liberty.
- *R. Rajagopal v. State of Tamil Nadu*⁷ (1994): The Court held that the right to privacy is implicit in Article 21.
- *K.S. Puttaswamy v. Union of India*⁸ (2017): Privacy was explicitly recognized as a fundamental right intrinsic to life and liberty.

2.3 Section 161(2) of the Criminal Procedure Code (CrPC)⁹

Section 161(2) protects individuals from being forced to answer questions that could expose them to criminal charges. This procedural safeguard aligns with Article 20(3).

3. Selvi v. State of Karnataka (2010)

The Supreme Court in *Selvi* addressed the constitutional validity of narcoanalysis, polygraph tests, and BEAP testing. The petitioners argued that these techniques violated their rights under Articles 20(3) and 21, as well as procedural safeguards under Section 161(2) of the CrPC.

3.1 Key Findings

- Violation of Article 20(3): The Court held that these techniques amount to testimonial compulsion as they extract information from the accused's mind without their consent.
- Infringement of Article 21: The methods were deemed an intrusion into mental privacy and autonomy, violating the right to life and dignity.
- Guidelines for Polygraph Tests: The Court emphasized that polygraph tests could only be conducted with informed consent, in compliance with the National Human Rights

⁶ AIR 1963 SC 1295

⁷ AIR 1994 SC 264

⁸ (2017) 10 SCC 1

⁹ Criminal Procedure Code, 1973, § 161(2) (India)

Commission (NHRC) guidelines¹⁰.

- Admissibility of Evidence: Evidence obtained through these techniques was declared inadmissible in court unless voluntarily provided.

4. Other Relevant Case Laws

4.1 Rishiraj Mukherjee v. Central Bureau of Investigation¹¹(2016)

In this case, the CBI sought to conduct narcoanalysis and other tests on the accused in a high-profile murder case. The Court rejected the application, citing the refusal of consent and reaffirming the principles laid down in *Selvi*.

4.2 D.K. Basu v. State of West Bengal¹² (1997)

This case provided detailed guidelines to prevent custodial abuse. The judgment emphasized the protection of personal liberty and the prohibition of third-degree methods, aligning with the principles in *Selvi*.

4.3 Rochin v. California¹³ (1952)

The U.S. Supreme Court ruled that evidence obtained through forceful and invasive methods violates due process, setting a precedent echoed in Indian jurisprudence.

4.4 Govind v. State of Madhya Pradesh¹⁴ (1975)

The Court observed that privacy is an essential aspect of personal liberty, reinforcing the view that invasive investigative techniques must pass the test of reasonableness.

5. Critical Analysis

5.1 Ethical Concerns

The involuntary administration of these tests raises ethical questions regarding individual

¹⁰ <https://nhrc.nic.in/press-release/guidelines-administration-lie-detector-test>

¹¹ Writ petition (Cr.) No.148 of 2014

¹² AIR 1997 SC 610

¹³ (1952) 345 U.S.165

¹⁴ AIR 1975 SC 1378

autonomy and dignity. The principles of substantive due process, as outlined in *Maneka Gandhi v. Union of India*¹⁵ (1978), demand that investigative methods be fair and reasonable.

5.2 Reliability of Techniques

Scientific studies have questioned the reliability of narcoanalysis and polygraph tests, citing the possibility of false positives and manipulation. The Supreme Court's acknowledgment of these flaws in *Selvi* highlights the need for caution.

5.3 Balance Between Public Interest and Individual Rights

While these techniques offer potential benefits for law enforcement, they cannot supersede constitutional safeguards. The judgment in *Selvi* ensures that the ends of justice do not justify unconstitutional means.

6. Implications of the Judgment

The *Selvi* judgment has far-reaching implications:

- **Strengthening Fundamental Rights:** It reaffirms the sanctity of Articles 20(3) and 21, ensuring that investigative processes respect individual liberties.
- **Judicial Oversight:** Courts must scrutinize the admissibility of evidence obtained through advanced techniques.
- **Future of Forensic Science:** Law enforcement agencies must prioritize non-invasive and constitutionally compliant methods of investigation.

7. Conclusion

The Supreme Court's decision in *Selvi v. State of Karnataka* represents a landmark in safeguarding constitutional rights in the face of technological advancements. By prohibiting the involuntary use of narcoanalysis, polygraph tests, and BEAP testing, the judgment upholds the principles of fairness, dignity, and autonomy enshrined in the Constitution.

¹⁵ AIR 1978 SC 597

While the judiciary has set a strong precedent, the evolving landscape of forensic science demands continuous vigilance to ensure that human rights remain paramount in the pursuit of justice.

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