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CASE COMMENT

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ABSTRACT

*The intersection of modern neuro-science and criminal justice often creates a profound conflict between technological efficiency and basic constitutional rights. This case commentary looks closely at the landmark Supreme Court of India ruling in **Selvi & Ors v. State of Karnataka & Anr (2010)**. This historic judgment fundamentally redefined the boundaries of state power by testing the legality of involuntarily administering narco-analysis, polygraph tests, and Brain Electrical Activation Profile (BEAP) examinations on suspects and witnesses.*

*The case originated from a murder investigation reliant entirely on circumstantial evidence, where lower courts had permitted these neuro-scientific tests without the suspects' consent. On appeal, the Supreme Court (headed by Chief Justice K.G. Balakrishnan) delivered a milestone decision for human rights. This paper deconstructs how the Court expanded the protection against self-incrimination under **Article 20(3)** and the right to privacy and bodily integrity under **Article 21** of the Constitution. By interpreting "testimonial acts" to include subconscious biological and physiological responses, the Court ruled that bypassing a citizen's conscious willpower through chemical or electronic means creates an impermissible form of "testimonial compulsion."*

Furthermore, this commentary explores the broader systemic and international impact of the Selvi ruling. It examines the Court's reliance on global human rights frameworks against cruel and degrading treatment, alongside its strict critique of the scientific unreliability of "truth serums."

CASE COMMENTARY : Selvi & Ors v. State of Karnataka & Anr

CITATION: AIR 2010 SC 1974

BENCH: J.M. Panchal, R.V. Raveendran, K.G. Balakrishnan

JUDGEMENT OF THE DATE: 05.05.2010

INTRODUCTION

With the advancement of technological development and its usage has raised certain major questions regarding personal liberty, right against self-incrimination. Despite being guaranteed in our constitution under article 21 and 20(3) respectively it has again and again been questioned whether the state's use of invasive investigative tools, such as narco-analysis, facial recognition, and digital data extraction, unlawfully breaches the boundaries of individual privacy and mental autonomy. The Supreme Court landmark judgement in *Selvi & Ors v. St of KN* is pertinent as it examines the legality with respect to the involuntary administration of the use of scientific techniques such as Narcoanalysis (NARCO), polygraph examination (PE) and the Brain Electrical Activation Profile (BEAP) test.

FACTS OF THE CASE

Selvi's daughter Kavita had married Shivkumar of a different caste against the wishes of the family. Shivkumar was brutally killed in 2004, Selvi and other 2 become the suspects. Because the prosecution's case was only dependent on circumstantial evidence, it pleaded for the court's permission to conduct polygraphy and brain mapping tests on the three persons. The Magistrate granted the permission after which a polygraph test was conducted but it didn't show the desired results and therefore requested for the usage of narcoanalysis. The Magistrate granted permission to undergo it. An appeal was filed against the lower court order in the high court but failed to get relief. The Supreme Court allowed a special leave petition in the context of cases where objections were raised where the accused, suspects and witnesses in the investigation were subjected to neuro-scientific tests without their consent. The above-stated techniques are a great asset provided by the modern sciences, which are followed and used to tap vital information out a person that could further be used in a court as evidence.

LEGAL ISSUES

1. **Right Against Self-Incrimination (Article 20(3)):** Whether forcing an accused, suspect, or witness to undergo these scientific tests amounts to a "compelled witness against oneself" and constitutes impermissible "testimonial compulsion" during the investigation stage.
- 2 **Right to Privacy and Personal Liberty (Article 21):** Whether the forcible extraction of personal thoughts intrudes upon an individual's **mental privacy** and bodily integrity, and whether it amounts to cruel, inhuman, or degrading treatment under the scope of substantive due process.
- 3 **Scientific Reliability and Fair Trial:** Whether the uncertain or disputed scientific reliability of these techniques compromises the guarantees of a **fair trial** and risks prejudicing the judicial process.
- 4 **Public Interest vs. Individual Liberties:** Whether compelling state interests (such as fighting terrorism or solving heinous crimes) can justify the suspension or dilution of non-derogable constitutional rights.
- 5 **Voluntary Consent and Admissibility:** Under what specific guidelines voluntary administration of these tests can occur, and whether the results of a voluntary test are directly admissible as primary evidence or restricted to subsequently discovered material (Section 27 of the Indian Evidence Act.

COURT'S DECISION

In this case, the court held that compelling the accused, suspect or witness to undergo scientific techniques amounts to testimonial compulsion that is expressly prohibited u/a 20 (3). The right against self incrimination purpose is to protect and respect the dignity of the individual and when the same is breached it violates individual's integrity The Court expanded the meaning of "testimonial acts" that now includes physiological response apart from spoken or written words. Referring to the precedent of State of Bombay v. Kathi Kalu Oghad (1962), the Court confirmed that forcing a person to reveal any personal knowledge, whether orally or otherwise,

falls under the protection of Article 20(3). The court made a clear distinction between physical and mental privacy, holding that forcefully approaching the accused's mind through intrusive technique that too without consent is unconstitutional.

Violent and compulsory testing breaches mental privacy, bodily integrity and the protection against cruel, inhuman and degrading treatment which has been explicitly mentioned under Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), 1966 and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984 to which India is a signatory. The practices aren't authorised by the statute; the explanation to S.53 CrPC, when read ejusdem generis covers only physical medical test and not testimonial techniques.

It is extremely crucial to note that the outcome of the test cannot be admitted as evidence even if the accused gives consent, because the subject does not exercise conscious control during the procedure. The scientific reliability on DDTs such as Polygraph (Lie Detector) that measures involuntary physical responses like heart rate, bp etc., fluctuate due to anxiety, nervousness, or fear rather than deception alone, resulting in high error rates. Relying on Nacro analysis involves consuming sodium panthenol a.k.a truth serum that lowers subject's inhibitions and the scientific community rejects it because it impairs cognitive function, increases suggestibility, and can lead to false confessions.

The State argued that compelling these tests on terror suspects and hardened criminals was justified by "compelling public interest" and national security. The Court rejected this justification, establishing that non-derogable constitutional guarantees cannot be overridden simply to make police investigations more efficient.

Even if the accused or suspect voluntarily agrees to the tests there are certain thresholds that has to be met which are the NHRC guidelines. Even if a person undergoes these tests completely voluntarily, the direct results, recordings, and statements are strictly inadmissible as primary evidence in a court of law.

LEGAL REASONING

The core rationale of *Selvi* is that **the right to choose whether to speak or remain silent belongs solely to the individual**. The State cannot use chemical or electronic means to bypass a citizen's conscious willpower, even in the name of an efficient criminal investigation.

ANALYSIS OF THE CASE

The finding of the Hon'ble Supreme Court of India in the above stated case not only acts as a binding precedent on the evidentiary value of the 3 tests but also provides a reservoir of information about the history and methods adopted in the above mentioned case. The court relied on the judgments of developed countries such as the USA, UK and Canada whereby the techniques have been declared unconstitutional. It is quintessential to note that it duly recognized the right to privacy u/a 21 before the judgment of Puttasawmy case. The non reliability of the techniques cannot gain evidentiary value because of the subjective nature of the procedure involved. Several legal experts argue that polygraph and brain mapping track involuntary biological reactions rather than conscious "testimonial" speech. They claim treating physical readings identically to a forced oral confession overstretched the meaning of Article 20(3). It complicates investigations into complex crimes like terrorism where physical evidence is scarce.

One of the primary justifications for these tests prior to *Selvi* was that they served as a modern, "softer alternative" to crude and violent police torture. Critics argue that completely restricting scientific options creates a regressive paradox. Prohibiting these scientific methods leaves investigators under extreme pressure to solve high-profile cases. Consequently, this heightens the structural temptation for law enforcement to revert to traditional **custodial violence and third-degree methods** to extract confessions.

CONCLUSION

Technological advancement without check may create an arbitrary environment. In this case, the court balanced the technology and fundamental rights of the citizen. The judgment in this

decision highlighted the supremacy of fundamental rights and is a perfect example of just and neutral. Though it has been subject to criticism sometimes, we can't deny the fact that it balances the approach carefully rather than considering the findings one-sidedly.

