

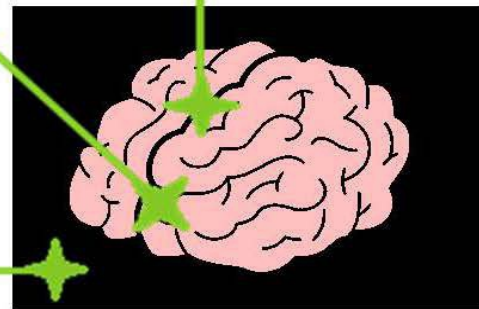


Selvi vs. State of Karnataka

MANU/SC/0325/2010

FACTS

In the present case, the appellant Selvi's daughter married a man belonging to a different caste against the wishes of her family. In 2004, the man was brutally murdered and Selvi, along with two others became suspects. The prosecution in this case sought permission of the Court to conduct polygraph and brain mapping tests on the three persons, such permission was granted. When the results of these tests showed deception, the prosecution sought permission to conduct narcoanalysis on the three persons, which was granted by the magistrate. The three then challenged this decision in the Karnataka High Court but failed to get relief. They then appealed to the Supreme Court.



In this present batch of criminal appeals objections were raised in respect of instances where individuals who are the accused, suspects or witnesses in an investigation have been subjected to tests such as Narcoanalysis, Brain Electrical Activation Profile (BEAP), Functional Magnetic Resonance Imaging (FMRI) and Polygraph, without their consent.

QUESTIONS OF LAW

- Whether the involuntary administration of certain scientific techniques, namely narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) test for the purpose of improving investigation efforts in criminal cases comes within the scope and meaning of the fundamental rights guaranteed to all citizens?
- Whether the involuntary administration of such techniques is a reasonable restriction on 'personal liberty' as understood in the context of Article 21 of the Constitution?
- Question of self incrimination and whether these tests are protected within the scope of Article 20(3) which says that no person shall be forced to be a witness against himself.

HELD

The Court in its decision said that **compulsory brain mapping; polygraph and other such tests are in violation of Articles 21 and 20(3) of the Constitution of India**. Saying that such tests used to obtain information would amount to self-incrimination within the meaning of Article 20(3), and can thus not be admitted as evidence. The Court stated that Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to show guilt or not.



"Article 20(3) aims to prevent the forcible 'conveyance of personal knowledge that is relevant to the facts in issue'. The results obtained from each of the impugned tests bear a 'testimonial' character and they cannot be categorised as material evidence."

On the violation of personal liberty as guaranteed under Article 21, the Court said,

*"We hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to **an unwarranted intrusion into personal liberty**. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place"*



Addressing the widely pondered question of such a decision benefiting criminals, the Court said,



*"One could argue that some of the parties who will benefit from this decision are hardened criminals who have no regard for societal values. However, it must be borne in mind that **in Constitutional adjudication our concerns are not confined to the facts at hand but extend to the implications of our decision for the whole population as well as the future generations.**"*

QUESTIONS OF LAW

● If a person is in a PVS, should withholding or withdrawal of life sustaining therapies be permissible?

● If a patient has previously expressed a wish not to have life-sustaining treatments in case of futile care or a PVS, should his/her wishes be respected when the situation arises?

● In case a person has not previously expressed such a wish, if his family or next of kin makes a request to withhold or withdraw futile life-sustaining treatments, should their wishes be respected?

