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**G.D. Goenka Moot Court Competition**

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*Before*

THE HON'BLE SUPREME COURT OF INDIA

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SPECIAL LEAVE PETITION(CRIMINAL)\_\_\_\_\_/2010

Filed UNDER ARTICLE 32&136, 20(3), 21 OF INDIAN CONSTITUTION

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IN THE CASE, VIOLATION OF THE RIGHTS, AND SPECIAL LEAVE PETITION CRIMINAL ORIGINAL  
JURISDICTION AND EVIDENCE ACT.

IN THE MATTER BETWEEN

Smt. SELVI & others .....(PETITIONER)

Versus

STATE OF KARNATAKA .....(RESPONDENT)

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MEMORIAL FOR DEFENCE

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## INDEX OF ABBREVIATIONS

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ABBREVIATION	WORD
&	And
IPC	Indian PENAL CODE, 1872
Ltd	Limited
pvt.	Private
SC	Supreme Court
S.	Section
U/S	Under Section
V.	Versus

## INDEX OF AUTHORITIES

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## **CASES**

1. Selvi v. State of Karnataka, AIR 2010 SC 1974
2. State of Bombay v. Kathi Kalu Oghad, (1961) 1 SCR 734
3. Maneka Gandhi v. Union of India, (1978) 1 SCC 248
4. A.K. Gopalan v. State of Madras, AIR 195
5. Debi Prasad v. Tek Chand (AIR 1958 SC 255)
6. Suruchi v. Suruchi Narula (2014) 6 SCC 120
7. Jainul Haque v. M/S A.M. Abdul Kadar AIR 1969 SC 1662
8. Supriyo a.k.a Supriya Chakraborty & Abhay Dang v. Union of India thr.(2023)
9. Kumar v. Bhai Mool Singh Charitable Trust 1958 AIR 321 SCR 1211
10. Bank of Rajasthan Ltd v. Sh PalaRam Guptait 1974 AIR 1892,1975 SCR(1703)
11. Ajudhia Prasad v. Chandra Lal AIR 1937 All. 610

## **STATUTES**

1. INDIAN PENAL CODE, 1872
2. CrPc
3. Indian Majority Act, 1875
4. Indian Evidence Act, 1872

## **BOOKS**

1. Indian penal code, 2016 by R.K. Bangia, Allahabad Law Agency
2. Procedural law, 2012, Avtar Singh, Eastern book Company

## **Sights**

1. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3802560](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3802560)
2. <https://indiankanoon.org/>
3. <https://www.legalserviceindia.com/legal/article-232-case-analysis-mohori-bibee-v-s-dharmodas-ghose.html>

## **STATEMENT OF FACTS**

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The case arose in Karnataka where Selvi and several others were accused in a criminal matter involving serious allegations, including conspiracy and murder. During the course of investigation in 2004, the investigating agencies sought permission from the court to conduct certain scientific tests on the accused persons, namely:

1. Narcoanalysis Test – where a drug (sodium pentothal) is administered to induce a semi-conscious state to make the subject more likely to speak truthfully.
2. Polygraph Test (Lie Detector) – which measures physiological changes like blood pressure, pulse rate, and skin response when the subject is questioned.

3. Brain Electrical Activation Profile (BEAP or Brain Mapping Test) – which records brain activity to check for familiarity with certain facts or events.

These tests were considered by the investigating authorities as useful tools to extract information that the accused were allegedly withholding. The Magistrate granted permission to conduct these tests despite the fact that the accused persons did not give free and informed consent.

The tests were conducted, and based on their results, the prosecution claimed they obtained some leads. However, the accused, including Selvi, contended that they were forced to undergo these procedures against their will. They argued that the extraction of information from their mind and body using such methods violated their fundamental rights.

The matter was first taken to the Karnataka High Court, where the petitioners sought to quash the orders permitting these tests and to declare the results inadmissible. The High Court did not provide them full relief, leading to an appeal before the Supreme Court of India.

The case before the Supreme Court consolidated several similar matters from different states, where police or investigating agencies were using these techniques during criminal investigations. The central factual question was whether compelling an accused or suspect to undergo such tests without consent could be treated as lawful and whether such procedures had any evidentiary value.

It was also revealed that these tests were being increasingly used across India, not only on accused persons but also on witnesses and suspects, and often without proper safeguards or consent. In Selvi's case, the procedures were undertaken during investigation to gather leads rather than as direct evidence in trial.

Thus, the facts essentially revolve around the forced administration of scientific techniques (narcoanalysis, polygraph, brain-mapping) on Selvi and others during investigation in Karnataka, the permission granted by a Magistrate to conduct them, the alleged lack of consent, and the subsequent challenge on constitutional grounds.

The Supreme Court had to consider these factual circumstances to decide whether such investigative practices were in conformity with the Indian Constitution and whether the manner in which they were administered in this case was legally sustainable.

In spite of the constitutionally entrenched status of the right against self-incrimination, there have been some criticisms of the policy underlying the same. John Wigmore (1960) argued against a broad view of the privilege which extended the same to the investigative stage. [Refer: John Wigmore, 'The privilege against self-incrimination, its constitutional affectation, raison d'etre and miscellaneous implications', 51 Journal of Criminal Law, Criminology and Police Science 138 (1960)] He has asserted that the doctrinal origins of the 'rule against involuntary confessions' in evidence law and those of the 'right to self-incrimination' were entirely different and catered to different objectives. In the learned author's opinion, the 'rule against involuntary confessions' evolved on account of the distrust of statements made in custody. The objective was to prevent these involuntary statements from being considered as evidence during trial but there was no prohibition against relying on statements made involuntarily during investigation. Wigmore argued that the privilege against self-incrimination should be viewed as a right that was confined to the trial stage, since the judge can 105

intervene to prevent an accused from revealing incriminating information at that stage, while similar oversight is not always possible during the pre-trial stage.

## **ISSUES RAISED**

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### **ISSUE 1**

1. Whether compulsory administration of narcoanalysis, polygraph, and brain-mapping tests violates Article 20(3) of the Indian Constitution?

### **ISSUE 2**

2. Whether conducting such tests without consent violates Article 21 – the Right to Life and Personal Liberty?

### **ISSUE 3**

3. Whether the results of these tests are scientifically reliable and admissible as evidence?



## **SUMMARY OF ARGUMENTS**

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### **1. Violation of Article 20(3) – Protection Against Self-Incrimination**

- The defense strongly argued that narcoanalysis, polygraph, and brain-mapping tests amount to testimonial compulsion, as they extract information directly from a person's mind without their voluntary cooperation.

- According to Article 20(3), an accused cannot be compelled to provide any evidence that may incriminate them. Forcing these tests makes the accused an involuntary witness against themselves.

### **2. Violation of Article 21 – Right to Life and Personal Liberty**

- The defense contended that these tests invade mental and physical privacy and violate personal dignity.

- The forced administration of such tests involves bodily intrusion (drug injection in narcoanalysis) and mental intrusion (extracting thoughts or memories), which is against the principle of substantive due process under Article 21.

**3. Lack of Consent and Free Will**

- The accused were subjected to these procedures without their informed and voluntary consent, making them inherently coercive.

- The defense maintained that any information obtained through coercion cannot be considered valid evidence under law.

**4. Unreliability and Scientific Inaccuracy**

- The defense highlighted that these techniques are not scientifically foolproof, with a high possibility of false positives, suggestion, or misinterpretation.

- Narcoanalysis can induce hallucinations, fantasies, or confabulations; polygraph tests are prone to errors; and brain-mapping may only show familiarity, not guilt.

**5. Potential for Misuse and Violation of Human Rights**

- The defense warned that allowing such techniques without strict safeguards can lead to custodial abuse, mental torture, and violation of human dignity.

- They also argued that such practices could set a dangerous precedent for law enforcement to bypass established legal procedures like voluntary confession and fair investigation.

**6. Contrary to Principles of Fair Trial**

- The defense emphasized that forcing an accused to undergo such tests undermines the presumption of innocence and the right to silence.

- It shifts the burden of proof indirectly onto the accused, which is contrary to the criminal justice system.

## **ARGUMENTS ADVANCED**

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**1. Violation of Article 20(3): Protection Against Self-Incrimination**

The defense argued that compulsory administration of these tests directly contravened Article 20(3) of the Constitution of India, which protects an accused person from being compelled to be a witness against themselves.

- **Nature of Testimonial Compulsion:** The defense emphasized that the essence of Article 20(3) is to protect individuals from forced disclosures of personal knowledge that may incriminate them. Testimonial compulsion is not limited to spoken or written words; it includes any method where the mental faculties of a person are exploited to extract information.

- **Involuntary Nature of Tests:** In narcoanalysis, drugs such as sodium pentothal are administered, inducing a semi-conscious state in which a person may not be in control of their faculties. Under such conditions, the information given cannot be considered voluntary. Similarly, polygraph and brain-mapping tests measure involuntary physiological or neurological responses, amounting to forced extraction of information.

- **Precedent Consideration:** The defense relied upon earlier judgments, including *State of Bombay v. Kathi Kalu Oghad* (1961), to argue that Article 20(3) protects against compelled oral or written testimony that is personal in nature. Since these tests extract mental contents, they are testimonial and therefore fall within the prohibition of Article 20(3).

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## 2. Violation of Article 21: Right to Life, Liberty, and Mental Privacy

Another core argument was that the forced administration of these scientific techniques violated Article 21, which guarantees the right to life and personal liberty, including mental privacy, bodily integrity, and human dignity.

- **Mental Privacy:** These techniques intrude upon a person's inner thoughts, memories, and mental processes. The defense contended that mental privacy is a part of the right

to life and personal liberty. Forcing a person to reveal their mental content is equivalent to violating the sanctity of the human mind.

- **Bodily Intrusion:** Narcoanalysis involves the injection of chemicals into a person's body without consent, which is an invasive medical procedure. Polygraph and BEAP involve placing instruments and electrodes to monitor involuntary bodily or brain responses. Such intrusions without consent amount to unauthorized medical intervention.

- **Human Dignity and Inhuman Treatment:** The defense further contended that compelling a person to undergo these tests reduces them to a mere object of investigation and subjects them to humiliation and psychological trauma. This is inconsistent with the constitutional promise of treating every individual with dignity.

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### 3. Absence of Free and Informed Consent

The defense highlighted that in Selvi's case, and in many similar cases, the tests were conducted without obtaining free, informed, and voluntary consent of the accused.

- **Coercive Circumstances:** Even when written consent was claimed, it was often obtained under pressure, intimidation, or the threat of adverse consequences.

- **International Standards:** The defense referred to international instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention Against Torture, which emphasize voluntary consent for any medical or psychological procedure.

- **Invalid Consent:** Any consent obtained under duress or without explaining the procedure, its effects, and its potential consequences cannot be considered lawful.

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#### 4. Scientific Unreliability and Risk of Miscarriage of Justice

The defense presented detailed arguments regarding the lack of scientific reliability and accuracy of these techniques.

- Narcoanalysis: The drugs used may induce hallucinations, false memories, or fantasies. A person in a hypnotic or sedated state is highly suggestible and may speak untruths unknowingly.
- Polygraph Test: Polygraph measures physiological responses such as blood pressure, heart rate, and skin conductance. However, these responses are influenced by fear, anxiety, stress, or even medical conditions, and not necessarily by deception.
- Brain Mapping (BEAP): This technique merely records familiarity with certain stimuli, not direct involvement in a crime. It cannot distinguish between innocent familiarity (e.g., reading about an incident in the newspaper) and guilty knowledge.
- Consequences: Using such unreliable techniques as a basis for investigation or evidence could lead to wrongful accusations, false confessions, and miscarriages of justice.

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#### 5. Inadmissibility Under Evidence Law

The defense argued that the results or any information derived from these tests should not be admitted as evidence in court.

- Indian Evidence Act, 1872: Under Sections 24, 25, and 26, confessions made to a police officer or in police custody are inadmissible unless made before a Magistrate voluntarily.
  - Fruit of the Poisonous Tree Doctrine: Even if the tests lead to discovery of material evidence, the initial act of compelling a person to undergo such tests is unconstitutional, rendering the derivative evidence tainted.
  - Fair Trial Concerns: Admitting such evidence would compromise the principle of a fair trial, where the prosecution must prove guilt beyond reasonable doubt without compelling the accused to self-incriminate.
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## 6. Threat to the Presumption of Innocence and Right to Silence

The defense argued that compelling an accused to undergo such tests indirectly shifts the burden of proof and undermines the presumption of innocence.

- Right to Silence: Under Indian criminal jurisprudence, an accused has the right to remain silent, and no adverse inference can be drawn from exercising this right.
  - Indirect Pressure: When an accused is forced to undergo tests with the justification of aiding investigation, it creates a presumption of non-cooperation and implies guilt, contrary to the principle that it is the duty of the State to establish guilt.
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## 7. Potential for Misuse and Custodial Abuse

The defense warned that permitting such techniques would open the door to widespread misuse by investigative agencies.

- **Mental and Physical Torture:** There is a risk that such tests may be used as a form of psychological or medical torture under the guise of scientific investigation.
  - **Lack of Regulation:** At the time, there were no clear legal guidelines or statutory provisions governing the administration of these techniques, creating scope for arbitrary use.
  - **Precedent for Future Abuse:** Allowing these tests without safeguards could lead to routine violation of fundamental rights in the name of speedy investigation.
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## 8. International Human Rights Obligations

The defense drew attention to India's international obligations:

- **Universal Declaration of Human Rights (UDHR):** Articles 5 and 12 protect against inhuman treatment and arbitrary interference with privacy.
- **International Covenant on Civil and Political Rights (ICCPR):** Article 7 prohibits torture and cruel, inhuman, or degrading treatment, while Article 14(3)(g) protects against self-incrimination.

- UN Convention Against Torture: Although not yet ratified by India at that time, its principles were cited as reflective of evolving international norms.

They argued that allowing such techniques would place India in violation of its global commitments to protect human dignity and prevent custodial torture.

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## 9. Public Interest Cannot Override Fundamental Rights

The prosecution claimed that such tests were useful for solving crimes and served public interest. The defense countered that constitutional rights cannot be sacrificed at the altar of expediency.

- Rule of Law: The Constitution places individual liberty and dignity above mere administrative convenience.

- Ends Do Not Justify Means: Even if the tests occasionally help solve crimes, they cannot be justified if the means of obtaining information violate fundamental rights.

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## 10. Need for Judicial Safeguards

The defense submitted that, if such tests were to be permitted at all, they must be accompanied by strict judicial safeguards, including:

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- Obtaining informed and voluntary consent.
- Allowing the presence of legal counsel.
- Ensuring that results are not treated as conclusive evidence.
- Providing medical and psychological assessment before and after the test.

However, in Selvi's case, none of these safeguards were adequately observed.

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#### Conclusion of Defense Arguments

The defense concluded that the compulsory administration of narcoanalysis, polygraph, and brain-mapping tests violated Articles 20(3) and 21, lacked scientific reliability, threatened the right to a fair trial, and set a dangerous precedent for investigative overreach. They urged the Supreme Court to declare the use of such techniques without consent as unconstitutional and to direct that any information derived from such tests should not be admissible as evidence

### **PRAAYER**

The petitioners sought relief from the Supreme Court against the forced administration of narcoanalysis, polygraph (lie detector), and brain-mapping (BEAP) tests conducted during criminal investigation. They contended that these procedures were carried out without their free and informed consent, violating their fundamental rights under Article 20(3) (protection against self-incrimination) and Article 21 (right to life, liberty, personal dignity, and mental privacy).

They prayed that the Court declare such compulsory tests unconstitutional and direct that no person be subjected to these techniques against their will. The petitioners also requested that orders of the Magistrate and the Karnataka High Court permitting these tests be quashed, and that investigating authorities be restrained from compelling accused persons, suspects, or witnesses to undergo such procedures in the future.

Furthermore, they sought a declaration that any information, statements, or material obtained through these tests should be inadmissible as evidence in any criminal proceedings. The overarching prayer was to ensure the protection of human rights, dignity, and the right to a fair

trial, reinforcing the principle that investigative expediency cannot override constitutional safeguards or force individuals to act against their will.

All of which is Humbly Prayed

(Council for the Defendent)