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Case Comment: Beyond the Truth Serum: Consent, Mental Privacy, and the Limits of Narcoanalysis in Selvi v State of Karnataka

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INTRODUCTION

An investigation depends on obtaining information, but the State cannot use every available method to obtain it. This tension was at the centre of *Selvi v State of Karnataka*,[1] where the Supreme Court considered whether a person could be compelled to undergo narcoanalysis, a polygraph examination or a Brain Electrical Activation Profile (BEAP) test during a criminal investigation. These techniques were presented as useful ways to uncover facts when ordinary investigation proved difficult. The Court, however, had to decide what their use would mean for the right against self-incrimination and personal liberty.

Selvi is often described simply as the judgment that prohibited forced narcoanalysis. Its reasoning goes further. The Court recognised that compelling a person to disclose information stored in their mind is different from collecting a fingerprint or a blood sample. It held that the State cannot bypass a person's choice to speak or remain silent by

[1] *Selvi and Ors v State of Karnataka* (2010) 7 SCC 263

administering a drug or measuring responses that the person cannot consciously control. At the same time, the Court left room for voluntary testing under safeguards. This comment argues that the prohibition on compulsion is the judgment's strongest contribution, while its treatment of consent and evidence discovered through voluntary tests requires continued scrutiny.

BACKGROUND OF THE CASE

The decision arose from a batch of criminal appeals concerning the use of three investigative techniques on accused persons, suspects and witnesses. Narcoanalysis involves administering a drug intended to lower inhibitions and induce speech. A polygraph records physiological responses while questions are asked, and a BEAP test seeks to measure responses associated with recognition of information. Although these methods operate differently, each is used to draw information from a person about matters relevant to an investigation.

Some authorities defended the tests on the ground that they could provide leads in difficult cases. They argued that information gathered during a test need not be used directly as evidence at trial; it could instead help investigators discover other evidence. The opposing argument was that this distinction did not remove the constitutional problem. If a person was forced to undergo a test to reveal personal knowledge, the intrusion occurred during the investigation itself.

ISSUES BEFORE THE COURT

The Court framed the following questions:

1. Whether involuntary narco-analysis and similar tests violate Article 20(3) of the Constitution.

2. Whether such tests violate the right to personal liberty under Article 21.

3. Whether such tests are legally authorised during investigation, and whether their results are admissible as evidence.

THE COURT'S DECISION

The Supreme Court held that no person could be forcibly subjected to narcoanalysis, polygraph examination or a BEAP test. Involuntary administration violated Article 20(3) and amounted to an unjustified intrusion into personal liberty under Article 21. The Court rejected the suggestion that the general power to conduct a medical examination could be extended to these techniques.

A central part of the reasoning was the distinction between physical evidence and testimonial responses. Taking a bodily sample may help identify a person or establish a physical fact. The impugned tests, by contrast, sought to obtain or infer what the person knew. The State could not avoid Article 20(3) merely because a polygraph or BEAP test did not require an ordinary spoken answer. What mattered was the attempt to extract personal knowledge relevant to the case.

The Court also made clear that the protection against self-incrimination applies at the investigative stage. Waiting until trial to exclude a compelled test result would not fully protect the person subjected to the test. Nor could investigators justify compulsion by saying that they did not yet know whether the information obtained would incriminate the subject. The constitutional protection includes the person's choice between speaking and remaining silent.

Article 21 supplied a further reason for the ruling. The Court treated forced testing as an intrusion into mental privacy and considered its implications for dignity and a fair trial. It was also concerned about reliability: a statement made under narcoanalysis is not necessarily true simply because a drug has reduced the subject's inhibitions. Treating such techniques as a dependable route to the truth could distort an investigation rather than improve it.

The judgment did not impose an absolute ban on the tests. It permitted their voluntary administration if safeguards were followed. Consent had to be informed and recorded before a Judicial Magistrate, with access to a lawyer and attention to the circumstances of detention. Even where the subject consented, the test responses themselves could not be admitted as evidence because the subject lacked conscious control over them. Material subsequently

discovered with the help of a voluntary test could, however, be admitted in accordance with section 27[2].

WHY THE JUDGMENT MATTERS?

The most convincing feature of *Selvi* is its focus on what the State is trying to obtain, rather than the outward form of a test. A polygraph produces readings from the body, and a BEAP test measures a physiological response. On that basis, it might be tempting to place them alongside other forms of physical examination. The Court looked past the instrument to its purpose: the investigator wanted to learn what the subject knew. That distinction gives Article 20(3) practical force. Otherwise, a right designed to prevent compelled testimony could be defeated whenever technology supplied an indirect means of obtaining it.

The ruling also recognises that a violation during investigation has consequences beyond the admissibility of a statement at trial. Knowledge extracted from a person may shape the direction of questioning, identify new suspects or lead police to a location. Excluding only the test report would leave much of the benefit of the compulsion intact. The Court was therefore right to examine the method of gathering information at the point it was used, rather than treating the trial judge's later decision on evidence as a complete answer.

The case is particularly significant for witnesses and suspects. A person need not already be facing a conviction before forced disclosure of personal knowledge becomes troubling. In an investigation, the position of an individual can change quickly. Someone initially questioned as a witness may become a suspect after providing information. The Court's approach takes that reality seriously and prevents investigative labels from determining whether basic protections apply.

The decision's discussion of mental privacy is equally important. Privacy is sometimes understood as a protection against searches of homes, devices or communications. *Selvi* identifies another concern: an individual's ability to decide whether to disclose the contents of their own mind. This does not mean that investigators cannot ask questions or pursue evidence. It means that they cannot remove the person's ability to choose how to respond

[2] Indian Evidence Act 1872, s 27

through drugs or techniques designed to measure involuntary reactions. That principle remains valuable as methods of collecting information become more sophisticated.

THE DIFFICULT QUESTION OF CONSENT

The judgment is less settled in its treatment of voluntary testing. On paper, the rule is clear: a person may agree to undergo a test after receiving legal advice, and a Magistrate must record that consent. In practice, the circumstances of an investigation may make the choice much harder. A person in custody may believe that refusing a test will make them appear guilty, delay their release or weaken their position with investigators. Formal agreement does not always establish that the decision was free from pressure. The Court itself recognised the possibility that promises or deception could affect consent and that the surrounding circumstances must be examined.

The safeguards in *Selvi* are therefore essential, but their value depends on how they are applied. A Magistrate should do more than record a 'yes' or 'no'. The person must understand what the procedure involves, that its results are uncertain, and how a discovery flowing from the test might later be used. Access to a lawyer is meaningful only if there is a real opportunity for private advice before the decision is made. Particular care is needed where the person has been detained for a long period or has already undergone intense questioning.

There is also a tension in the judgment's approach to evidence discovered after a voluntary test. The Court held that the test responses themselves are inadmissible because the person cannot consciously control them. Yet a fact discovered as a result of those responses may be admitted under section 27, subject to the law's requirements. The distinction can be justified where the discovery is independently verifiable: finding an object at a particular place is different from asking a court to accept a drug-induced statement as true. Still, the possible use of a discovery creates an incentive for investigators to seek 'voluntary' tests. It makes careful examination of consent especially important.

These concerns do not necessarily require a ban on every voluntary test. A person may have their own reasons for requesting one. But a request should never be treated as proof that the resulting report is reliable, or that the State can dispense with ordinary investigative work. The better reading of *Selvi* is that consent permits a tightly controlled investigative procedure; it does not turn narcoanalysis into a scientific certificate of truth.

CONTINUING RELEVANCE IN AMLESH KUMAR

The Supreme Court returned to these questions in *Amlesh Kumar v State of Bihar*[3] in 2025. In that case, the Patna High Court had accepted an investigating officer's proposal to conduct narcoanalysis tests on accused persons and witnesses while hearing a bail matter. The Supreme Court held that this approach conflicted with the constitutional protections recognised in *Selvi*. The perceived usefulness of modern investigative techniques could not justify their compulsory use.

Amlesh Kumar also clarified the other side of the issue. An accused may seek to undergo a test voluntarily at an appropriate stage, but has no absolute right to demand one. The court, considering such a request, must assess the circumstances, including free consent and the required safeguards. The Supreme Court further cautioned that a voluntary narcoanalysis report, or information discovered from it, cannot by itself form the sole basis of a conviction.

This later decision reinforces the central point of *Selvi*: narcoanalysis cannot replace proof gathered and assessed through a fair criminal process. It also shows why the consent question remains live. Courts may be asked both to prevent investigators from imposing tests and to decide whether an accused person's own request should be allowed. In either situation, the procedure's uncertain reliability and its intrusion into mental privacy matter.

CONCLUSION

Selvi drew a necessary limit on investigative power. Its strength lies in recognising that the right against self-incrimination protects a person’s control over the disclosure of personal knowledge, including when technology is used to obtain that knowledge without an ordinary verbal answer. The Court also placed that protection within the broader guarantees of privacy, dignity and a fair trial under Article 21.

The voluntary-test exception is more difficult. Consent given in the setting of a criminal investigation must be examined carefully, particularly because a test may lead to evidence that the prosecution later seeks to use. Read with *Amlesh Kumar*, *Selvi* establishes a sound principle: investigative difficulty may explain why authorities want new techniques, but it

[3] *Amlesh Kumar v State of Bihar* 2025 INSC 810

does not lessen their obligation to respect constitutional rights or prove a case through reliable evidence.