

## SELVI & ORS. VERSUS STATE OF KARNATAKA

*Selvi and others versus State of Karnataka* is a 2010 case which raises questions about the scientific method, like polygraph examination and NARCO test, used during investigation. The petitioner in this case, who was accused of killing her daughter with two other people, appealed to the court against these scientific techniques, which were being used on them for investigative purposes without their permission. The petitioner argued that the use of such techniques infringes their fundamental right of right against self-incrimination ascribed in Article 20(3) and right to life and personal liberty enshrined in Article 21.

[Smt. Selvi, with her husband and one other person](#), was held in police custody for the honour killing of Shiv Kumar, husband of her daughter Kavita, who had done an intercaste marriage. Kavita accused her mother, father and one of their friend of murdering her husband as they were against her marriage. The police, in their investigation, were not able to discover any convincing evidence that could prove the allegations. As a result, they rested upon scientific methods like [polygraph, Narcoanalysis test and Brain Electrical Activation Profile \(BEAP\) test](#). Firstly, they sought permission to perform a polygraph and brain mapping test; however, it showed some deception. This was followed by the NARCO test to ascertain the facts regarding the murder. All this was done without the consent of the three accused.

The petitioner moved to the Court, arguing that the use of such techniques without consent is a direct violation of their right against self-incrimination. The appellant also argued that use of such an impugned method also violates their 'personal liberty' as ascribed in Article 21. The petitioner had also argued that these techniques take a toll on their physical health. The respondent, on the other hand, argued that the use of such techniques is necessary for the verification of facts and the strengthening of evidence, resulting in speedy trials. They also argued that verbal confessions made during these tests are not used in court and thus do not breach their right against self-incrimination.

### **Question of Law**

The major question of law in this case was regarding the legality of the scientific techniques used during the custody of suspects. The court, while ensuring justice for the victim, also has to take the larger human rights into account. The question of law was whether the involuntary use of such techniques violates the right against self-incrimination. Contentions were also their regarding the scope of Article 20(3) and whether it applies to investigation or is limited to trial. The court also dealt with the question of whether such involuntary use breaches personal liberty as mentioned in Article 21 or is part of reasonable restrictions imposed on fundamental rights.

## **Judgment**

The Court, in its Judgment, held that the use of the impugned techniques without permission is invalid. The court stated that the reliability of statements made by the accused totally rests upon the voluntariness of the accused. The deliberation was that if the court started relying upon involuntary statements, it would increase third-degree torture and custodial violence. The court held that these scientific techniques, like polygraph and narcoanalysis, are not voluntary in nature and thus are against Article 20(3). Making deliberations on the scope of this article, the court held that the investigative stage also comes under the ambit of the right against self-incrimination, and the accused can exercise this right. However, this right is not extended to the witness. The court also held that the use of such methods is a breach of the personal liberty of an individual, and such tests do result in physical pain as observed in several reports. The Court held that guidelines made by the National Human Rights Commission, which include consent of the accused, a lawyer being provided to the accused and tests by a third party, like a hospital, should be strictly followed.