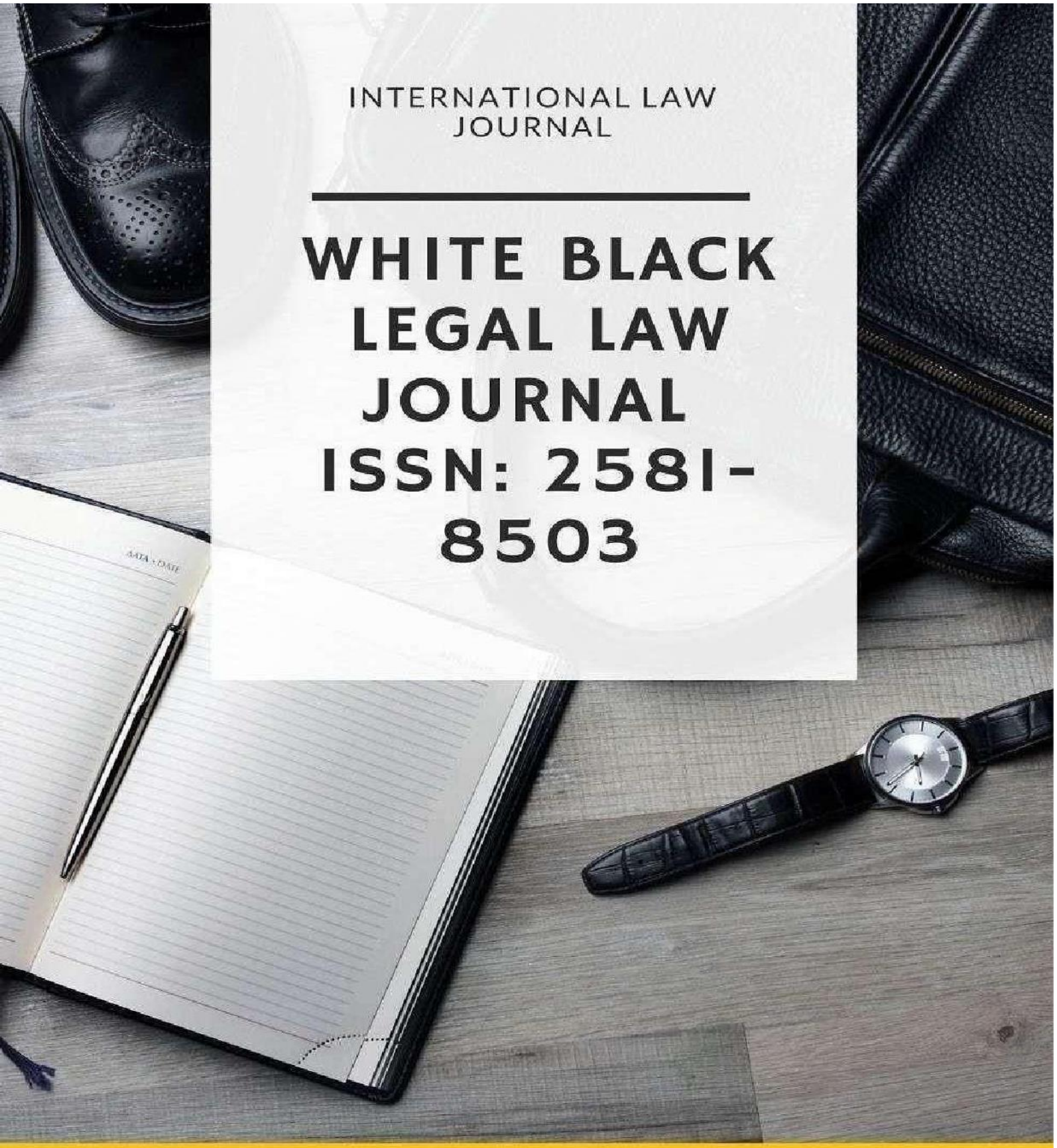


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CONSENT, CUSTODY AND DERIVATIVE EVIDENCE: A CRITICAL ANALYSIS OF THE POST SELVI REGIME ON NARCO-ANALYSIS AND POLYGRAPH TESTING IN INDIA.

AUTHORED BY - AKSHAYA S

ABSTRACT

Narco-analysis and polygraph examinations are used in Indian criminal investigations as forensic tools to elicit information from suspects, raising significant questions of scientific reliability, evidentiary value, and constitutional protection. In Selvi v. State of Karnataka, the supreme court of India held that involuntary narco-analysis, polygraph, and brain-mapping tests violate Articles 20(3) and 21 of the Constitution, however the court permitted the use of such test when there is voluntary consent from the person subject to safeguards. This study analyzes the post-Selvi regime by exploring three interconnected questions: the legality of consent acquired in detention settings, the scientific reliability and limitations of the techniques, and the admissibility of facts discovered through information obtained during testing. Adopting a doctrinal approach the paper studies Selvi v. State of Karnataka, the National Human Rights Commission's guidelines, and the transition from Section 27 of the Indian Evidence Act, 1872 to Section 23(2) of the Bharatiya Sakshya Adhiniyam, 2023.It argues that information obtained through compromised or unreliable testing can nonetheless influence the outcome of a trial by way of the discovery exception. Ultimately, the paper advocates for firmer consent safeguards, uniform forensic protocols, independent judicial supervision and well-defined boundaries on the derivative use of test-generated information.

Keywords: Narco Analysis, Polygraph, Selvi v. State of Karnataka, Scientific, Constitution

INTRODUCTION

The development of forensic science has significantly influenced criminal investigation by introducing various scientific methods that assist investigators in gathering information and identifying evidence. Narco-analysis and polygraph testing are two of these methods that have gained a lot of attention in India as they proved to be an effective method in acquiring

information from the suspect who might have been involved in the crime.

Narco analysis test is also known as the Truth Serum Test. Narco-analysis is a type of psychoanalysis in which drugs are used to induce a state akin to sleep. In a narco analysis test, a drug such as sodium amytal is administered to the suspect as a truth drug in order to obtain information about the crime.[1] whereas a polygraph test in India, commonly known as a lie detector test, is a forensic examination used to record physiological responses while a person answers a structured series of questions. It is a physiological examination in which specialised equipment records several bodily responses during structured questioning. The instrument typically monitors respiratory activity, cardiovascular activity, including changes in blood pressure and pulse, and electrodermal activity associated with changes in skin conductivity.[2] Though these techniques help in finding the truth and the actual accused, these methods raise concerns regarding reliability, privacy and the protection of fundamental rights guaranteed under the Indian Constitution.

The use of such techniques presents a conflict between the investigative interests of law enforcement authorities and the fundamental rights of individuals. Article 20(3) of the Constitution of India protects an accused person against compelled self-incrimination, while Article 21 safeguards life and personal liberty. This conflict was directly addressed by the Supreme Court in *Selvi v. State of Karnataka*, where the Court examined the constitutional validity of involuntary narco-analysis, polygraph and Brain Electrical Activation Profile (BEAP) tests and held that their involuntary administration violates Articles 20(3) and 21 of the Constitution.[3] The supreme court of India did not completely prohibit the use of these methods but it permitted the use where the person voluntarily consents to it and this is subject to the safeguards drawn from the National Human Rights Commission's guidelines.

RESEARCH PROBLEM

Although the Supreme Court in *Selvi v. State of Karnataka* held that the involuntary administration of narco-analysis, polygraph, and brain-mapping tests violates Articles 20(3) and 21 of the Constitution, important legal and forensic issues remain unresolved. Firstly, as the Validity of consent obtained from the suspect by the police as they may have involved pressure or coercion, Secondly, the reliability of such scientific test as the Narco analysis test may produce statements that are not completely true and the physiological response arise in

[1] DNA and Polygraph tests, S. Upadhyay
[2] https://forensicexpertinvestigation.com/polygraph-test-in-india/
[3] Selvi v State of Karnataka (2010) 7 SCC 263

the poly graph test may occur due to other factors other than deception, Thirdly, Selvi case held that the test results themselves are not admissible as substantive evidence, even if the person consented to the tests. However, evidence discovered later with the help of voluntarily conducted test results may be admitted under Section 27 of the Indian Evidence Act, 1872, Now Section 23(2) of the Bharatiya Sakshya Adhiniyam, 2023. The main research problem is whether the current legal framework sufficiently protects criminal proceedings from the use of evidence discovered as a result of unreliable or improperly conducted tests.

RESEARCH QUESTION

To what extent does the post-*Selvi* legal framework adequately regulate the voluntary administration of narco-analysis and polygraph testing, and the use of evidence derived from such testing, in light of custodial consent, scientific reliability and the constitutional right against self-incrimination?

- Under what circumstances can consent obtained from an individual in police custody be considered as free, informed and voluntary?
- What are the scientific limitations and reliability concerns associated with narco-analysis and polygraph testing, and how should these techniques be evaluated in the context of expert evidence?
- When can information or evidence discovered through these tests be admitted under the discovery exception, and does its use comply with the constitutional safeguards established in *Selvi*?

LEGAL AND FORENSIC FOUNDATIONS OF INVESTIGATIVE TESTING

- Scientific Reliability and Limitations of Investigative Techniques

The forensic usefulness of narco-analysis, polygraph and Brain Electrical Activation Profile (BEAP) testing needs to be evaluated in the context of its scientific limits. Though these techniques are meant to assist criminal investigations, their findings cannot be treated as a conclusive evidence of the crime.

In Narco Analysis test, a truth drug, such as sodium amytal, is injected to the suspect in order to obtain information regarding the crime. The reason behind this is that, reduced psychological inhibition may encourage a person to disclose information. However, every statement given by the suspect by the reason of the induced drug might not be true or accurate.

When a person is under the influence of such drugs, they may be prone to suggestions, confusion and fabricated recollection of facts. As a result, rather than providing the actual facts of the event, they may produce misleading information.

Polygraph tests track physiological reactions, such as variations in heart rate, breathing, and skin conductivity, that may be associated with emotional reactions during questioning. These physiological reactions are not always signs of dishonesty, Since fear, anxiety, nervousness, and other psychological or physical conditions may produce similar responses. According to the National Research Council's 2003 research, The Polygraph and Lie Detection, there is only limited correspondence between the physiological responses measured by polygraph instruments and the psychological states associated with deception.[4] These limitations show that the investigative effectiveness of these methods must be separated from their ability to prove guilt beyond a reasonable doubt.

- The Constitutional Context

Article 20(3) ensures that no person accused of an offense shall be compelled to be a witness against themselves.[5] This implies a person cannot be forced to provide evidence otr testimony that could be used against them. It is a fundamental right that protects individuals from being forced to testify against themselves. In *Nandini Satpathy v. P.L. Dani*, the Court held that the protection extends to police interrogation and not only to the trial.[6] Section 180(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, provides a similar statutory safeguard. In State of Bombay v. Kathi Kalu Oghad, the Supreme Court made a distinction between testimonial and physical evidence, ruling that providing fingerprints, sample handwriting, and other identifying traits under pressure does not typically qualify as testimonial compulsion.[7]

However, Narco-analysis, polygraph, BEAP testing, and regular gathering of physical identifiers all involve the extraction or analysis of answers that might reveal a person's personal knowledge. In Selvi v. State of Karnataka, the Supreme Court held that the results of these tests involve personal knowledge and cannot be obtained through force, as this would violate the right against self-incrimination under Article 20(3). The Court also held that forcing a person to undergo these tests violates their mental privacy and personal autonomy, which are protected under Article 21.

[4] National Research Council, The Polygraph and Lie Detection (National Academies Press 2003)
[5] Article 20(3) of Constitution of India
[6] Nandini Satpathy v P.L. Dani (1978) 2 SCC 424.
[7] State of Bombay v Kathi Kalu Oghad AIR 1961 SC 1808; (1962) 3 SCR 10.

- Background and Issues in Selvi v. State of Karnataka

Selvi v. State of Karnataka involved several criminal appeals challenging the use of narco-analysis, polygraph and Brain Electrical Activation Profile (BEAP) tests on accused persons, suspects and witnesses without their consent. The investigating agencies argued that these tests could help them gather information, particularly in cases where it was difficult to collect evidence through normal methods of investigation. They also claimed that the tests did not cause physical harm and that the information obtained would mainly be used to assist the investigation rather than as direct evidence in court.

The appellants challenged the use of these tests without consent and argued that it violated their fundamental rights. They contended that forcing a person to undergo these tests amounted to taking information from them against their will, which violated the right against self-incrimination under Article 20(3). They also argued that such tests interfered with personal liberty and mental privacy protected under Article 21. Questions were also raised about the scientific reliability of the results obtained through these techniques.

The main legal issues considered by the Supreme Court were:

1. Whether conducting narco-analysis, polygraph and BEAP tests without consent violates the right against self-incrimination under Article 20(3).
2. Whether the responses given during these tests amount to testimonial statements and are therefore protected under Article 20(3).
3. Whether forcing a person to undergo these tests violates Article 21, particularly the right to personal liberty and mental privacy.
4. Whether Sections 53, 53A and 54 of the Code of Criminal Procedure, 1973, which deal with medical examinations, permit the use of these techniques during criminal investigations.
5. Whether information or material discovered with the help of test results can be admitted as evidence under the discovery exception provided in Section 27 of the Indian Evidence Act, 1872.

Through these issues, the Supreme Court had to consider whether the need to collect evidence during criminal investigations could be balanced with the constitutional rights of individuals, particularly the right against self-incrimination and the right to protect their mental privacy.

- What Selvi v. State of Karnataka case permitted.

In Selvi, the Supreme Court did not completely prohibit the use of these techniques. Instead, it allowed them to be conducted voluntarily, provided that certain safeguards were followed.

The Court relied on the National Human Rights Commission's guidelines on polygraph tests and extended similar safeguards to narco-analysis and BEAP tests. hese safeguards include giving the individual the freedom to refuse the test, allowing access to legal counsel, explaining the physical, emotional and legal consequences of undergoing the test, and ensuring that consent is recorded before a Judicial Magistrate. The Court also required the testing process to be conducted under the supervision of an independent agency and in the presence of a lawyer.[8] The Court also clarified that the results of voluntary tests cannot be directly used as evidence in court. However, any information or material discovered later with the help of such test results may be admitted under Section 27 of the Indian Evidence Act, 1872. Currently in Section 23(2) of the Bharatiya Sakshya Adhiniyam, 2023. Such evidence can be admitted only if the legal requirements are satisfied and the constitutional protection against self-incrimination is not violated.

The legal position after Selvi raises two important issues. The first is whether consent given by a person in police custody can truly be considered voluntary. The second is whether information obtained through these tests can be used to discover other evidence that may be admitted in court. Although the judgment allows the use of such evidence in certain circumstances when the tests are voluntary, it makes clear that using information obtained through force would violate Article 20(3). Therefore, this paper examines the issues surrounding consent in police custody, the reliability of these scientific techniques and the extent to which the discovery exception can be applied.

CONSENT AND THE CONDUCT OF THE TEST

- Consent Framework in Selvi

In selvi v. State of Karnataka, supreme court held that narco-analysis, polygraph and BEAP tests can conducted voluntarily, subject to certain safeguards based on the National Human Rights Commission's 2000 guidelines on polygraph testing. According to these guidelines, a person must be given the choice to refuse the test and must have access to a lawyer. The person should also be informed about the physical, emotional and legal consequences of undergoing the test. The consent given by the person must be recored by the Judicial magistrate and the magistrate must consider circumstances such conditions of the detention, how long the person has been in the police custody and the nature of the interrogation. Most importantly, the test must be condictied by an independent agency in the presence of the lawyer. A proper record

[8] https://nhrc.nic.in/flipbook/act_rule_sop_guideline/45

of the test, including the medical and other details of how the information was obtained, must be maintained.

The reason behind these safeguards is to ensure than an individual properly understands the consequences of the test and voluntarily agrees to undergo the test. However, the consent given as per the guidelines doesn't necessarily mean that the decision was made voluntarily as it might have peer pressure or coercion. This is very common when an individual is already in police custody. Hence, it is significant to consider whether these safeguards are sufficient enough to ensure genuine consent in such circumstances.

- The Problem of Obtaining Voluntary Consent in Custody

In some cases it might be difficult to obtain free consent of those in custody. The individual is placed in a vulnerable position when giving information to the investigating authorities. There may be reasons such as constant questioning, the fear of being detained for a long period of time and the unequal power between the police and individual that may cause the individual to agree to take part in the tests. The individual may feel forced to take part due to the belief that if they did not then it would indicate their guilt.[9] They may be worried that if they do not take part in the tests then they will be looked at with suspicion by the investigating officers. This means that just signing the consent form may not be considered as freely given.

The NHRC guidelines state that consent must be obtained in front of a judicial magistrate. However this is only effective if the individual understands the nature of the test and what it entails. As a result this process should also be seen as a key safeguard but should not be seen as confirmation that the individual has given their consent freely.

- Conduct and Procedural Safeguards During Testing

As well as valid consent being acquired, it is also important to consider how the tests will be carried out. A variety of factors will affect the reliability of the information obtained through these tests. These include the professional qualifications of the person carrying out the test, precautions taken and procedures followed. Before a narco-analysis test is performed, the individual's medical history, allergies and pre-existing conditions should be considered to make sure they do not cause any harm when using the drugs. Medical professionals such as an anaesthesiologist and psychiatrist and psychologists and nurses should be involved in the

[9] Jyaditya Dogra, 'Narco Analysis: A Comparative Study with Respect to India and Western Countries'

process to ensure the individual's wellbeing.[10] This is due to the drugs being administered during narco-analysis, so proper medical supervision is required.

The Supreme Court also mandated that a test must be administered by an independent body, in the presence of a lawyer. This means that there is an extensive record of the medical and factual details of how the evidence was obtained. Whilst these provisions provide certain safeguards regarding the administration of the test, they focus mainly on the procedure. The judgment does not specify any particular tests or standards to meet when administering tests such as who will administer them, how questions will be asked, how equipment will be calibrated, to ensure recordings are preserved or any independent testing.

- Critical Assessment

While the provisions in Selvi provide some protection against involuntary administration of these tests, it will only be effective if the procedures are adhered to. If the person has given their consent to the test but is forced to do so due to being in police custody, then it may not be valid. Even if the consent was given voluntarily, if the correct medical and procedural guidelines aren't followed there may be concerns about the reliability of the information gained.

It is necessary to ensure that the circumstances in the giving of the consent are properly investigated, that the tests are properly supervised by medical professionals and that clear guidelines are available regarding how the tests should be carried out. This arises due to the fact that whilst the results of the test cannot be used as evidence they can lead to the discovery of information/material which would fall within the discovery exception. As such it will be necessary to determine whether the consent was given voluntarily and whether the tests were properly carried out.

RELIABILITY AND ADMISSIBILITY AS EXPERT EVIDENCE

- Scientific Reliability of the Techniques

The evidence obtained from narco analysis and polygraph tests depend on the reliability of the information obtained. Narco analysis involves drugs like sodium thiopental to lower psychological resistance so the person reveals information without any defences. However, there is no guarantee that the information the person reveals is true. Drug injected into the

[10] Nidhi Singh and Parantap Kumar Das, 'Impact of Narco Analysis on Accuracy and Reliability Evidence Obtained in Criminal Investigation in India' (2024) 13(3) Frontiers in Health Informatics

person may create induced effects, confusion, lack of memory and suggestibility. The Supreme court also acknowledged that statements may be untrue or misleading when under the influence of drugs in Selvi v. State of Karnataka. Similarly, Polygraph measures a person's physical responses while under the test. This could be things such as heart rate, blood pressure, respiration and perspiration. There is no guarantee that these responses mean the person is lying as they can be caused by someone being scared, anxious or nervous.

- Expert Opinion under the Bharatiya Sakshya Adhiniyam, 2023

Section 39 of Bharatiya Sakshya Adhiniyam, 2023[11], deals with opinion of experts in matters of science, art, etc. Section 45 of Indian Evidence Act, 1872, previously dealt with expert opinions. However, just because an opinion is given by an expert, does not necessarily mean that the scientific process involved and the conclusion attained is accurate. Therefore, it is important that the court analyses the opinion.

While dealing with this issue, the Supreme Court in *State of Himachal Pradesh v. Jai Lal*[12] made it clear that experts must possess special knowledge and experience in the particular field. The Court further held that the opinion of the expert is an advisory one. The expert must provide sufficient reasons for his opinion as well as the science on which the opinion is based. The Court has to independently evaluate the opinion expressed by the expert. Submitting the expert report is not conclusive. The expert can still be called upon to testify.

In Ramesh Chandra Agrawal v. Regency Hospital Ltd.,[13] It was emphasized by the Supreme Court, that an expert opinion must be based on sound principles and should be supported by proper facts. The qualification of the expert and the reasons for such opinion and the manner of deriving the conclusion are also important factors to decide whether such opinion can be relied upon or not.

This is particularly applicable to narco analysis and polygraph testing. Not only does the qualification of the examiner need to be taken into account, but also the scientific basis of the test, the circumstances under which it was administered, the evidence used and how it was interpreted. Section 39 should not be seen as automatically allowing any report produced by a forensic technique to be admitted.

[11] Section 39 of Bharatiya Sakshya Adhiniyam, 2023
[12] State of Himachal Pradesh v Jai Lal (1999) 7 SCC 280
[13] Ramesh Chandra Agrawal v Regency Hospital Ltd (2009) 9 SCC 709

- Admissibility of Test Results under Selvi

In the case of Selvi, the Supreme Court addressed the issue of admissibility of such test results. It was held by the court that the results of Narco-analysis, Polygraph and BEAP tests cannot be relied on as evidence since they are not voluntary. The fact that an expert report is created or that the examination carried out by a competent examiner does not mean that the results would be admissible in court. Section 39 of the BSA cannot be used to overcome the restriction laid down in *Selvi* by presenting the test results as expert evidence. Experts can however give evidence as to the scientific principles, process and limitations of these methods if it is relevant to the case.

Although the law acknowledges the importance of expert evidence, the scientific methods used in investigations cannot always be considered reliable. Section 39 of the BSA delas with expert opinion that can be considered by the Court, however, there is still a need to determine if the method is reliable and the reasons for the expert's opinion. The judgments of both Jai Lal and Ramesh Chandra Agrawal state that the Court must look at the experience of the expert, the materials the expert has relied on and the reasons for their conclusion. When read alongside Selvi it is clear that the results of narco-analysis, polygraph and BEAP tests do not provide conclusive evidence of guilt just because they have been derived using a scientific method.

DERIVATIVE EVIDENCE AND THE DISCOVERY EXCEPTION

- The Discovery Exception

Section 27 of the Indian Evidence Act, 1872, provides that the prosecution can prove the part of any information given by an accused person while in police custody which is directly relevant to a fact discovered as a result of such information. This provision has been included as a proviso under section 23(2) of the Bharatiya Sakshya Adhiniyam, 2023. Section 23(1) prohibits proof of confessions made to police officers, while Section 23(2) deals with confessions made in police custody.

In Pulukuri Kottaya v. Emperor[14], the Privy Council clarified that the expression 'fact discovered' includes the object recovered, the place from which it is produced and the accused person's knowledge of that place. However, only those facts that can be clearly shown to have been discovered may be admitted. If the weapon was identified as being hidden then this could be shown, however, if it is stated that the accused used the weapon to commit the offence then this would not be admissible.

[14] Pulukuri Kottaya v Emperor AIR 1947 PC 67

In the case of Selvi v. State of Karnataka, the Supreme Court held that the results of Narco analysis, Polygraph and BEAP test cannot be used as evidence per se, even if it is given voluntarily by the person. However, if any information or material comes to light with the help of evidence obtained from the voluntary administration of test, then it can be admitted as evidence under Section 27 of Indian Evidence act.

That is, If there is discovery of a hidden weapon as a result of information given voluntarily by the suspect/accused on a narco-analysis, it will only be permissible to prove those parts of the information which are directly related to the discovery. The whole disclosure will not be admissible.

- Constitutional Limitations

The discovery exception has been made subject to the constitutional protection of Article 20. The Court clarified that a lack of compulsion will not be found merely because the accused was in custody. If it is proved that there was compulsion, then the use of the information obtained and derivative evidence would breach article 20(3).

This raises a significant issue. Whilst the results of the tests are not admissible, any information gained from a voluntary test may result in physical evidence being found which can be used in the criminal proceedings. As there is no specific guidance given by the discovery exceptions as to what scientific reliability criterion should be met, it may allow for scientifically dubious techniques to affect the outcome of a trial.

The framework will require a close consideration by the judiciary to ensure that the testing was indeed voluntary. It will also need to consider how this information relates to the fact that was discovered, and whether the statutory requirements (Section 23(2) BSA) have been met.

POST SELVI JUDICIAL PRACTICE

Two subsequent cases have illustrated the application of these protections in practice. Both are particularly relevant to consent, court oversight and the admissibility of evidence obtained via narco-analysis.

1. Amlesh Kumar v. State of Bihar (2025)[15]

In this case, when the Investigating Officer had proposed to perform narco-analysis tests on all the accused and witnesses to their bail application, the Patna High Court had agreed. However,

[15] Amlesh Kumar v. State of Bihar, 2025 INSC 810

the Supreme Court overturned this holding, stating that involuntary narco analysis constitutes a violation of articles 20(3) and 21. A bail hearing would not be an appropriate time to allow investigative procedures to interfere with fundamental rights.

The court also considered the admissibility of information gathered during the test. Referring to Selvi, it was held that results gained from a voluntary test cannot constitute a conviction. If facts are discovered then they can be proven under the discovery exception however, this cannot constitute guilt on its own and will need to be considered alongside other evidence. It was also made clear that there can be no indefeasible right for an accused to require a narco analysis.

This shows that the convenience of investigation cannot override constitutional rights and the discovery exception will not provide conclusive proof of guilt from information gained through the test.

2. Vijay v. State of Madhya Pradesh, 2023

In Vijay v. State of Madhya Pradesh, the orders allowing the accused (police officials) to undergo narco analysis, polygraph and brain mapping tests were challenged. It was claimed by the prosecution that the accused had signed a consent form. However, the Madhya Pradesh High Court noted that only one of the accused had given their consent to undergo the tests before the Judicial Magistrate and that the others had refused on the grounds of poor health.

The Court applied the principles laid in Selvi and amended the orders of the lower courts. It held that the narco analysis tests could only be conducted on those accused that had given their consent before the Magistrate. This case highlights the importance of recording consent independently before a Magistrate rather than relying only on documents prepared during the investigation. The Court's observation on adverse inference also raises another concern. Even though an accused person has the right to refuse the test, the possibility that such refusal may be viewed negatively could influence their decision to undergo it. This may affect how freely the consent is given.

These decisions show that the safeguards laid down in *Selvi* continue to be important in present-day criminal investigations. Investigating agencies may still seek permission for broad testing or rely on consent documents prepared during the investigation. In *Vijay*, the Court highlighted the difference between claiming that consent had been given and actually obtaining it before a Magistrate. This shows why independent judicial supervision is necessary. Similarly, *Amlesh Kumar* emphasises the need to carefully examine evidence discovered through information obtained during these tests. Taken together, these decisions show that the

proper application of the safeguards still depends largely on how carefully courts examine each case, as there are no detailed and uniform procedures governing every stage of the process.

RECOMMENDATIONS

The Selvi framework relies on the underlying principle that the voluntariness of the custodial consent is ensured. However, there is no certainty that this will be the case. Therefore, the following changes are required:

The information acquired using voluntary testing can be used to a limited extent. This can be justified under the discovery exception. However, the scientific limitations of such tests must be acknowledged.

1. **Strengthen consent:** The person should be allowed to speak to their own independent lawyer. The Magistrate must make a note of why the consent is voluntary. A form of consent prepared by the police such as the sahmati panchnama in Vijay must not be considered sufficient. Refusing to consent cannot be seen to be non-co-operation. Negative inference cannot be drawn.
2. **Standardise testing protocols:** The competent authority should prescribe examiner qualifications and Examiners should have set qualifications and there should be standard procedures for administering, asking questions, recording and interpreting. All testing sessions should be fully recorded and there should be appropriate guidelines on how to store and retrieve these records. These should follow BSA guidelines on electronic/digital evidence.
3. **Provide post-test judicial review:** If evidence is being tendered based on the result of tests, the court should have access to the full testing process. This includes: obtaining consent and relevant medical records. Thus providing evidence that the correct procedures were implemented.
4. **Apply a scientific reliability standard:** The novel methods of evidence should be examined on the basis of testability, peer review, known error rates, standards of operation and acceptance. The Daubert standard, which was formulated in the United States can be used as a useful example even though it is not enforceable in India.
5. **Regulate derivative evidence:** Where a recovery follows information obtained through a test, the prosecution should establish the voluntariness of the procedure and the connection between the information and the discovery. Courts should also examine independent corroboration before relying on such evidence. This approach is consistent

with the caution expressed in Amlesh Kumar regarding the evidentiary value of discovered facts.

These reforms would strengthen judicial supervision, improve procedural accountability and prevent investigative techniques from receiving greater evidentiary weight than their scientific limitations justify.

CONCLUSION

The case of Selvi v. State of Karnataka set important constitutional restrictions on the use of narco analysis, polygraph and brain mapping tests by a prohibition against administering these tests involuntarily and exclusion of these tests as substantial evidence. This paper analyses the legal framework in place to ensure that these tests are administered accurately and legally. It is concluded that there are substantial problems. As aforementioned, the framework is based on the principle of consent. It can be very difficult to ensure that the consent provided by an individual in police custody is freely given. Even after following the correct process, there can sometimes be pressure applied. Secondly, the science behind these methods may not be reliable. Lastly, the exception to admissibility in the form of discovery, under the proviso to s. 23(2) of the Bharatiya Sakshya Adhiniyam, 2023, enables certain facts discovered using the information provided by the accused to be admissible. This therefore causes concern that the unreliable or forced testing may cause indirect influence within the criminal proceedings. The judgments in Vijay and Amlesh Kumar demonstrate how these issues must be carefully considered.

Overall, improvements could be made to the consent provisions. Standard forensic procedures should be implemented, together with post-test judicial oversight. Scientific reliability criteria should also be employed. These techniques should always be used as an aid to investigation and never a replacement for reliable evidence that is independently verified. Further empirical research in relation to how discoveries are treated in trial courts after consent based testing would assist in determining the practical effectiveness of post-Selvi methods.

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3. State of Bombay v Kathi Kalu Oghad AIR 1961 SC 1808; (1962) 3 SCR 10.

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