SAGRIKA AGRAWAL
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2026:CGHC:26233-DB

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 340 of 2026

1 - Laxminarayan Patel S/o Late Murlidhar Patel Aged About 50 Years Occupation Agriculturist R/o Village Beharapali Police Station Chakradhar Nagar Raigarh Tehsil And District Raigarh C.G.

2 - Smt, Ardhana Bhagat W/o Shri Mangleshwar Bhagat Aged About 40 Years Occupation House Wife R/o Village Mahapalli Police Station Chakradhar Nagar Tehsil And District Raigarh C.G.

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through- The Secretary Department Of Home Affairs Mantralaya Mahanadi Bhawan Atal Nagar Naya Raipur District Raipur C.G.

2 - The Director General Of Police Police Headquarter Officer Raipur District Raipur C.G.

3 - Inspector General Of Police Bilaspur Range Office Of Inspector General Of Police Bilaspur District Bilaspur C.G.

4 - The Superntendent Of Police Raigarh District Raigarh C.G.

5 - The Officer In Charge Of Police Station Chakradhar Nagar Raigarh District Raigarh C.G.

... Respondent(s)

For Petitioner(s)	:	Mr. Roop Ram Naik, Advocate
For State	:	Mr. Soumya Rai, Dy. G.A.

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon’ble Shri Ravindra Kumar Agrawal, Judge
Order on Board

Per Ramesh Sinha, Chief Justice

29.06.2026

1. Heard Mr. Roop Ram Naik, learned counsel for the petitioners as well as Mr. Soumya Rai, Dy. Govt. Advocate, for the respondent/ State.

2. The present petition has been filed by the petitioners under Article 226 of Constitution of India seeking the following relief:-

> “10.1 This Hon'ble Court may kindly be pleased to issue a Writ of Mandamus, Certiorari, or any other appropriate Writ, Order, or Direction restraining the Respondents, particularly Respondent No. 5, from subjecting the Petitioners to any form of brain mapping, polygraph tests, narco-analysis, or any other involuntary forensic diagnostic techniques in connection with Crime No. 61/2026 of Police Station Chakradharnagar, District Raigarh (CG).
>
> 10.2 This Hon'ble Court may kindly be pleased to issue an appropriate Writ, Order, or Direction commanding the Respondents to immediately return the illegally seized three mobile handsets to the Petitioners and the son of Petitioner No. 2 along with their respective SIM cards, which were confiscated without following due process of law.

10.3 This Hon'ble Court may kindly be pleased to issue an Direction ction to the appropriate Writ, Order, or Respondents to strictly adhere to the mandatory legal procedures and restrain them from summoning, detaining, or harassing the Petitioners under the guise of an ongoing inquiry without following the due process of law;

10.4 Any appropriate writ, direction or order may also kindly be passed in favour of the petitioner, which this Hon'ble court deems fit in the circumstances of the case."

3. The brief facts of the case are that the present writ petition has been preferred by the Petitioners challenging coercive actions of the respondent authorities, particularly Respondent No.5, in connection with Crime No.61/2026 registered at Police Station Chakradharnagar, District Raigarh, against unknown persons for the offences punishable under Sections 103(1) and 238A of the Bharatiya Nyaya Sanhita, 2023. The Petitioners are neither named in the FIR nor is any incriminating material available against them, as is evident from the investigation report dated 16.06.2026 submitted by Respondent No.5 himself. Despite the same, the Petitioners were repeatedly summoned to the police station for nearly 18 consecutive days without issuance of any statutory notice under the Bharatiya Nagarik Suraksha Sanhita, 2023, detained for prolonged hours, compelled to sign Supurdnamas, and their mobile phones were seized without preparation of any seizure memo or acknowledgment. Thereafter,

on 20.06.2026, Respondent No.5 further coerced the Petitioners to appear at Raipur on 22.06.2026 and 23.06.2026 for brain mapping, polygraph and narco-analysis tests without their consent, without any judicial authorization and in complete violation of the settled legal safeguards governing such intrusive techniques, while also refusing to return the mobile phone of Petitioner No.1. Apprehending further illegal coercive action, the Petitioners have approached this Court seeking protection against the arbitrary exercise of police power.

4. Learned counsel for the petitioners would submit that the entire action of the respondent authorities, particularly Respondent No.5, is wholly arbitrary, illegal, mala fide and violative of the Petitioners' fundamental rights guaranteed under Articles 20(3), 21 and 300A of the Constitution of India. Admittedly, the FIR in Crime No.61/2026 has been registered against unknown persons and, as per the Investigating Officer's own report dated 16.06.2026, no incriminating material whatsoever has been found against the Petitioners. Despite such categorical admission, the Petitioners have been subjected to continuous police harassment by being summoned to the police station for about eighteen consecutive days without issuance of any statutory notice under the BNSS, illegally detained for prolonged hours, compelled to execute Supurdnamas under coercion, and deprived of their mobile phones without any seizure memo or authority of law. Further, the Respondent No.5 has sought to compel the

Petitioners to undergo brain mapping, polygraph and narco-analysis tests without their voluntary consent and without any judicial order. The continued coercive conduct of the respondents, despite the absence of any evidence against the Petitioners, is manifestly arbitrary, constitutes an abuse of investigative powers, and warrants immediate interference by this Court to protect the Petitioners from further illegal harassment and infringement of their constitutional and legal rights.

5. Learned State counsel would submit that the present writ petition is premature and devoid of merit, as the investigation in Crime No.61/2026 is still at a nascent stage and is being conducted strictly in accordance with the provisions of the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023. It is contended that the Petitioners have been called for the purpose of investigation only on account of certain facts which surfaced during the course of investigation, and no coercive or illegal action has been taken against them. Mere questioning of persons acquainted with the facts of the case does not amount to harassment or violation of their fundamental rights. It is further submitted that no final decision has been taken to subject the Petitioners to any forensic examination in violation of law and, in any event, no such test can be conducted except in accordance with the procedure established by law and the principles laid down by the Hon'ble Supreme Court. The allegations regarding illegal detention, coercion, forcible obtaining of signatures, and unlawful

seizure of mobile phones are disputed as being incorrect, exaggerated and unsupported by any cogent material. It is, therefore, submitted that the investigation ought not to be interfered with in exercise of the extraordinary writ jurisdiction under Article 226 of the Constitution of India, and the writ petition deserves to be dismissed.

6. We have heard learned counsel for the parties and perused the material annexed with the petition.

7. The record reveals that the present petition has been filed in connection with Crime No.61/2026 registered at Police Station Chakradharnagar, District Raigarh, for the offences punishable under Sections 103(1) and 238A of the Bharatiya Nyaya Sanhita, 2023. It is not in dispute that the petitioners are not named in the First Information Report. The material available on record further indicates that the petitioners had earlier preferred an application for anticipatory bail, which was registered as B.A. No.621/2026 before the learned Sessions Court, Raigarh. During the said proceedings, the Investigating Officer submitted a report dated 16.06.2026 before the Sessions Court. A perusal of the said report shows that the investigation is being carried out against unknown persons. Though the report records that during the course of investigation it came to light that petitioner No.1 had certain previous differences with the deceased, it has also been specifically mentioned therein that no evidence has so far been found against the present petitioners and that the investigation is

continuing against unknown accused persons.

8. The grievance of the petitioners is with regard to the alleged insistence of the investigating agency requiring them to undergo narco-analysis test during the course of investigation. In the backdrop of the report dated 16.06.2026 submitted by the Investigating Officer, this Court is of the view that any investigative step involving narco-analysis or any similar forensic examination must necessarily conform to the procedure established by law. Such tests cannot be undertaken except in accordance with the statutory safeguards and the applicable legal procedure.

9. In the matter of ***Salvi Vs. State of Karnataka,*** *reported in* ***2010 (7) SCC 263***, the Hon'ble Supreme Court has held that :-

> **"102**. As mentioned earlier "the right against self-incrimination" is now viewed as an essential safeguard in criminal procedure. Its underlying rationale broadly corresponds with two objectives-firstly, that of ensuring reliability of the statements made by an accused, and secondly, ensuring that such statements are made voluntarily. It is quite possible that a person suspected or accused of a crime may have been compelled to testify through methods involving coercion, threats or inducements during the investigative stage. When a person is compelled to testify on his/her own behalf, there is a higher likelihood of such testimony being false. False testimony is undesirable since it impedes the integrity of the trial and the subsequent verdict. Therefore, the purpose of the "rule against involuntary confessions" is to ensure that the testimony considered during trial is reliable. The premise is that involuntary statements are

more likely to mislead the Judge and the prosecutor, thereby resulting in a miscarriage of justice. Even during the investigative stage, false statements are likely to cause delays and obstructions in the investigation efforts.

103. The concerns about the "voluntariness" of statements allow a more comprehensive account of this right. If involuntary statements were readily given weightage during trial, the investigators would have a strong incentive to compel such statements-often through methods involving coercion, threats, inducement or deception. Even if such involuntary statements are proved to be true, the law should not incentivise the use of interrogation tactics that violate the dignity and bodily integrity of the person being examined. In this sense, "the right against self-incrimination" is a vital safeguard against torture and other "third-degree methods" that could be used to elicit information. It serves as a check on police behaviour during the course of investigation. The exclusion of compelled testimony is important otherwise the investigators will be more inclined to extract information through such compulsion as a matter of course. The frequent reliance on such "short cuts" will compromise the diligence required for conducting meaningful investigations. During the trial stage, the onus is on the prosecution to prove the charges levelled against the defendant and the "right against self-incrimination" is a vital protection to ensure that the prosecution discharges the said onus.

* * *

117. These safeguards were designed to mitigate the disadvantages faced by a suspect in a custodial

environment. This was done in recognition of the fact that methods involving deception and psychological pressure were routinely used and often encouraged in police interrogations. Emphasis was placed on the ability of the person being questioned to fully comprehend and understand the content of the stipulated warning. It was held ibid. at US pp. 457-58: (Miranda case[1], L Ed pp. 713-14)

> "In these cases, we might not find the defendant's statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect the precious Fifth Amendment right is, of course, not lessened in the slightest. In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. (Professor Sutherland, Crime and Confessions[2].) The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles- that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice."

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1 Miranda Vs. Arizona, 384 US 436 (1965)

2 79 Harvard Law Review 21, 37 (1965)

* * *

119. The majority decision in Miranda (supra) was not a sudden development in the US constitutional law. The scope of the privilege against self-incrimination had been progressively expanded in several prior decisions. The notable feature was the recognition of the interrelationship between the Fifth Amendment and the Fourteenth Amendment's guarantee that the Government must observe the "due process of law" as well as the Fourth Amendment's protection against "unreasonable search and seizure". While it is not necessary for us to survey these decisions, it will suffice to say that after Miranda administering a warning about a person's right to silence during custodial interrogations as well as obtaining a voluntary waiver of the prescribed rights has become a ubiquitous feature in the US criminal justice system. In the absence of such a warning and voluntary waiver, there is a presumption of compulsion with regard to the custodial statements thereby rendering them inadmissible as evidence. The position in India is different since there is no automatic presumption of compulsion in respect of custodial statements. However, if the fact of compulsion is proved then the resulting statements are rendered inadmissible as evidence.

* * *

138. The distinction between inculpatory and exculpatory evidence gathered during investigation is relevant for deciding what will be admissible as evidence during the trial stage. The exclusionary rule in evidence law mandates that if inculpatory evidence has been gathered through improper methods (involving coercion, threat or inducement among others) then the same should be

excluded from the trial, while there is no such prohibition on the consideration of exculpatory evidence. However, this distinction between the treatment of inculpatory and exculpatory evidence is made retrospectively at the trial stage and it cannot be extended back to the stage of investigation. If we were to permit the admission of involuntary statement on the ground that at the time of asking a question it is not known whether the answer will be inculpatory or exculpatory, the "right against self-incrimination" will be rendered meaningless. The law confers on "any person" who is examined during an investigation, an effective choice between speaking and remaining silent. This implies that it is for the person being examined to decide whether the answer to a particular question will eventually prove to be inculpatory or exculpatory. Furthermore, it is also likely that the information or materials collected at an earlier stage of investigation can prove to be inculpatory in due course.

139. However, it is conceivable that in some circumstances the testimony extracted through compulsion may not actually lead to exposure to criminal charges or penalties. For example this is a possibility when the investigators make an offer of immunity against the direct use, derivative use or transactional use of the testimony. Immunity against direct use entails that a witness will not be prosecuted on the basis of the statements made to the investigators. A protection against derivative use implies that a person will not be prosecuted on the basis of the fruits of such testimony. Immunity against transactional use will shield a witness from criminal charges in cases other than the one being investigated. It is of course entirely up to the investigating agencies to decide whether to offer immunity and in what

form. Even though this is distinctly possible, it is difficult to conceive of such a situation in the context of the present case. A person who is given an offer of immunity against prosecution is far more likely to voluntarily cooperate with the investigation efforts. This could be in the form of giving testimony or helping in the discovery of material evidence. If a person is freely willing to cooperate with the investigation efforts, it would be redundant to compel such a person to undergo the impugned tests. If reliance on such tests is sought for refreshing a cooperating witness' memory, the person will in all probability give his/her consent to undergo these tests.

* * *

145. The next issue is whether the results gathered from the impugned tests amount to "testimonial compulsion" thereby attracting the prohibition of Article 20(3). For this purpose, it is necessary to survey the precedents which deal with what constitutes "testimonial compulsion" and how testimonial acts are distinguished from the collection of physical evidence. Apart from the apparent distinction between evidence of a testimonial and physical nature, some forms of testimonial acts lie outside the scope of Article 20(3). For instance, even though acts such as compulsorily obtaining specimen signatures and handwriting samples are testimonial in nature, they are not incriminating by themselves if they are used for the purpose of identification or corroboration with facts or materials that the investigators are already acquainted with. The relevant consideration for extending the protection of Article 20(3) is whether the materials are likely to lead to incrimination by themselves or "furnish a

link in the chain of evidence" which could lead to the same result. Hence, reliance on the contents of compelled testimony comes within the prohibition of Article 20(3) but its use for the purpose of identification or corroboration with facts already known to the investigators is not barred.

* * *

147. However, an unresolved question is whether the results obtained through polygraph examination and the BEAP test are of a testimonial nature. In both these tests, inferences are drawn from the physiological responses of the subject and no direct reliance is placed on verbal responses. In some forms of polygraph examination, the subject may be required to offer verbal answers such as "Yes" or "No", but the results are based on the measurement of changes in several physiological characteristics rather than these verbal responses. In the BEAP test, the subject is not required to give any verbal responses at all and inferences are drawn from the measurement of electrical activity in the brain. In the impugned judgments, it has been held that the results obtained from both the polygraph examination and the BEAP test do not amount to "testimony" thereby lying outside the protective scope of Article 20(3). The same assertion has been reiterated before us by the counsel for the respondents. In order to evaluate this position, we must examine the contours of the expression "testimonial compulsion.

* * *

153. Since the majority decision in Kathi Kalu Oghad[3] is the controlling precedent, it will be useful to restate the

3 State of Bombay Vs. Kathi Kalu Oghad, AIR 1961 SC 1808

two main premises for understanding the scope of "testimonial compulsion". The first is that ordinarily it is the oral or written statements which convey the personal knowledge of a person in respect of relevant facts that amount to "personal testimony" thereby coming within the prohibition contemplated by Article 20(3). In most cases, such "personal testimony" can be readily distinguished from material evidence such as bodily substances and other physical objects. The second premise is that in some cases, oral or written statements can be relied upon but only for the purpose of identification or comparison with facts and materials that are already in the possession of the investigators. The bar of Article 20(3) can be invoked when the statements are likely to lead to incrimination by themselves or "furnish a link in the chain of evidence" needed to do so. We must emphasise that a situation where a testimonial response is used for comparison with facts already known to the investigators is inherently different from a situation where a testimonial response helps the investigators to subsequently discover fresh facts or materials that could be relevant to the ongoing investigation.

* * *

157. Following *Schmerber*[4] decision, the distinction between physical and testimonial evidence has been applied in several cases. However, some complexities have also arisen in the application of the testimonial-physical distinction to various fact situations. While we do not need to discuss these cases to decide the question before us, we must take note of the fact that the application of the testimonial-physical distinction can be highly ambiguous in relation to non-verbal forms of

4 Schmerber Vs. California, 384 US 757 (1965)

conduct which nevertheless convey relevant information.

* * *

180. We have already stated that the narcoanalysis test includes substantial reliance on verbal statements by the test subject and hence its involuntary administration offends the "right against self-incrimination". The crucial test laid down in Kathi Kalu Oghad (supra) is that of

> "imparting knowledge in respect of relevant facts, by means of oral statements or statements in writing by a person who has personal knowledge of the facts to be communicated to a court or to a person holding an enquiry or investigation"

The difficulty arises since the majority opinion in that case appears to confine the understanding of "personal testimony" to the conveyance of personal knowledge through oral statements or statements in writing. The results obtained from polygraph examination or a BEAP test are not in the nature of oral or written statements. Instead, inferences are drawn from the measurement of physiological responses recorded during the performance of these tests. It could also be argued that and the BEAP test do not involve a "positive volitional act" on part of the test subject and hence their results should not be treated as testimony. However, this does not entail that the results of these two tests should be likened to physical evidence and thereby excluded from the protective scope of Article 20(3).

* * *

185. During the administration of a polygraph test or a BEAP test, the subject makes a mental effort which is accompanied by certain physiological responses. The measurement of these responses then becomes the basis of the transmission of knowledge to the investigators. This knowledge may aid an ongoing investigation or lead to the discovery of fresh evidence which could then be used to prosecute the test subject. In any case, the compulsory administration of the impugned tests impedes the subject's right to choose between remaining silent and offering substantive information. The requirement of a "positive volitional act" becomes irrelevant since the subject is compelled to convey personal knowledge irrespective of his/her own volition.

* * *

189. In light of the preceding discussion, we are of the view that the results obtained from tests such as polygraph examination and the BEAP test should also be treated as "personal testimony", since they are a means for "imparting personal knowledge about relevant facts". Hence, our conclusion is that the results obtained through the involuntary administration of either of the impugned tests (i.e. the narcoanalysis technique, polygraph examination and the BEAP test) come within the scope of "testimonial compulsion", thereby attracting the protective shield of Article 20(3).

* * *

224. Moreover, a distinction must be made between the character of restraints placed on the right to privacy. While the ordinary exercise of police powers contemplates restraints of a physical nature such as the

extraction of bodily substances and the use of reasonable force for subjecting a person to a medical examination, it is not viable to extend these police powers to the forcible extraction of testimonial responses. In conceptualising the "right to privacy" we must highlight the distinction between privacy in a physical sense and the privacy of one's mental processes.

225. So far, the judicial understanding of privacy in our country has mostly stressed on the protection of the body and physical spaces from intrusive actions by the State. While the scheme of criminal procedure as well as evidence law mandates interference with physical privacy through statutory provisions that enable arrest, detention, search and seizure among others, the same cannot be the basis for compelling a person "to impart personal knowledge about a relevant fact". The theory of interrelationship of rights mandates that the right against self -incrimination should also be read as a component of "personal liberty" under Article 21. Hence, our understanding of the "right to privacy" should account for its intersection with Article 20(3). Furthermore, the "rule against involuntary confessions" as embodied in Sections 24, 25, 26 and 27 of the Evidence Act, 1872 seeks to serve both the objectives of reliability as well as voluntariness of testimony given in a custodial setting. A conjunctive reading of Articles 20(3) and 21 of the Constitution along with the principles of evidence law leads us to a clear answer. We must recognise the importance of personal autonomy in aspects such as the choice between remaining silent and speaking. An individual's decision to make a statement is the product of a private choice and there should be no scope for any other individual to interfere with such autonomy,

especially in circumstances where the person faces exposure to criminal charges or penalties.

* * *

247. The decision of this Court in D.K. Basu v. State of W.B.93[5], had stressed upon the entitlement of a person in custody to consult a lawyer. Access to legal advice is an essential safeguard so that an individual can be adequately apprised of his constitutional and statutory rights. This is also a measure which checks custodial abuses. However, the involuntary administration of any of the impugned tests can lead to a situation where such legal advice becomes ineffective. For instance even if a person receives the best of legal advice before undergoing any of these tests, it cannot prevent the extraction of information which may prove to be inculpatory by itself or lead to the subsequent discovery of incriminating materials. Since the subject has no conscious control over the drug-induced revelations or substantive inferences, the objective of providing access to legal advice are frustrated.

248. Since the subject is not immediately aware of the contents of the drug-induced revelations or substantive inferences, it is also conceivable that the investigators may chose not to communicate them to the subject even after completing the tests. In fact statements may be recorded or charges framed without the knowledge of the test subject. At the stage of trial, the prosecution is obliged to supply copies of all incriminating materials to the defendant but reliance on the impugned tests could curtail the opportunity of presenting a meaningful and

5 (1997) 1 SCC 416

wholesome defence. If the contents of the revelations or inferences are communicated much later to the defendant, there may not be sufficient time to prepare an adequate defence.

249. Earlier in this judgment, we had surveyed some foreign judicial precedents dealing with each of the tests in question. A common concern expressed with regard to each of these techniques was the questionable reliability of the results generated by them. In respect of the narcoanalysis technique, it was observed that there is no guarantee that the drug-induced revelations will be truthful. Furthermore, empirical studies have shown that during the hypnotic stage, individuals are prone to suggestibility and there is a good chance that false results could lead to a finding of guilt or innocence. As far as polygraph examination is concerned, though there are some studies showing improvements in the accuracy of results with advancement in technology, there is always scope for error on account of several factors. Objections can be raised about the qualifications of the examiner, the physical conditions under which the test was conducted, the manner in which questions were framed and the possible use of "countermeasures" by the test subject. A significant criticism of polygraphy is that sometimes the physiological responses triggered by feelings such as anxiety and fear could be misread as those triggered by deception. Similarly, with the P300 waves test there are inherent limitations such as the subject having had "prior exposure" to the "probes" which are used as stimuli. Furthermore, this technique has not been the focus of rigorous independent studies. The questionable scientific reliability of these techniques comes into conflict with the standard of proof "beyond

reasonable doubt" which is an essential feature of criminal trials.

250. Another factor that merits attention is the role of the experts who administer these tests. While the consideration of expert opinion testimony has become a mainstay in our criminal justice system with the advancement of fields such as forensic toxicology, questions have been raised about the credibility of experts who are involved in administering the impugned techniques. It is a widely accepted principle for evaluating the validity of any scientific technique that it should have been subjected to rigorous independent studies and peer review. This is so because the persons who are involved in the invention and development of certain techniques are perceived to have an interest in their promotion. Hence, it is quite likely that such persons may give unduly favourable responses about the reliability of the techniques in question.

251. Even though India does not have a jury system, the use of the impugned techniques could impede the fact-finding role of a trial Judge. This is a special concern in our legal system, since the same Judge presides over the evidentiary phase of the trial as well as the guilt phase. The consideration of the test results or their fruits for the purpose of deciding on their admissibility could have a prejudicial effect on the Judge's mind even if the same are not eventually admitted as evidence.

252. Furthermore, we echo the concerns expressed by the Supreme Court of Canada in R. v. Beland[6], where it was observed that reliance on scientific techniques could cloud human judgment on account of an "aura of infallibility". While Judges are expected to be impartial

6 (1987) 36 CCC 3d 481

and objective in their evaluation of evidence, one can never discount the possibility of undue public pressure in some cases, especially when the test results appear to be inculpatory. We have already expressed concerns with situations where media organisations have either circulated the video recordings of narcoanalysis interviews or broadcasted dramatised reconstructions, especially in sensational criminal cases.

253. Another important consideration is that of ensuring parity between the procedural safeguards that are available to the prosecution and the defence. If we were to permit the compulsory administration of any of the impugned techniques at the behest of investigators, there would be no principled basis to deny the same opportunity to the defendants as well as witnesses. If the investigators could justify reliance on these techniques, there would be an equally compelling reason to allow the indiscrete administration of these tests at the request of convicts who want reopening of their cases or even for the purpose of attacking and rehabilitating the credibility of the witnesses during a trial. The decision in United States v. Scheffer, has highlighted the concerns with encouraging litigation, that is, collateral to the main facts in issue. We are of the view that an untrammelled right of resorting to the techniques in question will lead to an unnecessary rise in the volume of frivolous litigation before our courts.

* * *

Conclusion

262. In our considered opinion, the compulsory administration of the impugned techniques violates the "right against self-incrimination". This is because the

underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence. This Court has recognised that the protective scope of Article 20(3) extends to the investigative stage in criminal cases and when read with Section 161(2) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. 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.

263. We are also of the view that forcing an individual to undergo any of the impugned techniques violates the standard of "substantive due process" which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature. The impugned techniques cannot be read into the statutory provisions which enable medical examination during investigation in criminal cases i.e. the Explanation to Sections 53, 53-A and 54 of the Code of Criminal Procedure, 1973. Such an expansive interpretation is not feasible in light of the rule of "ejusdem generis" and the considerations which govern

the interpretation of statutes in relation to scientific advancements. We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to "cruel, inhuman or degrading treatment" with regard to the language of evolving international human rights norms. Furthermore, placing reliance on the results gathered from these techniques comes into conflict with the "right" to fair trial". Invocations of a compelling public interest cannot justify the dilution of constitutional rights such as the "right against self-incrimination".

264. In light of these conclusions, 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. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted in accordance with Section 27 of the Evidence Act, 1872.

265. The National Human Rights Commission had published Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused in 2000. These

Guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the "narcoanalysis technique" and the "Brain Electrical Activation Profile" test. The text of these Guidelines has been reproduced below:

> (i) No lie detector tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
>
> (ii) If the accused volunteers for a lie detector test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
>
> (iii) The consent should be recorded before a Judicial Magistrate.
>
> (iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
>
> (v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a "confessional" statement to the Magistrate but will have the status of a statement made to the police.
>
> (vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
>
> (vii) The actual recording of the lie detector test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(viii) A full medical and factual narration of the manner of the information received must be taken on record.

10. In ***Selvi (Supra)*** *case*, the Hon'ble Supreme Court has categorically held that the compulsory administration of narco-analysis, polygraph examination, and Brain Electrical Activation Profile (BEAP) tests is unconstitutional, being violative of the protection against self-incrimination guaranteed under Article 20(3) of the Constitution of India, as well as the right to personal liberty and mental privacy under Article 21. The Supreme Court further held that no individual can be forcibly subjected to such techniques during the course of investigation or otherwise. However, the Court recognised that such tests may be administered only on the basis of the voluntary and informed consent of the person concerned, subject to strict compliance with the safeguards prescribed therein, including recording of such consent before the competent Judicial Magistrate, access to legal assistance, adherence to the guidelines framed by the National Human Rights Commission, and observance of all constitutional and statutory protections. It was also held that while the results of such voluntarily administered tests are not by themselves admissible in evidence, any material or fact subsequently discovered with the aid of such test may be admissible in accordance with Section 27 of the Indian Evidence Act, 1872, subject to law.

11. Therefore, without expressing any opinion on the merits of the investigation or the allegations involved in the crime, this Court directs that the investigating agency shall not compel or coerce the petitioners to undergo narco-analysis, polygraph examination, Brain Electrical Activation Profile (BEAP) test, or any other similar scientific investigative technique. Such tests, if at all proposed, may be conducted only with the voluntary, informed, and unequivocal consent of the petitioners, strictly in accordance with the law declared by the Hon'ble Supreme Court in ***Selvi*** *(Supra) case*, the safeguards prescribed therein, including the NHRC Guidelines, and the applicable provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023. The consent of the petitioners shall be recorded before the competent Judicial Magistrate after ensuring that such consent is free, voluntary, and informed, and that all constitutional and statutory safeguards have been duly complied with.

12. With the aforesaid direction, the present petition stands **disposed of.**

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Sagrika

Head Note:

“No individual can be forcibly subjected to narco-analysis, polygraph examination, Brain Electrical Activation Profile (BEAP) test, or any similar scientific investigative technique. Such techniques may be administered only in accordance with law and with due regard to constitutional and procedural safeguards, including informed consent and judicially recognized protections.”