



RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Writ Petition No.51/2016

Subhash Saini S/o Shri Basti Ram R/o Bhompura, P.S. Mandrela,
District Jhunjhunu (Raj.)

----Accused/Petitioner

Versus

1. The State of Rajasthan through P.P.
2. The SHO, Police Station Chirawa, District Jhunjhunu

----Respondents

For Petitioner(s) : Mr. Arun Singh Shekhawat
For Respondent(s) : Mr. Jitendra Singh Rathore, PP

JUSTICE ANOOP KUMAR DHAND

Order

12/03/2026

Reportable

The right to remain silent is a cornerstone of criminal justice systems globally. Rooted in the principle of fairness, this right protects individuals from self-incrimination, ensuring that no one is compelled to testify or provide evidence against themselves in criminal proceedings. In India, this right is explicitly enshrined in Article 20(3) of the Constitution and further reinforced by various provisions of the Criminal Procedure Code (CrPC).

The right to remain silent is a legal principle that protects individuals from being compelled to provide evidence or testimony that may incriminate them in a criminal proceeding. Rooted in the principle of "nemo debet prodere ipsum" (no one is bound to



accuse themselves), it ensures fairness by safeguarding the accused from coercion or undue influence.

In India, this right is enshrined in Article 20(3) of the Constitution of India, which states that no person accused of an offence shall be compelled to be a witness against themselves. It extends to various stages of investigation and trial, emphasising the presumption of innocence and placing the burden of proof on the prosecution. This right is pivotal in upholding justice and individual dignity.

The right to remain silent has its roots in medieval England, where it emerged as a response to oppressive practices in the Star Chamber and High Commission courts of the 16th century. During this period, suspects were compelled to take an "ex-officio oath" and provide answers, often under threat of torture or severe punishment. Refusal to comply often led to coercion or physical abuse.

The principle "nemo debet prodere ipsum" (no one should be compelled to accuse themselves) gradually evolved to protect individuals from such practices. This principle became a cornerstone of the common law tradition, influencing legal systems worldwide.

Article 20(3) of the Indian Constitution of India explicitly guarantees the right to remain silent. It states:

"No person accused of any offence shall be compelled to be a witness against himself."





This provision ensures that individuals accused of a crime are not forced to incriminate themselves during investigations or trials. The right serves several critical purposes:

1. Protecting individuals from undue coercion or forced confessions.
2. Upholding the presumption of innocence.
3. Ensuring that the burden of proof lies with the prosecution.

Additionally, Article 21 mandates a fair and just procedure in criminal proceedings, further reinforcing the right to remain silent.

The right to remain silent is more than a procedural safeguard; it is a foundational principle of justice. By preventing forced confessions and undue coercion, it ensures fairness in criminal proceedings and upholds the dignity of the individual.

The right to remain silent, enshrined in Article 20(3) of the Constitution of India, serves as a vital safeguard against self-incrimination. Its importance lies in preserving the presumption of innocence, ensuring that the burden of proof rests with the prosecution, and maintaining fairness in the justice system.

Indian courts have consistently upheld this right, aligning it with international human rights standards. However, challenges such as statutory exceptions and evolving investigative techniques call for a nuanced approach to its application. As a cornerstone of justice, the right to remain silent must be preserved and protected to ensure the integrity of India's legal system and the fair treatment of all individuals accused of crimes.¹

1. Article by Aishwarya Agrawal on "Right to remain silent."





1. In recent years, the use of scientific techniques such as narco analysis, polygraph, and brain mapping has sparked significant legal and ethical debate within India's criminal justice system. These methods, often portrayed as tools to uncover concealed truths, raise fundamental concerns regarding personal liberty, bodily autonomy, and the right against self-incrimination.

2. One such methods include the Narco test which refers to a psychological and forensic instrument that is applied in the process of detecting hidden information in the investigation of crime. This process involves injection of some medication into a bloodstream, which include: sodium pentothal, scopolamine or sodium amytal. These drugs are what are referred to as "truth serums" because they suppress the central nervous system and lower the self control, inhibitions, and ability of the subject to lie. It is presumed that under this semi-conscious or hypnotic condition, people can give more spontaneous and honest answers to investigators.

3. In criminal investigations, consent for Narco tests must be free, informed and voluntary, as mandated by the Hon'ble Apex Court in the case of **Smt. Selvi & Ors. Vs. State of Karnataka** reported in **AIR 2010 SC 1974**, protecting Article 20(3) rights against self-incrimination.

4. The legal issue which emerges for consideration of this Court is "whether consent given for Narco-Analysis Test can be withdrawn before its administration?"

5. By way of filing the instant criminal writ petition, a challenge has been led to the impugned order dated 09.07.2015 passed by





the Judicial Magistrate, Chirawa, District Jhunjhunu by which the application submitted by the petitioner for revocation/withdrawal of his consent for conducting Narco Analysis Test on 23.05.2015 has been rejected.

6. Learned counsel appearing on behalf of the petitioner submits that an FIR No.375/2014 was registered at the Police Station Chirawa, District Jhunjhunu for the offences under Sections 363 & 366 IPC, wherein an application was submitted by the Investigating Officer before the Court of the Judicial Magistrate, Chirawa, District Jhunjhunu seeking permission for conducting the Narco Analysis Test of the accused petitioner. Learned counsel submits that at that relevant time, consent was given by the accused petitioner for the aforesaid test. Learned counsel submits that on the basis of the aforesaid consent given by the petitioner, the learned Magistrate vide order dated 18.05.2015 allowed the application submitted by the Investigating Agency for conducting Narco Analysis Test of the accused petitioner and the accused petitioner was directed to appear before the authority concerned on 23.05.2015 at 08:00 AM.

7. Learned counsel submits that immediately thereafter, the petitioner realised that he cannot be compelled to become witness against himself by conducting the Narco Analysis Test for the purpose of collecting evidence against himself. Hence, under these circumstances, he submitted an application on 06.07.2015 seeking withdrawal/revocation of his consent for conducting the aforesaid test upon him, but the said application filed by the accused petitioner has been rejected by the learned Magistrate vide





impugned order dated 09.07.2015. Under these circumstances, the accused petitioner has approached this Court for revocation of his consent for precluding himself from the aforesaid test. Hence, appropriate orders be passed in favour of the accused petitioner.

8. *Per contra*, learned Public Prosecutor opposes the prayer made by learned counsel for the accused petitioner and submitted that the petitioner himself has given his consent when the application was submitted by the Investigating Officer for conducting Narco Analysis Test upon him and on the basis of the same, the order dated 18.05.2015 was passed, hence, under these circumstances, the petitioner cannot be allowed to revoke his consent. Learned counsel submits that, under these circumstances, the learned Court below has not committed any error in passing the impugned order dated 09.07.2015. Therefore, the instant criminal writ petition submitted by the accused petitioner is liable to be rejected.

9. Heard and considered the submissions made at the Bar and perused the material available on the record.

10. The issue with regard to whether a person can be allowed to become a witness against himself on the basis of the Narco Analysis Test or not, has already been set at rest by the Larger Bench of the Hon'ble Apex Court in the case of **Smt. Selvi** (supra), wherein it has been held that no individual should be forcibly subjected to any of the techniques for the purpose of conducting investigation in a criminal case or otherwise which would compel him/her to become a witness against himself/herself as it amounts to violation of his/her personal liberty. It has also





been held that even after the said consent is given by any person to undergo such kind of test, it cannot be admitted as an evidence against such person. Certain guidelines have also been framed by the Hon'ble Apex Court in Paras 221, 222 & 223 and the same are reproduced as under:-



"221. 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.

222. 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".

223. 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. 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."



11. This fact is not in dispute that when an application was submitted by the Investigating Officer before the concerned Magistrate, seeking permission for conducting Narco Analysis Test of the accused petitioner, he has given consent and accordingly, on the basis of his consent, the Investigating Officer has been permitted to conduct the above stated test upon the accused petitioner vide order dated 18.05.2015. The aforesaid view has been taken by the learned Magistrate on the basis of the judgment passed by the Hon'ble Apex Court in the case of **Smt. Selvi** (supra). It appears that few days thereafter, the accused petitioner realised his mistake, hence, in order to revoke his consent he filed an application on 06.07.2015. However, the said application has been rejected by the learned Magistrate not on



merits but on technical count that the consent was given by the accused petitioner himself and now he cannot be permitted to revoke his own consent and accordingly, his prayer for revocation of his consent was declined.

12. The Hon'ble Apex Court recently in the case of **Amlesh Kumar Vs. The State of Bihar** while deciding Special Leave to Petition (Criminal) No.5392/2024 on 09.06.2025, has expanded the proposition of law on the said issue, as propounded by the Hon'ble Apex Court in the case of **Smt. Selvi** (supra) by framing certain other issues and issue No.3 is relevant with regard to disposal of the present petition, which states that whether an accused can voluntarily seek Narco Analysis Test as a matter of an indefeasible right?

13. The aforesaid question has been answered by the Hon'ble Apex Court in Para 21 of the judgment passed in the case of **Amlesh Kumar** (supra), which reads as under:-

21. In view of the above exposition in *Selvi* (Supra), the third question is answered in the following terms:
The accused has a right to voluntarily undergo a narco-analysis test at an appropriate stage. We deem it appropriate to add, that the appropriate stage for such a test to be conducted is when the accused is exercising his right to lead evidence in a trial. However, there is no indefeasible right with the accused to undergo a narcoanalysis test, for upon receipt of such an application the concerned Court, must consider the totality of circumstances surrounding the matter, such as free consent, appropriate safeguards etc., authorizing a person to undergo a voluntary narco-





analysis test. We deem it appropriate to reproduce and reiterate the guidelines issued in *Selvi* (Supra) in this regard as follows:

"**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."





14. From perusal of the aforesaid judgment passed by the Hon'ble Apex Court in the case of **Amlesh Kumar** (supra), it is clear that the accused has a right to voluntarily undergo a Narco Analysis Test at an appropriate stage and this right can be exercised by the accused to lead his evidence in the trial. However, there is no indefeasible right with the accused to undergo Narco Analysis Test because upon such application received by the Court below, the Court below must consider the totality of circumstances surrounding the matter, such as free consent, appropriate safeguards etc., authorizing a person to undergo a voluntary narco-analysis test.

15. A forensic psychological investigation is not possible without the suspects' consent. After the administration of the psychological assessment, facts and evidence collection from the Investigation Officer and the forensic interview of the suspect the forensic psychology expert takes consent of the suspect. An explanation about the forensic psychological investigation technique is given to the suspect so that the suspect undergoing the recording has full information about the technique then those queries are resolved by the expert. Queries by the subject are also answered to make the subject feel relaxed before undergoing the recording. The subject has the full right to deny giving consent before or during the recording. After the subject gives consent, further psychological investigation is done.

16. Hence, it is clear that a Narco Analysis Test cannot be conducted on a suspected person like that on the petitioner against his wish and will, i.e., against his consent. Such suspect





has the full right to deny his consent either given before or during the course of recording.

17. Right against self-incrimination guaranteed under Article 20(3) of the Constitution of India protects the suspected accused from being compelled to provide testimonial evidence against himself. Any involuntary Narco Test breaches this protection by forcing the individual to speak in a drug-induced state, thereby suppressing his free will. Without free will or consent, or informed consent, any statement or information obtained from Narco Analysis is inadmissible as evidence.

18. In the present case, initially the petitioner has agreed for his Narco Analysis Test, but subsequently after few days of conducting of such test upon him, he has changed his mind and this time he is not willing to undergo the said Narco Analysis Test and that is why he has submitted an application seeking revocation of his consent before the learned Magistrate. Hence, under these circumstances, he cannot be compelled to take Narco Analysis Test. Consent once given by him, cannot be treated as irrevocable and the same can be withdrawn prior to conducting of such test. If the application seeking withdrawal of his consent for Narco Analysis Test is not allowed, then it would amount to forceful conduction of such test upon the accused petitioner against his free will and consent and if such procedure is conducted against his wish and will, it would tantamount to violation of his fundamental rights such as right to life and personal liberty as well as right to remain silent, as guaranteed to him under Articles 21





and 20(3) of the Constitution of India respectively, because the petitioner cannot be allowed to become a witness against himself.

19. With the aforesaid observations, the instant criminal writ petition stands allowed. The impugned orders dated 18.05.2015 and 09.07.2015 passed by the learned Judicial Magistrate, Chirawa, District Jhunjhunu stand quashed and set-aside.

20. Stay application as well as all pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J

Karan/30

