

CONSTITUTIONALITY OF NARCO-ANALYSIS TEST IN INDIA

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Abstract Narco - Analysis in India is not an openly permitted tool of investigation in criminal cases but its significance to extract information from accused and suspects has been acknowledged based upon different considerations. Protagonists of Narco - Analysis argue that it is useful in investigations and courts' hearings because Narco - Analysis minimizes use of traditional third degree methods in investigations. Antagonists on the other hand, consider Narco - Analysis as violative of several ethical, Constitutional and Legal norms. Courts' view points on use of Narco - Analysis techniques have also been sundry. Amid such confusions, the aim of the present study will be to examine and understand the legal and ethical considerations associated with the use of Narco - Analysis Tests in investigations. Further, the study offers suggestions with respect to effective and consensual application of Narco - Analysis in investigations. The study will be purely theoretical in nature and hence secondary data will be used to complete the study.

Index Terms: Narco-Analysis, Scientific Investigation, Criminal, Legal, Ethical, Considerations

Law should not be seen sit by limply, while those who defy it go free, and those who seek its protection lose hope.

Edmund David¹

I. Prelude

In democratic society it is mandatory for State to maintain law and order so that the human beings can live in a peaceful environment without any fear of injury to their lives or property. The State can achieve this goal only if its laws are strong enough to deal with criminals. Hence, a sound criminal judicial system is essential element of a democratic society. Keeping in view this objective the makers of the Indian Constitution inserted the word "justice" in the preamble itself. This term justice includes justice for both accused as well as victim. The Indian Criminal Justice System ensures fair trial based on the principle of natural justice. This trial can be free and fair only if the investigation process is also fair and the same is completed within a reasonable period of time. In the present world, the technologies can be helpful to bring the criminals to justice, but at the same time it shall not violate the rights of the individuals. The latest technologies can identify, compare and establish link of clues found from the site of crime etc. The scientific techniques include DNA profiling, finger or foot prints, Lie Detector Test, Narco-Analysis Test etc. These techniques are very useful but require support of system and cooperation of suspected person.

In forensic science the scientific tools for investigation used for extraction of truth are Brain Mapping Test, Lie Detector Test, Polygraph Test, P300, and Narco Analysis Test.

II. Objectives:

In this paper, the researcher aims to analyze/study the legal and scientific aspect of Narco-Analysis Test and its scope, constitutionality, implementation, implications and importance as a measure to resolve the complex criminal cases. The researcher is willing to study the origin, methods and the effect of Narco Analysis Tests on accused person and the case itself. Further the researcher needs to study different legal and constitutional provisions pertaining to Narco Tests in India and the role of judiciary in such cases.

III. Methodology:

The present study is purely doctrinal in nature. The researcher applied descriptive and analytical methods of study of the problem and concentrated on Books of reputed authors, Articles, newspapers, research papers online material, Reports of various Commissions, committee, the leading cases decided by various High Courts and Supreme Court of India, legislative enactments, debate, reviews etc. The researcher also put utmost efforts to collect material through informal sittings with eminent jurists, judges, legislators, lawyers and law teachers. The data and information so collected has been analyzed in the light of the needs of the society and the judicial interpretation given by various courts.

IV. Meaning and Origin of Narco Analysis Test

The Narco Analysis Test is a kind of a psychological test. A drug is given to a person who is not disclosing some information and the stage of this person is monitored over the period of the test. This person develops a dissociative state during the test. The original personality of the person severs the association with his consciousness. In this test, his inhibition fades, because, in a stage of consciousness, he can suppress what he does not wish to release, but in the dissociative state, the patient effortlessly expresses the truth or suppressed information of his sub-conscious mind.² According to Merriam Webster's Dictionary the term Narco Analysis means "psychotherapy that is performed under sedation for the recovery of repressed memories together with the emotion accompanying the experience and that is designed to facilitate an acceptable integration of the experience in the patient's personality"³

The term "Narco Analysis" derived from a Greek word "narke" which means "anesthesia" or "torpor". This is used to describe a diagnostic and psychothepeutic technique that uses psychotropic drug, particularly barbiturates, to induce a stupor in which mental elements with strong associated affects come to the surface, where they can be exploited by the therapist.⁴

This Narco Analysis Test was used as an instrument for investigation in the year 1922 when Robert House used it on two prisoners in Dallas Texas whose guilt was later on confirmed.⁵ The American armed forces and Intelligence agencies continued to conduct the Narco Analysis Test during and after the World War years.⁶ In India, although the Narco Analysis Test was introduced in the year 1936 but it was first used in 2002 in the Godhra Carnage Case⁷ It was also in limelight in Arun Bhatt Kidnapping case in Gujarat and the famous Telgi Stamp Paper Case of 2003.

V. Procedure for Narco Analysis Test

The Narco Analysis Test is one of the major tools of investigation to help the police. It is also known as “truth serum test. The truth serum is actually drugs or chemicals which had been used for the purpose of treatment of patients. It had also been used by the psychiatrists for the reformation of mentally disturbed patients. Thereafter, these drugs or chemicals were used in the criminal justice system by the investigating agencies for the extraction of truth. The drugs used for these purposes are Seconal, Hyocine (Scopolamine), Sodium pentothal, Sodium Amytal and Phenobarbital.⁸ The experts commonly use Sodium Pentothal or Sodium Amytal. The dose of the drugs depends on the subject's sex, age, health and physical condition. A wrong dose can result in a person going into a coma, or it may also cause death.⁹

The Apex Court While dealing with this Narco Analysis Technique explained it as “This test involves the intravenous administration of a drug that causes the subject to enter into a hypnotic trance and become less inhibited. The drug-induced hypnotic stage is useful for investigators since it makes the subject more likely to divulge information. The drug used for this test is sodium pentothal, higher quantities of which are routinely used for inducing general anesthesia in surgical procedures. This drug is also used in the field of psychiatry since the revelations enable the diagnosis of mental disorders.¹⁰

The test is conducted by a group of minimum five persons i.e. one Anesthetist, one Physician and one Clinical or Forensic Psychologist, and One Writer including expert. Additionally a videographer is required to create video-recordings of the test for subsequent scrutiny. In India this technique has been used either inside forensic science laboratories or in the operation theatres of recognized hospitals. A fitness certificate is necessary before conducting the test. The psychiatrist and the General Physician perform the preliminary function of gauging whether the subject is mentally and physically perfect to undergo the test. Whereas, the anesthesiologist, is entrusted with the task to supervise the intravenous administration of the drug. The task of asking question is handed over to the forensic psychologist. Since the tests are meant to aid investigation efforts, the forensic psychologist needs to closely co-operate with the investigators in order to frame appropriate questions.

The procedure of Narco Test is completed in four stages. The first stage is Pre-test Interview. In this stage the subject is given all the information of test and his consent is obtained in writing. Thereafter a medical team conducts complete examination of the subject. In second stage i.e. Pre-Narcotic State, drugs is injected till the subject appears relaxed and in a state of good contact. The third stage is Semi Narcotic State. In this stage the forensic experts conduct the interview of the subject to extract the truth. The last stage is Post Test Interview. In this stage the subject is free from interview and is permitted to take complete rest and his body is examined by the physician and they allow him to know the fact revealed during the interview.

VI. Reports and Recommendations of Various Commissions and Committees:

In each and every democratic society it is mandatory that the criminals should be penalized as soon as possible. It stabilizes the society and creates faith in criminal justice system of the country. In heinous crimes the public expectations are so high. Therefore in cases where there is no clue or the investigating agencies are in dark, the scientific tools to investigate become important. But these scientific tools should be misused. Keeping in view this objective, in India various committees were constitute and they gave various suggestions and recommendations.

Padmanabhaiah Committee on Police Reforms

The Government of India set up a Committee in January 2000 under the chairmanship of Mr. K. Padmanabhaiah, to suggest the structural changes in the police.¹¹ The Committee submitted its report in October 2000 and recommended various various steps and functions of the police system. Among other recommendations it suggested that every police station should be equipped with ‘investigation kits’ and every sub-division should have a mobile forensic science laboratory. To deal with cyber crime effectively, police capabilities in various areas need to be developed. Capabilities of some police institutions, like the National Police Academy in the field of training, CBI in investigation, Intelligence Bureau in cyber surveillance and the National Crime Records Bureau in cyber technology/forensics should be enhanced.

The Committee was of the view that there is need for comprehensive reforms in criminal justice administration. Public would soon lose faith in the criminal justice system unless the other components of the systems are also thoroughly overhauled simultaneously.

Malimath Committee Report:

The Government of India, Ministry of Home Affairs constituted a committee on 24th November, 2000 under the Chairmanship of Justice V. S. Malimath, a former Chief Justice of Karnataka and Kerala High Court to consider measures for revamping the Indian Criminal Justice System.¹² The committee submitted it's report in the month of April 2003 containing 158 recommendations and suggestions to effect major administrative and legislative changes. The Committee had a clear opinion that the existing Criminal Justice System in India “weighed in favour of the accused and did not adequately focus on justice to the victims of crime.” The major recommendations of this committee were pertaining to protection of accused, increasing the number of judges as per the population of country, reducing the vacations in courts, rights of accused and hiving off the investigation wing from Law and Order and giving more powers to police for investigation. It concentrated a lot on right of victim. The committee pointed out the inadequacy of logistical and forensic back up support. It recommended that during investigation the assistance of forensic experts in necessary, therefore the facilities should be developed for imparting training in modern disciplines such as Forensic Accounting, Information Technology, Cyber Crime, Economic and Organized Crimes etc. It recommended that the Police Manuals and the Standing Orders of States shall be amended so that the present level i.e. 5 to 6 percent regarding use of forensic science can be increased. It recommended that since India was having only 23 Forensic Science laboratories in comparison to USA's 320, the number of forensic laboratories shall be increased to meet the need of the investigating agencies. Besides these recommendations the Committee emphasized that a polygraph machine for lie detector test should be provided in each district. The regular use will obviate the need for extra legal methods of interrogation.¹³

Despite valuable suggestions the recommendations of this committee were not implemented.

Report of Law Commission of India

In a Civil Writ Petition pending before the Hon'ble Supreme Court the Law Commission of India submitted it's 239 Report pertaining to investigation and trial of criminal cases against influential persons.¹⁴ The report was submitted in March, 2012. This Commission emphasized on the use of modern scientific techniques in investigation of criminal cases. In this report the Commission while quoting the principal causes of low rate of conviction observed that unscientific investigation by police is one of the major causes of low rate of conviction. The Commission recommended that at least, all District Headquarters should be provided with mobile forensic vans which should accompany the homicide teams to the place of occurrence. This van should be equipped with latest equipments such as finger print comparison, blood test etc.

Report of National Human Rights Commission

The National Human Rights Commission which is playing significant role for the protection of human rights in India framed its guidelines for Polygraph Test (Lie detector Test).¹⁵ These guidelines are applicable to Narco Tests as well because of the direction of the Apex Court in *Selvi vs. State of Karnataka*¹⁶. The Commission under the Chairmanship of Mr. Justice J. S. Verma, after taking into consideration all facts and circumstances of law and judicial pronouncements, laid down the following guidelines:

1. Lie detector test shall never be conducted without consent of subject. He should be given option to say yes or no to such test.
2. If he chooses to undergo the test then he should be given access to an Advocate.
3. His consent shall be recorded before a Judicial Magistrate.
4. Before recording the consent he has a right to be represented by an Advocate.
5. It should be made clear to him that the statement given during test shall be treated as a statement given to police.
6. The test shall be conducted by some independent agency (such as hospital) in presence of advocate.
7. The record of the medical and factual narration shall be maintained.

VII. Narco Analysis Test In Indian Criminal Justice System

The Indian Criminal justice system also provides for Narco Analysis Test. There are plenty of provisions under the Constitution or other statutes that deal with the test. Under the Constitution of India any Narco Test conducted without the consent amounts to encroachment of an individual's fundamental right, liberties and freedom. Any such test conducted without the consent of the accused first of all violates Article 20 (3). This provision of the Constitution guarantees protection to each and every person against self-incrimination.¹⁷ This right has also been protected by the Code of Criminal Procedure which says that every person "is bound to answer truthfully all questions, put to him by (a police) officer, other than questions the answers to which would have a tendency to expose that person to a criminal charge, penalty or forfeiture".¹⁸ Hence the accused person has a right to remain silent as well. The Apex Court has held that during the course of investigation no person can extract statements from the accused because the accused has a right to remain silent by virtue of Article 20(3) of the Constitution and Section 161(2) of the Code of Criminal Procedure.¹⁹

The Article 21²⁰ of the Constitution also confers "right against cruel, inhumane or dragging treatment."²¹ The Article 22 talk about the free and fair trial and the trial can only be free if the accused has not been forced to undergo Narco- Analysis Test at the stage of investigation.

Examinations of Scientific Tests are within the ambit of explanation (a) of Section 53, 53-A, 54 of Code of Criminal Procedure, 1973. But the Law under these provisions is very clear that before conducting the test a prior consent is necessary.²² The statement of accused given during test is also subject to the provisions of Evidence Act. The Section 27 of the Indian Evidence Act, 1872 provides that only that part of the statement of the accused can be produced before the court of law that leads to discovery of fact. Besides these provisions the Citizen Charter of Forensic Science Laboratory provides the procedure for conducting Narco Analysis Test.²³ The statement made by a person during investigation is a subject matter judicial scrutiny. The relevance, importance or value of such statement depends upon various provisions of Constitution or any other statute and the judgments of various High Courts and the Apex Court.

In a significant judgment delivered by a Bench of 11 Judges of the Supreme Court in *State of Bombay v. Kathi Kalu Oghad*²⁴ the major question before the Apex Court was whether the methods of gathering scientific evidence such as taking fingerprint samples, handwriting samples, DNA collection etc. are constitutionally valid methods. held that no person accused of an offence can be compelled to make a statement which is likely to be incriminative of himself. But the Compulsion in context must mean what in law is called "duress" which includes threatening, injury, beating or unlawful imprisonment etc. Therefore in case the accused makes a confession without any inducement, threat or promise etc the Art 20 (3) does not apply even if he was in custody. The Court specifically said that if a person is in the custody of police this does not mean that every statement given by him is a result of compulsion. "The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.²⁵ Such statement/information given to police officer leading to discovery of a fact which may or may not be incriminatory has been made admissible in Evidence by Section 27 of the Evidence Act. If the self incriminatory statement is given by accused person without any threat, that will not be hit by the provisions of Article 20 (3) of the Constitution for the reason that there has been no compulsion. Thus the provisions of Section 27 of the Evidence Act are not within the prohibition aforesaid, unless compulsion had been used in obtaining the information.²⁶

The privilege conferred by Article 20 (3) guarantees the right to individual's privacy²⁷ observance of civilized standards during the enforcement of criminal justice. This Article basically establishes *Nemo tenetur seipsum accusare*. It's a Latin term which means "no one including accused person is bound to incriminate or accuse himself." The court always rejects the confessional statements of the accused if there is any kind of physical, moral or mental compulsion. In such a scenario the question arises whether it is possible to conduct efficient investigation? If all rights are possessed by accused then how the truth can be extracted? Moreover the criminals are using scientific methods for commission of crime. In such a situation the investigation agencies shall also be permitted to use scientific methods to extract the truth.

In a very famous case of our country known as *Nithari case*²⁸ the Bombay High Court held that during investigation the police officials can use scientific methods to find out the offender and collect evidence necessary for investigation. The Court upheld the legality the use of Brain Mapping or P300 and Narco-Analysis test. In this case the main accused Surender Koli was brought to Forensic Science Laboratory in Gandhinagar in the month of January 2007 for the Narco – analysis Test. To ascertain the veracity of statements made during custodial interrogation, Polygraph Test had also been conducted on Moninder Singh Pandher and his servant Surender Koli who were accused of serial killing of several children and women in Nithari. During the Tests various confessional statements were made by the accused under the effect of the drug. He disclosed the names of the females he had murdered and revealed his urge to rape them after killing them. The Court while upholding the legality of the evidence procured under the effect of Narco- Analysis Test said that as the crime going hi-tech and the criminals becoming professionals, the use of Narco- Analysis test is essential, as the conscious mind does not speak out the truth, unconscious may reveal vital information about a case.

The importance of use of scientific method was explained by the Madras High Court in *Dinesh Dalmia v. State*²⁹. In this case the Court held that "if accused has not allegedly come forward with the truth, scientific tests are resorted to by the investigation agency. Such a course does not amount to testimonial compulsion. When there is hue and cry from the public and the human rights activists that the investigating sleuths adopt third degree methods to extract information from the accused it is high time the investigating agencies took recourse to scientific method of

investigation”.³⁰ Moreover the Court further held that the scientific tests such as narco analysis, polygraph, Brain Mapping etc conducted on accused to bring out the truth would not amount to breaking his silence by force.

In the case of *Rojo George vs. Deputy Superintendent of Police*³¹ the petitioner Rojo George was a suspect in a criminal case wherein a boy named Rahul of seven years of age was missing from Alappuzha. The boy was found playing alongwith some other children in a play ground. In between he went to drink water from a nearby water tap. But, thereafter he did not come back. An FIR was lodged and the investigation was conducted by local police station, but they could not find any clue. Thereafter the investigation was handed over to Crime Branch and again there was no clue of the missing boy. Finally the matter was handed over to Central Bureau of Investigation by the High Court. During this investigation the petitioner filed a writ petition before the same Court and the petitioner alleged that the Central Bureau of Investigation is harassing the petitioner and compelling him to undergo Narco- Analysis Test (Truth Serum Test) at Forensic Science Laboratory at Bangalore. It has been averred by him that he is completely co-operating with the authorities during investigation. He also alleged that he was subjected to polygraph test as well as brain mapping examination (P-300 test) at the same Forensic Science Laboratory at Bangalore. The petitioner alleged that the Narco- Analysis Test is one of the highly complicated test, conducted after administering sodium pentathol, which is an ultra short acting barbiturate that drug depresses the central nervous system, slows heart rate and lowers blood pressure. The petitioner said that it is very difficult to determine the correct dosage of the drug to be administered on a subject because it varies according to the age, sex, physical constitution and also mental attitude and will power. Moreover, a wrong dose can send a subject into coma or even it may cause death. It is further averred that the petitioner apprehends that if he is subjected to Narco Analysis Test at this young age of 24 years, it will have far reaching consequences on physical and mental health.

The Court after taking into account the contention of both the parties, allowed the Narco Analysis Test. The Court said that since the offenders used very sophisticated and modern technique for commission of crime therefore in this matter the conventional method of investigation will be useless. That is why, the scientific tests like Polygraph, Brain Mapping, Narco Analysis, etc. are now used in the investigation of criminal case. When such tests are conducted under the strict supervision of experts, it can never be said that there is any violation of the fundamental rights guaranteed to a citizen of India.

Similarly in *Santokben Sharmabhai Jadeja vs. State of Gujarat*³² the petitioner challenged the orders passed by the learned Additional Sessions Judge and Presiding Officer, 4th Fast Track Court, Junagadh passed in Criminal Revision, confirming the order passed by the learned JMFC, Junagadh granting Narco - Analysis Test and Brain Mapping Test of the petitioner. In this matter the Court allowed the Narco-Analysis Test on the plea that there is no way left to find out the truth and the prosecution is absolutely in dark. Moreover, the Court held that “the question of consent at the stage of conducting/performing the aforesaid two tests is not required to be considered”. The Court while giving the reason for the same held that “conducting / performing of the aforesaid tests is a part of investigation and for the investigation by Investigating Agency the consent of the accused is not required, otherwise the Investigating Agency will not be in a position to further investigate the case, if the consent of the accused is required. At this stage it is also required to be noted that the accused has not allegedly come forward with the truth and therefore, scientific tests are resorted to by the Investigating Agency.”³³ Moreover, the Court held that “by conducting / performing the Narco Test itself would not tantamount to compulsive testimony or testimonial compulsion and the same would not amount to violation of Article 20(3)³⁴ of the Constitution of India.”³⁵

In a landmark judgment in *Selvi vs. State of Karnatka*³⁶ the three judges Bench of the Apex Court delivered a historic verdict after examining in details the involuntary administration of Narco Analysis, Polygraph and Brain- Mapping Tests. In this matter the appellants were charged with murder. The brief facts of the case are that Kavita Murugesan, the daughter of Selvi Murugesan, a Tamil Nadu sitting filed a complaint against her parents and their friend Govindraj for killing her husband Shiv Kumar. It was basically a case of honour-killing because her marriage was inter-caste. As per the statement of the complainant, her husband was kidnapped in a Maruti van Number KA 04- MA3167, by four persons in front of L.L.T College, around 8 p.m. on 10-04-2004, when she was returning alongwith her husband after having eatables in a bakery situated there. Immediately thereafter she lodged a complaint regarding this kidnapping of her husband Shiv Kumar. Unfortunately, on the very next day the dead body of Shiv Kumar was found. His body was identified by his driving licence because it was difficult to recognize the face as his head was smashed with some bolder. There was no evidence of involvement of her parents and their friend. Moreover the accused persons were not cooperating during the polygraph test they tried to defeat the test. These techniques of the accused persons clarified their involvement in the commission of crime. Therefore, the police authorities sought permission for conducting Narco-Analysis from the magistrate against the order of which accused persons filed appeal before the Supreme Court.

After taking into consideration all facts and circumstances of the case it was held by the Apex Court that no person shall be forced to undergo any Narco- Analysis/Polygraph test etc. whether in context of criminal investigation or otherwise. Such act amounts to cruel, inhuman or degrading treatment and violation of liberty guaranteed under Article 20 and 21 of the Constitution of India and Section 161 (2) of the Criminal Procedure Code. This protection is available even at the stage of investigation in criminal cases. The protection becomes available after a person has been formally accused of committing an offence. Moreover the Court further held that the result of the tests cannot be admitted as evidence even if there was a consent behind the test because the at the time of making the statement the subject is not fully conscious.

While dealing conclusively on the question of exalted status of the “right to protection against self incrimination” in the Constitution of India the Apex Court held that “we must examine the ‘right against self incrimination’ in respect of its relationship with the multiple dimensions of ‘personal liberty’ under Article 21, which include guarantees such as the ‘right to fair trial’ and ‘substantive due process’. It must also be emphasized that Article 20 and 21 have a non-derogable status within part third of our Constitution (Forty-Fourth Amendment) Act, 1978 mandate that the right to move any court for the enforcement of these rights cannot be suspended even during the operation of a proclamation of emergency.”³⁷

The Court also upheld the right to privacy of the accused person. The court held that In conceptualizing the right to privacy we must highlight the distinction between privacy in physical sense and the privacy of one’s mental processes. In the Indian Criminal justice system the major stress has been given only on the protection of body and physical space against the intrusion of State’s action. But the right to privacy also extends to mental protection as well. The Court held that “it is our considered opinion that subjecting a person to the impugned techniques in an involuntary manner violates the prescribed boundaries of privacy. Forcible interference with a person’s mental process is not provided for under any statute and it most certainly comes into conflict with the ‘right against self incrimination’.

The Court further held that as per Section 25 of the Evidence Act “any confessional statement made before the police is not admissible”. For a statement to be admissible it is necessary that the same must cross examined and judicially examined. But still the court left one opinion that in such type of cases if there is discovery of any fact under Section 27 of the Evidence Act,³⁸ then it is admissible. The Section “permits the derivative use of custodial statements. However, in circumstances where it is shown that the person was indeed compelled to make statements while in custody, relying on such testimony as well as its derivative use will offend Article 20 (3).³⁹

The Apex Court also dealt with the question of inculpatory and exculpatory evidence collected during impugned test. The court said that it was stated that “exclusionary rule in evidence law is applicable to statements that are inculpatory in nature. Based on this premise, it was observed that at the time of administering the impugned tests, it cannot be ascertained whether the resulting revelations or inferences or inferences will prove to be inculpatory or exculpatory in due course. Taking this reasoning forward, it was held that the compulsory administration of the impugned tests should be permissible since the same does not necessarily lead to extraction of inculpatory evidence. We are unable to agree with this reasoning.”⁴⁰

In Pappu Ram vs. State of Rajasthan,⁴¹ the Rajasthan High Court followed the judgment delivered in Selvi Case⁴² and held that no person shall be forcibly subjected to any Brain Mapping, Polygraph Test, Narco- Analysis Test etc., whether in context of some investigation in criminal case or otherwise. The Hon’ble Mr. Justice Vijay Bishnoi specifically said that such forceful activity amounts to an unwarranted intrusion into personal liberty. But the Court left the room for voluntarily administration of these techniques in any matter provided that the safeguards are followed properly. The Court made it clear that even if the subject volunteers to the test but the results of the tests are not admissible because the subject is not fully conscious during the time he makes the statement under the influence of drug administered for the test.⁴³

In a latest judgment in State Rep. By The Inspector of Police vs. M. Murugesan,⁴⁴ the Apex Court while quoting the judgment passed in Sangitaben Shaileshbhai Datanta v. State of Gujarat⁴⁵ held that direction of the High Court to the accused persons and their relatives to undergo scientific test viz Lie Detector, Brain Mapping and Narco- Analysis Tests, is not only in contravention to the first principles of criminal law jurisprudence but also violates statutory requirements.⁴⁶

VIII. Advantages and Disadvantages of Narco Analysis Under Indian Criminal Justice System:

On the basis of the judicial pronouncements, Statutory and Constitutional Provisions following advantages and disadvantages can be enumerated.

Advantages:

1. In blind cases where there is absolute darkness and there is no clue the only way to know the truth is the Narco-Analysis Test. It can be proved as one of the major tool for investigations.
2. In the present scenario where the criminals are using the latest techniques to commit crime, it is necessary to equip the investigation agencies with latest scientific techniques to investigate the matters. It will help the agencies to crack the matters quickly and effectively
3. The crime rate in India is growing rapidly therefore it is necessary to strengthen agencies with scientific techniques so that they can easily and effectively catch up with criminals. It can be possible by giving rich technology to the investigation agencies and the Narco-Analysis Test is one of them
4. The scientific technology such as Narco Analysis Test is one of the best option that can replace the traditional method of investigation i.e. custodial violence.
5. The process is not harmful to the subject as the test is conducted under the supervision of the experts.
6. There is less possibility of telling a lie during the test especially when the questions are prepared by specialized persons.

Disadvantages:

1. The Narco Analysis Test may be dangerous to the mental and physical condition of the subject. A wrong dose can result in a person going into a coma, or it may also cause death.
2. The test may be dreadful to a subject who is already a drug addict. Moreover, the process is not as much successful as needed for collecting evidence.
3. The statement given under such circumstances is not admissible because the subject is not conscious about the statement he made.
4. The statement so collected violates the Constitutional and statutory provisions.

IX. Conclusion

Crime free society is the dream of every civilized nation. To achieve this goal it is necessary that the society shall change its approach in consonance with the changing crime pattern. The criminals are using latest scientific techniques to avoid punishment. Therefore, the investigating agencies shall also replace the traditional investigating methods as per the criminal behavior and it is possible only if scientific technology is used. In the present world the old technique of torture in custody is a blot on police hence all nations are making efforts to eradicate this practice. The scientific technique such as Narco-Analysis Test can easily replace this third degree torture. But at the same time it is mandatory to refrain from violating any rights of the accused as well. In India, the Apex Court had made it clear that such test conducted without the consent of the accused is unconstitutional. Moreover, the guidelines have been framed by various Committees and the Commissions for the purpose of use of these techniques so that the truth can be extracted without violating any right of the accused.

It is the duty of State to protect accused person from unnecessary harassment but at the same time it is also the duty of the State protect the interest of victim as well. If an offence is committed the offender should be penalized accordingly. It is therefore necessary to maintain a balance between the interest of accused and the victim. Therefore, the judiciary has consented for the conditional use of these tests for extracting truth. These tests can play a vital role in clueless cases. Hence its use in the criminal justice system should be a welcome step in a country like India where crime rate is very high but the conviction rate is less.

X. Suggestions

On the basis of the study the researcher is of the opinion that following are the main suggestions :

1. There shall be proper guidelines for the use of each and every scientific tests such Narco- Analysis test, Brain mapping test, polygraph tests etc.

2. Amendments shall be incorporated in the Criminal Procedure Code, 1973, Evidence act, 1872 and the Constitution of India to incorporate the use of such tests.
3. Each and every State shall have sufficient number of fully equipped Forensic laboratories and experts to meet the need of the State.
4. There shall also be provision for mobile forensic laboratory in each district of the State.
5. The criminal justice system that necessarily includes prosecution, Advocates and the courts shall have a great coordination so that there shall be no scope for criminals to escape and the innocent persons shall not be harassed.

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12. Committee on Reforms on Criminal Justice System, Government of India, Ministry of Home Affairs, Vol.1.
13. Id; Para 7.16.4(14).
14. Government of India, Law Commission of India, Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities, Report No.239, Submitted to the Supreme Court of India in Virender Kumar Ohri v. Union of India, WP (C) NO. 341/2004.
15. National Human Rights Commission, Law Division III, Guidelines Relating to Polygraph Test [Lie Detector test], No. 117/8/97-98 dated 11 January, 2000.
16. Supra Note 10; at p. 2061. The Apex Court while dealing with the National Human Rights Commission's Guidelines for the Administration of Polygraph Test (Lie Detector test) held that "These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narco- Analysis technique' and the 'Brain Electrical Activation Profile' test."
17. Constitution of India, Article 20(3) "No person accused of any offence shall be compelled to be a witness against himself."
18. Code of Criminal Procedure 1973, (Act. No. 2 of 1974), Section 161.
19. Nandini Sathpathy vs. P. L. Dani, AIR 1978 SC 1025: 1978 SCC (2) 424.
20. Supra note 17; Article 21, "No person shall be deprived of his life and personal liberty except according to procedure established by law".
21. Selvi vs. State of Karnataka, AIR 2010 SC 1974: JT 2010 (5) SC 11.
22. Ibid.
23. Citizen Charter of Forensic Science Laboratory, Central Bureau of Investigation, Government of India, New Delhi, available at: http://www.cbi.gov.in/cfsl/cfsl_cc_documents.pdf, Visited on 06-07-2020.
24. State of Bombay vs. Kathi Kalu Oghad, AIR 1961 SC 1808.
25. Id; at p. 1816.
26. Ibid.
27. The right to privacy is also guaranteed by Article 21 of the Constitution of India.
28. Ramachandran Ram Reddy vs. State of Maharashtra, 2004 All MR (Cr) 1704.
29. 2006 Cri LJ 2401 (Mad).
30. Id; at p. 2403.
31. (2006) 2 KLT 197.
32. 2008 Cri LJ 68.
33. Id; at p. 84.
34. Supra Note 17.
35. Supra Note 32; at p. 83
36. Supra Note 21.
37. Id; at p. 2009.
38. Indian Evidence Act, 1872 (Act No.1 of 1872), Section 27.
39. Supra Note 21; at p 2023
40. Ibid; at p 2024.
41. 2017 Raj HC 859.
42. Supra Note 10.
43. Supra Note 41.
44. AIR 2020 SC 514.
45. 2018 SCC Online SC 2300.
46. Supra Note 44.