



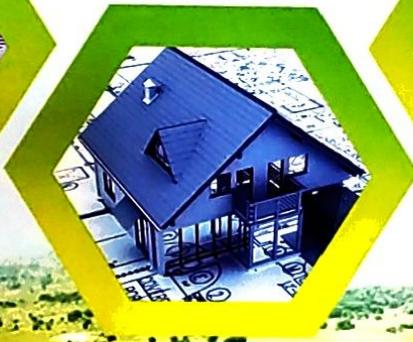
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15. Importance of Narco Analysis Test in Investigation and its Admissibility

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Investigation plays a very pivotal role in criminal cases only it can bring accused under the prison. Several methods based on torture are being used by the investigating agencies to elicit information from the accused and the suspects. Development and advancement of science and technology brought the sophisticated methods of lie detection which do away with the use of third degree torture by investigating officers. The scientific tools of interrogation such as the Polygraph test, the P300 (BEAP) and the Narcoanalysis are the main three tests that have recently been developed for extracting confessions

In the annals of police investigation, physical coercion has at times been substituted for painstaking and time consuming inquiry in the belief that direct methods produce quick results but they often raise doubts regarding basic human rights and constitutional validity.

Narco analysis test is conducted to obtain information from an uncooperative source. The test is usually conducted on criminals. The test lowers the person's inhibitions, interfering with his nervous system and thus making it difficult to lie.¹⁴ The term Narco-Analysis is derived from concept 'narke' which means 'anesthesia' or 'torpor'. This is the Greek word and is used to describe a diagnostic and psychotherapeutic technique that uses psychotropic drugs, 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 therapist¹⁵.

How it is conducted

The narco-analysis test requires the mixture of three grams of Sodium Pentothal or Sodium Amytal dissolved in 3000 ml of distilled water to lower a subject's inhibitions, by interfering with his nervous system at the molecular level. In this state, it becomes difficult,

¹⁴ <http://www.merineews.com/article/is-narco-analysis-test-reliable/131957.shtml>

¹⁵ <https://www.lawteacher.net/free-law-essays/human-rights/narco-analysis-test-with-emphasis-on-constitution-law-essays.php>

though not impossible for him to lie. A person may lie by using his imagination. In such semi-conscious sleep-like state, efforts are made to obtain truth about the crime. He may also divulge all his fantasies, personal wishes, impulses, instinctual drive, illusions, delusions, conflicts, misinterpretations, etc. The main drawback of this technique is that some persons are able to retain their ability to deceive even in the hypnotic state, while others can become extremely suggestible to questioning. The drugs used do not guarantee that the subject will speak only the truth. The statements made in a hypnotic state are not voluntary and are also not in a clear state of mind; hence these have not been admitted as evidence in the court of law.¹⁶

Other associated truth finding tests

Like Narco test there are also other two types of tests, which are popularly used on the accused for extraction of truth, these are

1. Polygraph or lie detection test

It is an examination based on an assumption that there is strong interaction between the mind and body and is conducted by various sensors of a polygraph machine, by attaching it to the body of the accused. In the machine the blood pressure, pulse rate and respiration and muscle movements are recorded. It is conducted in three phases - a pretest interview, chart recording and diagnosis. It was Keeler, who further refined the polygraph machine by adding a Psychogalvanometer to record the electrical resistance of the skin¹⁷.

2. P300 or the brain mapping test¹⁸:

Brain mapping test was developed and patented in 1995 by American neurologist Lawrence A. Farwell. An expert in brain wave science, he called his technique 'brain-wave fingerprinting or brain mapping test'¹⁹. In the brain wave fingerprinting the accused is interrogated to find out whether the person is concealing any information. The sensors attached to the person's head monitor the electrical activity in the brain and register P300 waves, which are generated only if the subject has connection with the stimulus. The subject is not asked any

¹⁶ Naples M, Hackett T. *The Amytal interview: history and current uses. Psychosomatic. 1978;19:98-105*

¹⁷ <http://www.merineews.com/article/is-narco-analysis-test-reliable/131957.shtml>

¹⁸ In 1962 The origin of Brain Mapping Research was first started in Ohio, and conducted at the Columbus State Hospital. More than 500 subjects were scanned using the US patented Hyper-frequency Electroencephalograph (Hyfreeg) brain scanner for the Brain Mapping Research

¹⁹ Dr Farwell found that a MERMER (Memory and Encoding Related Multifaceted Electro Encephalographic Response) is initiated in the accused when the brain recognises information pertaining to the crime.

questions here. The accuracy rate of this test is 99.99 per cent. In fact, brain mapping is one of the most effective ingredients of forensic sciences these days²⁰

Article 20(3) of Indian Constitution

The involuntary administration of deception detection test for the purpose of improving investigation efforts in criminal cases is always questioned for violation of fundamental rights such as Right against self-incrimination enumerated in Article 20(3) of the Constitution, which states "that no person accused of an offence shall be compelled to be a witness against himself", and Article 21²¹ Right to life and personal liberty which has been judicially expanded to include a 'right against cruel, inhuman or degrading treatment'. It also raises serious concerns related to the professional ethics of medical personnel involved in the administration of these techniques and violation of human rights of an individual. Concerns regarding human rights violations in conducting these tests were raised long back and the National Human Rights Commission had published Guidelines in 2000 for the Administration of Polygraph tests^{22,23}

Protection Against Self Incrimination

Clause (3) of Article 20 of the Indian Constitution provides that "No person accused of any offence shall be compelled to be a witness against himself". This clause is based on the Maxim 'nemoteneturprodereaccusareseipsum' which means no man can be compelled to accusehim. The clause embodies the general principle of English and American jurisprudence,

²⁰ <http://www.rediff.com/news/2006/jul/19george.htm>

²¹ Article 21 of the Indian Constitution states that 'No person shall be deprived of his life or personal liberty except according to procedure established by law'

²² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3171915/>

²³ The Commission, after bestowing its careful consideration on this matter of great importance, lays down the following guidelines relating to the administration of Lie Detector Tests and also for narco analysis:

(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 in an independent agency (such as a hospital) and conducted in the presence of a lawyer.

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

according to which no person would be compelled to give testimony which might expose him to prosecution for a crime²⁴. The characteristic features of Common Law criminal jurisprudence are that an accused must be presumed innocent till the contrary is proved; it is the duty of prosecution to establish the guilt and that the accused need not make any admission or statement against him of his own free will.

The protection under Article 20(3) is available only if the following ingredients are present –

1. It is a protection available to a person accused of an offence
2. It is a protection against compulsion to be a witness; and
3. It is a protection against such compulsion as resulting in his giving evidence against himself.

The privilege under clause (3) is available only to an accused i.e. a person against whom a formal accusation relating of an offence has been made which in the normal course may result in the prosecution. A person against whom a first information report has been recorded by the police and investigation has been ordered by the Magistrate can claim the benefit of the protection. It is only on the making of such formal accusation that clause (3) become operative covering the person with its protective umbrella against testimonial compulsion²⁵. It follows that a person cannot claim the protection if at the time he made the statement, he was not an accused but becomes an accused thereafter²⁶. The protection is available not only in respect of evidence given in a trial before Court but also at previous stage if accusation has been made and the same resulted in prosecution.

Validity of Narco analysis by Supreme Court

The issue of involuntary administration of certain scientific techniques is violative Article 20(3) or not was brought to the Supreme Court in the case of Selvi v. State of Karnataka²⁷. In this case the accused challenged the validity of certain scientific techniques

²⁴ Prof. Narendra Kumar, *Constitutional Law of India, Eighth Edition, 2012, Allahabad Law Agency, page no. 298*

²⁵ *M.P. Sharma v/s Satish Chandra, AIR 1954, SC 300*

²⁶ *State of Bombay v/s Kathikalu Oghad, AIR 1961, SC 1808*

²⁷ *AIR 2010 SC 1974*

8. Conducting DNA profiling is not a testimonial act, and hence protection cannot be granted under Article 20(3);
9. That acts such as compulsory obtaining 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;
10. That subjecting a person to polygraph test or narco-analysis test without his consent amounts to forcible interference with a person's mental processes and hence violates the right to privacy for which protection can be sought under Article 20(3);
11. That court cannot permit involuntary administration of narco-tests, unless it is necessary under public interest.
12. Guidelines for these tests are same as laid down by National Human Rights Commission in the year 2000 (mentioned above²⁹)

Conclusion

The Legal System should imbibe developments and advances that take place in science as long as they do not violate fundamental legal principles and are for the good of the society³⁰. However, in this age of ever increasing crime rate, such tests often render a lot of help to the investigation agencies and hence, it is high time to blend Article 20 (3) with the Narco Analysis. Advances in forensics are giving us an unprecedented ability to solve cases and exposing mistakes in some investigations

Under the law, an accused cannot be tortured to make a statement or a confession and no duress can be exercised in order to obtain some information out of him, in such a case the statement would be void and the privileges under Article 20(3) would be applicable. Narco-analysis tests, polygraph analysis etc. which refer to involuntary administration of mental processes, are considered violative of Article 20(3) and can only be done with the consent of the accused as it disrupts the right to privacy. But they provide an effective tool to furnish evidence which help in speedy disposal of cases.

In India, the test of Narcoanalysis is being conducted since 2000 by The Bangalore Forensic Sciences Laboratory but was firstly used in 2002, when three months after the God!

²⁹ *Supra* 11

³⁰ <http://www.merineews.com/article/is-narco-analysis-test-reliable/131957.shtml>

carnage in Gujarat, and the subsequent massacre of Muslims, seven persons accused of burning the train were brought to the Shree Sayaji General (SSG) Hospital in Vadodara for narco-analysis. During the course of the stamp paper investigations, at least five accused, including Abdul Karim Telgi and Mohammed Abdul Waheed Quadri, had been made to undergo narco-analysis. The suspects of infamous Nithari case have also been injected with the truth drug at Gandhinagar hospital. The most recent use of narco analysis was in the case of Abu Salem in which he reportedly revealed many missing links of various cases he has been involved in, The Arushi Murder Case in May 2008 and the Malegaon Bomb Blast Case³¹.

In most of these cases, the revelations made have led to the discovery of incriminating information favoring probative truth and recoveries. Thus, Narco Analysis is proving to be a useful tool in the field of criminal investigation. Crime is to be eliminated from the society and it has the right to be protected against the criminal, and all of society's rights are manifestly superior to those of the criminal. There can be no excuse that a suspect is either innocent or guilty, and no one knows the truth better than does the suspect himself. It is therefore necessary to adopt balanced approach towards the individual liberty and social protection through due process.