

NARCOANALYSIS TEST:- CRIMINAL INVESTIGATION AND CONSTITUTIONAL IMPERATIVES

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Introduction:-

Narco Analysis, Polygraph Examination and Brain Mapping tests are frequently used to obtain information from a person for the purpose of improving investigation especially in criminal cases. However obtaining the information by such techniques raises serious questions about the desirability of efficient investigation and the preservation of individual liberties. Generally the objections are raised when such tests are conducted on the accused, suspects or witnesses without their consent. It raised the question about the meaning and scope of Fundamental Rights which are available to all citizens. These are protective scope of the rights against self-incrimination under article 20(3) and Right to life and personal liberty under Article 21 of Indian Constitutional Law.

Narco Analysis Test:-for instance, the Narco Analysis technique in which Sodium Pentothel or Sodium Amytal, a drug is administered to the person which lowers control on body and induce the person to talk freely, can not necessarily be true. A person is able to lie by using his imagination. In Narco Analysis Test, the subject's imagination is neutralized by making him semi- conscious. In this semi – conscious stage, it becomes very difficult for him to tell lie and his answers would be restricted to facts he is already aware of. The dose administered to the person depend on the person's sex, age, health and physical conditions. A wrong dose can result in a person going into a coma, or even death.

The characteristic features of this principle are-

- i. The accused is presumed to be innocent;
- ii. That it is for the prosecution to establish his guilt, and
- iii. That the accused need not make any statement against his will.

These propositions emanate from an apprehension that if compulsory examination of an accused were to be permitted, then force and torture may be used against him to entrap him into fatal contradictions, the privilege against self-incrimination thus enables the maintenance of human privacy and observance of civilised standards in the enforcement of criminal justice.

APPLICATION OF NARCOANALYSIS IN CRIME INVESTIGATION :-

This technique helps in eliciting useful information from the subject without the use of third degree. It also helps in eliminating the innocent person. Thus, its approach is the most humanitarian one as far as the field of criminal investigation is concerned. If an individual agrees to submit to such a test without coercion as he might submit himself to a "lie detector" test and if he is aware of the implications of such an exposure, there could be no objection to its use as an auxiliary to a properly conducted psychiatric examination.

Gujarat FSL has made a beginning by using this technique in three crime cases. In one case registered under Official Secrets Act, Narcoanalysis was conducted in Sabarmati Central Prison as the accused was in judicial custody. Investigating Officer obtained the permission of the court for Narcoanalysis at Sabarmati Central Prison. Forensic Psychologist and the Psychiatrist conducted the narco-interview at the dispensary of the separate central prison, which helped the accused in proving his innocence resulting in acquittal. In second case of theft, Investigating Officer obtained the permission of the court and produced the accused person for Narcoanalysis Team consisting of Forensic Psychologist and Psychiatrist conducted the narco-interview at Forensic Science Laboratory, Ahmedabad that helped the Investigating Officer in detecting the crime. In a third case, Investigating Officer got the permission of the court, fitness from Civil Surgeon and arranged for the Anesthetist at Civil Hospital. Forensic Psychologist with the help of the Anesthetists conducted the narco-interview which helped in proving the innocence of the persons.

Utility in Investigative Processes:-The most important function of scientific investigation is to convert suspicion into reasonable certainty of either guilt or innocence. The scientific tests may be employed in two ways, that is, they may directly be used as evidence in court in a trial or they may be used merely as clues for investigation. Where the tests

involve the making of a statement, they may be directly adduced in evidence, provided they do not amount to a confession because proof of a confession before a police officer or in the custody of a police officer is prohibited. The evidence recovered at the crime scene holds great importance in the case trial since the physical evidence found will always be objective. However, if there is a witness to the crime and he/she might be a suspect in the police's eyes, then in order to make him confess to the truth, he can be subjected to narco analysis, lie detector or brain mapping tests. But the results of these tests are inconclusive and highly subjective as the person being tested may confess to the crime under the situation pressure or under the influence of the drugs given to him before the conduction of the test.

Validity and Admissibility of Scientific Evidence:-The question relating to admissibility of scientific evidence such as polygraph, narco analysis, brain mapping etc., have to be tested according to Clause (3) of Article 20 and Article 21 of the Indian Constitution.

Art. 21 provides that "No person shall be deprived of his life or personal liberty except according to a procedure established by law and Art. 20(3) provides that " No person accused of an offence shall be compelled to be a witness against himself."

DNA fingerprinting is one such test where there is ample evidence of its scientific authenticity however polygraphs and narco analysis tests cannot be relied upon because the results of these tests are not always authentic. The admissions that the accused may make during these tests cannot be considered truthful as there is possibility that the person undergoing the test might be making the confession under the influence of the drugs administered to him

Statutory laws in India:-

Art.20(3) which embodies this privilege reads, "No person accused of any offence shall be compelled to be a witness against himself". On analysis, this provision will be found to contain the following components:

- 1) It is a right available to a person "accused of an offence";
- 2) It is a protection against such "compulsion" "to be a witness";

- 3) It is a protection against such “compulsion” resulting in his giving evidence against himself.

All the three ingredients must necessarily coexist before the protection of Art. 20(3) can be claimed. If any of these ingredients is missing, Art. 20(3) cannot be invoked.

The application of the Narcoanalysis test involves fundamental questions pertaining to judicial matters and also to human rights. The legal position of applying this technique as an investigative aid raises genuine issues like encroachment of an individual's rights, liberties and freedom. Subjecting the accused to undergo the test, as has been done by the investigate agencies in India, is considered by many as a blatant violation of Art. 20(3) of the Constitution. It also goes against the maxim *Nemo Tenetur Se Ipsum Accusare* that is ‘No man, not even the accused himself, can be compelled to answer any question which may tend to prove him guilty of a crime he has been accused of. If the confession from the accused is derived from any physical or moral compulsion (be it under a hypnotic state of mind) it should stand to be rejected by the court. The man issue thus is the question of its admissibility as a scientific technique in investigations and its ultimate admissibility in court as forensic evidence.

Section 45 of the Indian Evidence Act, 1872 does allow expert's opinions in certain cases. It reads, “when the court has to form an opinion upon a point if foreign law, or of science, or art, or as to identify of handwriting or finger impression, the opinions upon that point of persons specially skilled in such foreign law, or of science, or art, or as to identity of handwriting or finger impressions are relevant.” However this section is silent on other aspects of forensic evidence that can be admissible in court in criminal proceedings.

The right against forced self-incrimination, widely known as the Right to Silence, is enshrined in the Code of Criminal Procedure (CrPC) and the Indian Constitution. In the CrPC, the legislature has guarded a citizen's right against self-incrimination. Sec.161(2) of the Code of Criminal Procedure states 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”.

Different Aspects of Narcoanalysis Test:-

Like other method of interrogation, the criminal assessment test of narcoanalysis also has its pros and cons.

The police believe that narcoanalysis as a scientific tool of interrogation, helps a lot in crime prevention and detection. It also helps in getting clinching evidence and is an effective and non-hazardous method of including hypnosis. According to the police, if a criminal was put under narcoanalysis then he would reveal about the crime committed, where he had hidden the weapons used in committing the crime and why did he do it? This would help in getting the motive for the crime and collect other evidence needed for prosecution. Narcoanalysis is also considered by many to be a very scientific approach in dealing with an accused's psychological expressions, definitely better than third degree treatment to extract truth from an accused. The police in order to find out the truth and solve the mysteries of the crime must use the advances in science. It is a better option than third degree torture.

But on the other hand, doubts have been cast on its reliability and legal validity i.e., admissibility in Courts of Law. Truth drug administration suffers from certain drawbacks –

1. The person to administer them has to be a highly qualified physician.
2. It is always difficult to determine the correct dose of the drug, which varies not only according to the physical condition of the subject but also his mental attitude and will power. A wrong dose can send a subject into coma or even cause death thus resulting in legal complications.
3. If the subject is an abuser of other intoxicants/narcotics, narcoanalysis could fall to disinhibition of them on account of the property of “cross tolerance” between pentothal sodium and other intoxicants. Thus the subject could fake the state of semi-consciousness and tell lies, which are useful to him.

Admissibility in the Court:-

While Narcoanalysis yielded an immense amount of information, it also triggered off many question as several critics shared profound sense of scepticism over the administration of serum on the witness to extract the truth. Narcoanalysis is considered as a tool or aid in

collecting and supporting evidence. However doubts are raised whether it amounted into testimonial compulsion in judiciary and violation of human right, individual liberty and freedom.

Lawyer are divided on whether the results of Narcoanalysis and P300 tests are admissible as evidence in courts, as they claim that confessions made by a semiconscious person is not admissible in court. A Narcoanalysis test report has some validity but is not totally admissible in court, which considers the circumstances under which it was obtained and assessed its admissibility.

Results of such tests can be used to admissible evidence, can be collaborated with other evidence or to support other evidence, but if the result of this test is not admitted in a court, it cannot be used to support any other evidence obtained the course of routine investigation.

In India, Narcoanalysis was first used in 2002 in the Godhra Carnage case. It was also in the news after the famous Arun Bhatt kidnapping case in Gujarat wherein the accused had appeared before NHRC and the Supreme Court of India against undergoing the Narcoanalysis. It was again in the news in the Telgi stamp paper scam when Abdul KarimTelgi was taken to test in December 2003. Though in the case of Telgi, immense amount of information was yielded, but doubts were raised about its value as evidence. The Bombay High Court, in a significant verdict in the case of **Ramchandra Reddy v. State of Maharashtra (AIR 2004)** upheld the legality of the use of P300 or Brain Mapping and Narcoanalysis test. The court also said that evidence procured under the effect of Narcoanalysis test is also admissible. However, defence lawyers and human rights activists viewed that Narcoanalysis test was a very primitive form of investigation and third degree treatment and there were legal lapses interrogation with the aid of drugs.

Decision of the Supreme Court in **Smt.Selvi& Ors. v. State of Karnataka (AIR 2010)** prohibited all involuntary administration of such tests, holding them to be “cruel, inhuman and degrading treatment”. However, the court also ruled that information “subsequently discovered” from the result of a “voluntary” test could be admitted as evidence.

The other view regarding the legal validity of Narcoanalysis test is that it is used as an aid for collecting evidence and helps in investigation and thus does not amount to testimonial

compulsion. Thus it does not violate the constitutional provision regarding protection against self-incrimination. In case of **Dinesh Dalmia v. State of Madras (AIR 2006)** it was held by Madras Court that scientific test of accused by conducting polygraph, Narcoanalysis and brain mapping test on accused to bring out truth would not amount to breaking his silence by force.

Earlier Judgment on Narco and other scientific techniques:-

State of Bombay Vs Kathi Kalu AIR 1961, it must be shown that the accused was compelled to make statement likely to be incriminative of himself. Compulsion means duress, which includes threatening, beating or imprisonment of wife, parent or child of person. Thus where the accused makes a confession without any inducement, threat or promise art 20(3) does not apply. In landmark judgement of **Nandini Sathpathy Vs P.L.Dani** ; no one can forcibly extract statements from the accused, who has the right to keep silent during the course of investigation. By the administration of these tests, forcible intrusion into one's mind is being restored to, thereby nullifying the validity and legitimacy of the Right to Silence. She claimed that she had a right of silence by virtue of Article 20(3) of the Constitution and Section 161 (2) of Cr. P.C. In **M.P.Sharma Vs Satish Chandra** the Apex Court observed that since the words used in Article 20(3) were "to be a witness" and not "to appear as a witness" the protection is extended to compelled evidence obtained outside the Courtroom. The Bombay High Court, in a significant verdict in the case of **Ramchandra Reddy and Others Vs State of Maharashtra**, upheld the legality of the use of P300 or Brain Mapping and narco analysis test. In a landmark judgment of **Dinesh Dalmia Vs State AIR 2006**, The Madras High Court conveyed that it is the duty of investigation agencies to complete investigation within a reasonable time. If it is not done in a reasonable time the benefit of delay goes to accused. Scientific investigation methods may have to be carried out to find the truth. Adopting the same spirit in **Sh. Shailender Sharma Vs State** crl. Wp no 532 of 2008 the court has held that the Narco Analysis test is a step in aid of investigation.

Recent Supreme Court Judgment of DDTs:-

In a landmark judgment of **Smt. Selvi and others Vs State of Karnataka & Anr on 5th May 2010**, the apex court of India has clearly stated that Deception Detection test (DDTs) can't be

administered without consent. It violates fundamental rights such as Art.20 (3) and 21 of Constitution of India.

Aarushi Hemraj Double Murder case: In this case Dr. Rajesh and Nupur Talwar parents of Aarushi were subjected to narco analysis test to confirm their involvement in the crime. No concrete evidence could be collected even after conducted the narco test. In this particular case the result of narco analysis were admissible in court however two years after than analysis, the S.C. of India ruled it unconstitutional but let investigators used the test results for leads. In another case of **Nithari Serial Killing** the results of the test were not admissible as evidence in court but are designed to help police with their investigation.

References:-

1. Satyendra K. Kaul and Mohd. H. Zaidi, Narco Analysis Brain Mapping , Hypnosis& Lie Detector Tests in Investigation of Suspect, Alia Law Agency, 2008.
2. Dr. Dhamija Ashok, " Making Scientific Evidence Admissible" 2006.
3. Sharma B.R " Forensic Science in Criminal Investigation ed. 4
4. Constitution of India
5. Evidence ACT 1872
6. Crl. Procedure Code 1974
7. Smt. Selvi & Ors v. State of Karnatka judgment on 5 May 2010. (Criminal Appeal No. 1267 of 2004)
8. Dinesh Dalmia Vs State 2006 Crl. R.C No. 259 of 2006
9. Ramchandra Reddy and Others Vs State of Maharashtra AIR 2004.
10. M.P.Sharma Vs Satish Chandra AIR 1954.
11. State of Bombay Vs Kathi Kalu AIR 1961SC 1808
12. Nandini Sathpathy Vs P.L.Dani AIR 1978 SC 1025:1978 Cri LJ 968.
13. Sh. Shailender Sharma Vs State crl. Wp no 532 of 2008
14. Nupur Talwar vs. Central Bureau of Investigation and Anr. AIR 2012 SC 1921
15. Aarushi Hemraj Double Murder case..... The Times of India , Mar 17, 2010