

Evidentiary Value of Narco-Analysis Test

Indu Rani

*Research Scholar, Department of Laws, Panjab University Chandigarh.

Abstract: The evidentiary value of Narco-analysis test is very important role in criminal investigation process. The Indian Evidence Act, 1872 is completely silent on such employment of scientific process under Narco-Analysis Test. The issue of using Narco-analysis test as a tool interrogation in India has been widely debated. Indian Law of Evidence allows a person who is witness to state the facts but not his inference and expert is permit to give opinion evidence and the judge is not expert in all fields especially where subject matter involves technical knowledge. Forensic scientists should inspire the police with their scientific methods not to violate the norms.

Keywords: *Narco-Analysis Test, Indian Evidence Act, 1872.*

Introduction

The 'narco-analysis' is a combination of two words 'narco' and 'analysis' meaning psycho-analysis, by administration of drugs for inducing a person to a condition of more or less like sleep. A chemical test is conducted on a person/suspect where the person is transformed in a state of hypnotism resembling sleep, though the person is sub-consciously awake, with the intention of bringing out of the facts from his-subconscious mind. The state of hypnotism/semi-unconscious occurs as a result of injection of sodium pentothal/sodium Amytal (drugs) administered on the person, while questions are frequently directed at the person in that state, prepared for the purpose. The process involved is known as 'narco-analysis test.' The drugs have a common name called 'truth serum', but the extent of truthfulness to be obtained by the serum remains a debatable issue.¹

Narco-analysis test is also known as "truth serum test." They are the drugs sometimes used clinically. Some of them are seconal, Hyoscine (scopolamine), Sodium Penthonol, Sodium Amythal and Phenobarbital. These drugs produce a state of consciousness in the subject and the reasoning faculty of the individual becomes ineffective. These drugs works on the principle of inhibiting the thought filtration procedure of the brain, the principle behind this is that when we lie, our thoughts are filter by the brain and decides by the brain what is to be exposed and what has to be unrevealed. By application of this procedure a person can no longer sift his idea and to speak the truth, or so is supposed.²

Narco-analysis has been the most debated topic amongst the legal fraternity, media and common masses. With recent advent of technologies in every sphere of life, criminal investigation is more

¹Anoopam Modak, *Scientific Techniques in Criminal Investigation* 199 (Universal Law Publishing an imprint of LexisNexis, Gurgaon, 2016).

²Rajesh Punia, "Narco-Analysis Investigating Tool or A Torture?" 115 CriLJ 22 (2009).

left out of its effects. Narco-analysis is one of such scientific forms of investigation in which some sort of statement from the accused is acquired which might from evidence. The Evidence Act is completely silent on such employment of scientific process. Such process has often been criticised as against the tenets of Constitution and on the other hand has been upheld as a necessity to evaluate some complicated issues. There are several issues regarding the validity of narco-analysis as scientific tool of investigation and admissibility in court of law.³

Indian Evidence Act, 1872

Section 3 of the Evidence Act, 1872 defines evidence as under:

“Evidence” means and includes

- (1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of act under inquiry; such statements are called oral evidence;
- (2) All statements including electronic records produced for the inspection of the Court; Such statements are called documentary evidence.

Question arises whether any answer received as result of Narco Analysis P300 Test would be evidence or not. Perhaps such answers or statement would not part of evidence unless it satisfies some other tests. It must be made clear that if any statement has been permitted or required by the Court it does not become admissible in evidence. Court may admit or may not admit it. Admissibility would depend upon number of factors.⁴

The statements are given by the concerned person under a semi-conscious state, they will not be admissible. The roaming gospel of criminal jurisprudence is that the person making the statement must be in a fit state of mind. Recently in a case that arose before Supreme Court, it was pleaded that accused could not have made such a confessional statement because he was under the spell of medicine but however on examination the Supreme Court found that there was no such influence of medicine and held the confessional statement valid. But the point is that cases may arise and may give birth to such controversy.⁵

The combined effect of the provision of Section 24 to 27⁶ and Section 32⁷ of the Evidence Act would bar statements from being admissible in evidence because there is the slightest doubt coercion, or intimidation or any type of fear that the statement was not free and frank or that immediately before such test the subject was harassed by the police or was coerced, then such statements would be meaningless.⁸

³Sarita Jand, *Forensic Science & Law* 102 (New Eraw Publications, Faridabad, 1st edn., 2017).

⁴R. Ramachandran, *Scientific Techniques for Criminal Investigation* 249 (Kamal Publishers, New Delhi, 2012).

⁵*Ibid.*

⁶Section 24 of the Indian Evidence Act, 1872 Confession caused by inducement, threat or promise when irrelevant in criminal proceeding.

Section 25 of the Indian Evidence Act, 1872 Confession to police officer not be proved.

Section 26 of the Indian Evidence Act, 1872 Confession by accused while in custody of police not to be proved against him.

Section 27 of the Indian Evidence Act, 1872 How much of information received from accused may be proved.

⁷Section 32 of the Indian Evidence Act, 1872 Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

⁸*Criminal Law Journal* 1772 (2007).

The confession from the accused is derived from any physical or moral compulsion (be it under hypnotic state of mind) it should stand to be rejected by the court. The main issue thus is the question of its admissibility as a scientific technique in investigations and its ultimate admissibility in court as forensic evidence.⁹ Confessions caused by inducement, threat or promise are inadmissible under Section 24¹⁰ of the Indian Evidence Act, 1872, in the case of Narc-analysis the person undergoing the test has no control over his mind and the subject is forced to answer questions against his will and according to Section 24 of the said Indian Evidence Act such confession made are inadmissible in court. The subject undergoing narco-analysis test is interrogated by the investigating agencies or police in the presence of the doctors and the entire confessional statement is hit by Section 25 of the Indian Evidence Act, 1872.¹¹

Law of Evidence allows a person who is witness to state the facts but not his inference and expert is permit to give opinion evidence and the judge is not expert in all fields especially where subject matter involves technical knowledge. He is not capable of drawing inferences from the fact which is highly technical. In these circumstances he needs the help of an expert who is supposed to have superior knowledge or experience in relation to subject matter. Today, the most pertinent question which generates much debate among jurists, judges, scientists, lawyers and academicians irrespective of our legal system is how for the present value-based system of justice required to be changed or modified or reoriented for the purpose of utilizing the benefit of modern scientific discoveries and technological in justice delivery system.¹²

In our consideration opinion, the compulsory administration of the impugned techniques¹³ 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 recognized 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 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

⁹Dr. Nishant Singh, *Forensic Science Principles and Applications* 163 (Ancient Publishing House, Delhi, 1st edn., 2011).

¹⁰Section 24 of Indian Evidence Act, 1872: Confessions caused by inducement, threat or promise, when irrelevant in criminal proceedings: A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused persons in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

¹¹Section 25 of Indian Evidence Act, 1872: Confession to police officer not to be proved-No confession made to police officer, shall be proved as against a person accused of any offence.

¹²Prof. (Dr.) Kamal Jeet Singh and Vikram Singh, "Forensic Science: An Effective Tool in Criminal Justice Administration" 48 *C&MJ* 302 (2012).

¹³Narco-analysis test.

remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory.¹⁴

The scientific validity of the impugned has been questioned and it is argued that their results are not entirely are not entirely reliable. For instance, the narco-analysis technique involves the intravenous administration of sodium pentothal, a drug which lowers inhibitions on the part of the subject and induced revelations need not necessarily be true. These techniques are essentially confirmatory in nature, wherein inferences are drawn from the physiological responses of the subject. In the context of criminal cases, the reliability of scientific evidence bears a causal link with several dimensions of the right to fair trial such as the requisite standard of proving guilt beyond.¹⁵

Case Laws

In *Nisha v. State of Orissa*¹⁶ Article 20(3), Constitution of India does not contemplate the suppression of truth simply because the information is given by the accused. It only protects him against being compelled to be a witness against himself. It is therefore not correct to presume that information given by the accused under Section 27 of Indian Evidence Act is compelled testimony. It may be remarked in his connection that although this matter did not for consideration before their Lordship in the manner it has been agitated here, evidence about discovery of a fact at the instance of the accused was taken into consideration by their Lordship of the Supreme Court.

In the case of *Radha Kishan v. State of Punjab*¹⁷, it was held that the scope of Section 27 is reduced by Article 20(3) of the Constitution of India. The discoveries which are brought about by compelling an accused person cannot be used against him, and in the case of narco-analysis the accused is compelled to give evidence.

In *In Re Modugula Jeremiah*¹⁸ it was held: "It is not a condition for the applicability of Section 27 that the information should have been given voluntarily by the accused. Whether it is given voluntarily or otherwise, the said information is made admissible in evidence as the Legislature presumably thought that the fact discovered in consequences of the information is sufficient guarantee of the truth of the information. This is the reason why, though as rule, statements made to the police are inadmissible as substantial evidence on the assumption that the police are in a position to compel an accused to give information, the guarantee afforded by the discovery is thought sufficient protection against any self-inculpatory information extracted from the accused. Therefore, the information given under Section 27 may be either voluntary or

¹⁴B.R. Sharma, *Forensic Science in Criminal Investigation and Trials* 47 (Universal Law Publishing Co. Pvt., Ltd., New Delhi, 5th edn., 2014).

¹⁵ B.R. Sharma, *Forensic Science in Criminal Investigation and Trials* 1567 (Universal Law Publishing Co. Pvt., Ltd., New Delhi, 5th edn., 2014).

¹⁶1955 Raj 147: Cr 1285.

¹⁷1960 CrLJ 847.

¹⁸ ILR (1956) Andh. Par. 173: AIR 1957 AP 611.

extracted from him by compulsion. In either case before the Constitution it was admissible in evidence, if the conditions laid down in the section are complied with. But Article 20(3) of the Constitution 'embodies the principle of protection against compulsion of self-incrimination' and the protection afforded under that Article extends to compelled testimony previously obtained from him. The information given to police by the accused is certainly testimony previously obtained from him, for that is intended to be used in a Court of law. If that information is not voluntary but is compelled testimony, Article 20(3) prohibits the use of the said evidence in Court. Section 27 of the Evidence Act and Article 20(3) of the Constitution may be reconciled. Information voluntarily obtained from an accused, relating distinctly to the fact thereby discovered, is not hit by Article 20(3) and, therefore, is relevant evidence under Section 27 of the Evidence Act. But such information obtained by compulsion was admissible in evidence before the Constitution. After the enactment of Article 20(3), they must be excluded from evidence for otherwise in effect the accused would be compelled to be a witness against himself.¹⁹ There is no presumption that information received by the police from an accused person is the result of compulsion and such information is not violating of Article 20(3) of the Constitution.²⁰

In *Amin v. The State*²¹ Article 20(3) applies to discoveries under Section 27, Evidence Act, if these discoveries are the results of compulsion. The scope of Section 27 Evidence Act is thus restricted by Article 20(3) of the Constitution and the discoveries which follow a confession brought about by compelling an accused person cannot be used against him.

In *M.P. Sharma v. Satish Chandra*²² the Supreme Court interpreted the expression 'to be a witness' very widely so as to include oral, documentary and testimonial evidence. The prosecution under Article 20(3) covers not merely testimonial compulsion in a court-room but also compelled testimony previously obtained any compulsory process for production of evidentiary document which are reasonably likely to support the prosecution against him. The Court accepted the definition given in the Indian Evidence Act, 1872 that a person can be a 'witness' not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness or the like. If this interpretation of the phrase 'to be witness; adopted by the Court in M.P. Sharma's case was to be followed; the compulsory taking of finger impression or specimen handwriting of an accused would come within the mischief of Article 20(3). This broad interpretation, it was thought, would certainly hamper the effective administration of crime and efficient administration of criminal justice.

In *State of Bombay v. Kathi Kalu Oghad*²³ the Supreme Court held that the interpretation of the phrase 'to be witness; given in Sharma's case was too broad and required a qualification. 'to be a witness' is not equivalent to 'furnish evidence; that is to say, as including

¹⁹*Amrut Soma v. State of Bombay* AIR 1960 Bom. 488: ILR 1960 Bomb. 664.

²⁰*N. Vasudevan Pillai v. State of Kerala*, ILR (1968) 2 Ker. 303: 1968 Cri LJ 1362, 1371.

²¹AIR 1958 All 293.

²²AIR 1954 SC 300.

²³AIR 1961 SC 1808.

not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused. Self-incrimination can only mean conveying information based upon personal knowledge of the person giving information and cannot include merely the mechanical process of producing documents in court which may throw light on any point in controversy, but which do not contain any statement of the accused based on his personal knowledge. Thus when a person gives his finger impression or specimen writing or signature, though, it may amount to furnishing evidence in the large sense is not or signature, though, it may amount to furnishing evidence in the large sense is not included within the expression 'to be a witness.' In cases, he is not giving any personal testimony. What is forbidden under Article 20(3) is to compel a person to say something from his personal knowledge relating to the charge against him.

The Bombay High Court in a significant verdict in the case of, *Ramchandra and Ors. v. State of Maharashtra*²⁴, upheld the legality of the use of P300 or Brain finger-printing, lie-detector test and the use of truth serum or narco-analysis. The court upheld a special court order given by the special court in Pune, allowing the SIT to conduct scientific tests on the accused in the fake stamp paper scam including the main accused, Abdul Karim Telgi. The verdict also said the evidence procured under the effect of truth serum is also admissible. In the course of the judgment, a distinction was drawn between "statements" (made before a police officer) and "testimony" (made under oath in court). The judges, Justice Palshikar and Justice Kakade, said that the lie-detector and the brain mapping tests did not involve any "statement" being made and the statement made under narco-analysis was not admissible in evidence during trial. The judgment also held that these tests involve "minimal bodily harm."

In *Rojo George v. Deputy Superintendent of Police*²⁵, the narco-analysis test Court is of the opinion that in present day the criminal started to use very sophisticated and modern technique for committing the crime. So the conventional method of investigation and questioning to the criminals will not be successful for solution and there is need to utilize some new techniques such as polygraph, brain mapping and narco-analysis. Court also said that when such techniques used in the presence of expert then it can't be raised that the investigating agencies violated the fundamental human rights of any citizen of India.

Conclusion

Evidentiary value of narco-analysis is important role in criminal investigation. The narco-analysis test should not be conducted without the consent of the accused and if the court order for narco-analysis then it clearly shows that it is done without his consent as nobody can go against the orders of the court. Police powers are confined by the provisions of the Constitution, the Criminal Procedure Code, the Evidence Act and many other local and special laws which impose restrictions on the scope and method of exercise of that power. Law is a living process, which changes according to the society, science, and ethics and so on.

²⁴2004 All MR (cri) 1704.

²⁵ High Court Kerela WP(C) No 6245 of 2006 (U).