

Constitutionality of Narco Analysis and Polygraph Examination

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ABSTRACT:

The article has a major role in dealing with polygraph and Narco analysis in collecting the evidence and to testify the constitutional validity. From centuries there is a rapid growth in science and technology development which include sophisticated methods in replacing the third-degree torture by police and help in lie detection. It carries the function in a smooth way. There are various scientific tools which help in the interrogation such as polygraph test, brain mapping, narco analysis and the truth serum. These tests have been recently developed to extract the information. These psychoanalytical tools are used by the investigating officers to find the truth and observe the behavior of the suspect and conclude on their observations. The main three tests such as polygraph, Narco analysis and brain mapping are called as deception detection tests. They have important role in ethical, scientific and legal implications. They are useful in revealing the information in grievous crime. Though sometimes it is crucial to detect the self-known information it can be clarified through the investigation. The study helps to arrive at the logical consequence and answering a large number of issues during the investigation. Forensic science has a vital role in detecting the crime. It is said according to Encarta world dictionary the word forensic means crime solving with application of science and to conclude on the issues arises from the crime or litigation. Forensic science is an important aspect of jurisprudence. It is a weapon in administration of justice. Forensic is the operation of the applications of science to conclude the analysis from the crime. However, sometimes they appear to be contrary to the fundamental rights of the examinees as they are subjected to pain and suffering in these tests. The procedure in which the information is extracted is also in question as they are not in their senses while divulging information in these tests.

The aim of this paper is to analyze the validity of these tests through the lenses of the constitution and determine whether they are in loggerheads with our basic fundamental rights and principles of natural justice.

I. RESEARCH OBJECTIVE

- To study about narco analysis test
- To study about polygraph analysis test
- To study about procedure of conducting these tests
- To study about the constitutional validity of conducting validity of these tests with help of relevant case laws.

II. RESEARCH METHODOLOGY

The research methodology used in this project is Doctrinal research methodology. The present study is based on technology and its application to criminal justice system with special reference to narco analysis and polygraph

test. The main sources of this study are the data collected from prominent publications of the concerned authorities, books available on the topic, articles, essays, newspaper reports, law journals, research studies, and internet.

III. RESEARCH QUESTION

- What is polygraph analysis test and procedure for conducting this test?
- What is narco analysis test and procedure for conducting this test?
- Whether polygraph analysis test is constitutionally valid?
- Whether narco analysis test is constitutionally valid ?

IV. NARCO ANALYSIS DEFINITION

The word narco is obtained from Greek term NARKE because of this Anesthesia or Torpor and became used to describe a diagnostic psychotherapeutic technique that uses psychotropic capsules to introduce a stupor suspension or considerable diminution of sensibility, a state wherein mental detail with a robust related affects come to the surface wherein they may be exploited via the therapist (or investigating company). The Narco evaluation test is also referred to as Lie Detector Testing or Truth System Testing. Under this take a look at the individual goes into the subconscious mind with the aid of passing the serum and speaks some thing is found in their mind. This high science forces two professions, which are law and technology, to paintings collectively within the array of instances.

V. OBJECT OF THE TEST

Object at the idea of Narco analysis is to solve the lie uses by a person along with he is using his imagination but within the Narco evaluation. It checks this creativeness and neutralizes it because the individual goes into the subconscious stage. Hence it is believed that the man or woman cannot tell lie and whatever he answers is spontaneous and real.

VI. NEED FOR THE NARCOANALYSIS

In briefly, from last few years, the sector of criminology has multiplied unexpectedly. Thus there may be a want for technology to criminal justice system and to enhance the efficacy of the investigation When the accused aren't coming ahead with the fact and to have a further clue in that particular matter and to understand the real perpetrator by using getting some clue after the take a look at. The undertaking of Narco evaluation is inside the procedure of collection of proof through the investigating organization. The medical test enables the investigating corporation inside the series of the hidden evidences and to prove the guilt or innocence of the

accused, the current medical test helps to protect the society additionally from the 3rd degree methods of the investigating officials.

VII. HISTORY OF NARCOANALYSIS

Narco analysis is a check executed on an affected person or suspect, after giving barbiturates, comes in a sleep like condition, and his repressed feelings are launched. It is likewise called narcosynthesis. As the Webster's Dictionary states the word Narco analysis coined in 20th century and is an aggregate of two words 'Narco' and 'Analysis'. It means psychoanalysis in a state that is much like sleep and this state is completed by way of use of medicine. These drugs are nicknamed 'reality pills' or 'truth serum'. Narcoanalysis is mixture of hypnosis and narcosis. The psychiatrist should collect extra details of mental contents in a short time frame. Narcoanalysis produces sleep with out massive dosages of sedative drugs. According to Horsley by using post hypnotic material, it hints to found that our intellectual contents might be reintegrated round the extreme occasion for symptom relief.

Horseley coined the word narco analysis in 20th century which means that analysis of the understanding of the man or woman in drug caused circumstance. Narco-evaluation for the primary times gained the recognition in late 1920, whilst Robert House, who become an obstetrician in Texas used the drug scopolamine on prisoners whose guilt seemed certainly verify. He organized the interrogation of two prisoners inside the Dallas prison, with the help of drug known as Scopolamine. Under the examination at each denied the crimes for which they were detained and upon trial they have been observed innocent. Subsequent to the a success experimentation it became concluded by way of House that difficulty can't lie in sleep like state below the impact of Scopolamine. It is most effective after this experiment that the phrase 'truth serum' got here into limelight. The time period 'fact serum' is a call given to hypnotic pills that set off a person to speak the truth. The achievement of this test gave Robert House recognition as the 'Father of Truth Serum'.

VIII. PROCEDURE TO PERFORM NARCO-ANALYSIS TEST

Narco evaluation is accomplished through an expert GABA (A neurotransmitter inhibitor), which is a chemical that happens certainly in his frame. Truth drug binds GABA forming a complicated at the B site which exerts strain over the permeability of chloride ions into impartial membrane. Leading to the stage of disinhibition fact. Drugs reduce to boom the action of GABA inside the brain, thereby decreasing nerve interest inside the brain which results in sleepiness. Three grams of drug is dissolved in 3000ml of distilled water and this mixture at the side of 10% of dextrose is injected intravenously to antecubital vein in the body of the problem over a period of 3 hours with the assist of a skilled anesthetist. It is injected in normal conditions 0.5 to 1 ml per minute until the problem will become sedative. The drug depresses central nervous (CNS) and makes the heart beat slower and

blood stress additionally lowers down. When the character's speech turns into slurred and he or she behaves in a co-operative manner and also turns into extra talkative it can pressure that he or she is under complete manipulate of the patient. The examiner satisfies himself through trying out the challenge's eye-muscles with his arms. Needle is left within the vein of the challenge as distinct man or woman want distinctive dosages of the drug and additionally for persisted narcotic state further management of drug is necessary. Care is taken that best so much drug is administered which may additionally keep the concern in semi-wakeful state and he does now not go in deep sleep charge. In this hypnotic state the questions are requested and answers are audio and video-recorded. Use of drug removes the aware block under which hidden statistics is saved. When the block is eliminated the person will become comfortable, conversant and statistics loose to reveal hidden records with none inhibition. The drug acts as a catalyst for catharsis. The following results occur below the have an effect on of fact pills:

- 1) After giving of truth drug suspect's body turns into cozy, his or her features slacken and full of exhilaration and few grow to be silly and giggly.
- (2) The drug blocks the impulses that commonly pass through positive nerves and maximum body parts fall asleep which emerge later in disoriented semi-wakefulness.
- (3) Under the affect of fact drugs the suspect, may be he or she, turns into incapable of telling a lie, and she or he will always share any records that is asked of them.

IX. CRITICAL ANALYSIS OF NARCO ANALYSIS

The grounds on which narco analysis tests are criticized are following:

1. The accuracy of narco analysis is not 100%, as it was claimed by Dr. B.M. Mohan, Director of FSL, Bangalore that as per his collected data narco analysis has 96-97% total screen rate. He was of view that narco analysis should be discredited.
2. Dr. P. Chandra Sekharan, former director of Forensic Science Department of Tamil Nadu, has compared the narco analysis test same as third degree method of investigation and declared it unscientific.
3. In Narco analysis by way of fake tricks sure subjects made completely false statements. If the person has been a drug addict or alcoholic his or her tolerance degree could be high and he or she may also false nation of semi-focus and can inform lies
4. It is very tough to suggest a actual dosage of drug for a particular man or woman because it will vary from person to man or woman depending upon the intellectual attitude and bodily shape of the problem. It is stated that if a wrong dose is run to the subject, it might cost his life.

X. MEANING AND DEFINITION OF POLYGRAPH ANALYSIS TEST

The Polygraph trying out or instrumental measures several psychological approach and modifications in these technique. From the chart of such measures in the response to the query on a Polygraph check and every time so often aided by way of observations in the course of the Polygraph check at examiners infer a mental state, namely, whether or not someone is telling the reality or is he lying. These mental phenomenon outcomes in the intellectual excitation. Psychologically, the strive made by the character to hide the excitation, is called the protection mechanism, which stimulates the adrenal glands, which in reaction secrete the adrenaline hormone.

The phrase Polygraph means a procedure in which decided physiological activities are collected. As per the definition given by Webster's legal dictionary, a Polygraph is that device which measure certain involuntary physical responses, along with blood strain and perspiration, through which a perception is made whether or not the individual being examined is telling the fact.

XI. PROCEDURE TO PERFORM POLYGRAPH

Polygraph look at as a chain of mental exams. In this take a look at modifications in blood pressure, pulse price, respiratory, muscle motion, skin conductivity are collected. A professional and skilled inspecting will make evaluation of following strategies—

1. as averment of examiner's emotional nation;
2. Medical fitness of the examination
3. To become aware of overly responsive conduct specialized assessments be conducted;
4. To assess responsive competencies of exam manipulate query be requested
5. To do genuine analysis of case records and
6. To do pre-take a look at interview and specified preview of questions.

In polygraph three parts of human physiology are getting tested by

1. Pneumograph tracing
2. Electrodermal pastime tracing
3. Cardiovascular tracing

Pneumograph tracing relates to respiratory, the Electrodermal pastime tracing relates to skin conductance or pores and skin resistance and the cardiovascular tracing relates with blood volume and pulse charge. If a person attempts to conceal physiological modifications like growth or decrease in blood extent, boom or decrease in

heart charge and adjustments in respiration, perspiration takes chance. If the person is factual, the organs displaying such physiological modifications characteristic in normal sample.

The end result of the check is received on a chart referred to as polygram. The following changes are referred carefully, suppression in breathing and increase of blood pressure after the reply, lower in blood strain, conduct breathing, slowing of pulse charge and the direction of blood stress.

Polygraph doesn't identify if the character is speaking fact or is false fact but the examiner carefully analyzes the sample of arousal responses and on that basis veracity of the individual is inferred. This inference or evaluation is referred to as 'diagnosis' of fact or is false fact.

XII. CRITICAL ANALYSIS OF POLYGRAPH

(1) The check does no longer inform as to whether the person is truthful or not. Test only display approximately the physiological adjustments which must be interpreted by using the expert.

(2) In asking the question no technology is worried and it utterly relies on to deception and on the information of the tester.

(3) An individual who can manipulate his feelings to a super extent can still inform a lie, in case, if an individual has control on himself by way of practice of yoga or in any other case, this check is sure to get fail.

(4) Tension obvious to be shown by many guiltless and straightforward people beneath the situations of police interrogations. This anxiousness might also rise up due to diverse reasons, In case, reason of being tensed due to the crime, or the distress that his or her preceding behavior may be proven to the police what isn't always related to the existing crime. It can also be due to the fact of not properly knowledge the method of polygraph, in addition there can be worry of incorrect interpretation of chart with the aid of the examiner and even the interrogator and examiner can be prejudice. If the Tester holds the situation guilty, he may interpret the chart with that twist of mind and he may be merciful in decoding chart of someone to whom he/she feels not guilty.

XIII. WHETHER NARCO ANALYSIS IS CONSTITUTIONALLY VALID?

It does not have any legal validity since it is made by a person who is semi-conscious. Thus, it cannot be made admissible in the court. After inquiring the circumstances under which the tests are taken the court if satisfied may grant limited admissibility. In one of the leading cases, it was held that the courts cannot direct the prosecution to hold Narco - analysis test, brain mapping and lie detector tests. These tests cannot be taken against the will of the person who is an accused in any case as it is highly violative of Article – 20 (3) of the constitution of India. The objective of this article deals with the privilege of self – incrimination. An important fundamental rule of common law in the field of Criminal jurisprudence is the privilege against self-

incrimination. The application of the rule of law in the test of Narco - Analysis in an accused person raises a fundamental question pertaining to judicial matters and human rights as well. With the perspective of investigative aid in legal position raises issues such as encroachment of an individual's rights, liberties and freedom.

In a leading Gujarat case of **Santokben Sharma Bhai Jadeja V. State of Gujarat**¹, it was held by the court that doctors conduct the Narco-Analysis test with due care and supervision. The element of risk is minimal in cases when there is consent and the state of the accused is also observed. Risk is an important factor which pervades in almost every other human activity and it is a part of life. The impugned test cannot be condemned solely based on this ground.

In the famous case of Arushi murder case (i.e. **Dr. Rajesh Talwar and Another v. Central Bureau Investigation**²), the victim Arushi, a 14 year old school girl was dead in her home. The reports were filed in the police station by the information given by the victim's parents. The suspect in this case of the murder of the victim was the maid in the house whose name was Hemraj. After two days of the death of their daughter, the servant Hemaraj was found dead in the terrace of the same building. Arushi (the Victim's) parents were arrested by the police. Narco-Analysis test, Polygraph test and Brain mapping test was conducted in this case against the will of the accused persons i.e. the accused persons. It was pleaded that the results or reports of these tests cannot be taken as evidence in the court of law. The narco test cracked the case it plays a crucial role in the case to find out the accused.

The observation made in the court while allowing the Narco – analysis test in the case of **Rojo George v. Deputy Superintendent of Police**³ said that the commission of the crimes committed by the accused and the techniques and methods used are very sophisticated as well as modern. The traditional method of questioning or investigating may not yield any valid result at all in these cases. The scientific tests such as polygraph, brain mapping, narco - analysis, etc. are now used in the investigation of a case because of the reasons which are mentioned above. The court held that it would not be any violation of the fundamental rights which are guaranteed to a citizens of India when such scientific tests are conducted under very strict supervision of the experts of the field.

The court in the case of **Dinesh Dalmia v State**⁴ observed that the scientific tests such as Narco – analysis tests are resorted to by the investigation agency when the accused had not allegedly come forward with the truth. Such measures will not be amounting to testimonial compulsion. It is very clear from the above argument that

¹ 2008 CriLJ 68

²2013 (82) ACC 303

³ 2006 (2) KLT 197

⁴ 2006 CriLJ 2401

conducting a Narco Analysis test does not violate Article 20 (3) per se. It would hit Article – 20 (3) of the Indian constitution only if the accused divulges information which is incriminatory. Thus, there is no point in discussing the constitutional validity of such tests.

Finding of Narco Analysis test has been very useful in solving big cases such as Malegaon Blast Case, Mumbai 1992 blast case, Hyderabad Blast Case and such more case. In most of cases the truth behind the case was found with the help of narco analysis test then also question was raised against the validity of such tests hence what I think is that now the time has come when central government need to make such law with the blend of article 20(3), so that no further question could be raised against the validity of such truth finding test.

XIV. WHETHER POLYGRAPH ANALYSIS IS CONSTITUTIONALLY VALID?

The judicial response to this question was like that the lie detector department provide important polygraphic help in many important cases conducted by Delhi police, other state police, NIA, judicial commissions and other law bodies. The lie detector department keep recent mode of polygraph machine with the object of:

- To check the oath of complaints, witness and other party.
- To increase the pace of investigation and reduce the cost of case by checking large number of suspects and leaving the innocent person.
- Interrogation through scientific mean in white collar cases.
- In order to match the finding of interrogation with investigating officers finding.

The provisions which govern technology to criminal justice system are code of civil procedure, Constitution of India and Evidence act of India. In Constitution of India, various provisions are present to protect the right of accused person such as provision of life and liberty to a person given under article 21 and as per article 20(3) “*No person accused of any offence shall be compelled to be witness against himself*” this article applies only to accuse and tell how self incrimination of accuse person happens by way of compulsion. With the help of this provision the accuse can get relief if he is forced to be witness to himself only.

All country that have its constitution provide right against self incrimination as right in fair trial of criminal matter. As per the principle of article 20(3), any person who is accusing in any criminal matter cannot be forced to witness against himself and incriminate himself.

In famous case of Supreme Court (**State of Bombay v. Kathi Kalu Oghad**⁵) court held that when police is carrying out the polygraph test without the consent of accuse is clear violation of right against self incrimination enshrined under article 20(3) of Indian Constitution. Bombay high Court had to clarify that If

⁵ 1961 AIR 1808, 1962 SCR (3) 10

accuse is compelled to give polygraph test against his will in order to get evidence then is it a violation of right to silent hence the court held that right against self incrimination only work at time of court proceedings and not to police interrogation.

In other case, in which Supreme Court answered the question about validity of polygraph analysis and whether consent need to be taken before polygraph analysis or not (**Selvi v. State of Karnataka**⁶), the court held that Indian constitution protect the individuals right against self incrimination and article 20(3) give right to accuse to not be a compelled witness against himself. The main idea behind article 20(3) is to protect accuse against self incrimination and to save accuse from becoming an evidence against himself. After hearing the argument from both sides Supreme Court has proposed certain guideline which is needed to be followed before enabling polygraph analysis test and also said that consent of accuse need to be taken before enabling polygraph analysis otherwise it will be clear infringement of right against self incrimination of Indian Constitution.

XV. CONCLUSION

The test of polygraph and Narco analysis have undergone many criticisms and yet not decided which degree it lies in. the modern-day criminals use the technology for the advancement of their criminal activities relatively it has compelled in delivering the criminal justice it has to seek the help from the scientific and technology community with the prosecutors, police and courts.

The legislation procedures, rules laid for evidences and the institutional infrastructure which has been enforced many years ago are now inadequate in dealing with demands of scientific age.

The main drawback in administering the criminal justice is the absence of the national policy.

It is the duty of the court to ensure that the guilty are punished and the innocent are released. As both of them are the public duties there is no violation of individual right and these tests helps to find the victims in many of the critical cases and can be used to fight against custodial deaths.

I personally feel that these tests must be used in high profile cases to find the accused and interrogate the suspects. Rapidly these techniques can become an alternate of third degree physical torture in police custody of investigation which helps to tackle the modern day criminals. Central government should also introduce the national policy so individual right is not get violated as complied in the supreme court judgment in the case of **DK Basu v. state of west Bengal**⁷ that there is an urgent need to develop the scientific technical methods for interrogation of accused in custodial deaths and torture is nothing but a blow at rule of law.

⁶2010(7) SCC 263

⁷AIR 1997 SC 610