

Narco Analysis Test And Trust: Legal Aspects Of The Drug-Induced Statement

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"The quality of a nation's civilisation can be largely measured by the methods it uses to enforce its criminal law".

Abstract

In any criminal investigation, interrogating the accused and suspects is essential to getting the truth out of them. Investigating agencies have employed a variety of techniques to extract information from suspects and the accused throughout history, the majority of which were based on torture. The use of "third-degree torture" by the police has been replaced by more advanced lie detection techniques brought about by scientific and technological advancements. The three primary scientific interrogation tools that have been developed recently to extract confessions 'are the Lie detector, also known as the Polygraph test; the P300, also known as the Brain Mapping test; and the Narco analysis, also known as the Truth Serum test'. 'These psychoanalytical tests are also used to interpret the criminal's (or suspect's) behaviour and support the findings of the investigating officers'. This research explains scientific evidence, which includes various lie detection tests, and its constitutionality and admissibility as evidence.

Key Words: Privacy- Rule against self-incrimination-consent- Serum test- compulsion

Introduction

As science and technology progress, scientific experts' evidence is occasionally trusted more¹. The court regularly requests scientific evidence in the modern era. The scientific disciplines that concentrate on using their specialised areas of study to address issues pertaining to criminal, civil, legal, judicial, and law enforcement cases are called forensic science. In forensics, the crime scene is investigated, evidence is retrieved and investigated, findings are interpreted, and conclusions or outcomes are predicted². This scientific data is offered as an opinion in court. Rejecting the application of forensic science in criminal investigations represents a significant infringement of human rights, as it perpetuates ineffective and violent policing methods, along with the severe abuses that ensue when a perpetrator of a crime or serious human rights violation remains undetected due to inadequate forensic analysis, whether intentional or inadvertent. Criminal activity and human rights violations are exacerbated in contexts where suitable remedies are absent. Consequently, any state committed to deterring crime and upholding human rights must elevate the quality of criminal investigations, necessitating extensive application of forensic science expertise. The significant authority of the police often limits the participation of forensic experts in criminal investigations across Asia. In most countries, the police oversee all facets of criminal investigation, although in a few, the public prosecutor also possesses some authority³. The role of forensic experts has not consistently been clearly defined by legislation; in most instances, their involvement in criminal investigations is discretionary. Consequently, forensic experts are infrequently utilised by law enforcement or the prosecution.

One of the main advantages of forensic evidence is that it prevents wrongful convictions by using the forensic evidence retrieved from the crime scene and professional advice⁴. As a result, the validity and admissibility of the forensic evidence must be discussed. The value of this proof is higher. It can either protect or punish a person by providing evidence of the offence. Forensic evidence is essential to solving a crime. In the analysis of a substantial case study, the forensic evidence is indispensable. The use of forensic evidence mitigates judicial bias, significantly reducing the likelihood of unjust decisions affecting the innocent.

Forensic science can ascertain the perpetrator, 'the nature of the crime, the time of occurrence', the crime's location, and the motive. It offers empirical data derived from tangible evidence, including mobile devices, utilised firearms, footprints, and additional sources. 'Section 45 of the Indian Evidence Act of 1872' delineates the circumstances under which a court may rely on expert opinions. The court is authorised to evaluate any foreign law, science, art, fingerprints, handwriting, and identification provided by an expert in the respective field. However, since they were not present during the

¹ 'Moenssens, A. A. (1961). Narcoanalysis in Law Enforcement. *The Journal of Criminal Law, Criminology, and Police Science*, 52(4), 453–458. <https://doi.org/10.2307/1141276>'

² 'Mishra, Praveen. (2020). Narco-analysis in criminal investigation and trial: conspectus. *Indian Journal of Law and Justice*, 11(2), 76-87'.

³ 'Dziubak. (2023). Legal Responsibility Issue of Forensic Expert in the Field of Law. <https://khrife-journal.org/index.php/journal/article/view/585>'

⁴ Deepti, Gaurav, Geeta, Harsh, & Rishabh. (n.d.). 'Advantages of blockchain in digital forensic evidence management, SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3866889'

commission of the crime and are solely offering insights derived from their scientific research, the experts function merely as advisors rather than eyewitnesses. However, it is crucial to adhere to the expert judgment methodology. Expert counsel supports the court's conclusion. They rely on it chiefly due to the experts' expertise in conducting this type of research. England acknowledges expert opinions as an exception to the "Opinion Rule," similar to India. 'The preliminary phase for assessing the admissibility of scientific evidence' in the United States occurred in 1923. The US legal system struggles to determine the admissibility of forensic evidence. The primary concern is assessing the degree of weight to assign to the expert advice. In India's criminal justice context, the culpable individuals often evade consequences while the innocent are penalised. The reform must be reinforced and effective as a consequence.

Various lie detection Tests

The three main scientific interrogation tools recently developed to extract 'confessions are the Lie detector, also known as the Polygraph test; the P300, also known as the Brain Mapping test; and the Narco analysis, also known as the Truth Serum test'⁵.

The Narco-Analysis Test is utilised in serious offences, such as terrorist attacks or economic fraud, where the accused is the exclusive source of information concerning the conspiracy and the involvement of other parties. These tests are employed to determine the veracity in such situations. The narco-analysis test is a procedure designed to recover the memory of a suspect who has experienced amnesia. 'The assessment is performed by a team comprising an anesthesiologist, a psychiatrist, a clinical or forensic psychologist, an audio-visual technician, and supporting nursing staff. The forensic psychologist will prepare the report on the disclosed information and will include a compact disc with audio-visual recordings'. The accuracy of the disclosures, if considered necessary, is further validated by conducting polygraph and neuroimaging evaluations on the individual. 'The practice of narco-analysis' is increasingly incorporated into diverse aspects of investigative methods, legal processes, and scientific inquiry⁶.

The Polygraph or Lie Detection Test⁷ is a procedure based on the premise that a correlation exists between the mind and body. This assessment is conducted using a polygraph machine, which is fitted with multiple sensors attached to the individual being interrogated by a trained expert. The device can measure and record 'physiological parameters, including blood pressure, pulse rate, respiration, and muscle activity'. The administration of a polygraph test comprises a three-phase process: a preliminary interview, chart recording, and diagnostic evaluation. 'The evaluator, potentially a clinical or forensic psychologist, develops a series of assessment questions derived from relevant case information provided by the investigating officer, encompassing the individual's criminal charges and statements made by the accused'.

P-300 or Brain Mapping Test: This test, also popularly known as Brain Mapping Test, is used extensively in criminal investigations in India and other European countries. In this test, upon recognising an individual's voice, the brain generates a specific type of electrical wave known as P300. During the examination, the individual is positioned in front of the monitor. He additionally presented various images or played different types of sounds. Subsequently, the sensors affixed to the patient's brain commence monitoring electrical activity and document it as P300 waves. The P300 electric wave is produced solely when the individual has any association with the stimulus, which consists of images or sounds in this assessment. Investigators administer P300 tests to assess their findings and determine the veracity of a suspect's statements. This assessment is also referred to as the Brain Mapping Test⁸.

How the Narcoanalysis test is different from the Polygraph and P-300 test⁹: The narcoanalysis test, commonly referred to as the truth serum test, entails the administration of sodium pentothal to induce a hypnotic state in an individual. The individual is subsequently posed questions or presented with scenarios to extract information. The hypothesis posits that an individual will disclose the truth while under sedation. In the polygraph method and in the P-300 method, the test is conducted externally with the help of some external devices that are connected to the monitor; no serum is injected into

⁵ 'Giorgio. (2014) Theories in deception and lie detection., Academic Press'.

⁶ <https://www.sciencedirect.com/science/article/pii/B9780123944337000075>

⁷ "Narcoanalysis has been criticised on the grounds that it is not 100% accurate. It has been found that certain subjects made totally false statements. It has been found that certain subjects made totally false statements. It is often unsuccessful in eliciting truth as such it should not be used to compare the statement already given o the police before use of drug. It has been found that a person who has given false information even after administration of drug. It is not much help in the case of malingers or evasive, untruthful persons. It is very difficult to suggest a correct dose of drug for a particular person. The dose of the drug will differ according to willpower, mental attitude and physique of the subject. A successful narcoanalysis test is not dependent on injection. For its success a competent and skilled interviewer is required who is trained in putting recent and successful questions".

⁸ Michael McGrath, (2017), The Polygraph: Uses and Misuses, Academic Press.

⁹ 'Aldert Vrij, (2017) Using the model statement to elicit information and cues to deceit in interpreter-based interviews', Academic Press.

⁹ 'Selvi v. State of Karnataka, 2010 ('7) SCC 263'.

the body of the subject. Hence, Narco analysis may persist in certain issues such as physical harm, psychological distress, consequences after injecting the serum or side effects, and invasion of personal privacy, and thus, it amounts to a contravention of Article 14, 21, 20(3) of the Indian Constitution and 161 of CrPC.

Right to privacy and Narco test¹⁰

'The term "Right to Privacy" is a generic term encompassing various rights recognised as inherent concepts of ordered liberty. The right to be left alone on the right of a person to be free from unwarranted publicity is the right to privacy. This right to privacy is implicit in the right to life and liberty guaranteed to the citizens of India by Article 21 of the Constitution of India'. One of the arguments against narco analysis is that 'it violates Article 21 of the Constitution'. The most important aspect of our constitution is its guaranteed right to life and liberty, which includes privacy. Therefore, in the name of law and public order, the state may restrict or even take away someone's right to life by following the legal process. "Due process" must be followed, though, as was decided in *Maneka Gandhi v. Union of India*¹¹. Therefore, the state cannot restrict or deny the right to life by sabotaging the legal system. Exaggerated "procedure" in activist fashion refers to "fair and reasonable procedure" that aligns with civilised standards such as natural justice that are firmly rooted in community consciousness rather than procedural barbarism or legally mandated normative mockery.

'Article 21 of the Constitution of India guarantees the 'right to life and personal liberty,' which encompasses the right to live with human dignity'. Any action that offends or undermines human dignity constitutes an infringement on the right to life and is therefore prohibited' India employs the adversarial system in its criminal justice administration. In the adversarial process, the defendant is consistently a 'party' to the trial. He executes the defence on the principle of parity with the prosecution. The accused actively participates in the adversarial criminal procedure rather than a mere object of it. In accordance with the legal requirement, his body may undergo examination under suitable conditions. However, his mind must remain unencumbered throughout all phases of the proceedings, ensuring he is able to effectively 'conduct' the defence. This freedom, it is perceived, prevents the intentional suspension of his consciousness to investigate his unconsciousness¹².

The Rule Against Self-Incrimination and Narco Test¹³

'The privilege against self-incrimination thus enables the maintenance of human privacy and observance of civilised standards in the enforcement of criminal justice'. It also goes against the maxim '*Nemo Tenetur se Ipsum Accusare*' which means, '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'¹⁴. "If 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. It becomes imperative to analyse Article 20 (3) of the Indian Constitution". 'Clause (3) of Article 20 declares that "*no person accused of an offence shall be compelled to be a witness against himself*"¹⁵. This provision may be stated to consist of the following three components: "*firstly*, it is a right pertaining to a person accused of an offence. *Secondly*, it is a protection against compulsion to be a witness; and *thirdly*, It is a protection against such compulsion resulting in his giving evidence against himself". 'The privilege under clause 20(3) is confined only to an accused, i.e. a person against whom a formal accusation relating to the commission of an offence has been levelled, which is in the normal course may result in the prosecution. A person against whom a first information report has been recorded by the police and an investigation has been ordered by the Magistrate can claim the benefit of the protection. Further, the guarantee in Article 20 (3) is against the compulsion to be a witness'. 'In *State of Bombay v. KathiKaluOghad*¹⁶ a Bench of the Supreme Court consisting of eleven judges

¹⁰ 'In Re: Ramlila Maidan Incident Dt.4/5.06.2011 v Home Secretary, Union Of India & Ors' 2012 Indlaw SC 54, (2012) 5 SCC 1, AIR 2012 SC (Supp) 266, [2012] 4 S.C.R. 971, A. T. Maideen v Senior Intelligent Officer Directorate of Revenue Intelligence Delhi Zonal Unit, New Delhi,, 2012 Indlaw MAD 65, Panner Selvam v State, Represented by Inspector of Police, Chennai, 2011 Indlaw MAD 1361, Asha Tamang v State of West Bengal, 2011 Indlaw CAL 788

¹¹ 1978 SCR (2) 621.

¹² Hansaben Lalitbhai Rathod v State of Gujarat, 2011 Indlaw GUJ 1306, Darshan Singh v District and Sessions Judge and another, 2011 Indlaw PNH 3482, Essar Telecom, Infrastructure Private Limited v State of Kerala, 2011 Indlaw KER 183, Patan Khaja Babu @ Babu and others v State of Andhra Pradesh, 2010 Indlaw SCO 561, Mahesh S/o Mahonsing Shribas v State of Maharashtra,, through Investigation Officer, 2010 Indlaw MUM 794, Y. Ranganadh Goud v State of Andhra Pradesh, Hyderabad, 2010 Indlaw AP 895

¹³ 'Dr. Mehmood Nayyar Azam v State of Chattisgarh and others', 2012 Indlaw SC 365, (2012) 8 SCC 1, 2012 ACJ 2239, AIR 2012 SC 2573, 2012 (5) AWC 4353, 2012 CRLJ 3934, Harjinder Kaur v State of Punjab and others, 2012 Indlaw PNH 5462, 'Sakshi Sharma W/o Rajesh Sharma and others v State of Himachal Pradesh and others, 2012 Indlaw HP 1474, Rohit Shekhar v Narayan Dutt Tiwari and another, 2012 Indlaw DEL 4296'

¹⁴ 'Available in <https://definitions.uslegal.com/n/nemo-tenetur-seipsum-accusare/>.'

¹⁵ Rule against self incrimination

¹⁶ AIR 1961 SC 1808.

held that': "it is well established that clause (3) of Article 20 is directed against self-incrimination by the accused person. Self-incrimination must mean conveying information based upon personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court that may throw a light on any of the points in the controversy but which do not contain any statement of the accused based on his personal knowledge". 'The third component of Article 20 (3) is that it is a prohibition only against the compulsion of the accused to give evidence against himself. In *Kalawati v H.P. State*¹⁷, the Supreme Court held that Article 20 (3) does not apply at all to a case where the confession is made by an accused without any inducement, threat or promise'. In *M. P. Sharma vs. Satish Chandra*¹⁸, the Supreme Court noted: "Article 20(3) encapsulates the principle of safeguarding against self-incrimination, a fundamental tenet of the British criminal jurisprudence system, 'It additionally noted Indian law maintains protections against self-incrimination similar to English common law concerning the accused and document production; however, it has been altered regarding oral witness testimony by incorporating compulsion and granting immunity from prosecution based on such compelled evidence'.

In '*Nandani Satpathy v. P.L. Dani*¹⁹, the Indian Supreme Court broadened the scope of Article 20(3) to include' the 'Right to Silence'. The court additionally determined that "compelled testimony encompasses evidence acquired not solely through physical coercion or violence, but also via psychological torment, environmental pressure, protracted interrogations, proximity, and oppressive or intimidating tactics, among other methods. The Fares examination undoubtedly falls within the Article's restrictive parameters as it entails coercive intrusion into the subject's psyche. For example, data acquired from the drug test suggests that the suspect possesses or is aware of the subject matter of the inquiry. Although the accused has not reacted verbally or physically to any bodily intrusion, the motivation and objective of the act have been effectively realized. This constitutes a blatant and severe violation of the protections afforded by Article 20(3) of the Indian Constitution. Analogous to this "test of violation," it seems that the right to equality enshrined in Article 14 of the Constitution is infringed". 'Equality is a multifaceted concept that cannot be confined within conventional and theological constraints'.

Right to Silence and Narco Analysis

'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. Section 161(2) of the CrPC states':

"Such person shall be bound to answer truly all questions relating to such case put to him ...other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."

'These are fundamental principles of criminal law, ensuring that the accused has the right to keep silent during the course of investigation'. A police officer may conduct an oral examination of anyone he believes is acquainted with the case's facts in accordance with section 161 CrPC. Some of the individuals interrogated under section 161 might be charged later²⁰. Therefore, "any person" under section 161 also refers to the accused. The subject of the examination is required by Section 162 to respond to all questions, with the exception of those that could lead to his incrimination. Hence, if the question is self-incriminating, the subject can remain silent. In short, 'section 161 of CrPC and Article 20(3) of the Indian Constitution protects the interest of the accused'. However, if a police officer examines someone and responds to a question that could lead to incrimination, the response cannot be used against them in the investigation or trial. Narco analysis of the accused yielded information similar to the statement recorded under section 161 CrPC., which, if reduced to writing, does not need the maker's signature and cannot be used against him. When someone is detained on suspicion of a crime, they may be forced to undergo a medical examination against their will. 'It is well established that the Right to Silence has been granted to the accused by virtue of the pronouncement in the case of *Nandini Satpathy vs P.L.Dani*²¹ no one can forcibly extract statements from the accused, who has the right to keep silent during the course of interrogation (investigation). By administering 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 CrPC. The Apex Court upheld her pleas'. The right to silence is an important

¹⁷ 1953 AIR 131, 1953 SCR 546

¹⁸ 1954 AIR 300, 1954 SCR 1077

¹⁹ '1978 AIR 1025 1978 SCR (3) 608 1978 SCC (2) 424'

²⁰ *Dilshad v State of Uttarakhand*, 2013 Indlaw UTT 1046, *Jyoti Savita W/o Pawan Kumar Sen v Pawan Kumar S/o Hariram Sen*, 2013 Indlaw MPLJ 213, *Pawan Kumar Sen S/o Hariram Sen v Jyoti Savita W/o Pawan Kumar Sen*, 2013 Indlaw MP 362, *Radha Krishna v State of Uttar Pradesh and others*, 2013 Indlaw ALL 3532, *Anand Sen Yadav and others v State of Uttar Pradesh*, 2013 Indlaw ALL 693, *H. Fernando Proprietor Fernando Coal and Coke Merchant, Coimbatore v Allied Coal (Private) Limited represented by its Director, Chennai*, 2013 Indlaw MAD 72, *All India Networks Welfare Trust and others v Superintendent of Police and others*, 2012 Indlaw ORI 128, *Ritesh Sinha v The State Of Uttar Pradesh & Anr.*, 2012 Indlaw SC 524, (2013) 2 SCC 357, AIR 2013 SC 1132, 2013 CRLJ 1301, *Soma Rama Chandram S/o Late Venkatachalam and others v 'State of Andhra Pradesh, Represented by its Public Prosecutor, Andhra Pradesh High Court, Hyderabad and others*, 2012 Indlaw AP 864',

²¹ '1978 AIR 1025 1978 SCR (3) 608 1978 SCC (2) 424'

provision that 'safeguards the interests of an accused during the investigation process. No person should be forced to cremate himself by saying something which can go against him. However, there is a difference between obtaining evidence and forcing someone to speak, and therefore, these scientific tests are not violative'²².

Admissibility and Consent Test

Here, narcoanalysis is not violative of Article 20(3) if it is made voluntarily. The issue comes only when there is any kind of threat, inducement or compulsion to undergo narcoanalysis. 'The court, in a number of judgements, held that courts could not direct the prosecution to hold Narco analysis, brain mapping and lie detector tests against the will of the accused as it would be violative of Article 20 (3) of the Constitution. The application of the Narcoanalysis test involves the fundamental question of judicial matters and 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. In the case of *State Bombay v. Kathikalu*²³, it must be shown that the accused was compelled to make a statement likely to be incriminating of himself. Compulsion means duress, which includes threatening, beating or imprisonment of the wife, parent or child of a person. Thus, Article 20(3) does not apply where the accused confesses without any inducement, threat, or promise. None can publish anything covering the above matters without his consent, whether truthful or otherwise or laudatory or critical. If done so, it will be violating the right to privacy of the person concerned and would be liable in an action for damages. In the Indian constitution, protection of life, liberty, and freedom has been interpreted, and Articles 14, 19, and 21 are the best examples of any constitution against the right to privacy'²⁴.

In the Indian penal Code 'injury' is defined in Sections 44, 323, 324, 328 and the punishment for which may extend to 10 years, imprisonment. Hence, the administration of narcotic drugs without consent amounts to causing injury and is liable to punishment under various sections of the Indian penal code. Furthermore, the reliability of scientific tests is not free from doubt. 'Section 156 (1) of the Code of Criminal Procedure, which reads "Police officer's power to investigate cognizable cases", states that any officer in charge of a police station without the order of a Magistrate can investigate any cognizable case which a Court has the power to inquire into or try under the provisions of Chapter XIII. 'Investigation', as defined in Section 2 (h) of CrPC, includes all the proceedings under the Code of Criminal Procedure for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who a Magistrate authorises in that behalf. Thus, the collection of evidence by Police Officers is permitted under the law. Conducting a Narcoanalysis Test on the accused is in the process of evidence by the investigating agency. The Karnataka High Court also made a similar observation in the case of *Smt. Selvi and Ors v. State by Koramangala Police Station*. This provision is also constitutionally valid'. However, it doesn't mean forced narcoanalysis.

Section.3 of the Indian Evidence Act defines evidence as, "*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 the 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*". 'However, doubts are raised about whether it amounted to testimonial compulsion in the judiciary and a violation of human rights, individual liberty and freedom. Lawyers are divided on whether the results of Narco analysis 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 Narco analysis test report has some validity but is not totally admissible in court, which considers the circumstances under which it was obtained and assesses its admissibility. The results of such tests can be used to get admissible evidence, can be corroborated with other evidence, or 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'²⁵.

²² 'Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid, State Of Maharashtra, Radhakant Yadav v State Of Maharashtra, Fahim Harshad Mohammad Yusuf Ansari & Another Union Of India & Others', 2012 Indlaw SC 258, (2012) 9 SCC 1, AIR 2012 SC 3565.

²³ AIR 1961 SC 1808

²⁴ 'Mohammed Majid Hussain S/o Hussain v Mohammed Aqueel S/o Mohammed Abbas', 2014 Indlaw HYD 974, Rajiv Singh S/o Rajdeo Singh v State of Bihar, 2014 Indlaw PAT 184, Jeya Priya and another v State By Deputy Superintendent of Police, Melur Sub-Division, Madurai and another, 2014 Indlaw MAD 771, Sandeep Laharia v State of Madhya Pradesh, 2014 Indlaw MP 1081, 'Suresh Kumar Koushal and another v NAZ Foundation and others, 2013 Indlaw SC 816', Rajli @ Rajjo v Kapoor Singh and others, 2013 Indlaw PNH 4939, Mohd. Khalid v Special Judge, C. B. I. Court No. 2 Lucknow and another, 2013 Indlaw ALL 2161, Dr. Rajesh Talwar and another v Central Bureau of Investigation and another, 2013 Indlaw SC 666

Dr. Rajesh Talwar and another v Central Bureau of Investigation Thru Its Director and another, 2013 Indlaw ALL 2395, Sukhvinder alias Shoki and others v State of Haryana, 2013 Indlaw PNH 1349

²⁵ Jamnadas and another v State of M. P., 2016 Indlaw SC 438, Anjan Biswas v Central Bank of India and others, 2016 Indlaw CAL 688, Manmeet Singh v State of Haryana and others, 2016 Indlaw PNH 2228, Annu Yadav v State of Uttarakhand and another, 2016 Indlaw UTT 175, S. P. Rajkumar v Central Bureau of Investigation, S. C. B., Mumbai and others, 2016 Indlaw MUM 385, Illiash Mondal and another v State of West Bengal, 2015 Indlaw CAL 1342, Roopesh @

*Whether the statement made by the accused or witness to the psychiatrist during the narco test can be treated as a confession?*²⁶ Confession means ‘a voluntary statement made by a person charged with the commission of a crime communicated to another person, in which he acknowledges himself to be guilty of the offence charged and discloses the circumstances of the act or the share and participation which he had in it’²⁷. ‘Indian Evidence Act mandates that confessions made before police officers are ordinarily not admissible as evidence, and only statements made in the presence of a judicial magistrate can be given weightage. The doctrine of excluding the ‘fruits of a poisonous tree’ has been incorporated in Sections 24,²⁸ 25,²⁹ and 26³⁰ of the Indian Evidence Act, 1872’. Apart from that, extra-judicial confession is not valid in India. Section 27 is an exception where a recovery has been made subsequent to confession to the police.

‘The relationship between Section 27 of the Evidence Act and Article 20(3) of the Constitution was clarified in *State of Bombay v. Kathikalu*³¹ It was observed in the majority opinion by *Jagannadhadass*, J: “The information given by an accused person to a police officer leading to the discovery of a fact which may or may not prove incriminatory has been made admissible in evidence by that Section. If it is not incriminatory of the person giving the information, the question does not arise. It can arise only when it is of an incriminatory character so far as the giver of the information is concerned. If the self-incriminatory information has been given by an accused person without any threat that will be admissible in evidence and that will not be hit by the provisions of cl. (3) of Art. 20 of the Constitution because there has been no compulsion. It must, therefore, be held that the provisions of S. 27 of the Evidence Act are not within the prohibition aforesaid, unless compulsion has been used in obtaining the information.”

‘A confession should be free and voluntary. If it proceeds from remorse and a desire to make reparation for the crime, it is admissible. If it follows from hope or fear, excited by a person in authority, it is inadmissible³². the ground for not receiving such evidence is that it would not be safe to receive a statement made under any influence or fear. There is no presumption of law that it is false or that the law considers that such statement can be relied upon; but such confessions are rejected because it is supposed that it would be dangerous to leave such evidence to the jury’.

In *Vijay S/o Mohanlal Devda & Ors. v. State of Madhya Pradesh*³³, the high court held that “In a case where police officers have been arraigned for looting ancient gold coins worth crores of rupees, Madhya Pradesh High Court has held that Narco-Analysis, Polygraph and Brain Mapping tests can’t be conducted on the accused when they haven’t expressly consented to such tests before the concerned magistrate”. In *Selvi case*, the apex court didn’t point out the admissibility of evidence. In the case of narcoanalysis, if it is argued that the person was under the influence of medicine, then such a confessional statement would also not be admissible.³⁴ Further, the court has given certain guidelines, including that “firstly, no lie detector tests should be administered except with the accused’s consent, *secondly*, The accused should be given an option whether he wishes to avail of such a test, *thirdly*, If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implications of such a test should be explained

Prasanth and others v Deputy Superintendent of Police 'Q' Branch CID, Coimbatore, 2015 Indlaw MAD 2446, State of (NCT of Delhi) v Mohd. Hassan @ Abu Qasim and others, 2015 Indlaw DEL 591.

²⁶ Om Prakash Chautala and others v Central Bureau of Investigation, 2015 Indlaw DEL 323, Leena Katiyar v State of Uttar Pradesh and others, 2015 Indlaw ALL 137, Rakesh Kumar @ Gora v State of Punjab, 2015 Indlaw PNH 1872, Sudhir Chaudhry and another v State, 2015 Indlaw DEL 957, Rikhi Ram S/o Kedar Dutt v State of Himachal Pradesh, 2014 Indlaw HP 594, Shreemad Jagadguru Shankaracharya, Shree Shree Raghaveshwara Bharati Swamiji, (Formerly known as Sri Harish Sharma), Shimoga District, Bangalore v State of Karnataka, Represented by the Director General of Police, Bangalore and others, 2014 Indlaw KAR 1918, Kodi Satish Naidu v State of A.P. Public Prosecutor High Court of A.P., Hyderabad and another 2014 Indlaw HYD 1200.

²⁷ Blacks Law Dictionary 5th edition

²⁸ S.24 - Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding. - A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the 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 person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceeding against him.

²⁹ S.25 – confession to police officer not proved – No confession made to a police officer shall be proved against a person accused of any offence.

³⁰ S.26. Confession by accused while in custody of police not to be proved against him.- No confession made by any person whilst he is in the custody of a police officer unless it is made in the immediate presence of a Magistrate, shall be proved against such person.

³¹ AIR 1961 SC 1808

³² Ibrahim v R, AIR 1914 PC 599

³³ Case No: Misc. Criminal Case No. 45214 of 2023, Available in <https://www.livelaw.in/high-court/madhya-pradesh-high-court/madhya-pradesh-high-court-narco-analysis-polygraph-tests-consent-mandatory-privacy-241752>

³⁴ Sri. Vikay Kumar v State, 2005 Cri. L.J 3085 (SC)

to him by the police and his lawyer, *fourthly*, The consent should be recorded before a Judicial Magistrate, *fifthly*, During the hearing before the Magistrate, a lawyer should duly represent the person alleged to have agreed, *sixthly*, 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, *seventhly*, The Magistrate shall consider all factors relating to the detention, including the length of detention and the nature of the interrogation, *eighthly*, The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer *and lastly* A full medical and factual narration of the manner of the information received must be taken on record"³⁵.

Apart from 'the Supreme Court, that National Human Rights Commission (NHRC) also provides the same guidelines such as; firstly, Lie detector test must not be carried out without the consent of the accused; *secondly*, If the accused volunteers to take a lie detector test, s/he must be given access to a lawyer to explain the physical, emotional and legal implications of the test. The police must also explain the implications, *thirdly*, consent to take a lie detector test must be recorded before a judicial Magistrate, *fourthly*, the Magistrate must consider the time the accused has been in detention and the nature of her/his interrogation. This should be done to find out whether the accused is being coerced into giving consent'. *fifthly*, a lawyer must represent the accused when recording consent. 'The lawyer will explain that the statement [given during the test] does not have the status of a confessional statement given to a magistrate. It will have the status of a statement made to the police; *sixthly*, the actual recording of the lie detector test should be done by/in an independent agency such as a hospital and in the presence of a lawyer. *Lastly*, a full medical and factual narration of the manner in which information is received must be taken on record'.

Recently *Sunil Bhati vs State Of Rajasthan*³⁶ "This Court, however, does not wish to enter into the degree of relevance of such a test, but certainly finds that such a scientific technique, which is recognised by the strength of law in the courts and in the legal system of the Country, and is crystallised by the Hon'ble Apex Court in the landmark case of *Selvi* wherein the Hon'ble Apex Court has held that the voluntary administration of such scientific techniques in the context of criminal justice may be permitted, and therefore, the same cannot be denied to the petitioner as it would amount to depriving him of the valuable right to defend himself during the trial," Justice *Pushpendra Singh Bhati* said in the ruling. Further, the court also pointed out that "*Even if the Narco Analysis test may not have an absolute binding impact upon the result of the trial, it is certainly is a scientific technique recognised by law, and is being utilised in the course of the investigation, by prosecution agencies as well as by the Courts, to support and corroborate the main evidence. Thus, denying the petitioner an opportunity to render such defence evidence at the appropriate stage, as is statutorily provided to him, would not only be detrimental to the cause of justice but would also be a clear violation of his statutory right envisaged under Section 233 CrPC.*"³⁷

Conclusion

There is a strong bias in today's criminal justice system that favours prosecution. Because of flaws in the administration of the criminal justice system, particularly in the areas of investigation and trial, offenders are using free speech, individual liberty, and freedom as a shield. The accused's incriminating declaration was coerced. It is not necessary to get a court order to conduct a narco analysis since it is similar to taking a statement from "any person" under section 161 CrPC. in a criminal prosecution. That being said, leveraging such remarks to help in inquiry is not difficult in the least. In any case, getting the court's approval is necessary before using it as evidence against the accused; if the court is persuaded of the statement's veracity and confidence-inspiring qualities, it will permit its proof. It is possible for the Indian criminal justice system to accept an incriminating statement from an accused person if the recovery of incriminating substances lends credence to the confession. There is no need to handle narco-analysis differently because of the inherent dangers of the procedure, especially when capturing a fingerprint, x-ray, or other physical imprint of an accused individual does not violate Article 20(3) of the Constitution. However, forensic medical specialists in specialised labs carry out the examination. Therefore, the level of danger is negligible. It is possible to reduce the danger of barbiturate administration by strictly adhering to the recommended protocol and taking all necessary safety measures. For the greater good of society, we should be willing to take a calculated risk. Numerous decisions have considered the specifics of the cases and

³⁵ 'State Of Andhra Pradesh v Golconda Linga Swamy And Anr, 2004 Indlaw SC 512', (2004) 6 SCC 522, State of Madhya Pradesh v Mohanlal Soni, 2000 Indlaw SC 364, (2000) 6 SCC 338, Sh. Satish Mehra v Delhi Administration, 1996 Indlaw SC 2249, (1996) 9 SCC 766, 'State of Maharashtra Etc v Som Nath Thapa, Etc, 1996 Indlaw SC 859', (1996) 4 SCC 659, State of Haryana and Others v Ch. Bhajan Lal and Others, 1990 Indlaw SC 91, (1992) Supp1 SCC 335,

³⁶ 2022 LiveLaw (Raj) 227

³⁷ 'Rajiv Thapar & Ors. v Madan Lal Kapoor, 2013 Indlaw SC 33', Madan Lal Kapoor v Rajiv Thapar and Others, 2008 Indlaw DEL 760, 2008 CRLJ 4788, 2008 (150) DLT 744, 2008 (3) JCC 1626, Rajiv Thapar & Ors. v Madan Lal Kapoor, 2013 Indlaw SC 33, (2013) 3 SCC 330, AIR 2013 SC (Supp) 1056, Rukmini Narvekar v Vijaya Satardekar and others, 2008 Indlaw SC 2491, (2008) 14 SCC 1, AIR 2009 SC 1013, Suresh Kumar Tekriwal v State of Jharkhand and another, 2005 Indlaw SC 1784, (2005) 12 SCC 278, State of Orissa v Debendra Nath Padhi, 2004 Indlaw SC 1025, (2005) SCC (Cr) 415,



maintained the legitimacy of narco-analysis. The potential of a miscarriage of justice is eliminated if it is carried out with the court's approval and in the presence of the accused's chosen counsel. By bolstering the evidentiary system, narcoanalysis tests for serious offences would enhance the administration of criminal justice.

References

1. Moenssens, A. A. (1961). Narcoanalysis in Law Enforcement. *The Journal of Criminal Law, Criminology, and Police Science*, 52(4), 453–458
2. Mishra, Praveen. (2020). Narco-analysis in criminal investigation and trial: conspectus. *Indian Journal of Law and Justice*, 11(2), 76-87.
3. Dziubak. (2023). Legal Responsibility Issue of Forensic Expert in the Field of Law
4. Deepti, Gaurav, Geeta, Harsh, & Rishabh. (n.d.). Advantages of blockchain in digital forensic evidence management, SSRN.
5. Giorgio. (2014) Theories in deception and lie detection., Academic Press
6. Aldert Vrij, (2017) Using the model statement to elicit information and cues to deceit in interpreter-based interviews, Academic Press.
7. Michael McGrath, (2017), The Polygraph: Uses and Misuses, Academic Press.