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Constitutionality of Narco Analysis Test

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Abstract

The article will analyse the role of Narco Test to collect evidence in criminal investigation in the purview of Indian Constitution. Science and technologies are growing rapidly and Indian investigation also adopted new methods such as polygraph, Narco analysis and brain mapping tests are called "Deception detection tests". The admissibility of such tests has become serious question arises that whether these test are against the fundamental right Article 20(3) of the Indian Constitution "right against self-incrimination". No person accused of any offence shall be compelled to be a witness against himself. The article also analyze the power of Court to order Narco analysis in some leading cases.

Narco Analysis

The term Narco analysis is derived from Greek word "nark", which means the anesthesia torpor. Narco analysis means psycho-analysis using drugs to induce a state akin to sleep (Webster's dictionary).

The drug named "Sodium Pentothal" is injected to witness or suspect by the investigation agencies to make him reveal some information under his hypnotic position. It is a new scientific or investigating tool for criminal investigation.

3 gram of sodium pentothal dissolved in three letters of distilled water injected in one veins along with 10% dextrose slowly over 3 hours. This injector drug is to depress the body's central nervous system. The Test procedure is carried out in three phases

1. The pre test interview
2. The measurement of the psychological around 2 various question
3. The post test interview.

Constitutional perspective

"No person accused of any offence shall be compelled to be a witness against himself" article 20 clause 3 of the Constitution gives protection to the accused it becomes the debated issue that statement made by person who is Semi conscious. Court held in one of some cases that the court cannot direct the prosecution to hold narco analysis, test brain mapping and lie detection test against the will of the accused person because it will be a highly violative of article 20(3) of the constitution. The protection against self-incrimination maintains the human privacy in the enforcement of criminal justice the maxim "Nemo tenetur se ipsum accusare" that is No man even the accused himself can be compelled to answer any question which tends to prove him guilty of crime he has been accused of even it includes right to silence which is given under CrPC and Indian Constitution.

Section 161(2) of the CrPC provides right against self incrimination it is stated that every person is bound to answer truthful all questions put to him by a police officer other than questions the answer to which would have a tendency to expose that person to a criminal charge, penalty or Forfeiture.

The complications arises between two aspects

that on one side the person has to answer all questions but on the other side he will not be compelled to give answer which tends to prove him criminal that is why the application of new technology narco analysis is under the realm of doubt .

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,

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in relation to matters of fact 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 due to admissibility of result received of such tests. But if results corroborated by other evidence then possibility of its validity may be arise. However sec 24 to 26 of the Evidence act clearly states that the confession under medicine or kind of coercion used by police officers is not valid at all. But according to sec 27 the confession under compulsion is invalid but the information can be used to support other evidences.

These tests can be conducted not only on suspected but also other witnesses. The only thing which is to be taken into consideration by the court giving permission is such test would not harm the subject.

Nithari Murder Case:

in famous case known as nithari case the court upheld the the validity of narco analysis test and P300 test the accused Surendra Koli e went through the test and by the influence of the drug should disclose his offences such as names of friends him Ordered and rape them after killing them the correct utilisation of Investigation Technology done in this case because the the hard core criminals can never speak the truth.

Dinesh Dalmia Case

in Dinesh Dalmia case the court said that the accused may be taken to the laboratory for such test against his will but Revelation during such test is quite voluntarily the court observed that when accused had not come forward with the truth scientific tests are resorted by the Investigation Agency in this case to kind of information can be found first which is incriminatory as other related information the information which is incriminatory in nature can be violative of article 14 clause 3 of the constitution but other relevant information can be admissible without violating article 23 and admissible under section 27 of Indian Evidence Act.

George vs Deputy Superintendent of Police

in the case of George vs Deputy Superintendent of Police the court allowed the narco analysis test and observed that conventional methods cannot reach at the result when and modern techniques used by criminals these are number of cases involving word it related to narco test

Ramchandra and Ors. v. State of Maharashtra.

In this case the bombay high court upheld the legality of Narco analysis test . The verdict was the evidence procured under the effect of truth serum or narco analysis is admissible. Hon'ble judges considered them as "minimal bodily harm"

Smt Selvi vs State of Karnataka

It is one of the popular case where Supreme Court added to guidelines in this case the protection of fundamental right under article 20(3) is emphasized the court found this test is admissible and void in I of law as well as increasing article 21 right to privacy guaranteed under constitution the supreme court held that the guidelines should be strictly adhered to conduct narco analysis technique and brain electrical activation profile test summary of guidelines are:

1. no Lie Detector test should be administered without consent of the accused
2. if the accused gives consent to undergo a lie detector test he should be given access to a lawyer and the physical and emotional and legal implication of such tests should be explained to him by the police and his lawyer before undergoing such a test
3. the consent should be recorded in the presence of a Judicial Magistrate
4. at the hearing the person in question must be informed in clear language that the statement that is made shall not be regarded as confessional statement but will have the same status as that of statement made to the police
5. the magistrate shall give due consideration to all the factors relating to the detention including the period of detention and the nature of the interrogation

6. the recording of the Lie Detector test cell be done by an independent Agencies such as a hospital and shall be conducted in the presence of a lawyer
7. a full Medical and acceleration of the manner in which the information was received must be recorded.

Conclusion

Since the veracity of the Narco analysis test is always quashed with Article 20(3) of the Constitution, we cannot deny its corroboration in some cases. Although high Court upheld its validity but Supreme Court having the responsibility of guardianship of Fundamental rights, held it inadmissible under evidence. The Supreme Court issued guidelines regarding such tests that means there is not proper denial of such test. If the law making bodies make the provisions of admissibility of narco test such as the nature of case, the heinous crime and habitual offenders and terrorist activities etc. taken into consideration, than there will be a harmony between such tests and fundamental rights.

References:

1. Sourdeep Nandy. Himanshu Garg. 2019 Constitutionality of Narco Analysis and Polygraph Examination IJLMH vol 2, issue 4 ISSN2581-5369
2. Chaudhary Dharmendra, (Oct.4.2010)"Constitutionality of Narco Analysis in India
3. Dr. Dharmendra kumar singh International Journal of law ISSN 2455-2194. www.lawjournals.org. Vol 3 issue 4, july 2027 pg 84-89
4. <https://www.lawctopus.com/academike/scientific-evidence-narcoanalysis/>
5. (Lawteacher.net, May 2021) <<https://www.lawteacher.net/free-law-essays/human-rights/narco-analysis-test-with-emphasis-on-constitution-law-essays.php?vref=1>> accessed 13 May 2021