

Development of narco Analysis Test as Investigation Technique In The Criminal Justice System: An Indian Perspective

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ABSTRACT:-Society is always changing according to its recipient human being therefore norms cannot be made stagnant and is equally needs changes according to the social, economic and cultural condition of society. The criminal justice system also witnesses such kind of changes with the span of time which has been made by the investigation agencies by introducing technological advancement in the procedure for the collection of evidence. These techniques are Lie Detector, Brain Mapping and Narco Analysis Test which investigating agencies frequently using these days. Among these the Narco Analysis Test is one of the technique for which investigating agencies have been questioned many times. Now the Supreme Court of India given verdict in this regards and instructed that the same can only be done with the consent of the subject. Through this paper an attempt has been made to explore the development and journey of Narco Analysis Test in the criminal justice system as a tool of investigation in India.

Keywords: *Investigation, Evidence, Lie Detector, Narco Analysis*

I. INTRODUCTION

People normally thinks that their expression is free, their self exposure as mediated through freely chosen words either truthfully or falsely representing the actual thought of mind but psychological technique can some extent reach the source immediately and get or extort the expression which is not voluntarily or falsely representing the actual thought of mind. The psychology and power of scientific method made this possible to reach directly to the intimate sources of thought and will and therefore expression also. This concept of science and technology given birth of some new technologies such as Brain Mapping, P300, Lie Detector and Narco Analysis Test or Truth Serum. It was considered as a Technique of a clinical psychiatry where some drugs have to be used to establish a contact with more or less inaccessible patients. It is similar in objective to the Freudian psychoanalytic technique except that it aims to get through the drugs to same type of cooperation that psychoanalysis gets through the free will of the patients. The drugs used for the narco analysis is Scopolamine and Sodium Pentothal. This Scopolamine has been used in the United States earlier in the treatment of Cocain and Morphin addicted patients as an analgesic in obstetrics "Twilight sleep". The concept also came as the medical experts began to employ the Scopolamine along with morphine and chloroform to induce a state of twilight sleep of women during child birth. A constituent of henbane, Scopolamine was known to produce sedation and drowsiness, confusion and disorientation, in-coordination and amnesia for events experienced during intoxication. Yet physician noted that the women in twilight sleep answered questions accurately and often volunteered exceedingly candid remarks. The Scopolamine is an Alkaloid drug, a sedative of nervous system. The first use of Scopolamine as an instrument of analysis is took place in 1922 to Robert House in Dallas Texas. The similar technique might be employed in the interrogation of suspected criminals in Dallas Texas in Robert House and arranged interview under scopolamine of two prisoners in Dallas County Jail whose guilt later on confirmed. Under the drug the both men denied about the charges on which they were held and both upon trial not held guilty.¹ It was a case where the Scopolamine used for the purpose of Narcoanalysis. Later on Calvin Goodard coin this term "Truth serum" and made the claim that under the influence of Scopolamine it is impossible to lie.²The Los Angeles Record first reported the phrase "Truth Serum" in the news report of experiments of Robert House. The suggestions that the drugs might facilitate communication with emotionally disturbed patients first came by accident in 1916 when Arthur. S Lovenhart and his associates

¹ https://www.cia.gov/library/center_for_the_study_of_intelligence/kent_csi/vol5no2/html/v05i2a09p_0001.htm, visited on 17 April, 2015.

² J. Rolin, *Police drug tr. L. Bendit* (NewYork, 1956), p. 12

were experimenting with the respiratory stimulants at the University of Wisconsin.³ In 1930's Dr. William Bleckwenn introduced the technique as a therapy for severely schizophrenic patients or those who suffered from catatonic mutism. It was found that after being administered the drugs, these people would release from their somatic state for short period. They could carry conversations; partake in meals and behaving like completely healthy person however after some period they returned to their prior condition. Despite these short live effects the treatment was common practice in English asylums through the 40s and 50s.⁴ In 1935, Clarence W. Muehlberger head of Michigan Crime Detection Laboratory, East Lansing was used barbiturates on many reluctant suspects.⁵ During World War II, the barbiturates, sodium pentothal and sodium amytal, began to replace the scopolamine as the drugs of choice in narcoanalysis. Barbiturates are the synthetically produced drugs, derivatives of barbituric acid, very numerous, ranging from the familiar Phenobarbital, in common use, to deep anesthetic drugs, such as pentothal and amytal. These are sedative and hypnotic which produce feeling of serenity, of well being of friendliness. Under the influence of these drugs in the lighter phases of anesthesia, the patient loses his inhibitions and experiences. The effect of the barbiturates is similar to that of alcohol, except the release that comes about through the barbiturates relates principally to the words, while that from alcohol relates to deeps as well as words. Thus barbiturates are easier to handle in narcoanalysis than alcohol, because the effects are more standardized and predictable. British and American army and air physicians achieved rapid, often lasting, and sometimes spectacular results through the barbiturates in enabling battle-shocked servicemen to expose hidden fears and regain emotional stability. By augmenting standard hypnosis with narcotics and synthesizing mental states through the power of hypnotic suggestion, a negative mental state could be replaced by a positive one.⁶ C.B. Hanscom, Director of the department of Protection and Investigation, University of Minnesota and forensic scientist refers that prior to the Dark ages "Opium, Hashish and wine were used for the purpose of extracting truth or confession of any information, after "dark ages" mescaline started to be used by the people for the same purpose and in 1903 a New York Criminologist used Ether for investigation purposes.⁷ Over a period of time Criminologists derived plausible explanations and theories to explain the steps whereby they can elicit confessions and assay guilt or innocence during examination. The criminologists and physician modified personality functions and lead the suspect into known confession mechanism because of development of science and technology.

An immense increase of verbal materials in narcoanalysis began to take place when the antagonistic effect of methyl-amphetamine hydro-chloride was added to the hypnotic effect of the barbiturates. Amphetamine is a stimulant drug, sold commercially under a variety of trade names, of which Benzedrine is the most widely known. Barbiturates can be used first to stifle anxiety, then afterwards amphetamine to activate, and in the swift change there can take place a truly explosive liberation of latent and unconscious material.⁸ A massive dose of methyl-amphetamine produces an effect similar to that of electric or insulin shock. It has no therapeutic value but it may aid diagnosis by carrying symptoms to their extreme.⁹ Now with the advancement and establishment of various forensic Science Laboratories the Narco Analysis Test became very advanced, only U.S. has more than 250 Forensic Science laboratories where the test is being conducted by the agencies.

II. PROCEDURE OF NARCO-ANALYSIS TEST

In the forensic science the scientific tools for interrogation which has thoroughly been used for the purpose of extraction of truth is lie detector test, P300, Polygraph Test, Brain mapping Test and Narco Analysis Test or Truth Serum Test. The truth serum is actually drugs or chemicals which had been used for the purpose of medical. These drugs are Seconal, Hyocine (Scopolamine), Sodium pentothal, Sodium Amytal and

³ Singh Charanjiv, "Narco analysis-A new trend in Forensic Science as a tool of Investigation," Punjabi University Law Journal 2007, p.236.

⁴ Miller, Michael M. "certain factors pertaining to the value of Narcoanalysis tests." Journal of the national medical association, 1954, July, 46(4); 238-241.

⁵ Quoted in "Andra Law Times," 2008, 14 (Jr), p.34.

⁶ Lopez Munoz Francisco, R. Ucha Udabe, C. Alamo "The history of Barbiturates a Century after their Clinical Introduction", Neuropsychiatric disease and Treatment, 2005, December 1(4): 329-343.

⁷ C.B. Hanscom, "Narco Interrogation," Journal of forensic sciences, 1 (1956) 37-45.

⁸ E.L. Kropa, Psychochemistry (lecture presented at the University of Notre Dame, Oct. 31, 1956) p.32

⁹ Ibid.

Phenobarbital.¹⁰ The most commonly used drugs which experts prefer to use is Sodium Pentothal which is an anesthetic and sedative one while administered intravenously can make a person garrulous and confessional and continuous use give hypnotizing effect on a person. The quantity of the drug depends upon the person's Age, Sex, Health and Physical condition. A wrong dose can send the subject into Coma or permanent loss of memory or resulted even death.¹¹ Subjects were questioned as they recovered from the light chloroform anaesthesia and gave answers which subsequently proved to be true.¹² The clinical or forensic psychologist interacts with the individual who will be in a trance, and give reports along with video tapes to the courts on behalf of the team.¹³ The descent into narcosis and beyond with progressively larger doses can be divided as follows:

1) Sedative stage

2) Unconsciousness with exaggerated reflexes (hyperactive stage)

3) Unconsciousness without reflex even to painful stimuli

In anaesthesia stages 1 and 2 may last only within 2 or three 3 seconds but all these stages can be distinguished in any given subject depends largely on dose and rapidly with which the drug is induced.

Plane three is treated as psychiatric stage in which the subject undergoes for the interview, it will last within few minutes but this duration can be increased by slow injecting drugs. The usual practice is to bring the subject quickly to stage two and conduct interview as he passes back in sedative stage on the way to full consciousness.¹⁴

Team Consist for conducting Narco Analysis:

One Psychiatrist, One Physician, One Anesthetist, Audio-videographer and One writer including expert.

Procedure Completed in four stages which are following:¹⁵

1. Pre-Test Interview

In this stage individual has given all the information about the test and procedure of the test and then consent taken.

2. Pre-Narcotic State

Anesthetists induce drugs and maintain the pre-narcotic state throughout the interview. Drugs is injected till the person appears relaxed and in a state of good contact. Sodium Pentothal or Sodium Amytal is given intravenously to induce hypnosis. A five percent or Ten percent solution of drugs is injected slowly in antecubital vein NMT 1 gm/grain per minute. As individual's speech starts the interview begins.

3. Semi Narcotic State

After establishing the semi-narcotic stage and the individuals appear to be :

- Flushed
- Slowing and slurred speech
- Nystagmus observed by testing examinee's eye, muscle, and finger
- Finally forensic experts or psychiatrist facilitate the interview.
- Individual allow to sleep off and allow to wake up
- Once individual wake up the anesthetist check the body and allow first to take coffee or tea

4. Post Test Interview

This is a stage where the subject become free from interview, got relax and anxiety free state, so the memory of subject is checked by the physician even they have allow to know what he reveals during interview.

Narco-Analysis Test in India

¹⁰ Sharma, B.R., "Scientific Criminal Investigations," Ed. 2006, University Law Publication, New Delhi, PP.60-61.

¹¹ Quoted in Andhra Law Times, 2008, 14(Jr.), p.34.

¹² The Journal of Criminal Law, Criminology and Police Science 513-528 (Nov.-Dec. 1951, at pp. 513-514)

¹³ Mohan B.M., "Misconceptions about Narco Analysis" 4(1) Indian Journal of Medical Ethics, (2007) at P.7.

¹⁴ Snider, R.S. Cerebellum. Sc. Am. Aug. 1958, 84. See also, Freedmen, L.Z. "Truth drugs," Sc. Am. March 1960, pp.145-154.

¹⁵ Rai, Supriya., "Narco Analysis Constitutional imperatives, SLS.

High profile criminal investigations in recent times have witnessed the emergence of a new investigative tools in India as well, such as p-300, lie detector, DNA, Finger printing and Narco Analysis Test for collection of evidence and extracting truth. In the criminal justice system though the Narco analysis test is relatively new in the field of investigation in India but it has been used in the field of psychiatry since long. Narco Analysis was hailed in the field of psychiatry as compared to other psychotherapeutic procedures as it saved time by helping the patient overcome reluctance in talking freely about their inner most feelings and experiences. By means of narco analysis it was possible to achieve a state of 'transference' in many patients whose previous state was apathy, inaccessibility, or even negative transference. The technology again at the service of law from the lie detector to narco-analysis and made a sudden reappearance in the world after 9/11. In the Indian context, the technology is being conducted since 2000 by the forensic science laboratories. It was first used in the very famous case of Bandit Virappan of Karnataka. During this period no one even investigating agencies has much idea about the test and no any controversy came out. The turning point came in 2002, when three month after the Godhara Carnage in Gujarat¹⁶ and subsequent massacre of Muslims, seven persons accused of burning of train brought to the laboratory for conducting Narco analysis Test in the Government hospital. During the course of investigation of fake stamp case¹⁷ at least five accused including Abdul Karim Telgi, Mohammad Abdul Wahid Qadari had been made to undergo for Narco Analysis Test. This was first constitutionally questioned before the court when one of the Managing Director of Cooperative Bank,¹⁸ Karnataka who has charged for the lending of money deposited by thousands of poor farmers in the bank and denied for the Narco Analysis test on the basis of rights guaranteed under various laws in India. This was a big question raised regarding the justice delivery system and constitutional framers that whether the rights given under constitution of India is for the protection of poor and downtrodden farmers who lost their money because they deposited with the bank and license issued by the Government or to the rich, intellectuals sections of society who may escape by cheating innocent farmer of the country. The suspects of Nithari Serial killings case had been also subjected to undergo for the truth serum test in Gandhinagar, Abu Salem, underworld criminal and accused of many cases of murder, extortion, kidnapping and drug smuggling had been subjected for narco analysis test and he revealed many missing links of various cases in which he was involved. In the Arushi Talwar murder case, CBI subjected narco analysis test to the both couple doctor Rajesh Talwar and Nupur Talwar and Supreme Court refused to entertain a petition seeking to restrain the CBI from conducting Narco analysis test to the suspected parents in the case. Not only these rather number of cases such as Tandoor Murder Case¹⁹, Shashi murder case and Malegaon bomb blast case are other example of cases in which suspected accused subjected for Narco Analysis in different forensic science laboratories in India. When it was first admitted in a suspected accused associated with Virappan of Karnataka²⁰, it was not as popular and controversial as today. The continuous report of growing rate of crime and reducing rate of conviction due to lack of evidence the agencies started trusting on these technology which has long history of European Country. The significance felt by the government in the field of criminal justice system looking the terrorist attacks and heinous crime were the offender left zero clue. Indian Government established number of forensic science laboratories such as Bangalore forensic Science Laboratory, Gandhinagar Forensic Science Laboratory and later on Lucknow and Mumbai forensic science laboratory are conducting these tests in India. In 2010 Ministry of Home Affairs, Government of India declared as the forensic science year and a committee constituted for the better use of forensic science in criminal justice system. The investigating agencies of India is in the favour of frequent use of Narcoanalysis test and thinks the technology as a effective technique in the era of technology for the reformation of criminal justice system while the civil society has deferent logic that it hampers individual liberty and self incrimination given under Indian constitution. The National Human rights Commission of India also issued some important guidelines for conducting narco analysis Test, which has to be followed by the agency while subjecting an individual for narco analysis, and this cannot be done without consent of the person concern, the consent must be taken before the magistrate so that the investigating agencies themselves cannot conduct test as and when they want. Present status of Narco Analysis Test in India is that it can be conducted with the consent of the suspected person.

III. CONCLUSION

¹⁶ https://en.wikipedia.org/wiki/Godhra_train_burning#27_February_2002_incident visited on 13/06/2016.

¹⁷ Abdul Karim Telgi @ Lala @ Karim vs State, SC 2007.

¹⁸ Peoples union for democratic rights, Twenty Second Dr. Ramanadham Memorial meeting, 2008.

¹⁹ State Vs. Sushil Sharma, 2007 CriLJ 4008

²⁰ Naia deepthi "Innocents have nothing to fear about narco analysis test" www.deccanherald.com., visited on 16 Feb. 2015.

It is the prime duty of every state to protect rights and liberties of the people, for this state has to develop such kind of norm which imposes restriction on the accused and protect the innocent. The society to be a peaceful and crime free only when it is governed by the rule of law and having established, well founded criminal justice system for the protection of people. This is the reason the Technological advancement became need for the survival of any developing society but this advancement reveals fruits only when their use ensure for the best purpose of society. The utilization of technological advancement in commission of crime is the negative face of Technology which compels the public authorities to change the strategy in the prevention and protection of citizens from crime. The criminal justice system in India since a decay faces serious problem where the crime rate is continuously increasing and the conviction rate is simultaneously decreasing. It was felt by the agencies that there is urgent need to change in the policy and strategy for the prevention of crime. In has been witness during last twenty years that the world faces serious terrorist attacks problem and one of the major problem in India is different spheres and faces of crimes including Terrorist activities which needs to be sorted out. The Criminal Justice system in India is looking a tremendous change of circumstances where the role of investigating agencies became significant and inclusion of technology like Narco Analysis Test made this change operative and fruitful. The system faces many serious issues related to delay in Justice and conviction which can only be possible by utilization of such technology which given a space of these technique. It was found that the investigation playing a major role in the conviction of crime and it is lacking because of technological advancement of criminals. This compels the investigating agencies to use technology in truth finding.

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