

DECEPTION DETECTION TESTS IN CRIMINAL INVESTIGATION WITH SPECIAL EMPHASIS ON NARCO ANALYSIS: EXAMINING THE LEGAL POSITION IN INDIA

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ABSTRACT

There are several methods for Criminal Investigation. Scientific techniques like polygraph, narco-analysis etc. is becoming common in the present time for crime detection. These scientific techniques have proved to be boon in criminal investigation. Narco-analysis has become increasingly, common and famous in India among the criminal investigating agencies. However, these scientific techniques are also challenged and criticised as being violative of our constitutional ethos. The current paper attempts to examine issues concerning the scientific techniques of criminal investigation and the author has focused specifically on narco-analysis method of criminal investigation and will examine the evidentiary value of narco-analysis test.

KEYWORDS: *Criminal Investigation; Narco-analysis; Scientific Techniques; Constitutional Ethos.*

1. INTRODUCTION

In India, with a strong democratic set up, the governance is based on rule of law.¹ Since the last few decades, science and technology has made life easy and comfortable. Legal framework provides the structure and guidelines for governing scientific and technological advancements. The convergence of law with science and technology has become a focus of attention for resolving the cases mainly relating to scientific evidence.² Criminal justice system is also not untouched with the advancement of science. With the introduction of new technology and new scientific techniques for crime detection such as brain mapping, narco-analysis, hypnosis, P-300 and polygraph test a change can be seen in the age-old laws of detection of crime in criminal jurisprudence.³ These advanced crime detection tools have emerged as the most powerful which is termed as neuro law helping the law enforcement agencies in the administration of criminal justice system.⁴ Deception detection tests, which are widely used by investigating agencies these days, are highly advanced and well-known term in usage in criminal investigation. The use of such technologies within the realm

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¹ C. K. TAKWANI, ADMINISTRATIVE LAW 56 (16th ed., Eastern Book Company 2001).

² Karun Sanjaya, The Constitutional Legitimacy of Narco-Analysis: An Analysis of Article 20 (3), 421IJJS 2021, at 46.

³ MANOJ H. PAREKH, S.P SINGH PARMAR CRIME INVESTIGATION AND MEDICAL SCIENCE 6 (Allahabad Dwivedi Company 2008).

⁴ Ibid.

of criminal justice is not of recent development. It has progressed gradually in tandem with societal advancements and in reaction to rising criminal activity.⁵

1.1 OBJECTIVES OF THE STUDY

- (i) To study the legal, judicial and scientific aspects of the deception detection test with special emphasis on narco-analysis.
- (ii) To study the scope, constitutionality, admissibility and evidentiary value of narco-analysis test in criminal investigation.
- (iii) To study the impact of this test on the accused and criminal investigation.

2. RESEARCH METHODOLOGY

The research methodology used in this paper is doctrinal research. The main sources of this research include the data collected from various publications viz., books, articles, essays, law journals, thesis and websites.

3. MEANING OF NARCO-ANALYSIS

Narco-analysis is derived from Greek word "narkē" (which means "anesthesia" or "torpor").⁶ It involves the use of psychotropic drugs typically barbiturates which induces a state of oblivion in which mental elements with strong affects reach the surface where the specialist can exploit them in a way to misuse it against the person administered with the drug.⁷ Narco-analysis, sometimes known as the truth serum test, involves injecting a barbiturate drug which is generally scopolamine, sodium amytal, or sodium pentothal into a person. When the drug takes effect the subject is interrogated and feels compelled to give truthful answers or so it is claimed. The phrase "truth serum" considered to be misleading because none of the barbiturates are serums, and the test does not always result in the truth as claimed.⁸ Horsley coined the term narco-analysis, but it was Calvin Goodard who invented the term "Truth Serum" for the first time, referring to a chemical that had previously been employed for psychiatric purposes. Experts began to utilise Scopolamine which was later replaced by Sodium Pentothal, for Narco-Analysis or Truth Serum Tests.⁹ According to the online Merriam Webster's Medical Dictionary it is defined as "Psychotherapy

⁵ Manu Saxena, *Striking a Balance: Efficient Investigation and Individual Rights*, (Mar.29, 2024, 10:00 AM), <http://www.legalservicesindia.com/article/1864/Investigation-and-Law.html/>.

⁶ *Encyclopedia.com*,(Mar.29, 2024, 10:00 AM), <https://www.encyclopedia.com/psychology/dictionaries-thesauruses-pictures-and-pressreleases/narco-analysis/>.

⁷ Ibid.

⁸ Dr. Sandeep Kumar, *Constitutionality of Narco-Analysis Test in India*, 7JETIR, 2020, (Dec. 29, 2023, 9:00 PM) <http://www.jetir.org/>.

⁹ J. VENDER VELDT & R.ODENWALD, *PSYCHIATRY AND CATHOLICISM* 69 (New York 1952).

that is performed under sedation for the recovery of repressed memories together with the emotion accompanying the experience and that is designed to facilitate an acceptable integration of the experience in the patient's personality"¹⁰ When simply put, it can be viewed as expert-led psychotherapy performed while the individual is asleep, induced by sedatives or other drugs and medications with the objective of relieving suppressed emotions, memories, and experiences. The use is limited to situations in which a patient's responses are required immediately and urgently.¹¹

4. PROCEDURE INVOLVED IN NARCO-ANALYSIS

The Narco test process is divided into four phases.¹² They are given below:

- (i) The Pre-test Interview- The subject is given all of the test information at this point, and his written consent is obtained. Following that, the individual is thoroughly examined by a medical staff;
- (ii) Pre-Narcotic State - In this stage, medications are injected into the subject until they appear calm and in good contact. The drugs are administered so as to maintain a controlled state through the interview process;
- (iii) Semi-Narcotic State - In this stage, the speech of the individual starts becoming slurred and flushed as the drugs start kicking in. The experts understand the state of mind of the individual by observing the examinee's eye, muscle and finger movements. The forensic psychologist interviews the subject in order to obtain information;
- (iv) Post Test Interview - This is the stage at which the subject becomes free from the interview, is relaxed and anxiety-free, and is allowed to rest completely. Once the patient wakes up, the physician checks the subject's memory and allows him to know what he revealed during the test.

5. NARCO-ANALYSIS TEST VIS-À-VIS LAWS

Legitimacy and validity of these tests is subject to criticism. One section is in favour of it, as this will be helpful in detection of crimes of grave nature and others are against the narco-analysis and they termed it as an infringement of the rights guaranteed to every citizen under the Constitution.¹³ Narco Analysis

¹⁰ *Merriam Webster Dictionary*, (Dec. 29, 2023, 9:00 PM), <http://www.merriam-webster.com/medical/narcoanalysis/>.

¹¹ M. Sivamanda Reddy, *Narco Analysis and Truth Serum* (Dec.29, 2023, 9:00 PM), [http://www.cidap.gov.in/documents/narco analysis/](http://www.cidap.gov.in/documents/narco%20analysis/).

¹² Bhupinder Virk Singh, *Narco Analysis Test: A new Crime Investigation Method*, *Punjabi University Law Journal* 220(2007).

¹³ *Legal Service India*, (Mar. 29, 2024, 10:00 AM), [https://www.legalserviceindia.com/article/1375-Article-20-\(3\)-Of-Constitution-of-India-And-Narco-Analysis.html/](https://www.legalserviceindia.com/article/1375-Article-20-(3)-Of-Constitution-of-India-And-Narco-Analysis.html/).

has been criticised being in serious violation of Article 20(3) of the Constitution of India. However, in the present time where criminals are executing their criminal intentions and motives by taking help of artificial intelligence, such tests often help in corroboration of evidence for the investigators.¹⁴

6. CONSTITUTIONALITY OF NARCO-ANALYSIS

The constitutionality of the narco-analysis test has been challenged under Article 20(3) as well as Article 21 in some of the cases. It has been argued that the test that violates the right against self-incrimination, right to remain silent, right to health as well as right to privacy.¹⁵

6.1 Right against Self Incrimination

As a core principle of a fair trial in any kind of criminal case, every civilised society provides the right to self-incrimination to the accused.¹⁶ This principle as provided under the Constitution states that a person accused of a crime cannot be forced to testify against him or provide any kind of evidence against him which may lead to his conviction. The right against self-incrimination is intended to prevent the use of the legal procedure in such a manner which leads to coercion of evidence from the mouth of accused in order to convict him.¹⁷ Article 20(3) reads as follows:

*No person accused of any offence shall be compelled to be a witness against himself.*¹⁸

It is argued that administering narco test on the accused, amounts to infringement of protection given to the accused of conviction of offences under article 20 (3) of the Constitution. The question is whether such technologies are being used in a way that violates the Constitution. It should be highlighted that only an accused person can invoke the protection provided under article 20(3) and only if he is forced to testify against him.¹⁹ Despite the fact that the right has a broad definition the courts in India has limited its interpretation to the application to testimonial evidence only. However, the safeguard provided under article 2(3) extends solely to evidence that requires voluntary action from the defendant.²⁰ The right to silence, which is the basic feature of criminal law, is also referred as the right against self-incrimination or the privilege against testimonial compulsion. The privilege against testimonial compulsion is based

¹⁴ *Ibid.*

¹⁵ A.S..Dalal & Arunava Mukherjee, *Constitutional and Evidentiary Validity of New Scientific Tests*, 49JILI 529-540, 529 (2007).

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ INDIA CONST. art 20, cl. 2.

¹⁹ *Supra* note 19.

²⁰ *Supra* note 11.

on the legal maxim *Nemo Tenetur Seipsum Accusare*, (the *nemo tenetur* principle) comes from Latin which means no one need accuse himself.²¹ The right is based on the principle of *nemo debet prodere se ipsum*, which covers the protection against self-incrimination and is the foundation of this right.²² This principle is distinguished by the fact that individuals accused of a crime are presumed to be innocent until proven guilty, placing the burden of proof on the prosecution. The accused cannot be compelled to give testimony against his will.²³ The right against self-incrimination encompasses several important aspects viz., the burden of proof lies on the prosecution about the guilt of the accused; an accused is presumed to be innocent until proven guilty and the third is the right to remain silent. However, the rule has exceptions also for example; an individual accused of a crime may be required to cooperate with an investigation by providing various forms of evidence, such as allowing their photograph to be taken, recording their voice, testing blood samples, using hair or other biological material for DNA analysis, and similar measures. The privilege against testimonial compulsion could be invoked not only in the case of directly incriminating evidence but also in so called hint facts.²⁴ The prohibitions prescribed under article 20(3) are directly applicable to criminal procedure followed during investigation by the law enforcement agencies and judicial proceedings. The goal of this safeguard is to prevent the accused from being tortured or treated inhumanely by investigative agencies in order to get confessions.²⁵

In order to avail the protection against testimonial compulsion embodied in article 20(3) of the Constitution, it must be proved that the person who made the statement was accused of any offence; and that the accused gave the statement under compulsion and the statement was self-incriminating in nature.²⁶

In a landmark case of *State of Bombay v. Kathi Kalu Oghad*,²⁷ the Supreme Court expanded the definition of 'compelled testimony' under Article 20(3) and include not only the just evidence admitted in court but also state evidence.

²¹ See also Mark A. Godsey, *Rethinking the Involuntary Confession Rule: Toward a Workable Test for Identifying Compelled Self-Incrimination*, 93 Cal. L. Rev. 465, 479 (2005) (tracing the development of the Nemo tenetur principle from the use of "imprisonment, exile, and physical torture to punish silence and to provoke suspects to confess to heresy and other crimes").

²² One Hundred Eightieth Report on Article 20(3) of The Constitution of India and The Right to Silence, Law Commission of India, May 2002.

²³ Ajay Kumar Barnwal, *Validity of Narco Analysis Test with special reference to Indian Constitution: A critical study* (2018) (Unpublished Ph. D. thesis, Central University of Rajasthan, Ajmer).

²⁴ Ibid.

²⁵ Justice Markandey Katju, *Torture as a challenges to civil society and Administration of Justice*, SCC journal , 39, 39 (2002).

²⁶ *Supra* note 17.

²⁷ (1962) 3 SCR 10, Para 17.

Looking at the interpretation of the compelled testimony in *Oghad* case, compulsion can refer to both physical and mental compulsion. The critics of the technique claim that narco-analysis is same as mental compulsion. When external influences condition the mind to such an extent that a statement is made involuntarily, mental compulsion arises, as the statement is essentially coerced out of the individual. If the accused makes some basic revelations and disclosures within the investigation period, they will not be covered by Article 20(3) because they were not obtained by compulsion.²⁸ In *Dinesh Dalmia v. State of Maharashtra*,²⁹ the court held that during narco-analysis, the accused gives all of the answers according to his own wishes; there is no external threat compelling him to disclose.

6.2 Right to Privacy under Article 21 and Narco Analysis

The human rights activists argue that narco analysis tests violate a person's fundamental right to privacy which is provided under the Constitution of India. The Supreme Court in *Gobind v. State of Madhya Pradesh*³⁰ held that the right to privacy is itself a fundamental right that fundamental right must be subject to restriction on the basis of compelling public interest. It is submitted that, like Article 21, the Right to Privacy is also subject to restrictions and limitations. However, such limitations must be imposed in accordance with procedure established by law. It must be noted that the technique and method used in narco-analysis is one which is sanctioned by present laws of the country.³¹ The various high courts ruled that the narco-analysis test should be a part of the Criminal Procedure code (now Bharatiya Nagrik Suraksha Sanhita, 2023) examination. In *Selvi v. State of Karnataka*,³² the Karnataka High Court rejected the claim that injecting a drug into the accused's body was different from collecting a sample of his blood or sperm.³³

7. CRIMINAL PROCEDURE CODE (NOW BHARATIYA NAGRIK SURAKSHA SANHITA (BNSS) AND NARCO-ANALYSIS

The Criminal Procedure Code (now BNSS) provides complete machinery and procedures to investigate and try cases. Section 293³⁴ of CrPC (now sec. 329 of

²⁸ *Veera v. State of Maharashtra*, AIR 1976 SC 1167(India).

²⁹ Cr. L.J. (2006) 2401.

³⁰ 1975 (2) SCC 148, para 31.

³¹ Ananthi Bharadwaj, Suresh et.al. *Narco Analysis and Protecting the Rights of the Accuse*, 4 NALSAR STUDENT Law Review 121(2008).

³² 2004(7) Kar LJ 501.

³³ Ibid.

³⁴ Reports of certain government scientific experts: (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

BNSS, 2023) mentions a provision that is directly related to scientific evidence stating that a chemical examiner's report may be presented as evidence in any investigation or trial. As per section 53(1) of the Criminal Procedure Code (now sec.51 (1) of BNSS, 2023) the accused can be subjected to medical testing in order to extract evidence. The narco- analysis test and several other scientific procedures were recognised as modes of evidence under the CrPC after Section 53 was amended in 2005. In *Anil A. Lokhande v. State of Maharashtra*,³⁵ the court held that taking the sample of accused and examining him in a way that best supports the evidence might become necessary in order to ascertain the facts which might afford such evidence. There is nothing brutal or offensive or shocking in taking blood sample under the protective eye of law. Modern community living requires modern scientific methods of crime detection lest the public go unprotected. Such scientific tests are necessary for proving the guilt as well as innocence of the accused. This is one of the well recognised methods adopted in the crime detection all over the world.³⁶ Section 161(2) of the CrPC (now sec. 180 (2) of BNSS) is another provision under the criminal law that emphasizes the right to be free from self-incrimination.³⁷ In *Nandini Satpaty v. P.L. Dani*,³⁸ the court held that forcibly collecting of evidence through narco-analysis infringes the right to silence provided by Section 161(2) of the CrPC (now sec. 180 (2) of BNSS). Court further held that Article 20(3) with section 161(2) of CrPC (now sec. 180 (2) of BNSS) has a broad concept and it protects the right to be silent. However, the Supreme Court in *PUCL v. UOI*³⁹ highlighted that such a privilege will amount to inadequate powers of cross-examination in the hands of police, and the case will go against the prosecution. The authorities shall not inflict any harm when delivering any scientific test otherwise they may be held accountable under Sections 330 and 331 of the Indian Penal Code. An offender must be investigated, prosecuted and tried in accordance with the law. One of the main goals of the Criminal Procedure Code (BNSS, 2023) is to ensure that all parties concerned receive a fair trial.

8. NARCO-ANALYSIS TEST VIS-À-VIS INDIAN EVIDENCE ACT (NOW BHARATIYA SAKSHYA ADHINIYAM (BSA))

The recording of the statement of accused by the police is not admissible⁴⁰ under the Indian Evidence Act. Sec. 23 of BSA, 2023) read as:

³⁵ 1981 Cr. LJ 125(SC).

³⁶ *Ibid.*, para 19.

³⁷ The Code of Criminal Procedure of 1973, sec. 161(2) (The Bharatiya Nagrik Suraksha Sanhita, 2023, sec. 180 (2)).

³⁸ AIR 1978 SC 1025.

³⁹ AIR 1991 SC 207.

⁴⁰ The Indian Evidence Act, 1872, sec. 25 (now Bharatiya Sakshya Adhinyam, 2023, sec. 23(1)).

*No confession made to a police officer shall be proved as against a person accused of an offence.*⁴¹

Further, sec. 23 (2) reads as:

*No confession made by any officer while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate shall be proved against him.*⁴²

The main objective of the inclusion of these sections is to prevent the acquisition of false testimony through torture and cruelty during police investigations.⁴³ If the accused discloses certain facts about the commission of the crime while in police custody, the court can consider the information under Section 27 of the Indian Evidence Act (now sec. 23 of BSA, 2023).⁴⁴ Furthermore, under this provision, evidence gathered through scientific procedures such as narco-analysis is admissible in court. Under no circumstances, however, can the statements be gathered through coercion. If the court discovers at any moment that the evidence was obtained through coercion rather than the free will of accused, it will be struck out and will not be admissible in evidence.⁴⁵

Section 132 of Indian Evidence Act (now sec.137 of BSA, 2023) also needs mention here which reads as follows:

Witness shall not be excused from answering any question as to matter relevant to matter in issue in any suit or in any civil or criminal proceedings, upon the ground that answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.⁴⁶

⁴¹ Bharatiya Sakshya Adhinyam, 2023, sec. 23(1); Corresponding Law Sec. 25 of Act of 1 of 1872.

⁴² Ibid sec 23 (2); Corresponding Law Sec. 26 of Act of 1 of 1872.

⁴³ Sayani Banerjee, *Scientific Evidence in Criminal Trials- Narco Analysis*, 8 Legal Desire International Journal on Law (Mar. 29, 2024, 10:00 AM), <https://legaldesire.com/journal/>.

⁴⁴ The Indian Evidence Act, 1872, sec. 27 (now Bharatiya Sakshya Adhinyam, 2023, sec. 23).

⁴⁵ *Supra* note 34.

⁴⁶ The Indian Evidence Act, 1872, sec.132 (now Bharatiya Nyaya Sanhita, 2023, sec. 137).

This section implies that a witness can be compelled to give answers which are relevant to the case, even if the answers will incriminate him. If he is compelled to give answers, he cannot be arrested or prosecuted as per the proviso. But if the witness has given an answer voluntarily, then he won't be protected by the proviso to this section.⁴⁷

9. JUDICIAL APPROACH TOWARDS NARCO-ANALYSIS TEST

There were some crucial matters that came before the judiciary at various periods in multiple cases, and the judiciary has seen it from distinct view point at different stages. As a result of which there have always been quite conflicting opinions and rulings of the court in this regard.⁴⁸ Narco-analysis test was actually introduced in 1936 in India when the police used it in an investigation by administering a few drugs to the accused. But it was used for the first time technically in the *Godhra case*⁴⁹. The test gained widespread attention as a result of the *Nithari serial killing case*⁵⁰. The accused in this trial had revealed the identities of other victims he had killed before this case. Although the findings were not recognized in the courtroom, they aided the police in their investigation process.

The test was performed on Md. Kasab during his interrogation in the case of *Md. Ajmal Md. Amir Kasab v. State of Maharashtra*.⁵¹

The question of constitutionality of narco analysis test was discussed widely in the case of *Ramchandra Ram Reddy v. State of Maharashtra*.⁵² The Bombay High Court held that:

Statement which is recorded during the course of narco-analysis will attract the bar of Article 20 (3) only if it is inculpatory or incriminating the person making it whether it is so or not can be ascertained only after the test is administered and not before. In our opinion, therefore, there is no reason to prevent administration of this test also because there are Indian Evidence Act (Bharatiya Sakashya Adhiniyam, 2023) Code of Criminal Procedure (Bhartya Nagrik Suraksha, 2023) enough protections available under the procedure and the Constitution of India

⁴⁷ The Indian Evidence Act, 1872, sec.132, Proviso (now Bharatiya Nyaya Sanhita, 2023, sec. 137, Proviso).

⁴⁸ *Supra*, note 26.

⁴⁹ *State of Gujarat v. Bilal Ismail Abdul Majid Sujela alias Bilal Haji*, 2017 SCC Online Guj 1325 (India).

⁵⁰ *SurendraKoli v. State of U.P.*, (2011) 4 SCC 80 (India).

⁵¹ *Mohammad Ajmal Mohammad Amir Kasab v. State of Maharashtra*, AIR 2012 SC 3566 (India).

⁵² 2004 All. MR (Cr.) 1704 Criminal Writ Petition Number 1924 of 2003 decided on March 9, 2004.

*to prevent inclusion of any incriminating statement if one comes out after administration of test.*⁵³

In the matter of *Selvi Murugesan v. State of Karnataka*,⁵⁴ Karnataka High Court decided whether the narco analysis method constituted compulsion under Article 20(3). After evaluating the evidence, the magistrate referred to section 53(1) of the CrPC (now 51(1) of BNSS), which allowed for the use of reasonable force to ascertain facts that may be used as evidence. Court suggested that narco-analysis fit under the ambit of this area, as did properly conducting the test. When this case went in appeal to the Supreme Court in *Shrimati Selvi and Others v. State of Karnataka*,⁵⁵ the Supreme Court specifically prohibited all involuntary conduct of these tests in its judgment calling them harsh, inhumane, and cruel treatment. Numerous high courts across the nation have previously approved the use of such tests. The Supreme Court's verdict in *Selvi's* case aptly highlights how all those decisions put the legal rationale to the test while relying on the scientific basis of the narco analysis test.⁵⁶

*It must be remembered that the law disapproves of involuntary testimony, irrespective of the nature and degree of coercion, threats, fraud or inducement used to elicit the same. The popular perceptions of terms such as 'torture' and 'cruel, inhuman or degrading treatment' are associated with gory images of blood-letting and broken bones. However, we must recognise that a forcible intrusion into a person's mental processes is also an affront to human dignity and liberty, often with grave and long-lasting consequences.*⁵⁷

Supreme Court in its recent judgment⁵⁸ held that compulsory administration of the narco-analysis test by the investigative agencies violates Article 20(3) as well as Article 21 of the Constitution as it violates "the right against self-incrimination". The judgment does not completely prohibit the admissibility of the narco-analysis test as it is allowed if it is done with the consent of the concerned individual. In the conclusion of the judgment, the Supreme Court clearly lays down:

The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective

⁵³ Para 21 of the Judgment.

⁵⁴ (2004) 7 Kant LJ 501.

⁵⁵ AIR 2010 SC 1974.

⁵⁶ AIR 2010 SC 1974, Para 205.

⁵⁷ *Ibid.*

⁵⁸ *Shrimati Selvi and Others v. State of Karnataka*, AIR 2010 SC 1974 (India).

*of whether the subsequent testimony proves to be inculpatory or exculpatory.*⁵⁹

With respect to the voluntary administration of the narco-analysis test, the Supreme Court gave a clear finding that even if it is with the consent of the accused, it will not automatically become admissible as evidence in the court of law as the accused remains in a semi-conscious state. The statement made by the accused in the narco analysis test can become admissible if it falls under section 27 of the Indian Evidence Act (now sec. 23 of BSA) that is when it gives information regarding the discovery of any evidence.⁶⁰ In *Selvi v. State of Karnataka*⁶¹ the Supreme Court recognised the guidelines published by the National Human Rights Commission⁶² and directed the investigation authorities to follow these guidelines.

10. CONCLUSION AND SUGGESTIONS

Deception detection tests like polygraph, narco-analysis, and brain-mapping carry significant clinical, scientific, ethical, and legal ramifications.⁶³ The narco-analysis test has sparked plenty of objections about its means to obtain access to sensitive information. Procedural laws, on the other hand, have been established to allow for the incorporation and use of scientific techniques in investigations.⁶⁴ However, the other side of this is that narco-analysis and other deception detection tests serve as valuable tools for extracting concealed information pertaining to crimes from the accused. Such information,

⁵⁹ Ibid, para 221.

⁶⁰ Ibid, para 223.

⁶¹ Ibid.

⁶² The recommendation made by the National Human Rights Commission for the Narco Analysis Test are: No narco analysis tests should be administered except on the basis of consent of the accused; An option should be given to the accused whether he wishes to avail such test; If the accused volunteers for a narco analysis test, he should be given access to a lawyer and the physical, emotional and legal implications of such a test should be explained to him by the police and his lawyer; the consent should be recorded before a Judicial Magistrate; During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer; 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; The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation; The actual recording of the Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer; A full medical and factual narration of the manner of the information received must be taken on record. 'Cited in: National Human Rights Commission India, Manual on Human Rights for Police Officers, 2011.

⁶³ Paul Root Wolpe, Kenneth R Foster et. al., *Emerging Neuro technologies for Lie-Detection: Promises and Perils* (December 28, 2023, 10:00PM), <https://pubmed.ncbi.nlm.nih.gov/16036700/>.

⁶⁴ Surendra Kumar, *New scientific test: with special reference to DNA, fingerprinting and Narco-Analysis*, 2015.

exclusively known to the individual, can be pivotal in criminal investigations at times. This information, which is known only to self, is sometimes crucial for criminal investigation.⁶⁵ Narco-analysis test is used when all other sources of evidence have failed to provide enough information. However, such tests just aid the ongoing trial, and the admissibility of the evidence is still in question. The Indian Evidence Act, 1872 (now Bharatiya Sakshya Adhiniyam, 2023) does not specifically mention the administration of scientific evidence to the accused, and such techniques are often criticised for violating constitutional and human rights. Based on the principle of natural justice, the India's criminal justice system assures a fair trial to both the accused and the victim. In today's world, science and technology can assist in bringing justice in society, but it must not infringe individual's fundamental and human rights.⁶⁶ However, it should also be kept in mind that in the name of infringement of rights of a person no one has a right to violate the rights of others. In a landmark case,⁶⁷ the Supreme Court has clearly highlighted that deception detection tests cannot be administered without consent and the court further highlighted that involuntary deception detection test has no place in the judicial process. Conversely, it will disrupt proceedings, create delays, and trigger various complications, ultimately offering no greater certainty in the process than what already exists.⁶⁸ However, understanding the sensitivity and specificity of these tests is crucial. Standard operating guidelines for narco-analysis procedures should be established. It is also important to know the sensitivity and specificity of these tests. There should be standard operating guidelines for conducting narco-analysis. The recent Supreme Court judgment on deception detection test is admirable from the scientific, human rights, ethical, legal and constitutional perspectives and it is important that the investigating agencies should follow the human rights guidelines⁶⁹ and Supreme Court leading judgment⁷⁰ while conducting deception detection tests. The following suggestions have been made:

- (i) The current legislation i.e., the Criminal Procedure (Identification) Act, 2022 does not expressly talk about any of these tests known as deception detection tests. There is an immediate use of policy and express legislation and the amendment of the above act on the use of such tests and lays out the clear procedure, conditions and specify individuals on whom such tests may be administered.

⁶⁵ I. Nose, J. Muraiet. al., *Disclosing Concealed Information on the Basis of Cortical Activations* (Dec. 28, 2023, 10:00PM), <https://psycnet.apa.org/record/2009-22049-017>.

⁶⁶ Sandeep Kumar, *Constitutionality of Narco-Analysis Test in India*, JETIR 12(2020).

⁶⁷ *Supra* note 54.

⁶⁸ *Ibid*.

⁶⁹ *Supra* note 61.

⁷⁰ *Supra* note 54.

- (ii) The suggestion given by Laxman J. of the Supreme Court and also highlighted in this paper i.e. every wall should post on its walls information regarding the rights of those undergoing the narco-analysis tests, investigating authorities should not exert any pressure etc.; should be considered by the policy makers.
- (iii) Although laboratories do exist, yet experts not yet been recruited; consequently it is recommended that the laboratories establish a panel of experts for the effective and efficient use of these scientific techniques.
- (iv) As per CBI, the panel of specialist must be selected for permanent positions, although the majority of labs still do not have permanent panels.

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