

- (18) Affidavits of persons who are bedridden due to extreme old age or sickness whose power of understanding is doubtful and effected by alzheimer's disease or forgetfulness or effected by partial paralysis *etc.*
- (19) Affidavit filed referring to part of the case and do not completely cover the case.

The above list is not exhaustive, Court shall not permit the filing of affidavits in other cases where *ex facie* Court doubts the voluntary nature of the contents and comes to conclusion that they are tutored one.

Unless such care and caution is exercised by scrutinizing with meticulous case, Court cannot judge the truth or otherwise of contents. Court has to peruse evidence and has to come to the conclusion that entire evidence is false or it is full of half truths *etc.* Unless strict scrutiny is made about affidavit evidence Court cannot come to the conclusion that it can be accepted and acted upon. It has to be kept in mind that witness giving false contents in the affidavit or in evidence is liable to be prosecuted for perjury. Before resorting to it Courts finding in the judgment is necessary. No fixed guidelines are there, there is no hard and fast rule. It is always left to the discretion of Court to accept or reject affidavit evidence, when irrelevant facts which are inadmissible are mentioned.

If there is no scrutiny at the earliest point of time regarding affidavit evidence, it may lead to injustice in particular who have no knowledge of legal principles and provisions and whose affidavits are ill drafted by the inexperienced legal experts. It is my experience that drafting of affidavits are sometimes entrusted to senior pleaders' clerks in moffisil areas, when system undergoes change due to modification of law problems are bound to occur. It is for the Courts to raise to the occasion to run the judicial system of recording of evidence in accordance with law. Court has got inherent powers under Section 151 of CPC to deal with the system and set right chief by affidavit while rejecting irrelevant facts which do not constitute chief-examination. This can be done till suitable amendments or safeguards are brought about to the said provisions of CPC and the Evidence Act. Originally this may not apply to the cases arising under Provincial Small Cause Courts Act since memorandum of substance alone has to be recorded as per Order 18 Rule 13. Order-L mentions the procedure that is applicable to the aforesaid cases. If scrutiny is done at the earliest point of time valuable time of Court can be saved and Courts can put amended provisions of chief affidavit to good use and it will render valuable help in expediting the process of recording evidence.

TEST OF NARCO ANALYSIS AND ITS EVIDENTIARY VALUE

By

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In the present society, the increasing crime creates alarm in the public. Though, there has been a machinery for the detection of crime, arrest of suspected criminals, collections of evidence, determination of guilt or

innocence of the suspected person and imposition of proper punishment on the guilty person. The methods used by the police for extracting information from accused, through interrogation have vital significance in curbing

the crime by inviting scientific methods in obtaining the information from accused. The Government of India brought few amendments to Section 53 of Cr.P.C. are positive and proactive towards the recognition of the importance of scientific tests which include narco analysis and brain mapping.

On February 23rd, 2004 the Pune Bench of Bombay High Court Thakare, who initiated the use of scientific tests in Teligi says, “the test results are not enough evidence to convict people. It should be looked at as a tool or an aid towards guiding us in the right direction or supporting evidence”.

No doubt, these methods are used for corroborating the evidence, they should not be used exclusively for convicting the accused. As Article 20(3) of Constitution of India embodies “No person accused of any offence shall be compelled to be a witness against himself.”

In *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025, *Iyer, J.*, advocated an expansive interpretation of the phrase “Compelled testimony”. According to him it is evidence procured “not merely by physical threats or violence” but also by psychical torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods, and the like.”

Narco Analysis Test :

Narco analysis first reached the mainstream in 1922, when Robert House a Texas Obstrettrician used the drug scopodamine on two prisoners, since then narco testing has become largely discredited in most democratic States, including the United States and Britian. There is a vast body of literature questioned about its ability to yield legal truth. Additionally, narco analysis has legal and ethical implications.

A person is able to lie by using his imagination. In the Narco Analysis Test, the

subject's inhibition are lowered by interfering with his nervous system at the molecular level. In this state, it becomes difficult though not impossible for him to lie. In such sleep-like state efforts are made to obtain “Probative truth” about the crime. Experts inject a subject with hypnoties like sodium pentothal or sodium Amythal under the controlled circumstances of the laboratory. The dose is dependent on the person's, sex, age, health and physical condition. The subject which is put in a state of Hypnotism is not in a position to speak up on his own but can answer specific but simple questions after giving some suggestions. This type of test is not always admissible in the Court of law. It states that subjects under a semi conscious state do not have the mind set to properly answer any questions, while some other investigative tool is questioned in most countries. A few democratic countries, India most notably still continue to use narco analysis¹.

Legal Position :

In India, there is no direct proviso allowing the Narco analysis Section 315 Cr.P.C. permits the accused to offer himself as a witness and Section 27 of Evidence Act has been held to fall outside the prohibition of Article 20(3)². During the course of investigation of a crime by the police, if an accused person was to point out the place where the corpus delicti was lying concealed, and in pursuance of such information the discovery was made within the meaning of Section 27, such information and the discovery made as a result thereof may be proved in evidence even though it may tend to incriminate the person giving the information while in police custody, unless compulsion has been used in obtaining the information.

The test of Narco analysis recognized by the criminal justice administration in India for

1. Narco analysis – Wikipedia, the free encyclopedia
2. *State of Bombay v. Kathi Kalu Oghad*

purpose of discovery of truth especially in high profile case such as Mumbai Train blasts, Nithari Killers, Hyderabad blasts *etc.*

Criticism :

Dr. P. Chandra Sekharan the former Director of Forensic Sciences Department of Tamilnadu has characterized the practice as an unscientific, third degree method of investigation and the drug contained in the syringe is the element of compulsion. The investigator can induce and communicate his own thoughts and feelings to the suspect. The scientific literature indicates that if narco analysis has any extra therapeutic uses, it may in making a suspect feel that he has revealed more than he actually did³.

Narco analysis test do not have legal validity as confessions made by a semi conscious person are not admissible in Court⁴.

“Confession made by a semi – conscious person is not admissible in Court. A Narco analysis test has some validity but is not totally admissible in Court, which considers the circumstances under which it was obtained and assess its admissibility” by advocate P.R. Vakill told. He represents former Maharashtra Deputy Chief Minister Chhagan Bhuwal’s nephew Samer’s Bhuwal.

This test had a drawback regarding drug administration. The person to administer them has to be a highly qualified Physician. It is always difficult to determine the correct dose of the drug, which varies according to the physical constitution of the subject, but also his mental attitude and will power. A wrong dose can send a subject into coma or even cause death thus resulting in legal complications.

Evidentiary Value of the Narco Analysis Test :

In spite of all misconceptions, and misunderstandings, the test plays a vital role

in getting the truth from the accused in investigation. The uses of narco analysis drug are twofold they are used as “truth drugs” in police work and also used in the accepted psychiatric practice of narco analysis. The difference in the two procedures lies in their different objectives. The police investigation is concerned with empirical truth that may be used against the suspect, and therefore almost solely with probative truth. The usefulness of the suspect’s revelation depends ultimately on their acceptance in evidence by a Court of law. The psychiatrist, on the other hand, using the same “truth drugs” in diagnosis and treatment of the mentally ill is primarily concerned with psychological truth rather than empirical fact⁵.

In *Dinesh Dalma v. State*, (2006), the Madras High Court held that subjecting an accused to narco analysis is not tantamount to testimony by compulsion. The Court said about he may not be taken to the laboratory for such tests against his will, but the revelation, during such tests is quite voluntary”. Some officials connected to law enforcement argue that narco analysis can be of great use in instances where witnesses turned hostile; rape cases where issues of consent are being debated; and cases where the Investigating Officer is hard pressed for time or working to disrupt offences planned for the near future, including terrorist acts⁶.

The revelations made during narco analysis have been found to be very useful in solving the sensational cases *i.e.*, in the Mumbai serial train blasts, blasts in Delhi and Malegoan and various other sensational cases with national and international ramifications. It is found to be effective to prove the innocence of about 20 – 25% of all those individuals examined. Further, narco analysis and brain mapping techniques have thus not only revolutionized the causes of crime investigation

3. “We need to talk about narco analysis” – Article in the Hindu by *Sriram Lakshman* dated 2.5.2007.

4. Narco – analysis – Wikipedia – the free encyclopedia.

5. Narco analysis test and constitutional imperatives – by *Supriya Rai*.

6. We need to talk about narco analysis” – Article in the Hindu by *Sriram Lakshman* dated 2.5.2007.

but also have led various Courts to redefine the very scope of the constitutional provisions especially Article 20(3)⁷.

Conclusion

Our criminal justice system is founded on

sound, just and equitable principles. The maxim “let hundred criminals were acquitted, but no single innocent shall be punishable” is underlying in our criminal administration. The test of narco analysis may be preferred as it was very useful to police in interrogation.

COPYRIGHT INFRINGEMENTS: CHALLENGES AND REMEDIES

By

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The concept and object of knowledge creation changed in the present globalized economy. The paradigm shift in the concept has transformed the knowledge as the property of an individual and excludes others from using it. The law of the land has changed its approach and is recognizing and protecting their rights. The new regime of intellectual property is emerging to safeguard the interests of the owners of IP assets, which includes the copyrights, patents, trademarks, geographical indications, circuit layouts, designs *etc.*

Copyright Law

The law that governs copyrights is known as copyright law. The present copyright law in India and in other countries is the outcome of various national and international conventions and treaties like Universal Copyright Convention and Protocols (UCC), 1952; Geneva Convention 1971, WIPO Copyright Treaty: (Diplomatic Conference) 1996, WIPO Performances and Phonograms Treaty, 1996 *etc.* The copyright law in India is based upon the Copyright Act 1911 of UK. The Act underwent various amendments and

a comprehensive and self-contained law is formulated in the year 1957- the Copyright Act 1957.

The Copyright Act, 1957 has undergone amendments to include provisions of various international conventions and treaties and to also adapt itself with the changing legal environment of the world.

“Copyright” is an exclusive right of an author granted under the provisions of the Copyright Act, 1957¹. The Act provides the exclusive right to the author of a literary, dramatic or musical work to :

- ☐ Reproduce the work in any material form
- ☐ Storing of the work in any medium including electronic media
- ☐ Issue copies of the work to the public not being copies already in circulation
- ☐ Perform the work in public, or communicate it to the public
- ☐ Make any cinematograph film or sound recording in respect of the work
- ☐ Make any translation of the work

7. Dr. B.M. Mohan, Director, Forensic Science Laboratories, Karnataka – “Is Narco analysis a pseudo – science” in Hindu.

1. Section 14, The Copyright Act, 1957