

148

मध्य भारती
मध्यम भाषास्य साहित्यस्य साक्षात्कारम्



MADHYA BHARTI
(UGC CARE Group I, Multi disciplinary)

18.3

CERTIFICATE OF PUBLICATION

This is to certify that the article entitled

USE OF NARCO ANALYSIS, BRAIN MAPPING, AND POLYGRAPH TESTS IN A CRIMINAL INVESTIGATION - A FORM OF TORTURE OR TOOL OF INVESTIGATION?

Authored By

Dr. Tharanath,

Principal and Guide, Shri Dharmasthala Manjunatheshwara Law College, Centre for Post Graduate Studies and Research in Law, Mangaluru, (affiliated to KSLU, Hubballi)

Published in

Madhya Bharti (मध्य भारती) : ISSN 0974-0066 with IF=6.28
Vol. 82, No. 12, January - June : 2022

UGC Care Approved, Group I, Peer Reviewed, Bilingual, Biannual,
Multi-disciplinary Referred Journal



Chief Editor
प्रो. अश्विनीकुमार शर्मा



श्रीधर्मस्थला मंजुनाथेश्वरा
UGC
श्रीधर्मस्थला मंजुनाथेश्वरा

USE OF NARCO ANALYSIS, BRAIN MAPPING, AND POLYGRAPH TESTS IN A CRIMINAL INVESTIGATION - A FORM OF TORTURE OR TOOL OF INVESTIGATION?

Ms. Suma Suresh Kogilgeri, Assistant Professor, Shri Dharmasthala Manjunatheshwara Law College, Centre for Post Graduate Studies and Research in Law, Mangaluru, (affiliated to KSLU, Hubballi)

Dr. Tharanath, Principal and Guide, Shri Dharmasthala Manjunatheshwara Law College, Centre for Post Graduate Studies and Research in Law, Mangaluru, (affiliated to KSLU, Hubballi)

Abstract

Ensuring justice for the victims of crime and to society at large is the fundamental object of our criminal justice system. The success of the criminal justice system depends upon the efficient implementation of its objectives. To fulfill this object and maintain peace and order in society, the State has empowered the Police to detect and prevent the crime. And bestowed upon police wide powers to arrest, search, seize, interrogate, and investigate whenever a crime happens. In this connection, the police are primarily considered as the guardian and protector of the rights of the individuals. Therefore, the investigation of crime should be directed towards finding the truth and nabbing the real culprit without compromising the rights of the accused person. Today, unfortunately, the protectors are turning into violators of human rights. Police are blamed for using third-degree methods, custodial deaths, rape, etc. during the investigation. Police tend to adopt these unethical investigation methods because of pressure on the police and for an immediate result. To put an end to this and also in the light of increasing sophisticated crimes, police should adopt scientific methods of investigation like narco analysis, polygraph, and brain mapping tests.

Keywords: crime, investigation, the criminal justice system, police, human rights.

Introduction

Investigation of crime is the foundation for the success of the criminal trial. Our country has adopted an adversarial judicial system. In this system, the role of investigation is vested with the police. During the investigation, the police collect the evidence to prove the innocence or guilt of the accused. The police being vested with the power to prevent and detect the commission of a crime are allowed to use necessary force against the suspects within the boundaries of the law. When we discuss the investigation of crime one can perceive it from two angles. On one hand, crimes are increasing every day and criminals are using sophisticated methods to commit crimes. In such a circumstance, the collection of evidence becomes difficult. Moreover, the accused is vested with constitutional and statutory rights like the right against self-incrimination, the right to remain silent, etc., during the investigation which again ties the hands of investigating officer. On other hand, there exist political pressure, and media pressure on the police to crack the case. Due to this, they tend to adopt third-degree methods, custodial torture to make innocent persons confess to the crime. In given circumstances narco analysis, brain mapping, and polygraph tests seem to be a better alternative to third-degree methods. The Supreme Court in *Raghubir Singh v. State of Haryana*¹ asserted that "it was deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death". With the expanding horizons of human rights and increasing crime rate at the same time, the state is encountered with the question of striking a balance between the individual human rights and the societal interest in combating crime. The state has cast a duty on the police, to ensure peace and order in society and to protect the rights of the individuals. The quest for finding the truth should not be done at the cost of the accused rights. Therefore, there is a need to balance the same. With this backdrop, in this paper, an attempt has been made to look into ensuring the humane

¹ AIR 1980 SC 1087



condition of an investigation by adopting the scientific method of investigation with special reference to narco analysis, polygraph, and brain mapping tests.

Statement of problem

Crime rates today are increasing at a high rate but conviction still remains low. The probable reason for this could be a poor or defective investigation. With the development of science and technology, new techniques of investigation have emerged to deal with sophisticated crimes. Police adopt third-degree methods to collect information from the accused person during the investigation. Which is a blatant violation of rights under Article 21 of the Indian Constitution. Therefore, there is a need to bring in a humane condition of investigation.

Objectives of the study

- To understand the investigating power of the police.
- To analyse the rights of the accused during the investigation.
- To understand the concept of torture and protection against torture at the international and national levels.
- To analyse whether narco analysis, polygraph test, and brain mapping amount to torture?

Review of Literature

Ashirbani Dutta in her article "Custodial torture: A shameless truth behind the bars" explained the protection of the accused against torture at an international and national level. Ms. Ashmaa Saikia in her article "Torture in custody-flouting human rights tenets" explained the concept of torture from the Human rights perspective. Sangita Mulji and Mehak Sethi in their article "Narco analysis: Truth or torture" explained the concept of the constitutional validity of narco analysis. M.P. Jain in this book Indian Constitution explained the concept of the right of the accused against self-incrimination under Article 20(3) and explained accused cannot be compelled to be witness against himself.

Research methodology

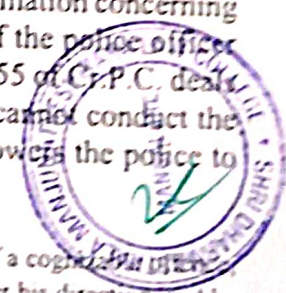
The methodology adopted for the study is doctrinal involving primary sources such as Statutes, Precedents, and secondary sources of information such as journals, textbooks, articles, commentaries, and websites.

Investigation of crime by police and their powers

Since ours is an adversarial legal system investigating power is vested with the police officer. The Criminal Procedure Code, 1973 contains provisions empowering the police to conduct an investigation and their powers during the investigation. Section 154 of Cr.P.C.² speaks about information concerning cognizable offences and the procedure to register F.I.R. It is the mandatory duty of the police officer to register F.I.R. once they receive information as to cognizable offences. Section 155 of Cr.P.C. deals with the non-cognizable offence, wherein under sub-section (2) the police officer cannot conduct the investigation until directed by the magistrate.³ Section 156(1) of the Cr.P.C. empowers the police to

² Section 154. Information in cognizable cases. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant. (3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

³ Section 155(2): No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.



conduct the investigation in case of a cognizable offence. No prior permission is required to conduct an investigation with respect to a cognizable offence.⁴ Section 157 of Cr.P.C.,⁵ explains the procedure of investigation wherein, the police shall proceed to the spot to investigate the facts and circumstances of the case, collect evidence in the crime spot, record eyewitness statements if any, and most importantly discover and cause the arrest of the accused person. After completion of the investigation charge sheet under sub-section 3 of section 172 of Cr. P.C is submitted. During investigation various powers are vested with the police like arrest⁶, search and seize⁷, summon the person to the police station who is acquainted with facts and circumstances of the case⁸, record their statements,⁹ etc. During the investigation, the police can interrogate the accused person. Interrogation is nothing but putting questions to the accused and it's the right of the accused to choose to remain silent for the questions which tend to incriminate him.

Rights of the accused during investigation

During interrogation, the arrested person has the right to meet counsel of his choice but not throughout the investigation¹⁰. This right was introduced in the Cr. P.C by way of the 2009 amendment but unfortunately, the date of enforcement is yet to be announced. Another important right enjoyed by the accused person is the right to remain silent during interrogation.¹¹ Section 161 of Cr.P.C. enables the police to examine the accused during an investigation. Article 20(3) of the Indian Constitution confers to the accused right against self-incrimination. According to Article 20(3), no person accused of any offence shall be compelled to be a witness against himself. In the case of *Nandini Satpathy v. P.L. Dhani*¹², the Supreme Court got the opportunity to examine the relative scope of Article 20(3) of the Constitution and section 161(2) of Cr.P.C. the Supreme Court held that both cover substantially the same area, concerning the police investigation. It is in this landmark decision Supreme Court upheld the right of the accused to remain silent during investigation. The right to remain silent and the right against self-incrimination is very much required to prevent and control the police excesses during an investigation. Otherwise, police may use their power and torture the innocent person to state as per the police direction.

Use of third-degree methods during the investigation

Human rights are those rights enjoyed by every individual by virtue of being humans and the accused person is not an exception. Protection of human rights is the obligation of every civilized state. Torture is prevalent in India from time immemorial. Police in the name of interrogation subject the accused to

⁴ Section 156(1): Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

⁵Section 157: (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender; Provided that- (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot; (b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. (2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

⁶ Section 41 of Cr.P.C. 1973.

⁷ Section 93 to 105 of Cr.P.C. 1973.

⁸ Section 160 of Cr.P.C. 1973.

⁹ Section 161 of Cr.P.C. 1973.

¹⁰ Section 41D of Cr.P.C. 1973.

¹¹ Section 161(2) of Cr.P.C. 1973.

¹² 1978 Cr. L.J. 968 (S.C.)



various forms of torture which include mental and physical torture to collect information about the commission of a crime. This attitude of the police is always condemned by the judiciary. In *Kishore Singh v. State of Rajasthan*¹³ emphasizing the importance of the right to life and personal liberty under Article 21 of the Indian Constitution, condemned the police brutalities and use of third-degree methods during an investigation by a police officer. To put an end to the abuse of power and police atrocities the Supreme Court in its landmark decision *D.K. Basu v. State of West Bengal*¹⁴ laid down eleven guidelines¹⁵ to be followed by every police during and after the arrest of the person till he is in police custody. This guideline was framed to draw a balanced approach between the protection of fundamental rights and the human rights of criminals versus the duties of police concerning custodial violence, to meet the ends of justice.

Protection of accused against torture.

a. International instrument to protect accused against torture.

Universal Declaration of Human Rights, 1948, under Article 5 laid down that no one should be subjected to torture or to cruel, inhuman, or degrading treatment or punishment¹⁶. Code of Conduct of Law Enforcement Officials, 1979, under articles 2,3,5,6,7, and 8 provides that in the performance of their duty, law enforcement officials shall respect and protect human dignity and shall maintain and uphold the human rights of all persons¹⁷. The European Convention for the prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1989 established the European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment, Human Rights Committee was established under International Covenant on Civil and Political Rights is a monitoring body consisting of 18 independent experts it examines reports, which the state are obliged to submit¹⁸. The

¹³ AIR 1981 SC 625

¹⁴ AIR 1997 SC 610.

¹⁵ The principles laid down by the Hon'ble Supreme Court are given here under: (i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particular of all such personnel who handle interrogation of the arrestee must be recorded in a register. (ii) That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest. (iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. (iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aids Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest. (v) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained. (vi) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclosed the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is. (vii) The arrestee should, where he so request, be also examines at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The Inspector Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee. (viii) The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctor appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well. (ix) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record. (x) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation. (xi) A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

¹⁶ Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> last visited on 4-06-2022.

¹⁷ Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials> last visited on 4-06-2022.

¹⁸ Available at <http://www.ejil.org/pdfs/2/1/2030.pdf> last visited on 4-06-2022.

United Nation Committee Against Torture, this is also monitoring body consisting of 10 experts established under Article 22 of Convention against Torture, 1984¹⁹. The UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment under this special Rapporteur Against Torture was first established in 1985 by the UN Commission on Human Rights to examine international practice relating to torture and report upon it²⁰. These are the various instruments adopted to ensure the rights of the accused person when in police custody.

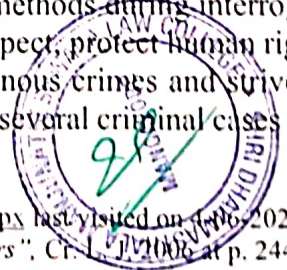
The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 defines Torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or third person or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.”²¹ The Convention also imposes responsibility on the states for preventing abuse of power by police and also establishes a Committee Against Torture for the proper implementation of this convention. India has signed the convention but has not yet ratified it. The draft bill on Prevention of Torture was submitted but it lapsed.²²

b. Protection of accused against torture under Statutes.

Much before India became a member and signatory to various international instruments, the Indian Penal Code which was enacted in the year 1860 recognizing the rights of the accused against torture, declared such act as offence and punishable under section 330 of IPC which deals with Voluntarily causing hurt to extort confession, or to compel restoration of property and Section 331 of IPC deals with Voluntarily causing grievous hurt to extort confession, or to compel restoration of property. Along with this, the rights of the accused against torture are also protected in Cr.P.C. 1973, wherein under section 163 police are cautioned against the use of any kind of inducement, threat, or promise against any person while recording their statements. To prevent the practice of torture by the police for the purpose of extracting confessions from the accused, section 25 of the Indian Evidence Act, 1872, makes the confession before a police officer as inadmissible before the court. It is believed that such confessions are not trustworthy. However, if the confession of the accused is supported by the discovery of a fact, to that extent it may be presumed to be true and admissible as evidence during trial under section 27 of the Indian Evidence Act. Lastly, The Police Act, of 1861 also contains provisions to protect the accused against torture.

c. Protection of accused against Torture under the India Constitution, 1950.

Article 21 of the Constitution of India reiterates that “No person can be deprived of his life or personal liberty except according to the procedure established by Law”. Hence, the use of any sort of torture, or third-degree methods during the investigation is a blatant violation of the fundamental right of the accused under Article 21 of the Indian Constitution. By giving a wider interpretation to the term “life and liberty” included within its ambit protection against inhuman degrading treatment, torture, and police atrocities. In republic India, if police brutalities are not put to an end, it destroys the rule of law. In *Sube Singh v. State of Haryana*²³, the three-judge bench explained that police personnel lack training in scientific investigation methods and pressure from media, and society on police to crack the case is enormous. Due to this, police adopt third-degree methods during interrogation. The bench also emphasized on balancing their function, where police respect, protect human rights, adhere to the principles of rule of law, and at the same time deal with heinous crimes and strive towards making society crime-free. In this case, the petitioner was involved in several criminal cases when police came



¹⁹ Available at <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> last visited on 16.06.2022.

²⁰ Ashirbani Dutta, “Custodial Torture: A shameless Truth Behind the Bars”, Cr. L. J. 2006 at p. 244.

²¹ Ms. Ashmaa Saikia, “Torture in custody – Flouting Human Rights Tenets”, Cr. L. J. 2009 at p. 211.

²² Why has India still not ratified UN Convention against torture, available at <https://ejp.org.in/why-has-india-still-not-ratified-un-convention-against-torture/> last visited on 15.6.2022.

²³ AIR 2006 SC 1117.

to his house to take him into custody, he was not present inside the house hence the police took the petitioner's parents and two minor sisters into custody. On the way to the police station, the father was beaten up with sticks. Later took him inside the police station and beat him for ten more minutes till then his wife and daughters were made to sit in uncomfortable posture (like punishment given in school). One of the police sat on the chest of the petitioner's father and the other two other police were pressing his hands and feet and forcibly plucked his mustache. Again, beat him and forcibly took Rs. 2350/- from his pocket. When the petitioner returned to his house he was taken into custody and tortured him by giving hot water with salt when asked for drinking water. He was also kept in a wooden shikanza for five days and was not allowed to sleep. In *Bhagwan Singh v. State of Punjab*²⁴, Supreme Court held that using third-degree methods during the investigation is barbaric and contrary to law. Further, the court suggested adopting scientific methods rather than resorting to physical torture. However, in spite of many provisions protecting the accused against torture at the international level, national level, and judicial pronouncement, still it continues as a growing reality. In our country police enjoys enormous right under the existing legal system. Being custodians of law, they themselves become a violator of the law. Recent NCRB crime report 2020 reveals that a total of 43 deaths occurred in police custody (not on remand); 11 policemen were arrested but none of them was convicted²⁵. And total death reported (person in remand) is 33 out of which one was arrested with zero conviction²⁶. Three encounter cases and seven deaths in custody were registered but no police personnel was convicted²⁷. In both the circumstances conviction rate is nil. This statistic speaks for itself and no further explanation is required.

Need for the scientific method of crime investigation

In the changing crime scenario, it is high time to adopt a scientific method of investigation. Forensic science is the application of science in the field of law. It aids in connecting the crime with the criminal. The forensic expert gives the report concluded on a scientific basis. The *modus operandi*²⁸ of the crime itself poses challenges for the investigating officer. High-tech criminals like mafia crime syndicates, drug suppliers, human traffickers, and terrorists go unpunished due to a lack of evidence and it is also very challenging to prove the guilt of the accused with traditional methods of investigation. Earlier crimes like robbery and dacoity needed well plan to commit the offense. And there was a chance to be caught red-handed. Today, not only robbery, dacoity even financial fraud, and hacking accounts, are committed at the click of the mouse without leaving any trace of evidence causing huge financial loss to the State. Cybercrimes are increasing every day. Traditional crimes are committed with aid of technology. In wildlife crime investigation also, scientific methods seem useful. In 2007, ten lions were killed by poachers on three different occasions at the Gir National Park. Initially, it seemed very difficult to investigate the case because police officers were clueless. Finally, forensic tools were used to nab the accused persons, who were convicted with three years of imprisonment. During the investigation, narco analysis was done on a woman which confirmed the initial findings.²⁹ In custodial death, it is very difficult to prove the guilt of erred police which often results in less conviction or no conviction. In corruption cases also proving the guilt is very tough.

Investigation of crime without forensic science support is impossible to imagine. Forensic tools like DNA, odontology, fingerprinting, voice analysis, ballistic, narco analysis, brain mapping and polygraph tests, etc. are boons in investigating crime. The low conviction rate itself is proof that

²⁴ AIR 1992 SC 1689.

²⁵ Crime in India 2020, Statics Volume III, National Crime Records Bureau (Ministry of Home Affairs) Government of India, New Delhi, Table 16A.1, Deaths in Police Custody/Lockup (Persons Not on Remand)-2020 at p. 1001.

²⁶ Crime in India 2020, Statics Volume III, National Crime Records Bureau (Ministry of Home Affairs) Government of India, New Delhi, Table 16A.2, Deaths in Police Custody/Lockup (Persons in Remand)-2020 at p. 1002.

²⁷ Crime in India 2020, Statics Volume III, National Crime Records Bureau (Ministry of Home Affairs) Government of India, New Delhi, Table 16A.6, Cases Registered against State Police Personnel for Human Right Violation-2020 at p. 1006.

²⁸ A particular way of doing something that is typical of a person, group etc.

²⁹ Available at <https://www.indiatoday.in/magazine/states/story/20081117-science-in-the-wild-738174-2008-11-07> last visited on 15-06-2022.

investigation is lagging. Therefore, there is a need to increase the efficiency of the police officer on scientific grounds. Forensic experts emphasize on the use of the scientific method of investigation. Due to the up-gradation of science and technology society has changed so have crime and criminality. What might have worked yesterday may not certainly work today. The criminals are way ahead of the police. But police and courts are entangled with archaic laws, therefore not giving the recognition it deserves to the narco analysis, polygraph, and brain mapping tests in the investigation of crime. In 2007, in sensational Ayesha Meera rape and murder of a 19-year-old girl in a hostel in Ibrahimpatanam near Vijayawada shocked the entire nation. The deceased was found dead in the bathroom with multiple stab injuries. In 2008, the police falsely implicated a Dalit youth compelling him to confess to a crime and the court sentenced him to life imprisonment. In 2017, the Hyderabad High Court acquitted him and ordered action against the erred police officer who investigated the case. The matter was later referred to CBI. In 2021, CBI filled an application to subject the suspects to narco analysis but the court rejected the application. Suspects are politically influenced persons.³⁰ The crime happened in 2007 if the accused were subjected to any of the scientific tests at that time it would have helped in the proper investigation of the case. We can say that this incident is an example of a miscarriage of justice. Therefore, to avoid a miscarriage of justice scientific method of investigation should be encouraged.

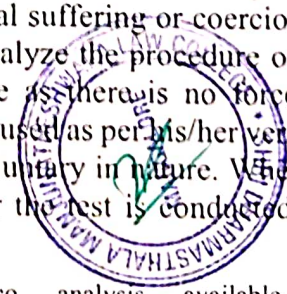
Whether narco analysis, polygraph, and brain mapping amount to torture?

Narco analysis is a process in which the subject is administered with 3 grams of sodium pentothal or sodium amytal dissolved in 3000 ml of distilled water. Once it is administered to the subject his inhibition level will be lowered because of which he will not have time to think over and speak what comes to mind immediately. i.e., there is no time to concoct a story. It is believed that a person can lie by using his imagination. The dose depends upon the person’s sex, age, health, and physical condition. In this position, he is able to answer a specific question but is not able to speak on his own.

In a polygraph, test sensors are attached to the body of the subject who is interrogated by the expert. The machine records the blood pressure, pulse rate, respiration, and muscle movement. During this test, the suspect is questioned and his reactions are measured. This test is based on the assumption that there is an interaction between the mind and body.

In brain mapping, the suspect is first interviewed and interrogated to find out if he is trying to conceal any information related to the crime. Later, the sensors are attached to the subject’s head and the person is seated before a computer monitor. He is then shown certain images or made to hear certain sounds related to crime. The sensors monitor the electrical activity in the brain and register P300 waves which are generated only if the subject has a connection with the stimulus i.e., image or sound.

Now the question is whether administering these above tests to the accused amounts to torture? No doubt right against torture is protected under Article 21 of the constitution of India. Though India signed the UN Convention against Torture, 1984, by not ratifying the said convention has failed to bring the legislation to prevent torture in India³¹. Therefore, even today right against torture is interpreted to be included in Article 21 of the Indian Constitution under the “right to live with dignity”. There is also no proper definition of the term torture. Since India has not ratified the Convention against Torture it has only a persuasive effect in the Indian scenario and cannot be enforced. Based on the definition of torture³² in the UN Convention Against Torture, it is said that the procedure adopted in narco analysis, brain mapping, and polygraph test amounts to severe mental suffering or coercion to obtain information and thus amounts to torture. Nevertheless, when we analyze the procedure of all these tests, we cannot say that it amounts to physical or mental torture as there is no force or compulsion to speak the truth. In narco analysis, just the statement of the accused as per his/her version is recorded. He might be forcibly taken to test but revelations made are voluntary in nature. Whether such revelations are inculpatory or exculpatory can be decided only after the test is conducted. In



³⁰ Ayesha Meera Case: Andhra court rejects CBI plea for narco analysis available at <https://www.thenewsminute.com/node/155628> last visited on 14-06-2022.

³¹ Sangita Mulji and Mehak Sethi, “Narco analysis: Truth or Torture”, the Lawyers collective, September 2007 at p. 18.

³² *Supra* note 21.

*Ramachandra Ram Reddy v. The State of Maharashtra*³³, *Dinesh Dalmia v. State*,³⁴ and *Rajo George v. Deputy Superintendent of Police*³⁵, has held that an accused can be forced to undergo a narco-analysis or truth serum test and that the question of violation of Article 20(3) would arise only if as a result of the test the accused makes a statement which is incriminatory and the prosecution seeks to introduce it into evidence during the trial.³⁶ In polygraph tests and brain mapping, there is no recording of the statement of the suspect, sensors are attached to the body which records the reactions of the suspect. It is also argued that forcefully without subject consent conducting these tests amounts to intruding on one's mental privacy as such amounts to mental torture. Which in turn is considered inhuman and degrading treatment. In *Selvi v. State of Karnataka*³⁷, in 2010 Hon'ble Supreme Court said that narco analysis, polygraph, and brain mapping tests can be conducted on the accused only if he gives consent. It reiterated that in the absence of consent it amounts to inhuman treatment and violation of Article 21 of the Indian Constitution. However, one should not forget that right under Article 21 is not absolute. Reasonable restrictions can be imposed. Infliction of little pain to the individual to protect the larger interest of the society is the need of an hour. Compared to third-degree methods these tests are better alternatives to curb torture against the accused.

Conclusion

With the growing crime rate, low conviction rate, and sophisticated methods of committing crimes. Indeed, it's very necessary to think beyond the rights of the accused as the state is equally responsible to ensure justice for the victims of crime. To tackle the menace of custodial torture the state should adopt remedial as well as preventive measures. Remedial in the form of paying compensation and preventive in the form of training the police personnel on the scientific method of investigation, new techniques of investigation, and also sensitizing the police about respecting and protecting the human rights of individuals. Narco analysis, polygraph, and brain mapping are effective tools for investigation in high-profile cases, cybercrimes, and crimes that affect the security of the state like terrorist acts, etc. The state should try to balance the rights of the individual and the interest of society. As quoted by Swami Vivekananda, "Everything can be sacrificed for truth, but truth cannot be sacrificed for anything". Sometimes though the accused gives consent to undergo tests, the court are rejecting the permission³⁸. That is not a good gesture on the part of the judiciary. Recently, the state has introduced The Criminal Procedure (Identification) Bill, 2022 is a welcoming step and has many milestones to reach.



³³ 2004 Bom CR (Cri.) 657.

³⁴ 2006 (3) Cr LJ 2401 (Mad).

³⁵ 2006 (2) KLT 197.

³⁶ M.P.Jain, Indian Constitutional Law, Sixth Edn., Reprint 2011, LexisNexis Butterworths, Wadhwa, Nagpur, at p. 1169.

³⁷ 2010 (7) SCC 263 at pp. 370-377.

³⁸ *Supra* note 30.