

Evidentiary Value of Narco-Analysis Test

Menu; Civil Law, sub-menu; Constitutional Law

Category; Fundamental Right

Keyword; self-incriminatory, Narco-Analysis, Article 20 (3)

Narco-Analysis in most of the cases are self-incriminating in nature. It is used to describe a diagnostic and psychotherapeutic technique that uses psychotropic drugs, particularly barbiturates, to induce a stupor in which mental elements with strong associated affects come to the surface, where they are often exploited by therapist. The privilege against self-incriminating is a fundamental canon of common-law criminal jurisprudence. The characteristic features of this principle are-

- (i) That the accused is presumed to be innocent,
- (ii) That it is for the prosecution to establish his guilt, and
- (iii) That the accused need not to make any statement against will.

With the advancement of technology, methods of investigation are now available to the police and other investigation authorities which have and continued to raise interesting issues on the constitutionality of the process employed. The Bombay High Court considered the question, whether the compulsory subjection of accused to three or these new methods namely Lie Detector or polygraphy tests, P-300 Test or Brain Mapping Test and Narco Analysis or truth Serum Test violate the constitutional prohibition of testimonial compulsion under Article 20 (3). According to the court none of the test violates Article 20 (3) of the Constitution because the tests of Brain Mapping and Lie Detector in which the map of the brain is the result, or polygraph, cannot be said to be a statement made by the witness. At the most it can be called the information received or taken out from the witness. With regard to narco analysis while holding that the result of administration of serum is necessarily a statement nevertheless “unless it is shown to be incriminating to the person making it, it does not give rise to the protection under Article 20 (3)¹.

Statement made in result of Polygraphy Test, P-300 Test or Brain Mapping Test, and Narco Analysis or Truth Serum Test during the course of investigation of a crime by the accused, or witness to the police, and if the accused point out the place where the *corpur delicti* has been

¹ Ram Chandra Reddt v. The State of Maharashtra, 2004 All MR (Cri) 1704 : 2004 Bom CR (Cri) 657

kept or reveals the possession of such things, and in pursuance of such information discovery was made which incriminate the accused, or the witness, neither such statement or such discovery comes within the prohibition of Article 20 (3)². Section 27 of the Evidence Act has been held to fall outside the prohibition of Article 20 (3)³ unless compulsion has been used in obtaining the information. If the self-incrimination has been given by an accused person without any threat, that will be admissible in evidence and will not be hit by Article 20 (3)⁴

² Subbaya Gounder v. Bhoopala, AIR 1959 Mad 396

³ State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808 : (1962) 3 SCR 10

⁴ State of Uttar Pradesh v. Deoman Upadhaya, AIR 1960 SC 1125 : (1961) 1 SCR 14; Md Dastagir v. State of Madras, AIR 1960 SC 756 :P (1960) 3 SCR 116