



Chalking Equilibrium Between Effective Investigation and Individual Rights

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ABSTRACT

Law, Science and Technology has a great relevance in our lives. Law and Science encounter each other in many ways. When technology intrudes in the ambit of legal rights it is checked by law. In modern times, when criminals take care to erase all the evidences of their involvements, the scientific and highly sophisticated methods are required to trace the involvement of criminals. Narcoanalysis, Polygraphy and Brain Mapping tests collectively called Deception Detection Tests (DDT) are new kinds of interrogation techniques which are simple and civilized way of conducting investigation. But, at the same time, one has to be conscious of its limitations as it infringes the fundamental rights under Article 20(3), and also right to privacy and right to health which are guaranteed under Article 21 of the Constitution.

Despite of verily limitations, it affirms certain attributes too but however there is a tension between desirability of efficient investigation and preservation of individual rights.

KEYWORDS : Investigation, Right, Evidence, Deception Detection Test

Concept of Investigation-

According to the Code of the Criminal Procedure under section 2(h) of the Code, Investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorized by a Magistrate in this behalf. Investigation, under the Code includes:

1. Proceeding to the spot of crime.
2. Ascertaining the facts and circumstances of the case.
3. Discovery and arrest of the suspected offenders.
4. Collection of evidence
 - examination of various persons including the accused and re-cording their statements in writing.
 - Search of places or seizures of things which are considered necessary.

Criminal Investigation is an applied science that involves the study of facts, used to identify, locate and prove the guilt of a criminal. A complete criminal investigation can include searching, interviews, interrogations, evidence collection and preservation and various methods of investigation. Modern day criminal investigations commonly employ many modern scientific techniques known collectively as forensic science.

Application of Science & Technology In Criminal Investigation-

The search for effective aids to interrogation is probably as old as man's need to obtain information from an uncooperative source and as persistent as his impatience to shortcut any tortuous path. The use of technology in the service of criminal investigations, and the application of scientific techniques to detect and evaluate criminal evidence has advanced the investigation process in criminal justice system throughout the country.

Modern society has improved upon the methods of the past to bring about more precise and accurate techniques wherein Forensic Science has expanded to Trauma Inducing Drugs and Psychotropic Substances. The application of science to matters of law has made great strides in recent years resulting in development of new scientific tools of investigation and interrogation (collectively called Deception Detecting Tests) viz.:

1. Narco Analysis Test
2. Brain Mapping Test/ Brain Electrical Oscillation Signature Profile (BEOS)
3. Polygraphy Test
4. DNA Profiling
5. Fingerprinting Test

Deception Detecting Test

Deception simply means lying which may lead to a serious aftermath in the enforcement of law and the proceedings in the courtroom. 'Deception' is also defined as a deliberate attempt to mislead others. Hence, much effort is devoted by the forensic psychologists in developing different techniques and methods to detect lies. The deception detection tests (DDT) have important clinical, scientific, ethical and legal implications. The DDTs are useful to know the concealed information related to crime. This information, which is known only to self, is sometimes crucial for criminal investigation. However, investigating agencies know that the extracted information cannot be used as evidence during the trial stage. They have contested that it is safer than 'third degree methods' used by some investigators. Here, the claim is that, by using these so called, "scientific procedures" in fact-finding, it will directly help the investigating agencies to gather evidences, and thereby increase the rate of prosecution of the guilty and the rate of acquittal of the innocent. Recently, these methods are being promoted as more accurate and best to none, without convincing evidence.

Narco Analysis Test:

The term Narco-Analysis is derived from the Greek word *narkō* (meaning "anesthesia" or "torpor") and 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 can be exploited by the therapist to lower a subject's inhibitions, in the hope that the subject will more freely share information and feelings. A person is able to lie by using his imagination. In the Narco-Analysis Test, the subject's inhibitions 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.

It was first used in 2002, in the Godhra carnage probe. During the Telgi scam, the use of Narco-analysis came under the scanner, and then it was used in the Arushi murder investigation. The scientific validity of the test has been questioned by medical professionals, and the legal validity has also been debated in several international and national cases.

Brain Mapping Test:

Brain-mapping is a comprehensive analysis of brainwave frequency bandwidths. In this test, forensic experts apply unique neuroscience techniques to find out if a suspect's brain recognizes things from a crime scene which an innocent person's brain will have no knowledge of.

In brain-mapping, sensors are attached to the suspect's head and he or she is made to sit in front of a computer screen. The suspect is then made to see images or hear sounds. The sensors monitor electrical activity in the brain and register certain waves which are generated only

if the suspect has any connection with the stimulus (image or sound).

Under "Brain-wave finger printing"; the accused is first interviewed and interrogated to find out whether he is concealing any information. In a nutshell, Brain finger printing test matches information stored in the brain with information from the crime scene. Studies have shown that an innocent suspect's brain would not have stored or recorded certain information, which an actual perpetrator's brain would have stored. In USA, the FBI has been making use of "Brain mapping technique" to convict criminals and In India, on Jan 30, 2008, Brain-mapping test on serial killer Chandrakant Sharma concluded in Bangalore who was alleged to have revealed details about a case.

Lie Detecting Test:

A polygraph, popularly referred to as a lie detector, is an instrument that measures and records several physiological indices such as blood pressure, pulse, respiration and breathing rhythms and skin conductivity while a suspect is asked a series of questions.

Deceptive answers are said to produce physiological responses that can be differentiated from those associated with non-deceptive answers. It is an examination, which is based on an assumption that there is an interaction between the mind and body and is conducted by various components or the sensors of a polygraph machine, which are attached to the body of the person who is interrogated by the expert. The machine records the blood pressure, pulse rate and respiration and muscle movements. Polygraph test is conducted in three phases- a pretest interview, chart recording and diagnosis. All these reactions are corroborated with other evidence gathered.

The polygraph test was among the first scientific tests to be used by the interrogators. The Attorney General of India Ghulam E. Vahanvati, arguing before a bench presided by the Chief Justice of India K.G.Balakrishnan, hearing petitions against the procedure of Narco-analysis, justified its use as a tool of investigation. He asserted that the procedure of Narco analysis finds legal sanction under the newly amended Section 53 of the Criminal Procedure Code.

In 2005, an Explanation clause was added to Section 53 of the Criminal Procedure Code, the relevant part of which reads as follows: "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case; (emphasis supplied) It is submitted that the expression 'such other tests' signifies a provision for recognizing newly developed techniques in forensic science and permitting the same in investigative procedures.

Deception Detecting Test: How Far It Is Justified?

In India, the use of Deception Detecting Tests has been questioned in courts. The main argument against it is the infringement of the fundamental right under Article 20(3) and under Article 21 of the Constitution, which provides for a privilege against self-incrimination and right to health and privacy, respectively.

The revelations made during the Narco analysis have been found to be of very useful in solving sensational cases of Mumbai serial train blasts, blasts at Delhi, Malegoan and more recently in Hyderabad and in various other sensational cases of National and International ramifications. Thus, it is right to say that DDT is proving to be a useful tool in the field of criminal investigation.

Legal questions are raised about their validity with some upholding its validity in the light of legal principles and others rejecting it as a blatant violation of constitutional provisions. There is a tension between efficient or successful investigation and preservation of individual rights, which is discussed in the following manner:

Violation of Individual Rights :

If a person is not willing to consent for DDT, he is likely to be assumed by people at large as non-cooperative with investigation process and therefore might have committed or involved in the offence. But on the other hand, DDT has certain outcomes which are unethical as well as unconstitutional.

As To Violation of 'Right to be Silent'

The right to remain silent is a legal right recognized, explicitly or by convention, in many of the world's legal systems.

Universal Declaration of Human Rights, 1948 Under Art. 11.1 declares, "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence." The International Covenant on Civil and Political Rights, 1966 to which India is a party states in Art. 14(3)(g) "Not to be compelled to testify against himself or to confess guilt". The European Convention for the Protection of Human Rights and Fundamental Freedoms states in Art. 6(1) that every person charged has a right to a 'fair' trial and Art. 6(2) thereof states: 'Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.' The right covers a number of issues centered around the right of the accused or the defendant to refuse to comment or provide an answer when questioned, either prior to or during legal proceedings in a court of law. This can be the right to avoid self-incrimination or the right to remain silent when questioned.

In India, Right to Silence is enshrined in the Code of Criminal Procedure (CrPC). S.161 (2) of the Code of Criminal Procedure states that every person "is bound to answer truthfully all questions, put to him by [a police] officer, other than questions the answers to which would have a tendency to expose that person to a criminal charge, penalty or forfeiture".

The constitution of India guarantees every person right against self-incrimination under Article 20(3) of the Indian Constitution which states that; "No person accused of any offence shall be compelled to be a witness against himself."

As To Violation of Right To Health-

Article 25 of the Universal Declaration of Human Rights 1948 states that "Everyone has the right to a standard of living adequate for the health, and wellbeing of himself and his family..." The United Nations defined the right to health in Article 12 of the International Covenant on Economic, Social and Cultural Rights in 1966.

The Supreme Court judgement of *Urjit Singh Vs State of Punjab* AIR 1996 SC 1388 ordered to settle the claim as per the rates admissible in 'Escorts Hospital'. Law is therefore well settled that right to health is an integral part of life guaranteed under Article 21 of the Indian Constitution.

P. Chandrasekharan, President of the Forensic Science Society of India, says that not only are Narco-analysis tests unreliable, they may also lead to dangerous side effects. The truth serum substance, sodium pentothal is the same substance that in larger dosages is used to induce a deep coma like state for executions by lethal injection in USA. A large dose of the drug is lethal; a test could result in coma or even death. It can be difficult to determine the correct dose of the drug. But in 2011, Sheikh Mujib, an engineering student who was accused in a bomb blast case in the Indian city of Ahmedabad, complained of health problems after Narco-analysis. Arun Ferreira, a political activist who underwent forced Narco-analysis after being arrested in 2007 under the Unlawful Activities Prevention Act for being an alleged Maoist, described the procedure as a sort of torture.

As To Violation Of Right To Privacy-

The concept of privacy is internationally recognized under Article 19 of UDHR as: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers." "Right to Privacy" means the right to be left alone to live one's own life with minimum degree of interference. The right to privacy is also stipulated in the Covenant on Civil and political Rights under Article 17(1) which says, "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation and everyone has the right to the protection of the law against such interference or attacks." But this right is not guaranteed in the Indian Constitution.

However, in *Kharak Singh v State of U.P.*, [(1964) 1 SCR 33] it was

held by the Supreme Court that the domiciliary visits is an infringement of the right to privacy and is violative of the citizen's fundamental right guaranteed under Art.21 of the Indian Constitution. Subba Rao J. was of the opinion that privacy was an essential ingredient of personal liberty.

In **Govind v State of Madhya Pradesh** [1996 (0) MPLJ 649] the right to privacy was assumed to be a part of the personal liberty guaranteed under Art. 21 of the Constitution, by stating that although the right to privacy is not explicitly provided in the Constitution, it is ingrained in the fundamental right of life and personal liberty.

In **Smt. Selvi and Ors Vs State of Karnataka**, Supreme Court held that the use of narco analysis, brain-mapping and polygraph tests on accused, suspects and witnesses without their consent, unconstitutional and violation of the 'right to privacy'.

Thus, Right to Privacy is implicit in the Right to life and liberty guaranteed to the citizens of India by Article 21 of the Constitution of India. Deception detection tests amounts to an invasion of privacy if it involves eliciting personal information from the accused known only to him. However, it must be noted that the test assumes the character of a restriction imposed by law on the said right.

Conclusion:

The criminal justice system should be based on just and equitable principles. In spite of the fact that Narco-Analysis is "not so reliable" method, its significance and necessity in the present scenario cannot be in any way negated but yet it has its own controversies and concerns. With the growth and development of society the nature of the crime has been also changing and diversifying. The developments and advancements in science and technology should be utilized to the fullest for effective aids to interrogation and investigations in criminal justice system.

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