

NARCO ANALYSIS TEST UNDER INDIAN EVIDENCE ACT, 1872

Written by Varsha Bharwdaj

LLM, MVN University, Palwal, Haryana, India

INTRODUCTION

India follows the adversarial system of law and the state has to gather evidence and then accuse the suspect. The police have to investigate with an object to collect necessary facts, information, and evidence for production at the trial. It is difficult for the court of Judges to have complete knowledge to determine if the testimony about technical and scientific evidence like narco analysis they are receiving is correct and reliable. Much legal protection has to be placed to ensure or promote reliability. The Indian Evidence Act, 1872 recognizes two types of evidence i.e. oral and documentary. Sec. 3 of the India Evidence Act defines evidence as – [1]. All statements which the court permits or requires to be made before it by witnesses in relation to matters of Act under enquiry such statements are called oral evidence. [2]. all statements including electronic records produced for the inspection of the Court, such statements are called documentary evidence.

ADMISSIBILITY OF NARCO TEST

Admissibility of evidence depends on a number of factors because if any statement has been required or permitted by the court it does not by itself become evidence. The court has the right to admit it or reject it. The statement received in narco analysis test as such would not form part of evidence until it fulfils some other requirements also. It is important that the person making the statement is in a fit state of mind. Thus, the question arises as to whether the

statements given in semi-conscious state of mind in narco analysis is admissible as evidence. It becomes more controversial because of the fact that studies have proved that people have given untruthful, false and utterly misleading statements and answers during the narco analysis test. In this regard, it is significant to mention that in *Smt. Selvi & others v State of Karnataka*,ⁱ the Supreme Court has also hold that the result of the test by themselves cannot be admitted in evidence, even if the subject consents to such test, because there is no conscious control being exercised by the subject over the responses during the course of such test. However, if with the help of voluntary administered test, any material or information is subsequently discovered, then it can be admitted under sec 27ⁱⁱ of the Indian Evidence Act 1872.

Sections 24 to 30 of the Evidence Act deal with the admissibility of confession of the accused person in a criminal case. The term 'confession' has not been defined in the Act but in simple words it can be termed as an admission made at any time by a person charged with a crime stating on suggesting the inference that he committed that crime.

Section 24 of the Evidence Act, 1872 clearly lays down that if it seems to the court that a confession has been obtained by inducement, threat or promise in authority, such a confession becomes irrelevant in the criminal proceedings against the accused. Thus, from the point of view, confession made under the effect of medicine would not be admissible. If it is argued that the person was under the influence of medicine then any confessional statement would not be admissible.ⁱⁱⁱ Moreover, it is a general view of the courts in India that merely confessional statements are not enough to convict the accused.

A combined reading of sections 25 & 26 of the Evidence Act would reveal that no confession either made in the custody of police or made to the police will be proved against the person accused of an offence. Thus, if a person is subjected to heavy and ruthless investigation by the police and the elements of fear or coercion still exist in his or her mind and out of the fear, the person makes a confession of guilt through this test, then it may not be held as admissible. Thus, in the context of narco analysis test, even if the accused, in the process confesses or makes any statement to the police, the same cannot be proved against him. At the maximum,

the statements recorded may be used to corroborate or contradict a witness but not as a substantive evidence.

Similarly, section 29 of the act provides that if any evidence is obtained under compulsion, then it is not admissible as per law. Narco analysis test when ordered to be conducted on an accused is, compulsion and as much information received on conducting such test should also be held to be inadmissible.

Section 45 of the Evidence Act allows experts opinion in certain cases. It provides that when the Court has to form an opinion upon a point of foreign law, or of science, or art or as to identity of handwriting or finger impression, the opinions upon that point or person especially skilled in such foreign or of science, or art or as to identity of handwriting or finger impression are relevant. However, this section is silent on other aspects of forensic evidence admissible in courts.

At present, the results of these tests are not, by any means, admissible in courts as evidence though it cannot be denied that they have been conducted to crack various cases. Presently at the maximum, they can be used as corroborative evidence or if any information is received or anything discovered by way of this test, they may be used u/s 27 of the Evidence Act. They may not be enough to convict an accused on basis of evidence produced but may be used as a necessary tool to collect corroborative evidence.

It is important to mention some pertinent observations made by the Supreme Court Bench in the case of *Mrs. Selvi and Others v State of Karnataka*.^{iv} Para 192 of the judgement is of more than 250 pages. The Supreme Court observed that, "so far, the judicial understanding of privacy in our country has mostly stressed on the protection of body and physical spaces from intrusive actions by the state. While the scheme of Criminal Procedure as well as evidence law mandates interference with physical privacy through statutory provisions that enable arrest, detention, search and seizure among others, the same cannot be the basis for compelling a person 'to impart personal knowledge about a relevant fact'".

... furthermore, the 'rule against involuntary confessions' as embodied in sections 24, 25, 26 and 27 of the Evidence Act, 1872 seek to serve both the objectivity and reliability as well as voluntariness of testimony given in custodial setting. A conjunctive reading of Article 20(3) and 21 of the Constitution along with the principles of Evidence law leads us to a clear answer. An individual's decision to make a statement is the product of a private choice and there should be no scope for any other individual to interfere with such autonomy, especially in circumstances where the person faces exposure to criminal charges or penalties^v.

ENDNOTES

ⁱ AIR 2010 SC 1974

ⁱⁱ Sec 27-Provided that when any fact is discovered in consequences of information received from a person accused of any offences, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

ⁱⁱⁱ *Vijay Kumar v State*, 2005 Cr. LJ 3085(SC).

^{iv} Air 2010 SC 1974.

^v Available at "Law in Perspective", at Legal Perspectives.blogspot.in/2010/05/narco-analysis-test-without-consent-of.html.