HUMAN RIGHTS IN PRE-TRIAL PROCESS

PRE-TRIAL DETENTION

Prisoners in pre-trial detention, or in remand, are those who have been detained without a sentence and are awaiting legal proceedings. They are also known as untried or un-convicted prisoners.
In Indi, as many as seven out of ten Indian prisoners are pre-trial detainees. The high number of pre-trial detainees in India is attributed to delays encountered at various stages in the criminal justice system, exacerbated further by an acute shortage of judges.
The excessive length and use of pre-trial detention is a major cause of overcrowding in prisons. In some countries the majority of the prison population comprises detainees awaiting trial.
In Nigeria, for example, more than 25,000 prisoners are currently detained in prisons without conviction due to delays in the justice system, missing files, absent witnesses and prison mismanagement.

International Humanitarian Standards

Article 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) require that prisoners must be brought to trial and the proceedings completed within 'a reasonable time' or be released on bail.

The UN Human Rights Committee has stated that:

What constituted "reasonable time" is a matter of assessment for each particular case. The lack of adequate budgetary appropriations for the administration of criminal justice does not justify unreasonable delays in the adjudication of criminal cases. Nor does the fact that investigations into criminal case are, in their essence, carried out by way of written proceedings, justify such delays.

According to the Universal Declaration of Human Rights:

"Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."

The UN Standard Minimum Rules for the Treatment of Prisoners sets out the standards for the detention of pre-trial detainees. These include the right to be held separately from convicted prisoners, the right to wear their own clothes and to access medical assistance, free legal assistance and contact with family and friends.

8th UN CONGRESS ON THE PREVENTION OF CRIME & TREATMENT OF OFFENDERS

One of the major achievements of the Eight UN Congress was the adoption, by consensus, of the UN standard Minimum Rules for Non-custodial Measures the "TOKYO RULES". These stipulate that governments should make every reasonable effort to avoid pretrial detention.

TOKYO RULES:

- Pretrial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the allege offense and for the protection of society and the victim.
- The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pretrial detention is employed.
- Alternatives to pretrial detention shall be employed at as early a stage as possible. Pretrial detention shall last no longer than necessary and shall be administered humanely and with respect for the inherent dignity of human beings.

According to the United Nations Human Rights Committee, detention before trial should be used only where it is lawful, reasonable, and necessary. Detention may be necessary "to prevent flight, interference with evidence or the recurrence of crime," or "where the person concerned constitute clear and serious threat to society which cannot be contained in any other manner."
Pretrial detainees are disproportionately likely to be poor, unable to afford the services of a lawyer, and without the resources of deposit financial bail to facilitate their release should this option be available to them. When poor defendants are more likely to be detained, it can no longer be said that the criminal

justice system is fair and equitable. Moreover, in some countries a significant number of pretrial detainees will eventually be acquitted of the charges against them or released without having stood trial.

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CONFESSIONS & LAW OF EVIDENCE & CONSIDERATION OF HUMAN RIGHTS

Definition of Confession

The term confession is nowhere defined in the Evidence Act. All the provisions relating to confessions occur under the heading of 'admission'. The definition of admission as given in Section 17 becomes applicable to confession also. Section 17 defines admission as "a statement oral or documentary which suggests any inference to any fact in issue or relevant fact."

Provisions Regarding Confessions

- **Section 24 of the Evidence Act: Confession caused by inducement, threat or promise, when irrelevant in criminal proceedings-**
- **To attract the provisions of Section 24,the following facts must be established:**

(a) The confession must have been made by an accused person in authority
(b) It must appear to the court that the confession has been caused by any reason of inducement, threat or promise proceeding from a person in authority
(c) The inducement, threat or promise must have reference to the charge against the accused person
(d) The inducement, etc. must be such that it would appear to the Court that the accused in making the confession, believed that he would by making it, gain any advantage or avoid of any evil of a temporal nature in reference to the proceeding against him.

Section 25 of the Evidence Act 1872: Confession to police officer not to be proved- "No confession made to a police officer, shall be proved against a person accused of any offence." The object of this rule is to prevent the extortion of confessions by police officers who in order to gain credit by securing convictions go to the length of positive torture.

Care must be taken to stop the torture by the police officers to extract confession but confessions made by an accused who is a proclaimed offender to a police officer without threat or violence being committed on the accused by the police officer should be made valid.

The rationale behind allowing confessions of a proclaimed offender is that, these criminals already have a history of committing crimes and they should not enjoy the immunity given to a common man that any confessional statement given to police officers is not valid. These are dangerous criminals who should not be allowed to go scot-free due to a provision of law but be put behind bars and save the society from crimes.

Law of evidence is one of the most important laws administered by our civil and criminal courts. Since 1872, when the present Act was enacted, there has been a sea-change in Human Rights Jurisprudence all over the world.

Seventy years later, basic principles governing human rights were enunciated in the Universal Declaration of Human Rights, 1948. This was followed by the International Covenant on Civil and Political Rights, 1966. The said Convention has been ratified by India in 1976. Our Constitution came into effect from January 26, 1950.

Art. 20(3) of our Constitution declare the fundamental right against self-incrimination. Art. 21 guarantees liberty and a right to procedure established by law requires the procedure to be just, fair and equitable.

NARCOANALYSIS

CONSTITUTIONAL LAW AND HUMANRIGHTS

Narco-Analysis is a scientific development that has become an increasingly, perhaps alarming, common term in India.

DERIVATION

The term Narco-Analysis is derived from the Greek word NARCK (meaning "anesthesia" or "torpor") and is used to describe a diagnostic and psychotherapeutic technique that use 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.

Narco Analysis from Constitutional & Legal Stand Points

Such tests generally don't have legal validity as confessions made by a semi-conscious person are not admissible in court. The court may, however, grant limited admissibility after considering the circumstances under which the test was obtained.

The petitioners none of the case said courts could not direst the prosecution to hold Narco-Analysis, brain mapping and lie detector tests against the will of the accused as it would be violative of Article 20(3) of the Constitution.

Privilege against Self-Incrimination

- It deals with the privilege against self-incrimination. The privilege against self incrimination is a fundamental canon of Common law criminal jurisprudence.
- Art. 20(3) which embody this privilege read, "No person accused of any offence shall be compelled to be a witness against himself."
- Subjecting the accused to undergo the test, as has been done by the investigative agencies in India, is considered by many as a blatant violation of Art. 20(3) it was held to attract of Constitution.

RIGHT TO SILENCE

It is well established that the Right to Silence has been granted to the accused by virtue of the pronouncement in the case of Nandini Sathpathy vs. P.L.Dani; no one can forcibly extract statement from the accused, which has the right to keep silent during the course of interrogation (investigation). By the administration of these tests, forcible intrusion into one's mind is being restored to, thereby nullifying the validity and legitimacy of the Right to Silence. She claimed that she had a right of silence by virtue of Article 20(3) of the Constitution and Section 161(2) of CrPC.

Lie Detection Test

- Lie detection test comes under the general power of investigation (Section 160-167, CrPC).
- It must be realized that it is prerogative of the person to allow himself/herself to be put to polygraph test or not and it should not be left to the discretion of police.
- Unless it is allowed by law it must be seen as illegal and unconstitutional.

Narco Analysis in India

- In India, the Narco analysis test is done by a team comprising of an anesthesiologist, a psychiatrist, a clinical/forensic psychologist, an audio-videographer, and supporting nursing staff. The forensic psychologist will prepare the report about revelations, which will be accompanied by a compact disc of audio-video recordings.
- The strength of the revelations, if necessary, is further verified by subjecting the person to polygraph and brain mapping tests.
- Narco analysis is steadily being mainstreamed into investigations, court hearings and laboratories in India.
- It has been held in Ram Jawayya Kupar's case that executive power cannot intrude on either constitutional rights and liberty, or for that matter any other rights of a person and it has also been

observed that in absence of any law any intrusion in fundamental rights must be struck down as unconstitutional.

- A Narco analysis test report has some validity but is not totally admissible in court, which considers the circumstances under which it was obtained and assessed its admissibility.

In India, narco-analysis was first used in 2002 in the Godhra carnage case. It was also in the news after the famous Arun Bhatt kidnapping case in Gujarat wherein the accused had appeared before NHRC and the Supreme Court of India against undergoing the narco-analysis. It was again in the news in the Telgi stamp paper scam when AbdulKarim Telgi was taken to the test in December 2003. Though, in the case of Telgi, immense amount of information was yielded, but doubts were raised about its value as evidence.

The Bombay High Court, in a significant verdict in the case of Ramchandra Reddy and Others vs. State of Maharashtra, upheld the legality of the use of P300 of brain Mapping and narco analysis test. The court also said that the evidence procured under the effect of narco analysis test was a very primitive form of investigation and the third degree treatment, and there were legal lapses interrogation with the aid of drugs.

Right to self incrimination: Is it against public interest?

- The other view regarding the legal validity of Narco analysis test is that it is used as an aid for collecting evidence and helps in investigation and thus not amount to testimonial compulsion.
- Thus it does not violate the constitutional provision regarding protection against self-incrimination.

NEED OF CAUTION

- Narco-analysis is particularly useful when there is a requirement to elicit required information for preventing any offences by terrorist.
- Its application must be assessed objectively so that it can be replaced by existing conventional method of interrogation which brought shame, ignominy and disrepute to police leading to erosion of credibility of criminal justice system.
- Narco-analysis can evolve as viable effective alternate to barbaric third degree methods.
- Care however must be taken that this procedure is not misused or abused by investigating officer and should ne correlated with corroborative.

The final judicial pronouncement status of narco-analysis is yet to come, but it seems in the offing, as in 2006 the Supreme Court of India stayed the order of a metropolitan judge to conduct narco-analysis on K.Venkatewara Rao in the Krushi Cooperative Urban Bank case. The issue required to be settled by a court decision because Mr. Rao refused to sign the consent form and the Forensic Science Laboratory at Gandhinagar declined to conduct a narco-analysis test without a duly filled and signed consent form.