

Circular No. 37/2010

Sub: Use of Polygraph, Narco Analysis, Brain Fingerprinting Techniques in Investigation-Instructions-Reg.

The Hon'ble Supreme Court, considering the issue of involuntary administration of scientific techniques namely Narco-Analysis, Polygraph Examination and Brain Electrical Activation Profile (BEAP) during investigation of criminal cases, vide judgment dtd. 05.05.2010 in Smt. Selvi & others vs State of Karnataka held that "no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty".

At the same time the Court permitted voluntary administration of these techniques with certain safeguards and held that even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the test. However, any information or material that is subsequently discovered with the help of voluntarily administered test results can be admitted, in accordance with Section 27 of the Indian Evidence Act.

The Court also held that the guidelines of the National Human Rights Commission on Administration of Polygraph Test, on an accused, must be strictly adhered to and that similar safeguards must be adopted for conduct of Narco Analysis and Brain Electrical Activation Profile Test. The guidelines are reproduced below:-

- i. No Lie Detector Test should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
- ii. If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer, and the physical, emotional and legal implications of such a test should be explained to him by the police and his lawyer.
- iii. The consent should be recorded before a Judicial Magistrate.
- iv. During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
- v. At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate, but will have the status of a statement made to the Police.
- vi. The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
- vii. The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital), and conducted in the presence of a lawyer.
- viii. A full medical and factual narration of the manner of the information received must be taken on record.

In order to effectively implement the above directions, the following procedures are prescribed for compliance by Investigating Officers/ FSL:

- i. After complying guidelines No.1 & 2 above, the investigating officer shall file an application before the Court concerned requesting the Court to take further steps to obtain the consent of the accused and to direct the Director, FSL or any other reputed agency having the required facilities to conduct the tests and to make available results of the tests to the court.
- ii. On receipt of such direction from the Court, the Director FSL will send notice, by post, to the individual, to appear for the test at a specified date and time if such place, date and time had not already been specified by the Court. Under no circumstances, should the police be used to serve such notice. Notice shall also be sent to the investigating Officer for a separate discussion to finalise the factual issues relating to the investigation which is of relevance in conducting the tests.
- iii. No police personnel should escort the individual to the laboratory, if the individual is on bail.
- iv. If the individual is in judicial custody, the Director FSL, must send the notice as above through the concerned jail authorities. In such cases, while the police escort party, may accompany the individual up to the laboratory, the individual's secure custody inside the room where the test is done must be ensured by the jail authorities with the permission of the Court, in such manner as the Court may direct.
- v. The entire proceedings of the test must be videotaped, and the original submitted to the Court with copy to the Investigating Officer.
- vi. The test should be conducted in the presence of the individual's lawyer, and the staff of the Forensic Science Laboratory. The IO may, with the prior permission of the Court, be present during the conduct of the test; without in any manner attempting to influence the conduct of the test.

All Investigating Officers will ensure that the aforesaid guidelines are adhered to before forwarding cases for Polygraph Examination, Narco-Analysis, and Brain Fingerprinting in the Forensic Science Laboratory, or other organisations. In those cases under investigation, which have already been forwarded to FSL, for use of these techniques, the Investigating Officers, will, in compliance of the guidelines, forward them again to the FSL.



Director General of Police

To

All Officers in List 'B'.

Copy to: CAs to All Officers in PHQ/All section Heads in PHQ/Director FSL

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