

DR. K.P. RAMALINGAM : Sir, I will withdraw the remark*. But, the question should be answered.

DR. V. MAITREYAN : The matter is *sub judice*. It cannot be discussed in the House.

MR. CHAIRMAN : Listen to the Minister...*(Interruptions)*....

SHRI P. CHIDAMBARAM : Listen to my answer, Sir, if I recall the facts of the case, there is an allegation that the Foreign Exchange Management Act has been violated. The matter is under investigation and, therefore, I cannot answer any more on that case because FEMA falls under the Ministry of Finance.

DR. K.P. RAMALINGAM : For how long, the case will be dragged on?

MR. CHAIRMAN : Please, no supplementaries on supplementaries. Now, Question No. 242.

Effect of invasive procedures declared illegal

*242. SHRI ISHWAR SINGH : Will the Minister of HOME AFFAIRS be pleased to state:

(a) whether presently an accused in India enjoys the right against self-incrimination, the right to remain silent and the right against giving information under physical or mental pressure;

(b) if so, whether the current invasive procedures such as narco analysis, brain-mapping and polygraph tests are brazen violations of such rights as recently held by the Supreme Court declaring that such procedures constitute a gross abuse of human rights; and

(c) whether in the absence of these now-barred investigative procedures, third degree methods of interrogation will get further entrenched?

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI MULLAPPALLY RAMACHANDRAN) : (a) to (c) A Statement is laid on the Table of the House.

Statement

(a) As per Article 20(3) of the Constitution of India no person accused of any offence shall be compelled to be a witness against himself.

* Withdrawn by hon. Member.

(b) Supreme Court has passed a judgement on 5.5.2010 in Criminal Appeal No. 1267 of 2004 - Smt. Selvi & Others (Appellants) *Versus* State of Karnataka. The Hon'ble Court has directed the strict adherence to the guidelines formulated by the National Human Rights Commission in 2000 on Polygraph Test (Lie Detector Test) on an accused which are also to be followed for conducting the 'Narco analysis technique' and the 'Brain Electrical Activation Profile'.

The guidelines are as under :-

- i. No Lie Detector Tests 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 implication 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 factories 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 in 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.

The technique in question is voluntary administration of the test in the context of investigation in criminal cases or otherwise which must be conducted under the guidelines formulated by the National Human Right Commission.

(c) Police powers are limited by the provisions of the Constitution, the Police Act, the Criminal Procedure Code, the Evidence Act etc. In case of violation of human rights, Courts have the power of demand accountability from the Police. Besides the above, the aggrieved persons/accused can

approach State Human Rights Commission or National Human Rights Commission. Therefore, adequate safe guards are available. It is also to be noticed that the Hon'ble Supreme Court has not banned the tests but has clarified that the tests may be administered only with the consent of the accused.

In view of the above, it is not correct to conclude that third degree methods of interrogation will increase.

श्री ईश्वर सिंह : सर मेरा, प्रश्न यह था कि क्या भारत में इस समय किसी अभियुक्त को self-incrimination का अधिकार, मौन बने रहने का अधिकार तथा शारीरिक एवं मानसिक दबाव में जानकारी देने का अधिकार प्राप्त है? मैंने अपने प्रश्न में पूछा था कि 'नार्को एनालिसिस', 'ब्रेन-मैपिंग' और 'पॉलीग्राफ जांच' जैसी चीजों का मिसयूज एजेंसियाँ कर रही हैं। सुप्रीम कोर्ट ने इस बारे में जो रूलिंग दी है, 'ruling against narco, polygraph and brain-mapping test - this is a violation of his physical privacy'. उसने यह भी कहा है कि criminal may benefit, but citizen's right should be protected. सर, इन्होंने मुझे जो आँकड़े दिए हैं, उसमें सिर्फ पॉलीग्राफ टेस्ट ही दिया है। इन्होंने कहा कि "झूठ का पता लगाने वाला कोई भी परीक्षण अभियुक्त की सहमति के बिना नहीं किया जाना चाहिए।" सर, कोई खुद ऐसा करने को क्यों कहेगा? क्या खुद की गवाही के लिए कोई सहमत होगा? यह एक प्रश्न का...

श्री सभापति : आप सवाल पूछिए।

श्री ईश्वर सिंह : सर, यह मेरा सवाल ही है।

मेरा सवाल यह है कि खुद की गवाही के लिए कौन सहमत होगा ? मेरा प्रश्न यह है कि 'नार्को एनालिसिस', 'ब्रेन-मैपिंग' और 'पॉलीग्राफ जांच' से जो हानियाँ होती हैं और सुप्रीम कोर्ट ने इस बारे में जो फैसला दिया है उसका इस स्टेटमेंट में कहीं भी जिक्र नहीं किया गया है। क्या सरकार को इस बात की जानकारी है कि इस प्रकार के परीक्षणों को पूर्णतः प्रतिबंधित करने के लिए कौन-कौन से कदम उठा गए हैं और क्या सरकार के पास ऐसी एजेंसीज़ हैं जो जबरदस्ती accused के 'नार्को एनालिसिस', 'ब्रेन-मैपिंग' और 'पॉलीग्राफ जाँच' जैसे टेस्ट्स कराती हैं? मैं इनसे यह जानना चाहता हूँ।

SHRI P. CHIDAMBARAM : Sir, whatever may have been the position prior to 5th May, 2010, but on 5th May, 2010, the Supreme Court declared the law. The Supreme Court has directed that while administering any of these tests, Polygraph Test, Narco Analysis Techniques, or, Brain Electrical Activation Profile, it can be done only with the consent of the accused.

The law is very clear, and, I am certain that every State authority has taken note of the law. These tests can, and, therefore, should be administered only if the accused consents to undergo the tests.

श्री ईश्वर सिंह : सर, नारको एनालिसिस टेस्ट के बारे में बताया गया कि यह तभी किया जा सकता है, लेकिन मेरा सवाल यह था कि खुद के लिए कौन सहमत होगा? इसमें यह है कि the dose of chemicals depends on

the person's sex, age and physical condition. चूंकि यह एक केमिकल है और जब इसका प्रभाव पड़ता है, तो कोई आदमी खुद यह कैसे कहेगा कि हाँ, मेरा परीक्षण कर लिया जाए। मेरे इस प्रश्न का उत्तर ही नहीं आया है।
...(व्यवधान)

श्री सभापति : आपको जवाब मिल गया है।

श्री ईश्वर सिंह : यह तो साफ कहा गया है कि a criminal may get benefit but citizens' rights should be protected, कोर्ट ने यह खुद कहा है। सर, कोर्ट ने यह भी कहा है, "We will be failing in our duty if we permit any citizen to be forcibly subjected to these tests".

श्री सभापति : मंत्री जी न उसका जवाब आपको दे दिया है।

श्री ईश्वर सिंह : सर, उससे संबंधित जवाब ही नहीं आया है। उसका जवाब केवल यह आया है कि जो लार्ड डिटेक्टर है, यदि अभियुक्त की सहमति हो तो उसको लगाया जा सकता है, बाकी जो मैंने आपको नारको टेस्ट और ब्रेन मैपिंग के बारे में कहा है, तो इसका तो कोई टेस्ट ही नहीं है। मैं अपने सप्लिमेट्री में दूसरी बात यह पूछना चाहता हूँ...

MR. CHAIRMAN : Do you wish to amplify ?

SHRI P. CHIDAMBARAM : Sir, if a person does not give consent, the test cannot be administered upon him. If there is no one who gives consent, then, it follows that the test will be administered on no one. The point is that it is possible, sometimes, that a person may agree to have a polygraph test administered upon him to clear himself, in which case, the polygraph test will be administered. I agree that it is most unlikely that anyone will give consent to a Narco test. If that is, the Narco test will not be administered on anyone.

श्री ईश्वर सिंह : सर, मेरा दूसरा सवाल यह है कि ...

श्री सभापति : नहीं, आपका सवाल हो गया है।...(व्यवधान)

SHRI Y.P. TRIVEDI : Sir, in our country, in criminal trials, the rate of conviction is very low. We all hear about prosecutions taking place. The prosecutions have lost the faith because people know, by and large, the accused gets the benefit of doubt, and, the trials do not come to an end for a long, long period.

The Supreme Court gave a pronouncement probably following the 5th Amendment to the US Constitution, and, the US Constitutional Amendment has also been mellowed down, to a substantial extent, by a recent judgement of the Supreme Court in the United States.

I think, it is high time that the Government should look at the entire Evidence Act in toto, and, see to it that the Narco test, which may not be conclusive for the purpose of conviction, should have a considerable persuasive value as a piece of evidence in any trial. Is the Government planning to do so?

SHRI P. CHIDAMBARAM : Sir, however well-meaning the suggestion of the hon. Member is, let me make it very clear that it is not our intention to make Nacro test mandatory; it is not our intention to introduce Nacro test to be administered as part of gathering evidence. Personally, my view is that Narco test should be totally outlawed. Nevertheless, we have a Supreme Court Judgement. So, that is the law of the country. There is no proposal to consider an amendment as suggested by the hon. Member.

SHRI RAVI SHANKAR PRASAD : Sir, I must say the words of the hon. Home Minister are very assuring that you are not going to have the kind of amendment because it is the question of human rights. But, what is troubling me and many other people in the country is that, of late, the investigating agency, knowing the almost untenable worth of these statements, release it to the media as if some kind of a conclusive statement has come. Is the Government, in the light of your assurance to the House today, going to give a guideline to the investigating authority, including the CBI, as to the sensitive and careful manner in which all these statements ought to be dealt with as far as release to the media is concerned?

SHRI P. CHIDAMBARAM : Sir, I entirely agree with the hon. Member that when a case is being investigated, very little about that case should be disclosed to the media. In fact, only a few days ago, the Supreme Court, in another case, has pronounced orders pulling up the investigating agency for periodic leaks to the media saying that this amounts to trial by the media. On the one hand, we have a very inquisitive media, let us put it that way.

SHRI RAVI SHANKAR PRASAD : You are not finding more words.

SHRI P. CHIDAMBARAM : On the other hand, we have organizations which put pressure on the investigating agency. On yet another side, we have the investigating agency trying to vindicate its position and trying to defend itself. So, when so many forces are at play, some parts of investigation, even if they are not quite complete or conclusive, find their way to the media. I totally disapprove of information being given to the media where investigation is on. On the contrary, where investigation reaches a certain stage of either arrest or charge sheet or filling a *challan*, at that stage, I think, there is a duty on the investigating agency to share information with the public. But pending investigation, when investigation has not reached any definite stage, I think, information should not be leaked to the media. Then it becomes a trial by the media. Advisories have been issued in the past, I am not able to recall one immediately, but advisories have been issued how investigating agencies should deal with information pending investigation...*(Interruptions)*...

SHRI V. HANUMANTHA RAO : What about the third degree? ...*(Interruptions)*...

श्री अवतार सिंह करीमपुरी : सभापति जी, मैं आपके माध्यम से आदरणीय मंत्री जी से यह जानना चाहता हूँ कि ये जो टेस्ट किए जाते हैं, जब कोर्ट ने भी ह्यूमन राइट्स को ध्यान में रखते हुए इनकी इजाजत नहीं दी है, तो क्या इनको ban करने के संबंध में सरकार सोचेगी कि इन पर पाबंदी लगा दी जाए और चाहें with consent हो या without consent हो, ये टेस्ट किए ही न जाए?

SHRI P. CHIDAMBARAM : Sir, the court has not banned the test. The Court has said that these tests can be administered only according to the guidelines already laid down by the National Human Rights Commission, and the first guidelines is, no test should be administered except on the basis of consent of the accused. So, the court has not banned the tests. But, personally speaking, as I said, I have given my personal view, I think, a polygraph test has uses. It is, by and large, a non-invasive test. But a narco test and a brain mapping test are invasive tests, and my personal view is that such tests should not be administered. But the law, as it stands today, after 5th of May, is that these tests can be administered only with the consent of the accused.

Naxal attacks including suspected derailment of Train

*243. SHRI RAMDAS AGARWAL : Will the Minister of HOME AFFAIRS be pleased to state:

(a) whether Government is aware of a series of recent deadly naxal attacks including suspected derailment of Gyaneshwari Express in West Bengal on 28 May, 2010 that killed 148 passengers;

(b) whether Government has agreed to a probe into this train accident by CBI so as to find out who were the persons responsible for removal of fish plates and cutting of the rail tracks; and

(c) what action Government has taken so far against the culprits involved in such heinous crimes on running trains?

THE MINISTER OF HOME AFFAIRS (SHRI P. CHIDAMBARAM) : (a) to (c) A Statement is laid on the Table of the House.

Statement

(a) and (b) There have been a few major naxal attacks in the recent past. The incident of suspected derailment of Janeswari Express in which 148 passengers were killed, occurred on 28 May 2010 in West Bengal. It is being investigated by the Central Bureau of Investigation (CBI). Investigation conducted, so far, reveals that Police Santras Birodhi Janasadharaner Committee (PSBJC/PCPA), a frontal organization of Maoists, was involved in damaging the Railway Track, thereby causing the accident. CBI has arrested 12 persons so far in this case.