

**TOPIC: -  
SELF-INCRIMINATION IN CONTEXT OF NARCOTIC  
ANALYSIS**

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**Acknowledgment**

This Research Paper is authored, keeping in mind the best of interest of society and for the better understanding of the laws and rights of people, which can be read and understood by a layman and be able to understand and avail the basic human rights. The paper is written and crafted under well-nourished knowledgeable guidance and paramount moral support of Ms. Shilpa Mehrotra. I would like to convey and extend to her my gratitude for showering her knowledge and support upon me throughout its production, which helped and aided me to write this paper.

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## **INTRODUCTION**

In today's day and age, science has had major developments, and it has outpaced the development of law. Due to the developments caused by science in the world of criminal investigation, the procedure called "Narco-Analysis" was discovered, Narco-Analysis is a scientific form of investigation in which the statement is obtained from the accused by the use of narcotics to induce the person into a trance-like state where he/she is asked questions. Narco-Analysis test is based on the science that a person's ability to lie comes from his/her ability to imagine, and under the influence of various narcotics, the ability to imagine is blocked and which leads the person in a semiconscious state. The term "Narco Analysis" is derived from the Greek word "narkç," which means anesthesia, and it is used to define a psychotherapeutic technique that uses psychotropic drugs to induce a trance.

The Evidence Act is completely silent on the use of the Narco-Analysis test. The Narco-Analysis poses a lot of questions at the intersection of law, medicine, and ethics. Narco-Analysis also contradicts the Art.20(3) of the constitution of India, which was the right that no one should be compelled to be a witness against himself. This paper is outlined in a manner to study self-incrimination in the context of narcotic analysis.

The first time the narco-analysis test in India was done on an individual who was associated with crimes committed by Veerappan, this test was first performed in the Forensic Science Laboratory in Bangalore in 2001. The narco-analysis test comes in the category of DDTs (Deception Detection Tests); the DDTs can be very useful in obtaining crucial evidence in the investigation of criminal nature. The guidelines laid down by the NHRC states that the use of DDTs can only be administered on a person if the consent of the person is obtained first in front of a magistrate or else the test will be considered to be illegal in the eyes of the law.

## **PROCEDURE TO PERFORM NARCO-ANALYSIS** **IN INDIA & THE SCIENCE BEHIND IT**

The science behind the administration of a Narco-Analysis test is that when the starts subject to enter into different stages of anesthesia when the subject enters this state due to the influence of psychotropic drugs behave in a more relaxed way which may let the subject to reveal more information than he generally would in a completely conscious state of mind.

The narco-analysis test is conducted by mixing 3gms of psychotropic drugs like “Sodium Amytal” or “Sodium Pentothal” with 3000 ml of distilled water. Sodium pentothal is from a group of drugs known as “barbiturate” which are commonly sedatives, sodium pentothal in particular only sedates the subject for a few minutes, it slows down the heart rate as well as the blood pressure, it also relaxes the brain and spinal cord activities. The injection of this drug into the body of the subject reduces the reasoning capabilities of the body without affecting the memory of the subject. The narcotic used in this test affects the part of the brain, which differentiates between good and bad. There are also other drugs that can be used during this process, like benzodiazepine, which is considered to be a safer drug to perform this test. However, the use of sodium pentothal is still prominent across India. The ability to reason goes so low that during the process, the subject can only be asked very simple questions as the subject is under the influence of drugs, which leads to the subject not being able to answer complicated questions and can't really manipulate the answers.

Narco-analysis is not an openly permitted test; in India, it is performed by a team involving an anesthesiologist, a psychiatrist, a clinical/ forensic psychologist, an audio-videographer, and supporting nursing staff, it is a very complicated procedure to perform. Narco-analysis may pose a lot of questions, but it's still getting in the mainstream and is being used in investigations, court hearings, and in laboratories across India.

Narco-analysis tests in India can only be administered on a subject only after obtaining the subject's permission and a permission from the Magistrate.

## **DRAWBACKS OF NARCOTIC-ANALYSIS**

In India, the narco-analysis test is administered at forensic laboratories with the use of different psychotropic drugs, which induce a trance-like state, which results in the person to lose its ability to imagine which leads the person to lose its ability to lie during an interrogation. This narco-analysis test has reduced the time of an investigation and is proven effective during the course of an interrogation.

The drugs used in this type of test may make the subject so inhibited that he/she may reveal all the information like their fantasies, personal desires, dreams, illusions, delusions, etc. which may make no sense relating to the goal of the narco-analysis test on the subject.

Every subject may react differently to the narcotics used to administer the narco-analysis test. Some people can be more immune to the effect of the drug on them as some of them can retain the ability to mislead the investigator even in the influence of these narcotics or on the other hand, there are some people on which the narcotics are working efficiently, and they are in a state where they are proved to be highly suggestible, and the investigator can take advantage of this fact and can form the question in a way to extract an incriminatory answer from the subject.

The drugs themselves do not guarantee that the subject undergoing the narco-analysis test may always speak the truth; these tests just make deceiving during the interrogation very difficult. These narco-analysis tests are inconsistent and do not guarantee the truth. The statements procured are during a subconscious state, which makes them involuntary and is not regarded as evidence in the court of law. This test does not have enough research to support the claim it makes.

There is no perfect dosage for the drugs used in this test; if they are given to the subject in excess can be proved to fatal.

# VALIDITY OF NARCO-ANALYSIS IN RESPECT TO CONSTITUTION AND OTHER LEGAL STANDPOINTS

The constitution of India only has the right against self-incrimination, which is given in Art.20(3) and the right of Protection against arrest and detention in certain cases given in Art.22 otherwise, it is completely silent regarding criminal investigation and code of criminal procedure. Almost every democratic country in the world has the right against self-incrimination, and this right is considered to be a very significant part of common law criminal jurisprudence.

The three components of Art.20(3) of the constitution of India: -

1. This right only comes into effect if the accused is being put on as a witness to himself.
2. This right safeguard the accused against the compulsion to be a witness.
3. This right safeguard the accused against giving the investigating agencies evidence against himself.

The use of narco-analysis tests raises the question of violation of a fundamental right that has given to us by the constitution of India, this test also raises a lot of questions on the front of human rights as the accused is compelled to undergo a scientific investigative procedure to prove his own conviction, but still, this test has been used in India in court hearings, interrogations and even in forensic laboratories. This test can be seen as a flagrant violation of Art.20(3) of the constitution of India. This test also violates the maxim "Nemo Tenetur se Ipsum Accusare," which translates to "No man, not even the accused himself can be compelled to answer any question, which may tend to prove him guilty of a crime, he has been accused of." If the confession of the accused is taken under any duress (which also includes being under a trance-like state) should be rejected in the court of law as it violates a fundamental right. That is the reason why these types of scientific investigative procedures are not openly permitted.

The code of Criminal Procedure, 1973 also gives us a statement in section 161(2) which furthermore safeguards the right against self-incrimination as it states that, " Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture" which means that during the interrogation any person who is connected

to the crime shall answer all the questions truthfully but later the clause it says that if the truth implicates the person undergoing the investigation has the right to not answer the questions asked by the police officer, this section of the code of criminal procedure fully supports the Art.20(3) of the constitution of India.

Although the Narco-Analysis test is not regarded as evidence in the court of law, yet the test is being performed by various investigative agencies, and there is a reason to it, the Indian Evidence act may completely be silent on the topic of Narco-Analysis, but in section 27 of the act it states that " Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offense, 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." Which lets the investigative agencies to administer the test as the section 27 conveys that the confession of the accused may be related to the discovery of fact, which lets these investigative agencies to administer the Narco-Analysis test but section 27 of the Indian Evidence Act can only operate in some particular conditions such as when: -

- 1.The information in question is discovered as the result of the confession given by the accused in the custody of the police.
- 2.The information matches distinctively to the facts that are discovered.

Furthermore, the code of criminal procedure in section 156(1) states that " Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have the power to inquire into or try under the provisions of Chapter XIII." Which conveys that an officer that is in charge of a police station has the power to investigate any case that falls under his jurisdiction without the order given by the Magistrate". In section 2(h) "investigation" is defined as "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" by these statements we can conclude that a police officer is permitted by the law for the collection of evidence in a case that comes under his jurisdiction. Thus, it can be concluded that administering the Narc-Analysis test on the accused can be seen as a process of investigation by law enforcement.

## **VALIDITY OF NARCOTIC-ANALYSIS IN RESPECT TO HUMAN RIGHTS**

Narcotic-analysis poses a lot of questions when it comes to human rights as it violates the accepted legal and ethical norms. It is widely accepted that there is no correct dose of the drugs used during these tests as it depends on the mental and physical condition of the subject the test is being administered on, it also depends on the fact that if the subject has a history of using intoxicants or other narcotics as he/she can develop a tolerance against narcotics.

As there is no exact dosage, a slight change in the needed dosage can be fatal to the subject as these narcotics can induce the subject into a coma or can even cause death. This procedure is highly dangerous, and it raises the question, "Is this procedure even humane?" During these tests, the subject is being audiotaped, or video graphed, and if the test is made public, it can also be considered as physiological harassment of the subject?

Under the guidelines laid by the NHRC (National Human Rights Commission ) the 'Narco-analysis' comes under the category of DDT (Deception detection tests) for which NHRC said that these DDTs could only be conducted after procuring the consent of the subject undergoing the test in front of a Magistrate, or else the test will be considered as illegal in the eyes of the law.

# **ADMINISTERING OF NARCO-ANALYSIS TEST**

## **IN INDIA**

The use of narco-analysis tests in India started in the early 2000s, the first application of narco-analysis test was in the case of Godhra carnage case where the accused went to the NHRC and the Supreme court of India against undergoing the narco-analysis test or DDT. The use of DDTs has been in the news, and people have questioned the evidentiary value of narco-analysis in India as well as in the rest of the world.

Here are some of the landmark cases as well as events related to the use of narco-analysis in India: -

- **Dinesh Dalmia v. State of Tamil Nadu (2006):** The Madras high court stated that "subjecting an accused to narco-analysis is not tantamount to testimony by compulsion" and "he may be taken to the laboratory for such tests against his will, but the revelation during such tests is quite voluntary."
- **Stamp Paper Case (2006):** The Bombay high court states that subjecting an accused to narco-analysis test doesn't violate his fundamental right against self-incrimination as given in Art.20(3) in the Constitution of India which clearly states that "No person accused of any offense shall be compelled to be a witness against himself." The court later said that the statements taken undergoing the narco-analysis test could not be admissible as evidence.
- On January 24th, 2008, a bench of Chief Justice K.G. Balakrishnan gave his ruling after hearing the arguments for three days from various parties, including Solicitor General Goolam E. Vahanvati and senior advocate Dushyant Dave, appointed by the bench as an impartial advisor to assist the court in the case. Telgi and his accomplices are facing a thorough investigation by various states' police and other investigative agencies for their alleged criminal acts. These accused people have challenged the legal standpoint of the use of the polygraph, brain mapping, and narco-analysis by the investigative agencies to investigate the crime.

- **Ramchandra Reddy and Ors. v. State of Maharashtra:** In this case, the Bombay High Court put to question the legal validity of narco-analysis. The court upheld a special court order given by the special court in Pune, as mentioned above, allowing the Special Investigating Team (SIT) to administer scientific investigative procedures on the people accused in the fake stamp paper scam case, including the main accused, Abdul Karim Telgi. The verdict also said that the evidence obtained under the effect of truth serum or Narco-analysis is also admissible. While giving the judgment, the court made a distinction between "statement" (made before a police officer) and "testimony" (made under oath in court). The Judges, Justice Palshikar and Justice Kakade also said that the lie-detector and the brain mapping test did not involve any "statement" being made, and the statement made under narco-analysis was not admissible in evidence during a trial. The judgment also stated that these tests involve "minimal bodily harm."
- A court in Kerala stated that there is no need of a court order to do a narco-analysis test, the court also disposed of a petition filed by the CBI (Central Bureau of Investigation) concerning about asking the permission of the court to which the Magistrate replied that filing this type of plea would only result in delaying the course of the investigation. The court also said that no one could stand in the way of investigation agencies from using investigative tools that deliver results and are recognized as effective in performing an investigation.

In India, there are laws and fundamental rights given to safeguard the accused against self-incrimination as given in Art.20(3) which states that "No person accused of any offense shall be compelled to be a witness against himself" and in Sec.161(2) of the code of criminal procedure which states that "Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture." In the case of "Nandini Sathpathy V. P.L. Dani," the court held that no one is allowed to forcibly obtain statements from the defendant as they have a right to remain silent during the questioning done by the investigating agency. However, the court also said that the right against self-incrimination could be waived by the defendant himself.

Narco-analysis tests have been administered in many of the high-profile cases of India, such as the case of Mumbai train blasts, the Nithari killers, Malegaon blasts, and in the more recent

bomb blast cases in Mumbai in these cases the suspects went under the influence of drugs to obtain evidence.

India is one of the very few democratic countries that still have continued use of narco-analysis. The use of these scientific techniques has been criticized by the people, and it has always been a very controversial topic as it raises a lot of questions legally, medically, and ethically.



## **CONCLUSION**

Narco-analysis have always been a controversial topic in the eyes of the law as it has been criticized by everyone from the time its application has started. The law is a living process that has changed and will change with respect to the changes in the social, technological, and even medical environment. Although the science behind the use of narco-analysis has been inconsistent and it raises a lot of questions on the crossroads law, scientific techniques for investigation, and even ethical dilemmas. And yet, narcotic-analysis tests are accepted widely into courtrooms in India. Premature application of these sciences should be stopped until it can prove itself to be more consistent and prove its efficiency. Narcotic-analysis also poses a lot of questions on the front of human rights as it violates our right to privacy, which are given to us by our own constitution as it can make us divulge information that is personal to us.

Narcotic-analysis of an accused is an absolute violation of our right against self-incrimination, and the use of narcotic-analysis must stop because the right against self-incrimination is one of the oldest rights given to us and almost every civilized country has this right.

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Law is meant to be absolute in nature, but the law in respect to Narcotic-analysis has a lot of gray areas as there is no particular law that speaks about anything regarding Narcotic-analysis. Therefore we seriously have the need to rethink the use of such doubtful science into our legal system.

## **BIBLIOGRAPHY**

### Websites referred:

1. [www.supremecourtcases.co](http://www.supremecourtcases.co)
2. <https://www.ncbi.nlm.nih.gov>
3. <https://www.lawteacher.net>
4. [www.legalserviceindia.com](http://www.legalserviceindia.com)
5. [Nhrc.nic.in](http://Nhrc.nic.in)

### Books referred:

1. Constitution of India
2. The Indian Evidence Act, 1872
3. Code of Criminal Procedure, 1973

### Legal Engines referred

1. Indian kanoon
2. SCC Online



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