Admissibility of Narco Analysis test in Criminal courts

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ABSTRACT

The Narco-analysis test has become the most debatable topic in the legal fraternity. Since, although it is an efficient and effective method in criminal investigation. However, it is complicated in the procedure as it may put the subject’s life at stake. In addition, this raises serious questions related to the human rights of the accused. Narco-analysis is one of the scientific methods of investigation which involves the intravenous administration of drugs. This was first used in India in the year 2002 in the Godhra carnage case in Gujarat. Through the administration of drugs, the subject enters into a sub-conscious mind and in this stage, it will be difficult for the subject to lie.

The use of Narco-analysis in the investigation procedure is treated as unethical in most democratic countries like India. Since, implications of this test in the investigative procedure would violate the Fundamental rights of the subject and also it is treated as a forceful practice to extract facts from the subject, as a reason most of the time Narco-analysis is not admissible in the courts in India.

Through this Research paper, researchers will analyse whether the Narco-analysis is admissible as evidence by the courts if admissible then in what are those circumstances. Along with which researchers will analyse whether the use of Narco-analysis in the Criminal investigation is a violation of the fundamental rights of the subject as guarded by the Indian constitution. In conclusion, whether the courts have the power to grant permission for conducting the Narco-analysis test to the accused by disregarding fundamental rights as guaranteed by the Indian constitution.

Keywords: Scientific method, Investigation, unethical, admissibility, evidence
INTRODUCTION

As science has overtaken the development of law, there is inevitable complication regarding what can be admitted as evidence in courts. Narco-analysis is one of the scientific developments that has become gradually a common term in India. The term Narco-Analysis is derived from the Greek word narke (meaning "anesthesia" and is used to describe a diagnostic and psychotherapeutic technique that uses psychotropic drugs, to induce a stupor in which a mental state with strongly associated effects come into play. The term narco-analysis was coined by Horsley. Narco-analysis is a very debatable term, and several questions arise at the juncture of law, medicine and ethics.

The implementation of the narco-analysis test caused an outcry among lawyers, psychologists etc. This paper analyses the legality of the “Narco-Analysis Test”, a method that is self-incriminating. The essence of this paper is to analyse the evidentiary value of the narco-analysis test in the eyes of the Indian Judiciary.

HISTORY

The term narco-analysis was coined by Horsley and it is derived from the Greek word "narke" which means anesthesia. The narco-analysis test also has various names as 'narcoanalytic interview' 'narcosynthesis' and 'amytal interview' and it is most known as Truth serum test.

Initially during the 1890's the narco agents were used by Freud to hypnotize patients making them relax thereby aiding the patients to discuss difficult emotional matters. Later came the discovery of barbiturates by a psychiatrist namely William Bleckwenn, he propounded that the administration of barbiturates to the patients takes them into a “lucid interval” which makes them express their mental state like never before.

The history of narco-analysis test in criminal investigation dates to wherein, Texas physician used a drug namely scopolamine on two prisoners which made them get into a state of mind known as “twilight state”. This invention of House was featured in an article of Time in their
1923 edition titled “The Truth-Compeller”. Soon, its usage became evident in World War II in order to treat the injured soldiers and shortly it had its role in interrogation in the Cold War.

Under the truth serum, a person is subjected to get under the influence of the drug which makes him get into a semi-conscious state of mind by which the person loses self-control which will make the person tell the truth without manipulating the answers. In such a semi-conscious state, efforts are made by a trained physicians to obtain the truth about the crime. The test involves the injection of hypnotics such as sodium panthenol or sodium amytal and the dosage of the hypnotic agent depends on the sex, age, physical condition, mental health and physical health of a person. Usually, the person who is put under the influence of these hypnotic agents is referred to as the subject.

The use of narco-analysis in Indian criminal investigation has its roots in the year 1935 after which it was in a dormant position for over 67 years and was again put on to use in the case of Godhra Communal Riots which was a case of Hindu-Muslim communal fight. The test was used in various important cases from then till date and had a turning point in the Indian criminal investigation system wherein the right against self-incrimination is enshrined in the constitution of the land as the fundamental right guaranteed to the citizens.

PROCEDURE OF NARCOANALYSIS TEST

The narco-analysis test in India is carried out by a team consisting of an anesthesiologist, a psychiatrist, supporting nursing staff, forensic psychologist and audio-videographer. The drugs that are used in the narco-analysis test are hyoscine, sodium amytal, phenobarbital and sodium pentothal which is the most commonly used drug in narco-analysis procedure. The dosage of the drug depends upon the body condition of the subject. The narco-analysis test may even lead to death in case of the wrong dosage to the subject. The narco-drug binds with the gamma-Aminobutyric acid (GABA) which is the predominant inhibitory neurotransmitter in the central nervous system of mammals. This binding results in sleepiness. The injection of the drug causes depression to the central nervous system thereby making the heartbeat slower and the blood stress would lower down. The subject is allowed to be in a semi-wakeful state prohibiting the subject to go into a deep sleep charge. In this stage, a skilled clinical or forensic psychologist is allowed to post several questions relating to the crime to the subject and this would be recorded by an audio-videographer.

The whole procedure of the narco-analysis test can be divided broadly into four stages: 
1) **Interview before the test:**

This state is known as the pre-test interview wherein the subject is given all the information and procedure about the test and the consent of the subject is taken.

2) **Pre-narcotics stage:**

During the stage, there is an intravenous administration of sodium pentothal or sodium amytal to hypnotize the subject. Five to ten percent of the drugs are injected slowly in antecubital vein NMT 1gm/ grain per minute. This is the beginning stage of the interview. The impulses that pass through positive nerves and body parts are blocked which leads the subject to semi-wakefulness.

3) **Semi Narcotic stage:**

It is the stage where the interview is conducted by a forensic expert for a psychiatrist when the subject is slurred in speech and slowing down in the pace of speech. Some common features that the subject might exhibit at this stage may include cozy, slackening of features, full of exhilaration, silliness and giggly. After conducting the interview this subject is allowed to sleep of under once the subject weights full examination of the body takes place after which the subject is given a caffeine drink.

4) **Post Test Interview**

It is the final stage where the memory of the subject is examined by the physician and the subject also has a right to know what the subject has revealed in the interview.

**ADMISSIBILITY AND VALIDITY OF NARCO-ANALYSIS TEST IN INDIAN COURTS**

As the narco-analysis test made an individual a semi-conscious state where he has no control over his brain or thinking and they are unable to imagine anything. It has been proved that the administration of such drugs, may suppress the power of thinking.¹ This incorporates a sensory system of the individual oppressed for the test and his mind does not influence over his action. It shows that the injection of narcotic drugs into the body of an individual leads to

¹ Sourodip Nandy & Himanshu Garg, Constitutionality of Narco Analysis and Polygraph Examination, IJLMH 1, 4 (2019).
playing with the life and mind of such individual. Along with this, the test raises essential Fundamental Rights issues like the right to life and freedom, and the advantage against self-incrimination. The Apex court of India has likewise offered variable input in various cases and conditions. The narco-analysis test was presented in India in 1936 however it was first utilized in 2002 in Godhara Carnage Case. Wherein in, 2004 when the Bombay High Court gave judgment in the Ramchandra Ram Reddy vs. The State of Maharashtra case, the issue became debatable. In this case the fundamental issue was whether utilization of logical innovation exceptionally minds planning and untruth indicator is an infringement of Article 20(3) or not, the Bombay High Court stated that:

“*What is required to be made under coercion by an accused is a statement. In our opinion undergoing tests targets certain framed questions which drawn by an expert after treatment that the person possesses certain knowledge about the crime and in relation to targeted question put before him. So, no way it can be said that any stretch of imagination which end result is statement. At the most it can be call as information received or taken out from witness. In our opinion they do not violate right against self-incrimination under Article20(3) of Indian constitution.*”

The Court upheld the validity of the use of the narco-analysis test and also held that evidence obtained under the effect of the narco-analysis test is also admissible. With the change in time crimes are committed with advanced techniques and the criminals become professionals. So, the use of Narco-Analysis has been important in detecting the crime. It was further held by the court that this test involves minimal bodily harm.

In M.P. Sharma v Satish Chandra⁴, there was an issue regarding Article 20(3) which provides the right to the person to appear as a witness in the courtroom and not beyond that and the same issue has been raised by the respondent in the Kathikal Oghad⁴ case wherein apex court observed and held that since words of Article 20(3) “to be a witness” and not “to appear as a witness” clearly states that the protection is extended to evidence obtained forcefully even outside of the courtroom. The privilege against self-incrimination enables the maintenance of human privacy and the right to silence as held by the Supreme Court.

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3 M.P.Sharma v Satish Chandra, AIR 1954 SC 300.
In the case of Nandini Satpathy v P.L. Dani, the Supreme Court held that “one cannot extract statements from the accused, who has right to silence during the course of investigation”. It was also claimed that the right to keep silent is guaranteed under Article 20(3) of the constitution of India and section 161(2) of CRPC and the same was upheld by the supreme court.

In the case of Ram Jawaya Kapoor, Court clearly stated that the executive power cannot encroach upon constitutional rights and liberty or any other rights of the person and if the issue is raising questions on fundamental rights, then it must be struck down as unconstitutional.

However, there is a disagreement from the investigating agencies that the Narco-analysis test is used for collecting evidence and helps the investigation procedure so it cannot amount to testimonial compulsion as per Article 20(3). In the case of Dinesh Dalmia v State, the Madras High Court while hearing the case held that the scientific tests such as polygraph, Brain Mapping and narco-analysis directed on the accused to get the truth would not amount to breach his silence by force.

In the case of Rojo George Vs. Deputy Superintendent of Police, while permitting the narco-analysis test, the Court believed that in the present day the criminals started to use very advanced technology and modern techniques for committing the crime. So, the conventional method of investigation and direct questioning to the criminals will not provide a good result and so there is a need to employ some new techniques such as polygraph, brain mapping and narco-analysis. Court also held that when such techniques is conducted in the presence of experts in field then there cannot be question that the investigating agencies violated the fundamental human rights of any citizen of India.

In the case of Santokben Sharma Bhai Jadeja v State of Gujarat, the court while permitting the order for conduction of Narco-analysis test on Santokben Sharma Bhai Jadeja (accused), it was observed that even after exhausting all the possible alternatives there was no possibility to find out the truth from the criminals and it is found by the investigating agency that there is no further technique of investigation, they are absolutely in dark then the necessity of such

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5 Nandini Satpathy v P.L. Dani, AIR 1978 SC 1025
7 Dinesh Dalmia v State, 2006 Cr.L.J. 2401
8 Rojo George Vs. Deputy Superintendent of Police,2006 (2) KLT 197.
tests arises. Based on this extraction if the investigating agency finds some clues or records, some statement that helps or aids for further investigation of crime then there will not be any violation of Article 20(3) of the Constitution of India.

In the case of Dharampal v State\(^\text{10}\), it was clearly stated by the supreme court that the criminal justice system cannot act properly if the person living in the society would not be supportive. So, every individual must support the state in bringing criminal justice and detecting the crime.

It must be acknowledged that no one can withhold criminal information and escape from social responsibility by avoiding disclosing such information in the name of the right to privacy which itself is not an absolute right.

State of Gujarat v Anirudh Singh\(^\text{11}\), the apex Court of India held that it is a statutory duty of every witness who knows the commission of crime then to assist the state in giving evidence and it seems justified that if a person is not willing to give information which is necessary for investigation, then adverse action must be taken against them.

In Mohinder Singh Pandher and Surender Singh Koli v. State of Uttar Pradesh\(^\text{12}\), in this case the test was conducted to determining the accuracy of the statement of the accused during their custodial interrogation. During this test, the accused person disclosed the name of females and children who had been murdered and also exposed his intention to rape them after murdering. By the conducting of this test many related information were disclosed and extracted by the investigating authorities.

The admissibility is dependent upon the various factors such as whether the court has permitted for conducting the test or not. It does not become admissible if the consent of the court is not present.

The provision relating to the confession is given from Section 24 to 30 of Indian Evidence Act, 1872 and is a very wide statement that covers both the statement written as well as oral. Thus, if a person, during narco-analysis test writes or says something then it will be covered under the meaning of confession. The proviso to Section 27 of Indian Evidence Act, 1872 states that any statement which is attained by compulsion or fear will not be admissible. However, as a subsequent result of the voluntary narco-analysis test there is an extraction of

\(^{10}\) Dharampal v State, MANU/SC/0260/2003

\(^{11}\) State of Gujarat v Anirudh Singh, MANU/SC/0749/1997

any information or material, then it becomes admissible under Section 27 of Indian Evidence Act.

The recent case of *Selvi v. State of Karnataka*¹³, the Supreme Court held that Narco-Analysis test cannot be conducted on the accused person without taking the consent from the accused person. If such test conducted on the accused, it would be violative of Article 20(3) of the Indian Constitution. It was further held by the Supreme Court that this test should be conducted in the presence of the expert. And the test results alone cannot be admitted as evidence because the accused person does not exercise conscious control over the responses during the administration of the test. However, any information or substantial things that is subsequently discovered with the help of voluntary test results would be admissible by the virtue of Section 27 of Indian Evidence Act, 1872.

FUNDAMENTAL RIGHTS AND NARCO-ANALYSIS TEST

The Object of narco-analysis is to get the truth out from the people. During Narco-Analysis test, the imagination power of person would be minimal. He is in a sub-conscious stage. So, it is assumed that person cannot tell lie during this stage. Now, the main question arises, whether this test is unconstitutional under Article 20(1). Before answering to that question, we would like to highlight some facts about the narco-analysis test.

First, Narco Analysis test is not 100% accurate, it is claimed by Dr. B.M. Mohan, Director of FSL, Bangalore that that as per his collected data narco-analysis has 96-97% success rate. He has conducted more than 300 Narcotic tests and he believed narco-analysis test should be discontinued. We also agree with him because in criminal jurisprudence it is said that “Let 100 guilty be acquitted but one innocent should not be convicted”.

Second, According to Dr. P. Chandra Sekharan, former director of Forensic Science Department of Tamil Nadu, Narco-Analysis test was considered as brutal as third-degree method of investigation and declared it unscientific.

Third, various fake tricks can be used by the person who is subject to narco-analysis test. If he is a drug-addict than he can control high dosage of drugs and can make false statement, which also questions the credibility of this test.

Fourth, it is exceedingly difficult to suggest actual dosage of drugs to a particular person because everybody is different; everybody needs different number of drugs to be in subconscious state.

Now, coming to the answer, In State of Bombay v. Kathi Kalu Oghad\(^\text{14}\), it was said by court that it must be shown that the accused was compelled to make statement of self-incrimination in duress, pressure, beating or imprisonment of family members. Then, Narco-analysis test is unconstitutional. For a valid narco-test, it must be taken with free-consent of the accused.

The privilege against self-incrimination enables the maintenance of human privacy and observance of civilized standards in the enforcement of criminal justice. There is a maxim Nemo Tenetur se Ipsum Accusare, which means ‘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.’ In Nandini Sathpathy v. P.L. Dani\(^\text{15}\), it was held by SC that an Individual has right to remain silent, no one can forcibly extract information from the accused without his consent during course of investigation.

In Santoben SharmaBhai v. State of Gujarat\(^\text{16}\), it was stated by the court that Narco-Analysis test are conducted in strict surveillance and within expert supervision. Risk is a part of every human activity. It cannot be condemned solely on the grounds of risk factor.

**CONCLUSION**

With the development of technology and science, modern-day criminals are becoming smarter than ever. They are integrating such techniques that are beyond the scope of the old investigation process. However, this only reason does not justify the use of any test or methods that is knowingly harmful to the body and mind and are rarely used by the psychiatrists. It is true that the narco-analysis test has helped in some profoundly serious cases and is being practiced because there exists a mutual understanding between judiciary, police and investigating agencies. But any practice that harm body or mind cannot be used in any manner as required but this has to be done in a proper procedure.

The evidentiary value of the narco-analysis plays vital role in criminal investigation. The narco-analysis test should not be conducted without the consent of the accused and if the

\(^{14}\)State of Bombay v. Kathi Kalu Oghad, AIR 1961 Cri LJ.


court order for the same then it clearly shows that it can be done without consent of that accused. Police powers are confined to the provisions of the Constitution, the Criminal Procedure Code, the Evidence Act and many other local and special laws which impose restrictions on the scope and method of exercise of that power. Law is a living process, which changes according to society, science, and ethics and so on.

There is a need for the State and Central Government to draft proper rules and regulations regarding the conduction of the tests in a safe manner. There is a need for harmony between these tests with the scope of Article 20(3) so that this will not be unconstitutional or violative of fundamental rights.