

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 2

2020

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Narco-Analysis Test: Truth Serum or Torture

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ABSTRACT

The development of crime is as old as the dawn of human life, and some criminals are as brilliant as intellectuals. Advances in science and technology have long been used and abused. The investigative procedures of the past are hence no longer as effective, and there is a need for the inclusion of advanced procedures in the investigative pathway. Laws should change according to changes in society; so should their procedure and regulation when it comes to dealing with criminals. Justice cannot be rendered without proper evidence; there is an urgent need to obtain relevant information from an arrogant, aggressive, and uncooperative source to be used as evidence in a Court of Law. Police investigations often result in physical torture and coercion. Such inquiry becomes painful and inhumane; it can even develop into third-degree torture. Such techniques are only used for quick results but are examples of bad investigation. Any suspect will confess to almost anything to escape the pain of such torturous conditions. While every judicial system's motive is to punish culprits without harming their dignity, older investigative techniques not only harm dignity but also result in the punishment of potentially innocent people as they sign off on whatever the investigating authorities may ask them to in a bid to escape the pain of torture. The Narco-Analysis test is one of the latest scientific development in the investigative procedure. It involves the recording of statements from suspects put into a sub-conscious stage by the administration of certain chemicals. They are rendered incapable of manipulating information and reveal what they know; this is a painless yet effective procedure. That said, it is often criticized by specialists in Constitutional Law; the Evidence Act of 1872 is also silent about this sort of investigative procedure.

The objective of this research work is to learn how this procedure contradicts Article 20(3) of the Constitution of India, detail its effectiveness to act as evidence in a Court of Law, and present an analysis of its usefulness. Case laws will be used to better understand the concept and its viability and how it is viewed by the Indian Judiciary.

Keywords- Evidence, Narco-Analysis tests, Criminal, Investigation.

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I. INTRODUCTION

The term Narco-Analysis originates from the Greek term ‘*narkç*’, which means anaesthesia or torpor. The development of Narco-Analysis can be traced back to the 1890s, when the renowned neurologist Sigmund Freud, the founder of psychoanalysis, used hypnosis to relax his patients in a bid to learn the cause of emotional breakdowns. The gynaecologist Robert House observed that women, when given scopolamine to ease the birth process, went into a ‘twilight state’ wherein they became more pliant and talkative. Authorities decided to use scopolamine on criminals to determine whether or not they were innocent. In 1922, the term Narco-Analysis was first used by Horsley. The Narco-Analysis test is generally conducted by dissolving 3 grams of Sodium Pentothal or Sodium Amytal in 3000ml of distilled water. Sodium Pentothal or Sodium Amytal are also known as ‘truth serum’ in lay terminology. Calvin Goddard coined the term and made the claim that it is impossible to lie under the influence of this serum. The Narco-Analysis test was first widely used by the CIA (Central Intelligence Agency) during the Cold War. While some criminals are tough nuts to crack, this advanced scientific technology can get them to tell the truth. According to C.B. Hanscom, author and director of the Department of Protection and Investigation at the University of Minnesota, “...it is the missionary duty of the state to promote the drug technique in criminological activities. The potentialities and possibilities are so broad these days”². In this procedure, Sodium Pentothal or Sodium Amytal is injected into a body; the quantity thereof depends upon the age, sex, height, and bodyweight of the person concerned.³ When the person goes into a sedated, semiconscious stage, relevant questions are asked and the answers given are jotted down and otherwise recorded. The team conducting Narco-Analysis consists of one physician, one psychiatrist, one anaesthetist, an audio-videographer, and one handwriting expert. As stated by Dr. M.S. Rao, Chief Forensic Scientist, Govt. Of India: “Forensic psychology plays a vital role in detecting terrorist cases. Narco-analysis and brainwave fingerprinting can reveal future plans of terrorists and can be deciphered to prevent terror activities. Preventive forensics will play a key role in countering terror acts. Forensic potentials must be harnessed to detect and nullify their plans. Traditional methods have proved to be a failure to handle them. Forensic facilities should be brought to the doorstep of the common man. Forensic activism is the solution for better crime management.”⁴

² 4 C.B. Hanscom, “Narco Intrrogation,” *Journal of forensic sciences* 1 (1956) 37-45.

³ Sharma, B.R., “Scientific Criminal Investigations,” Ed. 2006, University Law Publication, New Delhi, PP.60-61.

⁴ Keynote address given to the 93rd Indian Science Congress.

II. VIEWS OF THE INDIAN JUDICIARY

The first case in India in which a Court-authorized Narco-Analysis test was conducted was at Gujarat's Sabarmati Jail in Gujarat in 1989. A behavioural scientist, Dr S.L. Vaya, directed the procedure. The Sessions Court in Ahmedabad allowed the police to conduct a Narco-Analysis test on the accused, Ashok Jadeja, who was caught along with his wife while fleeing with cash worth Rs.1.98 crore. A crime branch official, while adding the permission granted by the Court, stated that "considering the complexity of the case, Jadeja's Narco-Analysis test reports had become a necessity to get the truth out of him". It was further contended before the Hon'ble High Court of Gujarat that considering the provisions of the Criminal Procedure Code, more particularly Sections 156 to 159, the State's Investigating Agency had every statutory right to investigate the case by the Narco-Analysis Test, the Brain Mapping Test, and any other scientific tests which were now the part of the investigation process⁵.

Another landmark case in which the Narco-Analysis test came into question was the Godhra carnage or train attack case in which 58 Hindu pilgrims returning from Ayodha were killed inside the coaches of Sabarmati Express due to fire. After the case had been investigated for six years, it was found that the arson had been committed by a mob of 1000 to 2000 people. This event is widely presumed to have triggered the infamous Gujarat riots. The Narco-Analysis test was conducted on 7 prime suspects in Bangalore's Forensic Science Laboratory, and in this case, the Hon'ble Gujarat High Court handed down life sentences to 11 convicts. After the Gujarat riots, the Former Union Textile Minister, Shankersinh Vaghela also futilely demanded that Narendra Modi, then Chief Minister of Gujarat, undergo a Narco-Analysis test. The Narco-Analysis test was also employed in the case of the Nithari Village serial killings case, in which at least 31 children and one woman were victims of cold-blooded murder. Mohinder Singh Pandher and his domestic helper Surinder Kohli were both accused of committing the crimes, and a Narco-Analysis test was done on them on 9th January, 2007. During the test, Surinder Kohli confessed that all his victims had died of strangulation, and that he had then attempted to raped the corpses before dismembering them. Kohli's confession was recorded on 27th February, 2007 by the magistrate where he gave a detailed account of coaxed the victims i.e. 9 female and 2 male children and 5 adult women to come into the house, murdered and attempted to rape the dead bodies, chopped them, even ate some of their body parts and threw the remaining in the drain. Kohli was given the death sentence as the act was

⁵ Ashok Jadeja (Bhat) vs State Of Gujarat (2008) 1 GLR 497.

of the nature of “rarest of rarest”.

In the Bombay Train Blast case that - according to government reports - claimed the lives of 189 people, the anti-terrorism squad availed of the Narco-Analysis test to get to the heart of the conspiracy and plan behind the blast.

In the case of *Rojo George v Deputy Superintendent of Police*⁶, the Court, while allowing the Narco-Analysis test, opined that since crimes were now committed using sophisticated tools, conventional methods of investigation would no longer prove successful. New techniques such as polygraphs, brain mapping, and Narco-Analysis had to be employed for the purpose of rendering justice. The Court further observed that when such techniques were used in the presence of experts, it could not be contended that the investigating agencies had violated the fundamental rights of Indian citizens.

Several High Courts in India had taken a stand in favour of the Narco-Analysis test, but the Hon’ble Supreme Court - in its recent decision in the case of *Smt. Selvi vs State of Karnataka*⁷ - has overruled all the previous decisions and stated that this test hurts Article 20(3) and Article 21 of the Constitution. The Hon’ble Supreme Court was of the opinion that no such test may be conducted on the accused without his or her consent. Right to privacy⁸ comes under the umbrella of Article 21, whereas Article 20(3) states that no person accused of any offence shall be compelled to be a witness against himself. The Hon’ble Bench further added that if the accused had given his or her consent to undergo the test, the test result could be admitted as evidence because “the subject does not exercise conscious control over the responses during the administration of the test, however, any information or material that is subsequently discovered with the test, can be admitted, in accordance with Section 27 of the Evidence Act.”

In the case of *Nandini Sathpathy v. P. L. Dani*⁹, the Hon’ble Supreme Court established that the accused has a Right to Silence; no one should forcibly extract statements from the accused. In another case, *Dharampal v. State*, the Apex Court was of the opinion that no one can escape their social responsibility of sharing information and knowledge of a crime, in the name of Right to Privacy, as this is not an absolute right in itself¹⁰. In recent times, the seven accused in the Kathua rape and murder case, pleading not guilty before the Learned Sessions Judge, asked the judge for the Narco-Analysis test to be conducted on them. Their request was denied; no test was done as it does not have any legal sanctity as evidence until a Court gives permission

⁶ *Rojo George v Deputy Superintendent of Police*, AIR 1953 SC 131.

⁷ *Smt. Selvi & Ors v. State of Karnataka*, Criminal Appeal No. 1267 of 2004 SC.

⁸ *Justice K. S. Puttaswamy (Retd.) and Anr. Vs Union Of India*, (2017) 10 SCC 1.

⁹ *Nandini Sathpathy v. P. L. Dani*, AIR 1978 SC 1025.

¹⁰ *Dharampal v. State*, MANU/S/0260/2003.

to conduct these tests. Later in this case, based on other evidence and witnesses, six of the seven men were convicted and one was acquitted.

III. ADMISSIBILITY IN COURTS

The Narco-Analysis test has no evidentiary value in a Court of Law, unless and until the Court directs that it be performed. The results thereof can only be admitted as evidence if the Court is satisfied with them. Narco-Analysis is only valid when the test is performed voluntarily and with the consent of the accused. Bombay High Court was of the opinion that statements made under Narco-Analysis are not admissible as evidence, but may be treated as corroborative evidence. Section 45 of the Indian Evidence Act, 1872 allows experts to offer their opinions when the Court needs to form an opinion on foreign law, or about science or art, or so as to identify the handwriting or finger impressions of suspects. However, this section is silent on recent scientific developments in forensic evidence and whether or not results obtained by their use can be admissible in Court during criminal proceedings. The Narco-Analysis test contradicts certain Constitutional and Legal provisions. Anything that contradicts the Constitution of India is unconstitutional. The maxim *Nemo Tenetur Seipsum Accusare* means “no one is bound to accuse oneself”. The Narco-Analysis test is considered to be unconstitutional as it violates Article 20(3) and Article 21. That an accused person cannot be compelled to be a witness against himself or herself, and that no person shall be deprived of personal liberty are well-established principles. ‘To be a witness’ means revealing knowledge against oneself by an oral statement or a statement in writing, made or given in Court or otherwise. Section 161(2) of Criminal Procedural Code protects one from giving testimony against oneself and states that one shall be bound to answer all questions truly related to the case, other than questions which would have a tendency to expose one to any criminal charges or to a penalty or forfeiture. By the administration of these tests, it is argued, a forcible intrusion into one’s mind is being resorted to, thereby nullifying the validity and legitimacy of the Right to Silence and other legal provisions. However, any information or material that is discovered subsequently with the help of voluntarily administered tests can be admitted in accordance with Section 27 of the Evidence Act, 1872. The Hon’ble Apex Court, in the case of *State of Gujarat v. Anirudh Singh*¹¹, was of the opinion that every witness has the duty to co-operate during interrogation. It further clarified that it is the duty of every witness who has knowledge of the crime to assist the State in providing evidence. It is allowed to adopt scientific and all fair means to unearth, the real offender, lay the charge-sheet before the Court competent to take

¹¹ *State of Gujarat v. Anirudh Singh*, MANU/SC/0749/1997.

cognizance of the offence. Any betrayal on the part of the witness is a step to stabilize social peace, order and progress. The Supreme Court has in this way maintained an equilibrium between the Constitution and Narco-Analysis.

IV. ADVANTAGES & DISADVANTAGES OF NARCO-ANALYSIS IN INDIA

It is quite clear after analysing the views of and cases before the Hon'ble High Courts and Hon'ble Supreme Court that the Indian judicial system is quite unclear about the legal validity of Narco-Analysis tests in India. While in a few cases the Hon'ble Courts have held an affirmative view, in some other cases, permission to conduct the Narco-Analysis test was denied. The courts have made conditional utilization of this process in various judicial pronouncements. The judiciary's approach towards the use of this process is such that it is neither rendered obsolete nor it can be used in each and every case. This sort of interpretation protects the interests of both individual and society. Security from the commission of crimes and the preservation of law and order is the first priority and in the national interest of each and every State. At the same time, protecting human dignity and human rights is also a priority of the State if the conflict between social and individual interests is to be well governed by the justice system. The following advantages and disadvantages of such an approach can be enumerated by examining judicial pronouncements and relevant literature.

Advantages

- Crime rates today are increasing at an extraordinary rate. This technology can check crime rates and help investigative agencies.
- Research agencies will benefit from the use of such technology that can be applied when there is a lack of evidence.
- The traditional method of extracting truth through torture is heinous. It violates basic individual rights and its use should be banned.
- While the procedure is harmful to the body only when the doses are very high, this test is safe when done in the presence of experts.
- Many Indian and foreign legal scholars are of the opinion that the questions framed by specialized persons are such that there are few chances for suspects to tell lies in their presence.
- The evidence obtained through this method may be rejected or denied by the Court for use as evidence, but the information collected during this test can be used to obtain admissible evidence or to corroborate with or to support other evidence.

- A statement made by a suspect in police custody cannot be considered as incriminatory until and unless duress or threat have been resorted to. Scientifically advanced investigation procedures such as Narco-Analysis tests often provide accurate results in the form of disclosure of highly relevant information.

Disadvantages

- In the Narco-Analysis test, the dosage of chemicals administered depends on such factors as the person's physique, mental attitude, gender, and will power. A wrong dose can make the person suffer from neural problems and can even lead to a state of coma, or, in extreme cases, even to death.
- The process may not be successful if the person on whom the test needs to be conducted is a drug addict.
- The reliability of the information provided by the subject is also somewhat dubious because the subject from whom the information is collected is semi-conscious. Therefore, there will always be a question about the reliability of the information collected.
- That the person providing the information should be 'well and fit' is a well-known and established principle of the criminal justice system. This contradicts the basic idea of putting the mind of the accused into a semi-conscious state during the test.
- The process may be declared as violation of fundamental rights as provided for by the Constitution, as, legally speaking, Part III, Article 20(3) of the Constitution of India clearly says that no person shall be made to be a witness against himself.
- There remains the possibility of the non-admissibility of evidence after the process has been carried out, as Section 25 of the Indian Evidence Act, 1872 states that a confession which is made by a person under police custody might not be admitted as evidence.
- According to Section 161 of the Code of Criminal Procedure, the police officer approved for investigation may verbally ask the person any question related to the facts and circumstances of the case and the person is required to answer all the questions except those which appear to expose him to criminal charges, penalties, or forfeiture.

V. CONCLUSION

The Criminal Justice system in India has an alarmingly low conviction rate due to lack of evidence and loopholes created by police personnel. This can be corrected by introducing the

application of science and technology in the collection of evidence. Judges applying their knowledge and judicial mind should then consider whether or it can be treated as admissible.

The legal system should develop with the development of crime. The Oxford Dictionary defines 'system' as "set of connected things or parts" or "set of organ of body with common structure or function". The Criminal Justice System is the combination of various organs of the Government, entrusted with the job of ensuring that justice is served to everyone. Our criminal justice system should adapt itself to crime patterns that have changed over a period of time due to various technological advancements. These advancements have made the crime scenario more complex, hence there arises a demand for sophisticated, scientifically advanced procedures. In India, the crime rate is very high; the conviction rate is low. The main cause of this abnormal gap is poor investigation; again, this indicates a need for improvement in investigative techniques and procedures. The best investigative agencies in the world, such as those of the US, used the Narco-Analysis test to determine truth after the terrorist attacks of 9/11. Gerald Poster, an American investigative journalist, has written that the US agency inwardly believes that the Hon'ble Supreme Court of the US also implicitly allowed the use of such a test where the public safety is at stake¹². Prof. N.R. Madhavan, while acting as a head of Drafting Committee of National Criminal Justice System, recommended the utilization of advanced scientific methods in the investigative process. The first and pivotal step is the formulation of clear policies for the Narco-Analysis test by the Central Government. In various cases, such as that of Abu Salem, the Nithari case, the Arun Bhatt Kidnapping case, and so on, the Narco-Analysis test acted as an important tool in solving them. Thus, by using this method, complex offences can be resolved. However, there needs to be a proper formulation of policies, rules, and regulation. Narco-Analysis should be conducted in strict accordance with the guidelines of the National Human Rights Commission. Narco-Analysis is one to improve the quality of criminal justice through a strengthening of the evidence system. It must also be kept in mind that the results of this test may not be 100% accurate. Therefore, there should always be other evidence to support the results. Lastly, this test should be conducted under the supervision of experts, as a wrong dosage of Sodium Pentothal or Sodium Amytal can make the person go into a coma or make the person suffer from permanent memory loss. Indian Judiciary has consented towards conditional use of this test, certain laws in the criminal justice system need to be amended so that the scientific techniques of investigation is recognized as a part of the law, thereby can be utilized for the sole benefit of people. There remains no iota of doubt that Narco-Analysis, when administered by experts, is a preferable method of extracting

¹² M.P.Sharma Vs. Satish Chandra 1954 AIR 300 SC

information from the when compared with the old traditional methods, it can be stated that truth serum is the most pressing need for extraction of truth rather than mental or physical torture by police personnel in the quest of collecting evidence.
