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Narco-Analysis: A Contested Tool in Indian Law Enforcement

SHIVANI SACHAN¹ AND ANIKET BHARDWAJ²

ABSTRACT

The urge to understand, get, and share correct information from a reluctant source is probably as old as the search for effective interrogation techniques. Another method for learning the truth or getting closer to it in the event of a crime is narco analysis, which also aids in investigations and questioning. The primary goal of a Narco analysis test is to elicit information from the accused while he is hypnotised, and the physicians and forensic psychologists present are solely responsible for this procedure. Tests conducted in front of police are frequently disregarded because they are seen to be pressured, and officers are not permitted to participate in any ongoing sessions of the test being administered. Since it is solely up to the accused or test-taker to decide whether to undergo the narco analysis test, the accused bears responsibility for his choice. Narco analysis within the Indian judicial system is the subject of this article. Its legitimacy with regard to Articles 20(3) and 21 and its statutory sanction under the Code of Criminal Procedure and Indian Evidence Act were the main topics of discussion.

Keywords: narco analysis, crime, laws, judicial system, cases.

I. INTRODUCTION

Law is a dynamic process that evolves in response to shifts in society, science, ethics, and other fields. As long as scientific advancements and innovations are in line with fundamental legal concepts and serve the interests of society, they must be included into a nation's legal system. In today's technologically advanced culture, criminals frequently utilise technology as a shield to protect themselves as well as to carry out their crimes.³ Since inquiry is the cornerstone of the criminal justice system, it is imperative that contemporary, scientific, and extremely complex techniques be used to identify dishonesty and increase the effectiveness of investigations.

The way the criminal justice system operates depends critically on how police investigations are carried out⁴. Effective prosecution of the guilty requires a careful and methodical search for

¹ Author is a Research Scholar at University of Lucknow, India.

² Author is a LL.M. Student at Amity University, Lucknow, India.

³ Robert E. House, *The Use of Scopolamine in Criminology*, 2 Am. J. Pol. Sci. 328, 368 (1931).

⁴ Andre A. Moenssens, *NarcoAnalysis in Law Enforcement*, 52 J. Crim. L. & Criminology 453, 588 (1961).

the truth as well as the collection of admissible and probative evidence, since these steps will avoid serious injustices in the event that the process of gathering evidence is marred by mistakes or misbehaviour.⁵ Therefore, even if narco analysis is a useful method in this situation that aids the investigating authorities in their efforts to look into the crime further when they are at a loss, it raises questions about its constitutionality and dependability.

(A) History and Rationale

The name "narco analysis" comes from the Greek word "narke," which means "anaesthesia" or "torpor."⁶ *Horseley*⁷ was the one who first used the phrase "narco-analysis." The material that is utilised in the test, which is sometimes referred to as the truth serum, is made up of a variety of chemicals, particularly barbiturates. Sodium penthanol, sodium amytal, and scopolamine are the materials utilised. This method entails administering certain medications that impair a person's capacity for thought and creativity without influencing his speech or memory. When under the effect of drugs, a person's self-control and willpower to control his responses are taken away, and he speaks freely. He can therefore be forced to speak the truth and reveal facts that only he knows.⁸

In 2001, the Forensic Science Laboratory in Bangalore conducted the first narco-analysis on a person connected to Veerappan's crimes. The NHRC has established standards for administering the test, which include that the police cannot do it on their own whenever they think it is suitable. The test should only be conducted with the subject's agreement acquired in front of a magistrate. These methods can also be used to compensate for deficiencies in investigative procedures, as in the cases of *Abdul Karim Telgi*⁹ in the stamp paper scam and a number of other suspects in the *Aarushi murder case*¹⁰, or when traditional forms of criminal activity have taken on enormous proportions, such as in the form of public outcry. The fact that they require some help from the defendant sets them apart from conventional inquiry techniques. This kind of cooperation does not always have to be voluntary; in fact, it can occasionally be coerced.¹¹

⁵ Ibid.

⁶ Gawsia Farooq Khan, *Narco Analysis Test: A Blessing to Criminal Justice System, Its Reliability and Admissibility in Light of Various Judgments*, 4 Int'l J. L. 1 (2018).

⁷Gagandeep Kaur, *Narco-Analysis: A Volcano in Criminal Investigation System*, LEGAL SERVICE INDIA, <www.legalserviceindia.com/article/1410-Narco-Analysis.html> (last visited Nov. 9, 2024)

⁸Dr. R.E. House, *Delivered at the 10th Annual Convention of the International Association for Identification*, Houston, Texas, 6 *Fingerprint & Id. Mag.* 3, 7 (1925).

⁹ *State of Maharashtra v. Abdul Karim Telgi*, [2007] 2 S.C.C. 200 (India).

¹⁰*Rajesh Talwar & Nupur Talwar v. State of Uttar Pradesh*, [2017] 4 S.C.C. 451 (All. H.C)

¹¹ Supriya Rai, *Narco-Analysis Test and Constitutional Imperatives*, DOCSTOC, <www.docstoc.com/docs/8389749/Narco-Analysis> (last visited Nov. 2, 2024).

II. CONSTITUTIONALITY OF NARCO-TEST

(A) *Right Against Self- Incrimination*

The conclusiveness of narco analysis and brain mapping in terms of their constitutional standing is still up for debate, however fingerprinting and ballistic reports are to be regarded as constitutional due to their significance. Article 20(3) also known as “The right against self-incrimination” which is divided into two sections:

The first is to the rights of an individual who is accused of a crime, and the second is about the rights of an accused person. Also, it provides protection against being compelled to testify against him. The accused's constitutional rights under Articles 20(3) and 22 are being violated by the application of the Narco test, which is the most crucial constitutional issue. According to the *Malimath Committee* study, the criminal conviction rate is a pitiful 6%, mostly due to proof beyond a reasonable doubt, in light of restricting Article 20(3).¹²

In the case of *Nandini Satpathy v. P.L. Dani*¹³, the Supreme Court explicitly established the scope of protection available under Article 20(3) of the Right Against Self-Incrimination. The Supreme Court established unequivocally that the protection under Article 20(3) starts to function at the pre-trial stage, in contrast to court's restrictive interpretation of the phrase "accused of an offence" in previous cases.¹⁴ "Any presentation of evidence or information that could be construed as incriminating qualifies as a witness against oneself." This means that even police-level investigations are covered by Article 20(3). Article 20(3) may thus be invoked even during the interrogation phase.

According to the Supreme Court, any "compulsory process" used to obtain evidence against the accused is covered under Article 20(3). Additionally, the Apex Court defined "compelled testimony," which violates Article 20(3), as "any mode of pressure, subtle or crude, mental or physical, direct or indirect but sufficiently substantial, applied by the policeman for obtaining information from an accused who strongly suggests of guilt." Therefore, the Supreme Court expanded the definition of "compelled testimony" under Article 20(3) in this historic decision to include not only evidence that was permitted in court but also the statement that "compulsion" in this context might refer to both physical and mental coercion. Critics of the process contend that narcoanalysis is equivalent to mental coercion¹⁵. The effect of mental compulsion is when

¹² Ibid

¹³ *Nandini Satpathy v. P.L. Dani*, (1978) 2 S.C.C. 424 (India).

¹⁴ *R.N. Bansilal v. M.P. Mistry* AIR 1961 SC 29; *State of Bombay v. Kathi Kalu Oghad* AIR 1962 SC 1808; *R.C. Mehta v. State of West Bengal* AIR 1970 SC 940; *Bhagwandas Goenka v. Union of India*, Cr. Appeals Nos. 131 & 132 of 1961.

¹⁵ 'A Shot at Justice: Truth Drug for Godhra Accused', *The Indian Express*, June 23, 2002

"some extraneous process has so conditioned the mind as to render the making of the statement involuntary and therefore extorted." While acknowledging that an accused person's voluntary statement might be crucial to the investigation of a crime, the Court also highlights the necessity of measures to "erase involuntariness" and guarantee the accused person's free will to make comments throughout an inquiry. In the *Kalawati v. H.P. State*¹⁶ case, the Supreme Court also ruled that Article 20(3) does not apply in any way when an accused person confesses without being coerced, threatened, or promised anything.

(B) International Perspective

The right to self-incrimination has been acknowledged as a crucial component of the accused person's right to a fair trial in a number of states and international human rights agreements.¹⁷ For example, the Fifth Amendment of the US Constitution states that "No person shall be compelled in any criminal case, to be a witness against himself."¹⁸ This clause encompasses the right against self-incrimination. In the case of *United States v. Hubbell*¹⁹, the Supreme Court upheld the Fifth Amendment's violation outside of a courtroom as well. Even if the utterances are not damning and are not put into evidence, the Court ruled that the Fifth Amendment's definition of "compelled testimony" included coerced statements that result in the discovery of incriminating material. However, the Fifth Amendment, which protects the right against self-incrimination, does not explicitly prohibit voluntary disclosures, as the *Miranda v. Arizona*²⁰ decision makes clear. Hence it can be seen clearly that the position on Self Incrimination as laid down in the *Nandini Satpathy case*²¹ is identical to the stance of the United States Supreme Court, i.e. the protection is operative at the interrogation stage itself even without the submission of the statements as evidence in Court.

Article 14(3)(g) of the International Covenant on Civil and Political Rights (ICCPR)²², to which India is a member, lists the minimal protections that must be provided during a trial and declares that no one has the right to be forced to testify against themselves or confess to a crime. According to Article 6(1)²³ of the European Convention for the Protection of Human Rights and Fundamental Freedoms, "Every individual accused of a crime has the right to a fair trial"

¹⁶ *Kalawati v. H.P. State*, (1953) 1 SCC 86; AIR 1953 SC 131.

¹⁷ Marcy Strauss, *Torture*, 48 N.Y. L. Sch. L. Rev. 213 (2003-04).

¹⁸ Akshaye Mukal, *The Legal Questions Raised over Truth Serum Use*, *The Economic Times* (July 25, 2002)

¹⁹ *United States v Hubbell* 530 US 27 (2000)

²⁰ *Miranda v Arizona* 384 US 436 (1966)

²¹ *Nandini Satpathy v PL Dani* (1978) 2 SCC 424

²² *International Covenant on Civil and Political Rights* (1966), available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last visited Nov. 7, 2024)

²³ *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950), art. 6(1), available at https://www.echr.coe.int/documents/convention_eng.pdf (last visited Nov. 4, 2024).

while Article 6(2)²⁴ stipulates that "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law." Because forcing an accused individual to testify would shift the burden of proof from the prosecution to the accused, the "presumption of innocence" provision is directly related to the "right against self-incrimination."

(C) Right to Equality

Article 20(3)²⁵ of the Constitution makes it quite evident that a person cannot testify against themselves, and no one can or should be forced to make admissions that incriminate him. This was carried out in order to safeguard the credibility of the testimony. Article 14 of the Indian Constitution provides that every individual has the right to be treated fairly and without discrimination. Using narco analysis on only certain suspects or groups could be seen as discriminatory and a violation of this principle, especially if it is applied inconsistently across cases. It was created to ensure:

- a. Only in cases when the accused is thought to be innocent.
- b. The prosecution must prove the accused person's guilt.

It is impossible to force the accused to testify against his will. Ultimately, the primary questions about the subject matter are whether the test should be admitted in court and if its use is morally right²⁶.

(D) Right to Privacy

Human rights activists contend that the fundamental right to privacy is violated by narco analysis. In *Kharak Singh v. State of UP*²⁷, Subba Rao J. concluded that, in accordance with Article 21, privacy was a necessary component of individual liberty. The Supreme Court also ruled in *Gobind v. State of Madhya Pradesh*²⁸ that the right to privacy is a part of the right to personal liberty that is protected by Article 21. Nonetheless, the Court also ruled that the right to privacy is not unqualified and can be curtailed in the event of a strong state advantage. This situation does qualify as a compelling state interest because of the state's obligation to maintain public safety, administer justice, and deter crime. An essential part of achieving this state interest is narco analysis. The process of narco analysis may be considered a privacy infringement since it requires the accused to provide personal information that is only known

²⁴ Ibid.

²⁵ *Constitution of India* (1950), art. 20(3), available at <https://legislative.gov.in/constitution-of-india> (last visited Nov. 9, 2024)

²⁶ Akshaye Mukal, *The Legal Questions Raised over Truth Serum Use*, *The Economic Times* (July 25, 2002).

²⁷ *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295; (1963) 2 Cri LJ 329

²⁸ *Gobind v. State of Madhya Pradesh*, (1975) 2 SCC 148

to him. The process, however, has the necessary approval under the current laws of the nation and takes on the form of a legal limitation on the aforementioned right.

III. CODE OF CRIMINAL PROCEDURE

The Code of Criminal Procedure's explanation (a) of sections 53, 53A, and 54²⁹ addresses the evidential significance of narco analysis and scientific testing. Explanation (a) "examination" refers to the use of contemporary, scientific methods, such as DNA profiling, to examine blood, blood stains, semen, swabs in cases of sexual offences, sputum and sweat, hair samples, and fingernail clippings. It also includes any other test that the registered medical professional determines is required in a given situation. However, provisions 53, 53A, and 54 of the CrPC permit the accused to have these medical examinations. However, several other medical examinations that require testimonial actions such as the BEAP test, polygraph, and mental examination are not covered in the explanation of these sections.

In 2005, the Indian Legislature recognised scientific methods of inquiry, including as narco analysis, by amending Section 53 of the Code of Criminal Procedure. But as the model makes clear, there are a number of requirements that must be met before narco analysis may be used as a useful investigative tool. These requirements, particularly informed consent, are not covered by the current version of the Code of Criminal Procedure. In actuality, the Code of Criminal Procedure makes no mention of requiring the accused's assent prior to an inquiry.

Further, the Section 53, 53A, and 54 of the CrPC is replaced by Section 51,52 and 53 of The Bharatiya Nagarik Suraksha Sanhita³⁰ that states the same provisions regarding Narco-Analysis.

(A) Narco-analysis vis-à-vis the Evidence Act

Section 45 of the Indian Evidence Act allows the testimony of people (referred to as "experts" under the Act) who are very knowledgeable in a particular area of foreign law, science, or art, or on the identification of handwriting or finger impressions. Expert testimony is valued according to a number of criteria, including the expert's level of expertise and the precision of the science.³¹ Expert opinion is only useful for corroboration and cannot establish a conclusion on its own if the science is imprecise. The veracity of the evidence obtained from the narco-analysis tests is then questioned, and this is examined from two angles:

First, as viewed by the scientific community, and

²⁹Constitution of India (1950), art. 20(3)

³⁰Bharatiya Nagarik Suraksha Sanhita 2023 (India)

³¹Alan M. Dershowitz, *Is it Necessary to Apply "Physical Pressure" to Terrorists - and to Lie About It?*, 23 *Israel L. Rev.* 192 (1989).

Second, as viewed by the legal system.

There is still some uncertainty about the legal status of scientific testing used as evidence. A Sessions Court in Faizabad, Uttar Pradesh,³² recently accepted the results of a narco-analysis test and declared that it was reliable evidence to deny a bail request in a murder case. Fortunately, it was specifically listed as evidence only in relation to the bail application to show that there was a prima facie case, not to support the accused's statements against him in order to convict him. Interestingly, the Gandhinagar Forensic Science Laboratory actually declined to test a suspect when he refused to provide his permission. Despite this, the magistrate gave the lab instructions to do the test. The Supreme Court, however, suspended a Metropolitan Judge's decision to do a narco-analysis in the *Krushni Coop. Bank case*³³ in 2006.

Also, Section 45 of Indian Evidence Act is being replaced by Section of 39 of The Bharatiya Sakshya Adhiniyam³⁴ stating the same provisions relating to opinions of Experts.

(B) Acceptability of narco-analysis: US courts

In support of its decision, the Ninth Circuit Court rejected psychiatric testimony and a videotape of an interview done while under the influence of sodium pentathol. In the case of *State v. Pitts*³⁵, the New Jersey Supreme Court banned the use of sodium amythal (a substitute for sodium pentathol) and truth serum narco-analysis, citing the lack of scientific reliability of the test results and the potential for subjects to fill in the blanks in stories (hyperamnesia), believe in false events, or perform hypnotic recall, in which they believe thoughts of events that never happened.

The subject of narco-analysis was thoroughly discussed in *United States v. Solomon*³⁶. In this instance, the Court's expert opinion proved that truth serum is a well-recognised investigative method. It is unnecessary to state that the state's responsibilities include both preventing crime and punishing those who commit it. Limitations on these responsibilities can only be imposed in severe circumstances when safeguarding basic rights outweighs the State's fundamental obligation. Additionally, everyone must provide information about violations.

³² *U.P. Court Admits Narco Report As Evidence*, (Oct. 5, 2008), available at <http://www.nerve.in/news:253500170205> (last visited Nov. 9, 2024)

³³ *People's Union for Democratic Rights*, (2008) 3 Twenty-Second Dr. Ramanadham Memorial Meeting, available at <www.pudr.org/index.php?option=com_docman&task=doc_view&gid=168>

³⁴ Bharatiya Sakshya Adhiniyam 2023 (India)

³⁵ *State v Pitts* 116 NJ 580; 562 A 2d 1320 (NJ 1989)

³⁶ *United States v. Solomon* 530 US 27 (2000)

(C) Judicial Response to Narco-Analysis

Before the Supreme Court's ruling in *Selvi v. State of Karnataka*³⁷, the Bombay High Court's ruling in *Ramchandra Reddy v. State of Maharashtra*³⁸ best summed up the judiciary's position on the narco analysis test. In that case, the court had to decide whether it was constitutional to force an accused person to give a statement by making him undergo a narco test against his will. According to the court, Article 20(3) will be applicable if the statement implicates the person saying it, which can only be determined once the test is given.

Since the Indian Evidence Act and the Code of Criminal Procedure offer enough protections against the inclusion of any incriminating statements made during test administration, the court determined that there is no justification for preventing test administration. But in *Selvi v. State of Karnataka*, a three-judge Supreme Court panel disagreed with the High Court's reasoning and ended the practice of forcing the accused to do the narco analysis test against his consent. We believe that the mandatory use of the contested methods is a violation of the "right against self-incrimination." The purpose behind the aforementioned right is to guarantee the validity and voluntariness of statements that are accepted as evidence. This Court has acknowledged that Article 20(3)'s protective reach extends to the investigative phase of criminal proceedings. When interpreted in conjunction with Section 161(2) of the 1973 Code of Criminal Procedure, it provides protection to suspects, accused individuals, and witnesses who are questioned during an investigation. If the findings of the test were acquired by coercion, they cannot be accepted into evidence. A person's decision to speak or keep quiet is protected under Article 20(3), regardless of whether the testimony that follows turns out to be exculpatory or incriminating. The purpose of Article 20(3) is to prohibit the "conveyance of personal knowledge that is relevant to the facts in issue" by coercion. Each of the contested tests' results had a "testimonial" nature and cannot be classified as substantial evidence.

Nonetheless, the Supreme Court has allowed the voluntary administration of the contested test, provided that specific requirements are met. It was decided that because the subject does not have conscious control over their replies when the test is being administered, the test findings alone cannot be entered as evidence, even if the subject has consented to do any of these tests. However, in line with Section 27 of the Evidence Act of 1872, any information or material that is later found with the aid of voluntarily provided test results may be included.

The guidelines for administering the polygraph test (also known as the Lie Detector test) to an

³⁷ Smt Selvi v State of Karnataka (2010) 7 SCC 1267

³⁸ Ramchandra Ram Reddy v State of Maharashtra 2004 All MR (Cri) 1704

accused person were released by the National Human Rights Commission in 2000. These rules should be closely followed, and comparable precautions should be used while doing the "Brain Electrical Activation Profile" and "Narcoanalysis technique" tests³⁹.

The following is a copy of the guidelines text:

- (i) Unless the accused gives their agreement, no lie detector test shall be conducted. The accused should be offered the choice to take such a test or not.
- (ii) The police and the accused's attorney should explain the psychological, physical, and legal ramifications of the Lie Detector Test to the accused if he agrees to take it.
- (iii) The consent ought to be documented in front of a magistrate.
- (iv) The individual who is accused of agreeing should have a counsel present during the Magistrate's hearing.
- (v) The individual in issue should also be made fully aware throughout the hearing that the statement they make will not be considered "confessional" to the magistrate but rather will be considered a statement to the police.
- (vi) The magistrate will take into account every aspect of the detention, such as the duration of the custody and the type of questioning.
- (vii) A lawyer must be present when the Lie Detector Test is really recorded by an impartial organisation, such a hospital.
- (viii) It is necessary to document a thorough medical and factual account of how the information was obtained.

(D) Criticisms of Narco-Analysis

Critics have pointed out that narcoanalysis is not entirely accurate. It has discovered that several of the subjects made completely untrue claims. Since it frequently fails to extract the truth, it shouldn't be used to compare statements made to the police prior to drug usage. It has been shown that even after receiving medication, some people continue to provide misleading information⁴⁰. In the event of malingerers or evasive, untrustworthy people, it is not very helpful. It is exceedingly challenging to recommend the right dosage of a medication for a certain individual. The drug dosage will vary depending on the subject's physical characteristics,

³⁹ R.M. Malkani v State of Maharashtra (1973) 1 SCC 471; (1973) SCC (Cri) 399

⁴⁰ Malak Bhatt, *Loss of Justice for Sake of Convenience? Narco-analysis and Brain-Mapping: An Examination in Light of Article 20(3)*, available at <https://www.allindiaareporter.in/articles/index.php?article=1020> (last visited Nov. 9, 2024).

mental state, and willpower. Injection is not necessary for a narcoanalysis test to be successful. A qualified and experienced interviewer who has received training in crafting effective and up-to-date questions is necessary for its success. A narcoanalysis test restores memories that the suspect had lost. If the test is used to get criminal confessions, the results might be questionable⁴¹. When under the influence of narcotics, criminal suspects may purposefully suppress information or repeatedly provide false accounts of incidents. It is not advised to use narcoanalysis to support criminal investigations. Narcoanalysis may be helpful in medicinal applications, such as the treatment of mental disorders. It is not appropriate to utilise the test in a criminal investigation unless the suspect has given their consent.

IV. CONCLUSION

Law is a dynamic process that evolves in tandem with societal, scientific, ethical, and other developments. As long as scientific advancements are beneficial to society and do not contravene fundamental legal concepts, the legal system ought to include them. Narco analysis is still used in a few democratic nations, most notably India. In India, there has been much discussion about the use of the Narco analysis test as an interrogation technique. In the near future, it will become more evident to what degree it is recognised in our judicial system and society.

Several High Courts have issued rulings confirming the accuracy of Narco analysis. These rulings stand in sharp contrast to the Supreme Court's previous interpretations of Art. 20(3). The truth is that, in the Indian criminal justice system, narco analysis is still a relatively new interrogation method with no established protocols. Since India's commitment to individual liberties and a fair criminal justice system are at risk, the central government must establish a clear policy position on narco analysis.

⁴¹ Ankita Patnaik, *Article 20(3) of the Constitution of India and Narco-analysis—Blending the Much Awaited, The Hindu* (online edition, May 2, 2007), available at <https://www.thehindu.com> (last visited Nov. 9, 2024).