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Narco Analysis Test and Evolution of Privilege: Protection of Right of the Suspects of the Crime

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ABSTRACT

The application of forensics is developing together with technological advances. It aids in locating both crimes as well as criminals in a criminal investigation. The constant advancement of crime scene investigation over time was aided by the employment of technologies. Narco analysis, as a scientific tool of crime detection, has aided investigators in investigating crimes and also serves a crucial role in the criminal justice system. In this sense, the investigators rely on narco analysis to acquire evidence, and the legal system acknowledges these without weighing several legal and moral concerns. Seeing the present situation anywhere criminals are using modern technology to execute criminalities, narco analysis has become imperative for the detection of crime. Basic human rights are being ignored due to the extensive use of the narcoanalysis technique on the suspects of the crime. Today, the root of the problematic situation is to create stability amongst the privileges of the accused of the crime and the usage of scientific deception tactics while keeping social and individual interests in mind. This practice appeared to give psychological aid in solving cases concerning dreadful crimes. It has been alleged that the legal system took an integrated approach to the employment of this technique and established a concept of restricted usage, indicating that the process and implementation in every criminal case should not be neglected. The reliability of the narco analysis has not been determined by the courts still in India. This paper gives insights into the usage of narco analysis by the investigating authorities and the concerns allied with this impugned technique. However, it is suggested that narco analysis should be assimilated into the legal mainstream with due care and circumspection.

Keywords: *Crime, Deception, Evidence, Narco analysis, Scientific technique.*

I. INTRODUCTION

Crime investigation can be coordinated and supported by scientific procedures in criminology. Because the results of such procedures are subjected to adequate review, employing new scientific approaches minimizes the human-centered approach to bias in conducting

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investigations. Scientific studies were regularly used to predict the outcome of important legal matters, and technologies have become increasingly important in a judicial setting. As society progresses, the real impact of criminal activity becomes more complicated. Crime impedes society and takes on different forms and methods of execution. Scientific methods must be used in the investigation process for this reason. Monitoring Deception For many years, tests like narco-analysis have been available, however, their efficiency is in question. It makes use of technology to find possible untruths. It is used to uncover purported lies and concealed information during an investigation. Narcoanalysis is regarded as a tool for obtaining information in criminal investigations. Yet, there have been inquiries regarding if it amounts to testimonial coercion in the legal system and a violation of basic human rights, individual liberties, and privacy rights.

(A) Methodology

The research is based on qualitative data gleaned through several readings of judicial conceptions. Judgments, statutes, including Criminal Procedure and the law of evidence, the Indian Constitution, and international treaties all serve as sources for legal propositions. The primary data includes the legislation, statutes, rules, and case studies. The secondary data comprises information found in books, journals, magazines, articles, law digests, and information on websites.

(B) Significance of Research

The study intends to shed new light on the importance of a person's constitutional rights, the ramifications relating to the narco-analysis test, and other important aspects related to the test.

II. NARCO ANALYSIS TEST: AN APPRAISAL

Narcoanalysis is the process of inducing reversible sleep using intravenous injections of medications such as amobarbital sodium to elicit memories and sensations that the person in a wakeful state cannot articulate due to resistance.² The "truth serum test" is another name for narcoanalysis, which involves injecting the subject with a substance. Not the serum but the therapeutically prescribed mind-altering truth drug that causes the individual uninhibited. In a drug analysis method called a "truth serum test," the drug called sodium pentothal is injected into the individual. The phrase "Narco Analysis" comes from the Greek word "Narke," which means exhaustion or anesthesia. At some point in time, it was used to denote a diagnosing process involving psychotropic drugs. In 1922, J.S Horseley a father of narco analysis used it

² "Narco Analysis" McGraw-Hill Dictionary of Scientific & Technical Terms, 2003, published by the McGraw-Hill Companies, Inc

for the first time in a clinical trial. The narcoanalysis test gained prominence afterward.³ It continued after that by mentioning how these medications were of relevance to forensic specialists. In India in 1935, narcoanalysis had been used. For the first time, medicines were employed to induce a person into a semi-conscious state to interrogate them. It was also used as psychotherapy for treating mental disorders and trauma.

Mostly in the majority of investigations in India, the policemen and the detectives seem who urge conducting narcoanalysis tests on the suspects. They do this because doing so would be preferable to inflicting third-degree harm on the suspect. The major defenses for using such a method include inefficiency, a lack of investigative skills, insufficient evidence gathering, and a failure to appropriately articulate the information.⁴

III. OFFENSIVE TECHNIQUES IN CRIMINAL INVESTIGATION

The development of narco-analysis as a science has now been commonly applied in India as well as globally to solve crimes through abreaction techniques. Narcotic analysis may have adverse effects, such as limiting cognitive reasoning. Physical interrogation, which constitutes third-degree torture, is just replaced by the involved taking saying it softer alternative. The test constitutes coerced compelled testimony. Technically, the investigating authorities occasionally overlook the subject's approval. Drugs that lessen the individual's inhibitions throughout this moment may hinder them from submitting a response that is truly relevant to the case. Every so often the subject is compelled to testify against himself when narco analysis is conducted. It is well established that narco analysis is a key development as an operational technique, but the valid consent of the accused is essential to guarantee that the method does not impede the accused's freedom of decision. The Supreme Court in 2010 held that involuntary administration of narco or lie detection test is an intrusion into a person's mental privacy and the law disapproves of involuntary testimony.⁵

The Supreme Court also reiterated notwithstanding the obvious limits, it confirms some features such as judicial order, consent of the subject, and secure general welfare. As a result, it creates a conflict between the need for efficient investigations and the protection of personal liberty.

IV. RIGHT AGAINST SELF-INCRIMINATION

The development of scientific tools must be included in the legal mainstream with due care and caution without violating the right under Article 20(3) of the Indian Constitution. So, to improve

³ Nandini C. Shahasane "Narco Analysis Test: Forensic Evidence?" 24 (9th ed 2019)

⁴ Anoopam Modak "Scientific Technique in Criminal Investigation" 2020 (3rd ed 2016)

⁵ Selvi v State of Karnataka, AIR 2010 SC 1974 SCC 263

the accuracy of the criminal justice system it is crucial to employ this technique as a potent defense to resolve criminalities. Although the safeguard against self-incrimination enables the criminal justice system must follow decent standards, that idea of the right to silence has been exalted.⁶ In *State of Bombay v Kathi Kalu Oghad*⁷, The Supreme Court ruled that the accused person's confession made with any pressure, force, or promise is not protected under Article 20(3) of the Indian Constitution. The Supreme Court has widened the scope of Article 20(3), declaring that the prohibition includes police interrogation as well as further violations that are underway or impending and that the accused may be eager to confess willingly. Article 20(3) affords the accused further protection, preventing harsh treatment and abuse which undermines basic human liberties. Yet, any such privilege should be validated, as required by the Indian legal system.⁸ In the very recent *Shraddha Walker Case Aftab Amin Poonawala*, the man charged with killing his live-in lover Shraddha Walker in 2022 with great brutality, underwent a narcoanalysis test in a hospital in Delhi. It has been asserted that in criminal matters, the scientific process is applied to uncover the accused's veiled truth and to advance the criminal investigation. The test has remained the subject of legal discussion regarding its use recently.

V. RIGHT TO PRIVACY

The narco-analysis test also called into question the basis of the right to life and privacy provided by Article 21 of the Indian Constitution. It is argued that utilizing extraneous measures to force a person to talk, as well as forcible access into one's mind, constitutes an invasion of one's privacy. The use of third-degree tactics, while a person is being detained and interrogated by police, and under investigation is unlawful. There can be no magic fix for crime prevention. The accused faces a greater risk of harm to their bodies and minds. Also, because a moderate mind can accidentally expose personal details, it is critical to implement certain confidential measures. As a consequence, it is widely speculated that subjecting the accused to contentious techniques against their consent is a breach of the recognized bounds of privacy. This coercive intervention in the accused's mental state is not legal to do and violates the constitutional obligation.⁹ In *Ashok Kumar v Raj Gupta and Others*,¹⁰ The Supreme Court made the case that if a person is unwilling to give a DNA analysis or any other sort of physical evaluation, it violates his privacy rights. On that basis, emerging investigative techniques must

⁶In accordance with Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights, the right to remain silent is a crucial part of the fair trial rule.

⁷ *State of Bombay v Kathi Kalu Oghad*, 1961 AIR 1808

⁸ *Ramachandra Reddy v State of Maharashtra*, 2004, ALL MR(Cri) 1704

⁹ R. Ramachandran “*Scientific Techniques in Criminal Investigation*” 13 (2nd ed 2021)

¹⁰ *Ashok Kumar vs Raj Gupta and Others* (2021) SC848

constantly be assessed in light of the protection of privacy. This problem of the law invading an individual's privacy is inextricably linked to cases that involve seizures and searches, as well as those in which someone is forced to undergo forced medical tests. The Supreme Court in 2010, declared that forcible administration of narco or lie detection tests is an attack on a person's mental privacy and the law disapproves compelled testimony.¹¹ *State of Gujarat v Inayat Ismail Vohra*,¹² Thus, the legal basis of scientific tests like narcoanalysis, polygraph testing, and Brain Electrical Activation Profile (BEAP) tests was challenged on the premise that they intrude upon the privileges of testimonial compulsion guaranteed by Articles 20(3) and 21, respectively, of the Constitution also section 161(2) of the Code of Criminal Procedure.

VI. RIGHT TO HEALTH

A sodium pentothal drug is administered to the person undergoing investigation. The dosage of the aforementioned drug changes based on the person's overall physical condition. When questioned specifically, the subject can respond. The responses provided have been thought for being unexpected so because a semiconscious person cannot deceive them. It is built around the notion that someone can lie by using their imagination inquiry. In a narcoanalysis test, the capability of imagination is suppressed by putting the subject in a semiconscious condition, making it harder for the subject to fabricate information. The technique of administering sodium pentothal to coerce confession by placing the user's nervous system into a twilight sleep condition and rendering them completely unconscious gave rise to the developed countries mostly in the mid-twentieth century. Several sedatives became more popular in the subsequent decades, but sodium pentothal was still widely employed in India and other democratic countries like UK and USA.¹³

Its historic depiction is a crucial component in present-day discussions of truth serum as it has been the topic of several contentious studies in the history of the science of technology. Each person has the fundamental right to self-respect and to live with dignity free from all forms of pain, and the right to a healthy life. This right to health in India must be strictly implemented well within the paradigm of empathy, fairness, and transparency that are core to global human rights and healthcare regulations.¹⁴ The *Indian Code of Medical Ethics* states that "the physician shall not assist or abet abuse, nor shall he participate to inflict the mental or physical trauma as

¹¹ *Selvi v State of Karnataka*

¹² *State of Gujarat v Inayat Ismail Vohra*,¹² 14th October 2013

¹³ Leon M. Despres "Legal Aspects of Drug-induced Statements" 603-606 University of Chicago LR, available at <http://chicagobound.uchicago.edu.in>

¹⁴ *State of Punjab & Ors v. Mohinder Singh Chawla* Aug 8, 1996, CWP No.15942/95.

it is a clear violation of human rights.”¹⁵

VII. RIGHT AGAINST TORTURE

By administering intravenous injections, the accused feels physical discomfort, the experimental study shows that the accused throughout the process of the amythal interview has to face unkind provocations like smacking, pinching, pulling, beating, and twisting the body in an attempt to induce the subject and get him to answer the questions. The effect of the drug on the accused's ability to reach the most confidential aspects of his or her brain causes him to suffer mental disturbances. In India, narco analysis is not specifically permitted in all cases due to moral and ethical reasons.¹⁶ However, if narco-analysis test discoveries are considered in a trial process then the fair trial rule is jeopardized. That using drugs during narcoanalysis counts as bodily torture must be looked into further. Asking an accused person to undergo any of the impugned psychotherapy tests like narco analysis is seen as harsh, cruel, or degrading treatment.¹⁷ Under the International Convention and the Constitution of India, the "Access to a fair trial process" is explicitly mentioned.¹⁸

Only when the investigators are in the doubtful stage and there aren't any other means of linking accessible this test can be employed. The employment of the third-degree method of information collecting is prohibited and should be used as a last resort. *Dr. Malini v The State of Karnataka*¹⁹ The Supreme Court ruled that the court should remain vigilant when accepting the findings of a narco-analysis test, whenever the investigation is at a critical phase, it should be undertaken to find out the truth.

VIII. CONCLUSION

The majority of narco-analysis tests in India have been conducted to support the process of investigation. Therefore, the general claim in the majority of the trials which have come before the courts is that narco analysis violates the accused's basic human rights, such as the right to self-incrimination, privacy rights, the right to health, and many others. Human rights campaigners have been already opposing the use of dubious scientific deception tests such as narco analysis. This has become one of the most effective methods for eliciting information

¹⁵ A.K Kala “*Of Ethically Compromising Positions and Blatant Lies about Truth Serum*” 6-9, 49(1) Indian Journal of Psychiatry (2007) doi: 10.4103/0019-5545.31512

¹⁶ R Ramachandran “*Law of Narco analysis: Right Against Self-Incrimination*” 15-16 (2019)

¹⁷ Debmallya Sinhia “Narco Analysis: Truth Serum or Torture” 416 International Journal of Law, Management and Humanities, 3(2) (2020)

¹⁸ S.P Rakade & G. Shrivastava “*Scope and Limitation of Narco-Analysis and DNA Profiling Technology in India*” 12(1) 617, Vidyabharti International Interdisciplinary Research Journal

¹⁹ *Dr. Malini v The State of Karnataka*, 15th April 2013

from suspected criminals. Provided, this test does not have any scientific validity and the findings of such test are not considered in a court of law. This test can be used only when the investigators have exhausted all other options and to find some clues in the investigation probe.

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