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Narco Analysis Test in Indian Criminal Justice System

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ABSTRACT

The rapid advancement in modern science has made its contribution in every field be it for the welfare of the society or otherwise thus modern science has made its way to the crime and crimes. Thus, it has made it essential for the investigating agencies to be equipped with the modern scientific tools so to serve justice to the society against the crimes. The Narco Analysis is one such psychotherapeutic technique which has been timely proved to be of great aid in finding the lead in clueless cases. In this study it has been concluded that Narco Analysis test is effective and aid in investigation but at the cost of fundamental rights of subject and this technique is admissible in court but only as weak evidence. The study is focused upon the Indian perspectives and laws related to Narco Analysis techniques.

Keywords: *Narco Analysis, Investigation, Infringement, Fundamental Rights, Self-Incrimination*

I. INTRODUCTION

The rapid development in modern scientific technology has paved its way in every aspect of human life of which crime is no exception, thus to deal with such crimes investigating authorities are too needed to be equipped with advanced scientific tools in order to deal with such offences thus the use of Narco Analysis test for this purpose can be of great aid to investigating agencies.

The Narco-Analysis according to the Webster dictionary is '*Psychotherapy that is performed under sedation for the recovery of repressed memories together with the emotion accompanying the experience and that is designed to facilitate an acceptable integration of the experience in the patient's personality.*'²

The term Narco Analysis is derived from Greek terms '*Narke*' meaning torpor and Analysis from '*análusis*' meaning detailed examination is a process in which a subject is injected with

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² Narco-Analysis: Merriam-Webster, <https://www.merriam-webster.com/medical/narcoanalysis> (Visited on April 23, 2021)

Narcotic drugs (Sodium Pentothal, Sodium Amytal, Scopolamine and Phenobarbital)³ by the experts due to which the subjects is in torpor state and then interrogated initially with controlled questions (initial details related to the subject himself) then followed by the questions related to the case. The entire process is recorded in both audio and video formats and after the conclusion of the test a report of the entire process is made and is submitted to the court. Also during the entire process the subject undergoing the test is monitored by the team of experts. The team of experts consists of The expert panel generally consists of Physician, Anesthetic, Forensic Psychologist and other staff.

The Narco test has been proved as great aid to investigating agencies in finding the leads and in extricating out the truth of narcosis mind of the subject yet the burden of proof lies upon investigating agencies also the chances are that subject may defraud the test as the success rate of the test is 96-97% in total as stated by Dr. B. M. Mohan, Ex-Director of FSL Bangalore.⁴

The concept of Nemo Debet Procure Ipsum is well settled principle in democratic world which states that every subject is to be treated as innocent unless the accusation upon are proved in the court. However, the use of this technique provides the confirmed conflict with the fundamental rights of the subject as the technique obstructs the right of privacy under Article 21 and silence under Section 161 (2) of CrPC, 1973 as well the use of information extracted out of the mind of the subject during the Narco Test is the court is infringement of right against self-incrimination under Article 20 (3).

The principle of Nemo Debet Procure Ipsum is well known principle in almost all the legal system around the democratic world. Thus, the administration of this method matches the vast evidence that identifies the confirmed issue with the fundamental rights as the use of this method effects the privacy and seizes the opportunity. The method is criticized as a technique which forces an individual to give testimony against him but if the witness confesses willingly then there is no application of Article 20 (3). Thus, the privilege against self-incrimination attracts the recognition of the explicit parameters in the protection of rights and the enforcement of criminal values. However, law is silent or does not provide privilege against personal protection and fingerprint checks in court.

In the case of *Selvi and Others v. State of Karnataka*⁵, the Apex court held that the use of Narco Analysis test without the consent of subject in itself is the violation of the fundamental

³ Narco-Analysis in Law Enforcement, available at: <https://core.ac.uk/download/pdf/193333225.pdf> (Visited on April 22, 2021)

⁴ Narco-Analysis and some hard facts, <https://frontline.thehindu.com/the-nation/article30191389.ece> (Visited on April 25,2021)

⁵ AIR 2010 SC 1974

right of right of privacy provided under Article 21 of the Indian constitution, thus the use of this technique without the consent is unconstitutional.

These days many countries have started to use opioids in pain management instead of narcotics as the narcotics was misleading to the society.⁶

II. NARCO ANALYSIS TEST

The concept of Narco Analysis is one of the most debated in legal world which was introduced to India by British during the World War II as first recorded case of Narco Analysis test in India was conducted in 1935.

However, the technique of Narco Analysis was developed by Robert House in Dallas Texas with the use of Scopolamine upon two prisoners in 1922 and interrogated them while they were under the effect of the drug and it was found that they information they provided was accurate. Then American Forensic Scientist Calvin Goodard claimed that it is unfeasible for the subject to lie under the effect of Scopolamine and termed the drug as Truth Serum and the technique as Truth Serum Test.⁷

Although the technique is no new to India but after the Independence it was not used for long time yet in 2001 it was reused upon the close associate of Veerapan with the use of Sodium Pentothal.⁸ However, after 2001 the technique was administered in various cases as in:

- *Surendra Koli v. State of Uttar Pradesh and Others*⁹(Nithari Case)
- *State of Gujarat v. Bilal Ismail Abdul Majid Sujela alias Bilal Haji*¹⁰(Godhra Carnage Case)
- *State by Stamp Investigation Team v. Abdul Karim Telgi*,¹¹ (Telgi Stamp Scam Case)
- *Dr. Rajesh Talwar and Another v. Central Bureau of Investigation*¹² (Aarushi Murder case)
- *Mohd. Ajmal Amir Kasab v. State of Maharastra*¹³(Mumbai 26/11 terrorist Attacks)

The process of Narco Analysis is concluded in 1 to 3 hours, where in last 15 minutes after the

⁶ Junk The Term Narcotics—Call Them Opioids, available at: <https://www.practicalpainmanagement.com/treatments/pharmacological/opioids/junk-term-narcotics-call-them-opioids> (Visited on 28 April,2021)

⁷ Snehal S. Shinde, “Narco-Analysis: A Tool of Investigation” 03 IJMRD 298-301 (2016)

⁸ Bannur Muthai Mohan, Misconceptions about Narco Analysis, available at: <http://www.issuesinmedicalethics.org/151co07.html> (Visited on April 30,2021)

⁹ (2011) 4 SCC 80

¹⁰ 2017 SCC Online Guj 1325

¹¹ ILR 2003 KAR 3702

¹² 2013 (82) ACC 303

¹³ (2012) 9 SCC 1

interrogation process is completed the subject is made to relax to bring him back into senses and is offered a cup of tea or coffee and is under the supervision of expert team in case to check the complications of the side effects of the test and the drugs administered to him.¹⁴

The doses for Narco Test depends upon the sex, age, mental and physical health of the subject yet the prescribed dosages are concentration used is 2000 ml Dextrose solution and 2 grams of Sodium Pentothal afterwards the solution produced is injected into the body of subject in doses of 1 ml each up to 10 ml unless the stage of narcosis is achieved. Also the Narco Test is administered in four stages as:¹⁵

- **Pre-Test Interview:**

The subject is detailed of the test and his approval in written is taken followed by fitness checkup of the subject by the Physician, after which the Physician provides him the fitness certificate.

- **Pre-Narcotic State:**

The drug is injected in the body of the subject in prescribed amount in fixed intervals of 5 to 10 minutes and is made to enter narcosis stage during the entire interrogation process, as soon subject enters torpor state he is interrogated first with controlled questions followed by questions related to the case.

- **Semi-Narcotic Stage:**

The subject in this stage experiences slow and slurred speaking and is allowed nabs while the Anesthetic keeps a constant check upon his muscle and body movements along with constant monitoring of his heart beats and blood pressure.

- **Post Test Interview:**

The interrogation concludes and subject is relaxed and brought back to his senses.

After these stages a detailed report is prepared by the experts along with the recording of the entire process in audio and video is produced before the court.

III. ADMISSIBILITY IN COURT

The laws are the basic norms and essence of the society as well the country thus each legal system across the world deals with various conventional or specific fields in a way for laws to

¹⁴ What is Narco-Analysis?, available at: <https://www.ndtv.com/india-news/what-is-narco-analysis-417139> (Visited on April 30, 2021)

¹⁵ Ajay Kumar Barnwal and A. Nagendra Sole “Development of Narco Analysis Test as Investigation Technique In The Criminal Justice System: An Indian Perspective”, 21 IOSR-JHSS 97-102 (2016)

regulate and penalize crimes and techniques used for the purpose of investigation. Moreover, these legal systems are indulged with the use of new and effective modern investigating tools against the crimes which includes different forensic technique and predominantly the use of Narco Analysis Test.

The administration of Narco test involves making the subject into torpor state which is considered as the breach of fundamental rights of right to privacy of the subject. Moreover, there is no mention of Narco test as an evidence of any kind in Indian Evidence Act which puts up a question mark upon the use of this technique in India, which is world's largest democracy where the fundamental rights are supreme.

Whenever there is situation where the laws are silent at some concept and court is in doubt then the opinion of expert is considered to decide that matter as per the Section 45 of Indian Evidence Act yet in case of Narco Test although are performed by experts are admitted by court but only as a weak evidence. Also, in times Narco tests have proved to be great aid to investigation but still its reliability is in question as these tests are considered to be equivalent to mental torture to the subject and breach of their fundamental rights.

In the case of *Ramachandra Reddy and others v. State of Maharashtra*,¹⁶ the Hon'ble court decided upon the question of admissibility of Narco test outcomes produced before the court, of which the court held that to be admissible in court as evidence.

IV. EVIDENTIARY WORTH

The concept of Narco Test holds significant position in Criminal Justice System as a method with the investigation agencies which may provide leads of the case. The test is to be conducted with the consent of the subject and the assent of the court which can comprehend these tests as it is essential to know the purpose of the test for which they are being conducted upon the subject. The provisions of CrPC, constitution and the evidence act restricts the investigating authorities against forced conduction of these tests upon the subject as it could amount to infringement of fundamental rights.

The Supreme Court in the case of *Radhe Kishan v. State of Punjab*¹⁷ held that the Section 27 of evidence act is contrary to that of Article 20 (3) of the constitution to some extent as the outcomes of Narco test is admissible before the court thus indirectly accepting the incrimination of the subject against himself.

¹⁶ 2004 All MR (Cri) 1704

¹⁷ 1960 Cr L J 847

V. NARCO ANALYSIS AS VOLITATION OF FUNDAMENTAL RIGHTS:

The use of Narco technique puts up a question upon the fundamental as well the human rights of the subject before the legal system. Although the application of these techniques have proved to be of great assistance to the authorities but at the same time have also encroached the right of liberty, privacy and silence of the subject. However, in a democratic country like India where the rights of the subjects are supreme certain protections are provided to the subject under the constitution in form of:

- RIGHT TO SILENCE:

The right to silence is provided under Article 20 (3) of constitution and Section 161 (2) of CrPC, 1973 providing certain privileges as:

- To protection to accused of offence
- To protection against evidences against himself
- To protection against testimony against himself

The court in the case of *Nandini Sathpathy v. P.L.Dani*,¹⁸ held that involuntary statements by the subject during interrogation amounts to infringement of right to silence thus interfering with right to privacy.

The privilege is based upon the conventional principle of “Nemo Tenetur Seipsum Accusare” which is no man to incriminate himself for anything. The process of Narco Test involves administering a subject into torpor state and then extracting out information out of his mind, this process interferes with the right of silence as during the process subject may reveal what in his conscious he willing could not have made out.

RIGHT TO PRIVACY:

The right to privacy is one of the essential rights under Article 21 of the constitution which provide safeguards against inappropriate publicity as nothing can be published be it true or otherwise without the consent of the related individual yet if done it is infringement of right of privacy and doer is liable to compensate. However, in the process of Narco test information is taken out of the semi-conscious mind of the subject, which interferes with the right of privacy of the subject.

In the case of *Mr. X v. Hospital Z*¹⁹, the court held that right to privacy is not absolute if it is

¹⁸ 1978 AIR 1025

¹⁹ AIR 1995 SC 495

breached in public interest as to prevent crimes and disorders.

RIGHT AGAINST SELF-INCRIMINATION:

The safeguard against self-incrimination is based upon the principle of “Nemo Debet Prodere Ipsum” which is that a subject can’t be forced to produce evidence against him before the court. The privilege is provided under Section 27 of Indian Evidence Act, 1872 and Article 20(3) of constitution; however, it is silent on production of material things, specimen or exhibition of body as these can be obtained by court under section 73 of Evidence Act thus creating adversary. Moreover the Section 27 of Evidence Act will not apply if information obtained is not involuntary, therefore the true situation will be if:²⁰

- Both written as well oral statements of accused are included
- Subject is accused while his statement
- Testimony of the accused does not incriminate him
- Self-Incrimination is information that the accused is known of
- Production of documents in the court is not include under Article 20(3)

Also it is essential for the statement that is recorded is obtained without force from the subject.

In the case of *Yusufali v. State of Maharashtra*,²¹ the court held that the information by alleged is recorded when without his consent is admitted in court when produced if is for the purpose of injunction then there is no breach of rights provided under the Article 20 (3).

The Article 20 (3) of the constitution is applicable upon the subject and provides that:

- Burden of proof is upon the prosecution
- The accused not to involuntarily witness against himself
- Accused to be assumed to be innocent unless is proved guilty by the court.

Also if the confession by the accused is voluntarily and without coercion then the Article 20 (3) is not applicable over that confession of the subject.

In the case of *State of Bombay v. Kathi Kalu Oghad and others*,²² the court has held that to avail the privilege under Article 20 (3) accused must have been made to incriminate against himself.

²⁰ Avtar Singh, The Constitution of India, Central Publication, 1st edn., 2019, p.340

²¹ AIR 1968 SC 147

²² 1961 AIR 1802

In the case of *Jeetu Bhai Babu Bhai Patel v. State of Gujarat*²³, the Supreme court stated that if the Narco tests were conducted during investigation then it would not be considered as an infringement of Article 21 and Article 20 (3) of the Indian Constitution.

VI. CONCLUSION

The concept of Narco Analysis Test is one of the most debatable in legal field as well one of the crucial concept for investigating agencies. The technique is administered by injecting Scopolamine, Sodium Pentothal or Sodium Amytal within the body of the subject which brings him to the state of narcosis in a way to extract out information of his mind which may provide essential leads to the investigations but the legal system in India consider the test to be equivalent of mental torture and thus breaching the fundamental rights of privacy, silence and safeguards against self-incrimination.

The practice of Narco tests were although introduced to India by British but was re-introduced to independent India only in 2001 in the matter where the investigating agencies got a hold over close ally of Verrapan but after that the concept was rapidly used in various important cases and was highly effective in providing leads to the agencies but with its success came up the controversies in form of infringement of fundamental rights of the subjects undergoing the test.

Therefore, it is the high time when with the blend of modern scientific technology in crimes it is becoming more complicated for the agencies to solve the matter so to ensure justice to the subject, the legal system must also implement the use of modern methods in dealing with the offences.

²³ (2005) 10 SCC 545

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