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The Significance of Narco Analysis Test in Criminal Investigations: Evaluating its Acceptance and Importance

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ABSTRACT

The findings of a narco-analysis test can play a pivotal role as evidence in a criminal investigation. Nevertheless, the Indian Evidence Act of 1872 does not make any reference to the utilisation of this scientific method in the Narco-Analysis Test. There has been a significant debate in India regarding the use of narco-analysis tests for interrogation purposes. In the realm of legal research papers, it is understood that judges are not necessarily well-versed in every field, particularly those that demand specialized knowledge. In accordance with Indian law, witnesses are allowed to present facts without offering their own interpretations, while experts are given the opportunity to provide their expert opinions.

Within the framework of this examination in India, the central issue at hand pertains to the potential violation of Article 20(3) of the Indian Constitution by Narcoanalysis, which explicitly forbids self-incrimination. Additionally, are the assertions made in line with the test mentioned in question in line with the provisions of section 25 and 26 of the Indian Evidence Act? This paper will discuss the author's investigation into these issues and possible remedies for facilitating the implementation of Narcoanalysis.

Keywords: *Indian Evidence Act, 1872, involuntary administration, Narco-Analysis Test, constitutionality.*

I. INTRODUCTION

In the realm of forensic science, narcoanalysis—a relatively new research method—has become more and more well-liked in recent years. The Greek word "NARKE," which means "anaesthesia" or "torpor," is the source of the name "narcoanalysis." This is a term for a diagnostic psychotherapy method that uses psychiatric medications to cause stupor or severely lower sensitivity. This state allows the therapist (or investigating agency) to access and utilise mental elements with powerful associated affects for diagnostic purposes.²

¹ Author is a student at Symbiosis Law School, Pune, India.

² Dr. Shakeel Ahmad, *Narco-Analysis and Rights of Accused: An Appraisal 100 Civil & Military Law Journal* (2016).

II. POLYGRAPHIC TEST

The veracity of people's replies may be ascertained by measuring their physiological reactions with a polygraph during questioning. The gadget captures vital physiological metrics, including blood pressure, heart rate, respiration rate, and skin conductivity, and securely archives the acquired data. The polygraph is one of the instruments used in the area of lie detection. Its effectiveness is based on the assumption that responding truthfully to questions will result in a distinct physiological reaction, differentiating it from the response triggered by dishonest answers. The experiments rely on an assumption that poses a challenge, as there is no guarantee that dishonesty or deceit will trigger the **brain fingerprinting**.

Brain fingerprinting is a scientific approach that gauges the amount of recognition towards stimuli by analysing a person's electrical brain wave responses to given words, phrases, or pictures. According to this idea, the manner in which a suspect reacts to specific information about a crime might serve as an indication of whether or not they had previous awareness of the event. Brain fingerprinting measures neural responses to crime-related words and pictures, whereas polygraphs evaluate emotional reactions. This strategy is only relevant when the investigators have enough information about a particular occurrence or conduct that the perpetrator would be cognizant of. Hence, Brain Fingerprinting functions as a technique for identifying criminal knowledge, since those who are guilty will have discernible physiological alterations in reaction to the factual specifics of the incident.

III. COMPARATIVE STUDY

(A) USA

In recent times, the practise of conducting narco analysis- truth tests on suspects and accused individuals has become quite common. These tests are carried out by forensic scientists, as requested by investigating agencies. Courts authorize the use of this technique on suspects and deem the resulting information admissible. The utilization of narco analysis has been employed by the United States in its efforts to combat terrorism.³ In the case of *Indiana Police v. Edmond*, it was determined that the administration of truth serum could be carried out without the need for a warrant or probable cause.⁴

(B) India

In the case of *Jitu Bai Babu Bai Patel v. Gujarat*⁵, the judiciary in India has upheld the use of

³ . Dr. B. IJmadethan, "Medico-legal Aspects of Narco Analysis", *NUALS Law Journal* 21-32 (2008).

⁴ *Indian police v. Edmond*, 531 US 32 (2000)

⁵ *Jitu Bai Babu Bai Patel v. Gujarat*, (2005) 10 SCC 545

narco analysis. In the present case, the Supreme Court has held that performing a narco analysis test on the accused during the investigation stage does not infringe upon the constitutional protections provided by articles 20 (3) and 21 of the Indian Constitution. There are concerns surrounding the credibility of narco analysis⁶. It has become an alarming shortcut for investigation. Interestingly, India stands out as the sole country in the civilised world where investigative agencies employ narco analysis. Other countries have attempted, evaluated, and rejected narco analysis due to various concerns, including its lack of scientific validity, unreliability, and ethical and moral implications. There have been concerns raised regarding the potential violation of human rights from a legal perspective.

IV. NEED OF NARO ANALYSIS TEST

The technique used to carry out the offence has unquestionably developed. Overall, criminology has experienced significant growth in recent years. To enhance the efficiency of the investigation and accurately uncover the truth, it is imperative to employ a method for detecting deception. Considering that the dosage in this examination is administered exclusively by professionals or under their supervision, and the questions posed in the aforementioned test are exclusively prepared by experts, it can be concluded that conventional investigative methods, such as the use of physical coercion by law enforcement to obtain confessions, pose risks to the individuals involved.

The individual in charge of the investigation possesses the power to collect evidence, interrogate witnesses, and deliver legal documents in accordance with the Criminal Procedure Code, 1872 (referred to as Cr. P.C). When the investigating agency is unable to gather information through other means, despite their best efforts, narcoanalysis can serve as a valuable tool. The modern scientific examination helps safeguard society from the coercive methods employed by law enforcement officers, while also aiding investigative agencies in gathering concealed evidence and establishing the culpability or innocence of the defendant.⁷

V. CONSTITUTIONAL VALIDITY OF NARCO ANALYSIS TEST

Techniques such as narcoanalysis, brain mapping, and lie detector tests are not admissible in a court of law. The reason for the violation stems from the admission made during a state of unconsciousness. It is essential to analyse Article 20(3) to determine its legitimacy. As per

⁶ The Indian Supreme Court accepted a number of petitions in December 2007 that contested the police investigation's use of lie detector tests, brain mapping, and narco analysis and asked for the creation of norms in this area. Regarding these petitions, the supreme court has not yet rendered a decision.

⁷ Santokben Sharmanbhai Jadeja v. State of Gujarat, 2009 Cri LJ 68.

Article 20(3), individuals who are accused have the right to protect themselves by remaining silent, also known as the "**Right against Self Incrimination**" or "**Right to Silence**". Section 161(2) of the Criminal Procedure Code ensures that every person is entitled to protection against self-incrimination, safeguarding their right to remain secure. ⁹

Throughout the years, Indian courts have rendered numerous rulings regarding the admissibility of evidence obtained through narcoanalysis. In the case of **Ramachandra v. State of Maharashtra**,¹⁰ the Bombay High Court made a ruling stating that the Narcoanalysis test does not infringe upon the protection against self-incrimination provided by Article 20(3). In addition, the court has determined that the accused may only utilise Article 20(3) as a means of safeguarding oneself from self-incrimination in the event of coercion. When the accused chooses to testify, they are giving up the protection of not being prosecuted. Consequently, the individual who receives the truth serum will bear legal responsibility for any evidence they provide.

In the case of **Dinesh Dalmia v. State**¹¹, the court observed that the investigative agency frequently relies on scientific testing, such as Narco-analysis tests, when the accused has not disclosed the truth. These actions do not amount to forced testimony. Based on the given information, it is clear that conducting a Narco Analysis test does not inherently contravene Article 20 (3). To contravene Article 20(3) of the Indian Constitution, the accused is required to disclose evidence incriminating themselves. Therefore, engaging in a debate about the constitutionality of such tests is pointless.

The data collected from the test contains both statements that support innocence and statements that support guilt. Article 20(3) prohibits making incriminating statements. The determination of a statement's usefulness during an interrogation will only be made after conducting the necessary tests. During the proceedings of **Rock v. Arkansas**¹², the United States Supreme Court ruled in favour of allowing hypnotically refreshed testimony as admissible evidence. Similarly, in the case of **Selvi and Ors**¹³, the court permitted the use of the Narco analysis test, stating that it does not infringe upon Article 20(3) of the constitution.

Therefore, the determination of the test's constitutionality lies with the judiciary, as there is a connection between the interests of society and individuals. In most instances, the truth was

⁸ Constitution of India. art 20(3)

⁹ Code of Criminal Procedure, 1973, §161(2), No. 3 1973. (India).

¹⁰ Ramachandra v. State of Maharashtra, Criminal. Writ Petition No. 1924 of 2003

¹¹ Dinesh Dalmia v. State, 2006 CriLJ 2401

¹² 1987 44 US 483

¹³ Selvi & ors. v/s state of Karnataka 2010 (7) SCC 263

revealed through the application of a narco analysis test. However, concerns have been raised regarding the reliability of these tests. Therefore, the central government must enact legislation, specifically incorporating Article 20(3), to eliminate any doubts about the credibility of these truth-seeking examinations.

The court in the matter of Selvi and others allowed the use of hypnotically refreshed testimony as evidence, and also approved the use of the Narco analysis test, since it does not infringe against article 20(3) of the constitution.

Therefore, the responsibility for determining the legality of the test lies with the court, notwithstanding the interconnection between community and individual interests. In most instances, the truth was revealed through the application of a narco analysis test. Nevertheless, concerns have been raised regarding the reliability of such tests. Therefore, it is imperative for the central government to enact legislation, specifically incorporating article 20(3), in order to eliminate any doubts regarding the validity of these truth-discovering tests.

VI. ADMISSIBILITY OF NARCO TEST FROM AN EVIDENCE PERSPECTIVE

There is no specific law that dictates the acceptability of scientific evidence, such as the narcoanalysis test. The admissibility of narcoanalysis in court remains uncertain. Occasionally, the courts may permit the mentioned test to be utilised in scenarios where direct evidence is lacking. Consequently, the examination is solely permitted to address the lack of evidence in rare cases.

In the judicial pronouncement of *Rojo George v. Deputy Superintendent of Police*¹⁴, the court expresses its belief that modern criminals have adopted sophisticated and up-to-date methods to carry out their unlawful activities. Thus, alternative techniques like polygraph, brain mapping, and narco-analysis should be employed instead of the conventional methods of investigating and interviewing criminals. The court emphasised that claims of human rights violations against Indian citizens could not be raised if the procedures were conducted with the guidance of an expert.

The primary issue is to its credibility as a legitimate scientific tool in investigations and, eventually, as admissible evidence in a court of law. According to Section 24 of the Indian Evidence Act of 1872, confessions that are gained via enticement, compulsion, or assurance are not acceptable in a court of law. Due to the absence of cognitive control during narco-analysis, people are driven to answer questions without their own decision, resulting in the unreliability

¹⁴ Rojo George v. Deputy Superintendent of Police, High Court Kerala Writ Petition P(C) No 6245 of 2006 (U)

of the offered responses. During a narco-analysis test, the suspect is interrogated by the investigating authorities or the police while physicians are present. The confessional statement given during this procedure is regulated under Section 25 of the Indian Evidence Act of 1872.

However, if the Narcoanalysis test is performed in the presence of the magistrate, the resultant confession would have legal significance and be exempt from the conditions specified in sections 25 and 26. The lack of conscious control by the patient renders the test findings inadmissible as evidence, even if the accused provides permission, as shown in the *Selvi and Ors. v. State of Karnataka* case. Nevertheless, the court acknowledged the potential for allowing the inclusion of any material or information obtained during the examination provided the individual gives their agreement, as outlined in section 27 of the Indian Penal Code (IPC). Moreover, it has been established that any remarks given to law enforcement authorities, including confessions, are inadmissible as evidence in a court of law, in accordance with section 25 of the Evidence Act. Consequently, the court has ruled that any utterances made by the individual while under arrest cannot be used as proof unless they can be disputed via cross-examination or assessed by a judge.

The court determined that the compulsory implementation of these approaches would violate Article 20(3). The court highlighted that the findings from these tests cannot be considered as standalone evidence, even if the individual had previously agreed to participate in them. This is because the person does not have conscious control over their responses while undergoing the test. Nevertheless, in accordance with Section 27 of the Evidence ¹⁵Act, any information or material that is discovered afterwards through the assistance of findings from tests that were performed voluntarily may be deemed admissible.

Thus, the Supreme Court acknowledged the potential validity of the test, except for instances where it is administered voluntarily. In such cases, any information obtained through the use of such a test may be admissible as evidence. There is a legitimate concern regarding the ethical implications of individuals freely contributing to a subject that has potentially harmful effects on the body.

(A) Compared with US Law

The narco test conducted by the United States government is a highly controversial investigational procedure that raises concerns about its constitutionality. The use and research of truth serum are prohibited by both US law and the standards set by the European Court of Human Rights. The United States government considers the utilisation of truth serum as a

¹⁵ The Indian Evidence Act, 1872, §27, No. 01, Imperial Legislative Council, 1872 (India).

method of torture and a breach of the Inter-American Convention Against Torture. Due to its historical association with the mistreatment of schizophrenic patients and Dr. William Black Won's groundbreaking research on drug suggestibility, the involuntary administration of truth serum is widely regarded as a form of torture in the United States. In 1963, the Supreme Court of the United States made a decision declaring the use of truth serum as unlawful and called for the cessation of narco-analysis. The court has determined that the use of truth serum is considered "unconstitutionally compelled" and therefore cannot be used as admissible evidence in any legal proceedings.¹⁶

VII. CRITICAL ANALYSIS

Dr B.M. Mohan., Director of FSLBangalore highlights that narco analysis has a screen rate of 96-97%, indicating that it is not entirely foolproof. From his point of view, narco analysis was flawed and required debunking.¹⁷

There are several shortcomings in the polygraph that lead to unreliable outcomes. Individuals who are under suspicion may understandably be reluctant to provide detailed responses due to feelings of fear and uncertainty. There is a potential for misinterpretation, leading to the perception of dishonesty.

It becomes more challenging for the interrogator or examiner to comprehend the evidence when the accused, witness, or victim lacks rationality. Determining the appropriate drug dosage can be challenging as it is contingent upon the individual's mental and physical well-being.

There is no assurance that a concerned test/experiment will produce the desired outcome. Many individuals' responses on drug tests often stray from the main topic, occasionally divulging personal information. That test violates the individual's *right to privacy*.

The Supreme Court has granted authorities the discretion to determine various aspects of test implementation. The application of such tests has primarily been limited to voluntary situations. In certain circumstances, a person might be compelled to undergo a process, rendering the judgement devoid of significance.

Several subsequent rulings have employed these procedures to gather evidence and reach a

¹⁶ LAKSH RAWAT, Critical Analysis of Narco Test: A Comparative Study with Special Reference to the India and United States, SOUTH ASIAN LAW REVIEW JOURNAL. <https://thelawbrigade.com/wp-content/uploads/2019/06/LAKSH-RAWAT.PDF>

¹⁷ SOURODIP NANDY, HIMANSHU CHAWALA, Constitutionality of Narco Analysis & Polygraph Examination, INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES, <https://www.ijlmh.com/wp-content/uploads/2019/10/Constitutionality-of-Narco-Analysis-and-Polygraph-Examination-1.pdf>

verdict, following the *Selvi v. State of Karnataka*¹⁸ case. As one of the most well-known murder trials in history, *Nupur Talwar vs. CBI*¹⁹ and Another needs no introduction. Due to a lack of conclusive evidence, the investigation could not proceed. Nupur and Rajesh Talwar underwent a narco-analysis examination. Despite the tests conducted, no definitive conclusions could be reached as they yielded identical results about the identity of the perpetrator of the murder. The lack of adequate training among the current authorities in the country has significantly hindered the progress of the justice system. This case has highlighted the importance of enhancing the calibre of forensic science in the legal system.

As evident from, the Supreme Court's ruling in the Selvi case has created an opportunity for continued utilisation of the tests. Decisions regarding the necessity of these tests are still made on a case-by-case basis.

VIII. CONCLUSION AND SUGGESTION

In these contexts, there are two main concerns: *first* is that the issue of self-incrimination, and *second*, statements that contravene sections 25 and 26 of the India Evidence Act, 1872²⁰. Based on the preceding discussion, it is evident that the Narcoanalysis test infringes upon the right of the suspect and the accused to not incriminate themselves, as stated in Article 20(3). In the case of *Rohit Shekhar v. N.D. Tiwari*²¹, the Delhi High Court made a ruling stating that when there is a conflict between individual and societal rights, the latter will be given priority. Due to this factor, the Supreme Court refrained from making a definitive ruling regarding the admissibility of the voluntary test.

Here are some recommendations. Permitting the use of the Narcoanalysis test in the presence of a judge and acknowledging it as admissible evidence might be advantageous in instances concerning terrorism, rape, and other abhorrent offences that significantly affect the collective moral consciousness of society. Moreover, given the egregious torment imposed by the police officer, the test's effect is not as substantial. Additionally, a series of criminal incidents must occur to facilitate the use of narcoanalysis. Ultimately, only those individuals who were present during the examination will have access to the announcement of the findings.

Internationally, certain countries impose strict restrictions on the utilisation of scientific tools, whereas others have implemented regulations to govern the validity of experiments. There has been no clear endorsement or rejection from the Indian legislature or judiciary regarding the

¹⁸ Selvi v state of Karnataka, SC CrLP No. 1264 of 2004

¹⁹ Nupur Talwar v CBI, SC CrLP No. 68 of 2012

²⁰ ibid

²¹ Rohit Shekhar v. N.D. Tiwari, (2013) 12 SCC 554

utilisation of scientific methods in investigations. In order to sustain India's dedication to protecting individual freedoms and providing a just and transparent criminal justice system, it is imperative for the Central government to adopt a firm stance on the policy of narco analysis.

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