

An Overview of the Narco Analysis Test from the Legal Perspective

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ABSTRACT: Just one change has remained constant throughout, since the beginning of time, and that is change. In every part and parcel of our lives, such a transition is seen. To battle against the rigors of change, even a well-defined legal structure needs to adapt itself. The flag bearer of such a transition is the NARCO Analysis Test. This is the period of modernization, and the NARCO Test is such a modern instrument that might allow the system of justice administration to have an edge over all offenders who do not shy away from using the most modern tactics to ridicule the Indian Legal System. The NARCO Test will prove to be a great leveler and can put behind the bars the offenders. Much has been heard and said about the NARCO Analysis Test concept. The public image is a negative one more often than not. The purpose of this paper is to dissipate this rumour and provide arguments for the pros and cons of the NARCO Test for both perspectives. The Indian Judiciary has also been weighing up on the NARCO Test factor. The paper deals with the dimensions of such a test's constitutionality. The paper tries to recognize the glaring lacunae in the implementation of such a test and its admissibility in the court of law.

KEYWORDS: Administration, Criminals, Indian Legal System, Indian Judiciary, NARCO Test.

I. INTRODUCTION

Among the legal fraternity, the media and the popular masses, narco-analysis has recently become the most debated subject. The creation of new forensic methods has contributed to the emergence of scientific interrogation tools for narco-analysis experiments. With the recent emergence of technology in every field of existence, the consequences of criminal investigation are no longer left out. One of such scientific forms of investigation is narco-analysis, in which some sort of statement from the accused is obtained that may shape evidence. On such jobs of the scientific method, the Evidence Act is wholly silent. This approach has also been criticized as opposed to the values of the Constitution and, on the other hand, has been upheld as a requirement to analyze such complex issues[1].

The term Narco-analysis is derived from the Greek word *narkō* (meaning 'anesthesia' or 'torpor') and is used to describe a diagnostic and psychotherapeutic technique that uses psychotropic drugs, especially barbiturates, to induce a stupor in which mental elements with strong associated effects come to the surface, where the therapist can exploit them. Horsey invented the word Narco-analysis. At the intersection of law, medicine and ethics, narco-analysis poses multiple questions[2].

Is the narco-analysis protocol a violation of the protection granted under Article 20(3) of the Constitution against self-incrimination? Recently, when it became eye of storm, it figured prominently in the news and sparked off the debate when media played the role of Unnao rape case in Uttar Pradesh. When he applied for a Narco test for fairness and confidence in the criminal justice system, the accused was subjected to a Narco-analysis test[3].

II. NARCO-ANALYSIS METHOD

In narco-analysis, intravenous medications are administered, so that the person passes through different stages of consciousness. The hypnotic stage is considered one such stage of consciousness. The subject discloses this truthful knowledge at this point of hypnosis, which they would not have in their consciousness. In addition, the subject also

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reveals his misinterpretations, fantasies, wishes and other information that, depending on the information provided, may be relevant or irrelevant. The main drawback of this is that a few manage to lie even during the hypnotic stage, and in some instances, the subjects become very suggestible, thus prone to being swayed away[4].

Issues surrounding narco-analysis

If several issues arise when narco-analysis is used without consent, hereafter I will mention a few such issues as follows:

- The attack can involve anything ranging from a slap to shaking the body when the person is physically assaulted in the hypnotic stage. Such a problem occurs because the person under hypnosis needs to be constantly awakened to address the question. Other painful injections often come under physical assault.
- Mental assault, apart from physical assault, cannot be ignored. It can affect how a person responds mentally when such a drug or injection is administered and can be counted as a mental assault. In addition to this, the subject discloses a lot of private information in the hypnotic process, which ensures that narco-analysis often violates the subject's privacy.
- Apart from this, the medical fraternity has a lot of debate and this approach has not shown adequate results in the treatment of any psychiatric problem. This approach has been known for quite some time now, but there are very few academic studies to support the hypnosis claim[5].

Constitutional & Legal Provisions on Narco-analysis in India

As admissions made by a semi-conscious person are not admissible in court, such tests usually do not have legal validity. However, the court can, after considering the circumstances in which the test was obtained, grant minimal admissibility. In one of the cases, the petitioners could not order the prosecution to conduct Narco analysis, brain mapping, and lie detector tests against the accused's will, as it would be contrary to Article 20(3) of the Constitution. The main provision in the Indian Constitution regarding crime investigation and trial is Art. 20. (3). The right against self-incrimination is discussed[6].

A basic canon of common law criminal jurisprudence is the right against 'auto-incrimination. Article 20(3) that embodies this right reads, "No person accused of an offense shall be forced to be a witness against himself." Subjecting the accused to undergo the test, as the investigative agencies in India have done, is seen by many as a blatant violation of Article 20(3) of the Constitution.

The implementation of the test for narco-analysis covers the basic issue of judicial matters as well as human rights. The legal role of applying this technique as an investigative help poses real issues such as infringement of the rights, liberty and freedoms of a person. It must be seen in the case of State Bombay v. Kathikalu[7] that the accused was forced to make a statement likely to be self-incriminating. Compulsion means coercion, which entails assaulting, beating or imprisoning a wife, parent or child of an entity. Therefore, Art 20(3) does not apply when the accused makes a confession without any inducement, threat or pledge.

In addition, it is well known that, in the case of Nandini Sathpathy vs P.L.Dani[8], the right to silence was given to the accused by virtue of the pronouncement; no one can physically extract answers from the accused, who has the right to remain silent during the course of the questioning (investigation). Forcible interference into one's mind is restored by the administration of these examinations, thus nullifying the validity and integrity of the Right to Silence.

Narco-analysis in India

Narco-analysis is still being used by a few democratic countries, most notably India. In most developed and democratic countries, narco-analysis is not freely allowed for investigative purposes. A team consisting of an anesthesiologist, a psychiatrist, a clinical/forensic psychologist, an audio-videographer, and supporting nursing staff is conducting the Narco-analysis test in India. The forensic psychologist prepares a report, accompanied by a compact disc of audio-

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video recordings, about the revelations. If required, the intensity of the revelations is further checked by subjecting the person to polygraph and brain mapping tests.

Narco-analysis is now actively being integrated into India's inquiries, court trials, and laboratories every day. In the case of *State of Bombay v. KathiKaluOghad*, the judgment of an eleven-judge bench in which it was found that self-incrimination requires transmitting information based on the person's personal knowledge and cannot involve merely the mechanical method of producing documents in court. In the case of *Ram JawayyaKupar*, it has been held that executive power should not interfere with either constitutional rights and freedom or any other rights of an individual, and it has also been observed that an infringement into fundamental rights must be struck down as unconstitutional in the absence of any statute.

Admissibility in the court

Although Narco-analysis gave an immense amount of data, it also triggered many questions as several critics shared a deep sense of skepticism about the administration of serum on the witness to extract the truth. In gathering and supporting evidence, narco-analysis is regarded as a tool or aid. Nevertheless, questions arise as to whether it led to testimonial compulsion in the judiciary and the infringement of human rights, individual liberty and liberty. Lawyers are divided on whether the results of the Narco-analysis and P300 tests are admissible in court as evidence, as they claim that confessions made by a semi-conscious individual are not admissible in court. A test report on narco-analysis has some validity but is not fully admissible in court, which takes into account the circumstances under which it was acquired and assesses its admissibility. It is possible to use the findings of such studies to obtain admissible proof, to cooperate with other evidence or to support other evidence. However, if the outcome of this examination is not admitted to the court, no further proof gathered during the regular investigation could be used to support it[9].

In the case of the Godhra carnage in India, Narco-analysis was first used in 2002. It was also in the news after the famous Arun Bhatt kidnapping case in Gujarat that the defendant appeared against the Narco-analysis before the NHRC and the Supreme Court of India. It was in the Telgi stamp paper scam news again when Abdul Karim Telgi was put to the test in December 2003. While an enormous amount of information was given in the case of Telgi, questions were raised about its value as evidence. In the background of the notorious Nithari village (Noida) serial killings, narco-analysis was in the limelight. In the Nithari serial killings, Mohinder Singh Pandher and SurendraKohli were subjected to narco-analysis tests at Gandhinagar in Gujarat by the two main defendants[10].

III. CONCLUSION

Law is a living mechanism that changes in culture, science, and ethics and so on according to the changes. As long as they do not contradict basic legal values and are for the benefit of society, the Legal System should incorporate innovations and advancements that take place in science. A few democratic countries, most notably India, are still using narco-analysis. The problem of using the Narco analysis test as an investigative method has been widely discussed in India. In our legal system and our culture, the degree to which it is recognized is something that will become clearer in the near future. Different High Courts have given orders confirming the validity of the Narco report. These decisions are in stark contrast with the Supreme Court's earlier judgments interpreting Art. 20.(3). The reality lies in the fact that in the Indian criminal justice system, without any rules or guidelines, Narco analysis is still a nascent interrogation technique. Different High Courts were ordered to uphold the validity of narco-analysis. These decisions are in stark contrast with the Supreme Court's earlier judgments interpreting Art. 20.(3). A strong policy stance on narco-analysis must be taken by the central government because what is at stake is India's dedication to individual freedoms and a clean system of criminal justice.

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