



LGJ

**LAWYERS GYAN
JOURNAL**

Online Quarterly Journal

LAWYERS GYAN PRESENTS

LAWYERS GYAN JOURNAL

on Law and Multidisciplinary Issues.

VOLUME 1 - ISSUE 1



AUGUST 2024

LGJ is a peer-reviewed Online Quarterly Journal. The aim is to promote legal research work, enhance legal academics, and to promote legal writing among law students and young academicians.

EDITED BY:

LAWYERS GYAN JOURNAL
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**“NARCO ANALYSIS: A VOLCANO IN THE
CRIMINAL JUSTICE SYSTEM”**

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ABSTRACT

Law is a dynamic field; it cannot be stagnant with relevance to the change in society and hence has to keep in touch with the changing social order. It is understood that the judiciary must stay in touch with the progress made by humanity. Therefore, to fight organized crime and aid the process of investigation, new prevention methods need to be employed simultaneously. If the criminals take the help of new and upcoming technology to commit crimes, it is the demand of the time for the enforcement agencies also to use new techniques to investigate the crimes committed. Horseley coined the term Narco-analysis. In 1922, Narco-analysis reached its height as Robert House, a Texas Obstetrician, used a drug on two prisoners to extract information pertinent to a case.¹

The Paper focuses on The constitutional validity of the Narco-analysis test is questioned because it seems to infringe Article 21 as well as Article 20(3) that covers the right to life and liberty as well as the right against self-incrimination.²

Narco-Analysis in India and will discuss the history of the test in India with the help of cases, procedure as well as the importance of such a test, secondly the evidentiary value and constitutionality of the analysis with particular emphasis on Article 21 and 20(3). Thirdly, it shall discuss the admissibility of such a test in the court of law and, lastly, the criticisms that the test faces. The conclusion will put forward the findings of the study that attempts to answer the questions that (a) Whether Narco-analysis violates established principles of Article 20(3) of the Constitution and Section 161(2) of the CrPC speaks about that no person accused of any offense shall be compelled to be a witness against themselves? And (b) Whether Narco-analysis holds evidentiary value in courts?

¹ Asmita Chakroborty, Narco Analysis: A Double Edged Sword?. Droit Penale: Indian Law Journal on Crime And Criminology. Vol. 2 Issue 2

² Article 20(3) "No person can be compelled to be a witness against himself". Administering hypnotic drug is not compulsion under Article 20(3) laid under case of state of Mumbai vs KathiKalu, 1961 (2) Cr Lj 856 (SC)

CHAPTER 1: INTRODUCTION

Law is a dynamic field; it cannot be stagnant with relevance to the change in society and hence has to keep in touch with the changing social order. It is understood that the judiciary must stay in touch with the progress made by humankind. Therefore, to fight organized crime and aid the procedure of investigation, new prevention methods have taken simultaneously. If the criminals take the help of new and upcoming technology to commit crimes, it is the need of the hour for the enforcement agencies also to use new techniques to investigate the crimes committed. Horseley coined the term Narco-analysis. In 1922, Narco-analysis reached its height as Robert House. A Texas Croaker used a drug on two inmates to extract information pertinent to a case.³ The test involves the use of certain substances in controlled quantities to be injected into the body for two-three hours so that the convict goes into a hypnotic trance. It is followed by an interrogation which is recorded in audio or video cassettes. Narco analysis was conducted in 2001 for the first time in India. Bangalore Forensic Science Laboratory conducted it on an individual associated with offenses committed by *Veerappan*.⁴ It was Krishna Iyyer J. who remarked that "the courts self-criminate themselves if they keep the gates partly open for the culprit to flee the justice under the guise of interpretative enlargement of the golden rule of criminal jurisprudence."⁵

It has been theoretically established that the need to extract data so that investigation is aided and completed is immensely important, it is still a question of interest whether these tests are valid and comply with the principles of natural justice⁶. The Principle of Natural Justice and Human rights, which was guaranteed to every citizen against the arbitrary action of Legislative and Executive, given under Part III of the Indian Constitution, 1950. In which it includes Right guaranteed under Article 21, 19, and 14 of the Constitution of India⁷. Narco-analysis acts as a double-edged sword that is a boon for the investigation process but is a curse concerning the rights of the person. The constitutional validity of the Narcoanalysis test is questioned primarily because it seems to infringe Right to Life and Liberty under Article 21 as well as Article 20(3)⁸

³ Asmita Chakroborty, Narco Analysis: A Double Edged Sword?. *Droit Penale: Indian Law Journal on Crime And Criminology*. Vol. 2 Issue 2

⁴ Naresh Kumar And Ved Pal Singh, "Narco Analysis Test In Investigation Process". *Law and Judicial XIV, MDU, Law Journal* 108 (2009).

⁵ (2011) PL July

⁶ Gowsia Farooq Singh, Narcoanalysis: A Blessing To Criminal Justice System, *International Justice of Law*, Vol. 4 Issue 2 (2018)

⁷ Right to Life and Liberty, Right to Freedom of Speech, Right to Equality.

⁸ privilege against self-incrimination.

of the Constitution. Additionally, there is always a question raised on the result of the test and its evidentiary value and its conflict with the provision of the Indian Evidence Act 1872.⁹

Narco-Analysis in India and will discuss the history of the Test in India with the help of cases, procedure as well as the importance of such a test, secondly the evidentiary value and constitutionality of the test with particular emphasis on Article 21 and 20(3). Thirdly, it shall discuss the admissibility of such a trial in the Court of law and, lastly, the criticisms that the test faces. The conclusion will put forward the findings of the study that attempts to answer the questions that (a) Whether Narcoanalysis violates established principles of Article 20(3) of the Constitution and Provision of the Criminal Procedure Code¹⁰, which say that person accused should not be made to be a witness against themselves? And (b) Whether Narcoanalysis holds evidentiary value in courts?

CHAPTER 2: USE OF NARCO ANALYSIS

Many Democratic Country has banned the use of the narco analysis technique like India continue to use Narco-analysis. In recent times, India is allowing Narco-analysis to be steadily mainstreamed into criminal investigations, court hearings, and laboratories and has also passed under the judicial scanner. The usage of such tests in criminal investigation has become alarmingly common in India. Especially in high-profile cases such as the Nithari killers and the Mumbai train blasts, suspects have been whisked away to undergo Narco-analysis. This has resulted in increasing criticism from the public and the media in the country.

In India, the Narcoanalysis test is mainly done in Forensic Labs at Bangalore and Ahmadabad. It is done by a team comprising of an anaesthesiologist.¹¹ In India, like other countries, the Narco-Analysis test is also conducted by a police officer for assistance in extracting a confession from the accused person. In so many years, there is in the news as effective and efficient Techniques of Interrogation, which was used by various investigative agencies in many cases. For example, it was used in 2003, In the case of *Abdul Karim Telgi*¹², *Aarushi*

⁹ Article 20(3) "No person can be compelled to be a witness against himself". Administering hypnotic drug is not compulsion under Article 20(3) laid under case of state of Mumbai vs KathiKalu, 1961 (2) Cr Lj 856 (SC)

¹⁰ Section 161(2).

¹¹ Sonakshi Verma, 'The Concept Of Narco analysis In View Of Constitutional Law And Human Rights' available at http://www.rmlnlu.ac.in/webj/sonakshi_verma.pdf

¹² *Abdul Karim Telgi and Sohailvs. Union of India, through CBI*, High Court of MP .April 3.2016.

*murder case*¹³, *Nithari case*¹⁴, etc. In this way, it has vast importance in the field of legal science.

CHAPTER 3: EVIDENTIARY VALUE AND CONSTITUTIONALITY OF NARCO-ANALYSIS

The Confession given during the narco test is not valid because the person is confessing in the semi-conscious mind, which is not admissible in the Court of law. There are exceptional circumstances where the Court affirmatively gives admission of the Confession made out of the Narco test. This is so because tests such as Narco-analysis, brain mapping, and lie detector tests, if conducted, then it violates the fundamental right of convict guaranteed under the Constitution of India¹⁵.

The Position of the legality of the test lies in the application of the technique in the investigation, which can infringe on individuals' liberty and freedom guaranteed under Article 21 of the Constitution of India. In the case of *State Bombay v. Kathikalu*¹⁶, it was held by the Court that it must be shown that the accused was compelled to make a statement likely to be incriminatory to himself. The meaning of compulsion is pressure, which compromising, beating, or detainment of spouse, parent, or children of the individual.

The Section 161 (2) of the Criminal Procedure Code provides a protection to citizen's right against self-incrimination¹⁷. It is assumed that the Narco Test comprises of torture, including Mentally and physically upon convict or accuse, which violates the rights guaranteed under article 21 of the constitution of India¹⁸.

In the famous case, which is also known as the *Nithari Murder case*¹⁹ Narco-Analysis test was conducted on Surender Koli and Mohinder Singh Pandher in Jan 2007, who was the main accused in the famous Nithari Murder case. This test was conducted to ascertain the veracity of their statement during their custodial interrogation. In the period of the trial, the accused

¹³ 2013(83) ALLCC 283, *Dr Rajesh Talwar and Another v. Central Bureau Investigation through its Director and Other*.

¹⁴ AIR 2011 SC 970, *Surendra Koli v. State of Uttarpradesh*.

¹⁵ Art 20 (3) says that which is the central provision regarding crime investigation and trial in the Indian Constitution is Art. 20(3). It deals with the privilege against self-incrimination.

¹⁶ Air 1961 Cri L J , Vol 2, 2007.

¹⁷Section 161(2) in The Code Of Criminal Procedure, 1973,(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

¹⁸ *Article 21 of Indian Constitution*.

¹⁹ AIR 2011 SC 970, *Surendra Koli v. State of Uttarpradesh*.

provided the information related to murders and raping of females and children. Thus the result of the test gives much relevant information that was disclosed to the investigating authorities. In the famous case of *Arushi Talwar Murder case*²⁰, In this case, Arushi, a 14-year girl, was found to be dead in the home on 16-05- 2008. The parents made the report of Arushi in the police station. In this case, Hemraj, who was a domestic servant in the house of Arushi, was suspected of the murder of Arushi. Also, the dead body of Hemraj was found on the terrace of the house of Arushi after two days. The police arrested the parents of Arushi. In this case, the NarcoAnalysis test, Polygraph test, and Brain mapping test were conducted on the accused person. It has been pleaded before the Court that these results of the test cannot be admissible as evidence in the Court.

The Court held it on behalf of the judgment of *Selvi v. State of Karnataka*²¹ that the authority cannot conduct such tests if the accused person has not given the consent. The trial court negatively issued its judgment that the Narco Test result cannot be admissible in the Court because the subject of the test does not have any conscious control over response at the time of conducting tests.

In the case of *Rojo George Vs. Deputy Superintendent of Police*²², while allowing the narco-analysis test, Court believes that in the present-day, there are many new techniques which is used by the criminals for committing any crime. Court also said that when such methods have been used in the presence of an expert, then it can't be raised that the investigating agencies violated the fundamental human rights of any citizen of India.

CHAPTER 4: NARCO-ANALYSIS AND ITS ADMISSIBILITY IN COURTS

There is an absence of a law that deals explicitly with the admissibility of scientific evidence, which includes the Narcoanalysis test. But in some cases, as stated above, the Court shall allow the usage of such examination, especially when there is no evidence except the circumstantial evidence.²³ Thus, in rare cases, the Court shall allow the test to fill the vacuum in the pieces of evidence. The core issue is that the pieces of evidence collected from the test is hit by section

²⁰ 2013(83) ALLCC 283, *Dr Rajesh Talwar and Another v. Central Bureau Investigation through its Director and Other.*

²¹ AIR 2010 SC 340.

²² AIR 1953 SC 131

²³ Barcelana Panda, "Narcoanalysis and its evidentiary value in India", The Practical Lawyer (2011).

25²⁴ and 26²⁵ of the Indian Evidence Act, 1872. But if the Narcoanalysis test will be conducted in the presence of the magistrate, then it would be a valid confession, and it will not be hit by sections 25 and 26.

In the case of *State of Gujarat v. Anirudh Singh*,²⁶ the Supreme Court held that every witness has to aid in the interrogation. In the *Shashi Murder case*, the Court allowed the Narco-analysis test; the Chief Judicial Magistrate permitted the police to conduct a Narcoanalysis test on Vijaysen Yadav, the main accused. In another case, *Satakben Sharm and Hailodeji v. the State of Gujarat*²⁷, the Hon'ble High Court granted permission for the Narco-analysis test despite the opposition made by the accused. As in the case of *Selvi & Ors. v. State of Karnataka*²⁸ the Supreme Court also held that if the accused voluntarily give consent to conduct Narcoanalysis test upon him then that later on statement used as a discovery statement under section 27 of the IEA. Hence the question that should arise is that if such a test should be considered to be harmful in nature and effect to the body due to the drugs used while administering such a test, why should it be admissible merely because of "voluntary administration."

CHAPTER 5: CRITICISM OF NARCO-ANALYSIS TEST

Narco-Analysis has been criticized on several grounds. They are summarized below:

1. In Narco-Analysis, by learning certain tricks, subjects can make false statements. Also, if the subject has been a drug addict or alcoholic previously, then their tolerance level to the drugs administered will be higher and can make false statements in a semi-conscious state and tell lies.
2. According to Dr. B.M.Mohan, Director of FSL, Bangalore, this test is not 100% accurate. His data states that Narco-Analysis has only 96-97% of the total screens rate. Hence, it can be said that Narco-Analysis should be discredited.

²⁴The Indian Evidence Act, 1872; Section 25: Confession to police officer not to be proved.—No confession made to a police officer, shall be proved as against a person accused of any offence.—No confession made to a police officer, shall be proved as against a person accused of any offence."

²⁵The Indian Evidence Act, 1872; Section 26: Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person." 2[Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George 3[***] or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882)4].

²⁶MANU/SC/0749/1997.

²⁷2008 Cri.LJ 68 (Guj).

²⁸AIR 2010 SC 340.

3. It is tough to suggest an exact dosage of the drug for a particular individual because the mental and physical structure of individuals varies from others. It can cost life to an individual if he has given the wrong dosage.
4. Dr. P. Chandra Sekharan, the highly regarded former director of the Forensic Sciences Department of Tamil Nadu, has characterized the practice as an unscientific, third-degree method of investigation.

CHAPTER 6: CONCLUSION

In the present times, technology is changing rapidly, and due to such quick advancement, the crime pattern has also changed. Criminals have replaced traditional methods with advanced technology to commit such crimes. Such brutality has shaken the conscience of society, and that is why there is a need to change the tools of the interrogation. There are various modern tools of the investigation which help in such interrogation. Narcoanalysis is one of the means of modern scientific instruments. As discussed in Chapter 3 of the paper, in cases where there is no such evidence available, Narco-Analysis can play an immense role in the investigation. But in India, there is still no confirmation for admissibility of the test. It varies concerning the need in the case. There are no particular provisions that deal with scientific tools. The discretion lies in the hands of the judiciary to allow or not to enable the Narcoanalysis to test.

There are mainly two issues in this context, firstly self-incrimination, and secondly, the statement hit by sections 25 and 26 of the IEA, 1872. From the above discussion, it just said that there is no doubt regarding the violation of Article 20(3) if the test is conducted without the consent of the accused, which includes the suspect, too, as it violates the right to self-incrimination. But in the case of *Rohit Shekhar v. N.D Tiwari*,²⁹ the Delhi high court held that where there is a question between the individual freedom and societal right, then in those cases, the societal interest will prevail over the particular part. Thus, the Supreme Court also left the door open for the admissibility of the voluntary test.

It is suggested that if there is a provision in the Legislature that would allow the Narco-Analysis test before the magistrate and then allow it as evidence, then it would be beneficial in cases like terrorism, rape, and such other heinous crime. Secondly, as stated in Chapter 5 of this paper, the test is harmful to the body; it can be argued that the test is not as dangerous as third-degree torture to which suspects were usually subjected. Thirdly, there should be a list of crimes in

²⁹(2012) 12 SCC 554

which Narco-Analysis should be allowed or not, which would make the conducting of such procedure easier as the Indian Legislature does not ultimately allow or disallow the scientific methods as an investigation tool.

BIBLIOGRAPHY

Primary Resources

Books referred:

- BR Sharma, *FORENSIC SCIENCE IN CRIMINAL INVESTIGATION AND TRIALS*, (5th Edition) (2016), Universal Law publishing.

Acts and Statutes referred:

- The Indian Evidence Act, 1872
- Criminal Procedure Code , 1973
- Constitution of India , 1950

Cases referred:

- State Bombay v. Kathikalu AIR 1961 Cri L J, Vol 2, 2007
- Nandini Sathpathy v. P.L.Dani AIR 1978 SC 1025
- M.P.Sharma v. Satish Chandra AIR 1954 SC 300
- Rojo George Vs. Deputy Superintendent of Police AIR 1953 SC 131
- State of Gujarat v. Anirudh Singh MANU/SC/0749/1997
- Satakben Sharm and Hailodeji v. State of Gujarat 2008 Cri. L.J. 68 (Guj)
- Selvi & Ors. v. State of Karnataka AIR 2010 SC 340
- Rohit Shekhar v. N.D Tiwari,(2012) 12 SCC 554

Secondary sources

Research Paper:

- Arvindeka Chaudhary, *Narco-Analysis, Polygraphy, and Brain-Mapping: A glimpse*. Retrieved on 5th March 2020
- Asmita Chakroborty, *Narco Analysis: A Double-Edged Sword?*. Droit Penale: Indian Law Journal on Crime And Criminology. Vol. 2 Issue 2
- Naresh Kumar And Ved Pal Singh, "*Narco Analysis Test In Investigation Process*." Law and Judicial XIV, MDU, Law Journal 108 (2009).

- Gosia Farooq Singh, *Narcoanalysis: A Blessing To Criminal Justice System*, International Justice of Law, Vol. 4 Issue 2 (2018)
- Shalini Tyagi, *Importance of Narco Analysis Test in Investigation and its Admissibility*, JLSR The Law Brigade Vol 3 Issue 1



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