

ADMISSIBILITY OF NARCO-ANALYSIS

Written by Aban Philip

3rd Year BBA LLB Student, Christ (Deemed to be University)

ABSTRACT

Law is dynamic and not static and therefore, as society advances, law needs to keep in consonance with the changing social order. Law is the instrument of societal change and the judiciary has the responsibility of interpreting the law for the greater good. Therefore, it is clear that the judicial mind must stay in touch with the advancement of humanity. The enforcement agencies must use new technologies, more than or in parallel to the criminals. To combat organised crime, its detection, investigation and prevention method have to be employed synchronously.¹ Krishna Iyyer J. Remarked, “the courts self-criminate themselves if they keep the gates partly open for culprit to flee the justice under the guise of interpretative enlargement of golden rule of criminal jurisprudence.”² Around the world, techniques for law enforcement are seeing major changes with advancement in science and technology. The present society needs the most recent scientific methods for recognising the crimes. There are a several techniques for criminal examination to recognize lying and deception by suspect and accused. Most of the strategies are established on torture, either physical or mental. In any case, present day techniques like Polygraph and brain– mapping test are non-intrusive technique that will distinguish deception without causing physical or mental damage to the subject. Scientific techniques are essential for proving guilt and also the innocence of the accused.³ Narco-Analysis is one such scientific method that has turned into an undeniably maybe alarmingly, common in India. Through this paper the author will be focusing on the importance of Narco-Analysis and why it should be made admissible in a country like India. The author will be also focusing on blending Narco-Analysis with Article 20(3) of the

¹ Nathuni Yadav v. State of Bihar (1998)9 SCC 238 at 242

² Nandini Sathpathy v. P.L. Dani & Anr. AIR 1978 SC 1025 at 1032.

³ Anjaneya Das and Arun Kumar “Narco-analysis and the shifting paradigms of art. 20(3): A comment of Selvi v. State of Karnataka” 37 Indian Journal of Criminology 120 (2009).

Constitution of India in such a way, to the point that no inquiries are raised as to its Constitutional validity.

MEANING AND CONCEPT OF NARCO-ANALYSIS TEST

Narcosis is a condition of stupor instigated by drugs. The term Narco-Analysis however a misnomer is ending up extremely well known in law requirement and legal circle. Narco-Analysis is in this way a method of psychotherapy which is a help to scientific interrogation in reality. It is a procedure whereby a man is put to sleep or into semi-conscious state by injecting a chemical into his body and then interrogated while in the dream like state. It is the perspective of the scientist who conducts the Narco-Analysis test on the individual who is suspect that in semi-conscious state individual loses self-control and speaks truth.

Generally it is viewed that if a drug is given to person which repress his power to reasoning without affecting the memory and speak, it is possible to made him to speak truth The hidden hypothesis is that a man can lie by utilizing his imagination, yet because of the impact of the drug a man loses his self-control therefore of which he neglects to imagine the fact and would talk truth. In this state it is extremely difficult for him to speak lies, rather he would talk concerning which he had the information.

A new terminology had been added in the field of Criminal investigation through forensic science in the year 1936 which is known as Narco-Analysis test. The term 'Narco-Analysis' is derived from the Greek word Narco (which means "anaesthesia" or "torpor") and is utilized to depict indicative and psychotherapeutic systems that utilized psychotropic drugs ,especially barbiturates to instigate a trance in which mental component with solid related impact rise to the top, where they can be misused by the specialist .It is otherwise called drug hypnosis or a truth serum or on the other hand a blend of hypnosis or narcosis .Thus it is technique to make human idea furthermore, correspondence manageable.⁴ According to Webster Dictionary, "Narco-Analysis means psycho analysis in a state which is similar to sleep and this state is achieved by use of drugs. These drugs are known as 'truth drugs' or 'truth serum'." Narco-Analysis test is otherwise called "truth Serum test". They are the drugs

⁴ Naresh Kumar and Ved Pal Singh,"Narco-Analysis test in investigation process: Law and judiciary" XIV, MDU Law Journl108 (2009).

at times utilized clinically. Some of them are seconal, Hyoscine (scopolamine), Sodium Pentonol, Sodium Amythal and Phenobarbital. These drugs create a state of semi-consciousness in the subject and the thinking personnel of the person ends up ineffective.

Narco-Analysis test is conducted by 3 grams of Sodium Pentothal broke up in 3000 ml of distilled water and the arrangement is administered intravenously alongside 10% of dextrose over period of three hours with the assistance of a qualified anaesthetist. It is a barbiturate (thiopental sodium) making the neural layer more permeable to Chloride ions, bringing about the general restraint, beginning with the cortex and working down to the lower cerebrum locales with expanding organic impacts at simply neural inhibitory impact to make an alcohol like disinhibition". At of typical practices limitations. A higher dosage may create a stupor and inhibit independent thought and actions to a greater extent.⁵ Essentially, the drug is utilized to decrease protection from the subliminal specialist, who at that point needs to outline question and bring out reaction in a path liable to create exact answer. Anyway this have numerous issues .Too little opiates also, the subject might have the capacity to counterfeit through the circumstance ,excessively and they may wind up oblivious, the exactness of answer might be affected .Sodium Pentothal ties GABA(gamma amino butyric corrosive) (Chloride channel super mind boggling, which is the essential inhibitory neurotransmitter divert in cerebrum) framing a complex at a site ,which applies control over the porousness of chloride particles in to neural film prompting the achievement of "the condition of disinhibition". At a measurements, which does not cause sleep, or rather unconscious, disinhibition". It removes the hindrance of restraint and it is troublesome for anybody to lie at this stage.

SUCCESS RATE OF NARCO-ANALYSIS TEST

As long as the principles underlying the technologies are recognized as scientific, no parallel can be drawn with "torture". In The Forensic Science laboratory, Bangalore, More than 300 people has subjected to this test for committing various crimes. The success rate of this test was about to 96-97 percent as evaluated by the investigating agencies. About 25 percent of

⁵ Vikas Gupta, "Constitutional validity of Narco-Analysis test in Forensic Science" 49Journal of The Indian Law Institute 531 (2008).

the total numbers of individuals subjected to Narco-Analysis test were proved to be innocent. Therefore, the rights no of innocent individuals stand established when the public and human rights activists protest that investigating agencies adopt third degree method to extract information from the accused; it is time the agencies took recourse to the scientific methods of investigation, because this technique is really very helpful in crime investigation.

CONSTITUTIONAL VALIDITY AND EVIDENTIARY VALUE OF NARCO-ANALYSIS TEST

Law is for society and the general public for that .Law needs to keep with the evolving social request due to trans-formative ethos of society .Judiciary has as a critical organ of government, the obligation of translating the law for more noteworthy benefit of the general public saw in this appropriate point of view, legal personality must stay in contact and be side by side of headway of humankind. . For combating emerging organised crimes having refined overtones, its detection, investigation and preventive method must be used synchronously.

Admission and confession shape an essential piece of proof whether in a civil or on the other hand in a criminal one and can in this way be depended upon for demonstrating reality of the reality, consolidated in that. Since admission are a critical bit of evidence. It is available to the individual who made the admission to demonstrate that those evidences are valid. Even if turned out to be valid, admission are not definitive but rather would be unequivocal of the matter.

The expanding horizon of science and technology has thrown new challenges to lawyers and judges dealing with the proof of fact in disputes, where advanced techniques in technology have been used.⁶The utilization of innovation under civil and criminal law does not confine itself to the generation of evidence for admission in the courts .With the development in innovation ,the technique for benefiting such admission is extended from utilizing lie detector to the utilizing of truth serum which is also called Narco-Analysis.

⁶ National Textile Workers Union v. PR Ramakrishna AIR 1983SC

One of the essential standards of administration of criminal justice is in view of the saying *Nemo Tenetur Seipsum Accusare* that signifies "no man is bound to accuse himself". Article 14(3) (g) of the International Covenant on civil and Political Rights likewise gives the rights, "not to be compelled to testing against himself or to confess guilt". In Britain it is a major standard of the precedent-based law that a individual accused for an offense will not be constrained to discover archive or question, which incriminates him. The privilege is based on the policy of encouraging person to come forward with the evidence in the court of justice by protecting them as far as possible from injury or needles annoyance in consequence of so doing .the Fifth amendment of the U.S Constitution also provides protection against self-incrimination by stating "no person shall be compelled in any criminal case to be a witness against himself."⁷

The Constitution of India has obviously expressed under Article 20 (3) that a person cannot be compelled to be a witness against himself. The arrangement works as a shield against the compulsion of testimony. It set up the relational word that –

- (a) Accused is presumed to be innocent
- (b) Prosecution has to establish his guilt
- (c) Accused need not make any statement against his will.

This provision of the Constitution has given due protection against such compulsion "to be a witness" and protection against such "compulsion" bringing about his giving evidence against himself .The protection against compulsion to be a witness is bound to individual accused for an offense .There is no Constitutional protection for witness i.e. individual other than the accused .However ,the Indian evidence Act, 1872 ,in Section 132 and 148 give a constrained assurance against self - incrimination to witness in civil and criminal courts.

In *Selvi v. Territory of Karnataka*⁸, the SC has set out the guideline about conducting Narco-Analysis that Narco-Analysis test can't be directed on the accused person without taking the assent from the accused person. In the event that such test directed on the accused person, it

⁷ Charanjiv Singh "Narco-Analysis –Anew Trend in Forensic Science As A Tool of Investigation"240 PULJ(2007)

⁸ *Selvi v. Territory of Karnataka* AIR 2010 SC 340.

would be violative of Article 20(3) of the Indian Constitution. It was additionally held by the Court that this test ought to be directed in the presence of an expert.

The right against self-incrimination is intended to keep the use of law or the Legal process to constrain from the lips of the accused person the proof important to convict him. In spite of the fact that the right has been characterized comprehensively its degree has been limited by legal elucidation to confirm that is tribute in nature .at the end of the day, it has been held that the assurance is accessible just to confirm which require a volitional follow up on the piece of the accused individual subsequently rendering it tribute or informative in nature and it won't ensure taking of blood test, fingerprints and so on from the accused. The security would be accessible just from the time the individual is charged of an offence. It does not extend to the pre-accusation or investigation stage, if a strict interpretation of Article 20(3) is done. The immunity won't be available to a man against whom no allegation has been made when an obligatory process or notice is issued guiding him under agony or punishment to deliver a report although eventually it might implicate him for the commission of an offense. The Constitution incarnation stimulating the restriction on self-incrimination has been revered in Article 20(3) of the Constitution of India. However, the inquiry that emerges today is regardless of whether the law authorization experts can be permitted to accumulate truth from each quarter keeping in mind the end goal to find coerce and satisfy the last tryst of the equity framework with the society. Article 20(3) of Indian Constitution depends on a maxim i.e. "no man, not even the accused himself can be compelled to answer any question, which may tend to prove him guilty of a crime he has been accused of". This right had its cause in a challenge the uncalled for strategy for investigating accused person. The law against self-incrimination remain an imperative shield in the criminal law. The provision given under Article 20(3) is non-derogable fundamental Human Right and can't be taken away under any condition at all. Indeed, even if there should be an occurrence of crisis, this right can't be taken suspended. The arrangement given under Article 20(3) exemplifies the guideline of protection against compulsion of Self-Incrimination, which is one of the essential. Canon of the British arrangement of criminal statute and which has been embraced by the government American framework and joined in the Federal Constitution. The Fifth Amendment of the American Constitution provides that "no person shall be compelled in any case to be a

witness against himself".⁹It has also to a substantial extent, been recognised in the criminal administration of justice in this country by the incorporation into various statutory provisions.

Breaking down the terms, in which the assurance is contained in our Constitution, it might be expressed to comprise of the accompanying three components:

- It is a right relating to a man accused for an offense.
- It is a protection against compulsion to be a witness, and
- It is a protection against such compulsion bringing about his giving proof against himself.

Article 20(3) would exclude signature, thumb impression, impression of the palm or foot or fingers, or example of hand composing, or uncovering a piece of his body by an accused for the reason for ID. This does not amount to furnishing evidence against himself.¹⁰ The self-incrimination must mean covering data in view of the individual learning of the individual giving the data furthermore, can exclude simply the mechanical procedure of creating record in court which may toss light on any point in debate, yet which don't contain any statement of the accused person in light of his own insight. The Narco-Analysis, P300 or Brain Mapping and lie detector tests are the primary tests which are directed by Forensic Experts. If there should be an occurrence of lie detector and Brain Mapping test, the earlier authorization of the court isn't required to be stepped through on the grounds that in these examinations, infusion of any drug isn't included where in Narco-Analysis test, the subject is given an infusion of a drug under the supervision of anaesthetist, so the earlier consent of the court is required. The Narco-Analysis test was subjected to incredible feedback by safeguard lawyers by whom it was named as infringement of Article 20(3) of Indian Constitution, yet it has been allowed to be directed on the accused person by different High Courts. In India and it has been observed to be exceptionally sentencing. The contention about infringement of Constitution has been repulsed by holding that rights under Article 20(3) isn't absolute. In this test the statement made by the accused persons are recorded on audio and video cassettes, and the reports of the expert is helpful in collecting evidence.

⁹ V.N. Shukla, Constitution of India 160, (2007) .

¹⁰ Uttar Pradesh v. Boota Singh, AIR 1978SC 1770.

In case of *State of Bombay v. Kali Kathu Oghad*¹¹, it was held by the Supreme Court that taking a thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body from an accused person for purpose of identification is constitutionally valid. In this case it was further held by the Supreme Court that the self-incriminating statement given without threat would not attract Article 20(3) of the Constitution of India because it was not given under compulsion. It was also said by the court that mere fact that the accused was in police custody does not by itself imply that compulsion was used for obtaining the specimen hand writing. Even if there is compulsion, it does not amount to testimonial compulsion.

In case of *M.P. Sharma v. Satish Chandra*¹², the decision was given by a Constitutional Bench of 11 judges of Supreme Court. In this case it was held by the court that protection under Article 20(3) of the Indian Constitution is available to a person against whom a formal accusation relating to an offence is pending. It would mean that if a FIR has lodged against a person then the protection would be available. It was contented before the Supreme Court that the guarantee in Article 20(3) of the Constitution against testimonial compulsion is restricted just to oral proof of a man standing his preliminary for an offense when he is called to the witness stand.

Rejecting the contentions, the Supreme Court has said that there is no motivation to bind the substance of the established assurance to its scarcely strict import and consequently, to restrict it is ransack the assurance of its significant reason and to miss the substance for the sound as expressed in certain American decisions.

The taking of impression of part of the body of an accused person all the time winds important to help the examination of a wrongdoing. It is as much important to ensure a accused person against being constrained to implicate himself as to arm the operators of law and the Courts with honest to goodness capacity to convey guilty party to equity.

Moreover, it must be expected that the establishing fathers of Constitution knew of the current laws, for instance Sec 73 of the Indian Evidence Act 1872 or Sec 5 and 6 of Identification of Pensioners Act (XXXIII of 1929). Subsequently the basic rule behind the

¹¹ *Bombay v. Kali Kathu Oghad* AIR 1951 SCI 808

¹² *M.P. Sharma v. Satish Chandra* AIR 1954 SC 300.

judgment that pronounced P300 and Polygraph testing as naturally legitimate as it is sensible and require no statement to be made by the denounced. Furthermore, its arms the specialist of law and the law courts with honest to goodness capacity to being guilty party to justice.

In *Nandini Sathpathi v. P.L.Dani*,¹³ it was seen by the Apex Court that so as to bring the proof inside the hesitance of clause (3) of Article 20 it must be indicated not just that the individual putting forth the expression was a charged at the time he made it and it had a material bearing on the culpability of the creator of the proclamation ,yet in addition that he was constrained to put forth that expression under impulse in the setting must mean what in law is called duress .In the word reference of English law by Eart Jawitt duress is clarified as takes after :

“Duress is where a man is compelled to do an act by injury, by beating or unlawful imprisonment (sometimes called duress in strict sense) or by the threat of being killed, suffering some grievous bodily harm or being unlawfully imprisonment (sometime called menace or duress per minas). Duress also includes treating, beating or imprisonment of the wife, parents or child of a person.” The compulsion is in the sense of physical objective act and not the condition of mind of the individual putting forth the expression, apart from where the psyche has been so moulded by some unessential procedure as to render the putting forth of the expression automatically and along these lines, exhorted.

By the different High Courts of India, it has been chosen that Narco-Analysis test is a substantial test and it doesn't damage Article 20(3) of the Indian Constitution like that of the Bombay, Madras, Kerala, Gujarat, Andhra Pradesh and Allahabad. In addition, they have held that the Narco-Analysis test and the utilization of P300 or Brain fingerprinting, lie-detector test and utilization of mouth serum to be splendidly legitimate under Article 20(3) of the Indian Constitution.

Likewise in *State of A.P. v. Inapuri Padma*¹⁴, it was held by Andhra Pradesh High Court that where the applicants are not the charged but rather captured by the request of the court ,there is no compelling reason to get any authorization from the court to experience Narco-Analysis test in the event that they express no complaint to experience this test .Where the witnesses

¹³ *Nandini Sathpathy v. P.L. Dani & Anr.* AIR 1978 SC 1025 at 1032

¹⁴ *State of A.P. v. Inapuri Padma* 2008 CriLJ 68.

are not willing to experience the test, the police needs to persuade the court with respect to what are conditions that made the police to pick up the feeling that there is probability that the individual proposed to be put to test knows something about the commission of the offense .

In the celebrated case of *Mohinder Singh Pandher and Surender Singh Koli v. State of U.P.*¹⁵, which is otherwise called Nithari Murder case Narco-Analysis test was directed on Surender Koli and Mohinder Singh Pandher in Jan 2007, who were the principle denounced in the acclaimed Nithari Murder case. This test was essentially directed in the Forensic Science Laboratory in Gandhinagar. This test was fundamentally directed to discovering the veracity of their statement amid their custodial cross examination. Amid this test, the accused person revealed the name for different females and youngsters who had been killed by them and furthermore uncovered his contend to assault them in the wake of killing them. By the leading of this test numerous applicable data were uncovered to the investigating authorities.

In *Dr. Rajesh Talwar and Another v. Central Bureau Investigation*¹⁶ through its Director and Other99, which regularly known as Arushi Murder case. For this situation Arushi, a 14-year girl was observed to be dead in the home on 16-05-2008. The report was made by the guardians of Arushi in the police headquarters. For this situation Hemraj, who was a domestic servant in the place of Arushi, was associated with murder of Arushi .But following two days the dead body of Hemraj was also found on the terrace of the house of Arushi .The parents of Arushi were captured by the police. For this situation Narco-Analysis test, Polygraph test and Brain mapping test was led on the accused person. It was argued under the steady gaze of the court that the report of these tests can't be taken as an prove in the courtroom .It was held by the court in the interest of the judgment of *Selvi v. State of Karnataka* that such tests can't be led by the authority if the assent has not been given by the accused person .Trial court held that the aftereffect of tests can't be conceded as a confirmation in light of the fact that the subject does not work out conscious control over the reactions amid the directing of the test .

¹⁵ *Mohinder Singh Pandher and Surender Singh Koli v. State of U.P* AIR 2011 SC 970.

¹⁶ *Dr. Rajesh Talwar and Another v. Central Bureau Investigation* 2013(83) ALLCC 283.

In the case of *Sasntokhben Sharmanbhai Ladeja v. State of Gujarat*¹⁷, the Gujarat High Court held that “the Narco-Analysis test is conducted under the supervision of doctors and proper care is taken and there is consent, observation of the State of the accused, and, as such, the element of risk is minimal .Risk is in fact part of life and pervades in most of human activities and on this ground, alone, therefore, the impugned test cannot be condemned.

In *Abhay Singh v. Territory of U.P*¹⁸, it was held by Justice Barkat Ali Zaidi that “it is now well settled that hairs and nails of the accused cannot be taken for the utilization during the investigation even if the accused does not agree for the same. For this situation the application was moved by the examining expert for conducting the Narco-Analysis test and cerebrum mapping trial of the accused person. It was the inquiry under the steady gaze of the court that whether the denounced might be constrained for the Narco-Analysis and Brain Mapping test without wanting to. It was held by the court that the examination and all endeavours must be made to discover the genuine wrongdoer, since, one blameworthy individual, escapes' identity, the expectation of one million .If the Narco-Analysis test and Brain mapping test might be steady in discovering the actualities identifying with the offense then it ought to be utilized and the court ought not hinder the lead of the activity.

In Criminal Justice System, forensic science involves an extremely huge place and it acceptable in the courts .Section 53(1) of Cr.P.C.(Criminal Procedure Code) accommodates the therapeutic examination of the denounced by the medicinal specialist in line with the cop .According to Section 53(1) of Criminal Procedure Code – "when a man is capture on a charge of carrying out an offense under such conditions that there are sensible justification for trusting that an examination of the individual will bear ,prove with regards to the commission of an offense ,it will be legitimate for an enlisted restorative professional ,acting in line with the cop not underneath the rank of sub-auditor ,and for any individual acting in compliance with common decency in his guide and under his heading ,to make such an examination of the individual captured as is sensible essential keeping in mind the end goal to find out of the realities which may manage the cost of such confirmation, to utilize such power as is sensibly important for that reason". Through this Section the measurable science gets a passage into the field of criminal examination .The ongoing Amendment of 2005 made

¹⁷ *Sasntokhben Sharmanbhai Ladeja v. State of Gujarat* 2008CriLJ 68(Guj.).

¹⁸ *Abhay Singh v. State of U.P* 2009 CriLJ 2189(All)(LKO Bench)

to Section 53 of Criminal Procedure Court separated from others is sure and defensive towards the acknowledgment of the significance of logical test which incorporate Narco-Analysis, Brain mapping separated from others. By temperance of Section 161(2) of Criminal Procedure Code, the enactment has ensured the native's rights against self-implication. According to Section 161(2) – "each individual will undoubtedly answer honestly all inquiry, put to him by a cop, other than question the response to which, would tend to open that individual to a criminal accusation, punishment or relinquishment". The privilege to quietness has been conceded to the charged and nobody can persuasively separate articulations from the denounced who has the privilege to keep quiet over the span of examination. Section 39 Cr.P.C. additionally positions an obligation upon any individual to give important data to the police. This Section and additionally different Sections identifying with data to specialists have not been held unlawful. For viable and proficient examination, such a capacity to an examiner gives off an impression of being important for bringing the lawbreakers equity.

CONCLUSION

The psychiatrists and investigators in most of the civilized countries use Narco-Analysis very less as it is unsafe strategy which result in non-reliable results .But in India, some investigating organizations use this technique with the assistance of doctors and forensic scientists .It is very probable for the subject to create lethal or serious unfriendly impacts, in the event that it isn't directed with needed care. It has turned out to be completely important for the State Governments to work with the Central authorities to enhance the investigative abilities of their police divisions. The Indian Criminal Justice System has an alarmingly low conviction rate, so there is need of utilization of scientific procedure. The Central Government must influence a clear policy to remain on Narco-Analysis. The lawful framework ought to soak up the improvements and advances that happen in science on condition that they do not abuse central lawful standards and are for the benefit of the public. Narco-Analysis for criminal interrogation has turned out to be a profitable method, which strongly influences both the faultless and the culpable and by this implies quicken the reason for equity which has seen in different cases like the well-known Arushi murder case, Nithari killings case, Telgi scam and Mumbai blasts case¹⁰⁷. It is the ideal opportunity for our

legislature and judiciary to act promptly for equity furthermore, reasonable technique to bring Narco-Analysis inside the extent of Article 20(3) of the Constitution. The way in which the modern-day criminals Make use of science and innovation in executing their criminal exercises with relative exemption has compelled reconsidering on the fundamentals of the criminal equity foundation to look for the assistance of mainstream researchers to go to the assistance of the police, prosecutors also, the courts. The criminal procedure, rules of evidence, and the institutional infrastructure designed more than a century ago, are presently discovered deficient to meet the requests of the scientific age. The absence of a national approach in criminal equity organization in such manner, is felt to be a genuine downside.

The conclusion is that Narco-Analysis test is being practiced in India just in light of a shared understanding between the judiciary, police, investigative agencies, human rights activists, etc. Only solid opinion of the public in support of the human rights will have the capacity to impact judicial decisions, thus additionally the decisions of various professions. A continuous development ought to be taken up by the general population of India, in the development for autonomous rights, against the use of scientific methods like Narco-Analysis test. It is high time that we mix this test with Article 20(3) in such a way, to the point that no inquiries are raised as to its Constitutional validity. For this reason, it is fundamental that the Union Government should turn out with specific guidelines which are to be strictly followed while conducting the test.