

# NARCO ANALYSIS: WEAPON OF POWER OR TOOL FOR ABUSE?

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## ABSTRACT

In each and every part of the world, there is the commission of crime it is not just today but since the origin of human. With the advancement of commission of crimes there needs to be advancement in the forensic techniques such that there would be strong evidences and it would punish the accused for delivering the justice. Thus, one of the kinds of forensic techniques for identifying the causation of crime would be Narco Analysis, Brain mapping, DNA Analysis, etc., which with the help of forensic experts could help the investigating authorities, to collect the evidences and understand the stages of commission of crime. Though this technique aids the investigation process, it would support the case and punish the accused, otherwise if there are no evidences then the case won't be solved in proper manner. From all these various forensic techniques, this paper aims at understanding whether the Narco Analysis Test is a weapon of power which it sets the judiciary in motion and punish the right person. Therefore, in this paper the author has made an attempt in explaining the meaning of Narco Analysis test, origin of this test, its objectives, the medical aspects of the test, Success rate of this test, its admissibility in the court, its constitutional and evidentiary value, application of this test in USA and UK and at last its Advantages and Disadvantages along with the Suggestions for improvement under this technique.

**Keywords:** Narco Analysis, Forensic Techniques.

## INTRODUCTION

The term 'Narco Analysis' is a combination of two words that is Narco and Analysis which could mean psychological analysis, by the administration of drugs for inducing a person such that he could feel like sleep. This chemical test is performed on a person/ suspect to transform his mind in the state of hypnotism with resembling sleep, here the person is subconsciously awake. This test is performed to bring out essential facts and evidences in front of the court from his subconscious mind. This test is being performed by the injection of sodium pentothal/ Sodium Amytal, and during the stage of subconscious mind the person is directly asked with the questions such that it would help to dig out the evidences. This complete procedure is called as "*Narco Analysis*". The drug which is being used is also called 'truth serum' but here the extent of truthfulness of the facts mentioned by the person may be doubted<sup>i</sup>. This test is also recognised as the '*truth serum test*'. The drugs which is administer has high clinical usage, this drug works on the principle of inhibiting the thought process of person that is through his brain, the principle which works is that as a person when he lies, the thoughts are filter by the brain and decides by the brain what is to be exposed and what has to be unrevealed. By application of this method the person cannot longer shift his idea and to speak the truth, or so is supposed<sup>ii</sup>.

### *Historical Background of Narco Analysis*

The usage of narco analysis could be found in 1935 in an investigation process. It was firstly used to make the person in semi- conscious state such that he would be asked the questions and evidences could be find out through examination. Later after 1935, it was used in 2002 Godhra Communal Riots case, as these riots were of intercommunal fights between Hindus and Muslims. After this case this test was highly used as a great forensic case like- Shashi Tharoor Murder case, Nithari Murder case, Abu Salem case, Arushi Murder Case, Mumbai Train Blast case, etc. This test has been highly useful to accumulate the evidences and understand the commission of crime in that particular case.

## **THE NARCO ANALYSIS TEST**

The term Narco Analysis is derived from the Greek word '*Narke*' which means Anaesthesia which was used to describe a diagnostic psychotropic technique that uses the psychotropic drugs for great diminution of sensibility. This test is also known as the Lie Detector Test or Truth System Testing. On this state the person goes into unconscious state by passing serum and speaks whatever is present in his mind. The technique of Narco analysis is one of the techniques from DDT's which particularly focuses on crucial clinical, moral and legal suggestions. Now looking at the increasing crimes in the society and ways of commission of crimes it sometimes become crucial in understanding the ways of commission in certain cases it really becomes difficult for the judiciary to gather the evidences thus this technique helps to get clarification and gather evidences on these crimes. For the understanding the process of Narco analysis let's look into its scientific details for the conduction of this test the amount of sodium panthenol is used it varies from individual to individual but mostly 3 grams are broken up into 3000ml of refined water and infused with the assistance and nearness of anaesthetist intravenously with 10% arrangement of dextrose over a time of 3 hours<sup>iii</sup>.

### ***Objectives of Narco Analysis Tests***

The main objective behind this test is to resort the lying uses by a person through his imagination but in Narco Analysis test that this imagination is neutralized as the person goes into the subconscious stage. Thus, it is believed that the person cannot tell lie and thus he answers spontaneous and true.

### ***Narco Analysis Room***

The test of Narco Analysis is carried out in an operation theatre, such that in case of emergency medical help could be taken and the same could be done without any delay. During the performance of test a general physician is kept as a watchdog and an anaesthetist who would administer the drug and other members.

### ***Staff required to conduct this test***

To conduct this test, a Psychiatrist, an Anaesthesiologist as General Physician, Forensic Psychologist, supporting nursing staff, Audio videographer, Interpreter, if needed. In India the

Narco Analysis test is conducted in “Forensic Lab, Bangalore; Forensic Science Lab, Gandhinagar, Gujrat.”

### ***Medical Aspects of Narco Analysis***

To conduct the test of Narco Analysis not just a single chemical used but it requires Sodium Pentothal, Sodium Amytal, Scopolamine<sup>iv</sup>. Sodium Pentothal is an ultra-short acting chemical which slows down the heart rate, lowers the blood pressure and slows down the spinal cord and brain activity<sup>v</sup>. It has anaesthetic, sedative and hypnotic properties<sup>vi</sup>. It has wide usage in induction of anaesthesia, euthanasia, psychiatry, and also in truth serum in narco analysis<sup>vii</sup>.

Intravenous injection of 20 millilitres of 2.5% solution of the drug can cause unconsciousness in 15-30 seconds which lasts for 5-10 minutes. The inhibition level of a subject is lowered by interfering with his nervous system at the molecular level. In this stage it really becomes difficult for a person to lie<sup>viii</sup>. The confession made at this stage is not reliable and it is dubious. The drugs can make a person chatty and cooperative with the interrogator but a person who is a liar by nature can control his inhibitions to some extent and still lie to the interrogator.

### ***Stages of Narco Analysis Test***

- In the first Stage, the person begins ‘going under’ and to feel the effects of drugs<sup>ix</sup>;
- In Second Stage, the person becomes semiconscious and enters into trance like state, if the drug is administering continuously the person will go into the third stage;
- In the Third Stage, Complete Unconsciousness;
- In Fourth stage, the person may eventually go into coma or may eventually die.

During the process of Narco analysis, the person is maintained only on second stage that is a hypnotic stage. The researchers have proved that in this hypnotic test it becomes really difficult for a person to lie.

### ***The Success Rate of Narco Analysis Test***

As per the records of FSL, Bangalore more than 300 people has been subjected to this test for committing various crimes<sup>x</sup>. The success rate to get the evidences were 96-97 percent which

was being evaluated by the investigating agencies. About 25% of the people were found to be innocent. Thus, these innocent rights were protected from facing the third-degree treatment from the police officers which would directly help them to declare as innocent from the crimes. Thus, this technique has been proved a helpful technique to find out new ways of investigation<sup>xi</sup>.

## **THE INDIAN SCENARIO FOR NARCO ANALYSIS TEST**

In most of the countries it is banned to perform this medical practise, but India holds it good to perform this test. This test is steadily being used for criminal investigations, court hearings, and laboratories. This test has high evidential value in cases like- Nithari Killers, Mumbai Train Blasts, etc. This test is mainly conducted by medical practitioners and along with Police officers for assistance<sup>4</sup> in extracting the confession from the accused person. During this test it is very much important to have good set of questioners to dig out the information from the accused person. This technique was used in 2002 Godhra Carnage Probe, in 2003 for Abdul Karim Telgi, Arushi Talwar, Nitahri case, etc. This technique has created wide importance in legal science. The application of Narco analysis involves fundamental and direct questions relating to judicial matter and human rights. However, there has been various debates as this test attacks on the fundamental rights of an individual. As due to increasing technological advancement and growing mental capacities of individuals it becomes really difficult to gather information from conscious mind but with performance of this test the information could be gathered from the unconscious state of mind. Even if the test is being performed in best conditions it could lead to deception, fantasy, and garbled speech<sup>xii</sup>.

### ***Admissibility in Courts***

According to the Evidence act, the confession taken from person in semi- conscious state is not admissible in court but it may eventually lead the investigating procedure. The report of narco analysis has some validity but it is not totally admissible in court. In certain situations, a person may hold certain belief by repeatedly thinking on the same but this thinking need not to be truthful. Results of such tests should not be form as a part of admissible evidence, but in other cases along with this evidence other corroborative evidences needs to be counted<sup>xiii</sup>. According

to **Dushyant Dave**,” the information revealed during truth serum test cannot have any evidentiary value in a court of law<sup>xiv</sup>. Articles 20 and 21 are sacrosanct to my mind and nobody is allowed to touch them. The moment court accepts as an evidence it would be in violation of fundamental rights.” He added, "Parliament has not stepped in by making any legislation on the issue of Narco-analysis test without consent of a person." According to him, Article 13 offers a permanent injunction on making narco test result admissible evidence, as ultimately it is considered "a coerced statement"<sup>xv</sup>. During the discussion, Dave also fell back on former solicitor general Harish Salve's argument that performing narco tests on a person without his consent is infringing on his privacy, which relied upon for proving the truth of the fact, incorporated therein. Since admission are an important piece of evidence. It is open to the person who made the admission to prove that those admissions are true<sup>xvi</sup>. Even if proved to be true, admission should not be permitted<sup>xvii</sup>.

#### ***A Comparison with the Stance on Self Incrimination in the United States***

Since Narco Analysis as an investigative procedure has been in the United States well before its introduction in India, a worthwhile reference can be made to the Courts' stance on Self Incrimination in the United States. In the case of **Nandini Satpathy v. P.L. Dani**<sup>xviii</sup>, has come from the case of **Miranda v. Arizona**<sup>xix</sup>, the US standpoint on the Right against Self Incrimination. The question regarding the point at which the protection against Self Incrimination begins to operate has arisen in the United States also, i.e. whether the protection only begins to apply if the statements are admitted as incriminatory evidence or whether it is operative at the pre-trial interrogation stage itself.

Advocates for a broad view of the right against self-incrimination argue that the Fifth Amendment should apply outside the trial setting and the United Supreme Court has also held the same. In **United States v. Hubbell**<sup>xx</sup>, the Supreme Court affirmed that the Fifth Amendment was violated outside of a trial setting also. The Court held that the 'compelled testimony' envisaged under the Fifth Amendment encompassed compelled statements that lead to the discovery of incriminating evidence even though the statements themselves are not incriminating and are not introduced into evidence. However, the case of **Miranda v. Arizona**<sup>xxi</sup> also clearly lays down that volunteered statements are not barred by the Fifth Amendment, which enshrines the Right Against Self-incrimination.

Hence it can be seen clearly that the position on Self-incrimination as laid down in the *Nandini Satpathy* case is identical to the stance of the United States Supreme Court- i.e. the protection is operative at the interrogation stage itself even without the submission of the statements as evidence in Court.

### ***Constitutional and Evidentiary Value of Narco Analysis Test***

Under Evidentiary value, admission and confession forms crucial part of evidence either in civil or criminal cases. It is open to a person who made the admission to prove that the admission is true and of not decisive in nature. One of the fundamental principles of administration of criminal justice system is '*Nemo Tenetur Seipsum Assusare*' which means 'no man is bound to accuse himself'. As per *Article 14(3) of International Covenant on Civil and Political Rights* mentions that 'a person should not be compelled to testing against himself or to confess guilt', in UK it is a common principle that a person accused should not be compelled to find out an object or document which would self-incriminate him. The privilege is based on the policy of for motivating people to come forward with the evidence in the court by protecting them from injury and annoyance in consequences in doing so. Also, in fifth Amendment of USA Constitution, the individual is being protected from self-incrimination. Its roots can also be found in Indian Constitution that is under Article 20 (3) that a person cannot be compelled to become witness against himself. There is no Constitutional protection of witness i.e. person other than accused. This provision acts as a shield for protecting the interests of an individual.

It establishes the propositions of-

- a. Accused presumed to be innocent;
- b. Prosecution has to establish the guilt;
- c. The Accused need not to make any statement which is against his will.

### ***Important Case Laws on Narco Anlaysis***

In the case of *Selvi v. State of Karnataka*<sup>xxii</sup>, the Supreme Court laid down the principle about conducting of Narco Analysis that the Narco Analysis cannot be conducted on accused without taking the consent from him. If such test is conducted without his consent, it would be in

violation of Article 20(3) of Indian Constitution. It was further held that this test should be conducted in front of the expert.

In a leading Gujarat case of *Santokben Sharma Bhai Jadeja v. State of Gujarat*<sup>xxiii</sup>, it was held by the court that doctors conduct the Narco-Analysis test with due care and supervision. The element of risk is minimal in cases when there is consent and the state of the accused is also observed. Risk is an important factor which pervades in almost every other human activity and it is a part of life. The impugned test cannot be condemned solely based on this ground.

In the case of *Arushi murder case*<sup>xxiv</sup> (i.e. Dr. Rajesh Talwar and Another v. Central Bureau Investigation). The Narco-Analysis test, Polygraph test and Brain mapping test was conducted in this case against the will of the accused persons. It was pleaded that the results or reports of these tests cannot be taken as evidence in the court of law as the consent from the accused person were not taken onto consideration.

In case of *State of Bombay v. Kali Kathu Oghad*<sup>xxv</sup>, it was held that if there is a need for taking thumb impression or impression of palm or foot or fingers for the process of investigation from the accused person then that is constitutionally valid. In this case it was further held by the Supreme Court that if the self- incriminating statement are given without threat, then it will 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 the accused was in police custody does not by itself imply that compulsion was used for obtaining the specimen hand writing.

Similarly in *State of A.P. v. Inapuri Padma*<sup>xxvi</sup>, it was held by Andhra Pradesh High Court that where the petitioners are not the accused but arrested by the order of the court, there is no requirement to obtain any permission from the court to conduct Narco-Analysis test if they express no objection to do this test. Where the witnesses are not willing to undergo the test, the police have to convince the court as to what are circumstances that made the police to gain the impression that there is likelihood that the person proposed to be put to test knows something about the commission of the offence<sup>xxvii</sup>.

In the famous case of *Mohinder Singh Pandher and Surender Singh Koli v. State of U.P.*<sup>xxviii</sup>, which is also known as *Nithari Murder case*. Narco-Analysis test was conducted on Surender Koli and Mohinder Singh Pandher in Jan 2007, who were the main accused in the famous

Nithari Murder case. This test was conducted in the FSL in Gandhinagar. This test was conducted to identify the veracity of the statement made during their custodial interrogation. During the performance of this test, the accused person disclosed the name of various females and children who had been murdered by them and also revealed that after murdering them they used to rape them. As this test was conducted it thus came out with various relevant facts to the investigating authorities.

In the case of ***Radha Kishan v. State of Punjab***<sup>xxix</sup>, it was held that the scope of Section 27 is reduced by Article 20(3) of the Constitution of India. The discoveries which are brought about by compelling an accused person cannot be used against him, and in the case of narco-analysis the accused is compelled to give evidence.

In ***Rojo George v. Deputy Superintendent of Police***<sup>xxx</sup>, the narco-analysis test Court is of the opinion that in present day the criminal started to use very sophisticated and modern technique for committing the crime. So the traditional method of investigation and questioning to the criminals will not be successful for solution and there is need to utilize some new techniques such as polygraph, brain mapping and narco-analysis. Here the court said that if the techniques are being performed by the experts, then here it cannot be said that it violated the fundamental rights of any citizen of India.

Thus, it can be said that these scientific and forensic techniques i.e. Narco Analysis has played a vital role in solving the cases like- Malegaon Blast case, Mumbai 1992 Blast case, Hyderabad blast case, etc. In most of these cases more than the evidences the truth came out because of the conduction of these techniques. Though it is helping for the investigation process then also the questions are being held for its validity.

## **ADVANTAGES & DISADVANTAGES OF NARCO ANALYSIS IN CRIMINAL JUSTICE SYSTEM**

### ***Advantages of Narco Analysis Test:***

- The technique of Narco analysis facilitate the investigating agencies with the help of scientific techniques and discover the evidences.
- Due to development of forensics in today's times, it helps to gather evidence without using any third degree of treatment or by using the violent means.
- The process is only harmful when injected in higher quantity, during the performance of this process experts are appointed to perform it.
- The questions which are being asked is framed in a logical manner such that the person who is injected will not have any opportunity to speak lie.
- In certain situations, the evidence collected by this process may be denied, but if got admitted it would form the best piece of evidence.

### ***Disadvantages of Narco Analysis Test:***

- In this process a strong dose of chemical is administer to a person, according to his physical and mental characteristics. But if the wrong analysis is done and if we administer in disproportionate quantity it may lead to state of coma or death of person.
- If the person is drug addicted then this drug won't work to gather the evidences from that person.
- The reliability of information which is being collected may be in shadow as the person who gives it is in semi-conscious state.
- As per the principles of Constitution that is according to Article 20(3) it states that no person shall be a witness in his own cause, but in this process, he tries to gives evidences against himself.
- According to Section 25 of Indian Evidence Act, 1872 the confession made in police custody should not be admissible and cannot be counted as a evidence. In this case it would mean that after conducting the whole procedure it may be non-admissible in court.

Therefore, these are certain advantages and disadvantages of Narco Analysis Test.

## **CONCLUSION**

Since ages we can see that “*Change is the need of time*”, this change needs to be applied in each and every aspect let it be in the Judicial System, the Forensic advancements, the investigating authorities, etc., thus each and every part of the society needs to accept the change, by accepting it then only there would be advancements in mankind otherwise the society would be stagnant. The changes should not only focus on the positive aspects but also the negative aspects of society, thus one of the negative aspects is the increasing of crime. To have control on these negative aspects there is far more development in the forensics approach such that the right accused is caught through forensic techniques and the right person is punished. In each and every case there are so many intricacies where the prosecution could lack to bring it before the court but with the help of these forensic techniques like- Narco Analysis, Brain Mapping, Polygraph, DNA Analysis, etc, this minute details came come in front of court and would help the right accused to get punished.

In terms of focussing ourselves on Narco Analysis Test, the Supreme Court of USA has privately given approval to conduct these tests if there is public risk at large. In terms of understanding the Indian aspect, the Indian Judiciary has given conditional access to follow this technique such that the truth would be extracted. Most of the committees, want this technique to be utilised in each and every case such that it would benefit the society and would help to have crime free society. These techniques should be adopted in mostly all cases such that it not only identifies the actual guilty person but also protects the innocent person from getting convicted. In this technique the consent from the accused is also taken into consideration while protecting and giving due importance to his individual rights.

Therefore, I believe the technique of Narco Analysis is a weapon of power as it keeps the law living, and tries to punish the right accused and protect the innocent one.

## SUGGESTIONS

The author would like to put forth certain suggestions which is as follows: -

- As there are different Forensic test which are being followed, there should be uniform guidelines on this test such that the common man could be able to understand and their trusts in forensic evidence could be improved.
- With respect to these different forensic tests there needs to be an amendment in the acts like- CRPC, IPC, Evidence and Constitution.
- As we can see there are only two places in India were this test ids performed instead there needs to be more technological and advanced experts in various places in India where this test could be performed.
- In terms of understanding various forensic techniques its trainings need to be given to Judges, Lawyers, Advocates to understand its due importance. Such that the demand could be made and an innocent would be protected.
- I believe these tests should be made as a part of Criminal Investigation Procedure for the high-profile cases relating to terrorism, rape, Scams, etc.
- As per other acts there also need to have an act relating to Forensics and its application in kinds of cases.
- The General Public or Citizens of this country needs to be made aware of the various forensic techniques

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