

**NARCOANALYSIS: A NECESSARY DOUBLE EDGED SWORD?**

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**ABSTRACT**

Advancement in science and technology in today's world has led to the change in the patterns of crime in the modern society. The Criminal Justice Machinery hence has to develop in order to tackle such crimes. Use of scientific methods like deception detection tests aids in accurate and fast completion of investigation. Narco analysis is one such scientific test. Narco analysis as a concept came into existence in the early 1900s and has since then developed immensely. However in India the concept is rather new. Needless to say it is faced with a lot of criticism as it prima facie appears to be violating various provisions of law and specifically the fundamental rights enshrined in the Indian Constitution. This article studies in details the various aspects of narco analysis, its modus operandi, its constitutionality, judicial overview etcetera.

**INTRODUCTION**

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A sound criminal justice system is an important requisite to regulate and make any society free from criminals and criminal activity. Unlike the Right to Information Act, 2005 which enables general people to obtain information of public importance, extraction of information from the human mind becomes very difficult. However, with the development of technology, certain scientific methods have been developed which make such extraction of information possible. Such methods are popularly known as Deception Detection Tests (DDTs).<sup>2</sup> Few years ago a new technology has been introduced in the field of investigation through forensic science i.e. 'Narcoanalysis'.<sup>3</sup> The term Narcoanalysis is derived from the Greek word 'NARKE' which means *Anaesthesia* or *Torpor* and was used to describe a diagnostic psychotherapeutic technique that uses psychotropic drugs to introduce a stupor suspension or great diminution of sensibility, a state in which mental element with a strong associated affects come to the surface where they can be exploited by the therapist or investigating agency<sup>4</sup>. It was termed by Horseley.<sup>5</sup> It is also known as the truth serum or the lie detector test. This high technology forces two professions, which are law and science, to work together in the array of cases.<sup>6</sup>

As already mentioned above, a sound criminal justice system is imperative for a criminal free society. However in order to achieve that proper investigation and collection of evidence by investigating officer is necessary.<sup>7</sup> DDTs have been very helpful in the recent times to gather substantial information which can be only extracted from the human brain. Narcoanalysis is one of the methods of DDTs. Other methods include Brain Mapping, Polygraph test. Lie Detection

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<sup>2</sup> Ajay Kr Barnwal, Dr.S.N Ambedkar, *Narco-analysis Test: An analysis of various Judgements of Indian Judiciary*, Volume 19, Issue 10, Ver. I (Oct. 2014), (IOSR-JHSS), PP 52-57

<sup>3</sup> Ekrama H Qureshi, "Article 20(3) And Narco Analysis Test"29(2) Gujarat Law Herald(2009)

<sup>4</sup> Dr. Shakeel Ahmad, "Narco-Analysis and Rights of Accused: An Appraisal",50, Civil &Military Law Journal (2014).

<sup>5</sup> Sonakshi Verma, *THE CONCEPT OF NARCOANALYSIS IN VIEW OF CONSTITUTIONAL LAW AND HUMAN RIGHTS*, available at [http://www.rmlnlu.ac.in/webj/sonakshi\\_verma.pdf](http://www.rmlnlu.ac.in/webj/sonakshi_verma.pdf),

<sup>6</sup> Dr. Jitendra Tiwari and Abhay Chand Mall Visen, "Narco Analysis and Article 20(3) of the Constitution of India",50 Civil & Military Law Journal(2014)

<sup>7</sup> R.Ramachandan, "Scientific Techniques for Criminal Investigation" Kamal Publishers (New Delhi)2012.

technique can be aid in the criminal investigation to prevent the innocent person from the conviction and by proving the guilt of real culprit.

Needless to say the police officers in many countries thus restrict to the use of drugs for extraction of confession from the accused person. Narcoanalysis has been a rather new concept in India, however since its inception in India Narcoanalysis has been used extensively for purpose of investigation by the police. The reason for the immense use of said test is increasing the gap between the rate of accusation and the rate of the conviction. Dr. M.S Rao, chief forensic scientist, the government of India<sup>8</sup> also suggested that-

*“Forensic psychology plays a vital role in detecting terrorist cases. Narco-analysis and brainwave fingerprinting can reveal future plans of terrorists and can be deciphered to prevent terror activities Preventive forensics will play a key role in countering terror acts. Forensic potentials must be harnessed to detect and nullify their plans. Traditional methods have proved to be a failure to handle them. Forensic facilities should be brought to the doorstep of the common man. Forensic activism is the solution for better crime management.”*<sup>9</sup>

However, just like a double edged sword Narcolanalysis comes with a lot of criticism on its part. It has often been in controversy owing to its usefulness in solving crimes on one hand and going against the principles of natural justice on the other hand.

### **NARCOANALYSIS TEST: A BRIEF HISTORY**

A person when narcotized often times tends to reveal the truth which he would generally conceal. Thomas De Quincy had done 1804 experiment to which he wrote with these experiences that “opium like wine makes the heart expended and the person speak out his/her concealed feelings”. Narcosis can be achieved by using drug like cocaine, ether, alcohol, scopolamine, barbiturates, hallucinogens, etc. 1980 Sheer Chance used sodium cyanide for narcosis.<sup>10</sup> Narco-analysis for the first times gained the popularity in the year 1922, when Robert House, who was an obstetrician in Texas used the drug *scopolamineon* two prisoners whose guilt

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<sup>8</sup> <http://mindjustice.org/india206.htm>.

<sup>9</sup> Ibid

<sup>10</sup> *Narco-Analysis: A boon for Crimiinal Justice System*, [www.shodhganga.inflibnet.ac.in](http://www.shodhganga.inflibnet.ac.in) available at <http://shodhganga.inflibnet.ac.in/bitstream/10603/70232/9/chapter5.pdf> last seen on 24/04/2018

appeared clearly confirmed.<sup>11</sup> It is only after his experiment that the phrase ‘truth serum’ came into limelight. The term ‘truth serum’ is generally a name given to the hypnotic drugs that induces a person to speak the truth. The success of this experiment gave Robert House recognition as the ‘Father of Truth Serum’.

In between 1903-1915, investigators used mild types of anesthesia commonly used in obstetrical practices. For extracting the truth or obtaining confession from suspect investigation used alcohol as a truth serum which depressed the central nervous system (CNS) because they believed on time-honoured aphorism in vino veritas which means “where there is wine there is truth”. The alcohol produces a remarkable condor or freedom from inhibition and under the influence of this a person loses his/her tongue and eliminates repressive influence.<sup>12</sup> In the late 19<sup>th</sup> century use of Ether, Chloroform, Hashish was made to induce a person and deepen its hypnotic effect. In the early 20<sup>th</sup> century, barbiturates were administered which induced state of excitations and the patients would recall forgotten events, repressed conflicts, events and experiences.

Amytal was used as a drug to treat ‘war neurosis’ specially during the time of World War II. However after World War II amytal therapy was used in civilians. In 1945, Adams used narcoanalysis in agitated and depressed patients. Freed used narcosynthesis to shorten the length of psychotherapy. In 1949, Hoch used narcosynthesis in patients with gastric ulcers, colitis and tachycardia. In 1947, O’Halloran used pentothal in chronic alcoholism.<sup>13</sup> In 1943 LSD( Lysergic Acid Diethylamide) was discovered and it was effectively used to induce hallucination like experiences and was further used for psychotherapy. In 1953, it was observed that a single LSD application on neurotic patients was effective in abreactive memory activation.<sup>14</sup> Psycholysis includes psychoanalysis with low dosages of hallucinogens. These experiences were dreamlike but at the sometime it was a clear altered state of consciousness which could be

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<sup>11</sup> P. Sivananda Reddy, SP, *Cyber Crimes*, in online Journal of CID

<sup>12</sup> Supra note 9

<sup>13</sup> Satyendra Kaul Zaidi and Mohd., Hasan Zaidi, *Narcoanalysis, Brain Mapping, Hypnosis and Lie Detector Tests, In Introduction of Suspect*, 432(Alia Law Agency, Allahabad, 2008).

<sup>14</sup> Ibid

processed.<sup>15</sup> Now-a-days besides amytal hypnotics, narcotics and benzodiazepines are also used for this purpose.

### ***NARCO-ANALYSIS: THE MODUS OPERANDI***

The narco analysis test is conducted by mixing 3 grams of Sodium Pentothal or Sodium Amytal dissolved in 3000 ml. of distilled water.<sup>16</sup> experts inject a subject with hypnotics like Sodium Pentothal or Sodium Amytal under controlled circumstances of the laboratory. The dosage is subject to certain conditions like age, sex, health and physical condition. The subject which is put in a state of Hypnotism is not in a position to speak up on his own but can answer specific but simple questions. The answers are believed to be spontaneous as a semi-conscious person is unable to manipulate the answers.<sup>17</sup> The effect of the bio-molecules on the bio-activity of an individual is evident as the drug depresses the central nervous system, lowers blood pressure and slows the heart rate, putting the subject into a hypnotic trance resulting in a lack of inhibition.<sup>18</sup> The subject is then interrogated by the investigating agencies in the presence of the doctors. The revelations made during this stage are recorded both in video and audio cassettes. The report prepared by the experts is what is used in the process of collecting evidence. This procedure is conducted in government hospitals after a court order is passed instructing the doctors or hospital authorities to conduct the test.<sup>19</sup>

### **NARCOANALYSIS VIS-À-VIS INDIAN LAWS**

While the importance of need for extraction of information in order to aid and subsequently complete the investigation has been well established theoretically, the question whether such tests are valid and not against principles of natural justice still remain unanswered. In India, the Indian Constitution ensures certain fundamental rights which in its core have the doctrines of natural justice and human rights enshrined. The all encompassing Right to Life and Liberty, Right to Freedom of Speech, Right to Equality etcetera are some of the important fundamental rights. As all ready mentioned above like a double edged sword narcolanalysis acts as a boon for

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<sup>15</sup> Ibid

<sup>16</sup> Kaur Gagandeep, *Narco Analysis: A Volcano in Criminal Investigation System*, [www.legalserviceindia.com](http://www.legalserviceindia.com) available at <http://www.legalserviceindia.com/article/1410-Narco-Analysis.html> last seen on 24/04/2018

<sup>17</sup> *Supra Note 15*

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*

the investigation procedure but on the other hand it acts as a curse against the rights of a person. The question regarding the constitutional validity of Narco analysis stems from the fact the test appears to infringe a person's Right to Life and Liberty(Article 21), Right Against Self Incrimination(Article20(3)). Additionally the admissibility of evidence obtained by the test of narcoanalysis also appears to come in contravention with the provisions of the Indian Evidence Act, 1872. However over the years in various rulings by different courts of the country including even the Hon'ble Supreme Court the stance regarding narcoanalysis in India has become clear.

- *Right against Self Incrimination[ Article 20(3)]*: article 20(3) of the Indian Constitution provides for the right against self incrimination and states that “*No person accused of any offence shall be compelled to be a witness against himself.*” The maxim *nemo tenetur prodere accusare seipsum* which basically means no man is bound to accuse himself<sup>20</sup>, is the basis of this Article. Making any statement that has the possibility of exposing the accused to criminal prosecution either in present or in future is not allowed under the Indian Constitution. This immunity is available to every person against whom formal accusation has been framed.<sup>21</sup> However this protection cannot be claimed by any person who while making the statement is not accused. Additionally it becomes immaterial if he becomes accused thereafter.<sup>22</sup> In *State of Bombay v. Kathi Kalu Oghad*,<sup>23</sup> the supreme court held that information provided by the accused not based upon his personal knowledge cannot be held to be self-incriminatory. The argument from the investigating agencies that the Narco analysis test is used as an aid for collecting evidence and helps the investigation so it cannot amount to testimonial compulsion as given under Article 20(3).<sup>24</sup> The Madras High Court while hearing a case held that the scientific tests such as polygraph, Brain Mapping and narco analysis conducted on accused to bring out truth would not amount to breaking his silence by force.<sup>25</sup> In the case of *Rojo George Vs. Deputy Superintendent of Police*<sup>26</sup>, while allowing the narco analysis test Court is of the

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<sup>20</sup> Narender Kumar “*Constitutional Law of India*”, Faridabad : Allahabad Law Agency, 2007, Sixth Edition, p. 6.

<sup>21</sup> M.P. Sharma v. Satish Chandra, AIR 1954, SC 300.

<sup>22</sup> State of Bombay v. Kathi Kalu Qghad, AIR 1961 SC 1808.

<sup>23</sup> AIR 1961 SC 1808

<sup>24</sup> *Supra note 1*

<sup>25</sup> Dinesh Dalmia Vs. State, 2006 Cr.L.J. 2401

<sup>26</sup> AIR 1953 SC 131

opinion that in present day the criminals started to use very sophisticated and modern techniques for committing the crime. So the conventional 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. Court also said that when such techniques used in the presence of expert then it can't be raised that the investigating agencies violated the fundamental human rights of any citizen of India.<sup>27</sup> It was again argued in the case of Santokben Sharmabhai Jadeja Vs. State of Gujarat<sup>28</sup> while upholding the order for narcoanalysis, that when after exhausting all the possible alternatives there was no possibility to find out the truth or nab the criminals and it is found by the prosecuting agency that there is no further headway of investigation, they are absolutely in dark then it is necessity of such tests. On the basis of this revelation if investigating agency finds some clues or records, some statement which helps or assists for further investigation of crime then there will not be any violation of Article 20(3) of constitution of India.<sup>29</sup> In another case<sup>30</sup> it was stated by the Apex court that the criminal justice system cannot act properly if the person living in the society would not be cooperative so it is the duty of every person to assist the state in bringing criminal justice and detecting the crime. It must be known that no one can withhold criminal information and escape from social responsibility by avoiding such information in the name of right to privacy which itself is not an absolute right.<sup>31</sup> In another case<sup>32</sup> it was held that, the Supreme Court of India held that, it is statutory duty of every witness who has knowledge of commission crime to assist the state in giving evidence and it seems justified that if a person is not willing to give information which is necessary for investigation then adverse impression must be taken against them and no Article 20(3) has stop to do this. In the landmark case of Nandini Sathpathy V. P L Dani<sup>33</sup> it was held that right to remain silent is encompassed under Article 20(3). however Article 20(3) can be waived by the

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<sup>27</sup> *Supra Note 1*

<sup>28</sup> 2008 Cr.L.J. 3992

<sup>29</sup> *Supra note 1*

<sup>30</sup> *Dharampal v. State*, MANU/SC/0260/2003

<sup>31</sup> *Supra note 1*

<sup>32</sup> *State of Gujarat v. Anirudh Singh*, MANU/SC/0749/1997

<sup>33</sup> (1978) 2 SCC

person himself. Additionally in the case of *Kalawati v. State of H.P.*<sup>34</sup> it was held that there must be some compulsion upon the accused. If there occurs no compulsion then such does not fall under the purview of article 20(3).

Finally in the landmark case of *Selvi v. State of Karnataka*<sup>35</sup> the issue of narcoanalysis in context of article 20(3) was raised. The court in this case had observed that:

*“The term narco-analysis was introduced in 1936 for the use of narcotics to induce a trance like state wherein the person is subjected to various queries. The material (literature) produced shows that in the Narcoanalysis Test conducted under medical supervision, an accused will be injected with Sodium Pentathol or Sodium Amytal and thereafter the accused will be subjected to interrogation by the investigating agencies in the presence of expert doctors. But, this will be only after carrying out a detailed medical examination of the accused. If accused is found medically fit to undergo the procedure, then only it will be done, otherwise not. After finding an accused medically fit to undergo the test, the accused will be administered small doses of intravenous infusion of sodium pentathol.”*

The court in this case allowed the narcoanalysis and held that it was not hit by Article 20(3). Hence the constitutional validity lies in the hands of the judiciary, but there is a tie between social interest and individual interest.<sup>36</sup>

- *Right to Life and Liberty:* Article 21 says that “No person shall be deprived of his life and liberty except for procedure established by law.” The Supreme Court defines personal liberty in the case of *A.K.Gopalan v. State of Madras*<sup>37</sup> as “an antithesis of physical restraint or coercion”. Later in the year of 1963 Supreme Court defined personal liberty as “a right of an individual to be free from restrictions or encroachment on his person whether these are directly imposed or indirectly brought about by calculated measure”<sup>38</sup>. The scope of personal liberty was further extended in the case of *Maneka Gandhi v. Union of India*<sup>39</sup> where the Hon’ble Supreme Court held that “the phrase

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<sup>34</sup> 1953, A.I.R 131.

<sup>35</sup> 2006(6) AIR Kar 788.

<sup>36</sup> *Sampatro R.Arveli v. State of Maharashtra* 2009 Cri LJ Bom 457.

<sup>37</sup> *A.K.Gopalan v. State of Madras* AIR 1950 SC 27

<sup>38</sup> *Kharak Singh v. State of U.P. and Others*, AIR 1963 SC 1295.

<sup>39</sup> (1978) 1 SCC 248.

personal liberty is of the widest amplitude and it covers a variety of rights which go to constitute personal liberty". Thus, protection against arbitrary privation of 'life' no longer means mere protection of death or physical injury, but also an invasion of the right to live with human dignity' and would include all these aspects of life which would go to make a man's life meaningful and worth-living.<sup>40</sup> Article 21 is repository of all human rights essential for a person. Life means something more than mere animal existence,<sup>41</sup> it includes right to food clothing, shelter, decent environment and also the right to live in a clear city.<sup>42</sup> In the case of D K Basu V. State of West Bengal<sup>43</sup> the Supreme Court opined the need for development of scientific techniques and methods for interrogation of accused.

- *Narcoanalysis under Indian Evidence Act*: there is no clear cut provision which talks about the admissibility of scientific evidence like that of narco analysis. The statements made under this can however be classified into two parts i.e. admission<sup>44</sup> and confession<sup>45</sup>. Further the confession made to the police officer or in the presence of the police officer and in the custody of the police officer<sup>61</sup> is not admissible as per the provisions of Indian Evidence Act except for when it is made in the presence of the magistrate<sup>46</sup>. When the accused is made the confession before the magistrate, the magistrate is duty bound to warn the accused that he is not bound to make the confession<sup>47</sup>. Narcoanalysis is the important tool of the investigation especially the cases when there is a lack of evidences. However if evidences collected from the Narcoanalysis test is conducted in the presence of the magistrate then it would be a valid confession and would not be hit by section 25 and 26.

## ADVANTAGES AND DISADVANTAGES OF NARCO ANALYSIS

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<sup>40</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Others* (1981) SSC 608.

<sup>41</sup> *Munn v. Illinois* (1877) 94 US 113.

<sup>42</sup> *Suo Motu v. State of Rajasthan*, AIR 2005 Raj 82

<sup>43</sup> AIR 1997 SC 610.

<sup>44</sup> Section 25, Indian Evidence Act 1872

<sup>45</sup> *Ibid*

<sup>46</sup> Section 26, Indian Evidence Act, 1872

<sup>47</sup> Section 164(2), Indian Evidence Act, 1872

an in depth analysis of Narco analysis would be incomplete if advantages and disadvantages of the same are not discussed.

The various advantages include:

- Narcoanalysis would facilitate investigation as they are not only scientific but also accurate.
- With advancement in modern technology the ways in which the criminals plan their crimes have also advanced. In order to counter the happening of such crimes scientific advancements are necessary. Narco analysis is just one example of such scientific tool.
- The traditional method of extracting truth by torture is heinous and narco analysis is an useful alternative
- The evidence extracted through this process may be denied as reliable but it can be used to get an admissible evidence, to corroborate with other evidence or in support of other evidence.

The various disadvantages are:

- The dosage of drugs administered in narco analysis is often done according to the physical health, age, sex etcetera of the accused. Administration of wrong dosage could cause coma and in extreme cases result even in death of the accused.
- Reliability of information given by the subject is also under some shadow because the subject from whom the information is collected is in semiconscious stage and hence the question of reliability of such information is being raised.
- In case of a drug addict the process is not as much successful as needed for collecting evidence.

**JUDICIAL OVERVIEW OF NARCOANALYSIS:** A few important cases have been elaborated in respect of the topic.

- State of A.P. v. Inapuri Padma<sup>48</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 need to obtain any permission from the court to undergo Narco-Analysis test if they express no objection to undergo this test .Where the witnesses are not willing to undergo the test ,the police has 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 .
- Abhay Singh v. State of U.P. <sup>49</sup>: 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. In this case the application was moved by the investigating authority for conducting the Narco-Analysis test and brain mapping test of the accused person. It was the question before the court that whether the accused may be compelled for the Narco-Analysis and Brain Mapping test against his will. It was held by the court that the investigation and all efforts have to be made to find out the real offender, because, one guilty person, who escapes, is the hope of one million .If the NarcoAnalysis test and Brain mapping test may be supportive in finding out the facts relating to the offence then it should be used and the court should not impede the conduct of the exercise.
- Mohinder Singh Pandher and Surender Singh Koli v. State of U.P.<sup>50</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 basically conducted in the Forensic Science Laboratory in Gandhinagar. This test was basically conducted to ascertaining the veracity of their statement during their custodial interrogation. During this test, the accused person disclosed the name of various females and children who had been murdered by them and also revealed his argue to rape them after murdering them. By the conducting of this test many relevant information were disclosed to the investigating authorities.

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<sup>48</sup> 2008 CriLJ. 3992 (AP).

<sup>49</sup> 2009 CriLJ 2189(All)(LKO Bench)

<sup>50</sup> AIR 2011 SC 970

## CONCLUSION

In a world with fast changing technology there has also occurred a change in the pattern of crime. In this scenario the criminals have replaced the traditional methods with more advanced form of technology to commit the crimes. Thus in order to ensure justice in such situations advancement in investigation patterns is imperative. Use of advancement in science and technology would only aid in solving the crime and delivering of justice. Narcoanalysis is one such tool of modern scientific advancement. Narcoanalysis can play an immense role in the investigation. But in India there is huge cry for admissibility of the test. There are no particular provisions which deal with scientific tools. The discretion lies in the hands of the judiciary to allow or not to allow the Narcoanalysis test. Further we can say that Narcoanalysis test is being practiced in India because of the mutual understanding between the judiciary, police, investigative agencies, human rights activist etc<sup>51</sup>. But in the case of Rohit shekhar v. N.D Tiwari<sup>52</sup>, the Delhi high court held that where there is a conflict between the individual right and societal right then in those case the societal interest will be prevail over the individual interest. Allowance of Narco analysis would only aid investigation specifically in cases like rape, terrorism etcetera. Also as the drugs are administered by trained personnels and only in small dosages it becomes a more conducive option in comparison to third degree torture. Hence, even though narco analysis may come with certain amount of criticism but it has become a need in today's time in interest of Justice.

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<sup>51</sup> A. Jesani “, *Narco Analysis, Torture and Democratic Rights*” , 22nd Dr. Ramanadham Memorial Meeting, 13 (2008).

<sup>52</sup> 2012, Delhi High Court