

NARCO ANALYSIS TEST: INDIAN PERSPECTIVE

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ABSTRACT

Since the dawn of time, only one change has remained constant throughout, and that is change. Such change is seen in every part and parcel of our life. Even a well – defined legal system has to adapt itself in order to fight against the rigors of change. A NARCO Analysis Test is the flag bearer of such change.

This is the era of modernization, and NARCO Test is such a modern device which could help the justice administration system to have an advantage over all the criminals who don't shy away from employing the most modern of methods to make mockery of the Indian Legal System. NARCO Test can prove to be a great leveler and can bring the slyest of criminals behind the bars.

A lot has been heard and said about the concept of NARCO Analysis Test. The public image is more often than not a negative one. This paper aims at dissipating this rumour and provide arguments for both the perspectives – the pros and cons of NARCO Test. The Indian Judiciary has also weighed up on the aspect of NARCO Test. The paper also deals with the aspect of the Constitutionality of such a test.

Lastly, the paper attempts at identifying the blatant lacunae there is in application of such a test. The paper also provides for resolving the issue, by stating the measures and legislative measures that can be taken for resolving the same.

Key Words - NARCO Test, History, Judicial Interpretation, Constitutionality, Administration of Justice, Suggested Reforms

Introduction

More often than not, one must have come across the use of a magical conglomeration of certain chemicals which would induce a person into speaking the truth in their favourite criminal novel or even a TV Show. The discussion about such a NARCO

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Analysis test really came to the forefront in the public forum during the administration of the same to the infamous terrorist Ajmal Kasab, the accused in the 26/11 terror attacks in Mumbai. This paper is going to deal with the same, the Indian perspective regarding NARCO Analysis Test and contention will be raised for making certain provisions regarding involuntary NARCO Analysis Test.

The use of this chemical has been witnessed throughout the recent history and hence, a historical analysis of the use of NARCO Analysis test also becomes quite necessary to present a holistic picture of the same. The term Narco Analysis is derived from the Greek word *narkō* (meaning "anesthesia" or "torpor") and is used to describe a diagnostic and psychotherapeutic technique that uses psychotropic drugs, particularly barbiturates, to induce a stupor in which mental elements with strong associated affects come to the surface, where they can be exploited by the therapist.²

For any thought, idea or norm to be synthesized, there needs to be a thesis and an anti-thesis, the interaction between the two giving rise to the idea. Likewise, to develop a better and a clearer understanding of the NARCO Analysis Test, the pros and cons of such a test need to be weighed together in order to reach a conclusion.

The use of NARCO Analysis techniques has also come to crossroads with the Fundamental Rights as guaranteed by the Part III of the Constitution of India. Article 20(3) of the Constitution of India bestows upon the people a right against self-incrimination, i.e., no person who has been accused of committing any offence would be forced to be a witness against his own self.

Another question which is pertinent in this regard is whether or not this mysterious potion is accurate and efficient in serving its purpose of bringing out the truth. There are chances that the results found out after the use of the truth serum might not even be correct and the same as well will be dealt with by the paper.

Most importantly, the way in which the judiciary has dealt with the aspect of NARCO Analysis and how it has envisaged the application of such test is another issue which

²Vassilis Kapsambeli, International Dictionary of Psychoanalysis, (14th Dec, 2018), <https://www.encyclopedia.com/psychology/dictionaries-thesauruses-pictures-and-press-releases/narco-analysis>.

this paper will dwell into. The questions such as whether or not there is a need for a legislative input on the conduct of NARCO Analysis and other tests such as Brain Mapping, Polygraph Test etc.

Over the course of the paper it can be observed that the judiciary has made several attempts at laying down a clear picture with regards to the various scientific tests and their application and admissibility. However, due to the novelty of the subject and lack of resources which could provide something better, certain lacunae with regard to the application of such tests have remained unanswered.

This paper aims at bridging this particular gap and also proposes a solution in the form of a new legislation which could completely put an end to any sort of ambiguity which could rise with respect to these Tests. A few amendments would also be needed to be carried out in order to keep the statutes such as the Indian Evidence Act etc. with the tides of time.

History and basics of NARCO Analysis

It has often been said that law is dynamic and not static, but also, the law breakers have always been one step ahead of it. The importance of incorporation of techniques which would lead to the use of such scientific methods is paramount and the same emphasized by Justice Krishna Iyer, “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”.³

The authorities have always found it to be quite difficult a task to crack down on the hardened criminals and get them to confess of their cold blooded crimes when all other measures have already been resorted to. Moreover, nothing will excite a man of science more than the power bestowed upon him by a magical combination of chemicals which would lead to him being able to penetrate into the deepest of defence mechanisms of such criminals which stops them from speaking the truth, in spite of all the enticement and even measures of coercion.

³ Nandini Sathpathy v. P.L. Dani & Anr. AIR 1978 SC 1025 pp. 1032.

It becomes an opportunity for Scientists to prove their mettle and let the world now of the immense power and new avenues science has reached. This intricate interplay of evidence law and science leads to the synthesis of such tests, which otherwise was even far away from the realms of imagination. However, how effective such tests are cannot be conclusively said as it is still a developing field.

The use of NARCO Analysis was based on the use of hypnosis by Sigmund Freud, who used hypnosis as a method to weaken the defence mechanism of the central nervous system. The same was made possible scientifically after the discovery of the compounds known as Barbiturates.

The Encyclopedia of Britannica has defined Barbiturate as any of a class of organic compounds used in medicine as sedatives (to produce a calming effect), as hypnotics (to produce sleep), or as an adjunct in anesthesia. Barbiturates are derivatives of barbituric acid (malonyl urea), which is formed from malonic acid and urea. Barbital was first synthesized in 1903, and phenobarbital became available in 1912. Barbiturates act by depressing the central nervous system, particularly on certain portions of the brain, though they tend to depress the functioning of all the body's tissues. Most of them exert a sedative effect in small doses and a hypnotic effect in larger doses. The barbiturates have largely been replaced as sedatives by the benzodiazepines and other minor tranquilizers, which have fewer unfavourable side effects and less abuse potential.⁴

The first use of such compounds can be credited to Dr. Robert House, who first noticed the women entering into a phase in which they were more pliant and talkative after they had been administered with Scopolamine. He later experimented the same on criminals as a test of 'determining their innocence or guilt.'⁵

Over time, these methods and techniques were deployed by the intelligence agency of USA, known as the CIA, during the Cold War as method to extract out the vital pieces

⁴The Editors of Encyclopaedia Britannica, Encyclopaedia Britannica, Barbiturate, (15th Dec, 2018)<https://www.britannica.com/science/barbiturate>.

⁵Laura Calkins, Wiley Online Library, Detained And Drugged: A Brief Overview of the use of Pharmaceuticals for the Interrogation of Suspects, Prisoners, Patients, and Pows in the US, (14th December, 2018), <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8519.2009.01774.x>.

of information during the interrogation and was also continued to be used in criminal investigations in USA.⁶

The NARCO Analysis Test involves the intravenous administration of a drug (such as sodium pentothal, scopolamine and sodium amytal) that causes the subject to enter into various stages of anaesthesia. In the hypnotic stage, the subject becomes less inhibited and is more likely to divulge information, which would usually not be revealed in the conscious state. He or she may also divulge all his/her fantasies, personal wishes, impulses, instinctual drive, illusions, delusions, conflicts, misinterpretations, etc.⁷

According to various sources, the most prevalent method of carrying out a NARCO Analysis Test as per the Forensic Science Laboratories in Bangalore and Gujarat, is conducted by injecting 3 grams of sodium pentothal dissolved in 300 ml of distilled water and this prepared solution is administered intravenously along with dextrose over a period of 3 hours with the help of anaesthetist⁸

The next point which needs discussion is what effect do the drugs administered under NARCO Analysis have on the human body and especially the human mind. Most of the compounds used for such an analysis are organic compounds associated with Sodium. The effect that they have is the same as anaesthesia, but instead of losing consciousness, the person who is being put to the test loses anxiety to a great extent and also faces a reduction in the degree of responsiveness. This is instrumental in getting the person to blurt out the truth, mainly because lying is not as easy as it seems. An average can lie subconsciously without putting much thought and effort into it. The drug has a primary effect in the Cerebral Cortex, the centre for the most complex activities carried out by the human body. It has a direct effect on the nerve-

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⁷Naples M, Hackett T. The Amytal interview: history and current uses. *Psychosomatic*. 1978;19:98–105. [PubMed].

⁸Pooja Vatsh, Legal Services India, Narco Analysis: A Volcano In Criminal Investigation System, (14th Dec, 2018), <http://www.legalserviceindia.com/article/1410-Narco-Analysis.html>.

tissue functionality and since this is the most primordial part of the body to have such an intricate functionality, the drug effects this part first.⁹

India has witnessed several instances where a NARCO Test was used as a last resort to find a lead in the most complex of cases. Some of the cases where such Test was previously applied are the likes of stamp paper scam kingpin Abdul Telgi (2004), Moninder Singh Pandher and Surendra Koli for Nithari killings (2007), 26/11 terrorist Ajmal Kasab (2008), Arushi's father Dr Rajesh Talwar, mother Nupur in Arushi murder case (2008-2010) among others.

From the above mentioned sample space, it is a very clear and direct inference that such Test has been employed when the suspects were the toughest cookies to crack and the tested line of investigation was being rendered useless due to their shrewd and crooked selves. The use of NARCO Test in the Arushi Talwar case went a long way in establishing the innocence of the accused parents'. Not only did it help prove their innocence, but also, it was a catalyst in putting the actual criminals behind the bars.

Pros and Cons of NARCO Analysis Test

The renowned author William Arthur Ward is accredited with saying that '*Curiosity is the wick in the candle of learning.*' This sense of curiosity has led to mankind in discovering numerous phenomenon. And forming a perception about such discoveries and innovations also came naturally to the human race. And such a perception can either be positive or negative. This notion can be seen throughout the human history. A prime example of it being the primitive man. The primitive man was quite adventurous and hence, it led to the discovery of fire. The perception of fire is different amongst different set of people. The most ardent of Christians do associate fire in a negative context with Satan, but on the other hand, the Greek mythology has given the world a 'God of Fire' in the form of *Hephaestus*. Hence, the perception of the masses with regard to the NARCO Analysis test can either be positive or negative, which entirely depends on their acquaintance with the either solely the pros or solely

⁹According to Harold L Kaplan, MD and Benjamin J Sadock, the Barbitol is the first barbiturate ever introduced in to clinical medicine in 1903. According to them "the barbiturates have effects on all organs and systems and the CNS is most sensitive to the effects of the barbiturates at clinical dosages most effects are central. See Kaplan and Sadock, Comprehensive Text Book of Psychiatry, 1928-1929.

the cons of it. The true nature of NARCO Analysis can only be found at when the pros and cons are read together.

The entire hypothesis which leads the people into viewing the Test with a negative perspective is based upon the questions on its reliability. There is no conclusive proof or even a research report that suggests that a NARCO Analysis Test will always deliver the truth. This down to the fact since the subject of the test is not in his complete senses, any misleading question can make the subject answer in an improper way, which might not actually be the truth. Also, it is not surprising to find that some persons can still manifest a lie even under the effect of the drugs, making a fool out of the entire testing scenario. Moreover, since the subject is in a highly suggestible state, as his brain is not working in its full capacity, some memories can be planted into his brain, something which can be easily done by the person who is doing all the questioning. What this might result in is the person being made to believe that he had indeed committed the offence, when, in actuality, he was completely innocent.

The people are also very suspicious about the ill – effects that such a test will carry with it even after its safest of application. It is easier to put an end to a wild forest fire than to put an end to a rumour born out of thin air. The medical sciences have failed to reach to a conclusion that a NARCO Test will definitely cause a plethora of medical concerns, but even the latest medical advancements cannot keep up with the whims and fancies of the masses.

The infringement on the Constitutional Rights, especially the Fundamental Rights, along with other legal rights also forms a significant con with respect to the NARCO Analysis Test. Such a test can lead to the violation of Article 20(3) and Article 21 as well. This aspect of Constitutionality has been dealt in detail in the subsequent part of the paper.

The other legal rights can have a far and wide reaching connotation. The person who is undergoing the NARCO Analysis Test can possibly take a plea for insanity, as prescribed under the Indian Penal Code, for the duration of the test, as his mind is not able to function at the highest of pedestal of consciousness, intelligence and its overall capability. However, this defence is only afforded to the accused at the time of the

confession of the offence and not during the investigative procedure. The ball is in the Court of the Judiciary to come up with a definitive answer as to whether such a defence can be taken up during the course of the NARCO Test.

Lastly, the evidentiary value of the results of such a test are also a determinant factor in formation of the people's perception about them. As it will be discussed in the latter part of the paper that the evidentiary value of such tests has been discussed by the Courts but it still leaves few loopholes which need to be conclusively answered in order to get a clear cut picture of the results of NARCO Test with respect to their admissibility and relevance in the Court of Law.

However, like there are two sides to every story, the people who have a sense of appreciation for such a marvel of modern day science and technology, also happen to voice their opinion on the same.

The NARCO Analysis Test must be envisaged as a catalyst for bringing about justice and adhering to principles of fair trial and equality, which have been so deeply enshrined in our Constitution. If used properly, it can be the sole determinant factor in ascertaining a person's guilt or innocence.

William Penn once said, "*To delay justice, is Injustice.*"¹⁰ The backlog on the backs of the judiciary is almost non-scalable. The number of cases pending before the Courts is an astounding figure of almost around 3,30,00,000.¹¹ This humungous number can certainly be reduced if help is sought from the scientific methods such as a NARCO Test. The Criminal Justice Administration System can be greatly expedited if such methods are adhered to. Not only it helps in fastening up the investigative process, if the Court does decide to view it as a conclusive proof, then it can also lead to timely disposal of a lot of cases.

NARCO Analysis can be a very effective tool in breaking down the most hardened of criminals who remain unfazed by even the extra judicial methods adopted by the concerned authorities in order for them to blurt out anything which could help in the

¹⁰Penn, William (1693), *Some Fruits of Solitude*, Headley, 1905, p. 86.

¹¹Harish V Nair, *India Today*, 3.3 crore backlog cases in courts, pendency figure at highest: CJI Dipak Misra, (19th December, 2018), <https://www.indiatoday.in/india/story/3-3-crore-backlog-cases-in-courts-pendency-figure-at-highest-cji-dipak-misra-1271752-2018-06-28>.

investigation procedure. It is only obvious and logical to push the rights such as right to privacy and other superficial human rights to the back end when the nature of the crime is such that it is carried out in the most inhumane of ways. The principles of equity empower the Courts to do so.

Also, if a person is convicted by such a scientific method and in a manner that such conviction could not have been possible without the application of such methods, it is imperative that the NARCO Test is the need of the hour. The argument might be raised that this resulted in the curtailment of the rights of the accused. However, the potential of violation of rights of the numerous innocent people, had such a criminal had been let loose, would have definitely sky rocketed.

Lastly, an investigation which could have gone in a completely different direction had a NARCO Analysis Test been carried out, would result in the violation of the rights of the party which has been adversely affected by the non-application of such a test. It would result in a gross violation of Article 21 of the party which is facing the brunt of the more conservative approach adopted by the judiciary by such non-application. The Article 21 is an umbrella right which in turn ensures a plethora of rights, such as the right to a speedy trial, also the Court has a duty cast on it by the Constitution to take any step in order to ensure complete justice. This inherent power of the Supreme Court is denoted in Article 142. Hence, in a case which is stuck and seems solvable with the administration of such attest, would result in the non-application of Article 142 of the Constitution of India if such Tests are not carried out.

Constitutionality of NARCO Analysis Test

John F. Kennedy, the 35th President of the United States of America, was keen advocate for ensuring the basic rights are served to each and every human. He was once remarked as saying, “The rights of every man are diminished when the rights of one man are threatened.” Hence, when looking at the Constitutional Rights of the subject of the NARCO Test, the said infringement of such rights needs to be weighed up against the possible denial of the right to receive complete justice of the victim and her/his kin.

The Fundamental Rights are the most intrinsic part of the Constitution of India and any curtailment of the same is a result of the denial of the most basic of virtues and needs which a human being needs in order to barely exist in the society. The right most relevant in this regard is the Right against Self-Incrimination. Article 20(3) of the Constitution gives birth to this Right and it reads as,

“No person accused of any offence shall be compelled to be a witness against himself”¹²

This provision can be broken down into some fundamental elements, the first of them being the person on whom this Article is being applied is an accused, secondly, there is a degree of compulsion in him being put to the witness stand and lastly, him being the witness would have an adverse effect on his own contention.

The Constitutionality of NARCO Analysis is shrouded by doubts due to the fact that it might compel an accused to give away such information which, in an ordinary state, he might not have given away. Moreover, it is a general rule of evidence law that confession made with a degree of coercion or any other threat behind it is not admissible in the Court of Law.

Even after the application of Section 80¹³ of the Indian Evidence Act, the scope for a forced confession was explained by the Apex Court in *Kalawati v. State of Himachal Pradesh*,¹⁴ where, it held that Article 20(3) does not apply at all to a case where the confession is made by the accused without any inducement, threat or collateral promise.

Hence, a logical conclusion which will arise from the interplay of Article 20(3) and NARCO Analysis Test is that if the accused is willing to undergo the said test on his own without any other coercion or incitement, then the result of such a test must be

¹²India Const., Article 20(3).

¹³Presumption as to documents produced as record of evidence.—Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume— that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

¹⁴*Kalawati v. State of Himachal Pradesh*, 1953 AIR 131.

made admissible to the Court. The same principle was propounded in the case of *Selvi v. State of Karnataka*,¹⁵ where it was stated that “*Compulsory involuntary administration of the Narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) violates the ‘right against self-incrimination’ enumerated in Article 20(3) of the Constitution as the subject does not exercise conscious control over the responses during the administration of the test.*”¹⁶

In the aforementioned case, the Court also held that such a confession, taken voluntarily, would not amount to material evidence and serve as conclusive proof, but rather, it should be classified as testimony and must be corroborated with the other facts of the case to reach a decisive conclusion.

However, the use of NARCO Analysis was not restricted on the basis of its lack of admissibility, but also, the police fell back to Section 27 of the Evidence Act,¹⁷ which stated a statement made in front of a police officer might also amount to a confession if it is proved by a subsequent fact. This has led to a string of instances where involuntary tests were carried by the police and the things which came out of such tests were later corroborated with the facts and were given the form of a confession.

The arguments mentioned in the aforementioned case only cater to one side of the coin. That being an overtly humanitarian view of the rights of the accused. While securing these rights, the right to complete justice, right to a fair trial and other related rights of the victim are often ignored. A NARCO Analysis might be the only things which can bridge the gap between the victim and his right to a fair trial. It can prove to be the only recourse available to him for proving the guilt of the accused, the non-application of such test will result in denial of the accused meeting the ends of justice.

Therefore, the NARCO Analysis Test can prove to be a conflict between Article 20(3) and Article 21, under which the Right to a Fair Trial is guaranteed by the Constitution, a right which has been more often than not interpreted in a

¹⁵*Selvi v. State of Karnataka*, (2010) 7 SCC 263.

¹⁶ *Supra*

¹⁷How much of information received from accused may be proved. —Provided that, when any fact is deposited to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

unidimensional manner, from the perspective of the accused only. It is normal human tendency to form a presumption against the person who is denying the taking of such a test as an obvious premise would be that he is concealing something which would make or break this case. Even though formation of such a presumption by the Court has been invalidated by the Evidence Act, it is an organic phenomenon which is bound to develop in the human mind.

On the other hand, the Article 21 of the Indian Constitution also guarantees a Right to Speedy Trial. This right finds its genesis in the ancient Magna Carta, and was first mentioned on the Indian shores by Justice Krishna Iyer in the case of *Babu Singh v State of Uttar Pradesh*.¹⁸ He stated that even in cases of grave nature, the system apparently moves in a slow motion, which is lethal for the principle promulgated by the doctrine of 'fair trial', no matter what the ultimate decision may be. In the case of *Hussainara Khatoon v. State of Bihar*,¹⁹ it was held by the apex court that the inordinate delay leads to a violation of Article 21 and also causes a lot of mental anguish. By ensuring that the accused undergoes a NARCO Analysis Test, the cumbersome task of establishing the guilt of the person can be easily sped up, which is in consonance with the principles mentioned above.

Another Constitutional Right which is relevant in this regard is the newly refurbished Right to Privacy. It hasn't been long since the Supreme Court of India construed the Right to Privacy as a Fundamental Right under Article 21 of the Constitution of India.²⁰ An unwanted interference with the information enjoyed by the person in his own private world through the tests such as NARCO Analysis can be seen as a clear-cut intrusion into the confidential information a person might be having. But again, this must be put to a reasonable restriction as making it an absolute right will curb justice and righteousness in more ways than one.

The judiciary on NARCO Analysis Test

¹⁸ *Babu Singh v. State of UP*, 1978 AIR 527, 1978 SCC (1) 579.

¹⁹ *Hussainara Khatoon v. State of Bihar*, 1979 AIR 1360.

²⁰ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

The Judiciary has dealt with the aspect of NARCO Analysis Test for quite some time now. Even after a string of ground breaking decisions, it has failed to provide a clear cut mechanism for the application of such tests, but instead, as mentioned before, it has ruled to invalidate the involuntary application of such tests. Apart from this aspect, a lot of areas with regard to the use of NARCO Analysis Test remain unanswered till date.

The issue was dealt with by the Madras High Court in the case of *Dinesh Dalmia v. State*,²¹ which validated the use of NARCO Analysis Test if it would truly and surely expedite the investigation process as a delay in concluding the investigation leads to the formation of a presumption in favour of the accused. Therefore, if the accused fails to co-operate during the custodial investigation and questioning, then scientific methods of investigation can be used to pull away the shroud of mystery surrounding the accused.

The same point was reiterated in the case of *Sh. Shailendra Sharma v. State*,²² where, NARCO Analysis Test was dubbed to be an aid to the entire investigation procedure. It can lead to the discovery of new facts and evidences, on which the further investigation has to be based. An essential inference which needs to be drawn from the aforementioned judgement is that the Court viewed it as an aid to investigation rather than an inhibition on the Constitutional Rights.

However, the same was invalidated by the Supreme Court in the case of *Selvi v. State of Karnataka*,²³ which clearly stated that the involuntary application of NARCO Analysis and other related rights is a violation of the Fundamental Rights. It was held to be violative of Right against Self-Incrimination as per Article 20(3) and violation of Article 21 on various grounds such as Right against cruel and inhumane treatment.

An example of voluntary undertaking of NARCO Analysis Test can be seen in the infamous Arushi Talwar Murder Case. The subjects to the test were key suspects of the murder of the 14-year-old girl and were her parents as well, i.e., Rajesh Talwar and Nupur Talwar. The accused wanted to prove their innocence and hence were

²¹Dinesh Dalmia v. State, 2006 Cri. L. J. 2401.

²²Sh. Shailendra Sharma v. State, Delhi High Court, WP (CrI.) 532 OF 2008.

²³Selvi v. State of Karnataka, (2010) 7 SCC 263.

ready to take the test. Later on, the Talwar's were acquitted and the domestic help was held to be guilty of the offence, that too on the basis of evidence found out after the conduct of NARCO Test on other suspects. Hence, instead of always viewing the NARCO Analysis as an inhibition of the rights of the accused, in this case, it can be seen as a catalyst for bringing about justice.

Previously, in the Shashi Murder Case, the Court had ordered the NARCO Analysis Test of the chief suspect and also recognized the scope for malpractice and tampering of the result produced by such a test. Hence, the Court disallowed the involvement of Police at any stage as the accused was someone with huge political pull and, the Court even ordered the test to be carried out in Judicial Custody.

While in Selvi Case the consent before the NARCO Test was being talked about, in the case of *Ramchandra Reddy v. State of Maharashtra*,²⁴ the legality of the NARCO Test and other tests such as Brain Mapping Test were put under the gavel. The Court affirmed the use of these methods and held them to be legally valid. In the case concerning *Abdul Karim Telgi*²⁵, the evidence procured under the effect of truth serum were held to be admissible and played an indispensable role in the conviction of the accused.

Hence, through its various decisions, the Supreme Court has tried to cater to every aspect in relation with the NARCO Analysis Test, but somewhat unsuccessfully, mainly due to the conflict of rights and conflicting opinion of the judiciary. Therefore, whether is an inherent need for legislative intervention or not will be answered in the subsequent part of the paper.

Suggested reforms

²⁴*Ramchandra Reddy v. State of Maharashtra*, Bombay High Court, Criminal Writ Petition No.1924 of 2003, along with Criminal Writ Petition No.66 of 2004.

²⁵Abdul Karim Telgi (born 1961) is a convicted Indian counterfeiter. He earned money by printing counterfeit stamp paper in India. The tentacles of the fake stamp and stamp paper scam, better known as the Telgi scam, has penetrated 12 states and is estimated at a whopping Rs 20,000 crore plus. Between 1992 and 2002, 12 cases were registered against Telgi relating to counterfeit stamps in Maharashtra alone and 15 cases in other parts of the country, but the lack of serious action suggests that the scamster had mastered the technique of corrupting the system.

It was the renowned Greek philosopher Heraclitus, who once remarked, “*Change is the only constant in the world.*” Hence, to keep up with the modern day and age, the *lex loci* also has to keep on evolving.

The conflict at hand is due to the application of the Constitution to the Scientific Tests and the conflict of rights which arises from it. The problem is caused due to the extensive effort put in by the Constituent Assembly to grant us an expansive set of Fundamental Rights. It is indeed a legislative problem, something which can only be solved with the intervention of the legislature.

The legislature needs to come up with a definitive set of rules and regulations to counter the criminals who roam around freely due to the unprecedented number of loopholes in the criminal justice system. The subsequent part of the paper deals with some possible legislative action that can be taken to solve this problem with respect to NARCO Analysis and other scientific methods of collection of evidence.

- The manner and the procedure in which the drugs have to be administered, the conditions that need to be complied with to ensure the safety of the subject, the type of chemicals and the composition of the same that are portrayed a ‘Truth Serum’ have to be clearly mentioned.
- To ensure that no malpractice is present, a central authority which specializes in Medico-Legal Jurisprudence has to be constituted for the overall upkeep of such practices of Scientific Methods of collection of evidence. It will also look into the appointment of professionals who will carry out the aforementioned tests.
- The results of the NARCO Analysis Test have to be taken with a pinch of salt. They should not be taken as absolute conclusive evidence and needs to be corroborated first. Rather, the test should be taken in order to facilitate the discovery of new facts and carry on investigation in that direction.
- Another problem which is deemed to be a roadblock towards acceptance over the results of a NARCO Analysis Test is suggestive questioning. What suggestive questioning means is that the question is framed in such a way that the person under the influence of drugs is bound to answer the questions raised

to him in a way that will prove to inculpatory to him, as the person is already in a very compromised state, with the functionalities of his brain working at a very reduced capacity.

- Therefore, the framing of the questions should be done by a neutral party. And no one can be a better neutral party than the judiciary itself. The judiciary can look after the fact that no suggestive questions are being asked and only relevant and important information is being adduced from the subject of the test. This can further ensure that there is no unnecessary infringement on the right to privacy of the accused as well.
- In certain crimes, which are of grave nature, the question of life is involved, the basic human dignity is being violated in the most gruesome ways, the idea of involuntary NARCO Analysis Test should be given. For example, a similar classification should be made as was done in the infamous Nirbhaya Case, where death penalty was said to be awarded in the rarest of rare circumstances. Similarly, a NARCO Test can be demanded of a person who is the prime accused in a murder case and is pleading the application of Article 20(3) against the answering of a question. In such a case a NARCO Analysis Test can be premised on the adverse inference drawn by the Court under illustrations (g) and (h) of Section 114²⁶ of the Indian Evidence Act.
- However, this must not be made into an absolute condition for a class of crimes. Ideally, the character of the accused or the subject of the test had to be given due regard while conducting the test. A medical expert has to be kept in loop for the determination procedure as to whether the person is fit to tolerate the consequences of the test.
- Usually, the NARCO Test procedure is carried out in a laboratory and then the taped recording of the same are displayed to the Judges. This increases the

²⁶Court may presume existence of certain facts. —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustrations The Court may presume—

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

chances of tampering with the outcome of the result as it is quite easy to alter the content of the recording with modern computing marvels. Hence, the NARCO Test should be live streamed to the Court so no scope for tampering with the evidence is left.

- Voluntary undertaking of such tests has to be established as admissible by the Court and relevant in discovery of new facts and even as a major factor in reaching conclusions, only if the information dwelled upon during the test has been duly and completely corroborated.
- Extensive research has to be undertaken to reach a conclusion and accuracy of these tests. The ways by which the results of the test can be manipulated by the subject are also to be given due regard.

Hence, if certain amount of precaution is taken into account, nothing can stop the criminal investigative law in scaling new heights with the help of modern-day scientific marvels and the complexities of the human mind and body.

Conclusion

This paper was to elaborate on the position of NARCO Analysis in India, the problems that come hand-in-hand with it, the conflict it has with the provisions regarding the rights of the individuals in the country, the rights of the people that it is seemingly infringing and the judicial view of the same. The other side of the argument was also duly highlighted, i.e., the rights of the victim catered by the NARCO Test and how useful it is in criminal investigation. The history of NARCO Analysis test was also looked into and a brief discussion was made into the mechanism of the said test.

Over the course of the paper, an effort was made to drive across the point that NARCO Analysis Test isn't that bad an evil that it more often than not portrayed to be. A case was made for the legislative intervention in the area which would simplify the scheme regarding the use of this test across the jurisdiction of the Indian Courts.

The main contention raised in the latter part of the paper was whether or not the concept of involuntary NARCO Analysis Test be entertained in India. Of course the

idea propounded above has to be carried out when certain conditions and requirement are complied with.

Lastly, it can be said that NARCO Analysis Test and other such scientific developments can bring the law enforcement agencies and the ever-advancing criminals on an equal footing, especially in cases where the only helpful recourse is the accused himself and hence, involuntary NARCO Test can be allowed in certain cases. NARCO Analysis Test has to be viewed as a catalyst for equality in the footrace for justice between the victim and the accused.