

Critical Analysis Of Truth Serum Test In India

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INTRODUCTION

Science is an ever growing and rapidly developing field in the present era, and it has its immediate impact on every sector such as on economic, society, and culture and even on law. One such fruit of scientific technology is Deception Detective Tests. To name a few - Polygraph, Brain mapping, Narco – analysis. Where using these tests in investigations can help the officers to extract the truth from the accused.

The facelessness of the Internet has enrooted various new crimes, with people committing crimes in cyberspace that they would not otherwise commit and the possibility of adopting multiple identities can be incentives for criminal behaviour. The change is not merely in the new crimes but also new ways of committing traditional crimes.

The development in technology has two facades to it, one side it is helping people to be more productive and progresses, on the other side, and it is helping criminals too to commit crimes without a trace of evidence. Hence, the use of such deceptive detective tests is becoming inevitable for the investigation process.

As propounded by Bentham and Mills, Law is dynamic and not static and therefore, as society evolves, law has to keep in consonance with the changing social order. Law is the instrument of societal change and the judiciary has the responsibility of interpreting the law for the greater good.² Therefore, it is clear that the judiciary need cope up with the advancement of human kind.

If the criminals use new technology in committing the crimes, the enforcement agencies have to use the new techniques in solving such crimes. If the investigators are reluctant to use these new technologies for solving such

complicated the crimes, it would be very difficult to detect the culprits of such crimes. Therefore, in the context of the changing organised modern criminal who are taking shelters behind and making full use of new sophisticated technologies. Krishna Iyer J. Remarked, “the courts self-criminate themselves if they keep the gates partly open for culprit to flee the justice under the guise of interpretative enlargement of golden rule of criminal jurisprudence.”³

But the question lies in how far these tests are valid and what is the extent of permissibility of such tests. In this paper the author tries to understand a specific deceptive detective test, which is Narco analysis.

OBJECTIVE OF THE RESEARCH

During the process of this research, the researcher has focused on the following subjects

- Procedure of the Narco – Analysis Test.
- Constitutional Validity of the test in India.
- Evidentiary Value of the test in India.
- Various cases where the test has been conducted.

RESEARCH METHODOLOGY

This research article based on doctrinal and analytical method of research. While writing this article the researcher has collected data from books of eminent authors, law journals, news articles and other such various websites.

CONCEPT AND MEANING OF NARCO ANALYSIS TEST

The origin of the ‘Narco-Analysis’ is from the Greek word Narco which means numbness and is used to describe diagnostic and psychotherapeutic techniques that used psychotropic drugs, particularly barbiturates⁴ to induce a stupor in which mental element with strong associated effect come to the surface,

where they can be exploited by the therapist.⁵ It is also known as drug hypnosis or a truth serum or a combination of hypnosis or narcosis. Thus it is a method to make human thought and communication manageable.⁶

The word 'Narco – Analysis' was introduced by J. Stephen Horsely in 1936 for the use of narcotics to induce stupors like state in which the patient talks freely and intensive psychotherapy may be applied. Nowadays psychoanalytical and Narco analytical tests are carried out to interpret the behaviour of the suspect, accused person or the criminals.⁷

The term Narco-Analysis even though in a poor description has become very popular in law enforcement and judicial circle. It is, therefore, a method of psychiatric therapy which is used as a scientific method of assistance for interrogation. In this process by injecting chemical into the accused body, he is put to sleep or into a semi-conscious state and then interrogated while he is in such state. It is the opinion of the scientists that in such semi-conscious state the person loses his self-control as he wouldn't be able to use his prefrontal cortex and lie and hence speaks truth.

PROCEDURE OF NARCO – ANALYSIS TEST

The procedure to be followed during the test can be divided into two heads, one being the medical precautions and the other being legal formalities.

➤ Medical Procedure–

Narco - analysis test is conducted by an expert GABA (A neurotransmitter inhibitor) a chemical which occurs naturally in the body. Truth drug binds GABA forming a complex at the B site which exerts pressure over the penetrability of chloride ions into the neural membrane which leads to the stage of disinhibition, truth drugs cut to increase the action of GABA in the brain, thereby decreasing nerve activity neural activity in the brain which results in sleepiness.

This test is conducted normally by an amount of 3 gram of Sodium Pentothal dissolved in 3000 ml of distilled water and the solution is administered intravenously along with 10% of dextrose over periods of three hours with the help of a qualified anaesthetist. It is a barbiturate (thiopental sodium) making the neural membrane more permeable to Chloride ions, resulting in the general inhibition, starting with the cortex and working down to the lower brain regions with increasing biological effects at just neural inhibitory effect to create an alcohol-like disinhibition". At of normal behaviours restraints. A higher dosage may create a stupor and inhibit independent thought and actions to a greater extent.⁸

However, the amount of the dosage to be dissolved in the water varies from accused person's age, sex, and health, physical and mental condition and the test must be conducted in the presence of Physician, Neurologist, Cardiologist, and Anaesthetist to study the alternations of blood pressure, pulse respiration etc. before and after the administration; to estimate time required; to reach the various stages of hypnonarcosis; to estimate duration of deep sleep following narcosis; and to investigate drugs which would extend the period for such investigation.

During the test, the person will be initially asked basic questions such as his/her name, place of birth, parents name and later on questions regarding accusations will be asked.

Predominantly, the use of the drug is to reduce opposition to the hypnotist, who then has to frame questions and evoke responses in a way likely to produce accurate answers. But there are many problems to conduct this process. If the amount of narcotics is less than the required percent the subject may be able to fake through the situation and if the amount is a bit more than the subject may become unconscious, the accuracy of answers may be effected.

➤ Legal Formalities

Every such test must be performed only with the consent of the person on whom it is being conducted and as per the guidelines of the National Human Rights commission, his consent must be taken in the presence of Magistrate. The presence of accused choice of lawyer during the test and during the consent procedure is compulsory and the legal implication of the result of the test must be communicated to the accused either by the police or the lawyer that such revelations he/ she made during the test are not confessions but merely taken as statements made to police officer. Further every such test must be conducted in a well-lighted room and must be recorded both through audio and video recording.

CONSTITUTIONALITY OF NARCO ANALYSIS TEST

The notion of right against self-incrimination finds its earliest essence in the medieval law of the Roman church in the Latin maxim '*Nemo tenetur seipsum accusare*' which means that '*No man is obliged to accuse himself*'. The right gradually evolved in common law through protests against the inquisitorial and manifestly unjust methods of interrogation of accused persons, back in the middle ages in England.⁹ Constitution of India provides for protection to an accused against self-incrimination under compulsion through Article 20(3) – 'No person accused of an offence shall be compelled to be a witness against himself'.

Supreme Court, elucidating the scope of this clause in *M. P. Sharma v. Satish Chandra*¹⁰, observed the following fundamentals, which are

- 1) It is right pertaining to a person who is accused of an offence.
- 2) It is a protection against "compulsion to be witness".
- 3) It is a protection against such compulsion

relating to his giving evidence against such compulsion relating to his giving evidence against himself.

For applicability of Article 20(3) of the constitution of India all the three ingredients must co-exist.

However, Article 20(3) does not include signature, thumb impression, impression of the palm or foot or fingers, or specimen of hand writing, or exposing a part of his body by an accused for the purpose of identification. This does not amount to furnishing evidence against himself.¹¹

Anything to be considered under the preview of self-incrimination should mean any such information based upon the personal knowledge of the person giving the information and but not any information obtained merely by mechanical process such as producing document in court which may bring attention to any point in controversy, but which do not contain any statement of the accused person based on his personal knowledge.

Supreme Court in *State of Bombay v. Kali Kathu Oghad*¹², held that thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body from an accused person for purpose of identification is constitutionally valid and further said that self-incriminating statement given without threat would not attract the provision of Article 20(3). It was also said by the court that mere fact that the accused was in police custody does not by itself imply that compulsion was used for obtaining the specimen hand writing.

In *Nandini Sathpathi v. P.L.Dani*¹³, it was observed by the Supreme Court that in order to bring the evidence within the self-consciousness of clause (3) of Article 20 it must be shown not only that the person making the statement was an accused at the time he made it and it had a material bearing on the criminality of the maker

of the statement, but also that he was compelled to make that statement under compulsion in the context must mean what in law is called duress. The word "Duress" means where a man is compelled to do an act by injury, by beating or unlawful imprisonment or by the threat of being killed, suffering some grievous bodily harm or being unlawfully imprisoned, either to him or any such person related to him.

Hence the compulsion is in the sense of physical act and not the state of mind of the person making the statement, except where the mind has been so conditioned by the some extraneous process as to render the making of the statement involuntarily and therefore, extorted.

By the various High Courts of India it has been decided that Narco-Analysis test is a valid test and it does not violate Article 20 (3) of the Indian Constitution like that of the Bombay, Madras, Kerala, Gujarat, Andhra Pradesh and Allahabad. Moreover they have held that the Narco-Analysis test and the use of P300 or Brain fingerprinting, lie-detector test and use of mouth serum to be perfectly valid under Article 20(3) of the Indian Constitution.

However these *Selvi v. State of Karnataka*¹⁴, the Supreme Court rejected the High Court's contentions reliance on the supposed utility, reliability and validity of Narco analysis test and other tests as methods of criminal investigation. The Court held that forcing a person to undergo tests is itself amounts to compulsion, irrespective of the lack of physical harm done to administer the test or the nature of the answers given during the tests and the Court also held that as the answers given during the administration of the test are not consciously and voluntarily given, and an individual does not have the ability to decide whether or not to answer a given question, the results from such tests amount to the requisite compelled testimony to violate Article 20(3).

The case also held that Narco-analysis and other such techniques violates the standard of

'substantive due process' which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature.

Further held that such test would not come under the preview of the statutory provisions which enable medical examination during investigation in criminal cases, i.e. the Explanation to Sections 53, 53A and 54 of the Code of Criminal Procedure, 1973.

Recently, Supreme Court in Justice K.S. Puttaswamy vs Union of India¹⁵ included right to privacy as a fundamental right under Article 21 of Constitution, expanding its horizon. The most fundamental concern of the concept of right is concerned with the physical protection of a person. In this context, State's responsibility towards public safety. Considerably Narco analysis amounts to an invasion of privacy since it involves eliciting personal information from the accused known only to him. However, it must be noted that the procedure is one with the requisite sanction under the existing laws of the land.

EVIDENTIARY VALUE OF NARCO ANALYSIS TEST

What constitutes as an evidence is defined in section 3 of Indian Evidence Act, where it exhaustively defined, oral evidence as all those statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry and documentary evidence as all documents including electronic records produced for the inspection of the Court.

The question now lies is whether the answers given during the process of narco analysis test would suffice as evidence or not. And also admissibility would also depend upon various factors such as whether such test was made with

consent and whether appropriate measures were taken during the test.

So to consider such statements as confession as to admitting the criminal liability, it must be evaluated as per the sections 24 to 30 of Indian Evidence Act, which deal with admissibility of confession by the accused person in criminal cases.

In regard to Narco- Analysis test, it can be said that if the subject orally states or even write down something then both will be amount to confession. But proviso of Section to 27 of the Indian Evidence Act would make the statement inadmissible as evidence because if there is the slightest doubt about coercion or intimidation or any type of fear that the statement not free or that immediate before such test, the subject was harassed by the police or was coerced then such statement would be meaningless

Section 24 of the Indian Evidence Act bar such statement.

On study of both the Section 25 and 26 of the Indian Evidence Act, together it is clear that no confession either made to the police or in custody of police will not be proved against the person accused of any offence. The question arises that if such person has been subjected to weighty and brutal investigation by the police and the element of fear and coercion still exists in his mind and out of this fear, the person (subject) makes a confession of guilt through this test, it will not be acceptable.

Supreme Court in Selvi's¹⁶ case Court has recognised that the protective scope of Article 20(3) extends to the investigative stage in criminal cases and when read with Section 161(2) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects

an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculcator or exculpatory. Article 20(3) aims to prevent the forcible 'conveyance of personal knowledge that is relevant to the facts in issue'. The results obtained from each of the impugned tests bear a 'testimonial' character and they cannot be categorised as material evidence. However, any such evidence acquired through the Narco-analysis test can used as only to corroborative not as primary evidence.

FEW CASES IN WHICH NARCO ANALYSIS TEST CONDUCTED

In *Mohinder Singh Pandher and Surender Singh Koli v. State of U.P.*¹⁷, which is also known as Nithari Murder case Narco-Analysis test was conducted on the main accused's Surender Koli and Mohinder Singh Pandher in Jan 2007 at the Forensic Science Laboratory in Gandhinagar. This test was basically conducted to ascertain the accuracy 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.

In *Dr. Rajesh Talwar and Another v. Central Bureau Investigation through its Director and Other*¹⁸, commonly known as Arushi Murder case. In this case Arushi, a 14 year girl was found to be dead in the home on 16-05-2008. The report was made by the parents of Arushi in the police station against domestic servant Hemraj. But after two days the dead body of Hemraj was also found on the terrace of the house. The parents of Arushi were arrested by the police and Narco-Analysis test, Polygraph test and Brain mapping test was conducted on the accused, however they pleaded before the court that the report of these tests cannot be taken as an evidence in the court

of law and with regard to Selvi's case, trial court held that the result of tests cannot be admitted as an evidence because the subject does not exercise conscious control over the responses during the conducting of the test.

In the case of *Terrorist attack at Indian Institute of Science (IISc)*. In this case On December 28, 2005 a terrorist attack was made at Indian Institute of Science (IISc), Bangalore. The arrested suspect *Abdul Rehman alias Raizur-Rehman* was subjected to Narco - analysis and brain mapping tests where he had admitted that he met the Laskar-e-Toiba top brass including *Abdul Rehman Makki, Abdul Aziz, Abu Hamza* etc. while he was in Saudi Arabia. And he transported many of the rifles into Uttar Pradesh by train, and the railway security personnel didn't bother to check him even once. After training how he went to Bangalore and kept an eye on all seminars and conferences.¹⁹

In *Ayesha Murder case*, where a 19-year-old Pharmacy student named Ayesha Miran was raped and murdered brutally in a hostel at Vijayawada. Her body with stab injuries was found in the bathroom on Dec 27, 2007. A letter dropped by the 'murderer' stated that the girl was raped and murdered for refusing his request for 'love'. In this the public prosecutor, counsel on behalf of the Special Investigation Team (SIT), argued that permission should be given for conducting the Narco - analysis test on seven accused and only two of them agreed. However, the accused was acquitted in this case due to lack of proper cause and evidence.²⁰

In *Journalist Gauri Lankesh murder case*, Bengaluru where special investigation team arrested accused, K T Naveen Kumar, strongly refused to undergo a Narco-analysis test after agreeing to it earlier.²¹

Recently in the sensational *Kathua rape case*, where an 8 year old girl was raped and murdered as part of a line of attack to drive out members of her community from a village named Rasana.

There were eight accused who pleaded not guilty and asked the judge for a Narco analysis test.²²

CONCLUSION

So, as we have seen in the above listed cases, in our country there is often reference has been made to the Narco- Analysis and other such test either by the prosecution or the accused himself. However, the result of the test hasn't been fruitful in all the cases, still it gave a lead to investigation in many cases.

Narco-Analysis as is, itself a very risky procedure and is quite possible for the subject to develop fatal or serious adverse effects, if it is not conducted with proper care and caution.

However, I concluded that law is nothing but a living element so, the laws of a country should progress according to changing needs and demands of the society it seeks to protect, care and nurture. Like any other legal systems, criminal justice system should adopt and take in developments and advances that take place in science as long as they do not violate fundamental legal principles and serve the good of the society.

(Endnotes)

- 1 3rd- year law student of Alliance School of Law, Alliance University
- 2 Philosophy propounded by Jeremy Bentham and John Stu Article Mills.
- 3 *Nandini Sathpathy v. P.L. Dani & Anr.* AIR 1978 SC 1025 at 1032.
- 4 Barbiturate, 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 anaesthesia.
- 5 Robert house, a Texas obstetrician used the drug scopolamine on two prisoner in 1922.
- 6 Naresh Kumar and Ved Pal Singh, "Narco-Analysis test in investigation process: Law and judiciary" XIV, MDU Law Journal 108 (2009).
- 7 Deepak Ratan and Mohd. Hasan, Zaidi, *Forensic Science in India and the World* 357 (Allahabad Law Agency, Allahabad, ed. 2008).
- 8 Vikas Gupta, "Constitutional validity of Narco-Analysis test in Forensic Science", *Journal of The Indian Law Institute* 531 (2008).
- 9 180th Report of the Law Commission of India, Article

- 20(3) the Constitution of India and the Right to Silence, 3, (2002).
- 10 AIR 1954 SC 300.
- 11 Uttar Pradesh v. Boota Singh, AIR 1978SC 1770.
- 12 AIR 1951 SCI 808.
- 13 AIR 1978 SC1025 at 1032.
- 14 AIR (2010) 7 SCC 263.
- 15 Writ Petition(CIVIL) No 494 of 2012; MANU/SC/1044/2017
- 16 Ibid.
- 17 AIR 2011 SC 970.
- 18 2013(83) ALLCC 283.
- 19 Retrieved from <http://www.rediff.com/news/2008/apr/17terror1.htm>, last accessed on 13th June 2018.
- 20 Retrieved from <http://www.thehansindia.com/posts/index/Andhra-Pradesh/2018-06-05/Decision-on-narco-test-deferred/386816>, last accessed on 13th June 2018.
- 21 Retrieved from <http://www.newindianexpress.com/cities/bengaluru/2018/apr/21/gauri-lankesh-murder-accused-refuses-narco-test-at-last-minute-1804336.html>, last accessed on 13th June 2018.
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- News Articles from The Hindu, New Indian Express, The Hans India, Rediff.