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**Examining ‘Narco-Analysis’: A descriptive and critical analysis of
judicial pronouncements in India**

[Volume 4, Issue 1]

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INTRODUCTION

Narco-analysis has been one of the most controversial issues amongst the legal community, media, and common masses. With the recent advancement of technologies in every sphere of life, a criminal investigation is no more left out of its effects. Narco analysis is one of such scientific forms of investigation in which some sort of statement from the accused is acquired which might form as evidence in the court of law. Indian jurisprudence is completely silent on the deployment of scientific techniques. Normatively, the narco-analysis process has often been criticized as infringing the tenets of the Constitution and on the other hand, has been upheld as elementary to examine certain complicated issues. This article is outlined in a manner to examine the constitutional validity and the evidentiary value of narco-analysis by reviewing case laws.

A BRIEF OVERVIEW OF NARCO ANALYSIS

The term narco-analysis was coined for the first time in 1936 by Horseley for the use of narcotics to provoke a trance-like state where the person is subjected to interrogation.^[i] The terminology Narco analysis is derived from the Greek term NARKE (meaning anesthesia or tarpor) 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 strongly associated effects come to the surface, where they can be exploited by the therapist(or investigating officials). The Narco analysis test is also referred to as Lie Detector Testing or Truth System Testing. Generally, the

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truth drug administered to the accused of a narco analysis test is sodium Amytal to ascertain facts about the crime. Such activity is recognized as ‘Amytal Interview’. It is believed that when an individual is administered a drug that affects his logical reasoning without suppressing his memory and speech, he is susceptible, to tell the truth. Under the influence of certain drugs, the ‘twilight state’ of the subject is induced and their imagination is blocked or neutralized, thereby leading the person into a semi-conscious state. It becomes onerous for the subject to lie and his answers would be restricted to facts he is aware of. Consequently, the statements uttered by the subject are recorded on audio and video cassettes, and the report of the expert facilitates collecting evidence. The use of such a drug in investigation or interrogation is similar to the accepted psychiatric practice of narco analysis and the only difference in the two procedures is the difference in the objectives.

In 2001, the first narco-analysis was performed in the Forensic Science Laboratory, Bangalore on a person associated with offenses committed by Veerappan.^[ii] To perform the test, the National Human Rights Commission of India (‘NHRC’) has notified certain guidelines to the effect that the test should only be administered if the consent of the accused is obtained before a Magistrate and therefore, the police cannot suo moto conduct the test. Such tests are equally relevant in instances where traditional forms of crime have assumed immense proportion, in the form of public outcry, or to cover up for shortfalls in investigative processes like in cases of Abdul Karim Telgi in the stamp paper scam and many other suspects in the Aarushi murder case. They are distinct from

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usual investigative practices which necessitate a certain level of cooperation from the suspect/accused. Such cooperation need not be voluntary and, in fact, can be coercive in nature.

Under the influence of the drug, the individual expresses freely and is ostensibly deprived of his self-control and will power to maneuver his/her answers. The underlying premise is that an individual is capable to lie by steering his imagination. In the narcoanalysis test, the individual's imagination is neutralized thereby affecting reasoning faculty by making him semi-conscious. When the individual goes into the subconscious stage, he/she purportedly answers spontaneously as a semi-conscious person is unable to manipulate his answers. The individual is not in a position to speak up on his own but can answer specific and simple questions. In such a semi-conscious state, it becomes difficult for him to lie and his answers would be restricted to the facts he is already aware of. A few of the best-known drugs are Seconal, Hyoscine (scopolamine), Sodium Pentothal, Sodium Amytal, Phenobarbital. A commonly used drug for truth serum evaluation is an anesthetic and sedative drug, Sodium Pentothal which when administered intravenously to a person can make him loquacious and confessional.

The procedure to carry out narco analysis includes mixing 3 grams of Sodium Pentothal or Sodium Amytal dissolved in 3000 ml of distilled water. Depending on the person's sex, age, health, and physical condition, this concoction is administered through intravenous injection together with 10% of dextrose over a period of 3 hours under the direct supervision of an anesthetist. The erroneous or miscalculated doses can send the individual into a coma or even result in death. The

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rate of administration is controlled to pilot the accused gradually into a hypnotic trance. The effect of the biomolecules on the bio-activity of a person is exhibited when the drug devitalizes the central nervous system, minimizes blood pressure, and decelerates the heart rate, putting the subject into a hypnotic trance resulting in a lack of inhibition. Subsequently, the individual is interrogated by the investigating agencies under the aegis of the doctors. The declarations made during such interrogation are recorded both in video and audio cassettes. The report prepared by the experts is instrumental in collecting evidence. This procedure is conducted in government hospitals following a court order is passed instructing the doctors or hospital authorities to perform the test. Personal consent of the subject is obligatory.

CONSTITUTIONAL VALIDITY OF NARCO-ANALYSIS TECHNIQUE

The application of the Narco analysis test involves the fundamental question pertaining to human rights. The International Convention and the Constitution of India provide the normative framework of fundamental human rights such as ‘Right against self-incrimination’ and the ‘Right to fair trial’. Article 7 of the International Covenant on Civil and Political Rights (ICCPR) particularly stipulates no person shall be subjected to medical or scientific experimentation without his free consent.^[iii] In addition, Article 14(3)(g) secures the fundamental guarantee of human rights not to be compelled to testify against himself or to confess guilt.^[iv] Correspondingly, the European Convention for the Protection of Human Rights and Fundamental Freedoms encapsulates a right to a fair trial under Article 6.^[v] Article 6(2) prescribes that ‘Everybody shall

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be presumed innocent until proved guilty according to law’. Special emphasis is placed on the definitions of ‘torture’ as well as ‘cruel, inhuman or degrading treatment or punishment’ as specified under Articles 6 and 16 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.^[vi]

In the context of Indian jurisdiction, the courts cannot compel any individual to be a witness against himself by subjecting him to Narco analysis against the will of the accused, on account of violation of Article 20(3) of the Constitution. Additionally, ‘right against self-incrimination’ is associated with varied dimensions of ‘personal liberty’ under Article 21, including guarantees inter-alia ‘right to fair trial’ and ‘substantive due process’. It is crucial to emphasize that rights guaranteed under Articles 20 and 21 cannot be derogated or waived within Part III of the Indian Constitution because the Constitution (Forty-Fourth Amendment) Act, 1978 mandated that the right to move any court for the enforcement of these rights cannot be suspended even during the operation of a proclamation of emergency.

A few democratic countries, India most notably, still continue to use Narco analysis. Narco analysis is not openly permitted for investigative purposes in most of the first and third world countries. Protection against self-incrimination was an instrument for the protection of the innocent and not intended for the acquittal of the guilty. Therefore, in several high-profile cases, for instance, the Nithari killers, the Mumbai train blasts, Aarushi murder case, Malegaon blasts, and Mumbai blasts case suspects have been made to undergo narco-analysis, drugged with the sodium

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pentathol. Furthermore, certain High Courts in Allahabad, Gujarat, and Madras have adopted a progressive stance with respect to the efforts made by the prosecution for the discovery of the truth. However, the core debate surrounding the narco analysis test is regarding its validity as a scientific tool of investigation and its admissibility in court of law infringement of individual fundamental rights and questions its value as evidence.

EVIDENTIARY VALUE OF NARCO ANALYSIS TEST AND ITS ADMISSIBILITY IN INDIAN COURTS

In the contemporary era, complex social environment with proliferating crimes against the society and the integrity of the country, it is necessary to keep in mind the interest of the society at large and the need for a thorough and proper investigation, as against individual rights, while ensuring that the individual constitutional rights are not violated.

The procedure Narco analysis has progressively become mainstream procedure in investigations, court hearings, and laboratories in India. The eleven-judge bench in the case of *State of Bombay v Kathi Kalu Oghad*^[vii] observed that self-incrimination means disclosing information based upon personal knowledge of the person and cannot include merely the mechanical process of producing documents in court. Furthermore, in a significant verdict of *Ramchandra Ram Reddy v. the State of Maharashtra*^[viii], the court upheld the legality of the use of P300 or brain mapping and narco analysis test. The Court also said that evidence procured under the effect of the narco

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analysis test is also admissible before the judiciary. Similarly, in the case of *Rojo George v. Deputy Superintendent of Police*^[ix], the court made an observation that the commission of crimes committed by the accused and the techniques and methods used are very sophisticated as well as modern. The traditional method of questioning or investigating may not yield any valid result at all in these cases hence the scientific tests such as polygraph, brain mapping, narco analysis, etc. are now used in the investigation of a case. The court held that it would not be any violation of the fundamental rights which are guaranteed to citizens of India when such scientific tests are conducted under the very strict supervision of the experts of the field, thereby rendering evidence from narco analysis admissible in court. The strict duty of experts or doctors to conduct narco analysis test with due care and supervision was re-emphasized in the case of *Santokben Sharma Bhai Jadeja v. the State of Gujarat*^[x]. In addition, the element of risk is perceived to be minimal in cases where there is consent and the state of the accused is observed.

There have been a number of judicial precedents where the court has acknowledged the importance of narco-analysis as an aid in the investigation. In the case of *Sh. Shailender Sharma v. State*^[xi], the findings of the court elaborated that the narco analysis test does not suffer from any constitutional infirmity as it is a step-in aid of investigation and any self incriminatory statement if made by the accused, cannot be used or relied upon by the prosecution. The court ordered the accused to undergo the narco-analysis test in the stipulated period. Consequently, in one of the prominent decisions of Madras High Court in *Dinesh Dalmia v. State*^[xii], the court elucidated that the investigating agency is obligated to complete the investigation within a reasonable time period,

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otherwise, the benefit of the delay is given to the accused. If the accused refuses to cooperate with the investigation process undertaken during custodial interrogation, to unravel the facts about the crime, scientific investigation methods may be adopted to find the truth.^[xiii] Such investigative measures will not be amounting to testimonial compulsion. The court further clarified that conducting a Narco Analysis test does not violate Article 20(3) per se. It would hit Article 20(3) of the Indian constitution only if the accused divulges information that is incriminatory.

As we know, the use of the narco analysis test has been very prominent in investigating and solving high-profile cases. The medical or scientific tests conducted on the accused during the investigation, in accordance with criminal law jurisprudence, are covered within the ambit of explanation (a) of Section 53, 53-A, 54 of Code of Criminal Procedure (‘CrPC’).^[xiv] Explanation (a) provides for ‘and such other tests’ along with other tests conducted with blood, bloodstains, semen, swabs in case of sexual offenses, and sputum and sweat, hair samples, and fingernail clippings tests using modern and scientific techniques including DNA profiling. The fundamental question is whether narco-analysis tests are implicitly included within the ambit of ‘and such other tests’ for the purpose of expediting investigation efforts in criminal cases?

In the landmark judgment of *Selvi v. State of Karnataka*^[xv], the Supreme Court elucidated on the basis of testimonial acts and physical evidence that ‘and such other tests’ includes narco analysis technique, though has not been expressly enumerated, can be read in by examining the legislative intent. In addition, the Apex court established the distinction between testimonial acts and physical

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evidence while classifying bodily substances such as blood, semen, sputum, sweat, hair, and fingernail clippings as physical evidence, in contrast to the reports obtained via narco analysis technique. The judiciary was of the opinion that the results of the narco through technique should be recognized as testimonial acts. Such a proposition was supported by invoking the principle of ‘ejusdem generis’ which is used in the interpretation of statutes. This principle implies that the meaning of general words that follow specific words in a statutory provision should be construed in light of the commonality between those specific words. The substances in contention in the aforementioned case were all examples of physical evidence. Finally, it was held that the term ‘and such other tests’ which appeared in the Explanation to Sections 53, 53A and 54 of the CrPC must be construed to include the examination of only physical evidence and not that of testimonial acts.

The Explanation (a) to Sections 53, 53A, and 54 of the CrPC does not specify few other forms of medical examination that encapsulate testimonial acts, such as psychiatric examination among others viz. narco analysis and polygraph tests. This demonstrates that the amendment to this provision was informed by a rational distinction between the examination of physical substances and testimonial acts. Based on the aforesaid grounds in the Selvi case^[xvi], the Apex Court held that Narco analysis tests are not included in ‘and such other tests. Thus, the registered medical practitioners cannot conduct or prescribe to conduct these tests involuntarily.

It was emphatically stated by Supreme Court that no individual should be forcibly subjected to any of the techniques in question to avoid any unwarranted intrusion into personal liberty, whether in

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the context of investigation in criminal cases or otherwise. Nevertheless, the Court permitted voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place. Even though the individual has given consent to undergo any of these tests, the outcome of the test can not be construed as evidence because the individual does not exercise conscious control over the statements during the administration of the test. The compulsory administration of the impugned techniques constitutes ‘cruel, inhuman or degrading treatment’ in the context of Article 21, whereas, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted in the court of law under Section 27 of the Evidence Act, 1872. The use of narco analysis procedure raises serious concerns related to the professional ethics of medical personnel involved in the administration of these techniques and violation of the human rights of an individual.^[xvii] Several apprehensions with regard to human rights violations in conducting narco analysis test were raised long back and subsequently in the year 2000, NHRC had issued ‘Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused’ which laid down safeguards to be adopted while conducting narco analysis technique. These guidelines should be strictly adhered to, however, only a few of the investigating agencies seem to follow these guidelines.

IS NARCO ANALYSIS PROCEDURE RELIABLE?

Narco analysis has yielded an immense amount of information. Contrastingly, it also triggered off many questions as several critics shared a profound sense of skepticism over the administration of

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serum on the witness to extract the truth. It has been criticized on the ground that it is not a hundred percent accurate. It has been found that certain subjects made totally false statements. It is often ineffective in eliciting the truth as such it should not be used to compare the statement already given to the police before the use of drugs. In several instances, it was noticed that a person has given false information even after the administration of the drug. In addition, it is very difficult to suggest the correct dose of the drug for a particular person. The dose of the drug will differ according to will power, mental attitude, and physique of the subject. Successful narco analysis test is not dependent on injection.

Narco analysis test is a restoration of memory that the accused had forgotten. The test results may prove to be skeptical if the test is used for the purposes of confession of crimes. Suspects of crimes may, under the influence of drugs, deliberately withhold information or may give an untrue account of the incident persistently. Narco analysis is not recommended as an aid to the criminal investigation. In medical uses, like in situations of treatment of the psychiatric disorder, narco-analysis may be useful. Unless the test is conducted with the consent of the suspect, it should not be used in a criminal investigation.

CONCLUSION

The Indian judicial system should incorporate scientific developments and advances that take place as long as they do not infringe on fundamental legal principles. Narco analysis for criminal

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interrogation has proved to be a valuable procedure, which profoundly affects the cause of justice as evinced in various cases.

However, Indian courts have only taken an incomplete view of law into consideration. While such tests may be a practical necessity, the sanction of the law for a few techniques is unfeasible to discover, and extensive safeguards need to be laid out to prevent their abuse. The onus is on the legislature and judiciary to act without any further ado in the interest of justice and fair procedure to bring narco-analysis within the scope of Article 20(3) of the Constitution.

The criminals in today’s world have wielded science and technology as an instrument in perpetuating their criminal activities with relative impunity, as a result, it has provoked rethinking on the part of the criminal justice establishment to seek the assistance of the scientific community to come to the rescue of the police, prosecutors and the courts. The criminal procedure, rules of evidence, and the institutional infrastructure promulgated centuries ago, are now found ineffective and inadequate to meet the demands of the scientific age. The lack of a national policy in criminal justice administration in this respect implicates serious fallout.

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[i] Gangandeep Kaur and Ratan Singh, *Narco Analysis: A volcano in criminal investigation system* (2010).

[ii] Bannur Muthai Mohan, *Misconceptions About Narco-Analysis* (2007).

[iii] Article 7 of International Covenant on Civil and Political Rights.

[iv] Article 14(3)(g) of International Covenant on Civil and Political Rights.

[v] Article 6 of European Convention for the Protection of Human Rights and Fundamental Freedoms.

[vi] Articles 6 and 16 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

[vii] AIR 1961 SC 1808

[viii] 2004 All MR (Cri) 1704.

[ix] (2006) 2 KLT 197.

[x][x] 2008 CriLJ 68.

WISDOM CRUX

[ISSN: 2456-6233]

www.wisdomcrux.lawtimesjournal.in

Examining ‘Narco-Analysis’: A descriptive and critical analysis of
judicial pronouncements in India

[Volume 4, Issue 1]

Author – Shreya Somani, *NALSAR, Hyderabad.*

[xi] 2008 CrIWP 532.

[xii] 2006 CriLJ 2401

[xiii] *Supra* note 11.

[xiv] Explanation (a) of Section 53, 53-A, 54 of Code of Criminal Procedure.

[xv] (2004) 7 Kant LJ 501.

[xvi] *Id.*

[xvii] *Supra* note 14.