
NARCOANALYSIS TEST: THE TRUTH SERUM TEST

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ABSTRACT

Narcoanalysis is a scientific method of investigation which has gained importance in the recent times in India. This test is utilized in criminal investigations where information otherwise was not possible to be extracted from the accused. The intention of conducting the narcoanalysis tests is to extract important information from an individual by putting him into a hypnotic state and the entire responsibility of this process shall be conducted in the presence of doctors and forensic psychologists. There are various scientific methods being adopted by the Indian courts in recent due to the advancement of civilization, science, and technology. There are a few strategies of criminal interrogation to detect lying and deception by suspects and accused. Most of the methods are established on torture, either physical or mental. But present-day strategies like polygraph and brain fingerprinting are non-invasive strategies that will identify deception without causing physical or mental damage to the individual. Psychiatrists are utilized to perform psychoanalysis by inducing a sleep-inducing state by infusing narcotics. During the trance, the individual will recall repressed facts and events which will be helpful for the doctor for further treatment. Usually done with the help of qualified anaesthetists in a well-equipped hospital since fatal adverse reactions are possible with the narcotic drug. This hazardous strategy is rarely done these days. Presently this method is renamed as 'narcoanalysis,' which is widely performed on suspects and accused, by forensic scientists at the command of investigating agencies. Courts grant permission to subject the suspects to this method and accept the revelations as admissible. Statements made deliberately and in a clear state of mind are acknowledged within the court of law, but in these tests, the subject gave statements when he/her is in a hypnotic state of mind, under the influence of sedate injected and involuntarily, subsequently admissibility of any such result as evidence is a huge question in the court of law. The major issues managed with being, its legality in connection to Article 20 (3) and 21. The legal point of view on narcoanalysis in India has not been clearly pronounced by the Courts. The present study is to recognize an attempt to examine the various issues involved in the utilization of Narcoanalysis in Criminal Investigation.

INTRODUCTION

The term Narco-Analysis is inferred from the Greek word “Narke” (meaning anaesthesia or Torpor) and is used to portray a diagnostic and psychotherapeutic technique that uses psychotropic drugs, especially barbiturates. Narcoanalysis could be a chemo-physiological test utilized to get truth from an accused who denies to reveal the truth and instead deceits during interrogation. It includes addressing a suspect after injecting him intravenously with appropriate measurements of a psychoactive (hypnotic) drug—usually a barbiturate. Sodium thiopental¹ or Sodium Amytal are the foremost common barbiturates (Amobarbital). The injection is given under supervision to diminish or destroy the subject’s thinking capacity without impairing his memory. Narco-analysis is a distinct strategy based on the observation that a combination of narcosis with psycho-therapy is faster and, in some cases, more viable than the formal strategies of analytical psychology. The prior endeavours of this kind were restricted to the non-analytical strategies of overt suggestion increased by drugs. To draw attention, the sedate utilized for the reason is given the ornamental name of Truth Serum by the authors and media. The strategy is additionally known as the “Truth Serum Test.” The term “narcoanalysis” is regularly utilized in India to depict the procedure. Narcoanalysis test has been seen fundamentally in criminal matters where statements made by a person are confirmed by the test but the truths and statements made within the test cannot be utilized as proof against the individual making the statements and can as it was being utilized for the reason of examination of the case only.

These days while looking at the statistics of crime and the strategy of criminals, the use of technology in prevention and investigation of crimes becomes the demand of society but at the same time, we cannot be exempted from the consequences which might happen while utilizing these technologies. As far as the Narcoanalysis test is concerned it is conducted by injecting sodium pentothal into the body of the proposed accused or subject. Sodium pentothal is a trade name given by a company, Abbot Laboratories, discovered in 1935. Its real name is Thiopental Sodium, which is a thiobarbiturate, a part of the barbiturate group of drugs. The sum of sodium pentothal shifts from individual to individual but for the most part it is 3 grams broken down in 3000 ml of refined water and infused with the assistance and nearness of an anaesthetist intravenously beside 10% solution of dextrose over a period of three hours. This entirety

¹ In narcoanalysis, it is the foremost commonly utilized barbiturate. It is an extremely short-acting barbiturate, with effects lasting only several minutes. It causes a subject to be in a condition of semi-consciousness.

preparation is controlled by pushing the suspected individual into a state of hypnotic trance and observing the blood pressure and heart rate persistently. The questions framed by the expert are carefully and a few are being repeated and the explanations made during the hypnotic trance are recorded.

- This method is utilized for examination purpose.
- It could be a handle of abreaction or catharsis
- Also known as Truth Serum / Drug Hypnosis / Narco-interview technique.
- Trance is initiated by using barbiturates or another psychotropic drug as a means of releasing repressed feelings.

HISTORY OF NARCO-ANALYSIS

The experiments with narco-analysis were narrated as far back as 1950 and with lie detection in 1953. The September 11, 2001, terrorist attack within the United States led to focus in scientific research on lie detection. A PubMed search established 26 references from 1997 to 2001, but in less than five years (2002 to July 2006) the number has more than tripled to 83 or 16.6 publications per year. Many of these are randomized controlled trials².

Since 2000, the Bangalore Forensic Sciences Laboratory (BFSL) has been piloting lie detection tests and narco-analysis in India. The turning point for narco-analysis in India came in 2002. In June 2002, three months after the burning of a prepared bogie by a crowd at Godhra in Gujarat, and the consequent slaughter of Muslims, a total of seven people were blamed of burning the train was brought to the Sree Sayaji Common (SSG) Hospital in Vadodara. They were examined and doctors from the medical college departments of anaesthesia, surgery and psychiatry carried out a narco-analysis. The chief of the SSG Hospital, Dr Kamal Pathak, allegedly said, "I can't reveal anything since this is often something that relates to national interest"³. Dr S Malini, who left the head National Institute for Mental Wellbeing and Neuro Sciences to join the BFSL, supplements this contention by expressing that such tests have a "scientific and a humane approach." This echoes the former CIA chief's declaration that they

² AMAR JESANI, EDITORIALS, Medical professionals and interrogation: lies about finding the 'truth' Indian Journal of Medical Ethics Vol III No 4 October-December 2006, Last accessed on 14:05:35 PM GMT +05:1800 Asia/Calcutta, 15.04.2014.

³ See Bhan, Rohit, "A shot at justice? 'Truth drug' for Godhra accused," Indian Express, June 23, 2002.

are “short for torture.” The drugs were exploited by the security agencies in addition to their clinical use. For illustration, the CIA had done some surreptitious tests with LSD which led to causing the death of one unsuspecting member during the cold war in order to utilize its mind-altering properties to its advantage. During the cold war period, it was accepted that the Soviet Union knew a few strategies to brainwash individuals. And in the 1970s, in case an individual got to be Marxist, the individual had been brainwashed. The term brainwash was utilized exceptionally commonly at that time, but in the present, it is barely heard, though a different kind of ideology is washing the minds of an expansive number of individuals. The death in a covert LSD experiment became a scandal, driving to senate hearings. These hearings moreover uncovered that the CIA was moreover testing with the sodium pentothal.

PROCEDURE FOR NARCO-ANALYSIS TEST

Narcoanalysis test is a practice of administering barbiturates or certain other chemical substances, usually, the Sodium Pentothal, to lessen an individual’s thinking capacity and lower their inhibitions hoping that the individual will be more open and share critical information and his feelings. Narco-analysis test is generally conducted by mixing 3 grams of Sodium Pentothal or Sodium Amytal in 3000ml of refined water. The narcoanalysis shall be conducted in the presence of a team consisting of an anaesthetist, a psychiatrist, a clinical/forensic psychologist, an audio-videographer, and a supporting nursing staff and such other persons required by the court depending on the case. The dosage is determined based on the body weight of the subject and the drug is injected by an anaesthetist at the rate of 4ml/min which is 100 mg/ min of a 2.5% solution of Sodium Pentothal. The individual travels into a sleep-like trance state, and efforts are made to get probative truth about the crime. Experts inject hypnotic substances like Sodium Pentothal or Sodium Amytal in the laboratory. The dosage is basically dependent on the person’s sex, age, health, and physical condition. The drug depresses the person’s Central Nervous System and lowers blood pressure, and slows the heart rate, putting the individual into a hypnotic trance resulting in a lack of inhibition. The individual is then examined by the investigating officers in the presence of the doctors. The disclosures made by him during this stage are recorded both in video and audio cassettes. The forensic psychologist prepares the report about the revelations, which will be accompanied by a compact disc of audio-video recordings which can be utilized in the court of law. The quality of the revelations, if necessary, it is further verified by further subjecting the individual to polygraph and brain mapping tests. This method is conducted in government hospitals after a court order is passed in this regard

instructing the doctors or hospital authorities to conduct the test. The results of the research conducted at the Forensic Science Laboratory at Bangalore and the methods used by the laboratory in the administration of narcoanalysis has neither been peer reviewed nor published⁴.

ADMISSIBILITY OF NARCO-ANALYSIS IN THE COURT

The Indian judiciary has recognized the use of narco-analysis in certain cases, Narco-analysis yielded an immense amount of information, it also triggered numerous queries as a few critics shared a significant sense of distrust over the administration of serum on the witness to extricate truth. Narco-analysis is considered as an instrument or aid in collecting and supporting evidence. In any case, questions are raised about whether it amounted to testimonial compulsion in the judiciary and a violation of human rights, personal freedom, and flexibility. Lawyers are dissented on whether the results of Narco-analysis and P300 tests are permissible as evidence in courts, as they claim that confessions made by a half-conscious individual are not permissible in court. A Narco-analysis test report has some validity but is not completely admissible in court, which considers the circumstances under which it was obtained and evaluated its admissibility. The results of such tests can be utilized to get admissible evidence and can be corroborated with other evidence. But in case the result of this test is not conceded in court, it cannot be utilized to support any other proof obtained during an examination. Nevertheless, the statements in fact made under the scientific tests may be classified into admissions or confessions⁵ as they suggest an inference as to a fact, including an extensive denial of any knowledge of the crime, or the statement may substantively admit to the commission of the crime itself. The expert evidence is appreciated based on several factors such as the skill of the expert⁶.

In *United States v. Solomon*⁷, the discussion regarding the use of Narco-Analysis took place. In this case, the expert opinion given to the court recognised that truth serum is largely accepted as an investigative technique. In India, Narco-analysis was, to begin with, used in 2002 in the Godhra carnage case. It was moreover in the news after the popular Arun Bhatt kidnapping case in Gujarat where the accused had appeared before the NHRC and the Supreme Court of India against submitting himself to the Narco-analysis. Narcoanalysis gained popularity once again all over the media during the Telgi stamp paper scam when Abdul Karim Telgi was

⁴ <https://frontline.thehindu.com/the-nation/article30191389.ece>, last accessed on 01.12.2022 at 11.55pm.

⁵ Section 25 of the Evidence Act, 1872.

⁶ *State v. S.J. Choudhary*, (1990) 2 SCC 481, para 8: 1990 SCC (Cri) 364

⁷ *United States v. Solomon*, 753 F 2d 1522 (9th Cir 1985).

subjected to the test in December 2003. Although in the case of Telgi, an immense amount of data was yielded, questions were raised about its admissibility. Narco-analysis was in the spotlight in the context of the notorious Nithari village (Noida) serial killings. The two accused in the Nithari serial killings Mohinder Singh Pandher and Surendra Kohli have undergone Narco-analysis tests in Gandhinagar in Gujarat.

The Indian Judiciary have supported this practice in various cases. In furtherance of its support the Supreme Court has held that the right to life includes right to health, however, exposing a person to a scientific test as part of investigation will not amount to denial of health⁸. Therefore, it will not amount to denial of reasonable and just procedure⁹. Section 53 of the Criminal Procedure Code bestows the requisite statutory sanction for conducting these tests. The high court of Bombay, upheld the legality of the utilization of P300 or brain-mapping and Narco-Analysis test¹⁰. Narco-Analysis is carried out only after a detailed medical examination of the accused. If the accused is found medically fit to undergo the method, then the individual will undergo the test as our constitutional law clearly states that a person cannot be compelled to be a witness against himself¹¹.

CONSTITUTIONAL VALIDITY OF NARCO ANALYSIS TEST

The Supreme Court in *Smt. Selvi & Ors Vs State of Karnataka*¹², questioned the involuntary administration of deception detection tests (DDT) for the purpose of advancing investigation efforts in criminal cases. This case stressed that certain fundamental rights were violated, such as:

- The right against self-incrimination enumerated in Article 20(3) of the Constitution, which states that, “no person accused of an offence shall be compelled to be a witness against himself/herself”.
- Right to life and personal liberty guaranteed under Article 21, has been judicially enlarged to include a “right against cruel, inhuman or degrading treatment”.

⁸ S. Aishwarya, Evidentiary Value of Narco-Analysis, 6 *Supremo Amicus* 343 (2018).

⁹ *State of Punjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83: 1997 SCC (L&S) 294.

¹⁰ *Ramchandra Ram Reddy v. State of Maharashtra*, 2004 All MR (Cri) 1704.

¹¹ Article 20(1) of the Constitution of India.

¹² *Smt. Selvi & Ors Vs State of Karnataka*, Criminal Appeal No. 1267 of 2004

The 'right to life and personal liberty' enshrined under Article 21 of the Constitution of India includes the right to live with human dignity¹³. Every act that offends or impairs human dignity Every act, which offends or impairs human dignity would establish an inroad into the right to live and it would be prohibited by Article 21 unless it is in accordance with the procedure established by law. Numerous apprehensions were raised regarding human rights violations in conducting DDTs and the National Human Rights Commission had published guidelines in 2000 for the administration of Polygraph tests¹⁴. Protection against self-incrimination is a fundamental principle expressed in Article 20 which reads: "No person accused of any offence shall be compelled to be a witness against himself." Article 20(3) symbolizes that the general principles of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime. In *JituBhai Babubhai Patel v. State of Gujarat*¹⁵, the supreme court has taken a view that conducting narcoanalysis test on the accused at the stage of investigation does not violate the constitutional guarantees mentioned under Articles 20(3) and 21 of the Constitution of India. Likewise in *M.P Sharma v. Satish Chandra*¹⁶, the Supreme Court has observed that Article 20(3) embodies the following essentials:

- i. It is a right concerning to a person 'accused of an offence.'
- ii. It is a safeguard against compulsion 'to be a witness.'
- iii. It is a protection against such compulsion in giving evidence 'against himself.'¹⁷

The protection against torture and third-degree strategies for obtaining information first emerged in the case of *Miranda v. Arizona*¹⁸, this has developed to such a degree that it includes not just physical emasculation but also mental depravity or the usurpation of the ataraxyical requirement of the distressed party. The Supreme Court has inscribed the legal proposition that even inducement, threat, or promise would come under the limits of compulsion under Article 20(3). The Supreme Court has similarly held that compulsion can be mental in nature too¹⁹. In

¹³ Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (198 1) 1 SCC 608, p.619.

¹⁴ National Human Rights Commission. NHRC Guidelines. Available from: <http://nhrc.nic.in/Documents/sec-3.pdf> . [Ref list], last accessed on 02.12.2022 at 12.07pm.

¹⁵ *JituBhai Babubhai Patel v. State of Gujarat*, (2005) 10 SCC 545.

¹⁶ *M.P Sharma v. Satish Chandra*, AIR 1954 SC 300 and Sec 132 of Indian Evidence Act, 1872.

¹⁷ *State of Bombay v Kathi Kalu Oghad* AIR 1961 SC 1080 Para 7.

¹⁸ *Miranda v. Arizona*, 384 U.S 436

¹⁹ *Yusufalli Esmail Nagree V. State of Maharashtra*, AIR 1968 SC 147 p.150

the case of *Nandini Satpathy v. PL Dani*²⁰, the supreme court held that, any mode of pressure, subtle or crude, mental or physical, direct, or indirect, but necessarily substantial, applied by the policeman for obtaining information from an accused intensely suggestive of guilt, it becomes compelled testimony, and such compulsion is violative of Article 20(3). Consequently, Article 20 (3) may be attractive even at the interrogation phase. In this context, the Supreme Court held that the protection under Article 20 (3) expands to any 'compulsory process' for gathering evidence against the charged. When all the conceivable outcomes are exhausted and the investigating officers do not get any clue or clinching evidence then these tests become essential. The nature of the test which is required under the circumstances depends upon the nature of the investigation. In *Dr. Rajesh Talwar and Another vs Central Bureau of Investigation*²¹ (Arushi murder case), Arushi's parents were required to undergo these scientific tests. It was appealed by the accused that its results cannot be admissible as evidence in the court of law as they were not voluntary. On the other hand, these results played a pivotal role in solving the case then²². These scientific tests have now become a part of the investigation process and simply because of the truth that the accused does not consent to a test the investigating officer should not be restricted from conducting the tests. It was also contended that these tests exclude the possibility of third-degree violence which the investigating officer's resort to when they could not discover any clue relating to the crime²³. In case such tests are not conducted, the investigating agency will be deprived of clinching evidence against the accused. The contention that under the influence of barbiturates the answers are influenced by suggestions offered by the interviewer and thus there is a likelihood of false results is difficult to be agreed with. The scientific value of such tests and their reliability is evaluated during the trial. Conducting such scientific tests will not amount to violating his right to silence. A comparable position was taken by the Court in *Shailendra Sharma Vs State & Another, 2008*²⁴, and it was held that such scientific methods assist with the examination and can be of great utility. Concerning constitutional legitimacy, the court is of the conclusion that by utilization of these scientific methods, no constitutional infirmity rises.

²⁰ *Nandini Satpathy v. PL Dani* (1978) 2 SCC 424

²¹ *Dr. Rajesh Talwar and Another vs Central Bureau of Investigation*, 2013 (82) ACC 303

²² Ms. Laxmi Khimji Buchiya, USE OF POLYGRAPH AND NARCOANALYSIS TESTS IN INDIA: A LEGAL PERSPECTIVE, UGC Journal. No. 45489 RESEARCH DIRECTIONS ISSN NO – 2321-5488 Impact Factor – 5.7 (UIF) Vol: 6 Issue: 9, February 2019

²³ *Santokben Sharmanbhai Jadeja vs State Of Gujarat* 2008, Cri.L.J 68 Gujrat.

²⁴ *Shailendra Sharma Vs State & Another*, WP (CrI.) 532 OF 2008

CONCLUSION

In the current scenario the offenders are more professionally skilled and equipped to commit any crime so it will not be sufficient to always rely upon traditional investigation strategies. In circumstances like these, the investigation agencies are required to upgrade the process of conducting the interrogation based on the social pattern and the behaviour of the criminals which can be accomplished only by adopting scientific procedures in the investigation process. To make this more bona fide, the narcoanalysis should undergo rigorous research, such research is quintessential to discover its sensitivity and specificity. The central government must make a clear policy on narcoanalysis and more research is required in the legal realm to incorporate this method and various other criminal laws should be amended to give effect to its admissibility. The validity of Narco-analysis has been upheld in different occasions having regard to the circumstances of the cases. Numerous committees and commissions have issued statutory guidelines for the use of the scientific methods such as narcoanalysis, polygraph tests etc, If it is carried out with the approval of the court in presence of a lawyer of the choice of the accused, the possibility of miscarriage of justice can be excluded. In general, the Indian judiciary has assented for conditional use of these tests for extracting truth from the accused.

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