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**NARCO ANALYSIS: CONSTITUTIONAL AND LEGAL VALIDITY****INTRODUCTION**

Narco analysis is a procedure which is used by investigative agencies to get the truth out of the person by investing a certain amount of drugs into the body of the person, which makes the person to enter various states of unconsciousness. This test involves the intravenous administration of a drug such as Sodium Pentothal, Scopolamine and Sodium Amytal under the controlled circumstances of the laboratory, which causes the subject to enter into various stages of anesthesia. It is believed when person is in semi-conscious state, he is unable to imagine or it becomes very hard for him to lie for the question that has been asked. 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. There is still a possibility that person may lie in the narco analysis, as some persons are able to retain their ability to deceive even in the hypnotic state, while others can become extremely suggestible to questioning, which makes this test not much reliable.

Narco analysis was introduced in the year 1922 by Robert House a Dallas Texas Obstetrician, used the drug scopolamine on two prisoners in the Dallas County Jail. The phrase “Truth Serum” is believed to have appeared first, in the news report of Robert House’s experiment the Los Angeles Record, sometime in 1922. Robert House thereafter came to be known as the ‘Father of Truth Serum’.

Narco analysis has become a hot topic in news these days, when State Government of Uttar Pradesh in Hathras rape and murder case ordered polygraphic and narco analysis test of the

policeman and other involved in the case, including the family of the victim. A petition has been filed by the Mumbai-based activist Saket Gokhale against this order of Uttar Pradesh Government, under Article 226 of Constitution of India, which gives the High Court the right to issue writs to persons, authorities and government.<sup>1</sup> To understand this we need more information about Narco Analysis, and for that let's start from beginning.

### **NARCO ANALYSIS IN INDIA**

In Bollywood movies, we have seen many times that interrogative agencies uses polygraph, narco analysis and brain mapping tests, sometimes the villain uses these methods to get the truth out of person however, reel life is different from real life, not everything which has shown in movies is true and so in the case of narco analysis test.

In India the Narco analysis test can only be held by the respective labs assigned by the Government to conduct the tests. In India, the Narco-analysis test is being mainly done at forensic labs at Bangalore and Gandhinagar. As per one unofficial data, both laboratories had carried out the Narco-analysis test of around 600 persons by now, but the results of these test and their parameters were never peer reviewed and the data never published anywhere for the scientific scrutiny.<sup>2</sup>

Experts in India, have dissenting opinions regarding narco-analysis tests. Group of experts (Doctors, Lawyers and Media) considers narco-analysis test as a vital and relevant procedure of criminal investigation and acknowledges it as a necessary step in order to provide justice to the aggrieved or victim. According to these experts, investigation agencies should not be restraint from using modern technologies to solve the crime as this is for the benefit of society. It at least better option for investigation than the previous interrogation method involving third degree torture, where the accused breaks down and blurts out the truth. Hon'ble Supreme Court of India has stated in many of its judgment that to tackle the modern problems, we need modern solutions to achieve the very aim to provide justice to aggrieve. Some of the experts found narco-analysis test unconstitutional, according to them it deprives a person's right to personal liberty given in Article 21 of constitution and infringes the right against self-incrimination given in Article 20(3) of constitution. The Hon'ble Supreme Court of India also observed in Selvi and Ors V. State of kerela, that no person should be compelled without his consent to go through such tests as it amounts to violation of Article 21 of

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<sup>1</sup> India Today Article

<sup>2</sup> <https://swapsushias.blogspot.com/2013/09/narco-analysis-procedure-scientificity>

constitution i.e. Right to personal liberty and prohibits self-incrimination and thereby violates Article 20(3) of constitution.

### **EVIDENTIARY VALUE OF NARCO ANALYSIS**

The report of narco analysis test can be admissible in the Court under section 45 of The Indian Evidence Act, 1872 which states that “Opinion of experts – when the court has to form an opinion upon of point of foreign law or of science of art, or as to identify handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in question as to identify of handwriting] [or finger impressions] are relevant facts. Such persons are called experts. However, this section is silent on other aspect of forensic evidence that can be admissible in court in criminal proceedings.

The principal “Right against self-incrimination” also known as “right to silence” is enshrined in the code of criminal proceedings and the Constitution of India. Section 161(2) of the Code of Criminal Procedure states that every person is bound to answer truthfully all questions, put to him by [police] officer, other than questions the answer to which, would have a tendency to expose that person to a criminal charge, penalty and forfeiture.

It is well established that the Right to Silence has been granted to the accused by virtue of the pronouncement in the case of **Nandini Sathpathy vs P.L.Dani**<sup>3</sup>, no one can forcibly extract statements from the accused, who has the right to keep silent during the course of interrogation (investigation). By the administration of these tests, forcible intrusion into one’s mind is being restored to, thereby nullifying the validity and legitimacy of the Right to Silence. She claimed that she had a right of silence by virtue of Article 20(3) of the Constitution and Section 161 (2) of Cr. P.C. The Apex Court upheld her pleas. Moreover, the tests like Narco analysis are not considered very reliable. Studies done by various medical associations in the US adhere to the view that truth serums do not induce truthful statements and subjects in such a condition of trance under the truth serum may give false or misleading answers. In USA, in the case of **Townsend v. Sain**<sup>4</sup>, it was held that the petitioner’s confession was constitutionally inadmissible if it was adduced by the police questioning, during a period when the petitioner’s will be overborne by a drug having the property of a truth serum.

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3. AIR 1978 SC 1025

4. 372 US 293 (1963)

## CONSTITUTION VALIDITY OF NARCO ANALYSIS

Narco-analysis test is subject to Article 20(3) of Constitution of India which is regarding protection in respect of conviction for offences, states that no person of any offence shall be compelled to be a witness against himself. This Article is based upon legal maxim “Maxim Nemo Tenetur Se Ipsum Accusare” and on legal principle “Right against self-incrimination”. Article 20(3) gives privilege to the accused or any person against self-incrimination which, in fact is a fundamental basis of Common Law on Criminal Jurisprudence.

The application of narco analysis test involves the fundamental question test pertaining to judicial matters and also Human Rights. The legal position of applying this technique as an investigative aid raises genuine issues like encroachment of an individual’s rights, liberties and freedom. In case of **State of Bombay V. Kathikalu**, it must be shown that the accused was compelled to make statement likely to be incriminative of himself. Compulsion means duress, which includes threatening, beating or imprisonment of wife, parent or child of person. Thus, where the accused makes a confession without any inducement, threat or promise Article 20(3) does not apply.

Some of the experts considers Narco analysis as a test used as an aid for finding evidence and assists in investigation or interrogation therefore, it should not be considered as testimonial compulsion. Thus, it does not violate the constitutional provision regarding protection against self-incrimination. Advocates of narco analysis considers that narco analysis is particularly useful when there is a requirement to elicit required information for preventing any illegal activity by terrorist or criminals.

In the case of **Selvi V. State of Karnataka**<sup>5</sup>, Supreme Court of India held that the use of Narco Analysis, brain mapping and polygraph tests accused, suspects and witnesses without their consent as unconstitutional and violation of the right to privacy. Three Judge Bench of Chief Justice K.G. Balakrishnan, Justice R.V. Raveendran and J.M. Panchal, in its 251 page judgment, held:

“We hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty.”

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5. AIR 2010 SC 1974

“The compulsory administration of the impugned techniques violates the right against self-incrimination. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20 (3) of the Constitution [No person accused of any offence shall be compelled to be a witness against himself] protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory 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 categorized as material evidence.”

“It is our considered opinion that subjecting a person to the impugned techniques in an involuntary manner violates the prescribed boundaries of privacy.”

The Bench held that if these techniques were used compulsorily it would violate Article 20 (3). The Bench made it clear that even when the subject had given consent to undergo any of these tests, the test results by themselves could not be admitted as evidence because “the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted, in accordance with Section 27 of the Evidence Act.”

## CONCLUSION

Law is a living process, which changes according to the changes in society, science, ethics and so on. The Legal System should imbibe developments and advances that take place in science as long as they do not violate fundamental legal principles and are for the good of the society.

Criminals are becoming very organized; they are adopting modern technologies while conducting criminal activities and they do not leave much evidence which puts investigative agencies in a very arduous position. To overcome this problem, it becomes mandatory for administrative system to adopt modern technologies, new methods for investigating the crime which are time efficient, fair in process and easy to handle. In the case of **Rojo George V. Deputy Superintendent of Police**<sup>6</sup> while allowing the narco analysis test Court is of the opinion that in present day criminals started to use very sophisticated and modern techniques

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6. 2006 (2) KLT 197

for committing the crime. So the conventional method of investigation and questioning to the criminals will not be successful for solution and there is need to utilize some new techniques such as polygraph, brain mapping and narco analysis.

Narco analysis, brain mapping, polygraph tests are in some way new methods which are being used by investigative agencies. These tests are considered to be not reliable as their results are not accurate or up to the mark however, a few democratic countries, India most notably, still continue to use narco analysis. The issue of using Narco analysis test as a tool of interrogation in India has been widely debated. The extent to which it is accepted in our legal system and our society is something, which will be clearer in the near future. The veracity lies in the fact that Narco analysis is still a nascent interrogation technique in the Indian criminal justice system without any rules or guidelines. There have been orders of various High Courts upholding the validity of narco analysis. These judgments are in stark contrast with the earlier judgments of the Supreme Court interpreting Article 20(3). The Central government must make a clear policy stand on narco analysis because what is at stake is India's commitment to individual freedoms and a clean criminal justice system.

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