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NARCO ANALYSIS AND ITS ADMISSIBILITY IN THE INDIAN CONTEXT

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ABSTRACT

The society keeps shifting according to the needs of human beings as a result of which norms cannot be made static and changes are equally required depending upon the social, cultural, and economic conditions of the society. The criminal justice system is also witnessing various improvements in the years that the investigating agencies have rendered by incorporating technological advancement in the process of gathering evidence. There are various techniques used by the investigating agencies and one of the most important techniques is the Narco Analysis Test. However, the Indian Evidence Act of 1872 is silent on the use of the Narco test by investigation and collection of evidence purposes. This process has been criticized in various judgments and by different authors to be against the principles as enshrined in the Constitution of India. On the other hand, in various cases, the test has been upheld as a need for evaluation of complex issues. Furthermore, if any accused is subjected to undergo the Narco Analysis Test without voluntary request, it is considered as a violation of Article 20(3) of the Constitution of India. In this paper, an attempt is made to bring out the development and evolution of the Narco Analysis Test as a mode of investigation and its admissibility in the Indian context. It highlights various notions of the Narco Analysis Test, the procedure followed, important cases, and various views of discussion in this regard.

Keywords: Narco Analysis, criminal justice system, investigation, techniques, evidence

INTRODUCTION TO NARCO ANALYSIS

The evolution in scientific technology has been waving like fast-flowing air and water in the modern world of development. Science has now outpaced the development of law, and it is impossible to avoid complexity regarding what can or cannot be admitted as evidence in a court of law.

In today's time, the Narco Analysis Test has become a common term used in the field of scientific developments. The term was first used in 1936. It is derived from the Greek word "*narkc*". Horseley had first coined the term Narco Analysis. With the help of narcotics, a state of dizziness or a trance -like state was made where the subject is asked various questions to find out the truth. Psychotropic drugs are used in this technique. It mostly consists of barbiturates to bring out the thoughts of subconscious mind with some effects on the accused, thereafter which the therapist usually asks questions related to the investigation/case at hand. In this state, the accused finds it difficult to lie as all the answers given by him are limited to the facts he is aware of. Every statement made by the subject during this process is recorded in an audio and visual form which is followed by an expert's report. The test can only be conducted when a prior consent of the subject is obtained by a Magistrate and therefore the police officials cannot conduct the test whenever they feel suitable. It is important to take note of the fact that the law on the conduct of scientific tests for evidentiary value is dicey and is not clear since a long time.¹

NEED FOR NARCO ANALYSIS

There is no doubt that the way individuals commit crimes has changed drastically over the years which has led to the expansion of area of criminology at a fast pace. There is an utmost requirement for Narco Analysis to improve the efficiency of the process of investigation when a crime is committed. The conventional modes used for investigation consist of police brutality which involves measures of third-degree torture. Whereas, the test comprises injection of dose by experts or in their presence and only the experienced professionals can prepare the test and ask questions to the subject.

The investigating officer is provided with statutory power illustrated under Crpc for investigating the crime, collecting evidence, and arresting the guilty after examining all the facts of the case.

¹SubhojyotiAcharya, "Is Narco-Analysis a Reliable Science, The Present Legal Scenario in India", <<http://ezinearticles.com./IsNarco-analysisAREliableScience-ThePresentLegalScenario-inIndia&id=991046>>.

The test poses as an effective method, especially at times when the investigating team exhausts all alternatives and hits a dead-end in the process of investigation. In such circumstances, the test provides the investigating team with some clue to apprehend the accused.

PROCEDURE FOR NARCO ANALYSIS TEST

People are known to lie to save themselves. The test consists of the process of applying the barbiturates or another similar kind of substances that contains chemical components, mostly Pentothal Sodium. In 3000 ml. of distilled water, 3 grams of Sodium Pentothal is to be mixed for the test. This is used to lower the inhibitions of the subject. It is done by interfering with his nervous system at the molecular stage so that the truth can be extracted out of him. The team which conducts the Narco Analysis test consists of a psychiatrist, clinical psychologist, anesthesiologist, audio-videographer, and the nursing staff.

The dose is injected under the controlled circumstance in the laboratory. In case a wrong dose is injected, it will send the subject into a state of coma. It can also result in the subject's death. Hence, while injecting the substance various factors have to be taken into consideration like the individual's age, sex, and physical condition. When the subject is put in a state of hypnotism he cannot speak on his own but can answer simplified questions asked by the expert. The information provided by the subject is captured both in audio and video forms. The test requires voluntary consent of the subject as it is important for the conduction of the test.²

ADMISSIBILITY IN THE COURT

The law is still unclear on the aspect of admissibility of the Narco Analysis Test as there is no direct provision that deals with it. But in cases where no evidence is found and the entire case depends on circumstantial evidence, the court has allowed the conduction of the Narco test as a last resort. The test is used to fill the gaps at the time of the collection of evidence and connect the dots of the case.

Cases

²Kumari, S.. Kusuma, "Narco-Analysis Right to Self-Incrimination Versus Public Interest", (2007)

The Supreme Court in the case of *State of Gujarat v. Anirudh Singh* maintained that every witness must aid in the interrogation process.³

In the case of *Satakben Sharmanbhai Jadeja v. the State of Gujarat*, permission for conduction of the Narco test was granted by the court. This permission was given even after the opposition statement provided by the accused.⁴

The court had upheld the legality of the Narco test and also stated that the evidence collected during the Narco test is admissible. The criminals have started using advanced technology to commit crimes. In such cases, the Narco analysis test comes in handy. This judgment was passed in the case of *Ramchandra Ram Reddy v. State of Maharashtra* by the Supreme Court of India.⁵

In *Dharampal v. State*, it was held by the court that no individual can escape by withholding vital information. The individual cannot avoid answering questions asked in relevance of the facts of the case.⁶

The court held in *Selvi v. State of Karnataka* that in cases where the individual gives voluntary consent for conduction of the Narco analysis test then that statement can be further recorded and used as a discovery statement. Under Section 27 of the Indian Evidence Act of 1872, a discovery statement is defined. The Courts have kept open the chances for admission of the Narco Analysis Test with an exception known as a voluntarily administered test.⁷

CONSTITUTIONALITY OF NARCO ANALYSIS IN THE INDIAN CONTEXT

The law as defined under Article 20 (3) of the Indian Constitution, states that no individual accused of an offense is bound to become a witness against himself. This very basic right of the individual is guaranteed under the Indian Constitution and has been divided into various parts to analyze its true state.

Right against self-incrimination

³State of Gujarat v. Anirudh Singh, (1997) 6 SCC 514

⁴Satakben Sharmanbhai Jadeja v. State of Gujarat, (2005) 10 SCC 545

⁵Ramchandra Ram Reddy v. State of Maharashtra, (2004) All MR (Cri) 1704

⁶Dharampal v. State, AIR (2014) 3 SCC 306

⁷Selvi v. State of Karnataka, AIR (2010) SC 1974

The scientific tests conducted do not hold any validity in the court of law. These tests are conducted when the subject is in a subconscious state of mind hence, the court does not allow its admission. The right to self – incrimination states that no individual can be made to be his own accuser. It is based on the maxim “*Nemotenetur seipsum accusare*”. Understanding the legality of the Narco test, an analysis of Article 20 (3) is essential. The Article provides the Right to Silence to the accused. The protection against self-incrimination for every person is dealt with under Section 161(2) of Cr.p.c.

The important issue here is when an individual claims protection under Article 20(3) against self-incrimination. As stated under Article 20 (3), protection can be taken against statements made in the court of law. The legal position slightly differs from this.

The Supreme Court has held in *State of Bombay v. KathiKaluOghad* that protection may be availed under Article 20 (3) in the courtroom but also at the previous stages. Hence, the bar provided under this Article will be applicable to statements recorded in a test made before the commencement of the trial.⁸

Cases

It has been held by the court that the right to silence is granted to the accused in cases whereby forced statements cannot be extracted from the accused. The accused has the right to remain silent at the time of the interrogation process. This has been stated in the case of *NandiniSatpathy v. P.L. Dani*.⁹

The Court held that the test conducted to bring out the truth from the accused will not be held against Article 20(3) and Section 45 of the Indian Evidence Act of 1872. Furthermore, the court in the case of *Dinesh Dalmia v. the State of Madras*, said that special rules have been enacted to convince the accused to take the test.¹⁰

⁸State of Bombay v. KathiKaluOghad,, AIR (1961) SC 1808

⁹NandaniSathpathi v.P.L. Dani,, AIR (1978) SC 1023

¹⁰Dinesh Dalmia v. State of Madras,, (2006) Cri LJ, 240

The Court held that compulsion must be provided to the accused under Article 20(3). As stated in the case of *Kalawati v. the State of H.P.*, if no compulsion is provided then the matter does not fall under the purview of the given Article.¹¹

Nowadays the criminal justice system is more strained towards the accused and more importance is given on individual liberty due to which evidence can be diluted easily. Hence the famous saying, “Let a hundred guilty men go free if it saves one innocent man from punishment”.

Hence, the lenient behavior towards criminal cases is facilitating more heinous crimes and the escape of terrorists and criminals.

CRITICISM OF NARCO ANALYSIS TEST

One of the major shortcomings of the Narco test is that its accuracy at all times is doubtful. There have been instances where the subjects have found out to be making false statements during the test and diverting the investigating team into a different path. The test does not come in handy in case of an untruthful person.

Another criticism that is of concern is that most of the times there is a difficulty in administering the correct dose of the drug. The factors such as health, sex, and age vary from person to person. Hence, the dose of the drug will also differ based on these factors. Narco Analysis test helps in the restoration of memory of the subject which is blurry or not very vivid. To pave the way for a successful Narco test, it is essential to have an experienced and skilled professional team that is trained for putting past specific and concise questions.

The test has also been criticized for its dicey results at the time when it is used for confession of crimes. The test is not advised as a reliable source for criminal investigation as the subject may not give correct answers and may cause hindrances in the test. The test can be relied upon for medical purposes. Only after having the voluntary consent of the subject, the test should be used in a criminal investigation.¹²

Right to self-incrimination: Whether is it against the public interest?

¹¹Kalawati v. State of Himachal Pradesh., AIR (1953) 131

¹²Dr. Ishita Chatterjee, Law of Forensic Science, First Edition, (2015)

Narco test helps in the times of need by collection of evidence and directing the investigation in a new path when it hits a dead end. Hence, it can be said that the test does not violate the provision stated under the Indian Constitution for protection against self-incrimination.

The right to self-incrimination cannot be said to be against public interest as a majority of people support the test. It poses a need to gain the required information to prevent heinous offenses such as terrorism. There is a dire need for the test as it can replace the current conventional methods of interrogation by the police and paves way for police brutality by inflicting third-degree torture. Such methods of practice leads to loss of credibility and authenticity of the criminal justice system.

The Narco Analysis test has proved to be an effective alternative method to the conventional torturous methods. However, while administering it a lot of care and attention is to be attributed so that the test is not abused by any official.¹³

Cases

The Court has pointed out in *Rojo George v. Deputy Superintendent of Police* that criminals have started using advanced techniques for the commission of crimes. The out-dated methods for interrogation should not be used and new and advanced techniques should be used such as the Narco test, lie detector, and other scientific methods.¹⁴

The Supreme Court held in *Selvi v. State of Karnataka*, that the Narco test on a subject without their consent will be a violation under Article 20(3) of the Indian Constitution. The Court also stated that the results of the test shall be admitted under Section 27 of the Indian Evidence Act if any type of crucial information received with the help of voluntary consent.¹⁵

CONCLUSION AND SUGGESTIONS

In today's time, the technology is advancing very rapidly, as a result of which there have been changes in the pattern of crimes. This has shaken the very conscience of our country. In the Indian context, there is a dire need for the admission of the Narco test. There is a huge cry for

¹³LakshmanSriram, "Narco-analysis and Some Hard Facts", Issue 9, (2007)

¹⁴*Rojo George v. Deputy Superintendent of Police*, (2006), 2 KLT 197

¹⁵*Selvi v. State of Karnataka*, AIR (2010) SC 1974

particular provisions to be enacted which can deal with scientific tools. Admissibility point is very discretionary in India as it solely depends on the judiciary to allow for the conduction of the test.

The Narco test has proven to be an efficient advanced technique. It strikes a balance between the innocent and the guilty by affecting both of them in an equal manner. The technique has been used in various cases such as Aarushi murder, Nithari killings, Telgi scam, and Mumbai blasts case. The Indian criminal justice system should include in its provisions scientific developments and advances that take place in as long as they do not violate the fundamental rights or principles and are for the betterment of society. After the injection of the drug, there may be repercussions on the subject's mental health. In such a situation, the scheme for redressal is to be formed which will take place after observing the symptoms or side-effects in the subject. If the test is administered correctly then it may not expressly violate an individual's Right to Privacy. To prevent the person's basic right from abuse, strict procedural safeguards should be added.

The Court had stated in the case of *RohitShekhar v. N.D Tiwari*, "that in a conflict arises between the individual right and societal right then in such a case the societal interest will prevail over the individual interest."¹⁶



¹⁶RohitShekhar v. N.D.,Tiwari, AIR (2012), 12 SCC 554