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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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NARCO ANALYSIS ADMISSIBILITY: EXPLORING LEGAL & ETHICAL DIMENSIONS

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ABSTRACT

The paper's primary focus revolves around the application of narco-analysis tests on individuals who are alleged or suspected of committing crimes during the investigative phase, along with a study of their legal status within the jurisdiction. Despite its lack of legal legality, law enforcement organizations continue to utilize tests such as narco-analysis during investigations, even though any replies or confessions received from individuals in a semi-conscious condition are not admissible as evidence in Court. The tests do not possess a 100 percent level of accuracy. This paper critically analyses the narco-analysis test technique and assesses its compatibility with the Constitution of India and pertinent legislations, such as the Code of Criminal Procedure¹ and the Indian Evidence Act². Furthermore, this research offers a comprehensive assessment of the narco-analysis test, specifically emphasizing its potential adverse effects on an individual's well-being, the dependability of the test outcomes, potential violations of human rights, and the psychological anguish it may cause. The narco-analysis test can function as a beneficial and efficacious investigation tool, providing an alternative to coercive techniques such as third-degree or custodial violence commonly utilized by law enforcement agencies. Nonetheless, the administration of this examination must refrain from violating the defendant's constitutional rights.

KEYWORDS: Narco-analysis, Third-degree torture, self-incrimination, right to silence, Indian evidence act

¹ Code of Criminal Procedure, 1973

² Indian Evidence Act, 1872

INTRODUCTION

In recent years, India has begun to pay more and more attention to the problem of narco-analysis. Many techniques have been used throughout history to elicit information from suspects. The emergence of modern analytical questioning techniques has significantly lessened the propensity to ignore the findings of criminal investigations. The interrogation of the accused is a crucial step in the criminal investigation process. Three regularly used methods to obtain confessions from people under investigation that may be used as acceptable evidence include lie detectors, sometimes known as polygraph exams, brain mapping, and narcotic analysis testing. Horsley coined the phrase "Narco-analysis" first. The practice of narco-analysis raises various questions at the intersection of law, science, and ethics, with some proponents arguing for its legality and others denouncing it as a severe violation of constitutional principles.

RESEARCH QUESTIONS

- Does the utilization of narco analysis adhere to constitutional rights?
- Does applying the narco analysis technique infringe against the constitutional protection against self-incrimination, as stipulated in Article 20 (3) of the Constitution?
- Does applying narco-analysis in criminal investigations give rise to primary ethical and legal considerations?
- Can administering a test that encroaches upon an individual's bodily autonomy and invades their privacy by examining their mental condition be morally justified?
- Is it legally permitted to utilize cruel techniques in the quest for truth?

RESEARCH OBJECTIVE

- This study aims to analyze judicial decisions on the legality of narco analysis.
- To assess the application of narco-analysis in different jurisdictions for comparative analysis.
- The paper aims to review the legal and ethical problems associated with narco-analysis critically.
- To propose a just approach for utilizing narco-analysis that adheres to constitutional requirements.

JUDICIAL PRONOUNCEMENT

The statement obtained by the narco analysis test does not qualify as evidence in its current form unless it also meets other requirements. The Supreme Court ruled in the case of Smt. Selvi & Others v. State of Karnataka³ that administering a test, even with the subject's permission, does not include conscious control over the responses. The test results cannot be used as evidence in and of themselves. The Indian Evidence Act of 1872's Section 27⁴ permits the admission of any evidence or information gleaned from a voluntarily conducted test.

Dinesh Dalmia v. State by Special Executive Magistrate⁵ established that the investigation team is authorized to proceed with the use of scientific tests in order to identify potential leads relevant to the case when the accused party refuses to cooperate with the investigation team, leading to an inability to conclude the investigation within the specified period, and if the circumstances of the case allow. The Court reaffirmed the viewpoint above in the case of Sh. Shailender Sharma v. State & Another⁶ stated that using narco-analysis and other scientific investigations aids in collecting evidence, hence supporting the investigative process.

Dr. Rajesh Talwar Case (2013), Investigation agencies conducted the polygraph and brain mapping tests in this instance of the Rajesh Talwar Narco-Analysis Test without the agreement of the accused. The narco test, however, was critical in resolving the case and identifying the suspects.

COMPARATIVE ANALYSIS

A narco test began as a novel instrument in criminal investigations during the early 1920s in the Soviet Union under the Bolshevik regime. The Soviet secret police, the Cheka, used the drug scopolamine to question people suspected of being involved in counterrevolutionary activities.

Studies carried out by several medical associations in the US support the idea that truth serums do not lead to credible statements. The truth serum-induced trance state can also cause people to give

³ Smt. Selvi & Others v. State of Karnataka, AIR 2010 SC 1974

⁴ Indian Evidence Act, 1872, Section 27.

⁵ Dinesh Dalmia v. State by Special Executive Magistrate, CBI 2006 CriLJ 2401

⁶ Sh. Shailender Sharma v. State. Sh. Shailender Sharma v. State, CrI. WP No. 532 of 2008

false or misleading information. Townsend v. Sain⁷ determined that the admission of the complainant's confession gained through police questioning was illegal in the United States. This decision was made in light of the confession's elicitation when the petitioner's willpower was seriously undermined due to the use of a chemical resembling truth serum.

Protecting the accused from self-incrimination is a fundamental tenet of the British and American criminal justice systems. The United States Supreme Court has upheld the accused's right to silence. This practice has been reported to constitute a form of psychological torture and violating the right to remain silent. The use of a sodium amytal interview was recently found invalid and inadmissible in the case of State v. Pitts⁸.

It is crucial to remember that there are further inconsistencies, although the United States has used narco-analysis in its counterterrorism initiatives. In the case of Indianapolis v. Edmond⁹, it was decided that administering truth serum might be done without a warrant or legal justification if it would help fight terrorism or other serious crimes. In the event of a necessity, the welfare of the people would take precedence over individual rights.

The argument that the societal need for research outweighs the privilege is also frequently made. In Malloy v. Hogan¹⁰, the Court unambiguously decided that a witness' claim to the privilege against self-incrimination must be carefully considered. The safeguard of protection is not available when it is clear that the claim has no basis.

The use of truth serum has raised concerns from the European Court of Human Rights, which claims that it could violate a person's right to be protected from torture and other cruel or inhumane treatment. Furthermore, it has been observed that this action breaches the Inter-American Convention to Prevent and Punish Torture.

⁷ Townsend v. Sain, 372 US 293 (1963)

⁸ State v. Pitts, 116 NJ 580 : 562 A. 2d 1320 (1989)

⁹ Indianapolis v. Edmond, 531 US 32 (2000)

¹⁰ Malloy v. Hogan, L. Ed. 2d 653 : 378 US 1 (1964)

CRITICAL ANALYSIS

CONSTITUTIONALITY OF NARCO ANALYSIS

The Indian Evidence Act and the Indian Constitution set the legal parameters for drug tests in India. According to the Indian Evidence Act, drug tests may be used as evidence as long as they are carried out with the subject's agreement, as part of an ongoing criminal investigation, and with a judicial magistrate's approval. The right to privacy and the proscription of cruel, degrading, and inhumane treatment are just two examples of people's protections and entitlements under the Indian Constitution. These constitutional clauses might place restrictions on the use of drug tests.

RIGHT AGAINST SELF-INCRIMINATION

The right against self-incrimination protects people's privacy and upholds civilized standards regarding the administration of justice.

Individuals accused of a crime are protected from being forced to testify against themselves under Article 20(3)¹¹ of the Indian Constitution.

The legal idea that no one must implicate themselves is known as the "Nemo Tenetur se Ipsum" principle. The right against self-incrimination, also known as the principle of accusare, states that no one, including the accused, can be forced to answer questions that would implicate them in a crime for which they have been charged. Any confession given by the accused that was gained by physical or moral coercion—including situations where the accused was under hypnosis—shall be disregarded by the Court.

Every coin has two unique features. On the one hand, the narco-analysis test makes it easier to find new facts, leads, or pieces of evidence that can advance the investigation and function as a catalyst for the pursuit of justice. However, it should be recognized that individuals may use the constitutional protections offered, such as the fundamental rights to life, privacy, and immunity from self-incrimination, when narco-analysis is carried out forcibly or used unfairly. The legal system has recognized narco-analysis as a legitimate investigative technique. Additionally, this is desirable when

¹¹ Constitution of India, 1949, Article 20(3).

societal welfare is at stake, in which case it takes precedence over the importance of individual interests. The decision in the matter of Nandini Sathpathy vs. P.L. Dani¹² shows that the Right to Silence has been established as a legal right for the accused. The right to remain silent during questioning or an investigation is protected by this ruling, which assures that no one can force the accused to make remarks. By reinstating the practice of penetrating an individual's mind, these tests undermine the legitimacy and legality of the right to silence. In the 2006 case Rojo George v. Deputy Superintendent of Police¹³, the Court found that modern criminal activity had become more dependent on technology. As a result, conventional investigative techniques might not always result in fair results. The more time an investigation takes, the more chance the offender has to hide their illegal behavior. As a result, there have always been a variety of positions on narco-analysis, which has led to an ongoing discussion.

In the case of State of Bombay v. Kathi Kalu Oghad¹⁴, the Court recognized that proof of coercion to make an incriminating statement by the witness is required for the provisions of Article 20(3) of the Indian Constitution to apply.

The narco-analysis test is controversial because it can violate the fundamental rights to life and privacy protected by Article 21¹⁵ of the Constitution. The argument asserts that it is against the law to forcefully eavesdrop on someone's thoughts or use coercive means to compel them to talk. Additionally, the fundamental right to live in dignity, as protected by Article 21, is violated by the psychological pain that participants in this examination experienced.

Narco-analysis testing proponents contend that this investigation method is beneficial when it is necessary to extract crucial information to stop terrorist operations and associated crimes. The use of the narco-analysis test attracted considerable media interest in high-profile cases like the Abdul Karim Telgi counterfeit stamp paper controversy¹⁶, the Mumbai terror attack case of 26/11, and the 2007 Nithari Killings case which implicated the terrorist Ajmal Kasab, who was caught. To assess this

¹² Nandini Sathpathy vs. P.L. Dani, AIR 1978 SC 1025.

¹³ Rojo George v. Deputy Superintendent of Police, 2006 (2) KLT 197

¹⁴ State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808

¹⁵ Constitution of India, 1949, Article 21.

¹⁶ State by Stamp Investigation Team v. Abdul Karim Telgi ILR 2003 KAR 3702

method's ability to replace the standard method of questioning, it is crucial to assess its application objectively. The traditional approach has been linked to unfavorable outcomes, including shame, ignominy, and disgrace for the police, which has led to a deterioration in the criminal justice system's confidence. The adoption of reputable and effective narco-analysis techniques can replace the usage of cruel third-degree procedures. To prevent investigating officers from misusing or abusing this process, it is crucial to take precautions and ensure that it is adequately supported by corroborating evidence. The Madras Court found that the administration of a polygraph test constituted a scientific investigation of the accused in the case of Dinesh Dalmia v. State of Madras. Using narco-analysis and brain mapping tests on the accused to get the truth from them does not constitute coercing them into speaking up.

ADMISSIBILITY OF NARCO ANALYSIS IN LAW

Narco-analysis was first used in India in 2002 as part of the inquiry into the Godhra catastrophe incident. As a result of the accused is required to undergo narco-analysis in front of the National Human Rights Commission and the Supreme Court of India, the Gujarat kidnapping case involving Arun Bhatt received much public attention. In December 2003, Abdul Karim Telgi's role in the Telgi stamp paper fraud attracted much media attention. When a sizable amount of material was gathered, inquiries regarding the evidence's importance were raised in the Telgi case. The high-profile series of murders that took place in Noida's Nithari village brought narco-analysis to the public's attention.

The Bombay High Court upheld the legality of using the P300 or Brain Mapping and narco-analysis tests in the case of Ramchandra Reddy and Others v. State of Maharashtra¹⁷. The Court claims it has established the admissibility of evidence obtained through a narco-analysis test. However, defense counsel and human rights activists viewed the narco-analysis test as a crude form of investigation and a coercive interrogation technique with noteworthy legal shortcomings in drug-assisted questioning.

¹⁷ Ramchandra Reddy and Others v. State of Maharashtra, 2004 All MR(Cr)1704

ADVANTAGES AND DISADVANTAGES

ADVANTAGES

- In situations where the sole means of ascertaining veracity is the utilization of the Narco-Analysis Test. It can be demonstrated to be a significant instrument for conducting investigations.
- In the contemporary context, where criminals employ advanced methodologies to perpetrate unlawful activities, it becomes imperative to furnish investigative authorities with state-of-the-art scientific procedures to probe such concerns effectively. This will facilitate the expedient and efficient resolution of cases by the agencies.
- The escalating crime rate in India necessitates reinforcing law enforcement organizations with scientific methodologies to enhance their ability to apprehend offenders efficiently and expeditiously. Enabling investigative agencies with advanced technological resources, such as the Narco Analysis Test, has the potential to facilitate the objective above.
- Scientific technology, such as the Narco Analysis Test, presents a viable alternative to the conventional inquiry approach, specifically custodial violence.
- The procedure does not pose any risk to the participant, as the examination is carried out under the guidance and oversight of professionals.
- The likelihood of dishonesty during an examination is reduced, notably when experts in the field formulate the test questions.

DISADVANTAGES

- The administration of the Narco Analysis Test can potentially pose risks to the psychological and physiological well-being of the individual undergoing the procedure. An incorrect dosage can potentially induce a state of unconsciousness or even fatality in an individual.
- The administration of the test may elicit significant distress in individuals who are already afflicted with substance addiction. Furthermore, the method's efficacy in gathering evidence falls short of the desired level of success.
- The statement provided in such circumstances lacks admissibility because of the subject's lack of consciousness over the statement made.
- The statement above violates both Constitutional and statutory restrictions.

SUGGESTION & CONCLUSION

- It is crucial to define detailed protocols for the use of several scientific exams, including but not limited to polygraph tests, brain scans, and narco-analysis tests.
- It is advised that changes be made to the Criminal Procedure Code of 1973, the Evidence Act of 1872, and the Indian Constitution to implement such criteria.
- To meet its needs, each state needs to have a sufficient number of forensic laboratories that are fully stocked and qualified experts.
- Furthermore, it is crucial to set up a mobile forensic laboratory in each region of the State. The seamless coordination of the prosecution, counsel, and courts is essential to the criminal justice system's efficient operation. This cooperation prevents criminals from eluding the law while protecting innocent people from unnecessary harassment.

Several High Courts have affirmed the propriety of narcotics analysis in their different orders. The decisions above clearly depart from how the Supreme Court has previously interpreted Article 20(3). The assertion's plausibility stems from the fact that narcotics analysis is still a relatively new method of questioning in the Indian criminal court system and lacks set standards or processes. Numerous High Courts have made decisions confirming the legitimacy of narco analysis from a legal standpoint. The decisions above clearly depart from how the Supreme Court has previously interpreted Article 20(3). Since narco analysis directly affects India's commitment to preserving individual freedoms and upholding an impartial criminal justice system, the Central government must take a firm stand on the issue.

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