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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

NARCO-ANALYSIS AND ITS RELEVANCE UNDER ARTICLE 20(3) OF THE INDIAN CONSTITUTION

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Abstract

Even if it is nearly impossible to create a society without crime, it is always preferable to implement an equitable criminal justice system in order to get there. The traditional approach to looking into and questioning offenders doesn't always result in a good outcome. This makes it necessary to rely on some more recent methods, such as brain mapping and narco-analysis. Several problems about the intersections of law, medicine, and ethics are raised by narcotics analysis. Article 20(3) of the Constitution guarantees the right against self-incrimination, which is violated by the narco analysis technique. Science and technology are advancing at breakneck speed. The legal system needs to adapt to the rapid advancements in technology. It is impossible to claim that the criminal justice system has not benefited from advances in science and technology. The investigation and criminal detection process has been made simpler by the development of new tools including brain mapping, polygraph testing, and narco-analysis. The study makes an effort to examine the legality of methods like narco-analysis, in criminal analysis. One of the main scientific tools for questioning someone is narco-analysis. These kinds of scientific approaches are very helpful to the investigating agencies in the current period where crime rates are rising out of control. Undoubtedly, despite the ruling in *Selvi v. State of Karnataka* by the supreme court, one might argue that investigative agencies continue to use narco-analysis as an interrogation technique today. This necessitates more investigation into the subject. The study examines the implications of Article 20(3) of the Constitution for performing narco-analysis or similar tests on individuals. The study will examine the fundamentals of narco-analysis as well as the relationship between narco-analysis and Article 20(3) of the Constitution. The matter will be investigated using judicial precedents.

Keywords: Technology, Narco-Analysis, Interrogation, Article 20 (3), Precedents.

Introduction

Justice is the fundamental tenet of the law. In specifically, criminal law is a body of guidelines for maintaining social order in a dynamic society. The 'Rule of Law,' which maintains that the law is superior, that everyone is equal before the law, and that justice is to be served by the law, is the cornerstone of the political system of a democratic nation like India. The foundation of the criminal justice system in India is police investigation. Police personnel frequently behave autonomously and in accordance with their own protocols, which may involve using third-degree methods that are forbidden in a civil society ruled by the rule of law. India has traditionally believed that evil cannot triumph over evil. Thus, everything has to happen inside the bounds of the law. Here, as a link between science and law, we can look to scientific facts to help ensure that justice is administered properly. When investigators and forensic specialists obtain, analyse, and apply scientific evidence, they should do so with fair play, objectivity, and an open mind. This is the essential concept that guides the use of scientific aids in inquiry. One essential scientific method for criminal investigation is the use of tests for deception detection. DDT methods, like brain mapping and narco-analysis, have significant ethical, legal, and scientific ramifications. The DDTs are useful in gathering intelligence regarding illegal activities. Due to its individuality, this knowledge is often essential for criminal investigations. DDTs have seen widespread application among law enforcement organisations. Investigators are aware that the data they have collected will not be admissible in court, though. They contend that compared to certain investigators' "third degree approaches," it is more secure. These methods have recently been promoted as being more accurate and better than all others, despite the lack of strong data to support them. Tests have been carried out by investigative authorities in some well-known cases. These scientific research techniques have the potential to swiftly become a respectable substitute for third-degree physical torture while detained by the police. As the Supreme Court noted in *D. K. Basu v. State of West Bengal*, the employment of scientific methods in the investigation and questioning of suspects is required since torture and deaths in custody are egregious abuses of the legal system.

The fundamental idea is that a person can lie by employing his imagination. The NARCO Analysis Test neutralises the subject's imagination and affects his cognitive faculties, causing him to become semi-conscious. Although he is unable to talk for himself, the subject is able to respond to brief and

straightforward inquiries. Because a semi-conscious person cannot control his response, his responses are impromptu. When administered continuously in little doses, it hypnotises the subject and causes them to answer questions incoherently. Throughout the testing process, the blood pressure and ECG are continuously recorded. The entire process is captured on cassettes. The questions are intentionally crafted and asked often enough to minimise uncertainty when questioning someone about drugs. Following the NARCO test, the suspect is allowed to unwind for two or three hours. When someone receives an infusion of sodium pentothal or sodium amytal, they become semi-oblivious, and queries are frequently directed towards them while they are in that state. The person becomes less restrained and more prone to share facts during the somnific stage that they would typically withhold during the conscious state. Additionally, subjects are free to reveal all of their dreams, desires, urges, innate motivation, conflicts, delusions, and misinterpretations, among other things. The 'narco test' is the name given to the included cycle.¹

“It was once thought that man's worry or anxiety prevented him from releasing saliva from his mouth. In light of this, suspects were forced to chew rice powder. The person was deemed guilty if the powder didn't dry out. Despite their dubious dependability, these views were supported by accurate observation. The primary goal of a scientific investigation is to establish the guilt or innocence of a suspect by turning suspicion into a reasonable level of assurance. Demonstrating the accused's guilt beyond a reasonable doubt and shielding the innocent from erroneous convictions form the cornerstones of the criminal justice system.”

Criminal Investigation

In the Code of Criminal Procedure (Cr.P.C.)², Section 2(h) defines the term "investigation." In H.N. Rishbud v. State of Delhi Delhi³, the Supreme Court stated that the following procedures are typically included in the investigation:

- (i) Arriving at the scene;
- (ii) Learning the details of the case;

¹ Narco-. (n.d.) American Heritage Dictionary of the English Language, Fifth Edition. (2011). Retrieved November 7 2019 from <https://www.thefreedictionary.com/narco>

² All the proceedings under the Code for the collection of evidence by a police officer or by any other person (other than a Magistrate) who is authorized by the Magistrate in this behalf will come under the purview of investigation.

³ AIR 1955 SC 196.

(iii) Finding and apprehending the suspected offender;

(iv) Gathering evidence regarding the commission of the offence, which may comprise: (a) Questioning people (including the accused) and putting their statements in writing if the officer deems it appropriate; (b) Searching locations and seizing items deemed essential for the investigation and to be presented at the trial; and

(v) Forming an opinion regarding whether there is sufficient evidence to bring the accused before a magistrate for trial based on the materials gathered, and if so, taking the appropriate action to file a charge sheet in accordance with section 173 Cr.P.C⁴.

All inquiries aim to uncover the truth in order to serve justice and hold the accused accountable. Every person who has information about a cognizable offence being committed or who can help the investigator in any other manner is obliged to notify the police and aid the investigating officer, who is tasked with gathering evidence, throughout this search. It is expected of the investigator to use legally permissible scientific procedures of criminal detection in order to uncover the crime. The Narco-Analysis Test satisfies the requirements of section 2(h) of the Cr.P.C, indicating that it is a scientific investigation in which the accused provides information about the offence that may be used as evidence against him.

The Supreme Court has repeatedly condemned unwelcome court intervention in police investigations of crimes in the proper execution of their statutory duties under the law of the land. It is a well-established legal principle that police authorities have the statutory right and duty to investigate into a cognizable offence under the scheme of Cr.P.C.

A group of people that advocate for human rights, privacy rights, freedom of speech and expression, and individual liberty have objected to the use of Narco-analysis against a subject without the subject's agreement. These people include social thinkers, attorneys, and human rights activists. They claim that the medications employed in narcoanalysis are bad for the health of people.

The incorrect dosage may be lethal. “In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world,” the Supreme Court declared in the case of SidharthaVashisht alias Manu Sharma vs. State

⁴ Section 173 of CrPC provides that every investigation by the police shall be completed without unnecessary delay.

(NCT of Delhi). India's criminal justice administration system gives human rights and the value of human life a far higher priority. According to our legal system, a person accused of a crime is deemed innocent until and until they are proven guilty. The accused also has the right to a fair trial, a thorough investigation, and a fair trial, while the prosecution is supposed to take a balanced approach to the case. It added, "To ensure adherence to the fundamental rule of law, the investigation should be judicious, fair, transparent, and quick. These are the cornerstones of our criminal jurisprudence, and they fully align with Articles 20 and 21 of the Indian Constitution's constitutional mandate.

A police officer may question someone orally under section 161 Cr. P.C. if he believes that individual is knowledgeable about the case's circumstances.

A portion of the person questioned under section 161 might be charged later on. So, the term "any person" in section 161 also refers to the accused. The subject of an examination is required by Section 162⁵ to respond to all questions, with the exception of those that could lead to his incrimination. However, if the subject of the police examination provides a response to a question that could be used against him in an investigation or prosecution, the answer cannot be used against him. The data obtained from the defendant by conducting a narcotics analysis on him is similar to the declaration documented under section 161 of Cr.P.C. A police officer may question someone orally under section 161 Cr. P.C.⁶ if he believes that individual is knowledgeable about the case's circumstances.

A portion of the person questioned under section 161 might be charged later on. So, the term "any person" in section 161 also refers to the accused. The subject of an examination is required by Section 162 to respond to all questions, with the exception of those that could lead to his incrimination. However, if the subject of the police examination provides a response to a question that could be used against him in an investigation or prosecution, the answer cannot be used against him.

The data obtained from the defendant by conducting a narcotics analysis on him is similar to the declaration documented under section 161 Cr.P.C. This, if reduced in writing, cannot be used against

⁵ Section 162 provides that "statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made."

⁶ Section 161 of Code of Criminal procedure provides: Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

the maker and is not necessary for him to sign. When someone is detained on suspicion of a crime, they may be forced to submit to a medical examination against their will.

In the case of *Ram Lal Narang v. State (Delhi Administration)*, it was decided that there was no reason to think that a court overseeing the administration of criminal justice could not, under Section 53,⁷ ask a medical professional to examine a person for information that might be used as evidence in cases the police are investigating. Examples of such information include taking a blood sample, semen sample from the accused, or DNA test for the purpose of conducting a follow-up investigation under Section 173(8) of the Code.

DDT's

The polygraph, narcoanalysis, and brain mapping are examples of deception detection tests (DDT) that have significant clinical, scientific, ethical, and legal ramifications. The DDTs are helpful in uncovering hidden details about criminal activity. Sometimes, this information—which one knows only about oneself—is essential for conducting a criminal investigation. The investigative agencies have made extensive use of DDTs. Investigating agencies are aware, meanwhile, that the material that has been retrieved is not admissible as evidence in court. They have denied that it is any less dangerous than the "third degree methods" that certain investigators employ. Here, the argument is that employing these supposedly "scientific procedures" in fact-finding will directly aid the investigative agencies in gathering evidence, hence increasing the likelihood that the guilty will be prosecuted and the innocent will be found not guilty. Without solid proof, some techniques have been pushed as being more precise and superior than others recently. The Indian Supreme Court has ruled in a landmark decision that the administration of DDTs requires consent.⁸

Debate on DDT's

⁷ Section 53 Cr.P.C provides that "when a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably for that purpose." 19(1979) 2 SCC 322.

⁸ Wolpe PR, Foster KR, Langleben DD. Emerging neurotechnologies for lie-detection: promises and perils. *Am J Bioeth.* 2005;5:39–49

The central question raised by the DDT is whether it is acceptable to confess to a crime via cruel, degrading means. One of the most important aspects of gathering evidence is questioning the accused. *To what degree can the investigating agencies compel or force the accused to divulge information if the accused stays mute and refuses to respond to any of their questions?*

It is wrong for police to use torture in a civilised society in order to obtain information about a crime. Confessions given to police officers are invalid, even in court. The subject at hand is, *"Is it possible for police to obtain information from the accused using DDT?"* While some believe that such tests are helpful to the investigating agencies in this day of rising crime, others reject the idea, arguing that it violates the constitution in blatant ways. This perspective examines the previous court's opinion, the latest Supreme Court ruling, and the scientific foundation of DDTs.⁹

Narco-analysis

The word "narco analysis," which comes from the Greek word "narkō," which means "anaesthesia" or "torpor," refers to a diagnostic and psychotherapeutic approach in which barbiturates, in particular, are used to induce a stupor in which mental elements with strong associated affects emerge, allowing the therapist to take advantage of them. Horseley is credited with coining the phrase "narco-analysis." Sodium pentothal, often known as "Truth Serum," is injected as part of the Narco-analysis test method. A person can speak more freely and feel less self-conscious after taking this truth serum. Speaking without inhibitions begins when the subject reaches a fully tranced condition and loses inhibitions. Examiners and investigating authorities ask inquiries at this point and receive accurate, truthful responses.

***Object behind narco-analysis test?** The purpose of the narcoanalysis test is to see if a person can resort to lying through his or her imagination; however, once the subject enters the subconscious state, the test neutralises this imagination. As a result, it is thought that the individual cannot lie and that his responses are genuine and honest.*

What Effects Do Narco Tests Have on the Law?

⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3171915/#ref2>

In the 2010 case of **Selvi v. State of Karnataka & Anr**,¹⁰ the Supreme Court made a ruling regarding the admissibility and validity of narco tests, concluding that administering narco or lie detector tests against consent is an invasion of a person's "mental privacy." The Supreme Court ruled that narco tests are against Article 20(3) of the Constitution, which prohibits compelling someone who is accused of a crime to testify against themselves. This basic right against self-incrimination is violated by narco testing.

In the 1997 case of **D.K. Basu v. State of West Bengal**, the Supreme Court held that, in the framework of Article 21, or the Right to Life and Liberty, the compelled administration of the polygraph and narcotics test would constitute cruel, inhuman, and humiliating treatment.

History of Narco-Analysis

- The Greek word "NARKE," which meaning numbness, is where the name "narco" originates. It was in the twentieth century when Horseley first used the term "narco analysis."
- The application of narco analysis in forensic science dates back to the late 1800s, when an American physician employed hypnosis to calm his patients so he could talk to them about emotionally taxing topics.
- Regarding narco analysis, the Indian Evidence Act 1872, the main statute governing the admissibility of evidence in all national courts, is silent. On the other hand, information that is later found with the use of freely administered test results may be entered as evidence, according to Section 27 of the Evidence Act 1872.
- Narco-analysis was applied for the first time in India in the Godhra train fire case in Gujarat in 2002.

Narco analysis is a procedure used to examine a patient or suspect who has been given barbiturates, appears sleepy, and has his suppressed emotions released. It goes by the name narcosynthesis as well. According to Webster's Dictionary, the term "Narco analysis" was created in the 20th century and combines the terms "Narco" and "Analysis." It refers to psychoanalysis in a sleep-like state that is brought to an end by the use of medication. These medications are often known as "truth serum" or "reality pills." Hypnosis and narcosis are used to create narcoanalysis. In a brief amount of time, the

¹⁰ Smt. Selvi & Ors Vs State of Karnataka. Smt. Selvi & Ors Vs State of Karnataka Judgment on 5 May 2010. (Criminal Appeal No. 1267 of 2004) [accessed on May 10, 2010]. Available from: <http://supremecourtofindia.nic.in/>

psychiatrist should gather additional information about minor contents. Sleep is produced by narcoanalysis without the need for large sedative dosages. Horsley claims that by utilising post-hypnotic material, it suggests that our mental contents may be reintegrated at the most extreme moment to alleviate symptoms. The term "narco analysis," which refers to an examination of a person's comprehension of a situation brought on by drugs, was first used by Horseley in the 20th century. The first instance of narco-evaluation was in late 1920, when Texas physician Robert House began using the drug scopolamine on convicts whose guilt appeared to be confirmed. Using the medication Scopolamine, he arranged for two inmates in the Dallas prison to be questioned. Each of them disputed the charges during the examination, and they were found not guilty when they went on trial. Following a successful trial, House came to the conclusion that problems cannot occur in a sleep-like condition when Scopolamine is present. The term "truth serum" gained prominence primarily as a result of this experiment. The term "fact serum" refers to a time period when hypnotic drugs are used to induce truthfulness. Robert House gained renown as the "Father of Truth Serum" after passing this exam.

CRITICAL ANALYSIS OF NARCO ANALYSIS

Narco analysis tests are criticised for the following reasons:

1. According to Dr. B.M. Mohan, Director of FSL, Bangalore, narco analysis has a total screen rate of 96–97%, which indicates that the accuracy of the analysis is not 100%. He believed that narco analysis ought to be rejected.
2. The narco analysis test has been called unscientific by Dr. P. Chandra Sekharan, the former head of Tamil Nadu's Forensic Science Department, who compared it to a third-degree way of investigation.
3. Using deceptive techniques, certain participants in the Narco analysis provided utterly false statements. The person may have a high threshold, fake a state of semi-focus, be able to tell lies, and have a history of drug or alcohol addiction.
4. It is quite difficult to recommend a specific medicine dosage for a given man or woman because it will differ based on the problem's physical form and mental attitude.

It is said that giving the person the incorrect dosage could endanger his life.

Procedure of narco analysis test

- Depending on the individual's sex, age, health, and physical condition, 3 gm of either sodium pentothal or sodium amytal dissolved in 3000 ml of distilled water is administered intravenously
- Along with 10% dextrose over the course of three hours with the assistance of an anesthetist for the Narco Analysis Test.
- To gradually induce a hypnotic trance in the accused, the rate of dosage is adjusted.
- The substance depresses the central nervous system, reduces blood pressure, slows the heart rate, and puts the person into a hypnotic trance that results in a lack of inhibition.
- When under hypnosis, subjects tend to be less guarded and more forthcoming with information that they would normally keep private.
- It is possible to demonstrate all of the subject's desires, illusions, conflicts, instincts, beliefs, misinterpretations, and fantasies.
- A wrong dosage could put the patient in a coma or possibly kill them. The accused is observed while the rate of medication is adjusted to gradually induce hypnosis.
- Because the medication lowers blood pressure, slows the heart rate, and depresses the central nervous system, it induces a hypnotic trance in which inhibition is absent, which has an impact on an individual's bio-activity.
- After that, the doctors watch as the Investigating Agency questions the subject. Both audio and video cassettes contain recordings of the insights made during this phase.
- The document created by the specialists is what's employed in the evidence collection process. The individual speaks freely while under the effect of the drug, and it is said that he lacks the willpower and self-discipline to restrict his responses.¹¹

The necessity of a narcoanalysis test

Certainly, the means of committing the crime has evolved. In summary, criminology has grown significantly over the past several years. Therefore, it is necessary to enhance the effectiveness of the investigation to find the crime and to conduct a deception detection test. Therefore, the conventional

¹¹ <https://blog.ipleaders.in/validity-narco-analysis-india-crime-detection-technique/>

methods of inquiry, such as the third-degree torture administered by the police to elicit a confession, are harmful to the subjects. In this test, the dosage is administered by experts alone or in their presence, and only the experts have prepared the questions. ¹²

The investigating officer has the statutory authority to look into the offence, discover the facts, and contact the accused under the Criminal Procedure Code, ¹³1872 (hence referred to as Cr.p.c.). A narcoanalysis test is a useful method, particularly when the investigating agency is working in the dark and the inquiry is still at a standstill despite all of the efforts and exhaustion of all options.

In situations where the agency lacks the capacity to ascertain the truth and the accused, the test aids in uncovering the truth and identifying the true offender by providing hints following the test. The investigative agency is gathering evidence, which includes conducting a narcoanalysis. The contemporary scientific test helps to protect society from the third-degree tactics used by police officers, just as it aids the investigating agency in gathering hidden evidence and proving the guilt or innocence of the accused. ¹⁴

Steps in a narco-analysis test

It consists of the following steps:

1. Pre Test Interview
2. Pre Narcotic State
3. Semi Narcotic State
4. Post Test Interview

Pre Test Interview

The process is fully described to the individual, and their informed consent is obtained.

¹² 2007 Cri LJ, Journal Section, 172.

¹³ When the accused are not coming forward with the truth and to have a further clue in the matter further investigate the crime

¹⁴ <https://thelawbrigade.com/wp-content/uploads/2019/05/Shalini-Tyagi.pdf>

Pre Narcotic State

During the interview, anaesthetic produces narcotic and keeps the subject in a pre-narcotic condition. The injection of the medication is continued until the subject seems at ease and in good contact.

Semi Narcotic State

Following the establishment of the semi-drugged condition, the person seems to be flushed or speaking more slowly and slurred.

The interview is facilitated by psychiatrists and forensic psychologists.

- The person is permitted to go to sleep and wake up.
- The anaesthetist checks the patient when they awaken and gives them permission to drink ¹⁵ tea or coffee.
- The entire Narco interview is written, audio-video recorded, and both.¹⁶

Post Test Interview

It consists of:

1. Verifying memories.
2. The person has the right to know what they said during the interview.
3. People report feeling more at ease and anxiety-free.¹⁷

Narco-analysis in India

- A few democratic nations, most notably India, still employ narco-analysis.

¹⁵ <https://www.sifs.in/blog-details/narco-analysis-test-in-criminal-investigation-system/54>

¹⁶ Madhavuniversity.edu.in

¹⁷ Ambedkar S. N., Barnwal Ajay. "Narco-analysis Test: An analysis of various judgements of Indian Judiciary". IOSR Journal of Humanities And Social Science 19.10 (2014) :52-57

- In a forensic laboratory, narco-analysis is carried out in preparation for the interview.
- This test is administered in Bangalore and Gujarat, India.
- The court's consent is necessary.¹⁸

ANALYSIS OF NARCO FROM THE PERSPECTIVE OF THE EVIDENCE

The admissibility of scientific evidence, including the results of the Narcoanalysis test, is not covered by any laws. It is still unclear under the law whether narcoanalysis is admissible. However, in certain cases, where there is just circumstantial evidence, the court will accept the aforementioned criteria. As a result, the court will occasionally permit the test to fill in any gaps in the evidence.

The two sections of the statement are called confession and admission. Furthermore, under the Indian Evidence Act, a confession made to a police officer, in that officer's presence, or while the police officer is in detention is only admissible if the magistrate is present. The magistrate has a duty to inform the accused that he is not required to make the confession when the accused makes one in front of him. As was said in the previous discussion, narcoanalysis is a crucial investigative tool, particularly in situations when there is a dearth of evidence. The main problem is that sections 25 and 26 of the Indian Evidence Act of 1872 apply to the evidence gathered from the test.¹⁹

However, if the narcoanalysis test is carried out in front of the magistrate, the confession is legitimate and is exempt from section 25 and 26 penalties. The court determined in *Selvi and ors. v. State of Karnataka* that-

"The Supreme Court of India held that even though the accused gave their consent, the test results cannot be admitted as evidence because the subject was not exercising conscious control during the test. However, the court did leave open the possibility that, should the subject have given consent, any material or information found during the test could be admitted under section 27 of the Indian Evidence Act, 1872. Additionally, it was decided that confessions made in front of a police officer are not admissible as evidence in court under section 25 of the Evidence Act. Therefore, the court believes that unless the subject's remarks are subject to a cross-examination or judicial scrutiny, they cannot

¹⁸ www.ncbi.nlm.nih.gov

¹⁹ 1978 SCR (2) 621swa

be admitted as evidence.²⁰

Additionally, the court determined in Dharampal v. State that: “The Apex court made it very plain that everyone has a responsibility to help the state bring criminal justice and discover crime since the criminal justice system cannot function effectively if members of society do not cooperate. It must be understood that no one may dodge societal responsibility by hiding criminal information under the guise of their right to privacy, which is not an inalienable right.”²¹

The Supreme Court ruled in *State of Gujarat v. Anirudh Singh*²² that it is the responsibility of each witness to assist with the questioning. The court in the Shashi Murder case enabled the police to test Vijaysen Yadav, the primary accused, with narcoanalysis, and the CJM granted permission for this to happen. In another case, *Satakben Sharm and Hailodeji v. State of Gujarat*, the honourable high court allowed a narcoanalysis test notwithstanding the accused's protests. The Supreme Court ruled in the Selvi case that if the accused voluntarily consents to a narcoanalysis test being performed on him, the statement may be utilised as a discovery statement under section 27 of the IEA.

Thus, the Supreme Court did not rule out the test's admissibility with one caveat: a "voluntary administered test," which allows results to be found using the information gleaned from it to be allowed as evidence. Thus, the question of why it is acceptable when people give voluntarily arises if it is detrimental to the body in nature. Then, it ought to be outright forbidden, not just partially, like other unlawful acts like euthanasia and suicide.

Other observations made by the SC:

- Because narco tests rely on assumptions and probabilities, they are not trustworthy or definitive as proof.
- According to Section 27 of the Evidence Act, 1872, any information or material that is later found with the aid of voluntarily administered test results may be admitted.

²⁰ Criminal Writ-Public Interest Litigation No. 8 of 2018.

²¹ AIR 1961 SC 1808

²² <https://indiankanoon.org/doc/893441/>

- For instance, if during a narco test an accused discloses the location of a tangible piece of evidence (such as a murder weapon) and the police subsequently discover that particular piece of evidence there, the accused's statement will not be considered evidence but the tangible evidence will be accepted.
- Such tests do not ensure that the subject will only provide false information. Vested interests have the potential to fabricate and manipulate the results.
- Only with the accused's permission and only after fully informing them of their rights and potential repercussions can narcotics tests be carried out.
- The court further stressed that adherence to the National Human Rights Commission's 2000 publication, "Guidelines for the Administration of Polygraph Test on an Accused," is imperative.

Right concerning self-incrimination

Legally speaking, the DDT test, which includes narcoanalysis, brain mapping, and lie detector tests, is invalid. The confession made at the subconscious stage of thought is the cause of its illegality. The adage "**Nemo tementur seipsum accusare,**" which states that no one may be forced to be his accuser, is the foundation of the right to self-incrimination. Although the narcoanalysis test was brought to India in 1936, it wasn't carried out there until 2002, when it was applied to the Godhara atrocity case. Therefore, it is crucial to analyse Article 20(3) in order to ascertain the legality.²³

The accused has the "Right against Self Incrimination," sometimes known as the "Right to Silence," according to Article 20(3). Everybody is protected against being forced to testify against themselves under Section 161(2) of the Criminal Procedure Code. The tenets of both English and American law are embodied in the right to self-incrimination. Thus, the admissibility of narcoanalysis is a topic of discussion in India, just like it is in other nations. India's courts have rendered numerous decisions regarding the admissibility of the narcoanalysis test over the years. The Bombay High Court ruled in *Ramachandra v. State of Maharashtra* that the narcoanalysis test did not infringe upon the rights granted by article 20(3), particularly the right against self-incrimination. The court went on to state that article 20(3) is only applicable in cases where the accused is coerced into incriminating himself.²⁴

²³ J.M MacDonald, *Narcoanalysis and Criminal Law*, 1954 Edition

²⁴ 2005 Cri Lj 150, Journal section

By choosing to testify in the witness box, the accused voluntarily gives up their protection. Consequently, in order to administer the truth serum against that individual, evidence provided upon request is acceptable.

The Madras High Court ruled in the *Dinesh Dalmia v. State of Madras*²⁵ case that the DDT test, which requires the accused to tell the truth, does not violate the right to silence under section 45 of the IEA or the concept of 20(3). The court even stated in this instance that specific guidelines had been created to persuade the accused to take the test.

***The court further noted in Nandini Sathpathi v. P.L. Dani*²⁶ that**

"The phrase 'compelled testimony' must be read as evidence procured not merely by physical threats or violence but also by psychic torture, atmospheric pressure, environmental coercion, tiresome interrogative prolixity, overbearing and intimidator methods and the like - not legal penalty for violation. "Therefore, the consequences in law for not answering or not answering honestly cannot be interpreted as coercion in the sense of Article 20(3). "

Because the current criminal justice system is more focused on the accused and individual liberty, it is easy for the evidence to be weakened. The well-known legal maxim "let the hundred guilty go unpunished rather than an innocent is punished" serves as the foundation for this. Thus, overly cautious approaches to protecting individual liberty in criminal situations are paradoxically making it easier for terrorists and other criminals to evade justice. Here, the question of whether the public has any right to sue an individual comes up. The problem also lies in the fact that narcoanalysis is only outlawed in the nation up to the testimonial compulsion.

The Andhra Pradesh High Court*²⁷*ruled in one of the cases that –

"If the respondents do not object to the test being conducted, there is no need to seek permission from the court to conduct a narcoanalysis because they are not the accused who was arrested by the police

²⁵ CrI July 2006, page 2401.

²⁶ AIR 1978 SC 1025.

²⁷ State of A.P. v. Smt. Inapuri Padma and ors, 2008 Cri LJ A.P 3992.

officer." The police must ask the court for authorization to test witnesses who refuse to participate in the process, in which case they must file an application. The police have to persuade the court of the reasons for their belief that the people who are supposed to undergo a narcoanalysis test have a possibility of knowing something about the commission of the crime. The issue of whether to include the testimonial test in these applications is moot because the respondents are neither the accused nor the suspects in the aforementioned crime."

In a different case, *Kalawati v. State of H.P.*²⁸, the esteemed high court ruled that in order for 20(3) to apply, the accused must be subject to a compulsion; otherwise, the subject matter is not covered by 20(3).

From the foregoing, it is clear that 20(3) will apply if the accused is forced to administer the test; but, if the test is given voluntarily, 20(3) will not apply and the test will be permitted. The test will not only be partially forbidden but will be outright banned if it is damaging.

*Smt. Selvi and ors. V. State by Koramangala Police Station*²⁹ brought up the topic of narcoanalysis in relation to 20(3). The judge noted that –

*"The practice of administering drugs to generate a trance-like condition in which the subject is interrogated under various circumstances was first referred to as "narco-analysis" in 1936. The material (literature) produced demonstrates that during the Narco-analysis Test, which is carried out under medical supervision, the accused will receive an injection of sodium pentothal or sodium amytal. Following this, the accused will be questioned by the investigating agencies in front of medical professionals. However, this will only happen following a thorough medical evaluation of the defendant. The procedure will only be carried out if the accused is determined to be medically suitable for it; otherwise, it will not. Once the accused is deemed medically suitable for the test, tiny intravenous infusions of sodium pentothal will be given to them."*³⁰

The most widely used medication for inducing general anaesthesia is sodium pentothal, which is regularly considered in the majority of surgeries. Psychiatrists also frequently employ sodium

²⁸ 1953, A.I.R 131.

²⁹ 2006(6) AIR Kar 788

³⁰ *Smt. Selvi and others v. State by Koramangala Police Station*, 2006(6) AIR Kar 788.

pentothal for diagnosing mental disease and/or assessing psychological realities. The patient speaks freely while under the effect of the medication, and it is said that he loses control over his responses and willpower. This is due to the fact that only a few number of medications have the ability to weaken a person's defences, causing them to unintentionally expose information they have been trying to hide.

Therefore, police officials in certain nations have recently turned to the assistance of such medications in the interrogation of uncooperative accused persons during the hunt for efficient interrogation aids, which is probably as ancient as man's need to gain information from an uncooperative subject. When gathering information from people or accused, the investigating agency employs a drug of its choosing to reach their subconscious, where it may be more difficult for them to lie. This is allegedly because to the drug's lack of inhibition, which allows the accused to speak freely and honestly when questioned verbally.

Because of this, the use of such drugs in police work and interrogations is comparable to the widely established psychiatric practice of narco-analysis; the two procedures differ only in their intended goals. But the real question is: Could a narcoanalysis test on an accused person be accepted as a legitimate scientific method in an investigation? Stated differently, the question is: Does giving a drug to a suspect during a narco-analysis test against his will or permission constitute coercion? ³¹

It is accurate to say that both exculpatory and inculpatory ³²remarks are included in the test data. Article 20 hits the inculpatory statement (3). However, the exam alone will determine whether or not a statement is helpful for questioning. The court permitted the narcoanalysis test in the Smt. Selvi and others case, ruling that it was not violated by article 20(3) of the constitution³³. The United States Supreme Court ruled in the Rock v. Arkansas ³⁴decision that testimony that has been hypnotically refreshed may be admitted into evidence.

Therefore, the judiciary is responsible for determining whether the test is constitutionally valid;

³¹ Supra note 8.

³² Inculpatory means causing blame to be imputed to; to incriminate. For example, inculpatory statement is a statement which attribute liability on the person making such statement. It incriminates or places guilt or responsibility on someone. Likewise, inculpatory evidence is evidence that establish the guilt of an accused. It indicates that a defendant committed a crime.

³³ Supra note 52.

³⁴ 1987 44 US 483

nonetheless, there is a conflict between the interests of society and the individual³⁵. As was previously said, the sodium pantheon is used in medicine and is administered based on a patient's medical state when doctors are there. This examination is preferable to the accused being subjected to third-degree torture by the police in exchange for a confession. As a result, the interests of society and individual rights should be balanced.

Third-degree methods: a violation of Article 20(3) right to self-incrimination

Investigators and police employ third-degree tactics as a scientific interrogation truth machine to force confessions. These are frequently referred to as brain mapping, polygraph examinations, and narco-analysis. They are used to extract data that may be corroborated by the police inquiry. The name "narco-analysis" comes from the Greek word "narkç," which means "anaesthesia" and was used to medical or psychological conditions. The coinage belongs to Sir Victor Horsley, a well-known British surgeon. In this case, psychiatric medications are injected into the circulation to impair mental function and bring repressed desires and ideas back to the surface.

The act of employing such a tactic to coerce offenders into confessing to their wrongdoing breaches the fundamental rights protected by Article 20(3) of the Constitution. "No person accused of any offence shall be compelled to be a witness against himself," the aforementioned Article declares unequivocally.

When considering whether or not the confession should be accepted, the Supreme Court has stated unequivocally that "if an individual's will is governed" or that the confession is not "the product of rational intellect or free will," then the confession obtained through coercion has no legal value and should not be accepted. In addition, it breaches or encroaches upon an individual's mental privacy.

The polygraph test, sometimes referred to as the lie-detectors test, is typically used to assess if someone's claims are true or not. It primarily measures physiological reactions including respiration, blood pressure, pulse rate, and blood flow. Its legality has always been questioned based on two points of contention: first, the utterly irrational association of physiological responses with the truth or falsity of the statements; and second, the use of physiological responses as a criterion for truth or falsity of statements, which is also not entirely credible given their accuracy. One neuroscience approach that

³⁵ Sampatro R.Arveli v. State of Maharashtra 2009 Cri LJ Bom 457.

evaluates the bandwidths and frequencies of brainwaves is brain mapping.

A separate wave of frequency is sent from the brain of the innocent individual, who is unaware of the occurrences, if the suspect's brain recognises events or scenes from the crime scenes. The abovementioned frequency is created by connecting sensors to the suspect's head. To ascertain whether the suspect's confessions are genuine or not, the suspect is made to hear noises and see images from the crime scenes. Afterwards, various signal frequencies are recorded.³⁶

Narco analysis from the standpoint of the evidence

It is a crucial investigative technique, particularly in situations where there is no evidence. A confession made to a police officer is unprovable and inadmissible, according to Section 25³⁷. Preventing police officials from using torture to coerce confessions from accused individuals is the main goal of this section and Section 26. Despite having the same goal, the two portions work in distinct domains. It's common knowledge that police officers utilise deceptive tactics to get confessions, including placing suspects under arrest for the third degree. The underlying premise of Section 26 rejection of an accused person's confession made to a police officer or while they are under their custody is that such a confession is unreliable. For these reasons, a confession given to a police officer cannot be used as evidence against the accused under section 25 of the law. A narco analysis test is absolutely necessary in order to prevent various forms of torture that occur during detention.

CONCLUSION

The current criminal justice system favours the accused disproportionately. Because of shortcomings in the administration of the criminal justice system generally and in the investigation and adjudication of criminal cases specifically, offenders are using freedom of speech and expression, individual liberty, and freedom as a shield. The confession of the accused obtained through involuntary narcoanalysis is comparable to the statement of "any person" under section 161 of the Criminal Procedure Code, which can be obtained by the investigating officer of a criminal case without the need for judicial approval. Therefore, employing such utterances as an investigative tool

³⁶ [https://www.legalserviceindia.com/article/1375-Article-20-\(3\)-Of-Constitution-of-India-And-Narco-Analysis.html](https://www.legalserviceindia.com/article/1375-Article-20-(3)-Of-Constitution-of-India-And-Narco-Analysis.html)

³⁷ Section 25 of IEA states that "No confession made to a police officer shall be proved as against a person accused of any offence"

is not difficult.

If the court is convinced that the statement is authentic and instills trust, it should be allowed to be proven. However, if it must be used as evidence against the accused, it must be done with prior authorization from the court. The Indian criminal justice system has demonstrated the feasibility of adopting incriminating statements from accused people whose sincerity is backed by the recovery of incriminating substances by establishing acceptable statements of accused under section 27 of the Indian Evidence Act. If a court does not take an accused person's thumb, finger, or palm impression in violation of Article 20(3) of the Constitution.

Despite the inherent risk associated with narco-analysis, there is no justification for treating it differently. However, forensic medicine specialists administer the test in forensic labs. Therefore, the risk is negligible. The danger is reduced when barbiturates are delivered in accordance with the recommended protocol and with adequate caution. It is imperative that we are prepared to take a measured risk in the greater good of society. Given the facts of the instances, the validity of narcotic analysis has been affirmed several times. The potential of a miscarriage of justice is eliminated if it is conducted with the consent of the court and in the presence of the accused's chosen attorney. A narcoanalysis test for serious crimes will strengthen the evidence system and enhance the quality of criminal justice administration.

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