



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Narco-Analysis Test: An Analysis

Pratyasha Sahu^a

^aSymbiosis Law School, Hyderabad, India

Received 16 August 2021; *Accepted* 11 September 2021; *Published* 15 September 2021

Narco Analysis is a virtually hypnosis process. The search for effective aids for interrogation is probably as old as man's need to find out, obtain, and in dismantling the right information from an uncooperative source. Narco analysis is just another such tool to find out or get any closer to the truth when any crime is committed and in providing help in investigations and interrogations. The main intent in conducting a Narco analysis test is to extract information from the accused when he is in a hypnotic state and the entire responsibility of this process relies on the doctors and the forensic psychologist present. Police are not allowed to enter into any ongoing session of the test being committed and the tests performed in the presence of the police is often dismissed as it is deemed to be coerced. The accused is responsible for the decision taken by him to go through the narco analysis test process as the decision to take on the test is entirely on the accused or the person taking the test.

Keywords: *narco analysis, crime, laws, psychology, eligibility.*

INTRODUCTION

With the increase in crimes, there has been an evolution in collecting proof or confessions from criminals and now science too plays a very important role in the evolution of laws as well. With these changes in the justice system, one should make sure the rationality and sensibleness of the justice system for the criminals to make sure that there is a significant

decrease in crimes. And with these certain evolutions in-laws, and the extraction of confessions and proofs there is ineluctable intricacy regarding the admissibility of any shreds of evidence. The Narco Analysis is also known as the truth serum and is derived from the Greek word “*narke*” which means “*anesthesia*” or “*torpor*”¹. In this, a drug is used to render a person partially unconscious and influence its consciousness to divulge the answers asked by the interrogator. The origin of the Narco Analysis test is very recent and has burst out an outcry among many psychologists and people who practice law however this test has become increasingly probably alarmingly in today’s India. This research work provides the legality and eligibility of these tests as they are self-incriminating in the aspects of both legal and ethical ways. The evidentiary value in the narco analysis test and to conduct an analysis based on the Indian scenario is the very essence of this paper.

The drug used in the test is often called the truth serum is not just one compound or chemical but is made using many substances especially barbiturates.²The substances used are Scopolamine, Sodium Amytal, and Sodium Penthanol. These drugs can only be administered by certain people and can only be carried out by police forces and not by any judicial person or administered. These confessions are however not fully relevant as these drugs are sedatives with hypnotic properties and take the person into a trance. The drugs are also used for euthanasia so these drugs are not safe and can be incriminating to a person. These drugs were first used in the year 1935 in an ongoing investigation where the person was in a semi-conscious state using drugs and was interrogated however this procedure was not carried out for an extended time until the Godhra riots in 2002 which were caused due to tension between people of different religions where a train carrying 58 Hindu passengers were burnt alive from their pilgrimage journey from Ayodhya back to Gujrat. After this, the Narco Analysis test has been carried out in several cases such as

- Militant case if Lakshar-e-Taiba

¹ Snehal S Shinde, ‘Narco - Analysis - A Tool of Investigation’ (2021) 3 International Journal of Multidisciplinary Research and Development

² Soham Sarkar and Shubham Singh, 'Narco Analysis Test: Admissible or Not?' (SSRN, 2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3687775> accessed 09 August 2021

- The double murder case of Arushi-Hemraj
- Bomb blast case of Malegaon
- Bomb blast in Mumbai Train
- Nitahri Murder case
- Case on Mohammed Amir Ajmal Kasab, Mumbai terrorist Attack

RULES PREVALENT FOR NARCO ANALYSIS TEST

According to article 14(3), the law of India says no person can or should be compelled to confessions incriminating him, and Article 20(3) of the constitution clearly states that an individual cannot be a witness of oneself.³ This was done to protect the viability of the testimony. It was established to for sure:

- a. Only if the accused is presumed innocent.
- b. The guilt of the accused has to be established by the prosecution.

The accused cannot be compelled to give testimony against his will. Overall the main concern about the discussed topic is both if the use of the test is ethical and whether it should be admissible in court.

In the case of *Smt. Selvi & Ors vs State of Karnataka*⁴, the Supreme Court on 5th May passed a judgment identified with the compulsory organization of DDT to further develop examination endeavors in criminal cases was addressed on the record of infringement of major rights, for example:

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

³ Gawsia Farooq Khan, 'Narco Analysis Test: A blessing to Criminal Justice System, it's Reliability and Admissibility in light of various Judgments' (2018) 4 International Journal of Law

⁴ *Smt Selvi & Ors v State of Karnataka* [2010] SC 1267

SCIENTIFIC EVIDENCE & PROCEDURE OF THE NARCO ANALYSIS TEST

This test necessitates administering medication (such as sodium pentothal, scopolamine, or sodium amytal) intravenously to induce various phases of anesthesia in the individual. The person becomes less inhibited in the hypnotic period and is more likely to share facts that a person would not normally convey in the state of awareness. He or she may also reveal all of his or her fantasies, personal desires, instincts, instinctual drive, illusions, delusions, conflicts, misinterpretations, and so on. The fundamental disadvantage of this method is that some individuals can maintain their capacity to mislead when hypnotized, while others can become exceedingly suggestible to inquiry.⁵ This is especially pushing, since inspectors may diagram requests in a way that may incite incriminatory responses. The meds used don't guarantee that the subject will talk just reality. The assertions made in an entrancing state are not intentional and are additionally not in an unmistakable perspective; consequently, these have not been conceded as proof in the courtroom. Narco-investigation "without assent" raises undeniable problems, for example:

- I. An actual attack on the body by giving infusions and numerous difficult upgrades, for example, slapping, squeezing, pushing, hitting, shaking the body, etc to wake an individual from an entrancing state to respond to the inquiries and,
- II. Mental attack as a result of the injection's influence on his or her mind, as well as unlimited access to the highest private, his or her own mind's privacy. It no longer plays a substantial role in the treatment of any psychiatric problems in the age of evidence-based medicine.

The drug used for the Narco analysis test, often known as the truth serum is not just one drug but is a mixture of drugs including barbiturates. The main ingredients of the serum are Sodium Pentothal, Sodium Amytal, and Scopolamine. Sodium pentothal acts as the agent of sedative and slows down all the functions of the body such as the heart, spinal cord, and head. The dose is supplied to the body intravenously which acts with the body at a molecular level

⁵ Shalini Tyagi, 'Importance of Narco Analysis Test in Investigation and it's Admissibility' (2017) 3 Journal of Legal Studies and Research

and at that stage, it becomes very difficult for a person to lie. The procedures involving the test are:

- Mixing of 2000ml dextrose with 2 grams of Sodium Pentothal.
- 1ml of the solution is added until a trans-state is achieved in the patient.
- The heart rate and condition of the patient are monitored regularly by the doctors present.
- Questions are asked after the trans-like state is achieved.
- The solution is regularly administered to keep the person in the trans-state.
- A camera records the audio and video of the whole process.

RIGHT TO SELF INCRIMINATION

Another point of view on the legality of the Narco analysis test is that it is employed as a tool for gathering evidence and aiding in investigations, and so does not constitute testimonial compulsion. As a result, it does not violate the constitutional rule prohibiting self-incrimination. Supporters of the Narco analysis test believe that it is particularly beneficial for eliciting information to prevent terrorist offenses. However, its implementation must be rigorously evaluated so that it can be replaced by current traditional interrogation methods that have brought shame, ignominy, and dishonor to police, eroding the criminal justice system's credibility. Narco analysis has the potential to become a viable alternative to brutal third-degree procedures. However, care must be taken to ensure that the method is not misapplied or exploited by the investigating officer, and it should be paired with corroborative evidence. The Madras Court held in the case of **Dinesh Dalmia vs State of Madras**⁶ that scientific testing of the accused by conducting polygraph was appropriate. The use of narcotics analysis and brain mapping on the accused to reveal the truth is not the same as forcibly breaking his silence.

The current criminal justice system is fascinated with individual liberty and freedom, and in this context, a safe passage has been forgone, and criminals have been a dilution of evidence owing to flaws in the criminal justice system. Because the validity of the test and admissibility

⁶ *Dinesh Dalmia v State of Madras* [2006] Cr1 RC No 259

of Narco analysis is upheld in light of the circumstances in which it was obtained, there is little chance of a miscarriage of justice when administered according to procedure and with all necessary safety precautions; the apprehension of accused counsel and critics is unfounded. When the administration of a narco analysis test is made mandatory for the accused/witness in serious crimes, it would open the way for bettering the quality of criminal justice by strengthening the evidence system. This approach will result in a qualitative shift in criminal justice, with former police station death chambers being replaced by operation theatres injecting truth serum to convicts, providing a ray of hope that justice would finally win.

CRITICISM OF THE NARCO ANALYSIS TEST

The criticism of the narco analysis test is 100% when it comes to the Indian scenario as there were false statements made by the people or accused undergoing the test process. The statement given during the process of the test should not be compared with the statement given to the police before the administration of the drug on the accused as the process is unsuccessful in eliciting the truth by the given process. This process is not useful against people malingers or evasive persons and the suggestion of the correct amount of dose for every person varies according to the person's mental attitude, power, and the physique of the person undergoing the test, hence making the report mostly unreliable.

This test is mostly carried out to restore and memorize the fact and incidents of an incident he has forgotten. However, criminals even under the effects of drugs withhold information or give out wrong information hence making the test not completely reliable and trustworthy. This test should not be trusted to aid true information in criminal investigations until unless consented by the accused.

LANDMARK CASES

1. *Townsend vs Sain*⁷ In the present case the judgment passed out was that the evidence was coarsely taken from the petitioner by the police officers and also stated that the person being

⁷ *Townsend v Sain* [1963] 372 US 293

under some sort of truth serum and the evidence being adduced from the petitioner from such state is admissible is the court.

2. *M.P Sharma s. Satish Chandra*⁸ The apex court, in this case, stated and observed that the words such as “to be a witness” and not “to appear as a witness” interpreted by Art.20 (3) and the protection is provided against any compelling of evidence out of the courtroom.

3. *Arushi-Hemraj Double Murder Case* This case was a result of circumstantial evidence where the accused were professional doctors, and parents of one of the victims Arushi Talwar and the other victim was the servant of their house Hemraj. This case was deemed to be one of the rarest cases of circumstantial evidence. The test was held of all the three servants employed in their house. The outcome of all the servants was different and no one was arrested due to negligence.

4. *Dinesh Dalmia vs State by Spe, CBI*⁹ This case took place on 7 March 2006 in Madras High Court held that the testimony of the test is not the conclusion of the case. The court stated that “he may be taken to the laboratory for such tests against his will, but the revelation during such test is quite voluntary.

CONCLUSION

The changes in society, the changes in science and the changes in ethics, and many more are dependent on each other and are abiding by the law which is a long loving process for ages. The world and the countries present in it are rapidly moving toward a future with developed techniques and ways to which will help get hold of the criminals more easily and with these rapid changes the law should also imbibe new ways or bring developments with the help of different scientific methods which will not interfere with the basic fundamental rights of the people of India and as long as it doesn't injury the believes of the society. There are several countries still practicing the test which includes India as well however the topic of the admissibility of the test and the ethical background relating to the test has been in debate for

⁸ *MP Sharma v Satish Chandra* [1954] SC 300

⁹ *Dinesh Dalmia* (n 6)

quite some time and the extension of accepting the method in the society is still unclear which may change shortly.

Several high courts validated and held the use of the drug test favorable which is quite opposite of the implementation of the Supreme Court judgments regarding Art.20 (3). Narco Analysis test is a nascent method of interrogation technique and the veracity lies in the acceptance of it in the Indian legal system and its criminal justice, as neither guidelines nor rules are prevailing for the implementation of the test. There is a stark contrast between the judgments of the high court and the Supreme Court interpreting Art.20 (3). The government should impose and implement certain rules and regulations and a code of ethics which implementing such tests.