

The concept of Narco Analysis in view of Constitutional Law and Human Rights

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What is Narco Analysis Test?

Narco Analysis is a kind of a psychological test. A drug named sodium pentothal is given with slow iv (An IV infusion is a controlled administration of medication into your blood stream over time) and the stage of the patient is monitored over the period of the test. The dose depends on the person's sex, age, health and physical condition. A wrong dose can result in a person going into a coma, or even death.

The patient develops a dissociative state during the test. The original personality of the patient severs the association with his consciousness. The subject is not in a position to speak up on his own but can answer specific but simple questions. The answers are believed to be spontaneous as a semi-conscious person is unable to manipulate the answers.

In this test, the inhibition of patient fades, because, in a stage of consciousness, he can suppress what he does not wish to release, but in the dissociative state, the patient effortlessly expresses the truth or suppressed information of his sub-conscious mind. In this stage, it becomes difficult for him to lie and his answers would be restricted to facts he is already aware of.

If the patient wants to keep truth in the stage of inhibition while being conscious is then that the Narco Analysis is done.

The narcosis state of the brain is produced with the help of this test and hence, the extraction of the truth is projected.

It is a kind of a dissociative test.

History of Narco Analysis test:-

The term Narco Analysis is derived from the Greek word 'narke' (meaning 'anesthesia' or 'torpor') and is used to describe a diagnostic and psychotherapeutic technique that uses psychotropic drugs.

The term Narco Analysis was first used by Horseley. In 1922, the Narco Analysis test entered the mainstream when Robert House, a Texas obstetrician, used the drug scopolamine on two prisoners.

This test was extensively used in the Nithari serial killing case. The two accused of the case, Mohinder Singh Pandher and Surendra Kohli underwent the Narco Analysis test in Gujarat.

What happens to a person undergoing a Narco Analysis test?

A constant monitoring of blood pressure, pulse, or ECG(the pattern of cardiograph) of the patient or accused is carried out as part of the test after injecting sodium pentothal which is administered intravenously along with dextrose over a period of three hours with the help of anesthetist. The reaction in the patient starts within minutes of medication.

The use of sodium pentothal sometimes sedates the patient and puts them to sleep. But it is mandatory to maintain the level of consciousness and keep the patient in a drowsy state.

Is the Narco Analysis test a 100 percent guaranteed method and a complete truth serum?

It is difficult to consider it as a 100 percent guaranteed truth extraction method but this is the most clinically used method to extract and trace the information out of patients or accused persons of subconscious mind.

Is a Narco Analysis test allowed on an accused person as per Indian Constitutional provisions ?

It is absolutely required to analyze Article 20(3) of the Indian Constitution. Clause (3) of Article 20 declares that no person accused of an offense shall be compelled to be a witness against himself.

The Narco Analysis test is conducted only with the consent of the patient.

The provisions of this Article 20(3) consist of the three components:

That it is a right pertaining to a person accused of an offense.

A protection against compulsion to be a witness against himself or herself

A protection against compulsion resulting in the accused giving the evidence against himself or herself.

The privilege under clause (3) is confined only to an accused and a person recorded with an FIR can claim the benefit of protection.

Is result of this test admissible in courts ?

Lawyers are divided on whether the results of Narco Analysis are admissible as evidence in courts.

“Confessions made by a semi –conscious person is not admissible in court. A Narco Analysis Test report has some validity but is not totally admissible in court, which considers the circumstances under which it was obtained and assesses its admissibility.

“Under certain circumstances, a person may hold a certain belief. By repeatedly thinking about an issue in a particular way, he begins to believe that what he is thinking is right. But it need not necessary be truth.

“Results of such tests can be used to get admissible evidence, can be collaborated with other evidence or to support other evidence. But if the result of this test is not admitted in a court, it can't be used to support any other evidence obtained the course of routine investigation.”

As per other opinion “If the courts give permission to conduct narco test, then only it can decide the admissibility of the test results and other related evidence. Such reports can be used as evidence or to support other evidence.” Some law experts have different views also. They think such tests don't have any legal validity. They can only assist the police investigation.

“But, in case a person is not affected by the chemical, he might take some wrong names(to mislead investigators). The results of such tests can be used to support other evidence, they said.

Reliability of Narco Analysis Test:-

The narcoanalysis test has been criticized for its unreliability. Science studies demonstrate that test is not foolproof and even induces confession from innocent persons, as the subject is in a highly suggestible state and prone to give false or misleading answers to questions that may be improperly framed. Hence doubts are raised whether it amounted to testimonial compulsion in judiciary and violation of human right, individual liberty and freedom. Studies have shown that persons who make truthful confessions are those who were likely to confess had interrogators persisted with regular methods, and that persons who lie can continue to manifest a lie even under the influence of a so-called truth serum. It is also feared that memories may be “planted” in the subject's brain during questioning; a person may come to believe that he has actually committed the crime, even though in reality he is entirely innocent. Research shows that there is a very high risk of “a gross miscarriage of justice through undue dependence upon unreliable statements.”

In India, narco analysis was first used in 2002 in the Godhra carnage case. It was also in the news after the famous Arun Bhatt kidnapping case in Gujarat wherein the accused had appeared before NHRC and the Supreme Court of India against undergoing the narco-analysis. It was

again in the news in the Telgi stamp paper scam when Abdul Karim Telgi was taken to the test in December 2003. Though in the case of Telgi, immense amount of information was yielded, but doubts were raised about its value as evidence. So it has been observed through different cases since 2002 that Lawyers, media, and doctors have a divided opinion on the admissibility of Narco Analysis Test. For some it is very vital mode of investigation into the probative truth, and on the other hand it raises questions regarding basis human rights of a person's and is termed as third degree.

Notable Events and Judgments of Narco Analysis in India

In the case of (**Dinesh Dalmia v State**) , the Madras High Court held that subjecting an accused to narco analysis is not tantamount to testimony by compulsion. The court said about the accused: "he may be taken to the laboratory for such tests against his will, but the revelation during such tests is quite voluntary."

The Bombay High Court recently in a significant verdict in the case of, **Ramchandra Reddy and Ors. V. State of Maharashtra**, upheld the legality of the use of P300 or Brain Finger – printing, lie- detector test and the use of truth serum or narco analysis. The court upheld a special court order given by the special court in Pune as mentioned above, allowing the SIT to conduct scientific tests on the accused in the fake stamp paper scam including the main accused, Abdul Karim Telgi. The verdict also said that the evidence procured under the effect of truth serum is also admissible. In the course of the judgment, a distinction was drawn between "statement" (made before a police officer) and "testimony" (made under oath in court). The Judges , Justice Palshikar and Justice Kakade, said the lie- detector and the brain mapping tests did not involve any "statement" being made and the statement made under narco analysis was not admissible in evidence during trial.

In a landmark judgment of **Aarushi- Hemraj Double Murder Case** narcoanalysis test was made on Dr. Rajesh and Nupur Talwar. All the findings of the case raise suspensions as to whether the murders were committed by them. Therefore to confirm their involvement in the

crime they were subjected to narco analysis test. No concrete evidence could be collected even after conducting the narcoanalysis test that could help in investigation of murder case. The test was conducted in the hope that Nupur Talwar or Rajesh Talwar knew anything about the crime, but after the narco test it result out that they knew nothing different about the murder of the teenage girl.

In this particular case , the results of the narcoanalysis were admissible in court however , two years after the analysis; the Supreme Court of India ruled it unconstitutional but let investigators use the results of test to leads .

Criticism of Narco analysis test:-

Narco analysis has been criticised on the ground that it is not hundred per cent accurate. It has been found that certain subjects made totally false statements. It is often unsuccessful in eliciting truth as such it should not be used to compare the statement already given to the police before use of drug. It has been found that a person has given false information even after administration of drug. It is very difficult to suggest a correct dose of drug of for aperson. The dose of drug will differ according to will power, mental attitude, and physique of the subject.

For its success, a competent and skilled interviewer is required who is trained in putting recent and successful questions. Narcoanalysis is not recommended as an aid to criminal investigation. Unless the test is conducted with the consent of the suspect it should not be used in criminal investigation.

NHRC Guidelines and Selvi Case:-

The three judges Bench in the famous case of Selvi v. State of Karnatka finally framed a binding guideline and held that no individual should be forcibly subjected to scientific tests like Narco Analysis, Polygraph and Brain Mapping Tests in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwanted intrusion into personal liberty of a person guaranteed u/ Art. 20 and 21 of the Constitution of India and under sec. 161(2) of the Criminal

Procedure Code 1973. The court left the scope for voluntary administration of Narco, Polygraph and BEAP tests in context of criminal justice system and provides that these tests are conducted or subjects are undergo any of these tests only when they give their consent for these tests. Even when the subject has given consent to undergo any of these tests, the test results by themselves can't be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted in accordance with sec. 27 of the Evidence Act, 1872.

NHRC had published guidelines for the administration of Polygraph Test (Lie Detector Test) on an accused in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the ' Narcoanalysis technique' and ' Brain Electrical Activation Profile' test. Some of NHRC guidelines has been given below-

1. No Lie Detector Tests should be conducted without the consent of the accused. Before administering these tests an option should be given to the the accused whether he/she wishes to avail such tests.
2. If the accused volunteers for Lie Detector Test, he should be given access to a lawyer of his choice and physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
3. The consent given by the person should be recorded before a judicial Magistrate.
4. At the time of recording volunteering consent before the magistrate the person alleged to have agreed should be duly represented by a lawyer.
5. The actual recording of Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.
6. A full medical and factual narration of the manner of the information received must be taken on record.

Conclusion with reference to my opinion:-

Law is not like mathematics but it is a changing process according to changes in society, science, ethics and so on. Our legal system should be based on just and equitable principle of law changed and it should be changed and developed time to time according to all these changing circumstances. The conventional method of questioning may not be able to lead to any result at all. Since the validity and admissibility of Narcoanalysis is upheld taking into consideration the circumstances under which consent is obtained. Moreover police has been accused of undue delay in investigation and producing doctored documents, the modern methods like Narcoanalysis will act as a boon to the investigation procedure. Although it should not be made a matter of practice always, it should be used only in demanding situations .

The provision of administering Narcoanalysis, Polygraph and Brain Mapping tests when made compulsory for the accused/ witnesses in grave offences it will improve the quality of criminal justice system and it will bring qualitative change in criminal justice system. It will offer a ray of hope that justice at last will prevail and it will improve the thought of society above police system and criminal justice system.

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