


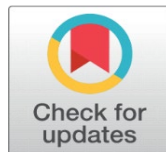
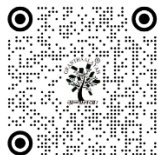
# EVIDENTIARY VALUE OF NARCO- ANALYSIS: AN ANALYSIS OF INDIAN LEGAL POSITION

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## ABSTRACT

This paper explores the value of using narco-analysis and its application in the Indian legal system. A method, using drugs administered to an individual to bring him or her into a semi-conscious state, in order to gain information during a criminal investigation. The study examines the constitutionality of the narco-analysis under Article 20(3) and 21 of the Constitution of India and admissibility under Indian Evidence Act, 1872. The involuntary administration of narco - analysis tests has been limited by judicial pronouncements, especially in *Selvi v. State of Karnataka*. Finally, the paper finds that the use of narco-analysis as an investigative tool and not substantive evidence on its own must be backed up by legally admissible corroborative evidence.

**Keywords:** Narco-Analysis, Evidence Law, Self-Incrimination, Article 20(3), Article 21, Truth Serum, Criminal Investigation

## 1. INTRODUCTION

“Memory is a man’s real possession... In nothing else is he rich, in nothing else is he poor. Crime wave deceives, criminal mind perceives and criminal soul conceives.”

--Alexander Smith.

Narco-analysis is a technique that is used in investigation, where information is retrieved from a person by inducing a hypnotic or semi-conscious state through the use of drugs. The technique is mainly employed in criminal

investigations where conventional interrogation methods fail to obtain information from suspects or witnesses<sup>1</sup>. There are a number of cases where narco-analysis helped investigating agencies to find further evidence linked to criminal activities. The use of narco-analysis came into the limelight in the Ajmal Kasab case, and also in the Hathras case and Selvi v. State of Karnataka. The process is to inject chemicals, like Sodium Pentathlon, into the person's system to induce a hypnotic state that lowers their inhibitions. The use of narco-analysis, however, poses serious constitutional and ethical issues. Routine administration of these tests could be an infringement of the fundamental rights under Article 20(3) and 21 of the Constitution. Questions also emerge about reliability, voluntariness and perhaps misuses by investigating agencies. While some say that using a narco-analysis is better than third degree, others believe that it violates human dignity and the right against self-incrimination.

## 2. DEFINITION AND HISTORICAL BACKGROUND

Narco-analysis is the procedure of giving drugs to the patient that produce some kind of semi-conscious state and the person is believed to be able to talk freely. According to Webster's, "narco-analysis" is defined as "psychotherapy carried out under sedation to recover repressed memories. The term "Narco" comes from the Greek word "Narke," which translates to numbness or torpor, and was used by C.B. Hanscom to describe a tool that could be used in an investigation to learn about the information gathered from a suspect or terrorist<sup>2</sup>. It was first used in 1922 by an obstetrician in Texas, Robert House, on prisoners using scopolamine. In India, narco-analysis was noted in the investigation of Godhra train burning case in 2002, later on Robert House came to be known as the "Father of Truth Serum." Information obtained from the statements of the Accused would be admissible under Section 27 of the I E Act, 1872 if it leads to the discovery of relevant facts. Narcotics statements are not substantive evidence though, without corroboration.

## 3. THE IMPORTANCE AND PROCEDURE OF NARCO - ANALYSIS

Narco-analysis is useful in investigations where ordinary interrogation techniques have proved to be inadequate. According to the supporters, it helps to prevent custodial violence and to solve complicated crimes such as terrorism and organized offences. Dr. M.S. Rao, the Chief Forensic Scientist of India, highlighted the need for application of forensic psychology techniques like narco-analysis for detection of terrorist activity and prevention of future crime<sup>3</sup>.<sup>5</sup> Although it has been touted as useful, the technique is subject to controversy for issues of scientific reliability and constitutional validity. One criticism of subjects under the influence of drugs is that they can give false or made-up information. The common drugs used in narco-analysis include:<sup>4</sup>

- 1) Seconal
- 2) Hyoscine (Scopolamine)
- 3) Sodium Pentathlon
- 4) Sodium Amytal
- 5) Phenobarbita

## 4. PROCEDURE OF NARCO - ANALYSIS

In 2007, the Ministry of Home Affairs released the Laboratory Procedure Manual of Forensic Narco-analysis which prescribes the constitution of an expert team, which comprises of:

- 1) Clinical forensic psychologist
- 2) Psychiatrist

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<sup>1</sup> Arunadhita, Narco-Analysis As Scientific Evidence in Criminal Proceedings: A Critical Analysis, Legal Service India E-Journal, Mar. 27, 2024.

<sup>2</sup> C.B. Hanscom, "The Use of Truth Serum in Criminal Investigation," Journal of Criminal Law & Criminology, Vol. 47.

<sup>3</sup> Megha Chaturvedi, Constitutionality of Narco Analysis: Development & Legal Approach, HK Law Offices, July 27, 2020.

<sup>4</sup> Rahul Negi, "Narco Analysis Test in Indian Criminal Justice System," *International Journal of Law Management & Humanities*, Vol. 4, Issue 4 (2021).

3) Physician

4) Audio-video recorder

### 1) Supporting nursing staff

This involves four steps in general<sup>5</sup>:

- **Pre-Test Interview**

Accused is made aware of the whole procedure and informed of the granting of voluntary consent.

- **Pre-Narcotic Stage**

The dose of Sodium Pentathion is measured and given based on the age, weight and health status of the subject.

- **Semi-Narcotic Stage**

Subject is put into hypnotic or semi-conscious state and questioned by forensic experts. The whole interview is taped (on tape).

- **Post-Test Interview**

The person will have a chance to recover; memory and physical condition will be tested. The dosage must be carefully monitored and the procedure carefully administered, otherwise there can be serious side effects such as coma or death<sup>6</sup>.

## 5. NARCO - ANALYSIS AND ITS CONSTITUTIONALITY VALIDITY

In India, the constitutionality of the use of the narco-analysis technique in criminal jurisprudence has been a subject of debate.

Article 20(3): Right Against Self-Incrimination

Article 20(3) of the Constitution states: No person shall be compelled to be a witness against himself. The principle that "No one shall be compelled to incriminate himself" (*Nemo tenetur se ipsum accusare*). Compulsory narco-analysis has been questioned as being contrary to Article 20(3). The critics state that compelling a man accused of a crime to take such tests is "getting testimonial answers under the guise of compulsion"<sup>7</sup>.

In *Selvi v State of Karnataka*, the Supreme Court determined that the use of the narco-analysis, polygraph and brain-mapping tests was a violation of Article 20(3). The Court found that such techniques are intrusive of the mental privacy and autonomy of the individual. Article 21: Freedom of life and personal freedom. The right to life and personal liberty is guaranteed in Article 21. In *D.K. Basu v. State of West Bengal*, the Supreme Court expressed itself as regards the protection of cruel, inhuman and degrading treatment. The use of narco-analysis may be a violation of the rights guaranteed under Article 21 (body and mental privacy), if the process is used without consent of the individual.

Thus, the Supreme Court has ruled that such tests are to be voluntary and conducted with proper safeguards. Evidentiary Value under the Indian Evidence Act, 1872: In India, a witness may not be adduced as a result of narco-analysis without any evidence. Its proactive value is minimal, and mainly rests on further discovery of facts. Section 27 of the Indian Evidence Act states that if the information in the police custody is having distinct reference to a discovery of a fact, that part is admissible<sup>8</sup>. It may be said that only information which has come out of the police custody on the basis of the discovery of the fact on the basis of the narco-analysis statement can be considered admissible. Where as Section 45 says the expert opinion of a medical professional, forensic psychologist and/or psychiatrist is therefore deemed relevant evidence<sup>9</sup>. Evidence obtained through Narco-analysis may be indirectly supported by sections 156, 157 and 158 which cover corroborating evidence in relation to statements of the witnesses. Indian courts repeatedly have

<sup>5</sup>Megha Chaturvedi, *Constitutionality of Narco Analysis: Development & Legal Approach*, HK Law Offices, July 27, 2020.

<sup>6</sup>Shonakshi Verma, *The Concept of Narco-Analysis in View of Constitutional Law and Human Rights*, Dr. Ram Manohar Lohiya National Law University.

<sup>7</sup>Indian Evidence Act, 1872, Section 27.

<sup>8</sup> Indian Evidence Act, 1872, Section 45.

<sup>9</sup> Indian Evidence Act, 1872, Sections 156–158.

held that statements under the influence of narco drugs are not admissions and cannot be used as substantive evidence as the process does not take place in the presence of a magistrate.

## 6. CRITICAL ANALYSIS

The use of narco-analysis for investigation is still a debatable method, because of the problem of the reliability and voluntariness of the evidence and constitutional morality. From a scientific standpoint, there is no certainty that someone who is on drugs will always tell the truth. Suggestibility, confusion or fantasy can occur. Thus, the value of information obtained by use of the "narco" method is questionable. Involuntary administration is a violation of Articles 20(3) and 21 of the law. The Supreme Court in *Selvi v. State of Karnataka* correctly limited the use of compulsory narco-analysis since the seizure of information violates an individual's personal liberty and human dignity.

Meanwhile, supporters say that narco-analysis can aid in the uncovering of evidence and help keep the torture of the prisoners to a minimum in investigating agencies. It is a helpful ancillary tool in extraordinary circumstances where terrorism

or 'heinous crimes' are involved. However, if there are inadequate safeguards, the risks of coercion, misuse and infringement of personal mental privacy are greater than the benefits of such an intervention. Therefore, it is not an appropriate method of replacing fair investigation or scrutiny by the court.

## 7. CONCLUSION

Narco-analysis should not be accepted as a scientific fact in the Indian legal system and it is constitutionally not independent evidence due to its inherent scientific limitations and doubts. In *Selvi v. State of Karnataka*, the Supreme Court made it amply clear that it is an infringement of fundamental rights for the state to use involuntary use of narco-analysis. It is useful only as an investigative tool to aid investigators in uncovering further evidence. Statements made during a narco analysis are not considered as confessions unless there is legally admissible evidence in support of the statement. Thus, the use of narco-analysis should only take place with the free consent of the accused and be strictly supervised by the court. A balance is required that would be a combination of scientific methods and limited use thereof, and would also serve to protect human rights, the integrity of criminal justice, and personal liberty.

## CONFLICT OF INTERESTS

None.

## ACKNOWLEDGMENTS

None.

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