



Narco-analysis test as a tool to trace the criminals

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Abstract

Narco-analysis test is the tool of forensics to catch the culprits and trace the criminals and decipher their modus operandi by administering hypnotics or similar drugs (popularly known as Truth Serum) into the suspects.

In the Narco-analysis Test, the subject's imagination is neutralized by making him semiconscious. In this state, It becomes difficult for him to lie and his answers would be restricted to facts he is already aware of.

In India the technique became more popular in June 2000, three months after the burning of a train coach by the mob at Godhra in Gujarat and leading to massacre of Muslims. Seven persons accused of torching the train were interrogated and subjected to Narco-analysis who revealed vital clues. Since then, it is used intermittently on the suspects of crimes, enough to cause worry that it might become a routine technique of Police Investigation before it is duly accepted by law and judiciary as safe practice.

Keywords: narco-analysis, drugs, criminals

Introduction

The foremost task in the investigation of a crime is to identify the perpetrators of crime. One the commission of a crime, traces of the evidence are left at the scene of the crime and may also be carried elsewhere. The immediate action on the part of the investigator is to collect this evidence before it is destroyed or contaminated. The evidence of crime may be available in the tangible material or in the human beings as such. The success of a criminal case largely depends upon the skill and perfection by which all the relevant material is collected. Law provides protection to the accused against forced confessions, to be witness against himself, and gives right to be silent. However within the permissible limits relevant material or information can be collected from the accused person which could perhaps be first hand information relating to the events of the crime. Such evidence when collected by established and authentic scientific practices would lend more weight-age and could corroborate other evidence. The objective of researcher is to study different aspects of Narco-analysis technique which is being adopted in our Indian criminal investigation system for the collection of relevant information from the accused himself in a scientific manner without infringement of established safeguards.

Narco-analysis ^[1] test is the tool of forensics to catch the culprits and trace the criminals and decipher their modus operandi by administering hypnotics or similar drugs (popularly known as Truth Serum) ^[2] into the suspects ^[3]. It is believed that if a person is administered a drug which suppresses his reasoning power without affecting memory and speech, he will tell the truth. Some drugs create this twilight state, in most of the persons. The underlying theory is that a person is able, to lie by using his imagination. In the Narco-analysis Test, the subject's imagination is neutralized by making him semiconscious. In this state, It becomes difficult for him to lie and his answers would be restricted to facts he is

already aware of. In such sleep-like state efforts are made to obtain "probative truth" about the crime. The subject is not in a position to speak up on his own but can answers are believed to be spontaneity as a semi-conscious person is unable to manipulate the answers.

Procedure for Application

The Narco-analysis is a scientific procedure to obtain information from an individual in a natural sleep-like state. This is not a new method. Technically, Nacro-analysis is drug-induced hypnosis used by anesthetists and psychiatrists for clinical investigation. It reduces the level of resistance of patients and elicits from them information they are not comfortable sharing when in a conscious state of mind. The drug is administered to the subject after taking his consent. Ethics apart, the police in the country have been extensively resorting to Narco-analysis for investigations of crimes. It is one of the three truth detection techniques (the other two being polygraph or Lie Detection and Brain Mopping) the forensic experts have been using to track the minds of criminals.

In this technique, the accused is initially put at ease. Photographs and statements relevant to the particular crime are presented to the subject so as to stimulate his/her brain and encourage a reaction. Narco analysis test is conducted by injecting 3 grams of Sodium Pentathol dissolved in 3000ml of distilled water and above with 10% of dextrose over a period of three hours with the help of anesthetist. The quantity of dose is depended on the person's sex, age, health and physical condition. This makes person come in a trance and lose all his inhibitions. What a man refused to devolve upon if he was completely conscious, he did so under the inference of this drug.

Dr. Mohan, the Director, State Forensic Science Laboratory, Bangalore, opines that a person would not lie at all when

administered with this drug. According to him the Narco-analysis procedure depends upon the effect of bio-molecules on the bio-activity of an individual ^[4]. This is evident as the drug depresses the central nervous system, lowers blood pressure and slows the heart rate, putting the subject is then interrogated by a team comprising of an anesthesiologist, a psychiatrist, a clinical, Forensic Psychologist, and audio-video-grapher and supporting nursing staff. The members of team monitor reactions, facial expressions, pulse rate, heart beat and body temperature of the accused. The revelations made during the hypnotic trance are recorded both in the video and audiocassettes. The entire conduct of the procedure is video graphed. The questions are designed carefully and are repeated persistently in order to reduce the ambiguities during drug interrogation. The forensic psychologist will prepare the report about the revelations. After the Narco examination is over the suspect is made to relax for 2-3 hours. The report prepared by the experts useful in the process of collecting the evidence. Based on test reports, investigators corroborate information gathered previously on a person's involvement in crime. The strength of the revelations, if necessary, is further verified by subjecting the person to polygraph and brain mapping tests ^[5]. Like other techniques of investigation, the narco-analysis also has its pros and cons which are analyzed in the following discussion.

Application in India

In India, the resort to Narco-analysis test as an investigation technique has been of somewhat recent origin. The test was first administered in the year 2000 on the bandit Veerappan aide in Karnataka ^[6]. The technique became more popular in June 2000, three months after the burning of a train coach by the mob at Godhra in Gujarat and leading to massacre of Muslims. Seven persons accused of torching the train were interrogated and subjected to Narco-analysis who revealed vital clues. Since then, it is used intermittently on the suspects of crimes, enough to cause worry that it might become a routine technique of Police Investigation before it is duly accepted by law and judiciary as safe practice. In the recent past, the test has been performed on Abdul Karim Telgi ^[7] and Abu Salem ^[8] while Ruhul Mahajan ^[9] marginally escaped it when the police withdrew its request for conducting the same. The police decision to make Moninder Singh Pander and Surendra Koli, the suspects in Nithari Serial Killings to undergo Narco-analysis test is the latest in a series of case in which the police have resorted to this practice in the hope to obtain further evidence. The Bangalore Forensic Laboratory has conducted more than 300 Narco-analysis tests since it started first in 2000 including on the bandit veerappan aide, the "lake stamp king" Telgi and gangster Abu Salem ^[10].

Constitutionality of Scientific Tests

As regards Narco-analysis, there have been various orders of various High Court upholding its validity. In the case of Ramchandra Ram Reddy v. State Maharashtra ^[11], V.G. Palshikar and P.V. Kakade J.J. very lucidly deliberated upon the issue of the constitutional validity of the test. The line of reasoning is very apt. In Narco-analysis the person to whom it is administered does make a statement. The question which falls for consideration, therefore, is whether such statements

can be forcibly taken from the accused by requiring him to undergo the test against his will it will be seen that such statements will attract the bar of article 20(3) only if it is inculcating or incriminating the person making it. Whether it is so or not can be ascertained only after the test is administered and not before. Therefore, there is no reason to prevent administration of this test. Also, there are enough protections available under the Indian Evidence Act, under Criminal Procedure Code and under the Constitution (Article 20(3)) to prevent inclusion of any incriminating statement.

In the case of Selvi Murugesan v. State of Karnataka ^[12], the question before the Karnataka High Court was whether as a scientific technique in investigations, Narco-analysis test on an accused could be permitted. In other words whether administration of drug to an accused against his consent or wishes during Narco-analysis amounts to compulsion? In an answer to this question Majage J. of the Karnataka High Court made a reference to Kathi Kalu Oghad case ^[13] (which was also followed in Nandini Sathya v. P.L. Dani and Anr.) ^[14] Wherein the supreme Court has held that:

"Compulsion' in the context of Art 20(3), must mean what in law is called 'duress', in the Dictionary of English Law ^[15] 'duress' is explained as follows:

"Duress is where a man is compelled to do an act by injury, beating or unlawful imprisonment (sometimes called duress in strict sense) or by the threat of being killed, suffering some grievous bodily harm, or being unlawfully imprisoned (sometimes called menace, or duress per mines). Duress also includes threatening, beating or imprisonment of the wife, parent or child of a person."

On this point he made it clear that it is true that causing some pain by injecting drug may technically amount to hurt as defined under section 319 of the Indian Penal Code. But such pain could be caused even when blood sample is drawn for the purpose of its test. However for such purposes, the law permits use of necessary force. He made a reference to section 53(1) of Code ^[16], which permitted use of reasonable force in order to ascertain those facts which may afford any evidence. Narco-analysis, he suggested, came under the purview of this section and conducting the test in a proper manner was justified. He also said that this examination has to be carried out by a registered medical practitioner. It cannot, therefore, be said that merely because some discomfort is caused (in injecting the drug). Such a procedure should not be permitted ^[17]. He also pointed out ^[18] that Section 39 of the Criminal Procedure Code casts a duty upon every person to furnish information regarding offences. Criminal justice system cannot function without the cooperation of the people. Rather, it is the duty of every person to assist the State in the detection of the crime and bringing criminal to justice. Withholding such information cannot be traced to the right to privacy, which itself is not an absolute right. In this regard, reference can be had to a recent decision of the Supreme Court in the case of State v. Dharmapal ^[19], and observation made by the Supreme Court in the case of State of Gujarat v. Anirudha Singh ^[20], that it is the statutory duty of every witness, who has the knowledge of the commission of the crime, to assist the State in giving evidence.

Looking at the aspect of holding test in a very broad prospective it can be said that the protection or the cover

granted by the fundamental right appearing in Clause (3) of the Constitution is complete and invariable. The question is what is sought to be provided by guaranteeing such right and it is undisputed that what is sought to be protected is the protection of human rights and dignities. It is also to be considered in the light of other equally important provisions of the Constitution. Article 51(A) which has been added to the Constitution by subsequent amendment provides via Clause (1) which says that it shall be the duty and the duty cannot be properly done by the State, if unnecessarily large protection is spelt out from other provisions like Article 20(3). Prevention of crime is a sole prerogative of the State and the punishment of the crime if proved is also the duty of the State. Fetters on these duties can be put only in extreme cases where the protection of fundamental rights weigh, more than the fundamental duty casts on the State ^[21]. Therefore, in certain cases, a likely suspect may be subjected to the test at least to aid the police in the investigation stage if not the prosecution at the trial stage. Under a properly monitored procedure established by law, the test may be allowed. After all, society's need outweighs the privilege of an individual in certain cases. The law enforcement authorities must be allowed to garner truth from every quarter in order to discover guilt and administer justice.

There was not much of a difference in the findings of this court from the findings of the Karnataka High Court except for the fact that it was noted that Narco-analysis could also assist in establishing the innocence of a person and not necessarily incriminate him.

There are other significant legal aspects of the Narco-analysis debate. In case of *Dinesh Kalmia v. State of Madras* ^[22], 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." There are two fallacies in this reasoning. First, the accused will involuntarily answer questions posed to him during the interview. The second fallacy is that it is incorrect to say that the accused is merely taken to the laboratory against his will. He is then injected with substances. The breaking of one's silence at the time it is broken is always voluntary. Similarly, it can be argued that after being subject to electric shocks, a subject 'quite voluntarily' divulges information. But the act or threat of violence is where the element of coercion is housed. In Narco-analysis, the drug contained in the syringe is the element of compulsion. The rest is voluntary.

In a very recent case of *Santokben Shoron Bhai Jadeja v. State of Gujarat* ^[23]. The Gujarat High Court held that when after exhausting all the possible alternatives to find out the truth and nab the criminal/accused and when it is found by the prosecuting agency that there is no further headway in the investigation and they are absolutely in dark, there is a necessity of such a test. On the basis of revelations and/or the statement recorded while conducting/performing the Narco-analysis test, the prosecuting agency may have some clues which would further help and/or assist the investigation agency to further investigate the crime and at this stage, there will not be any bar of a Article 20(3) of the Constitution of India and merely conducting/performing of a Narco-analysis

test on the accused, the protection guaranteed under Article 20(3) of the constitution of India is not violated. As stated above, only and only at the stage when the prosecuting agency is likely to use such statement as evidence and if it is inculpatory and incriminating the person making it. It will attract the bar of Article 20(3).

The Court said that there is another reason also in favour of the prayer of the prosecuting agency for conducting performing the aforesaid two tests. Under the provisions of the Criminal Procedure Code, the prosecuting agency is statutorily authorized to investigate the crime and to find out the truth and to reach to the accused persons, who have committed serious offences, detail investigation is required. Investigation Officer is the master of the investigation and nobody can restrain and/or interfere with the investigation carried out by the Investigation Officer, not even the magistrate an appropriate report is submitted by the Investigating Officer as contemplated under the provisions of the Criminal Procedure Code. Thus considering the various provisions under the Criminal Procedure Code right from Sections 156 to 159 and other related provisions, collection of evidence by the police officer is permitted under the law conducting the aforesaid tests on accused is to be considered as process of collection of such evidence by the Investigating Agency. The aforesaid two tests are scientific methods in furtherance of the investigation. The field of criminology has expended rapidly and new techniques and methods are used for committing the crimes and offences and the demand for supplemental methods of detecting deception and improving the efficiency of interrogation have increased concomitantly. Thus, aforesaid tests for criminal interrogation is a valuable technique which would help the Investigating Agency to further investigate the crime when the Investigating Agency finds itself clueless and there is no be prevented to interrogate the accused at the stage of investigation and restraining the Investigating Agency to further investigate with right of the Investigating Agency to investigate the crime of which it is statutorily authorized.

Views in Favour of Narco-analysis

Those who approve, the use of Narco-analysis test in criminal investigation are of the view that Narco-analysis in crime investigation is doing wonders and is helping a lot in crime prevention and detection clinching evidence is necessary to prove any crime and Narco-analysis is helping the police in getting this evidence. According to the forensic experts if a criminal was put under Narco-analysis, then he would reveal about the crime committed, where he had hidden the weapons used in committing the crime, and why did he do it. This would help the police in getting the motive for the crime, and collect other evidences needed for prosecution. These tests have a 95 percent success rate. However, the during Narco-analysis ^[24].

It is the most humane approach to upholding the criminal justice system. The drug that is used is harmless, similar to the one used during surgery. Its effect wears out in 30 minutes and the residue gets washed off after 48 hours ^[25]. Unlike the third degree, Narco-analysis is video graphed. It can be clearly seen whether the accused was compelled to give the information or did so of his own free volition. Also, unlike in

third degree, where even an innocent person may confess to the crime for fear of being beaten up. Narco-analysis is foolproof. Moreover, Narco-analysis is never carried out without the permission of the court. Only forensic and medical experts are allowed during the probe. It is very difficult to escape the truth under the drug. If the person is innocent, he has nothing to fear^[26].

Experts regard tests such as Narco-analysis and brain mapping as better alternatives to older processes such as the polygraph, commonly known as the lie detector. While the polygraph was used on people in full control of their consciousness, Narco-analysis and brain mapping are tests targeted at the subconscious human mind and impulses in the human brain, respectively^[27]. During Narco-analysis, the conscious mind is rendered ineffective, so as to enable a person to express his true feelings^[28]. Narco-analysis is sometimes of value in the psychiatric examination of criminal suspects who have entered a plea of insanity, because the Narco-analysis is an essential part of the psychiatric examination to determine the suspect's sanity. Information so obtained should not be used as evidence in determining the innocence or guilt of the accused person, unless it is with his consent and his attorney's approval^[29].

Conclusion

The field of criminology has expanded rapidly during the last few years and the demand for supplemental methods of detecting deception and improving the efficiency of interrogation have increased concomitantly. The investigating agency has statutory right to investigate the crime and to find out the truth and to reach to the accused. Narco-Analysis Test for criminal interrogation is a valuable technique which would profoundly affect both the innocent and the guilty and thereby hasten the cause of justice. The investigation agency cannot be prevented to interrogate the case at the stage of investigation relating to crime in which he is shown as accused. If the aforesaid two tests (Narco-Analysis and Brain Mapping) are permitted, it would assist the investigating agency in finding out the truth and find out the real culprit of the commission of an offence. When the investigating agency is absolutely in dark and after all efforts and exhausting all the alternatives still there is no further headway in the investigation, the aforesaid two tests would help the investigating agency to further investigate the crime and during the course of the aforesaid two tests and/or after completion, the investigating agency may get some clue and may be able to further investigate the crime and reach to the real accused/culprit who has committed offence. Accusations are made against the investigating officer using third degree methods to extract information from the accused and therefore there is a need to have such scientific tests. The scientific tests like polygraph test, P.300 test are like taking MRI or CT scan and when the accused are not coming forward with the truth, the scientific tests are resorted to by the investigating agency to find out the truth and he has a further clue in the matter to further investigate the crime. Such scientific tests are prayed only as a last resort after exploring all the alternatives and when the investigating agency is not in a position to reach the accused and find out the truth. If the nature of the offence alleged to have been committed by the accused coupled with the circumstances under which it is committed affords reasonable

grounds for believing that an examination of the person will afford evidence as to the commission of the offence then such tests are necessary. It is a right of the police officer under the provisions of the criminal procedure code to investigate the crime and collection of the evidence by the police officer is permissible under the law. Conducting of Narco Analysis Test and Brain Mapping Test on the accused is a process of collection of such evidence by the Investigating Agency. Section 161 of the Criminal Procedure Code enables the police to examine the accused also during the investigation.

It is submitted that the duty of every citizen/person to furnish information regarding offence and to assist the State in the detection of crime and bringing the criminals to justice. It is a statutory duty of every witness/person, who has knowledge of the commission of the crime to assist the State in the giving evidence. The investigation of the crime on the scientific line is to help the investigation agency so as to enable collection of evidence to prove the guilt or innocence of the person accused of committing crime as the modern community requires modern scientific methods of crime detection, lest the public go unprotected^[30].

What can be clearly seen is that there is a clear violation of fundamental right guaranteed under Article 20(3) by practice of Narco analysis, as a salute to the development in technology. However with a background of conflicting judgments and no concrete decision on the same, the law of the land stays unclear. The Indian courts have, however, considered these tests as a useful scientific aid to investigation.

References

1. (a) According to Webster's Dictionary, the word narco-analysis had its origin in the 20th century and is coined from 'narco' + 'analysis'. It means psychoanalysis using drugs to induce a state akin to sleep.
(b) According to International Dictionary of Psychoanalysis, "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, particularly barbiturates, to induce a stupor in which mental elements with strong associated affects come to the surface, where they can be exploited by the therapist. www.soc.enotes.com.
2. Truth serum (or sera) are no serum at all. These are drugs sometimes used clinically. A few of the best known are Hyoscine (Socopolamine), Sodium Pentothal, Sodium Amytal, Phenobarbital. They produce a state of semi-consciousness in the subject. The reasoning faculty of the individual becomes ineffective. The phrase "Truth Serum" is believed to have appeared first, in the news report of Robert House's experiment the Los Angeles Record, sometime in 1922, Robert House thereafter came to be known as the father of Truth Serum.
3. From wikipedia, the free encyclopedia, www.wikipedia.org.
4. Supra note 73.
5. Supra note 69.
6. Dipti Nair, Innocents have Nothing to Fear about Narco-analysis, www.Deconherald.com.

7. A narco-analysis test on Abdul Karim Telgi, the mastermind behind the stamp paper scam, yields an immense amount of information, but doubts are raised about its value as evidence.
8. Underworld don and prime accused in the Mumbai blasts in 1993 and also in many cases of extortion, forgery and murder.
9. Son of BJP leader Late Sh. Parmod Mahajan. He was charged under Narcotics Drugs and Psychotropic Substances Act. 1985.
10. Maynak Tewari, We have ways of making you squeal, Sunday Hindustan Times, Mumabi, Sept. 17, 2006, p.9.
11. Ibid.
12. MANU/KA/0588/2004.
13. 1961 Cri.L.J. 856 (SC).
14. Nandini sathpathy v. P.L. Dani and another, AIR 1978 SC 1025 at 1032. (Emphasis added).
15. By Earl Jowitt.
16. The code of Criminal Procedure, 1973, Section 53- Examination of Accused by medical practitioner at the request of police officer. (1) 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 office not below the rank of sub-inspector, and for any person acting in good faith in his aid and under is direction, to make such an examination of the person arrested as is reasonable necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonable necessary for that purpose.” (emphasis supplied).
17. Supra note 101, p.4 (para, 13).
18. Id. P. (para, 20).
19. 2003 AIR SCW 1960 : AIR 2003 SC 3450.
20. MANU/SC/0749/1997.
21. Supra note 101, p. 6 (Para. 23).
22. 2006 Cri.L.J. 2401.
23. 2008 Cri.L.J. 68 (Guj.).
24. View of Dr. Mohan, the Director, state Forensic Science Laboratory, Bangalore, See Supra note 73.
25. View of Dr. S. Malini, the Assistant Director, State forensic Science Laboratory, Bangalore.
26. Ibid.
27. How Legal are Truth Serums, www. Ajp.psychiotryonline.org.
28. R.K. Sharma, Additional Professor of Forensic Medicine, All India Institute of Medical Sciences (AIIMS), Delhi.
29. John M. Macdonald M.D., Assistant Professor of Psychiatry, University of Colorado School of Medicine, Narco-analysis and Criminal Law, 288. www. Ajp.psychiotryonline.org.
30. Supra note. 76-77.