
MULTI-DIMENSIONAL APPROACH TOWARDS THE STUDY OF NARCO ANALYSIS- PRIVATE AND PUBLIC INTEREST THROWING DOWN A GAUNTLET AT EACH OTHER?

Nandini Ravishankar, School of Law at Dr. Vishwanath Karad MIT World Peace University

ABSTRACT

Given that the constitution of India is considered to be the most sacrosanct document revered as the supreme law of the land, there is always a very moot question worth all the galore of popularity whether personal interest in the form of freedom safeguarded by the fundamental rights provision is superimposed by the public interest that largely walks parallel with it. While dealing with this issue Narco Analysis in criminal forensics is what gets the primary recognition. Part 3 of the Constitution of India has contained therein article 20(3) which talks about the right against self-incrimination. But if at all this right stands protected at the investigation stage and continues till the period of gathering evidence and whether it is not derogable at all is a questionable fact. These instances will have to be certainly understood through case laws as will be discussed in this paper. It is incontrovertible to mention that in addition to providing a staunch prohibition to retrospective criminal legislation or ex post facto legislation, it underscores protection against compulsion to give self-incriminating evidence. This was primarily with an objective to draw an iota of balance between- albeit the majority of laws being prospective in nature, the tendency of Legislature to give effect to Laws retrospectively (precisely indictment for offenses committed even prior to the very enactment of laws) and interest of the society as a question has to be rationally thought about.¹ Inter- alia the competence of the Legislature to retrospectively punish acts of criminal nature that were not criminal at the time of the commission of the act needs emphasis since it affects the rights of the individual guaranteed to them, in a great way. Prejudicially violative of Art 20 (1) that topic has played to the gallery in the arena of narco analysis.² Article 20(3) mentions about a person accused of an offense, under no grounds to be

¹ Durga Das Basu, 'Introduction To The Constitution Of India' LEXISNEXIS, 26th Edition, Pg.126

² 'A Brief Idea Of Article 20: Protection Against Conviction Of Offences' <<https://www.legalserviceindia.com>>

compelled to be a witness against himself. However contrary to this, there can be no bar through this class against obtaining thumb Impressions or specimens of a signature at the time of the medical examination of the accused.³ Supreme Court intervention to make the gradual progress in this field has been quite clear that in order to claim immunity from being compelled to make a self-incriminating statement it must appear that a formal accusation has been made against the person at the time when accused of this forced to make an incriminating statement. As will be seen further this immunity even if seen in the purview of Narco Analysis cannot provide immunity to the accused under this at the time of general inquiry or investigation, merely by stating that the statements at the initial stage may at some later point of timely to accusation posed on him. One needs to know before delving deeper that protection under article 20(3) is only available post a formal accusation of a person for the commission of a Crime. This paper tries to have a multidimensional analysis since Narco Analysis is seen as a technique amounting to testimonial compulsion thereby necessitating the protection of constitutional rights. For facilitating the ease of grasp of the same, focus will be on the following:

- 1) Basic grasp of a Narco Analysis technique and a fusion of the topic with constitutional rights as a realm of a paradigm shift towards broader knowledge of superiority between individuals and societal interests.
- 2) Understanding brain mapping and evidentiary valuation in the view of the P300 test with broader parallelism with the significance of DNA fingerprinting.
- 3) Shedding light on relevant case laws where the techniques are incorporated and discussions of drawbacks in a nutshell.
- 4) Comparison of Narco Analysis in India with the current prevalent system in the USA for a practical conclusion of the Ambit of the paper covered.

Keywords: self-incrimination, constitutional analysis, P300 analysis, brain mapping, Fundamental Rights, public interest.

³ Article 20(3) In The Constitution Of India 1949 <[Https://Indiankanoon.Org](https://indiankanoon.org)>

INTRODUCTION

Derived from the term which means anesthesia or torpor this concept is largely inspired by the Greek literature which is a **Diagnostic psychotherapeutic technique** largely using drugs of psychotropic nature to bring about stupifying outcomes.⁴ This means suspension or diminution of the ability to think rightly or make a prognosis of the question put forth or largely decelerating simultaneous actions of the body. Tracing back to 1922, it gives a realization that Robert House who almost did a maiden observation in this arena found out that a person under the influence of such drug loses the ability to give a chimerically conspire or psychologically come up with Dilly-dallying concocted facts that never happened, thereby adding in faster arrival at conclusive judgment through linking of largely disconnected links in criminal cases.⁵ Through the catena of judgments, Court has stated that polygraph Narco Analysis and tests like BEAP cannot be conducted without the consent of the person who is proposed to undergo the same. When consent of the subject is not taken into consideration it is violative of Art 21 Art 20(3) of the constitution of India. Section 161(2) says that a person shall be bound to answer truly all the questions relating to such cases that up put to him by a such officer other than the questions the answers to which would have the tendency to expose him to criminal charge penalty or per feature will also be affected.⁶

Moreover talking about statements of confession it is elucidated in section 25 of the Indian Evidence Act that no confession made to a police officer be proved against the person accused of any offense.⁷ This has been brought forth with an assumption that in police custody a person is generally tortured with the duress brought upon him to confess the guilt with a possibility of there being no guilt, especially of great importance when the system operates with a conscience of never letting an innocent be incarcerated and guilty go scot free. It is not to conclude that no statement before the investigating authority can be permissible to state section 27 of the Indian Evidence Act clearly stipulates admissibility of those statements of confessions that led to the discovery of the fact which is indispensable to be considered due to another inculpatory part of the statement unable

⁴ RAMACHANDRAN,' LAW OF NARCO ANALYSIS –RIGHT AGAINST SELF-INCRIMINATION' Pg-306

⁵ Sec 2009, Cri LJ, Journal section at Pg 274

⁶ Section 161(2) in The Code of Criminal Procedure,1973 <<https://indiankanoon.org>>

⁷ Rishiraj Mukherjee vs. CBI New Delhi, 2016 Cri LJ 2271

to be proved in the trial.⁸ Due to third degree measures on the hike it has become compulsory for the courts to taken into consideration of section 313 of Cr PC that empowers the court to examine the accused without administering the oath to him, in addition to which he should have voluntarily been called to be a witness but not ordered to be one. Failure to give evidence shall not be the grounds to give rise to a presumption of guilt on his part or any other person charged for the same thereof.⁹ These provisions give paramount importance to existence of basic morality aiding the civilized existence of mankind in the society. Plethora of debates that revolve around this issue have a common contention that under threat or inducement if it all it is confessed as a statement before an investigation authority it would not be admissible in the court of law if evidence of competence is to substantiate a point. Then how can a statement pronounced as a result of medical inducement of poignant interference with the central nervous system of the accused be admitted in the court of law? A semi- unconscious person being extracted of a statement is more barbarous than an extreme third method adopted by the police who due to their own inefficiency to bring to light the fruits of a systematic investigation cut it short by using scientific techniques to finish off with the process with ease. Aarushi Talwar's case was in limelight with narco test being done on parents of the deceased as prime suspects in the case with no conclusive proof ultimately tarnishing the image if the facts of guilt are otherwise.

Reiteration that Narco tests be condemned if done without consent of the subject seems to be a welcome move when three judge bench headed by chief justice KG Balakrishna who had called procedures of polygraph, which were done without consent to be violative of personal liberty. The state authorities are seen to be acting contrary to the judgement by buttressing on the point that consenting to undergo a polygraph test for establishment of Innocence will lead to legitimate furthering the ends of guidelines of National Human Rights Commission(NHRC). This underscores the prosecuting agency who in the light of fighting terrorism (pretext of matter of public interest) are constraining the inalienable constitutional rights.¹⁰ Moreover admissibility of narco test has been permitted to an extent only till confessional statement not being induced by threat or promise as mentioned in the Indian Evidence Act. Is this analysis being used as a

⁸ See 2009, Cri LJ , Journal Section, at Pg 273

⁹ See 2009, Cri LJ , Journal Section, at Pg 273

¹⁰ See 2009, Cri LJ , Journal Section, at Pg 273

substitute to dodge the burden of garnering and gathering evidence, on the medical practitioners in accordance to their convenience? Often misuse of the test is also seen where investigation agencies put the subject thrice on brain mapping test and just to keep their head above water misuse the authority bestowed upon them to come out with no evidence at all.¹¹ Doctrine of presumption of innocence also says that presumption of guilt of a person who remains silent or refuses to answer questions posed to him is highly contrary to the doctrine of common law and also against the spirit of American fifth Amendment Act that puts a sweeping bar and compels a person to be a witness against himself. Efficiency of this test have been question on several grounds ranging from breaking the dogma that in a semi unconscious state where person's powers of imaginations has been hindered, he cannot lie, has reached the verge of being baseless, going against the maximum of jurisprudence and criminal law, 'nemo temture seipsum accusare' which emanates from unjust methods of techniques of interrogation. Protection against self incrimination has to be seen with many tests that have proved to be a dud, especially with an individual is well built and physically sound it is a glib of ease to falsify and prolong the procedure there by totally disrupting the objective of the creation of narco analysis in the first place. It is not only the Indian Constitution that provides immunity from self incrimination but also this finds place in article 6 (1) and 6(2) of European convention for protection of human rights and fundamental freedoms, which states that a person charged with offence of criminal nature shall be presumed to be innocent until proven guilty in accordance with law.

A PARALLEL ANALYSIS- COMPARING THE ACCURACY OF DNA FINGER-PRINTING VERSUS NARCO ANALYSIS

Right to life and liberty may have a general applicability in all instances involving DNA fingerprinting as well. Under what pressing situations can the fingerprints of an individual be used and subjectivity of person consenting to it is also ambiguous. Compact to narco analysis technology upgradation has made DNA evidence to be more reliable and admissible given the credibility it has. It can be a panacea for all problems sort to be solved by the Judiciary including exonerations of those wrongly convicted of an offence. The inspiration of DNA fingerprinting can be traced back to the error of Edmond Locard. This person by creating a watershed movement in

¹¹ RAMACHANDRAN,' LAW OF NARCO ANALYSIS –RIGHT AGAINST SELF-INCRIMINATION' Pg-306

forensics propounded a concept where he stated that on the coming together of two objects one will transfer its traces to another and vice versa. Contact between two parties or objects can be easily proved by particles of similar nature that may be present on the surface of the objects. Many disputed undiscovered links are figured out when blood fluids like semen, hair, or skin tissues are examined and they end up unravelling nexus leading to prominent discoveries. From conventional to technology collected advancements the most popular of all has been the PCR(Polymerase chain reaction) that cuts across limitations and amplifies even small quantity of DNA that is found at the crime conspiracy spot. Bringing a scientific and valid conclusion it proves the involvement of DNA of a suspect which is backed by greater authenticity if it matches with the DNA of the substance that is found at the crime spot.¹² However much like narco analysis having a drawback and unlike the former having an issue in the procedure in itself DNA profiling can prove to be equivalent that would permit someone either to be held liable or the exonerated of the offence following the foot steps of biological evidence. Cases where everyone from investigation authority is to Judiciary is flummoxed, given the suspect is not being identified, the computerised alphanumeric value acquired as a result of analytical process has helped a great way that too accurately in identifying, eliminating, and confirming to aid the process of elimination from the group of suspects.¹³ By Linking DNA profiles found at different scenes and that too through a biological sample which is an element of **unique identification**, legislations still fall short in cases where samples of DNA can be extracted from suspects of specified offences and from volunteers. The lacuna of their being lack of material capacity for storage of DNA material happens to be a glitch for enabling the process of matching the profiles for investigation. Apart from the drawbacks of lack of training of personnel in different fields ranging from lack of training in maintenance of database in serious crimes, the mechanism of DNA profiling still has proven to be much more efficient than the narco analysis to figure out new links and understand new facts.¹⁴ It is relevant to discuss it here since forensics is all about incentivizing the criminal investigation and much like other places the best technique standing up to survival of the fittest must be applied. Instances where DNA profiles have deemed fit to be presented and have further been admitted as an admissible evidence by the court of law itself speaks for itself that collection of profile will now

¹² Kathrun M. Turman, ' *Understanding DNA Evidence: A Guide For Victim Service Providers* ' O.V.C BULLETIN AND US DEPARTMENT OF JUSTICE, April (2001)

¹³ RAMACHANDRAN,' LAW OF NARCO ANALYSIS –RIGHT AGAINST SELF-INCRIMINATION'

¹⁴ RAMACHANDRAN,' LAW OF NARCO ANALYSIS –RIGHT AGAINST SELF-INCRIMINATION' Pg-303

try to strike a balance between private and state interest largely¹⁵. When contrary to the constitutional provisions serious infringement of inalienable right or were compliance of ordained procedure is missing the evidence can only be admitted in the impugned case if consequences of not admitting it outweigh the desirability of admitting it but for the want of removal of procedural infirmities. Entry into forensic crime scene index of a database leads to an automatic search of many whom must have been convicted of the same offence. A comparative analysis of DNA profile generated from biological evidence found at the spot of occurrence of crime with profiles of Convict in the database can be tried to be matched. Unlike Narco, this has been a factor that has led to deterrence of offenders from committing crime. Technique of originally tracing matching and evaluating DNA profiles was done using a system of RFLP(elaborated as, restriction fragment length polymorphism).¹⁶ RFLP does not yield good results when the sample is contaminated with dirt. The greatest advantage of DNA analysis the ability of the former to trace out profiles from the evidence that are almost invisible to the naked eye. An example of this is legatures containing skin cells. With the advent of sample tracking system time consuming work is largely done by automated Robotics this has made identification of connection of the suspect with the crime much easier. DNA chip Technology also uses nanotechnology for a better resolution that significantly minimise as time for a cost effective achievement of elements that are extremely miniaturised in nature.¹⁷ One needs to understand that comparison between methods of Investigation in forensics is much required to find out prevalent skepticism in matters related to administration of truth serum on the accused.¹⁸ It still to be if it races any testimonial compulsion in Judiciary including pondering over a very important question of narco analysis actually violates the right against self-incrimination guaranteed under the constitution of India.¹⁹ Also the validity of it can be checked when this test was revived on catching the attention of the media and few critics leading to several issues from accepting it as a scientific tool of Investigation to infringement of fundamental rights that are largely individualistic in nature.

¹⁵ J.D Heydon, 'Cross On Evidence' (6th Australian Amendment 2000)

¹⁶ Special Report On 'Using DNA To Solve Cold Cases-National Institute Of Justice –July 2002'

¹⁷ Joanna Kerr, 'Building The Future Of DNA Technology- RCMP's DNA Data Bank Sets A World Standard' CANADIAN GAZETTE Vol.62 No. 5/6 2000

¹⁸ See 2007 Cri LJ, Journal Section at Pg. 138

¹⁹ See 2007 Cri LJ, Journal Section at Pg. 138

EXAMINING THE EVIDENTIARY VALUE OF NARCO ANALYSIS P300 TEST

Till now it must be clear that in the view of the author if one reads section 25 and 26 of the evidence act combined, no confession that is made before the investigating authority should be permissible against an accused as an evidence due to general assumption that such confession be induced by threat or fear and it is not voluntarily accustomed to. However the process of narco analysis that largely affects the central nervous system of the accused though done with the consent of the subject as mandated by the court is still performed on a person of semiconscious state which should also not be accepted as in the former case. Slightest amount of threat or duress would make the evidentiary credibility come crashing down upon the investigating authorities. In the case of *Thiyogbaijam versus state of Manipur*, it has been mentioned by the court that confessions should not be a result of inducement or any other criteria envisaged in the evidence act that could make it impermissible.²⁰ This has been extended to say that any statement made under the influence of medicine would also be impermissible. This has been held in the case where narco analysis P300 test was involved.²¹ What is interesting to note is that evidences extracted to narco analysis only have corroborative value. Independent corroboration thus becomes necessary since any conviction that is devoid of it is deemed to be unsatisfied. If it is found that a case is solid dependent on confessional statements of the accused it cannot be completely relied upon and needs to be independently checked. These are the instances where drawbacks hit the worst which need to be combated. If the quantity of drug for facilitating the process of narco analysis is injected less, adding to which if the subject is one who has succumbed to the addiction of the drug, or has a good immunity and a good physique he may not be affected at all and may pretend, ultimately lying it all. Quantitatively if more drug is injected than the stipulated amount person may go in coma, or it may even prove to be fatal. The test for admissibility can be seen the implied in the case of *Pyarilal vs. state of Rajasthan*, where the code decided that statements will be inadmissible when it can be opinionated that accused by making a statement may avoid evil or get an advantage.²² The impact of the test may differ from one individual to another. In order to evaluate the

²⁰ *Thiyogbaijam@Thangjam Ibotombi singh vs. State of Manipur* (GAU 2005)

²¹ *Vijay Kumar vs. State*, 2005 Cri LJ 3085 (SC)

²² AIR 1963 SC 1094

evidentiary value one must first know what evidence stands for by definition which has been elaborated as follows:

- a) As mentioned in section 3 of the evidence act all statements that are permitted by the court or required to be made before it by witnesses such statements will be under the scope of oral evidence.
- b) The records in electronic form that are produced before the court for its inspection are called documentary evidence.

Admissibility of narco analysis P300 test would be largely a discretion of the court which may be influenced by a number of factors. The gospel of criminal jurisprudence firmly states that person giving statement of confession needs to be in a fit state of mind. Cases where it is played at the time of giving the statement the person was under the influence of medicine would have made the same inadmissible. However it would be valid if on court's perusal of the modus operandi of the investigation, it is discovered that there was no such influence. Controversies may even arise in cases of unwanted misuse of statements of confession which led the code to rule in the case of state of *National Capital Territory of Delhi vs Navjot Sandhu* that they cannot be used against co- accused.²³ The same position if held in the case that is precarious to national importance or sovereignty, then to what extent can it supersede public welfare is the most prolific question to be pondered upon. However relentless efforts to safeguard individual interest the scene and case of *Shri Vijay Kumar vs state*, which has held that statements free from any effect of drugs would be acceptable since person well knows the nature and consequences of the acts.²⁴ This answers the plea of unconsciousness of the accused that was raised. Though the picture is quite clear about what admissibility is Evidence Act does not define what confession is. This has been defined by judicial committee in the case of *Pakala Narayana Swamy vs Emperor* the expression of which states that statements that are made by the accused by the admitting the terms of the offence or substantiating any fact constituting the offence will be called as a statement of confession.²⁵ Especially with reference to narco analysis P300 test when the subject orally states or writes down something it is called as a statement worth admissibility in the court of law as a confession. Since

²³ Appeal (crl.) 59 of 2007

²⁴ Vijay Kumar vs. State, 2005 Cri LJ 3085 (SC)

²⁵ (1939) 41 BOMLR 428

a person lies using is imaginary power the same largely curbed, it's effects are neutralized since the subject goes to a semi-unconscious state. The narco analysis result is with a belief that a person, in a state of semi unconsciousness would not lie due to the answers being largely spontaneous in nature. However amidst all this one needs to remember the cardinal principle regarding admissibility of confession. In the case of *Abdul Haleem vs state of Assam*, it has been held that statement of confession should not be in nexus with missing links which is sought after to be investigated.²⁶ The accused cannot be administered the oath prior to recording of the confessional statement due to the same rendering the evidence completely inadmissible when seen in the purview of article 20(3) of the Constitution of India. It was held by the Calcutta High Court in the case of *Jayanti Bhattacharya vs state of West Bengal*, when it comes to heinous crimes synonymously called as White Collar crimes then Narco analysis P300 test is also called as **Lie Detector test**.²⁷ The serum is passed into the blood through probes that are attached to various nerve endings leading to utterances by the person of matters pestering him from within or undiscovered elements of a crime. The credibility of P300 tests is high due to ability of detector to generate a certain wave by recognizing a person. In forensics and neurology it attempts to correlate changes in cognition and evoked chemical alteration with subject changes.²⁸ This is generally appraised through attaching test sensors to the head of the person who is made to sit before computer's monitor. As soon as there is a chemical change in a person's body P300 waves are recorded. The stimulus that gives a response directed positively shows the connection that the subject has with the crime, consequent to which probe is delved into by investigating authorities further.

CONSTITUTIONALLY GUARANTEED PRIVACY PITTED AGAINST SOCIETY'S INTEREST AND NECESSITY?

Problem arises when rights of the accused clash with interest of the society. Brandished at the end is the societal interest.²⁹ The constantly spiking rates of crime have to be plummeted which makes it desirable to give the importance attached to constitutional rights that the private in nature

²⁶ Abdul Haleem vs. State of Assam, 1967 Cri LJ 714

²⁷ 2006 Cri LJ 3414 (Cal)

²⁸ See 2007 Cri LJ, Journal Section, at Pg 171

²⁹ 'The Accused Vs. Society: A Dilemma Of Conflicting Rights' <<https://www.jstor.org>>

available to the accused against the state a bit constricted to strike a balance with societal interests. Judiciary cannot practically afford letting go the criminals scot free just because their constitutional rights are in Peril as against the extremeness of the nature and extent of crime committed. This realisation is a far cry due to a common belief among investigation agencies that, '*it is better to sit in the shade rubbing paper into some poor devils eyes then to go out in the sun hunting for evidence.*' somewhere a great chasm of inaccuracy lies amidst managing to provide a solace to the society as against intensity of the harm inflicted by the accused and also protecting the accused from third degree torture at the hands of the sluggish investigating officers finding an easy way out. To prevent the police officer from resorting to degrading treatment, investigation must be on scientific basis. Drawing the attention to the pretty state of accused behind bars in the case of **Bhagwan Singh vs State of Punjab** the supreme court said that it is a matter of pity that some of the police Officer's as in this impugned case have not shed methods even in modern age which are brutal in nature. Emphasizing on the need of the hour to adopt scientific methods as an effective alternative for physical torture the court said that if police officers start taking the law into their own hands safety of the society is definitely in peril.³⁰ The forensic psychology saw and advent of brain mapping test as a way to harmonize the conflicting interests of individuals and the society collectively. The brain mapping process has census strapped around the head in the form of a band. Electrical activities around the band that have been censored by it are recorded.³¹ Very rightly the gestures and exhibitions recorded during brain mapping tester within the canopy of section 162 which talks about concessional statement, contrary to which BEAP test serving the same purpose attaches electrodes to the scalp of the subject.³² Since results of the test are not recorded, it cannot be produced as an evidence as it has not been duly signed by a person who is making the report. The court in the case of **MP Sharma vs. Satish Chandra** explain that under article 20(3) to be a witness as a phrase would mean nothing more than furnishing evidence that could be done through lips.³³ In case, if permission for surveillance through electronic form is granted a clinching evidence can easily be obtained through the same in neurology. Instrumental investigation have proved to be a great authority than drugs. Another question that's bring up was if obtaining thumb impression or specimen handwriting would violate article 20(3). The court by choosing to answer

³⁰ AIR 1992 SC 1689; (1992) 3 SCC 249

³¹ Kodi Satish Naidu vs. State of AP, 2015 Cri LJ 3028 (Hyd)

³² See 2008 Cri LJ, Journal Section, at Pg 76

³³ AIR 1954 SC 300

in negative held that, mere mechanical process until be self incriminatory would not contravene the above mentioned provisions in short, thumb impressions or specimen of body cannot be declared self incriminatory if they are not based upon personal knowledge as held in the ***State of Bombay vs. Kathi Kalu Oghad***. Due to accused not conveying any personal information even during brain mapping the statements recorded there from cannot be termed incriminatory or violative of Art 20(3).³⁴

PROCESS OF COLLECTION OF EVIDENCE POST COMMISSION OF CRIME

Mr.Fali. S. Nariman a great legal luminary has quoted that whenever society's larger interest comes into question it is important for right to silence of the terrorist to give way to the discretion of the court. The Malimath committee has insisted on inclusion of accused in the process of Investigation from preventing crucial information go untapped. Obligation to assist the process of Investigation is binding and Recommendation of the committee must be duly followed. That the right to privacy is not an absolute right but is subject to being subservient to the security of the state in the threat of which one is under an obligation to not withhold but furnish such crucial information as has been held in the case of ***PUCL vs. Union of India***. In order to curb, confine, and cabin the acrimonious acts of the accused their rights have to be made subject to restrictions and not vacillate in absolutism.³⁵ Being highly corroborative in nature of their objective to curb the violence against the accused extraction of brain mapping tests and narco P300 analysis can only be substantive in nature and beef up the already collected evidence and cannot substitute the same. The legality of polygraph (lie detector test), BEAP(brain electrical and activation profile), and narco analysis was challenged in the case of ***Selvi vs. state of Karnataka*** among other things the fact that this processes were violative of article 21 was proclaimed.³⁶ The court also did not deny that sodium pentothel is injected due to which subject goes into a hypnotic stage in addition to pneumographs cardio cuffs, electrodes attached to the persons body for examining responses recorded in the form of waves. However unless it has been forth Upon that confession has not been procured with the consent, it will be a valid evidence in nature. Analysis can be considered as an exception to article 20(3) of the Indian Constitution, the US 5th amendment of the Constitution of

³⁴ AIR 1961 SC 1808

³⁵ AIR 2004 SC 456

³⁶ (2010) 7 SCC 263

us puts a complete ban on using any mode that may incriminate the accused in the slightest possible way. In the case of *Miranda vs. state of Arizona* the court has held at before putting forth questions, it is important for the accused to know that he has the rights to remain silent and be informed that statements recorded can be used against him.³⁷ Even in the absence of voluntary concerned when authority is progress with the analysis it does not amount to compulsion. These have largely arisen due to popularity of the name of Miranda rights that again appeared in the case of *Harris vs. New York*. The holding of Miranda case has undergone refinement with the court ruling that statements procured and contravention to Miranda rights are permitted in the court of law to impeach the accused who testifies contrary to illegally procured confession.³⁸ When accused without being subject to any threat agrees and is all by himself to task there can be no element of inducement largely used to save the face of criminal system which has upon it the cascadingly obliterating faith in it vested by the people due to low break-neck speed. The concept of right to silence has been over eulogized which has created a not so desirable impact in the society. India still lacks system which draws an analogy between improving scientific progress and criminal forensics psychology in criminal investigation. Herbert packer discusses about crime control model in his book which underscores conduct to be repressed and this alone is the prime duty of criminal process. While this focuses on crime control due process model emulate structure of law in general. Peoples Republic of China also followed a model promulgated in 1954 along with its constitution which is reflects and inquisitorial model a like the European system without any leeway to right against self incrimination. The ideological foundation of brain mapping and narco analysis needs a revamp for handling dual challenges ranging from tracing the occurrence of crime to apprehending the one accused of crime.

THE EVOLUTION OF THE PRIVILEGE OF RIGHT AGAINST SELF INCRIMINATION

Being victims of persecution members of religious groups like protestants, Roman catholics, and Anglican clergy were subjected to a common atrocity. This was oath or administration of affirmation. Questions pertaining to ones religion or belief systems were asked in this oath. Being devout disciples of God they could not falter to lie due to the very faith that nonconformist views

³⁷ 384 U.S 436

³⁸ 401 U.S 222(1971)

if rendered by them would lead to punishments being inflicted upon them. This developed an aversion towards self incrimination which comments to be claimed by witnesses or defendants by the time of reign of Charles II came to an end with advent of the privilege being recognised in all the courts.³⁹ Our system of criminal jurisprudence enmeshed in ethical considerations is falling flak due to ambiguity of inducement being present in narco analysis or otherwise. In the case of *Nandini satpathy vs PL Dani* the apex court has scouted for any substantial pressure which can be subtle or crude, mental and physical, direct or indirect, the result of which is compelled testimony which prima facie infringes right guaranteed under article 20(3) of the constitution.⁴⁰ However what makes this judgement stand out is a minor edition that is done by the court which is right to refuse answering to the questions can only extend up to those questions that are incriminating in nature. This is contra distinction to the stand taken by Supreme Court of the US where accused enjoys the right to complete silence and cannot be forced to testify in any case what so ever. Slightly subsidizing the speed of Investigation without altering the procedure by which is carried out, accused has now become bound to answer questions that are not incriminating in nature. Thus keeping in mind that it is impractical to expect those who are prime suspects of a crime to furnish all the information in tandem with crime a bit of coaxing has to be done as hobsons choice without accustoming to violence. It was held in the case of *Dagdu vs state of Maharashtra*. When these grounds have been added to, one cannot say that there has been an infringement of rights guaranteed under the constitution of India.⁴¹

QUICK SNIPPETS OF NARCO ANALYSIS TEST- A CLOSER LOOK

Drug that may be injected includes sodium pentothel or sodium Amgtal that are administered with varying age, sex, or health factors with a belief the individual in semiconscious state is unable to manipulate the situation to his predisposition. Clarene.w.Muenberger started using replacements of conventional drugs by barbituates. During the initial implementation words of Justice Douglas were taken into consideration which is a welcome move as against the dubiousness created by the amendment stating that, under no circumstances (without any anomaly) compel the person to be a

³⁹ 'Atrocities and Innocents: A call to prayer by the Primate' <<https://www.anglican.ca>>

⁴⁰ 1978 AIR 1025, SCR(3) 608

⁴¹ 1977 AIR 1579, 1977 SCR(3) 636

witness against himself which is strictly prohibited.⁴² Whether this would serve the ends of justice is still the question if weighed against the Miranda decision of aiding the process of law and enforcement to give information at their disposal and in nexus with crime which is not incriminatory in nature. The analysis is extremely useful to act as a deterrent to prevent any offence by terrorists. There have been issues like a handful of those with a lot of money as depositors dosing their monetary support who were pushed to the state of bankruptcy as in the case of ***Krushni and Charminar Bank scam***.⁴³ But the MD of the company refused to undergo narco analysis rendering thousands of depositors vacillate in uncertainty of not being answered. This had denied justice to people due to acute unaccountability rightly demanding the obliteration of one side with all approach and narco test be made compulsory even where there is no consent of the subject given the emergence situation of public interest at stake. With an objective to extract probative truth of crime a team comprising of audio-videographers, anaesthesiologist, will compile in a compact disc as ordained in the manual released by the directorate. It all kick started in the 20th century when physicians begin to use copalamine along with chloroform and morphine observing decelerated blood flow, incoordination, and high blood pressure inducing twilight sleep. It dawned on Robert house in 1922 at Dallas Texas obstetrician that a technique of similar nature can be employed while interrogative criminals consequent to which he arranged an interview with two prisoners and the influence of scopolamine, who were almost with no fault liability and completely guilty. A conclusion was arrived at that the person under the influence of medicine cannot generally lie due to the reasoning ability being totally lost. This earned him his name as **father of the truth serum**.⁴⁴

EFFECTS OF SCHIZOPHRENIA AND CONCEPT OF COMPREHENSIVE GENETIC ASSOCIATION

Patients with recent onset of schizophrenia were examined. Longitudinal measurements of the volume of the brain was also recorded. Revelation highlighted that patients consuming Cannabis during 5 years of follow up had lesser volume of gray matter than once not using Cannabis. A greater volume in the ventricular segment laterally there was no symptomatic improvement that

⁴² Ibid

⁴³ 'Krushni scamster's claim holds no water' <<https://m.timesofindia.com>>

⁴⁴ RAMACHANDRAN, 'LAW OF NARCO ANALYSIS –RIGHT AGAINST SELF-INCRIMINATION'

could be seen except for discovering and altered gene expression in schizophrenia affecting r-aminobutyric acid as observed in visual cortices that are primary in nature and anterior cingulate leaving intensity of distinctions not so conspicuous in almost 4 brain regions in toto. The study of genetic Association forms the foundation of narco analysis since objective was to examine if a polymorphic DNA sites or single nucleotide polymorphism that have been associated with schizophrenia would continue to do so even in European ancestry. Genes can be found through various methods that may include systematic identification, positional cloning, analysis through linkage ,and many more. In the works of Ramachandra examples of genes have been stated as dystrobrevin, neuregulin, amino acid oxidase Activator, etc.

THE TABLE THAT HAS BEEN FORMED BELOW IS TO FACILITATING THE EASE OF UNDERSTANDING

Experiment: Observations include 14 of the genes associated in accused with schizophrenia were of modest size. 1,952 persons with schizoaffective disorder were examined with others doing a simple clinical assessment through self-report analysis.	Result: Examination resulted in no threshold of statistical evidence due to polymorphism not being associated with schizophrenia in which only 4 genes showed nominal association that was in contrast to the earlier observations. Accommodating alterations for test done multiple times is still an issue when the hypothesis is backed by poor evidence
To Surmise:It leads us to an understanding that the procedure of genetic mapping as against Narco maybe misleading at times. Forms of schizophrenia, sporadic, or familial in nature may share a common Genetic feature. A new genetic mutation may make mapping if not futile largely less useful.	Bird's eye-view: Meta analysis of samples in large numbers is possible when genomic study in criminal forensics is delved into. Due to molecular in accuracy is like this scientific instrumental examination like Narco Analysis proves to be more efficient.

Source: 'No significant association of 14 candidates genes with schizophrenia in a large European ancestry sample: Implications for psychiatric genetics'

This data becomes relevant when narco analysis test is done on people suffering from schizophrenia. The exhibit disturbances in many functions including cognitive, effective, sensory, and motor functions that depend on balance between precarious cortical areas. Neurotransmission cannot be relied upon when there is this dysfunction of dorsolateral prefrontal cortex. To prove this as a precaution before a subject undergoes narco analysis (and is a patient of schizophrenia), polymerase Chain Reaction as a quantitative analysis was undertaken analysing 7 transcripts which proved to be lower in level against persons not suffering from schizophrenia. Greater magnitude of changes were seen for mRNA encoding, somatostatin, and parvalbumin, finally arriving at a common conclusion that molecular alterations largely affect neurotransmission and may also affect the impact that stupifying drug has on the subjects. The context of hypnotism and mental coercion is also applicable here. There have been efforts brought to force to know the inner working or entry into the most private thoughts of an individual for which artificial methods have been used. Unlike earlier days when alcohol was all that one needed to make other spit all the facts out that came and era in which witch ointments came to be used, containing belladonna and operated in huge quantities. This provoked hallucinations as an effect among individuals where the invasion the ecstasy. Hypnosis is the process of forgoing once independent will an acting as per the directions of the hypnotizer. Even before narco analysis doctors in Egypt have practiced this process of hypnotism with evidences of many quacks who with the intention of coercing subjects to submission have encode a lot of profits in a criminal way. The greatest disadvantage of this can also be the ability to force a person under the spell of hypnotism to give in to the commission of crime. Psychologist have a saying that a person refusing to do an act in conscious state of mind cannot be forced to do the same while under the spell of hypnotism. Legal jurisprudence exactly says that the latent and the social elements present in humans when surfaces by being subject to a spell or under the influence of hypnotism for long can be termed as a third party external influence which becomes a root cause for a lot of crimes in India.

Medically even when a psychiatrist brings to use his competence to force upon someone a blamed or thruster responsibility such that the patient submits to coercion it will be a contravention of hippocratic oath of the doctors for going the professional affirmation, clearly even violating the

fifth amendment of the Constitution of the United States. Excellent example of this is the case of 1950 named *people vs Leyra* which revolved around a person named Camilio Western Leyra who was arrested for the brutal murder of his senile and aged parents in the flat at Brooklyn.⁴⁵ Initial interrogation resulted in he denying even his presence at the spot of the crime post which that came a psychiatrist who said leyra would be better place if he gave in the confession of his guilt of Murder. We can call does a fit of passion in which he agrees to a few confession statements made voluntarily, which were duly taken down. However in the court of law the conviction was set aside on the fact that confession had been extracted in voluntarily through brainwashing and convulted psychiatric methodology. The objective of the case was not to a certain whether he was guilty or not but the fact that he was not in a fit state of mind and that he was under the spell of hypnotism which was important to be considered to allow or reject the statement of confession in the court of law. Another popular method incorporated is MERMER(memory and encoding related encephalographic response) where questions are not put forth but brain can immediately figure out not working and instances of crime. Other truth serum that are used include Seconal, scopolonine, pentothal, phenobarbital or sedatives that even in small quantities can affect molecular movements in the neurotransmitter of the central nervous system of the human body.

1. NARCO-ANALYSIS- AN INTERNATIONAL SCENARIO

Common law in letter and spirit says that it is a principle to be fundamental adhered to that an accused of any offence should not be compelled to give a statement of confession that appears to be incriminating in nature. This was to encourage people to give evidence if any voluntarily without any annoyance. In the case of *State vs Pitts* in 1989 Supreme Court of New Jersey prohibited sodium amytal narco analysis from being brought to use underscoring the potential of subjects to close the truncated walls of crimes with fabricated information(hyperamnesia) or over concocting events that never happened before in reality, called as brain hardening.⁴⁶ Ultimately rendering it a bit ineffective. However Indian courts have taken a slightly different stand. Sec 161(2) of CrPC becomes relevant here which says that it shall be binding on the person to answer all the questions asked by the police except those having a propensity to incriminate him. Both Indian and English students believe in presumption of Innocence until proven guilty the difference

⁴⁵ 309 N.Y. 806 (1955)

⁴⁶ 116 N.J. 580 (1989)

only being in the pliability of law. In the case of *Dinesh Dalmia vs state of Maharashtra* the Madras High Court held that just by conducting polygraph brain mapping test silence is not broken and no intrusion that can be seen from the perspective of section 45 of the Indian Evidence Act or Art 20(3) of the Constitution of India.⁴⁷ However if the drug has been administered without consent of an individual it would be a compulsion given it would go against the maxim '**nemo tenetur se ipsum accusare.**' Supreme Court of the United States has accepted truth serum as valid technique of Investigation. Administration there vests a belief in uses of drugs at the time of public safety at stake saying that a pin-prick involving sodium pentathol has minimum intrusion is permitted when government needs to fight terrorism with without warrant issued for the same.

This stands to the popular pronouncement of the court that, in case of special government needs beyond normal requirements of law enforcement a warrant maybe dispensed with. Parameters required for conducting the analysis and a subject consciousness during examination including the quantity of drug administered is constantly measured and monitored. Amendment to the year 2005 to Section 53 of the CrPC has entailed the importance of scientific test in criminal jurisprudence.⁴⁸ This is not to deny that American law quotes in several instances of denied accepting it as an evidence since it may not necessity be a guarantee of truth. The danger lies in creation of a weak ego such that the subject succumbs to interventionist's statements and give in to confession. Physical danger being an additional disadvantage, Aldous Huxley describes in his work '**the doors of perception**' as artificial chemical Paradise in which the subject is found himself to be in after taking the drug known as peyote. Evaluation is also largely affected by serotonergic facilitation of top down control, imbalance in subcortical regions, catacholaminergic or neuropeptide circuitry can result in delays or reflective alterations in examination. As seen before a person with schizophrenia may respond differently than the one without it. If the subject is an emotionally disturbed person drugs administered can cater to the needs as well, as mentioned by Associates of Arthur Lovenhart at the University of Wisconsin by using barbiturates. In spite court's decision to reject drug induced confessions, barbiturates continue to be administered to the suspect that resulted in shocking revelations. This was very initially given to the soldiers of the World War II who were driven to debilitation because of the battle. The first aid technique help them heal but

⁴⁷ 2006 Cri LJ 2401 (Mad)

⁴⁸ Section 53(1) Of The Code Of Criminal Procedure 1973

revealed the secrets under the influence of the drug induce unconsciousness. The issue of addiction became an international once since communist China was forbidding the use of opium in its own territory but smuggling and exporting each quantities of opium to other Nations. Thailand being one such region poster charge on China who was attacking the Siamese demography with opium and its addiction having consequences like acute weakening of the brain.

RELEVANT CASE LAWS IN NARCCO ANALYSIS

SELVI MURUGHESAN VS STATE OF MAHARASHTRA

Kavita Murugheshan daughter of Selvi Murugeshan a sitting Tamil Nadu MLA, at filed a suit by lodging and FIR mentioning that a parents are the prime suspects in this issue of murder of her husband.⁴⁹ Due to the solemnization of a marriage being a resultant of love affair which apparents could not accept she believe them to have killed the husband who was kidnapped and found done Bangalore identified by his driving licence. Investigation Agency demanded allowance of Narco test on the accused Prime question being whether the same would be violative of Art 20(3) of the Constitution of India. It was held by the supreme court that nature of the question asked should not be inculpatory per se. Collection of evidence is the prime responsibility of the investigation authorities and conducting narco analysis test is also a part of collecting evidence.⁵⁰ Consent of the subject and presence of the expert of adequate competence and expert is on the field is mandatory.

KM SEEMA AZAD VS. STATE OF UP

Popularly known as the '**Shashi murder case**' Vijay Sen Yadav who was the prime suspect and disappearance of a law student Shashi in Faizabad has undergone polygraph test.⁵¹ The same was permitted to be conducted at the Central forensic laboratory in Bangalore. It was revealed that then when is the Vijay same had illicit relations with Shashi who got pregnant. On knowing about this he called Vijay to notify him that she had been post into a canal and has been strangled to

⁴⁹ AIR 1980 SC 593

⁵⁰ Rajesh Punia, '*Narco Analysis- An Investigating Tool or Torture?*'

⁵¹ Criminal Appeal No. 1055 of 2011, Alternate Citations : 115 Cri LJ 22 (2009)

death.⁵² Taking this as corroborative evidence finding of narco analysis was substantiated by history of phone calls between Anand and Vijay same from the spot she was murdered. Anand Sen continuous to be in jail with application of bail pending before the High Court of Allahabad.

NUPUR TALWAR VS CBI AND ANR. (2012)

Popularly known as the '**Aarushi Talwar-Hemraj double murder case**' the mystery is yet to unfold since 16 may 2008, when a 14 year old girl was found there in the bedroom with the father pointing the suspicious finger towards Hemraj the house help.⁵³ The body of the letter was also found in the terrace after two days leaving everybody flummoxed. Black stains of Hemraj were unfound in Arushi is bedroom but the dragging marks on the stage indicate the murder to have taken place elsewhere then the terrace. Unfound till date and clothes of the suspects being examined resulting in blood stains if any, totally undiscovered. Medical experts had to say that the splitting of the throat was done by a person medically well trained due to the precision using the surgical instrument. CBI therefore conducted a narco test at forensic science laboratory Gandhinagar only to draw a blank. Though they helped in further investigation then you nothing different about the murder of their daughter.

ROJO GEORGE VS. DEPUTY SUPERINTENDENT OF POLICE

A contention in the impugned case was that narco test is an extremely problematic test due to physical implications like reducing the heart rate, high blood pressure, and lack of Investigation to look into the fact If the confessions are true or not.⁵⁴ Determination of immaculate and medically right dosage was difficult due to variations of effect according to age, sex, and physical constitution of the person. Even though one May voluntarily agree to undergo the test the amounts to testimonial compulsion which is violative of the right against self incrimination accepting the immunity under 20(3) does not extend to blood specimens. The court held that just because that is

⁵² Naresh Kumar and Vedpal Singh, '*Narco Analysis Test In Investigation Process: Law and Judiciary*' Xiv, Mdu Law Journal 108(2009)

⁵³ Criminal Appeal No. 68 of 2012

⁵⁴ 2009 Cri LJ 2189 (AU)

a remote possibility of occurrence of an adverse reactions scientific technique essential for investigation cannot be prevented from taking place.

RESEARCH METHODOLOGY

The author would give you credit to the work of Ramachandran on narco analysis for majority of Technical information that it has provided as a contribution for this research paper. Descriptive analysis of different experience of psychiatrist and judgement of international countries have helped in better understanding of the current status of the scientific technique as practiced in India. Statistical analysis to analyse genome sequencing to be compared to polygraph and P300 test prove to be very useful. Database of catena of judgements in this arena involved digitally segmenting such interest as per requirements. Objective and statutory examination helped to arrive at a better conclusion to check the provisions of law and appraise current practice if forming anomaly if any. Reputed journals where authors of prolific understanding about narco- analysis have worked helped in getting a better idea of the scope of improvement and the present lacuna to be combated through sufficient legislations and efficiency of functioning of the criminal jurisprudence

CONCLUSION

Very similar to a training methodology, psychotherapy in order to be successful requires the congenial participation of both- the medical practitioner and the subject. The chances of a doctor's will being imposed on the patient is very high which can take the form of coercion which is undesirable and contrary to law. This dependency of the subject on the doctor should be control such that it does not continue post the polygraphic narco analysis test. It is mandatory to curve the encouragement of submissiveness in the patients which is very necessary. The education regarding personal sensitivity and staying away from formalising human intuition is the need of the hour. Being a fiduciary relationship and the objective being using the process of criminal investigation the subtle unconscious thighs between patient and the doctor should not be forced upon but voluntarily accepted to be taken upon by the subject himself. Maintenance of freedom on the other hand cannot be over eulogized, given in these methods which are scientific in nature, the impediment of compulsion fades away as mentioned by the author, in the plethora of cases before. Being abreast of all scientific development should be analogous to developing adequate

legislations to support a legally. At the same time a clean criminal justice system will always try to stay committed to giving a prime orders to individual freedoms guaranteed by moral conscientiousness and various substantive laws.