

Abstract

This article deals about how Narco Analysis test plays a major role in Criminal Justice system and its constitutionality in India. The most recent development in the field of interrogation has been the "Narco-Analysis Test" (Truth Serum Test), which is a very intriguing method as it has been of topic of debate between many jurist and psychiatrist. Narco Analysis is latest scientific innovation and advanced technique employed by the investigating agencies all over the world, including India.

Key Word:- Narco-Analysis, Validity, Truth Serum, Investigation, Technique, Evidence.

Introduction:-

The term Narco-Analysis was first introduced in the year 1936 for the use of narcotics in the investigation to induce a trance like state wherein a person may be subjected to various queries. The Narco-Analysis test is of recent origin and its implementation has caused furore among lawyers, pschycologists etc. It has been proved by scientific experimentation that if a person is administered with such drugs which may suppress his reasoning or power to think, he may be made to tell the truth.

History of Narco-Analysis Test:-

A person when in narcotized state of mind reveals the truth and those thoughts which he/she normally conceals. In between 1903-1915, investigators used mild type of anesthesia commonly used in obstetrical practices. For extracting the truth or obtaining confession from suspect's investigators used alcohol as a truth serum which depressed the central nervous system because they believed on time-honored aphorism *in vivo veritas* which means "where there is wine there is truth". The alcohol produces a remarkable candor or freedom from inhabitation and under the influence of this a person looses his/her tongue and eliminates repressive influence.

In 1936, J. Stephen Horsely introduced the term "Narco-Analysis" for the use of narcotics to induce a trance like state in which the patient talks freely and intensive psychotherapy may be applied. It was used with considerable success in treatment of acute combat psychoneuroses during World War II. ¹

J. Stephen Horsely tried to combine narcosis with hypnosis. He believed that his technique would allow psychiatrists to collect more detail in less time. It avoids the use of larger dosages of sedative drugs.

How Narco-Analysis Test is performed:-

Narco-Analysis test is carried out by experts. For Narco-Analysis test use of narcotics e.g. Sodium Pentothal, Sodium Amytal is injected slowly in the arm to induce a trance like state in which the person talks freely and intensive psychotherapy may be applied. In hypnotic state the questions are asked and answers are audio and video recorded. However Narco-Analysis is cannot be conducted without the consent of the subject and order of court. "Narco-Analysis" is a process whereby a subject is put to sleep, or in to a semi-somnolent state by means of chemical injections and then interrogated while in this drams like state; or the process of injecting a truth serum drug into a suspect to induce Semi-consciousness and then interrogating the suspect. This process has been utilized to enhance the memory of a witness. ²

Use of Narco-Analysis Test in criminal investigation:-

The technique of scientific test like Narco-Analysis is now being used in forensic filed also. But law has its own principles and problems. Narco-Analysis technique has to use for legal purposes within the boundaries of law. It must have

* Assistant Professor, University College of Law, MLS University, Udaipur, Rajasthan

¹ <https://refrence.alrefer.com/encyclopedia/N/narcosis.html>.

² P. Ramanatha Aiyer's Law Lexicon, 2005 Edition, p 3121; Black's Law Dictionary 8th Edition, p 1049

consent not only of the subject but also of the judiciary. At the same time the expert experimenting the technique must be experienced, skilled and trained one. In criminal justice system it is used for investigation purposes. In criminal cases accused is asked to submit himself for Narco-Analysis. Legally he is entitled to refuse such test but in almost hundred percent cases he volunteers for such case. This voluntariness cannot be treated as willingness. At least and it should be willingly without any pressure and no adverse inference should be drawn if he refuses to submit for such test.

Generally there are two categories of suspects who undergo Narcoanalysis test. First is the category where suspect willingly volunteers and co-operates with the interrogator. The other class is of those suspects who are forced to undergo test under court orders. However, in both cases suspect has initial hesitation because of the fear that he /she will lose control of oneself and may reveal something which are not desirable or are closely kept secret. He/she may be apprehensive that such disclosures may put him/her in awkward position which may put him/her or his/her close relatives or near and dear one in embarrassment or harassment. Those apprehensions are more relevant in Indian context as it is not expected of a police officer that they would maintain confidentiality about such disclosures. For avoiding all these obstacles the interrogator should develop a rapport with the suspect and get his/her cooperation. In such a situation the suspect will give such information to the interrogator which he/she (the interrogator) want to listen, later on he/she will give details about protecting his/her interest but in the last stage he/she may, after persuasion, disclose information hidden in him/her which may produce hidden links of the case. All these can be obtained from a trained and skillful expert who will patiently guide the subject and wait for his/her real self to come out.

In Narcoanalysis the subject should neither be coaxed nor guided. The information coming out from him/her should be spontaneous and in that case the suspect would feel relieved of the burden and be relaxed. Such spontaneity can be obtained by careful handling of the suspect and by better counseling. During the interview the suspect may show signs of excitement and aggression but ultimately the suspect calms down. The sign of aggression or excitement may be caused by feelings that he/she has been involved due to other or he/she is being trapped.

Entire proceeding should be video graphed so that the suspect may himself/herself see what he/she has said during Narcoanalysis and what he/she already had said before Narcoanalysis. This will result in explaining any apparent contradiction in the two statements which may be helpful for investigator.

The technique is helpful in saving the innocents from prosecution and eliminating the use of third degree method. In such case the test was carried on a prisoner inside a jail in Gujarat (India) who was accused of offences under official secrets act and the result proved his innocence and ultimately he was acquitted. In another case of Gujarat, Narcoanalysis of a jailbird solved the crime of unrelated third case. Narcoanalysis has been used as a time saving device in criminal cases as it is claimed that the same result may be obtained by prolong period of interrogation by a trained and skilled psychiatrist.

Narco-analysis Test in India and Worldwide:-

The main provision relating to trial and investigation of a case of criminal nature is Article 20(3) of Indian Constitution which talks about privilege against Self-incrimination. Almost in every society this concept has been accepted in some or other form.

In India, privilege against self-incrimination is recognized as a canon of common law. Article 20(3) reads as, "No person accused of an offence shall be compelled to be a witness against himself."

This statement has two elements, which are,

- The person should be accused of an offence
- The protection should be against the compulsion of being a witness against himself.

If these ingredients are missing than Article 20(3) cannot be invoked.

from that Narcoanalysis test also involves fundamental question related to aspect of Human rights, as well as certain concepts. Some of the aspects around which questions are raised are encroachment of individual's right, liberty and privacy. Moreover some jurists have considered such investigation as blatant violation of Article 20(3) of the Constitution of India.

Section 45 of Indian Evidence Act, 1872 talks about expert opinion but however remains silent on other aspects of forensic evidence in a criminal proceeding.

Narco-analysis, P-300 or brain mapping and lie detector tests are the main tests which are conducted by forensic scientists. The lie detector test and brain mapping do not involve injection of any drug and hence for these test the prior permission of court is not required whereas in Narcoanalysis the subject is given an injection of a drug under the supervision of anaesthetists and hence for this test prior permission of court is necessary. The Narcoanalysis was subjected to sharp criticism by defence lawyers who termed the same as violative of Article 20(3) of constitution of India but various High Courts in India has permitted Narcoanalysis as the results of such tests have been found to be very convincing the argument that violation of constitution has been repelled by holding that right under Article 20 (3) is not absolute.

In USA, the fifth amendment of the US Constitution provides that, "No person shall be compelled to be a witness in any criminal case against himself."

Whereas in Britain, it is fundamental principle of common law that a person accused of an offence shall not be compelled to produce any evidence or documents, which can incriminate him.

Analysis of Narcoanalysis Test:-

Narcoanalysis has been criticized on the ground that it is not 100% accurate. It has been found that certain subjects made totally false statements. It is often unsuccessful in eliciting truth as such it should not be used to compare the statements already given to the police before use of a truth drug. It has also been found that a person who has given false information before use of the drug is likely to give false information even after administration of drug. It is not much of help in case of talkative or evasive and untruthful persons. This test has to be done by a highly qualified physician. It cannot be done by ordinary physician.

It is very difficult to suggest a correct dose of drug for a particular person. The dose of drug will differ according to will power, mental attitude and physique of the subject. A wrong dose may bring the suspect in coma or in some cases even death may be caused. If the subject has been a drug addict or alcoholic his/her tolerance level will be high and he/she may fake statement of semi-consciousness and can tell lies.

Successful Narcoanalysis is not dependant on injection. For its success a competent and skilled interviewer is required who is trained in putting relevant and useful questions. As such it is possible that a psychiatrist is more capable of eliciting information from the suspect than a police officer.

In India there is no legal precedent on the issue of Narcoanalysis. Narcoanalysis has raised several issues of legal importance, for example, its admissibility in evidence, encroachment on personal liberty, and test being violative of Article 20(3) of Constitution of India. It is also termed as psychological third degree method. However, expert's opinion has been made admissible by virtue of Section 45 of the (Indian) Evidence Act, 1872. This Section is, however, silent over the evidence based on result of forensic applications. Section 45 of Indian Evidence Act, 1872 talks about expert opinion but however remains silent on other aspects of forensic evidence in a criminal proceeding.

Further right to silence is provided in Code of criminal procedure, which is also providing right against confession of self-incriminating nature.

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Admissibility and Credibility of Narco-Analysis Tests:-

In Ranjit Singh Brahmajee Singh Sharma Vs State of Maharashtra⁴, the court said that admissibility of the result of scientific test depends upon its authenticity. And in the case of Dinesh Dalmyia Vs State of Madras⁵, while discussing the nature of Polygraph, Narcoanalysis and Brain Mapping tests, the court said that these tests are like MRI or CT scan. It is high time to use scientific methods of investigation as against the use of third degree methods and credibility of these tests can be evaluated during trial.

Article 20 (3) of the Constitution of India is not a Paper Tiger but a Provision "to Police the Police" and to Silence Coerced Criminals

In Nandini Satpathi Vs P.L.Dani⁶ Apex Court stated that Article 20(3) of the Constitution of India provides that no person accused of an offence shall be compelled to be a witness against himself. A similar provision has been made in section 161(2) of the Code of Criminal Procedure. The aforesaid provisions have been enacted for the purpose of preventing a citizen from compelling forces. There should be no forced confession. The new scientific tests have been developed for aid to criminal investigation. These tests are Polygraph test or Lie Detector test, Brain Mapping or P-300 test and Narco-Analysis test or truth serum test.

In Narco-Analysis test the information is obtained from a semi-conscious person in whom he has no active control over his actions. The mind is conditioned by some extraneous process and thus the reliability of information thus obtained is very doubtful. It is a fundamental right of accused to refuse to answer some questions and the aforesaid right is defeated in the case of Narco-Analysis test.

In case of V.S. Kurian Pillai Vs Ramakrishnan⁷, it has been ruled that passive submissions to search and interrogation does not amount to testimonial compulsion. In the polygraph, brain mapping, fingerprinting and Narcoanalysis tests the information is gathered by invasion on one's mind. It is a point to be noted whether the three tests violate the constitutional mandate enshrined in Article 20(3) of the Constitution of India. The tests may be unconstitutional.

The Supreme Court ruled that thumb-impresion, signature, impression of palm, handwriting, exposing of body parts for identification are not covered by Article 20(3) of the Constitution, Section 73, Indian Evidence Act also permits taking of handwriting for purposes of comparison in interest of justice. Besides, it has also been held that if self-incriminating information has been given by accused without any threat or coercion it would not violate Article 20(3) of the Constitution of India. Similarly extraction of blood was also held not against the protection given under Constitution of India.

Narcoanalysis Test is a Process of Collection of Evidence - In instant case, the court held that Narcoanalysis test is a process of collection of evidence by investigating agency⁸.

Only Information or Statement is Obtained from Narcoanalysis Test - It is true that, in Narcoanalysis test nothing is extracted from the body of accused nor anything is compared nor tallied. What is obtained is information or statement may be exculpatory or inculpatory. It is premature to think whether statement is exculpatory or inculpatory⁹.

⁴ 2005 CH LJ 2533.

⁵ 2006 CH LJ 2401(Mad).

⁶ AIR 1978 SC 1025 (1049)

⁷ AIR 1980 SC 185; (1980) 1 SCC 264;1980 CH LJ 196.

⁸ Selvi Murgeshan Vs State of Karnataka, Cri.P. No. 1964/2004 (Kant HC.)

For Narcoanalysis Test Court Order is Expected – In the instant case, the court held that permission is not necessary from Magistrate in any investigation of cognizable offence. For conducting a Narcoanalysis test a doctor require a court order for assisting investigating agency. If an investigating agency had sought permission without referring provision, it cannot be termed as unwarranted for bad in law¹⁰.

Right to Privacy - Right to privacy is not an absolute right. Information cannot be withheld under garb of right to privacy. It is statutory duty of every person having knowledge of commission of offence to assist State in giving evidence¹¹.

Presence of Doctor During Narcoanalysis Test - In the case of Selvi Murgeshan v/s State of Karnataka, on the question of presence of doctor during question (Narcoanalysis test) the court held that presence of doctor is only for observation and not taking part in any manner in the process (Procedure) of conducting Narcoanalysis test¹².

Narcoanalysis Test Conducted in High Profile Cases in India:-

Narcoanalysis test has been conducted in India on Godhra incident accused persons; on Abdul Karim Telgi, prime accused in stamp paper scam; in Arun Bhatt Kidnapping case of Gujarat; on Nithari serial killers of Nithari, Noida (U.P.); on Selvi Murugesan, a sitting MLA of Tamil Nadu; on Abdul Rehman, Bechu Rehman an Ijju Shiek; on Mumbai Police Inspector Daya Nayak, on Naxalite Mallika; on Abu Salem a suspect of Bombay Blast Case; on Actress Preeti Jain, Naresh Pardesi, suspects of Malegoan Blasts; on R. Venkateshware Rao, Prime accused of Krushi Bank scam; and on Nadeem Kashmiri in fraud case. Narcoanalysis was not used in India in the past, but for last few years the test has been applied to so many persons.

Conclusion and Suggestion

When every concept is scrutinized on a scientific basis, when psychologists, psycho-analyse concepts an important question arises. How true are these analyses? For one, these analytical methods are constructs of human minds which themselves vary from individual to individual. Secondly, these psychologists were certainly not mystics who had realised the concept they espoused. Scientific evidence is an inescapable fact of modern litigation. The faulty analysis of scientific evidence would deprive litigants of intellectual due process from judges and undercut the proper functioning and credibility of the judicial system. The task of the Court is to industriously understand the scientific evidence and assess its value, without being affected by commercial publicity given to the scientific inventions patented for use of science as commerce.

The new scientific investigation method has been framed through this research on the comparative analysis of the right against self-incrimination and new scientific investigation methods and their court room validity. Our constitution framers were gave the paramount importance to the fundamental rights and these rights are given as a guaranteed right to its citizen against the state. These fundamental rights are not absolute rights and subjected to suspension and regulation under special circumstances. In those condition when interest of mass is adversely affected then in the interest of majority, rights of individual can be compromised. The scientific methods are much better than the use of inhuman third degree methods. These techniques can be very useful for investigating agencies in collecting the evidences and also for Judges to put the guilty behind the bar.

Suggestion:- The criminal justice system should be based on just and equitable principles "*Necessita public major est quam*" public interest is greater than individual interest. This move will bring about a qualitative change in criminal justice system and use of third degree methods by police authority would be replaced by scientific investigation methods on accused and thereby raising the hope that justice at last will be done. So to protect the rights of people legislature and judiciary take some extra efforts and make a harmonious balance between the right of individual and right of society.

⁹ Selvi Murgeshan V/s State of Karnataka, Cri.P. No. 1964/2004 (Kant H.C.)

¹⁰ Selvi Murgeshan V/s State of Karnataka, Cri.P. No. 1964/2004 (Kant H.C.)

¹¹ Selvi Murgeshan V/s State of Karnataka, Cri.P. No. 1964/2004 (Kant H.C.)

¹² Selvi Murgeshan V/s State of Karnataka, Cri.P. No. 1964/2004 (Kant H.C.)

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