



## ORIGINAL RESEARCH PAPER

Law

### NARCO-ANALYSIS AND ITS EVIDENTIARY VALUE IN INDIA

KEY WORDS:

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#### ABSTRACT

Analysis has been the most debated topic amongst the legal fraternity, media and common masses. With recent advent of technologies in every sphere of life, criminal investigation is no more left out of its effects. Narco-analysis is one of such scientific forms of investigation in which some sort of statement from the accused is acquired which might form evidence. The Evidence Act is completely silent on such employment of scientific process. Such process has often been criticized as against the tenets of Constitution and on the other hand has been upheld as a necessity to evaluate some complicated issues.

#### Introduction:

The project work aims at explaining the links between science and law. The use of scientific evidence in criminal trials and the admissibility of this evidence in court is one of the major areas covered by this project. The advent of using science as a means to investigate criminal cases is a recent one. Earlier, the courts relied on the non-scientific evidence such as statements by eye-witnesses. Such evidence cannot be relied upon since its validity cannot be tested. However, with the use of science and technology such pieces of evidence can be used in court. Usually, tests such as narco-analysis, brain mapping and lie detectors are used to confirm the truth of these pieces of evidence. Judicial discomfort in handling scientific evidence has increased in recent years with the emergence of scientific testimony offered by experts. Advance in technology have significantly increase the capabilities of forensic science laboratories. Cold cases, those which have been classified as dead or unsolved, have had life breathed into them because of these advances in DNA technology. The narco-analysis test is one of the scientific tests used to nail the culprit. This test has recently begun to be recognized as a crucial test to identify the accused when all other modes of investigation prove to be not useful. The result of the tests are not made admissible in the court, it merely aids the investigation procedure. However due to the test's subjective nature, the foremost criticism levied against conducting the test is the conclusiveness of the test. According to medical and legal experts, Individuals who have conscious and unconscious reason for doing so are inclined to confess and yield to interrogation under drug influence; some are able to withhold the information. But there is a need to accept the fact that where most of the crimes are taking shape in the mind of a person, narco-analysis is the apt mechanism.

#### Scientific Evidence in Criminal Trials:

(i) During criminal trials, evidence rules restrict both the content of evidence presented and the manner that evidence can be presented during a trial. Evidence rules not only ensure the smooth running of a criminal trial, but also, protect a defendant's right to a fair trial. Scientific evidence, or forensic evidence, is information derived through the scientific method. Commonly, scientific evidence, such as DNA, fingerprints, ballistics, and other items, is regularly entered during a criminal trial by both sides. Contrary to some beliefs, polygraph evidence is not typically deemed reliable enough to be admitted to a criminal trial, nor is most statements made under hypnosis or other forms of altered consciousness. Typically, turning to the chain of custody rules may immediately put into question the validity of an admitted piece of evidence. This piece of evidence may have undergone scientific testing that returned a given result, which can be ruled inadmissible if the chain of evidence was not properly followed. Additionally, disputes over admitting evidence are typically heard during a minitrial, which allows the jury to leave, while a decision to admit or suppress a given piece of evidence is established. This minitrial event prevents jurors from being influenced by evidence, which may be inadmissible. Scientific evidences are crucial to the fact finder in order to arrive at the logical consequence in deciding large number of issues brought before him/her. In the present era, they have almost become indispensable to them. Whether

scientific evidence is worth believing or not is a key issue which can be encountered by a judge/jury when ever scientific evidence is put before him. Till recently, the courts had to rely on the non-scientific evidences only because of the non-availability of proper technology. But the problems associated with such evidences are-

- The eyewitness observes the occurrence for a very short period.
- He may intermingle the acts of various individuals in the occurrence.
- He may be biased in favour of the victim or the culprit.
- He may be mentally imbalanced leading to exaggeration of the event.
- The eyewitness may forget, rationalize or get confused as his statement is recorded after a considerable lapse of time.
- He may be frightened by the court room environment.
- He may be over-awed by the opposing counsel.
- He may subconsciously take into account the opinion of others with whom he has discussed the happenings of the case or who have aired their opinion in the media.
- He may be uncertain about the identities of the culprits.
- He may not observe the complete occurrence.
- His powers of observation, memory and description play an important part.

(ii) The most important function of scientific investigation is to convert suspicion into reasonable certainty of either guilt or innocence. Scientific evidences such as biological evidence cannot tell a lie and decision arrived at by such an evidence is said to be justice through science. The scientific tests may be employed in two ways, that is, they may directly be used as evidence in court in a trial or they may be used merely as clues for investigation. Where the tests involve the making of a statement, they may be directly adduced in evidence, provided they do not amount to a confession because proof of a confession before a police officer or in the custody of a police officer is prohibited. The evidence recovered at the crime scene holds great importance in the case trial since the physical evidence found will always be objective. For example, a fingerprint found at the scene of a crime can only belong to one person, who may or may not be the suspect but is definitely a lead in the criminal investigation. However, if there is a witness to the crime and he/she might be a suspect in the police's eyes, then in order to make him confess to the truth, he can be subjected to narco-analysis, lie detector or brain mapping tests. But the results of these tests are inconclusive and highly subjective as the person being tested may confess to the crime under the situation pressure or under the influence of the drugs given to him before the conduction of the test.

(iii) The term narco-analysis 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. The narco-analysis test is based on the principle that a person is able to lie using his imagination and, under the influence of certain barbiturates, this capacity for imagination is blocked or neutralized by leading the

person into a semi-conscious state. Narcoanalysis has been the most debated topic amongst the legal fraternity, media and common masses. With recent advent of technologies in every sphere of life, criminal investigation is no more left out of its effects. Narcoanalysis is one of such scientific forms of investigation in which some sort of statement from the accused is acquired which might form evidence. The Evidence Act is completely silent on such employment of scientific process. Such process has often been criticized as against the tenets of Constitution and on the other hand has been upheld as a necessity to evaluate some complicated issues. There are several issues regarding the validity of narcoanalysis as a scientific tool of investigation and its admissibility in court of law.

(iv) The narco-analysis test is conducted by mixing three grams of Sodium Pentothal or Sodium Amytal dissolved in 3000 ml of distilled water. Narco-analysis is carried out only after a detailed medical examination of the accused. If the accused is found medically fit to undergo the procedure, then only will it be done, otherwise not. Narco test refers to the practice of administering barbiturates or certain other chemical substances, most often Pentothal Sodium, to lower a subject's inhibitions, in the hope that the subject will more freely share information and feelings. A person is able to lie by using his imagination. In the narco-analysis test, the subject's inhibitions are lowered by interfering with his nervous system at the molecular level. It becomes difficult for the person to lie and his answers would be restricted to facts he is aware of. The statements made by the accused are recorded on audio and video cassettes, and the report of the expert is helpful in collecting evidence.

(v) The narcoanalysis test is often associated with the infringement of individual's fundamental rights which raises questions about its value as evidence. Narcoanalysis is not considered very reliable. Studies done by various medical Associations in the US adhere to the view that truth serums do not induce truthful statements and subjects in such a condition of trance under the truth serum may give false or misleading answers. In USA, in the case of **Townsend v. Sain** it was held that the petitioner's confession was constitutionally inadmissible if it was adduced by the police questioning, during a period when the petitioner's will was overborne by a drug having the property of a truth serum. The Constitution of India has clearly stated that a person cannot be compelled to be a witness against himself, and therefore, any statement given during the narcoanalysis test cannot be considered evidence in the constitutional framework of the country. In fact, studies have shown that sometimes the subject (person undergoing the test) gives false statements during the test. If the test was given evidentiary value, the police would harass innocent persons under the garb of tackling terrorism. Narcoanalysis test is a restoration of memory which the suspect had forgotten. This test result may be doubtful if the test is used for the purposes of confession of crimes. Suspects of crimes may, under the influence of drugs, deliberately withhold information or may give untrue account of incident precisely. Such tests generally don't have legal validity as confessions made by a semi-conscious person are not admissible in court. The court may, however, grant limited admissibility after considering the circumstances under which the test was obtained.

(vi) A few democratic countries, India most notably, still continue to use narcoanalysis. Narcoanalysis is not openly permitted for investigative purposes in most developed and democratic countries. In India, the Narcoanalysis test is done by a team comprising of an anesthesiologist, a psychiatrist, a clinical/forensic psychologist, an audio-videographer, and supporting nursing staff. The forensic psychologist will prepare the report about the revelations, which will be accompanied by a compact disc of audio-video recordings. The strength of the revelations, if necessary, is further verified by subjecting the person to polygraph and brain mapping tests. Narcoanalysis is steadily being mainstreamed into investigations, court hearings, and laboratories in India. Narcoanalysis came in the limelight in the context of infamous **Nithari village (Noida)** serial killings. The two main accused in the Nithari serial killings Mohinder Singh Pandher and

Surendra Kohli had undergone narcoanalysis tests in Gandhinagar in Gujarat. Narcoanalysis was also used in the interrogation of Ajmal Kasab, the main accused in the 26/11 attacks in Mumbai.

(vii) The body of Aarushi Talwar was found in her bedroom in house No. L-32, Jalvayu Vihar, Sector 25, Noida, on the night of 15-16.5.2008. In the first information report Dr. Rajesh Talwar, her father pointed the needle of suspicion at Hemraj, a domestic help in the household of the Talwars. On 17.5.2008 the dead body of Hemraj was recovered from the terrace of the same house, i.e., house No. L-32, Jalvayu Vihar, Sector 25, Noida, where Aarushi's murder had also allegedly been committed. First hand Investigations conducted by the police revealed the following points-

1. No blood of Hemraj was found on the bed sheet and pillow of Aarushi. There is no evidence to prove that Hemraj was killed in the room of Aarushi.
2. Dragging mark on steps only indicate that murder has taken place somewhere other than the terrace.
3. On the clothes of Dr. Rajesh Talwar, only the blood of Aarushi was found but there was no trace of blood of Hemraj.
4. The clothes that Dr. Nupur Talwar was wearing in the photograph taken by Aarushi in the night of the incident were seized by CBI but no blood was found during forensic examination.
5. Murder weapons were not recovered immediately after the offence. One of the murder weapon i.e. sharp edged instrument could not be recovered till date and expert could not find any blood stain or DNA of victims from golf stick to directly link it to the crime.
6. There is no evidence to explain the finger prints on the scotch bottle (which were found along with blood stains of both the victims on the bottle).
7. The guards of the colony are mobile during night and at the entrance they do not make any entry. Therefore, their statements regarding movement of persons may not be foolproof.
8. The exact sequence of events between (in the intervening night of 15-16/05/2008) 00.08 mid night to 6:00 AM in the morning is not clear. No evidence has emerged to show the clear role of Dr. Rajesh Talwar and Dr. Nupur Talwar, individually, in the commission of crime.
9. A board of experts constituted during earlier investigation team has given an opinion that the possibility of the neck being cut by khukri cannot be ruled out, although doctors who have conducted postmortem have said that cut was done by surgically trained person with a small surgical instrument.
10. There is no evidence to explain the presence of Hemraj's mobile in Punjab after murder.
11. The offence has occurred in an enclosed flat hence no eye witness are available.
12. The blood soaked clothes of the offenders, clothes used to clean the blood from the flat and stair case, the sheet on which the Hemraj was carried and dragged on the roof, the bed cover which was used to cover the view from the steel iron grill on the roof are not available and hence could not be recovered.

All the above findings raised suspicions as to whether the murders were committed by Dr. Rajesh and Nupur Talwar. Therefore they were subjected to narcoanalysis test to confirm their involvement in the crime. The CBI carried out narco-analysis test on Nupur Talwar between February 8 and February 12, 2010 and on Rajesh Talwar between February 15 and 20, 2010 at the Forensic Science Laboratory in Gandhinagar, Gujarat. However, the investigations drew a blank. No concrete evidence could be collected even after conducting the narco-test of the Talwar couple that could help in further investigations in the case. The test was conducted to find out if Nupur Talwar or Rajesh Talwar knew anything about the case, but they knew nothing different about the murder of the teenage girl. In this particular case, the results of the narcoanalysis were admissible in court however, two years after the analysis; the Supreme Court of India ruled it unconstitutional but let investigators use the test results for leads.

### Conclusion:

There is urgent need for the application of forensic science in the criminal justice delivery system. The use of scientific or forensic evidence in criminal trials not only identifies the actual guilty but also prevents the innocent from being convicted wrongly. The principle of the Indian legal system is based on the fact that until proved guilty, a person is innocent and an innocent cannot be convicted even if a hundred criminals are surrendered. With the above objective in mind, subjecting a person to narcoanalysis without his consent will be surely undermining his individual rights which are absolutely negating the principle of a right based society. The use of scientific proof in a forensic setting has proven problematic for both judges and attorneys because most of them are not technically trained. Much of the difficulty encountered by courts when facing scientific evidence lies not in a lack of understanding the underlying science but in the task of choosing between competing scientific explanations. Law is a living process, which changes according to the changes in society, science, and ethics and so on. The Legal System should imbibe developments and advances that take place in science as long as they do not violate fundamental legal principles and are for the good of the society. The Central government must make a clear policy stand on narco analysis because what is at stake is India's commitment to individual freedoms and a clean criminal justice system.

### Suggestion:

Narcoanalysis has been criticized on the ground that it is not hundred per cent accurate. It has been found that certain subjects made totally false statements. It is often unsuccessful in eliciting truth as such it should not be used to compare the statement already given to the police before use of drug. It has been found that a person has given false information even after administration of drug. It is very difficult to suggest a correct dose of drug for a particular person. The dose of drug will differ according to will power, mental attitude and physique of the subject. For its success, a competent and skilled interviewer is required who is trained in putting recent and successful questions. Narcoanalysis is not recommended as an aid to criminal investigation. Unless the test is conducted with the consent of the suspect it should not be used in criminal investigation.

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