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Narco Analysis: Violation of the Right Against Self-Incrimination under Article 20(3) of the Constitution of India

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Abstract

Collecting accurate information during investigation is one of the crucial steps in building a strong case against an accused. Most of the time basic investigation reveals all the story behind a crime but in some exceptional cases, where collection of information becomes difficult, investigators use controversial methods like narco analysis, polygraph, brain mapping, etc. This paper critically analyses Narco analysis as a method of collecting information and explains why critics of this method strongly oppose it. By following the doctrinal method, the researchers have explained how narco analysis violates the fundamental right against self-incrimination guaranteed under Article 20(3) of the Indian Constitution & put a strong argument for banning this method permanently due to its limited scope & unreliableness.

Keywords: Narco-analysis; Article 20(3); self-incrimination; compelled testimony; Selvi v. State of Karnataka.

1- Introduction

One of the most debated & controversial forensic techniques in criminal law is narco-analysis which involves administration of sedative drugs on the subject to make him semi-consciousness & disclose what he has done or what he experienced during the commission of crime.¹ Though it is considered as a scientific process,² it is highly unreliable as well as it violates the rights of the accused to remain silent or not give any evidence which can be self-incriminatory. The authors in this paper aim to explain how narco-analysis wrongfully compels the subject to waive the constitutional³ & legal⁴ safeguards available to him and how it breaches his privacy. Authors have primarily focused on the voluntary narco-analysis tests which are legally permitted in India but are highly unreliable, violative of the subjects' rights and contain huge probability of manipulation in the whole process which can lead to wrongful conviction or implicate subjects in fake cases as well.

As per the general rule of the Indian criminal jurisprudence, the investigators & the prosecutors have to prove the case and the accused can not be forced to assist them or to give self incriminatory evidence. According to Article 20(3) of the Indian Constitution,⁵ right against self-incrimination is the most crucial safeguards available to the accused but the narco analysis test violates this right and butchers the guarantee of not forcing the accused to give evidence against himself. The supporters of narco analysis give argument that it is a voluntary process and the information is collected after seeking proper permission from the accused but the proponents of this theory totally ignore this fact that a subject under narco test goes through an unfair process in which he is chemically induced to go in a semi-consciousness state where he loses control over his mind and fails to think before speaking. In this condition, the subjects miserably fail to use their ability to remain silent and safeguard their rights. This way of collecting information is full of mental torture and at the same

time information extracted from a semi-consciousness subject is highly unreliable and totally untrustworthy which create strong grounds to permanently ban it in any form and discontinue this method in future investigations.⁶

2- Self-Incrimination and protection against it under Article 20(3)

According to Article 20(3) "*no person accused of an offense shall be compelled to be a witness against themselves*".⁷ The act of forcing a person to provide evidence which can bring criminal liability to him, amounts to "self-incrimination"⁸ which if really conducted in an actual case can severely violate many principles like fairness in trial, adversarial procedures and presumption of innocence of the accused until proven guilty. Article 20(3)⁹ of the Indian Constitution guarantees to safeguard these principles and provides a fundamental right against self-incrimination. In reality, extracting knowledge from the mind of the subject through the use of sedative chemicals destroys the practical utility of protection provided under Article 20(3),¹⁰ still every year we see many narco analysis cases in India leading to sentencing of the accused. It is a highly concerning issue because a controversial and non reliable system which should have been completely banned in India is being used to extract information from the accused/suspects and punish them.

The SC in the *Selvi*¹¹ case has also declared the involuntary narco analysis as an unconstitutional method and agreed that it is a forceful method to extract information from the accused which violates the safeguards provided under Article 20(3).¹² According to the SC, this method also violates Article 21 because it interferes with personal liberty & mental privacy of the subjects. But this landmark judgment is not free from criticism because the SC gave strong declarations against narco-analysis and instead of completely banning it they permitted and justified voluntary narco-analysis tests. The reality is that voluntary narco-analysis is as dangerous & unreliable

¹ B.R. Sharma, *Forensic Science in Criminal Investigation and Trials* 142 (Universal Law Publishing, New Delhi, 6th edn., 2014).

² Jinee Lokaneeta, *The Truth Machines: Policing, Violence, and Scientific Interrogations in India* 72 (University of Michigan Press, Michigan, 2020).

³ Constitution of India, art. 20(3).

⁴ Bharatiya Sakshya Adhiniyam, 2023, s. 23.

⁵ Constitution of India, art. 20(3).

⁶ V.R. Dinkar, *Scientific Expert Evidence: Determining Probative Value and Reliability* 204 (LexisNexis, Gurugram, 2016).

⁷ Constitution of India, art. 20(3).

⁸ Ramachandran, *Law of Narco-Analysis: Right Against Self Incrimination* 45 (Kamal Publishers, New Delhi, 2022).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Selvi & Ors v. State of Karnataka & Anr.*, (2010) 7 SCC 263; AIR 2010 SC 1974.

¹² Constitution of India, art. 20(3).

as involuntary narco-analysis but still it has been allowed in India. The SC in the *Selvi*¹³ case did not buy the idea of preferring scientific utility of narco analysis tests over constitutional rights and rightly treated the mind as a protected territory instead of assuming it as an object which states can control to extract information. The apex court rightfully concluded that statements obtained through narco-analysis tests are not substantive evidence but by this logic, voluntary narco-analysis should have also been declared unconstitutional as it carries all the defects present in involuntary narco tests and it debars the semi-consciousness subjects to use their ability to remain silent; therefore the Hon'ble SC should have permanently banned it in all forms.¹⁴

3- Why Narco-Analysis is Problematic Even in Voluntary Tests

To collect information & build a strong case against an accused investigators use various unethical & illegal means like custodial violence, third degree tortures, forced confessions, etc. Narco-analysis is also an example of controversial means in this category which involves forceful extraction of information¹⁵ but somehow has been given legal sanction in India in voluntary cases. It is quite strange to know that an unconstitutional method which should have been permanently banned due to its limited scope & unreliability is still legal and continued in India.

Narco-analysis involves administration of sedative drugs on the subject to make him semi-consciousness & disclose information related to the alleged crime. This test can't be conducted in India if there is no consent of the accused, so proper permission is taken from them before conduction of this test but in reality the whole process involves a lot of intricacies & intrusions which makes the consent just a formality and leads to severe violation of fundamental & legal rights. Though it is considered as a scientific process, it is highly unreliable as well as it violates the rights of the accused to remain silent. The subject in the semi-consciousness state loses the control to not to speak against himself and in that state he also becomes incapable in exercising his rights of not giving self-

incriminatory evidence.¹⁶ In this way, voluntary narco-analysis wrongfully compels the subject to waive the legal safeguards available to him and it severely breaches his privacy.

It is also to be noted that consent for narco analysis does not justify it as a completely legal process because there is a high chance of manipulation in the whole process and the subjects can be implicated in fake cases as well. Even after the consent is given, violative interrogation always happens which undermines the *D.K.Basu*¹⁷ guidelines against cruelty, torture & inhuman treatment of prisoners. In this context, chemical interrogation whether forceful or voluntary falls in the category of cruel, inhuman or degrading treatment. This test also bars accused to protect himself from manipulation, immense pressure from investigating agencies, third degree torture and physical violence.

In this way, voluntary narco-analysis is as dangerous, self-incriminatory & unreliable as involuntary narco-analysis but still it is allowed in India. The SC in the *Selvi*¹⁸ case should have also been declared voluntary narco-analysis as an unconstitutional method as it debars the semi-consciousness subject to use his ability to remain silent, it prevents the subjects to take action against torture and hence it was required by the Hon'ble SC to permanently ban it. Information given under a semi-conscious state completely lacks any evidentiary value. It is much needed to move beyond traditional & slow investigation methods but it should not be done at the cost of fundamental right against self-incrimination. Instead of adopting innovative methods of investigation relying on forceful methods bars the advancement of forensic science & the interrogation system in India.

4- The Need to Completely Ban Narco Analysis Test

In the *Selvi*¹⁹ case, the Hon'ble SC gave various strong arguments against Narco-analysis and it held this controversial test unconstitutional but this declaration was only limited to involuntary tests. The

¹³ *Selvi & Ors v. State of Karnataka & Anr*, (2010) 7 SCC 263; AIR 2010 SC 1974.

¹⁴ V.N. Shukla, *Constitution of India* 245 (Eastern Book Company, Lucknow, 13th edn., 2019).

¹⁵ Satyendra K. Kaul and M.H. Zaidi, *Narcoanalysis, Brain Mapping, Hypnosis & Lie Detector Tests in Interrogation of Suspects* 118 (Alia Law Agency, Allahabad, 2008).

¹⁶ V.R. Dinkar, *Scientific Expert Evidence: Determining Probative Value and Reliability* 204 (LexisNexis, Gurugram, 2016).

¹⁷ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610; 1997 (1) SCC 416.

¹⁸ *Selvi & Ors v. State of Karnataka & Anr*, (2010) 7 SCC 263; AIR 2010 SC 1974.

¹⁹ *Selvi & Ors v. State of Karnataka & Anr*, (2010) 7 SCC 263; AIR 2010 SC 1974.

Hon'ble SC should have applied the same logic for voluntary tests as well and the Narco-analysis test must have been completely banned but sadly it didn't happen. Now enough research has been done to prove that the consent in the voluntary tests is there just to cover & legalise the torture on the subjects, it is there to validate forceful extraction of information, perform manipulation and violate privacy of the subjects. It is also proven that this method is not perfectly scientific²⁰ because a person in a semi-consciousness state can not give any reliable information and at the same time the subject can be forced to utter fake & planted information to wrongly implicate him or someone else. These arguments strongly prove that narco-analysis, whether involuntary or voluntary, is highly violative, illegal and it should be permanently banned in India.²¹

5- Conclusion

Narco analysis is still highly unreliable and it uses a violative method of interrogation. Though it is banned in India in involuntary cases, its usage in voluntary tests is also highly questionable. This research concludes that consent in the voluntary test is sought just to cover & legalise the torture on the subjects, it is there to validate forceful extraction of information, perform manipulation and violate privacy of the subjects. Administration of the drug forces the subject to lose his control on remaining silent and suppresses the ability to think twice before speaking anything which overall undermines his constitutional right given under Article 20(3). It is also concluded that this method is not perfectly scientific because a person in a semi-consciousness state can not give any reliable information and at the same time the subject can be forced to utter fake & planted information to wrongly implicate him or someone else. These arguments strongly prove that narco-analysis, whether involuntary or voluntary, is totally violative, illegal and it should be permanently banned in India. On the basis of research findings some important suggestions are given below:

1. It is much needed to move beyond traditional & slow investigative methods but it should not be done at the cost of fundamental rights of the accused against self-incrimination.
2. Voluntary narco-analysis should also be banned because it is unconstitutional, unscientific, violative and reliance on it also bars the advancement of the forensic science and interrogation system in India.
3. The SC should revisit its declaration in the *Selvi* case and declare narco-analysis completely unconstitutional in both involuntary & voluntary tests.
4. The State must prove the case through legal means & lawful evidence, not by using sedative drugs on the accused.
5. Safeguards against custodial tortures & forced confessions needed to be strengthened more. No methods should be used to violate the rights of the accused to remain silent.

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²⁰ V.R. Dinkar, *Scientific Expert Evidence: Determining Probative Value and Reliability* 204 (LexisNexis, Gurugram, 2016).

²¹ Jinee Lokaneeta, *The Truth Machines: Policing, Violence, and Scientific Interrogations in India* 72 (University of Michigan Press, Michigan, 2020).