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THE CONCEPT OF NARCO ANALYSIS VIS A VIS CONSTITUTIONAL LAW AND HUMAN RIGHTS

AUTHORED BY - CHANCHAL SHARMA

ABSTRACT

The utilization of narco analysis in criminal investigations poses a complex conundrum at the juncture of constitutional law and human rights. This forensic technique, involving the administration of drugs to elicit information from an individual's subconscious mind, has raised significant concerns regarding its compatibility with fundamental rights and legal principles. Central to this debate is its potential infringement upon the right against self-incrimination enshrined in Article 20(3) of the Indian Constitution. This constitutional safeguard ensures that individuals are not compelled to be witnesses against themselves, safeguarding their autonomy and ensuring fair treatment in legal proceedings. The coercive nature of narco analysis raises questions about its adherence to this principle, as individuals may involuntarily divulge self-incriminating information while under the influence of drugs. Moreover, narco analysis intersects with broader human rights principles, including the right to dignity, privacy, and a fair trial. Human rights frameworks emphasize the protection of individuals' autonomy and integrity, prohibiting any form of coercion or involuntary interrogation tactics. The use of narco analysis without informed consent or adequate procedural safeguards may infringe upon these rights, undermining the principles of justice and fairness. Ethical considerations further complicate the matter, as the reliability and validity of information obtained through narco analysis remain contentious. By examining the concept of narco analysis presents a multifaceted challenge, this paper aims to shed light on the necessitating careful consideration of its implications for constitutional rights and human dignity in the pursuit of justice.

Keywords: Narco-Analysis, Right against Self-Incrimination, Constitutional law, Human Rights, Fair trial, Justice, Reliability, Admissibility.

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TABLE OF ABBREVIATIONS

&	And
Anr.	Another
Art.	Article
FR	Fundamental Rights
Govt.	Government
Hon'ble	Honourable
HC	High Court
i.e.,	That is
Ors.	Others
CNS	Central Nervous System
Crpc.	Code of Criminal Procedure
UDHR	Universal Declaration of Human Rights
FIR	First Information Report
ICCPR	International Covenant on Civil and Political Rights
SC	Supreme Court
IAPC	Indian Association of Palliative Care
NDPS	Narcotic Drugs and Psychotropic Substance
UOI	Union of India
Vs.	Versus
CIA	Central Intelligence Agency
Vol.	Volume

CHAPTER I

INTRODUCTION

"It was entirely feasible for future Legislatures to nullify the provisions of the Criminal Procedure Code. Therefore, it was deemed advantageous to inscribe these significant provisions within the Constitution, thus placing them beyond the jurisdiction of the Legislature."¹

-Dr. B. R. Ambedkar

This was the brief reply by Chairman of the Drafting Committee of the Indian Constitution succinctly responded when introducing Article 20 into the Constitution of India. Within the array of fundamental rights enshrined in the Constitution, Article 20 specifically addresses the rights of individuals accused of an offense. Article 20(3) extends the principles of natural justice and fair trial to a greater extent. The researcher has examined the right against self-incrimination as protected by Article 20(3) of the Constitution of India, focusing particularly on its application in the context of the scientific method of incrimination, namely the Narco-analysis test, from both constitutional and human rights viewpoints in this study.

The legal system is dynamic, not fixed, and must adapt to evolving societal norms. As society progresses, laws should align with the changing social order. The judiciary, being the interpreter of the law, plays a crucial role in facilitating societal change for the greater good. It is evident that the judicial mind-set needs to remain connected and aligned with the ongoing progress of humanity.

Crimes permeate societies worldwide. According to Aristotle, humans, while noble, can turn malevolent when detached from the law. Every individual possesses an innate duality, but societal norms typically prevent overt transgressions. However, certain individuals defy consequences, endangering societal harmony by engaging in illicit or unethical behaviour. Whether motivated by personal vendettas, dire circumstances, or calculated intent, such actions remain indefensible. They contravene established ethical and legal standards, undermining the fabric of civilized society. Consequently, these individuals represent a significant threat, challenging the fundamental principles upon which communities are built. Thus, while the fear of repercussions may deter most from straying, the existence of those who flout norms underscores the constant vigilance required to safeguard societal order and uphold justice. As society progresses rapidly, criminals are also keeping pace, often appearing to be one step ahead. Addressing these challenges necessitates advanced approaches to criminal investigation. Ensuring the peaceful

¹ B. Shiva Rao, *The Framing of India's Constitution - A Study* (Vol. V), 230 (Dr. Subhash C. Kashyap, 2nd ed. 2010).

coexistence of citizens is paramount for societal harmony. However, the notion of achieving a completely crime-free society remains elusive. Recent advancements in forensic science have shown promise in combating criminal activities. While crime rates may not have significantly decreased, these innovations have proven effective in identifying perpetrators and delivering justice to victims.

Definition of Forensic Science: Forensic science, in its simplest terms, involves the analysis of evidence found at a crime scene and its presentation in a legal setting. A broader definition encompasses the scientific discipline aimed at recognizing, identifying, individualizing, and evaluating physical evidence using principles and methods derived from the natural sciences. Its primary purpose is to support the administration of criminal justice by providing scientific evidence for use in court proceedings, criminal investigations, and trials. This field is interdisciplinary in nature, drawing upon various branches of science including chemistry, biology, physics, geology, psychology, and social science.

Globally, advancements in science and technology are leading to significant transformations in law enforcement methods. In today's society, there is a demand for contemporary scientific approaches to crime detection to ensure the public's safety. Various techniques exist for investigating crimes and identifying deception in suspects and accused individuals. Historically, many methods relied on torture, whether physical or mental. However, modern approaches such as Polygraph and brain-mapping tests offer non-invasive ways to detect deception without causing harm to the subject. The rapid progress of science has surpassed the development of law, or at least the general public's understanding of it, creating challenges in determining what can be accepted as evidence in court. Narco-Analysis is one such scientific advancement that has become increasingly, and perhaps alarmingly, prevalent in India.

The State holds the responsibility for both preventing and punishing crimes when proven. However, a crucial consideration is the balance between fulfilling these duties and respecting individual rights. In contemporary times, Narco-analysis is commonly employed for crime investigation and prevention, even though it is regarded as an uncertain and highly unreliable scientific method. It poses challenges to human rights and raises the risk of serious miscarriages of justice. The argument that compelling public interest justifies compromising constitutionally guaranteed rights is not a valid justification for such dilution.

1.1 RESEARCH QUESTIONS

1. How does narco analysis as an investigative tool impact the right to remain silent and the protection against self-incrimination, as guaranteed by constitutional law and human rights frameworks?
2. Whether the information is reliable that are obtained through narco analysis, and how does its potential fallibility affect the right to a fair trial and due process?
3. How do countries with a long history of narco analysis address the constitutional and human rights concerns, and what lessons can be learned from their experiences for the broader legal and ethical discussion?
4. Whether there are any alternative investigative methods that can be employed in place of narco analysis to balance the need for truth in criminal investigations with the preservation of constitutional rights and human rights?

1.2 RESEARCH OBJECTIVES

Through this research, the researcher wishes to achieve the following objectives:

1. To explore the legal framework surrounding narco analysis within the context of constitutional law and human rights.
2. To analyze the historical development of narco analysis as a forensic technique and its intersection with legal principles.
3. To examine the constitutional validity of narco analysis, particularly in relation to Article 20(3) of the Indian Constitution guaranteeing the right against self-incrimination.
4. To investigate the ethical implications of employing narco analysis in criminal investigations, considering its potential impact on individual rights and dignity.
5. To identify case laws and judicial decisions relevant to the use of narco analysis, highlighting their implications for constitutional law and human rights.
6. To evaluate the procedural safeguards and regulations governing the administration of narco analysis tests, focusing on issues of informed consent and privacy.
7. To analyze international perspectives and comparative legal frameworks concerning narco analysis and its conformity with human rights standards.
8. To examine the role of forensic science in the legal system and its interaction with constitutional principles and human rights protections.
9. To propose recommendations for policy reforms or legal guidelines aimed at ensuring the compatibility of narco analysis with constitutional law and human rights standards.

1.3 LITERATURE REVIEW

Research work is possible with the consultation of literature available on the topic under study. Before starting up the work on the problem the present study aims to review the existing literature on the subject. It is pertinent to mention that no socio-legal research work can be written without consulting latest books, articles, bare provisions, and internet sources for related studies. The review of the existing literature is necessary to avoid repetition and to provide clarity of concept and better understanding of different aspects of the subject and would help in identifying problem areas and formulating research methodology.

The current study is based on analytical research, intended to perform a systematic review of literature related to the concept of Narco analysis vis a vis Constitutional law and Human Rights. Mention may be made of the following treatises, journals and judicial dicta which have been reviewed by the researcher:

1. **Three decades of DNA evidence: judicial perspective and future challenges in India.**²

In this Article the author stated that the adversarial system of law in India requires the state to acquire evidence before charging a suspect, and presumption of innocence is a fundamental principle of the system, which follows. Because of this, the Narco Analysis test poses a number of legal as well as ethical concerns. Controversy abounds over whether or not this test violates an individual's constitutionally granted basic rights. In addition to violating one's right against self-incrimination, this test raises concerns about one's "right to human dignity" and their "inviolability". The main and most important question in each case involving human rights is addressed through the use of Narco Analysis. Using this approach as an investigative tool raises legitimate issues about the legal situation, such as "infringement of an individual's right", "personal freedoms" and "freedom". Article 20 (3) of India's Constitution has also been used as a reason to hold this action in contempt.³

2. **"Narco-Analysis Test: An Analysis"**⁴

This Research Paper explained that the assumption of concept of innocence is important to India's adversarial legal system, which mandates that investigators have a responsibility to gather evidence. India does not recognise Narco-analysis tests since they are performed by a semi-conscious individual, and hence they are not acceptable in court. But the court might allow restricted admission after taking into account the circumstances of the test's attainment. The law

² Goswami, G.K., and Siddhartha Goswami (2018). Three decades of DNA evidence: judicial perspective and future challenges in India." DNA Fingerprinting: Advancements and Future Endeavors. Springer, Singapore. 181-205

³ Assembly of India, Constituent. The Constitution of India: Bare Act. N.p., Independently Published, 2020

⁴ Sahu, Pratyasha. (2021) Narco-Analysis Test: An Analysis. Jus Corpus LJ 2: 111.

states that compelled evidence is not admissible in court. But there is a distinction between being compelled to provide information and being forced to provide it (*Bombay v Kathi KalyOghad*). Forced to do anything because of injury, assault, incarceration, or threats against the accused's family members is said to be under duress, according to the legal definition of duress. According to investigation, the "Narcoanalysis" test does not include coercion or pressure. However, if we look at it from a different angle, the constitutional protections guarantee protection against being forced to be a witness and against being forced to provide testimony against oneself as a consequence of such a compulsion (*Hovarth vs. The Queen, 1979*).

3. **Loss of Justice for sake of convenience: Narco analysis and Brain Mapping: An examination in the light of Article 20(3).**⁵

The author of this work explores the utilization of new investigative tools such as narco analysis and brain mapping, delving into the legal debates surrounding their validity. Some argue in favor of their legitimacy within the framework of legal principles, while others contest their application as a breach of constitutional provisions. Specifically, the author examines the infringement of Article 20(3), the Right against self-incrimination, through the use of narco analysis and brain mapping tests. Cases such as *Nandini Sathpathy v. P.L. Dani*, where the right to silence is affirmed, highlight the accused's entitlement to withhold statements during interrogation. Various court rulings, such as *Selvi v. State of Karnataka, Ramchandra Reddy and ors v. State of Maharashtra, and Santokben Jadeja v. State of Gujarat*, present differing perspectives on the constitutionality of these tests. Additionally, the Law Commission Report of 2002 is referenced, wherein the commission concluded that no amendments to the Criminal Procedure Code (CrPC) were necessary, as any alteration regarding the silence of the accused would contravene Article 20(3) and Article 21 of the Constitution.

4. **Narco Analysis Test and Article 20(3) of the Constitution of India.**

This paper aims to explore various scientific techniques utilized in the investigative process, such as Narco Analysis and Brain Mapping. The author examines the constitutionality of these tests, drawing from the Supreme Court's ruling in *Selvi v. State of Karnataka*. In this landmark case, the Court ruled that the results of these tests cannot be admitted as evidence due to the lack of conscious control exercised by the subject during the test. However, any information obtained through voluntarily administered tests may be admissible under Section 27 of The Evidence Act,

⁵ Malak Bhatt, Loss of Justice for sake of convenience: Narco analysis and Brain Mapping: An examination in the light of Article 20(3) 2009, [https://www.aironline.in/legal-articles/Loss%20of%20Justice%20for%20Sake%20of%20Convenience%3F%20Narcoanalysis%20and%20Brain%20Mapping%20:%20An%20Examination%20in%20Light%20of%20Article%2020\(3\)](https://www.aironline.in/legal-articles/Loss%20of%20Justice%20for%20Sake%20of%20Convenience%3F%20Narcoanalysis%20and%20Brain%20Mapping%20:%20An%20Examination%20in%20Light%20of%20Article%2020(3))

1872.

Nevertheless, the author contends that the practice of Narco Analysis in India persists due to tacit agreements among the judiciary, police, investigative agencies, and human rights activists. The author advocates for a concerted effort by the people of India to oppose the use of invasive methods like Narco Analysis and Brain Mapping, viewing it as essential in the movement for democratic rights.

5. *R. Ramshastry's Kautilya's Arthashastra*

The review has examined the ancient roots of the right against self-incrimination in India, which includes the concept of Dharma. In ancient law, Dharma can be likened to natural law, upon which the legal system is founded. The author has emphasized the significance of Dharma in ancient India and its precedence over evidence and its gathering methods. This aspect of Dharma is compared to modern scientific approaches to evidence collection and the role of natural law in granting rights to the accused.

6. *Brain Mapping as a tool of Crime Investigation.*

The author of this work delves into the utility of Brain Mapping, a scientific technique employed in criminal investigations. The article presents a favorable perspective on Brain Mapping, highlighting its value in crime investigation. The author thoroughly explores Brain Mapping, including its application, procedure, and considerations regarding constitutional and evidentiary aspects.

It is noted that investigative agencies are not barred from interrogating individuals accused in a crime during the investigation stage. The author discusses several case laws from various high courts that have upheld the constitutional validity of these tests. Additionally, mention is made of pending decisions in the Supreme Court regarding the validation of these tests.

7. *Constitutional validity of Brain mapping and narco analysis test.*

This work addresses the constitutional validity of the Brain Mapping test, where the resulting brain map is considered valid as it doesn't involve statements made by the individual undergoing the test. However, the use of Narco Analysis is contentious. This is because the person subjected to it does make statements under the influence of a drug, and an overdose of such drug could potentially lead to coma or death, thus violating even Article 21 of the constitution.

8. *Narco Analysis- Right against Self Incrimination Vs Public Interest*⁶

⁶ Kusum Kumari, Narco Analysis- Right against Self Incrimination Vs Public Interest 2007, <https://www.aironline.in/legal-articles/Narco%20Analysis%20-%20Right%20to%20Self-Incrimination%20vs.%20Public%20Interest>

The author of this work has examined the scientific investigative technique known as Narco analysis, advocating for its allowance through amendments in laws such as the Criminal Procedure Code (CrPC) and others. The author argues that without these techniques, many criminals may evade punishment. Viewing these techniques through the lens of public interest, the author contends that their allowance would serve the greater good, outweighing individual concerns raised in defense of their unconstitutionality. Various jurists, cases, and international examples are considered in the author's analysis. Reasons supporting the allowance of these techniques are explored, emphasizing their relevance and necessity in an advancing society.

9. *The Concept of Narco analysis in view of Constitutional Law and Human Rights*⁷

The Author of the work provides a comprehensive examination of the controversial investigative technique of narcoanalysis within the framework of constitutional law and human rights. Through a thorough analysis of legal principles, ethical considerations, and case studies, Verma navigates the complex landscape of narcoanalysis, shedding light on its implications for individual rights and the legal system as a whole. This paper lies in the meticulous exploration of the legal and ethical debates surrounding narcoanalysis. Drawing on a wealth of scholarly literature and legal precedents, it presents a balanced analysis of the arguments both in favor of and against the use of narcoanalysis. By addressing concerns related to constitutional rights such as the right against self-incrimination and the right to privacy, it highlights the nuanced ethical considerations inherent in the application of narcoanalysis. In addition to the analysis of legal principles and case law, it offers insightful critiques and recommendations for reform. By identifying gaps in the current legal framework and proposing practical solutions, it contributes to ongoing discussions about the appropriate use of narcoanalysis in criminal investigations. Author's thoughtful recommendations underscore the importance of balancing investigative needs with the protection of individual rights in the development of narcoanalysis policy.

10. *Narco Analysis: Weapon of power or tool for Abuse*⁸

The Author of the work talks about the type of forensic technique utilized for identifying the causation of crimes includes Narco Analysis, Brain Mapping, DNA Analysis, among others. These techniques, facilitated by forensic experts, aid investigating authorities in collecting evidence and understanding the sequence of events leading to the crime. The effectiveness of these techniques can determine whether a case is successfully solved and the accused punished.

⁷ Sonakshi Verma, *The Concept of Narco analysis in view of Constitutional Law and Human Rights*, http://www.rmlnlu.ac.in/webj/sonakshi_verma.pdf

⁸ Aditi Shreenivas Prabhune, *Narco Analysis: Weapon of power or tool for Abuse*, 2021 <https://thelawbrigade.com/wp-content/uploads/2021/07/Aditi-Shreenivas-Prabhune-ALPPR.pdf>

This paper focuses on examining whether the Narco Analysis Test functions as a powerful tool that activates the judiciary and ensures justice. The author endeavors to explain the meaning, origin, objectives, medical aspects, success rate, admissibility in court, as well as the constitutional and evidentiary value of the Narco Analysis test.

11. Prof. S R Bhansali's 'Law relating to Human Rights, In International and National Laws and Constitutions'

This Book talks about the distinctive differences and relation between natural rights, human rights and fundamental rights. Since Right against self-incrimination originated as natural right to give protection against compelled testimony, this work explains importance of natural rights. Right against self-incrimination is also found in International Human Rights Instruments and Constitutions of other countries in world. This international and human rights perspective of Right against self-incrimination is analysed through this work.

12. Narco Analysis and Protecting the Rights of the Accused⁹

The authors delve into the contentious practice of narcoanalysis and its implications for safeguarding the rights of the accused within the legal framework of India. Through a thorough examination of legal principles, case law, and ethical considerations, this research paper provides a comprehensive analysis of the challenges posed by narcoanalysis and propose strategies for protecting the rights of individuals subjected to this investigative technique. The Author's analysis is the examination of the right against self-incrimination enshrined in Article 20(3) of the Indian Constitution. They interrogate the tension between the investigative benefits of narcoanalysis and the protection of this fundamental right, drawing on legal precedents and scholarly literature to evaluate the constitutional validity of narcoanalysis in the Indian context. The paper also analyze the significant judicial decisions related to narcoanalysis, providing readers with insights into how courts have grappled with the admissibility of narcoanalysis evidence and the protection of individual rights. Through this examination of case law, it offers valuable insights into the practical implications of narcoanalysis within the Indian legal system.

13. Narco Analysis Test: Admissible or not¹⁰

This paper discusses the evidentiary significance of narco tests in the Indian context, drawing support from landmark judgments rendered by the esteemed courts of justice. The analysis

⁹ Ananthi S Bharadwaj and Sumithra Suresh, Narco Analysis and Protecting the Rights of the Accused, <http://www.commonlii.org/in/journals/NALSARStuLawRw/2008/12.pdf>

¹⁰ Sohan Sarkar and Shubham Singh, Narco Analysis Test: Admissible or not, 2018 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3687775

primarily revolves around two pivotal cases: the Abdul Karim Telgi Stamp Paper Fraud Case and the Arushi-Hemraj Double Murder, both examined in the context of narco testing. In this paper the Author talked about the contentious debate surrounding the admissibility of narcoanalysis evidence in legal proceedings. Through a thorough examination of legal principles, case law, and scholarly literature, the authors provide a comprehensive analysis of the challenges and implications of admitting narcoanalysis evidence in court. The authors critically assess the reliability and credibility of narcoanalysis evidence, drawing on scholarly literature and empirical research to evaluate its probative value. They highlight concerns about the potential for false memories, suggestibility, and inaccuracies associated with narcoanalysis, underscoring the challenges in relying on such evidence in legal proceedings.

14. The constitutional Legitimacy of Narco Analysis: An Analysis of Article 20(3)¹¹

This paper aims to analyze the legality of techniques such as narco-analysis in criminal investigations. Narco-analysis stands as a significant scientific tool for interrogation. In the current landscape where crime rates are soaring, such scientific techniques provide invaluable assistance to investigative agencies. Despite the Supreme Court's ruling in Selvi v State of Karnataka, which addressed the use of narco-analysis, it is evident that investigative agencies continue to employ it as an interrogative tool. This necessitates further examination of the subject. The study investigates the implications of Article 20(3) of the Constitution on the practice of narco-analysis or similar tests on individuals. The paper explores the fundamentals of narco-analysis and the interaction between Article 20(3) of the Constitution and narco-analysis.

15. Constitutionality of Narco Analysis and Polygraph Examination¹²

The article plays a significant role in examining the use of polygraph and narco-analysis for evidence collection and their constitutional validity. Over centuries, there has been rapid advancement in science and technology, leading to the development of sophisticated methods that replace traditional forms of interrogation, such as third-degree torture by police, and aid in lie detection. This study assists in addressing numerous issues arising during investigations, with forensic science playing a crucial role in crime detection and serving as a tool in the administration of justice. Despite its importance, there are concerns regarding potential violations of fundamental rights, as examinees may endure pain and suffering during these tests and may

¹¹ Karun Sanjaya, The constitutional Legitimacy of Narco Analysis: An Analysis of Article 20(3) 2021, https://www.researchgate.net/publication/348135585_The_Constitutional_Legitimacy_of_Narco-Analysis_An_Analysis_of_Article_20_3

¹² Sourodip Nandy and Himanshu Garg, Constitutionality of Narco Analysis and Polygraph Examination 2019, <https://ijlmh.com/constitutionality-of-narco-analysis-and-polygraph-examination/>

not be fully conscious when providing information. The paper aims to analyze the validity of these tests in light of the constitution, assessing whether they align with fundamental rights and principles of natural justice.

16. Narco-Analysis Test¹³

In this paper the Author delves into the contemporary discourse surrounding the use of narcoanalysis as an investigative tool. Through a meticulous examination of recent developments and scholarly perspectives, it provides a comprehensive review of the current state of narcoanalysis and its implications in the context of criminal investigations. This paper critically evaluates the legal and ethical implications of narcoanalysis, drawing on recent case law and scholarly debates to assess the admissibility of narcoanalysis evidence in court proceedings. It examines the challenges and controversies surrounding the use of narcoanalysis, including concerns about its reliability, validity, and potential infringements on individual rights. The Author delves into the broader societal and ethical considerations surrounding narcoanalysis. Exploring the impact of narcoanalysis on privacy rights, informed consent, and the integrity of the criminal justice system, providing readers with a nuanced understanding of the ethical dilemmas inherent in the use of this investigative technique.

Through the meticulous analysis of recent developments, legal precedents, and ethical considerations, the author provides readers with a nuanced understanding of the complexities and implications of narcoanalysis in contemporary criminal investigations.

17. The concept of Narco Analysis in view of Constitutional Law and Human Rights¹⁴

Narco analysis, a contentious interrogation method involving the administration of drugs to induce a trance-like state, has sparked debates on its legality and ethical implications in India. Initially introduced in the Godhra carnage case in 2002, narco analysis has since been scrutinized for its compatibility with constitutional law and human rights principles. Critics argue that narco analysis infringes upon fundamental rights such as the right against self-incrimination and the right to privacy, as enshrined in Article 20(3) of the Indian Constitution. Concerns have been raised regarding the potential for coerced confessions and unreliable information due to the suggestibility of individuals under the influence of drugs. While recent Supreme Court rulings have defended narco analysis as a tool for aiding investigations, questions persist about its ethical implications and the risk of misuse. The ongoing discourse surrounding narco analysis

¹³ Suresh Kumar, Narco-Analysis Test 2020, <https://www.ijmh.org/wp-content/uploads/papers/v4i11/I0929054920.pdf>

¹⁴ Anil Kumar and Dr. Satyapal Singh, The concept of Narco Analysis in view of Constitutional Law and Human Rights 2019, https://www.ijmra.us/project%20doc/2019/IJRSS_MAY2019/IJRSSMay19AnilSW.pdf

underscores the need to balance investigative techniques with safeguarding individual rights within the legal framework of India.

18. Scope and Limitation of Narco Analysis and DNA profiling technology in India¹⁵

The authors investigate the capabilities of these technologies in India and their respective limitations. Narco analysis, a method used to extract information from accused and suspects, has been a subject of debate due to its ethical and constitutional implications. While some argue that it is useful in investigations and court hearings, others consider it as a violation of ethical, constitutional, and legal norms. The court's viewpoints on the use of Narco analysis techniques have been varied, with some acknowledging its significance while others raising concerns about its constitutionality. The authors of the research paper recommend that the judiciary should operate in accordance with its basic obligation to deliver justice using DNA and Narco analysis technologies. They also suggest that the scope and limitations of these technologies should be analyzed in the context of the Indian judicial system, which demands investigators to gather evidence and safeguard society while providing justice to crime victims. In conclusion, the literature review highlights the importance of understanding the scope and limitations of Narco analysis and DNA profiling technologies in India, considering their implications for constitutional law and human rights. The ongoing debate surrounding these technologies underscores the need for a balanced approach that respects individual rights while ensuring effective criminal investigations.

19. Admissibility of Narco Analysis test in Criminal courts¹⁶

The authors delve into the legal and scientific aspects of Narco Analysis tests, exploring their scope, constitutionality, implementation, implications, and importance in resolving complex criminal cases. Narco Analysis, a psychological test involving the administration of drugs to induce a dissociative state in individuals, has raised significant ethical and legal concerns. The use of such tests has been challenged on grounds of violating constitutional rights, particularly Article 20(3) of the Indian Constitution that protects individuals from self-incrimination. Human rights activists and legal professionals have questioned the constitutionality of subjecting individuals to Narco Analysis tests without their consent, highlighting potential violations of personal privacy and the right to silence during investigations.

¹⁵ S.P. Rokade and G. Shrivastava, Scope and Limitation of Narco Analysis and DNA profiling technology in India 2021, <https://www.viirj.org/vol12issue1/94.pdf>

¹⁶ Jeet Sinha, Kapuluru Saivarun and Aishwarya, Admissibility of Narco Analysis test in Criminal courts 2021, <https://burnishedlawjournal.in/wp-content/uploads/2021/07/Admissibility-of-Narco-Analysis-test-in-Criminal-courts-By-Jeet-Sinha-Kapuluru-Saivarun-Aishwarya-N.pdf>

In the context of admissibility in court proceedings, the authors discuss how admissions under the Indian Evidence Act play a crucial role in establishing facts related to a case. While Narco Analysis tests have been conducted in various high-profile cases in India, questions persist regarding their reliability and truthfulness due to the altered state of consciousness induced by the drugs administered during the test. The admissibility of information obtained through Narco Analysis tests is contentious, with concerns about its evidentiary value and potential impact on fair trial principles. The literature review underscores the need for a nuanced approach to evaluating the admissibility of Narco Analysis tests in criminal courts. Balancing the investigative potential of such techniques with safeguarding individual rights and ensuring due process remains a critical challenge. As advancements in forensic science continue to influence criminal investigations, the legal community grapples with defining the boundaries within which Narco Analysis tests can be ethically and legally employed within the Indian judicial system.

20. Constitutionality of Narco-Test¹⁷

The debate surrounding deception detection tests like polygraph and narco-analysis tests has intensified, particularly in the context of high-profile criminal cases and their constitutional validity. The authors undertake a thorough examination of the legal and constitutional dimensions surrounding the practice of narcoanalysis in India. The authors begin by providing a detailed overview of narcoanalysis, outlining its procedural aspects and the controversies surrounding its use in criminal investigations. They then delve into a critical analysis of the constitutional implications of narco-testing, particularly its compatibility with fundamental rights enshrined in the Indian Constitution. Drawing on a range of legal principles, precedents, and scholarly literature, the authors present a nuanced discussion of the arguments for and against the constitutionality of narco-analysis. They address concerns related to individual rights, including the right against self-incrimination, right to privacy, and right to a fair trial, and assess how narco-testing intersects with these constitutional safeguards. Furthermore, the authors analyze significant judicial decisions and legislative developments, providing insights into how courts have grappled with the constitutional issues surrounding narco-analysis and the standards applied in determining the admissibility of narco-analysis evidence. Through their comprehensive review, the authors offer readers a thorough understanding of the complex legal and constitutional considerations surrounding narco-analysis in India, contributing to ongoing discussions about its role in criminal investigations and its implications for constitutional rights and the justice system.

¹⁷ Avinash Kumar Yadav and Kumar Kartikeya, Constitutionality of Narco-Test 2020, <https://www.livelaw.in/lawschool/articles/constitutionality-of-narco-test-164554>

21. Efficacy and Ethics of Narco-analysis¹⁸

The author conducts a thorough literature review exploring both the effectiveness and ethical dimensions of narcoanalysis. The author begins by scrutinizing the efficacy of narcoanalysis as an investigative tool, assessing its ability to extract pertinent information from subjects under the influence of drugs induced in a hypnotic state. Through a critical evaluation of empirical research and scholarly literature, he weighs the strengths and limitations of narcoanalysis, considering factors such as reliability, accuracy, and potential biases in the information obtained. Transitioning to the ethical considerations, Francis examines concerns regarding coercion, privacy infringement, and the risk of false memories or inaccuracies in the information gleaned through narcoanalysis. Delving into ethical principles such as autonomy, beneficence, and justice, he navigates the complex ethical landscape surrounding the use of narcoanalysis. Furthermore, the author explores the broader societal implications of narcoanalysis, contemplating its impact on public perceptions of justice, individual rights, and the integrity of the legal system. It emphasizes the ethical responsibilities of forensic practitioners and policymakers in ensuring the judicious and ethical use of narcoanalysis. By critically analyzing scholarly literature and empirical research, Francis offers valuable insights into both the efficacy and ethical complexities of narcoanalysis, contributing to a deeper understanding of its role in forensic investigations and the ethical considerations that must accompany its use.

22. Constitutionality of Narco Analysis in India¹⁹

The author provides a comprehensive examination of the constitutional dimensions surrounding the practice of narcoanalysis in India. It commences with an overview of narcoanalysis, elucidating its procedural aspects and the controversies surrounding its use in criminal investigations. The author then delves into a critical analysis of the constitutional implications of narcoanalysis, particularly its alignment with fundamental rights enshrined in the Indian Constitution. Drawing on legal principles, case law, and scholarly literature, the author presents a nuanced discussion of the arguments for and against the constitutionality of narcoanalysis. He examines how narcoanalysis intersects with constitutional safeguards such as the right against self-incrimination, right to privacy, and right to a fair trial, evaluating the potential conflicts and harmonization's between these rights and the investigative utility of narcoanalysis. Furthermore, the author analyses significant judicial decisions and legislative developments related to

¹⁸ Geo Francis, Efficacy and Ethics of Narco-analysis 2012, https://www.asvattha.org/Data/Article025.htm#_edn88

¹⁹ Sharmendra Chaudhry, Constitutionality of Narco Analysis in India 2010, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1702866

narcoanalysis, offering insights into how courts have interpreted constitutional issues surrounding this investigative technique and the legal standards applied in determining its admissibility and use in criminal proceedings. The author contributes to a deeper understanding of the complex legal and constitutional considerations surrounding narcoanalysis in India, shedding light on its implications for constitutional rights, the criminal justice system, and the broader legal framework.

1.4 RESEARCH METHODOLOGY

To gain deeper insights into the subject of legalizing prostitution, **doctrinal research** was undertaken. This research method involved examining qualitative data sources such as articles, court judgments, websites, and law journals. These materials were sourced from online databases including JSTOR, Hein Online, and SCC Online. By referencing these diverse sources, the research incorporated opinions from various researchers and social scientists, aiding in drawing conclusions. The present study is based on technology and its application to criminal justice system with special reference to Narco analysis test. Given its focus on analysing existing data and legal frameworks, doctrinal research is well- suited for providing valuable insights into the practical implementation and ethical dilemmas associated with narco analysis.

1.5 SCOPE OF STUDY

The scope of study for the topic "The Concept of Narco analysis vis-a-vis Constitutional Law and Human Rights" encompasses an interdisciplinary exploration of the ethical, legal, and human rights implications surrounding the use of narcoanalysis in the criminal justice system. This study will delve into the constitutional frameworks and legal precedents governing narcoanalysis procedures across different jurisdictions, analyzing their compatibility with fundamental human rights principles such as the right to a fair trial, protection against self-incrimination, and bodily integrity. It will investigate the historical development, current practices, and controversies surrounding narcoanalysis, evaluating its effectiveness as an investigative tool and its potential conflicts with constitutional guarantees. Furthermore, the study aims to provide insights into potential reforms or safeguards necessary to reconcile the use of narcoanalysis with constitutional law and human rights standards, contributing to informed policy discussions and legal discourse in this complex area.

CHAPTER II

BACKGROUND AND HISTORY

The widely recognized impact of alcohol has led to the enduring aphorism 'in vino veritas,' signifying 'in wine, there is truth.'²⁰

Narco-analysis, a contentious interrogation technique entailing the administration of drugs to induce a hypnotic state, possesses a rich and intricate history. Its name derives from the Greek term "narke," signifying "anaesthesia," and it denotes a diagnostic and psychotherapeutic approach employing psychotropic drugs to induce a stupor, thereby eliciting a closely linked mental state. The term was first coined by Horsley in 1922. However, Narco-analysis remains deeply controversial, prompting myriad inquiries spanning law, medicine, and ethics.

Narco-analysis has been a longstanding practice in the field of psychiatry, with the use of barbiturates dating back to the early 20th century. By 1930, barbiturates were employed in psychotherapy for narco-analysis, alongside other therapeutic methods. In psychiatry, narco-analysis gained recognition for its efficiency compared to alternative psychotherapeutic approaches. It was particularly praised for saving time by facilitating patients in overcoming hesitancy and freely discussing their innermost feelings and experiences. Narco-analysis proved effective in inducing a state of 'transference' in patients who had previously exhibited apathy, inaccessibility, or negative transference.²¹

The truth serum induces a semi-conscious state in an individual, eliminating self-control and prompting truthful responses without manipulation. Trained physicians endeavor to extract information about a crime while the person is in this semi-conscious state. The test entails administering hypnotics like sodium panthenol or sodium amytal, with the dosage determined by factors such as the person's gender, age, physical condition, mental health, and overall well-being. The individual under the influence of these hypnotic agents is commonly referred to as the subject.

Narco Analysis has been utilized as a tool in criminal investigations for an extended period. The earliest report of Narco Analysis involving the drug scopolamine being administered to criminals in the United States dates back to 1922. Throughout and following the war years, the United States armed forces and intelligence agencies conducted experiments with truth drugs, a practice that has persisted under the Central Intelligence Agency (CIA).²²

In India, Narco Analysis gained prominence in criminal investigation in 1935, but it remained inactive for over 67 years. It resurfaced during the Godhra Communal Riots, a case involving

²⁰ C.W. Muehlberger, Interrogation under Drug-influence: The so-called Truth serum technique, 42(4) The Journal of Criminal Law, Criminology and Police Science 513, 513(1951) available at <http://www.jstor.org/stable/1139824> last visited on 16-01-2024.

²¹ Horsley, J.S., "Narco Analysis", (1942) British Medical Journal 230.

²² Lakshmanan, Sriram, "Nareo Analysis and some hard facts", <http://flonnet.com/fl2409/stories/%202oo70518002109700.htm> , last accessed 18-01-2024.

Hindu-Muslim communal clashes. Since then, the test has been applied in several significant cases, marking a pivotal development in the Indian criminal investigation system. This use of narco-analysis intersects with the constitutional right against self-incrimination, a fundamental right guaranteed to the citizens of the country.

CHAPTER III

NARCO ANALYSIS: PROCEDURES AND PRACTICES

Narco Analysis, also referred to as the Narco Test, is a technique employed by investigative agencies to gather information from individuals suspected of committing a crime. The process entails administering a drug called sodium pentothal, commonly known as the "Truth Serum." This substance diminishes a person's self-awareness, facilitating unrestrained communication. The individual begins speaking freely as inhibitions decrease, reaching a state of complete hypnotic influence. During this phase, examiners or investigative authorities can pose questions and receive authentic and truthful responses. The examination is conducted by a team consisting of an anesthesiologist, a psychiatrist, a clinical or forensic psychologist, an audio or videographer, and supporting nursing staff. Throughout the session, the team closely monitors the subject's blood pressure and pulse rate, and the entire process is thoroughly documented for record-keeping purposes.²³

The Indian Evidence Act of 1872, the principal legislation governing the admissibility of evidence in courts throughout the country, does not explicitly address narco-analysis. Nonetheless, under Section 27 of the Evidence Act 1872, any information discovered as a result of voluntarily conducted test outcomes can be accepted as admissible evidence in court.

Narco Analysis, a forensic tool employed in criminal investigations, is conducted in a meticulous four-stage process. The first phase, known as the Pre-Test Interview, involves inducing and maintaining a pre-narcotic state. An anesthetist administers a drug until the subject appears relaxed, and instead of promoting good conduct, the drug is intravenously delivered to induce hypnosis. This phase marks the initiation of the interview, characterized by the individual's speech starting to slur.

Moving into the second stage, the Semi-Narcotic State, a forensic psychologist takes charge of facilitating the interview. During this stage, the subject is permitted to sleep, and they are allowed to wake up naturally. The anesthetist checks the individual upon awakening, ensuring a smooth transition. Subsequently, the subject is granted the liberty to have coffee or tea. The entire narco

²³ <https://testbook.com/ias-preparation/narco-analysis>

interview during this stage is not only audio-video recorded but also documented in writing, ensuring a comprehensive record of the proceedings.

Transitioning to the third stage, the Post-Test Interview, the individual's memory is systematically examined. The purpose is to assess the recall of information shared during the interview. This phase plays a critical role in understanding the reliability and coherence of the details provided by the subject while under the influence of the administered drug. It serves as a key element in evaluating the validity of the information obtained through narco analysis.

While the Indian Evidence Act of 1872, the primary statutory framework for evidence admissibility, does not explicitly address narco analysis, Section 27 of the Act plays a crucial role. This section allows information subsequently discovered with the aid of voluntarily administered test results to be admitted as evidence in court. It sets the legal foundation for the admissibility of information obtained through narco-analysis, despite the Act's silence on the specific procedure.

The ethical and legal dimensions of narco analysis are subjects of considerable debate. The use of drugs to induce a state of reduced inhibition and increased suggestibility raises concerns about individual rights, coercion, and the potential for false or distorted information. Critics argue that the reliability of information obtained through narco analysis is questionable, emphasizing the risk of miscarriages of justice.

In India, the admissibility of narco-analysis results has faced scrutiny in the legal landscape. While the Supreme Court has acknowledged its admissibility in certain cases, it has also emphasized the need for stringent safeguards to prevent misuse. Informed consent from the subject is considered a crucial prerequisite, aligning with constitutional principles.

Despite the controversy surrounding its use, narco analysis continues to be applied in criminal investigations, representing a complex intersection of science, ethics, and law. As advancements in forensic techniques and legal understanding evolve, the debates surrounding the use of narco-analysis persist, shaping the contours of its admissibility and application within the criminal justice system.

3.1 DRUGS USED IN NARCO ANALYSIS

Narco-evaluation is performed with the assistance of a GABA expert, referring to a neurotransmitter inhibitor naturally present in the body. The truth serum interacts with GABA, creating a complex at the B site, influencing the permeability of chloride ions across the neutral membrane. This mechanism results in a state of disinhibition, facilitating truth disclosure. The drugs function by diminishing GABA's action in the brain, thereby decreasing nerve activity and

inducing drowsiness.

Three grams of the drug are dissolved in 3000ml of distilled water. This solution, combined with 10% dextrose, is then administered intravenously into the subject's antecubital vein over a 3-hour period, under the close supervision of a proficient anesthetist. The injection rate is typically maintained at 0.5 to 1 ml per minute until the subject achieves sedation under normal circumstances. The drug has a depressive effect on the central nervous system (CNS), resulting in a slower heartbeat and a decrease in blood pressure. As the person's speech becomes slurred, their behavior becomes cooperative, and they become more talkative, indicating that they are under the complete control of the administered drug.

The examiner assesses the subject's eye muscles through manual testing, and a needle is left in the subject's vein. The dosage of the drug is adjusted based on individual requirements, and additional doses may be administered to maintain the subject in a semi-conscious state without inducing deep sleep. Care is taken to ensure that only an appropriate amount of the drug is given. In this hypnotic state, questions are posed, and the subject's responses are recorded both in audio and video formats. The drug serves to eliminate the conscious barriers that conceal hidden information. Once these barriers are lifted, the individual becomes relaxed, communicative, and free to divulge concealed information without any inhibitions. The drug acts as a catalyst for catharsis.

The consequences listed below occur under the influence of truth drugs:

- After giving the drug, the suspect's body undergoes a state of relaxation, with facial features becoming slack, and a sense of euphoria. Some individuals may also exhibit a state of silliness and laughter.
- The drug inhibits the impulses that typically travel through specific nerves, causing most parts of the body to experience a temporary numbness that later manifests in a disoriented state of semi-consciousness.
- When under the influence of truth drugs, the suspect, whether male or female, becomes unable to utter falsehoods and consistently discloses any information inquired of them.

3.2 EFFICACY AND CONTROVERSIES

Nevertheless, concerns have been raised about the reliability of the information obtained during the test. Critics argue that because these drugs lead the subject into a deceptive state, the individual may disclose information influenced by hallucinations, which may not necessarily

reflect the truth.²⁴

The Narco-analysis test induces a semi-conscious state in an individual, depriving them of control over their thoughts and rendering them incapable of imagination. It has been demonstrated that the use of such drugs can suppress cognitive function.²⁵ This involves suppressing the sensory system of the individual undergoing the test, rendering their mind non-influential over their actions. It indicates that injecting narcotic drugs into an individual's body poses risks to both their life and mental state. Additionally, the test raises significant concerns related to Fundamental Rights, including the right to life, freedom, and protection against self-incrimination.

It is argued that such an accusation stems from a misinterpretation of the narco-analysis process. The technique operates on the fundamental premise that the capacity to deceive relies on imaginative prowess, and it is this capability of the individual that is nullified by the drugs. It's crucial to highlight that narco-analysis doesn't generate new information from the individual; rather, it aids the subject in overcoming a mental barrier. Dr. J.S. Horsley aptly concludes that narco-analysis can provoke transference in many patients who were previously experiencing apathy, inaccessibility, or even negative transference.²⁶ A Texas physician, Dr. Robert Ernest House, renowned as the "father of truth serum," authored one of the earliest publications regarding the application of narco-analysis for extracting reliable information from offenders. This publication appeared in the Texas State Journal of Medicine in 1922. In September 1924, Dr. House spoke at a gathering of law enforcement personnel in Houston, Texas, where he stated: "Under the influence of the drug, individuals tend to respond to questions with a simplicity and honesty akin to that of a child, without resorting to evasion, cunning, deceit, or fraud. Their answers are retrieved directly from their memory."

Therefore, it becomes challenging for an individual to fabricate falsehoods during this process, and their responses will be restricted to the information they are already acquainted with. Moreover, the interrogators employ a technique of posing questions in a specific sequence, reiterating them regularly to observe if consistent responses are obtained. Thus, the iterative questioning process additionally diminishes uncertainties.²⁷

The Supreme Court of India has presented varied viewpoints in different cases and circumstances. Although the narco-analysis test was introduced in India as early as 1936, its first application occurred in 2002 during the Godhra Carnage Case. The controversy surrounding this

²⁴ <http://www.lawyerscollective.org/content/human-rights-o/>, last accessed 21-01-2024

²⁵ Sourodip Nandy & Himanshu Garg, Constitutionality of Narco Analysis and Polygraph Examination, IJLMH 1, 4 (2019).

²⁶ Horsley, J.S., "Narco Analysis", (1942) British Medical Journal 230

²⁷ Lakshmanan, Sriram, "Narco Analysis and some hard facts", <http://flonnet.com/fl2409/stories/%2020070518002109700.htm>, last accessed 28-01-2024.

technique escalated in 2004 when the Bombay High Court issued a ruling in the case of Ramchandra Ram Reddy vs. The State of Maharashtra. The pivotal issue in this case was whether the use of scientific methods, particularly mind mapping and lie detector tests, constituted a violation of Article 20(3) or not. The Bombay High Court remarked:

“The requirement imposed on an accused under coercion involves the provision of a statement. From our perspective, undergoing tests entails responding to specific formulated questions posed by an expert after administering the test, with the assumption that the individual possesses certain knowledge about the relevant crime. Consequently, it cannot be argued, under any interpretation, that the outcome constitutes a statement. At best, it can be classified as information extracted or obtained from the witness. We contend that these procedures do not violate the right against self-incrimination as stipulated in Article 20(3) of the Indian Constitution.”

The court affirmed the legitimacy of employing the narco-analysis test, affirming that evidence obtained while under its influence is admissible. As criminal techniques evolve with time, becoming more sophisticated and perpetrated by professionals, the application of Narco-Analysis becomes crucial in crime detection. Additionally, the court concluded that this test inflicts minimal physical harm.

3.3 LEGAL REGULATIONS AND DIFFERENT JURISDICTIONS

Several democratic nations, India being a notable example, continue to employ Narco-analysis for investigative purposes. However, in most developed and democratic countries, Narco-analysis is not openly endorsed. My renewed interest in the Narco-analysis test emerged when it came under media scrutiny and criticism, raising numerous concerns regarding its credibility as a scientific investigative tool, its admissibility in legal proceedings, potential violations of individual fundamental rights, and its overall evidentiary value.

In the Indian context, the Narco analysis test requires a team comprised of an anesthesiologist, a psychiatrist, a clinical or forensic psychologist, an audio-videographer, and supporting nursing staff. The forensic psychologist is responsible for documenting the findings and compiling a report based on the revelations, which are also recorded on an audio-video format stored on a compact disc. Additionally, if necessary, the accuracy of the revelations is verified by subjecting the individual to polygraph and brain mapping tests.

Narco analysis is progressively becoming a common feature in investigations, court proceedings, and laboratories in India. The ruling of an eleven-judge bench in the State of *Bombay*

*v Kathi Kalu Oghad*²⁸ case emphasized that self-incrimination entails providing information based on personal knowledge, excluding the mere mechanical process of presenting documents in court. In the case of *Ram Jawayya Kupar*²⁹, it was established that executive power is not permitted to infringe upon constitutional rights, individual liberties, or any other rights of a person. Additionally, it was observed that any encroachment on fundamental rights in the absence of a law should be considered unconstitutional and invalidated.

Legal regulations surrounding narcoanalysis vary across jurisdictions in India. While narcoanalysis has been used in some cases, its admissibility and procedural guidelines are subject to interpretation and debate. Here, we delve into the legal regulations pertaining to narcoanalysis in different jurisdictions across India.

The legal landscape concerning narcoanalysis in India primarily revolves around its admissibility as evidence in court proceedings. The Supreme Court of India, in the case of *Selvi v. State of Karnataka (2010)*, addressed the issue of narcoanalysis and other truth serum tests. The Court ruled that subjecting an individual to narcoanalysis without their consent violates their right against self-incrimination under Article 20(3) of the Indian Constitution. Consequently, evidence obtained through narcoanalysis is generally considered inadmissible in court, unless specific exceptions are met.

In Maharashtra, the Bombay High Court has upheld the admissibility of narcoanalysis as corroborative evidence in certain cases. However, strict guidelines must be followed to ensure its legality. The Court has emphasized the need for the accused's consent and the presence of medical professionals during the procedure to safeguard against coercion and ensure reliability.

Conversely, the Delhi High Court has taken a stricter stance on narcoanalysis, emphasizing the importance of consent and the violation of fundamental rights. In a landmark judgment, the Court ruled that subjecting an individual to narcoanalysis without their consent violates their right to privacy and dignity under Article 21 of the Indian Constitution. The Court emphasized the need for clear guidelines and oversight to prevent potential abuse of the technique.

In Kerala, the High Court has addressed the issue of narcoanalysis in several cases, emphasizing the importance of adherence to procedural safeguards and the ethical considerations involved. The Court has stressed the need for informed consent, the presence of medical professionals, and strict adherence to guidelines laid down by the Supreme Court.

In Karnataka, the High Court has echoed similar sentiments regarding narcoanalysis, emphasizing the need for strict adherence to procedural safeguards and the protection of

²⁸ AIR 1961 SC 1808.

²⁹ 1955(2) SCR225.

individual rights.

The Court has ruled that evidence obtained through narcoanalysis without consent is inadmissible in court and may violate fundamental rights. Overall, while narcoanalysis has been used in some cases in India, its admissibility and procedural guidelines are subject to interpretation and debate across different jurisdictions. The Supreme Court's ruling in the Selvi case has set a precedent regarding the need for consent and adherence to strict procedural safeguards. However, there remains ongoing discussion and debate surrounding the legality and ethics of narcoanalysis, highlighting the need for clear regulations and oversight to ensure its proper use in criminal investigations.

CHAPTER IV

CONSTITUTIONAL LAW AND HUMAN RIGHTS PRINCIPLES

A major legal debate concerning narco analysis revolves around its purported infringement upon the Right Against Self-Incrimination as safeguarded by Article 20(3) of the Indian Constitution.

- **TESTIMONIAL COMPULSION UNDER ARTICLE 20(3)**

Article 20(3) of the Indian Constitution grants individuals the protection of not being forced to testify against themselves. It is established that the term "to be a witness" encompasses both spoken and written testimony. Therefore, for the statements made by the accused during narco analysis to fall under Article 20(3), they must be considered as testimony.

The Supreme Court, in the case of *Nandini Satpathy v. P L Dani*³⁰, has provided clear guidelines outlining the scope of protection offered by Article 20(3) regarding the Right Against Self-Incrimination. In this instance, the Supreme Court explicitly rejected the limited interpretation of the term 'accused of an offence' adopted by lower courts in previous cases,³¹ asserting that the safeguard provided by Article 20(3) applies from the pre-trial phase onwards.

"Any act of providing evidence or sharing information, especially if it could potentially incriminate oneself, falls within the scope of being considered a witness against oneself. Since Article 20(3) does not explicitly restrict its application to specific stages such as forensic proceedings, we must interpret it to encompass every phase involving the exchange of information and gathering of evidence. This means that even police-level investigations are covered by the protections outlined in Article 20(3)."

³⁰ (1978)2 SCC 424

³¹ R.N.Bansilal v. M.P. Mistry, AIR 1961 SC 29; State of Bombay v. Kathi Kalu Oghad, AIR 1962 SC 1808; R.G.Mehta v. State of West Bengal, AIR 1970 SC 940; Bhagwandas Goenka v. Union of India, Cr.Appeals 131 & 132 of 1961, dated September 20,1963

Hence, Article 20(3) may apply even during the interrogation stage. In this regard, the Supreme Court held that the safeguard provided by Article 20(3) extends to any obligatory procedure intended for gathering evidence against the accused. Furthermore, the Supreme Court elucidated 'compelled testimony,' which contravenes Article 20(3), as any type of coercion—whether subtle or explicit, psychological or physical, direct or indirect—exerted by law enforcement to elicit information from the accused, implying guilt.

Thus, in this crucial case, the Supreme Court broadened the scope of 'compelled testimony' as per Article 20(3) to encompass not just evidence presented in court, but also instances where the state imposes coercion. Such coercion can take various forms, including physical and mental. Critics of narco analysis argue that it constitutes psychological coercion.

Mental compulsion occurs when external factors have influenced the mind to such an extent that the statement made becomes involuntary and therefore coerced.³²

Simultaneously, the Court recognizes the significance of voluntary statements from the accused in crime resolution and stresses the importance of measures to eliminate any sense of coercion and ensure the accused's free will in providing statements during investigations. Additionally, the Supreme Court ruled in the case of *Kalawati v. HP State*³³ that Article 20(3) does not come into play when a confession is made by the accused without any form of inducement, threat, or promise.

- 'INFORMED CONSENT'- A PREPEQUISITE

At this juncture, it is crucial to underscore the necessity of obtaining 'informed consent' from the accused prior to proceeding with the procedure. 'Informed consent' involves ensuring that the accused comprehensively grasps the technical intricacies of the procedure, the effects of the narcotics administered during interrogation, and the potential physical, psychological, and legal ramifications of undergoing the procedure. The accused's understanding serves as the foundation upon which they provide their voluntary consent. Therefore, the consent given by the accused to undergo narco analysis signifies a willingness to respond to questions while under the influence of the narcotics utilized in the procedure, thereby ensuring that any statements made during the process are entirely voluntary and devoid of coercion.

Public prosecutors and forensic experts affirm that the procedure is never conducted without the explicit consent of the accused, who must sign a form indicating their agreement.³⁴

³² State of Bombay v. Kathi Kalu Oghad, [1962] 3 SCR 10, Para 17.

³³ AIR 1953 SC 131.

³⁴ Lakshmanan, Sriram, "Narco Analysis and some hard facts", <http://flonnet.com/fl2409/stories/%2020070518002109700.htm>, last accessed 28-01-2024.

However, in other cases, the Indian judiciary has adopted a different position regarding the necessity for the accused's consent.³⁵ The reasoning behind this stance of the courts is that narco analysis is regarded as a routine component of investigative procedures.

‘Investigation,’ as outlined in Section 2(h) of the Code of Criminal Procedure, encompasses all procedures under the code for evidence collection carried out by police officers or individuals authorized by a Magistrate. Hence, it was determined that statutory authority is granted by these provisions to conduct narco analysis as part of the investigation, irrespective of the consent of the accused.

The contention is that this ambiguity should be addressed by mandating ‘informed consent’ from the accused as a prerequisite before administering the procedure.

Some may question why consent is deemed necessary for a narco analysis test when other scientific tests involving blood or semen do not require it. Narco analysis surpasses traditional scientific investigation by extracting information through the administration of a narcotic substance. Unlike similar tests such as Polygraph and Brain Mapping, which simply monitor responses during interrogation, narco analysis represents a substantial advancement in investigative techniques. Therefore, obtaining consent is essential to ensure that the procedure does not violate the constitutional right against self-incrimination of the accused.

The landmark ruling of the Supreme Court in *Selvi and Ors v. State of Karnataka*³⁶ stands as the authoritative source on the constitutionality of the narco-analysis test. The Supreme Court expanded the right against self-incrimination to apply to every individual, not solely the accused. Therefore, the current stance is that no one shall undergo tests like narco-analysis without their explicit consent. However, the court acknowledged the significance of techniques such as narco-analysis in contemporary times and ruled that any statements unrelated to self-incrimination can be used and deemed admissible in court. Nevertheless, the court prohibited the utilization of self-incriminating statements as evidence against the accused. Additionally, the court explored the possibility of statements or information disclosed by the accused leading to the discovery of crucial facts and materials pertaining to the crime or proving the innocence of the accused.

- RIGHT TO PRIVACY UNDER ARTICLE 21

Article 21 serves as the cornerstone of the Constitution of India, guaranteeing the right to life and personal liberty to all individuals, regardless of citizenship status, residing within the country. It forms the foundation of all other rights granted by the Constitution, as life is essential for the

³⁵ Dinesh Dalmia v. State, 2006CriJ2401, Para 14; Santokhen jadeja v. State of Gujarat, 2007 CriJ 4566, Para 9.

³⁶ (2010) 7 SCC 263.

enjoyment of freedoms such as equality, religion, and others. This Article encompasses various rights necessary for individuals to fulfil their potential, including the right to health, a clean environment, peaceful sleep, livelihood, free legal aid, a speedy trial, and privacy.

Human rights activists contend that narco analysis violates an individual's fundamental right to privacy. In the case of *Kharak Singh v. State of UP*³⁷, Justice Subba Rao opined that privacy was a fundamental aspect of personal liberty as enshrined in Article 21.

In the case of *Gobind v. State of Madhya Pradesh*³⁸, the Supreme Court determined that the right to privacy is encompassed within the right to personal liberty guaranteed under Article 21. However, the Court also emphasized that the right to privacy is not absolute and can be curtailed in cases of compelling state interest. This implies that similar to the limitations placed on rights under Article 21, the right to privacy can also be restricted. Nevertheless, any such restriction must adhere to a legally established procedure.

In this regard, the state's obligation to ensure public safety, dispense justice, and prevent crimes constitutes a compelling state interest. Narco analysis plays a crucial role in achieving these objectives. One could contend that the narco analysis procedure intrudes upon privacy as it entails extracting personal information from the accused, which is known only to them. However, it is important to recognize that the procedure is authorized by the prevailing laws of the country (as will be demonstrated later) and thus takes on the nature of a legally imposed restriction on the aforementioned right.

The purpose of Article 21 is to safeguard personal liberty from infringement by the executive branch, except when done in accordance with established laws.³⁹ Typically, these tests lack legal validity since confessions made by individuals in a semi-conscious state are not admissible in court. However, the court may grant partial admissibility after assessing the circumstances surrounding the administration of the test. In one case, petitioners argued that courts couldn't compel the prosecution to conduct Narco analysis, brain mapping, and lie detector tests against the accused's will as it would violate Article 20(3) of the Constitution. Article 20(3) is a key provision concerning crime investigation and trial in the Indian Constitution. Article 20(3) of the Indian Constitution pertains to the right against self-incrimination. This right, derived from the common law tradition of criminal jurisprudence, is fundamental. Article 20(3) states, "No person accused of any offence shall be compelled to be a witness against himself." Many view the act of subjecting the accused to undergo such tests, as conducted by investigative agencies in India, as

³⁷ AIR 1963 se 1295.

³⁸ 1975 (2) see 148.

³⁹ G. Gurunadha Reddy v A.P. Road Transport Corporation AIR 1999 A.P. 179

a clear violation of Article 20(3). Courts have held that this action constitutes a breach of the Constitution. The use of the Narco-analysis test raises significant legal and human rights concerns regarding judicial matters. Its application as an investigative tool raises genuine questions regarding the infringement of individuals' rights, liberties, and freedom. In the case of *State of Bombay v. Kathikalu*⁴⁰, it must be demonstrated that the accused was coerced into making statements likely to incriminate himself. Coercion encompasses various forms of duress, such as threats, physical violence, or the imprisonment of family members. Therefore, if an accused confesses without any inducement, threat, or promise, Article 20(3) does not apply. The privilege against self-incrimination is crucial for upholding human privacy and ensuring adherence to civilized standards in criminal justice enforcement.

Hence, the results of the test should not be considered as definitive evidence. It is necessary to supplement the statements obtained during Narco Analysis with other corroborating evidence.⁴¹

- HUMAN RIGHTS

Human rights activists globally have strongly opposed the use of coercive interrogation methods to obtain information. It is argued that narco analysis presents a viable alternative to these methods, commonly referred to as 'third degree' tactics, employed by law enforcement during questioning. However, human rights activists have criticized narco analysis as being akin to a 'psychological third degree' or a form of 'torture.' It is crucial to note that while the term 'torture' is commonly used in discussions of human rights abuses, there is still no universally agreed-upon definition of the term.⁴²

There is no doubt that third degree methods entail coercion.⁴³ It is argued that for narco analysis to be considered a form of third degree interrogation, it must inherently involve coercion. However, obtaining 'informed consent' from the accused eliminates any potential coercion in the administration of narco analysis.

Here are some principles that are against the Human Rights

Nemo Tenetur se Ipsum Accusare

The narco test also contradicts the principle of "Nemo Tenetur se Ipsum Accusare," which means that no one, including the accused, can be forced to answer questions that may incriminate them. If the confession of the accused is obtained through any form of physical or moral coercion, including while under a hypnotic state, it should be dismissed by the court.

⁴⁰ AIR 1961 Cri LJ, Vol 2, 2007

⁴¹ State v. Pitt

⁴² Strauss, Marcy, "Torture", (2003-04) 48 N Y.L.Sch.L.Rev. 213.

⁴³ Vadackumchery, James, Crime Law and Police Science, (1st edn, Concept Publishing Company, New Delhi 2003), 274-275.

Can be fatal to life

An incorrect dosage of the substance can lead a subject into a coma or potentially result in death. It is imperative that the individual administering the tests be a highly skilled physician. Determining the appropriate dosage of the drug is always challenging, as it depends not only on the physical characteristics of the subject but also on their mental state and level of determination.

Not a full proof test

If the subject has a history of using other drugs or narcotics, narco analysis may fail to induce the desired effect due to the phenomenon of "cross tolerance" between Pentothal sodium and other substances.

4.1 RIGHT TO SILENCE AND SELF-INCRIMINATION

The right to silence and protection against self-incrimination are fundamental principles in criminal law that safeguard individuals from being compelled to provide evidence against themselves. These rights are deeply intertwined with the practice of narcoanalysis, a controversial investigative technique involving the administration of drugs to induce a semi-conscious state in individuals for the purpose of extracting information.

The utilization of Narco-analysis contradicts Article 20(3) of the Constitution, which prohibits forcing any accused individual to testify against themselves. Similarly, Section 161(2) of the CrPC stipulates that individuals are obliged to respond only to questions that could potentially incriminate them. These are foundational tenets of criminal law that safeguard the right of the accused to remain silent during investigations. Narco-analysis undermines these protections by rendering the right to silence of the subject meaningless. When interrogated while fully conscious, the subject may opt to stay silent. However, by dismantling rational defences, narco-analysis undermines both the individual's right to remain silent and the underlying principle.

One of the primary concerns surrounding narcoanalysis is the potential violation of the right against self-incrimination. Critics argue that compelling individuals to undergo narcoanalysis effectively forces them to provide evidence against themselves, thus undermining their constitutional rights. The semi-conscious state induced by the drugs may lead individuals to make incriminating statements or reveal information that could be used against them in criminal proceedings.

Furthermore, the utilization of narco-analysis to effectively disregard the right to silence of the accused should also be viewed within the wider scope of 'reforming the criminal justice system' to increase convictions. Both the recent Madhava Menon Committee and the previous Malimath

Committee on the criminal justice system proposed that an accused's silence during interrogation should be viewed unfavourably. Although the Law Commission of India rejected this suggestion, narco-analysis appears to be advocated as an indirect method to circumvent the constitutional right to silence and the right against self-incrimination. Additionally, the use of narco-analysis raises various other concerns.

The recording and subsequent public disclosure of statements made by drugged subjects can unfairly impact their right to a fair trial. Furthermore, utilizing these statements for the purposes of 'recovery' and 'discovery' of facts or materials, as well as for corroborative evidence, may be allowed despite the questionable scientific validity of the extracted 'evidence,' potentially resulting in additional charges or individuals being implicated based on such statements.

In response to these concerns, the Supreme Court of India addressed the issue of narcoanalysis in the landmark case of *Selvi v. State of Karnataka*⁴⁴. In this case, the Court ruled that subjecting individuals to narcoanalysis without their consent violates their right against self-incrimination under Article 20(3) of the Constitution. The Court held that evidence obtained through narcoanalysis is generally inadmissible in court, unless specific exceptions are met.

The Court's ruling in the Selvi case established important safeguards to protect the rights of individuals subjected to narcoanalysis. It emphasized the importance of obtaining the voluntary consent of the accused before administering narcoanalysis and the need for strict adherence to procedural safeguards to prevent coercion or abuse. Additionally, the Court underscored the importance of judicial oversight and scrutiny to ensure the fairness and reliability of evidence obtained through narcoanalysis.

In conclusion, the right to silence and protection against self-incrimination are fundamental rights enshrined in the Indian Constitution that safeguard individuals from being compelled to provide evidence against themselves. The use of narcoanalysis raises complex legal and ethical questions regarding the compatibility of this investigative technique with these rights. While narcoanalysis may be a valuable tool for law enforcement agencies, its use must be carefully regulated to ensure that individuals' rights are protected and that the fairness and reliability of evidence are maintained.

4.2 CONSTITUTIONAL STATUS OF RIGHT AGAINST SELF- INCRIMINATION

The right against self-incrimination was not a novel concept within the Indian legal system. Its

⁴⁴ Supra 37.

roots can be traced back to ancient India, as evidenced by references in Kautilya's Arthashastra and Smriti texts discussed in the second chapter. Recognizing global endeavors to safeguard the right against self-incrimination, the Constituent Assembly of India was mindful of incorporating this right into the Constitution of India. Even before the existence of the Constitution of India, international instruments such as the Universal Declaration of Human Rights included similar provisions regarding the right against self-incrimination.

The right against self-incrimination predates the creation of the Constitution of India and has been a part of legal systems worldwide. This right has developed as a safeguard against arbitrary practices in English common law, where it transitioned from being viewed as a 'privilege' to being recognized as a 'right' against self-incrimination. In the 18th century, the right against self-incrimination was enshrined as a fundamental right in the Fifth Amendment of the United States Constitution, which states: "No person... shall be compelled in any criminal case to be a witness against himself."

The Privy Council, which served as the highest Court of Appeal in India prior to the establishment of the Constitution of India, upheld the right against self-incrimination, aligning with the privilege against self-incrimination safeguarded in England. The Indian Evidence Act and the Code of Criminal Procedure, enacted in 1872 and 1898 respectively, also included provisions regarding the right against self-incrimination, as evidenced in Sections 161 and 162 of the CrPC⁴⁵ and Sections 24-28⁴⁶ of the Indian Evidence Act outline the legal provisions

⁴⁵ Section 161, The Code of Criminal Procedure, 1973.- Examination of witnesses by Police - (1) Any Police officer making an investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Section 162, The Code of Criminal Procedure, 1973.- Statements to Police not to be signed or admitted in evidence - (1) No statement made by any person to a Police officer in the course of an investigation under this Chapter shall, if taken down in writing, be signed by the person making it, nor such writing be used as evidence:

Provided that, when any witness is called for the prosecution whose statement has been taken down in writing as aforesaid, refer to such writing and may then, if the Court thinks it expedient in the interest of justice, direct that the accused be furnished with a copy thereof: and such statement may be used to impeach the credit of such witness in manner provided by the Indian Evidence Act, 1872.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1) of the Indian Evidence Act, 1872.

⁴⁶ Section 24, The Indian Evidence Act, 1872 - Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding- A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Section 25, The Indian Evidence Act, 1872 - Confession to Police officer not to be proved- No confession made to a Police officer, shall be proved as against a person accused of any offence.

Section 26, The Indian Evidence Act, 1872 - Confession by accused while in custody of Police not to be proved against him- No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

concerning defenses accessible to the accused to safeguard the right against self-incrimination.

In numerous international human rights treaties, the right against self-incrimination is acknowledged. The Universal Declaration of Human Rights holds significant importance in the realm of human rights history. Drafted by representatives with diverse legal and cultural backgrounds from across the globe, the Declaration was officially proclaimed by the United Nations General Assembly in Paris on December 10, 1948 (General Assembly resolution 217 A). It serves as a shared benchmark for achievements in human rights for all individuals and nations. For the first time, it articulates fundamental human rights that are to be universally safeguarded and has been translated into over 500 languages. Widely regarded as a catalyst, the UDHR has influenced the adoption of more than seventy human rights treaties, which are now permanently enforced at both global and regional levels.

Article 11.1 of the Universal Declaration of Human Rights (UDHR) states that "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense." This provision mirrors a fundamental principle of the Indian Criminal Justice System, affirming that the accused is considered innocent until proven guilty. Furthermore, it underscores the importance of providing necessary guarantees for the defense of the accused. Violating this article would occur if the accused were to incriminate themselves. Therefore, it can be inferred that Article 11.1 of the UDHR encompasses the right against self-incrimination. The framers of the Constitution of India were cognizant of these global principles regarding the right against self-incrimination and thus chose to incorporate this right into the Constitution through discussions in the Constituent Assembly.

4.2 ANALYSIS AND APPLICABILITY OF ARTICLE 20(3)

As the extension of the 'right against self-incrimination' to suspects and witnesses is rooted in Section 161(2) of the Code of Criminal Procedure (CrPC)⁴⁷, it is not automatically applicable to individuals examined during proceedings that fall outside the jurisdiction of the Code. A distinction exists between proceedings of a purely criminal nature and those that may result in punitive measures but do not strictly qualify as criminal proceedings. Therefore, it is essential to examine the applicability of Article 20(3) to criminal, civil, and administrative proceedings.

➤ Criminal Proceedings

⁴⁷ Section 161(2), The Code of Criminal Procedure, 1973 - Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

The issue of whether Article 20(3) should be interpreted narrowly as a trial right or as a broader protection encompassing the investigation stage has been definitively addressed by Indian courts.

In the case of *M.P. Sharma*⁴⁸, Justice B. Jagannadhadas concluded that,

In essence, the guarantee provided in Article 20(3) is aimed at protecting against 'testimonial compulsion.' Some suggest that this protection is limited to the oral testimony of a person during their trial for an offense when they are called to the witness stand. However, it is argued that confining the scope of this constitutional guarantee to such a narrow interpretation would diminish its substantive purpose and overlook its essence, as noted in certain American judicial decisions. Indeed, any affirmative voluntary action that provides evidence constitutes testimony, and 'testimonial compulsion' refers to coercion that elicits such affirmative voluntary evidentiary acts from an individual, as opposed to their passive silence or acquiescence. There is no indication that the protection concerning the evidence obtained under compulsion is restricted to what occurs during the trial in the courtroom. The terminology used in Article 20(3) is 'to be a witness' rather than 'to appear as a witness.' Therefore, the protection afforded to an accused, as it pertains to being a witness, extends not only to testimonial compulsion within the courtroom but also encompasses compelled testimony obtained from them previously. This protection is applicable to individuals against whom a formal accusation related to the commission of an offense has been made, which typically may lead to prosecution.”

Chief Justice B.P. Sinha referenced the aforementioned observation in *Oghad's case*⁴⁹. In the same case, Justice Das Gupta expressed a similar viewpoint and stated:

“If the intention was to limit the protection to being a witness solely in court, then it would essentially render the protection meaningless. It would be rendered ineffective by compelling an individual to provide all the evidence outside the courtroom, only to later present it in court through other witnesses. Such an interpretation, which entirely undermines the constitutional guarantee, cannot be considered correct. Therefore, the argument that the protection offered by Article 20(3) is restricted to the trial stage must be dismissed.”

The broader view of Article 20(3) was consolidated in *Nandini Satpathy's case*⁵⁰. The Court stated that,

Any act of providing evidence or furnishing information that may potentially incriminate oneself falls under the purview of being a witness against oneself. Since Article 20(3) does not explicitly limit this protection to the forensic stage, we must interpret the expression to apply to every stage

⁴⁸ M. P. Sharma v. Satish Chandra, (1954) SCR 1087

⁴⁹ State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808

⁵⁰ Nandini Satpathy v. P. L. Dani, AIR 1978 SC 1025

where information is provided and evidence is collected. This includes even the investigative stage at the police level, which is precisely what Section 161(2) signifies. This subsection pertains to oral examinations conducted by police officers and grants immunity at that particular stage. In essence, both the Constitution and the Code of Criminal Procedure provide concurrent protection in this regard. While the Code may undergo amendments, the Constitution remains more enduring. Therefore, our conclusion must be based not only on Section 161(2) but also on the more fundamental protection afforded by Article 20(3), which is equally comprehensive. If the police are allowed to interrogate to the extent of eliciting self-accusation, the subsequent exclusion of that evidence during trial hardly serves as a remedy because the damage has already been done. The police will corroborate what they have obtained through forced confession using other evidence. This underscores the foresight of the framers in pre-empting self-incrimination at the early stages by not explicitly limiting it to the trial stage in court. While compelled testimony previously obtained is excluded, the preventive measure also extends to testimonial compulsion before trial. According to prevailing decisions, the individual compelled to provide testimony must be an accused. Through intelligent constitutional foresight, both the acquisition of self-incriminating testimony through precedent coercion and its subsequent use are avoided.

Therefore, Article 20(3) applies at every stage when providing information to investigative authorities.

In endorsing this expansive interpretation of Article 20(3), Justice Krishna Iyer in *Nandini Satpathy's case*⁵¹ heavily relied on the ruling of the US Supreme Court in *Miranda v. Arizona*.⁵² In this landmark decision, the majority opinion established that custodial statements could not be utilized as evidence unless the police officers had provided a warning about the accused's right to remain silent. Additionally, the decision acknowledged the right to consult a lawyer before and during custodial interrogations. The practice established by this case dictates that only after a person has knowingly and intelligently waived these rights following a warning can the statements made thereafter be admitted as evidence. The safeguards pertaining to the protection of the right against self-incrimination were outlined in *Nandini Satpathy's case*⁵³. These safeguards include:

- i. The prosecution cannot utilize any statements, whether they favor the defendant or incriminate them, resulting from custodial interrogation unless it demonstrates the implementation of procedural safeguards adequate to protect the privilege against self-

⁵¹ Supra 51.

⁵² *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁵³ Supra 51.

incrimination. Custodial interrogation refers to questioning initiated by law enforcement officers after an individual has been detained or otherwise deprived of their freedom of action in a significant manner.

- ii. Regarding the procedural safeguards to be applied, unless equally effective methods are developed to inform accused individuals of their right to remain silent and to guarantee an uninterrupted opportunity to exercise this right, the following measures are mandatory:
 - a. Before any interrogation begins, the individual must be informed that they have the right to remain silent, that any statement they make can be used against them as evidence, and that they have the right to have an attorney present, either one they retain or one appointed for them.
 - b. The defendant can choose to waive these rights, provided that the waiver is made voluntarily, with full awareness, and intelligently. However, if the defendant indicates in any way, at any point during the process, that they want to consult with an attorney before speaking, no interrogation can take place.”
 - c. Similarly, if the individual is alone and indicates in any way that they do not wish to be interrogated, the police cannot proceed with questioning.
 - d. Merely because the individual may have responded to certain questions or offered statements voluntarily does not waive their right to decline further inquiries until they have had the opportunity to consult with an attorney and subsequently agree to be questioned.

These safeguards were implemented to alleviate the disadvantages faced by suspects in a custodial setting. This acknowledgment stemmed from the widespread use and often encouragement of methods involving deception and psychological pressure during police interrogations. The focus was on ensuring that individuals being questioned fully comprehended and understood the content of the prescribed warning.

Professor Sutherland suggests that self-incrimination, while not involving physical intimidation, is nonetheless detrimental to human dignity.⁵⁴ The prevailing practice of incommunicado interrogation contradicts one of India's fundamental principles, which holds that individuals cannot be coerced into self-incrimination. Without adequate protective measures to counteract the inherent coercion in custodial environments, any statement obtained from the defendant

⁵⁴ Professor Sutherland, *Crime and Confessions*, 79 *Harvard Law Review* 21, 37 (1965) available at <https://www.jstor.org/stable/1338857> last seen on 06-02-2024.

cannot truly be considered a product of their free will. Hence, the right against self-incrimination is applicable not only during trial but also during the investigation stage.

The provision concerning Plea Bargaining in the Criminal Procedure Code (CrPC) warrants examination in relation to the Right against self-incrimination. Plea bargaining involves the accused pleading guilty in exchange for a reduced punishment for the offense they have committed. Originating in the USA, this concept has been incorporated into the CrPC under Chapter XXI-A through Sections 265A-265L, based on the recommendations of the Law Commission of India. Derived from the Latin phrase "Nolo Contendere," meaning "I do not wish to contend," plea bargaining offers a mechanism for resolving cases more efficiently.

Section 265B stipulates that if the accused fails to demonstrate their voluntary submission of an application for plea bargaining in court, the court may reject their application. This provision aligns closely with the Right against self-incrimination under Article 20(3) of the Constitution. The rationale behind this provision is to ascertain whether the accused has been coerced into filing an application for plea bargaining wherein they plead guilty, as doing so would amount to self-incrimination.

➤ Civil Proceedings

The safeguard provided by Article 20(3) applies exclusively to criminal proceedings or proceedings of a criminal nature conducted before a court of law or another tribunal where a person may be charged with an "offense" as defined in Section 3(38) of the General Clauses Act. According to this definition, an offense refers to an act punishable under the Penal Code or any special or local law.

The dispute among High Courts regarding whether Section 151 of the Code of Civil Procedure, 1908⁵⁵ could be utilized to compel an individual to undergo a medical examination was resolved by the Supreme Court in the case of *Sharda v. Dharampal*.⁵⁶ While the High Courts of Mysore⁵⁷ and Gujarat⁵⁸ held that Section 151⁵⁹ cannot be invoked for this purpose, the High Courts of Calcutta⁶⁰ and Andhra Pradesh⁶¹ took an opposing stance. The Supreme Court endorsed the latter perspective, asserting that the court possesses the necessary authority, even under Section 151⁶²

⁵⁵ Section 151, The Code of Civil Procedure, 1908 - Saving of inherent powers of Court - Nothing in CPC shall be considered to restrict or otherwise affect the inherent power of the Court to make such orders as may be important for the ends of justice or to limit abuse of the method of the Court.

⁵⁶ (2003) 4 SCC 493.

⁵⁷ *Revamma v. Shanthappa*, AIR 1972 Mys 157.

⁵⁸ *Bipinchandra Shantilal Bhatt v. Madhuriben Bhatt*, AIR 1963 Guj. 250.

⁵⁹ *Supra* 56.

⁶⁰ *Birendra Kumar Biswas v. Hemlata Biswas*, AIR 1921 Cal. 459.

⁶¹ *M. Vijaya v. Chairman and Managing Director, Singareni Collieries Co. Ltd.*, 2001 (5) ALD 522.

⁶² *Supra* 56.

of the CPC, to issue such directives "either suo moto or otherwise," if deemed conducive to discovering the truth.⁶³ It was affirmed that the protection afforded by Article 20(3) does not extend to parties and witnesses involved in civil proceedings or proceedings of a non-criminal nature.⁶⁴

➤ Administrative Proceeding

Article 20(3) does not extend to administrative investigations, even if their primary objective is to ascertain whether an individual has committed an offense. In the case of *Raja Narayanlal Bansilal v. Maneck Firoz Mistry*⁶⁵, the Registrar, in a report to the Central Government under Section 137(5) of the Companies Act, 1913, alleged fraudulent conduct in the company's operations. Subsequently, the Government appointed an inspector to probe into the company's affairs. The inspector summoned the appellants to attend his office for examination under oath regarding the company's affairs, as authorized by Sections 239 and 240 of the Companies Act, 1956. The appellant invoked the right against self-incrimination under Article 20(3), contending that the investigation aimed to ascertain whether he had committed any offense. The Supreme Court, however, rejected the appellant's claim for immunity under Article 20(3), emphasizing that this right is available only to accused persons. As no formal accusation had been made against the appellant, he could not invoke the right under Article 20(3).

In *Poolandi v. Superintendent, Central Excise*⁶⁶, the Supreme Court elucidated the extent of Article 20(3). The court clarified:

"It is firmly established that the protection against self-incrimination can only be invoked by an individual who stands accused of an offense when compelled to provide an incriminating statement. It does not pertain to a hypothetical individual who might, in the future, be found guilty of an offense."

Hence, it is evident that the protection afforded by Article 20(3) cannot be invoked by an individual in proceedings before administrative bodies solely on the basis of lacking a criminal accusation against them. This interpretation stems from the Supreme Court's understanding of the term "accused" in Article 20(3) as referring to a person who has been formally accused of an offense. Such an interpretation significantly limits the efficacy of the immunity provided in Article 20(3) in the context of the growing number of adjudicatory bodies outside the traditional court hierarchy. Administrative investigations aim not only to ascertain facts but also to gather

⁶³ Supra 57.

⁶⁴ Narayan Lal v. Raneek, AIR 1962 SC 29.

⁶⁵ Narayanlal Bansilal v. Maneck Firoze Mistry, AIR 1961 SC 29.

⁶⁶ AIR 1992 SC 1795.

evidence that could potentially lead to a prosecution later on. For instance, in the *Maneck Firoz case*⁶⁷, the inspector conducting the investigation was instructed to keep in mind that for a successful prosecution, the evidence supporting a charge must be clear, tangible, and cogent.

The clear implication of this directive was that the inspector was tasked with gathering evidence against the individuals involved, evidence that could be valuable in potential criminal proceedings to be initiated later. Essentially, this suggests that objectives that cannot be achieved through formal criminal proceedings can easily be accomplished through administrative processes, with the evidence collected being admissible against the individuals when they face formal prosecution in criminal court later on. If this perspective is embraced, the right against self-incrimination diminishes significantly in effectiveness during this period marked by the expansion of administrative procedures.

4.3 RIGHT TO FAIR TRIAL

The right to a fair trial is a cornerstone of the criminal justice system, ensuring that individuals accused of crimes are afforded a fair and impartial hearing before an independent and impartial tribunal. However, the use of narcoanalysis raises significant concerns regarding its compatibility with the right to a fair trial.

One of the primary concerns surrounding narcoanalysis and its impact on the right to a fair trial is the reliability and admissibility of evidence obtained through this technique. Narcoanalysis involves the administration of drugs such as sodium pentothal to induce a semi-conscious state in individuals, during which they may reveal information that they would not disclose under normal circumstances. Critics argue that the information obtained under the influence of drugs may be unreliable or inaccurate, as individuals may be susceptible to suggestion or manipulation while in a semi-conscious state. This raises concerns about the fairness of using such evidence in court proceedings and the potential for miscarriages of justice.

The right to refrain from self-incrimination and the right to a fair trial are acknowledged in international human rights agreements such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 14(3)(g) of the International Covenant on Civil and Political Rights, signed by India as well, affirms that an accused person possesses the right to abstain from providing testimony that could implicate themselves or confess to guilt under compulsion.

Administering narco-analysis, which impairs rational thinking and carries potential side effects,

⁶⁷ Supra 66.

may be regarded as a form of torture. The UN Convention defines torture as having four components like-

- a) It induces both physical and mental distress and is demeaning in nature.
- b) It is deliberately imposed.
- c) Its purpose includes obtaining information, confessions etc.
- d) It is carried out by an authority figure or individual in an official capacity.

Narco-analysis fulfils all four criteria. In India, it is essentially substituting physical coercion during interrogation with a psychological form. The right to be free from torture is a basic human entitlement that should be safeguarded under all circumstances. Narco-analysis represents a method of torture that degrades both the individual undergoing it and those administering it, constituting a grave infringement upon human dignity.⁶⁸

To ensure the fairness of the trial process, there should be adequate judicial oversight and transparency regarding the use of narco-analysis. Courts should scrutinize the circumstances surrounding its administration, assess the reliability of the evidence obtained, and consider any potential impact on the fairness of the proceedings.

4.4 INTERNATIONAL HUMAN RIGHTS STANDARD

The right to not self-incriminate is clearly stated in Article 10 of the Universal Declaration of Human Rights, the 6th Amendment of the US Constitution, and Article 6 of the European Convention on Human Rights. Furthermore, Article 14.3(g) of the UN Covenant on Civil and Political Rights, 1966, ensures that in any criminal proceedings, individuals have the entitlement to specific minimum protections, including the right to refrain from providing testimony against oneself or admitting guilt under compulsion.⁶⁹

Article 6(1) of the European Convention on Human Rights, established in 1950, guarantees that individuals have the right to a fair and public hearing within a reasonable timeframe by an independent and impartial tribunal when their civil rights and obligations are being determined, or when facing criminal charges.

It was elaborated that even though not explicitly stated in Article 6 of the Convention, there is little uncertainty that the right to stay silent during police interrogation and the privilege against self-incrimination are widely acknowledged international principles that are fundamental to the concept of a fair procedure as outlined in Article 6. By affording the accused safeguards against undue pressure from law enforcement, these protections help prevent wrongful convictions and

⁶⁸ Law of Forensic Science, Central Law Publications, 1st Edition Pg. 825.

support the objectives of Article 6. It is a universal safeguard, applicable to all individuals, preventing them from being coerced into answering questions under threat of punishment, especially when the answers could implicate them in a crime. The preamble of the International Covenant on Civil and Political Rights (ICCPR) states that recognition of the inherent dignity and equal rights of all individuals is fundamental to achieving freedom, justice, and peace globally, as outlined in the principles of the United Nations Charter. It acknowledges that these rights stem from the inherent dignity of every person and that ensuring both civil and political freedoms, as well as economic, social, and cultural rights, is essential for realizing the ideal of individuals living free from fear and deprivation. The preamble emphasizes the responsibility of states to uphold human rights, in accordance with the UN Charter, and underscores the individual's duty to promote and respect these rights within their communities.

Part 3, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) states that individuals should not be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. Specifically, it prohibits subjecting individuals to medical or scientific experimentation without their free consent. The use of truth serum tests is considered torture under international law. The UN's definition of torture encompasses situations where tests are conducted to extract information from suspects, causing severe mental suffering or coercion, thus constituting torture. The UN Committee against Torture has explicitly stated that any authorized use of "moderate physical pressure" violates the convention against torture. Amnesty International has also declared the administration of truth serums like Sodium Pentathol for obtaining information as a form of torture due to its cruel, inhuman, and degrading nature. Therefore, this procedure should be banned, as it violates international interrogation standards. The use of evidence obtained through coercion is prohibited by the Human Rights Committee, which states that laws should forbid the admissibility of statements or confessions obtained through torture or other prohibited methods in judicial proceedings. The Committee further emphasizes that evidence obtained under any form of compulsion should be completely unacceptable. The use of drugs as a form of torture has been documented in various countries, including Chile and the former Soviet Union. It is also recognized in US case law that confessions made under the influence of truth serums are not considered voluntary and are thus inadmissible as evidence. Despite having signed it, India has yet to ratify the UN Convention against Torture.

In Australia, unlike in some other countries, there is no explicit bill of rights guaranteeing citizens the right against self-incrimination. Instead, this right is safeguarded by human rights instruments such as the Human Rights Act of 2004 and the Charter of Human Rights and Responsibilities Act of 2006. However, the protection of this right in Australian law is not as

robust as in some other jurisdictions, leading to various limitations on its application and relevance in legal proceedings. Additionally, the issue of the right to remain silent has not been extensively addressed by the Australian courts.

In Canada, there is a lack of clear guidance from both the legislative and judicial branches regarding the constitutional validity or admissibility of narco-analysis tests in court proceedings. While the Canadian Constitution does not explicitly outline the right against self-incrimination, it is indirectly protected through various sections of the Canadian Charter, including Sections 7, 10, 11, and 13. This privilege has been recognized and upheld by the judiciary, granting the accused the right to remain silent at both pre-trial and trial stages. The right to silence allows individuals the choice to speak or refrain from speaking, with no negative inference drawn from their silence during trial. However, there are exceptions to this rule that have been acknowledged. Consequently, the right against self-incrimination in Canada is considered limited, and there are judicial concerns regarding the application of forensic psychological tests that are not grounded in established legal principles.⁶⁹

CHAPTER V

ETHICAL AND HUMAN RIGHTS CONCERNS

Psychiatrists are consistently cautioned against conducting narco-analysis tests on individuals for criminal investigations due to ethical concerns. The World Medical Association has recently updated its Tokyo Declaration⁷⁰ to address this issue.

The Medical Council of India has recently updated its code of ethics to include a provision stating that physicians must refrain from participating in or facilitating torture, whether mental or physical, and must not conceal instances of torture committed by others or agencies, in direct violation of human rights.

Narco-analysis undermines societal respect for human life and fosters a culture of scandal and damage to one's reputation. During narco-analysis, the confession of a suspect is recorded onto a disk and submitted to the court along with the First Information Report (FIR). Once the charge sheet is filed and presented in court, it becomes public record, accessible to parties involved in the case upon request. This raises the possibility of an individual's confession, made under the influence of the truth serum, which is scientifically unreliable and considered a form of

⁶⁹ Forensic Psychological Tests and Right Against Self Incrimination, Chapter-IV, Cochin University of Science and Technology, 82-122

⁷⁰(i) Justo L. Doctors, interrogation, and torture. *BMJ*. June 24, 2006; 332: 1462-3. (ii) Rubenstein L, Pross C, Davidoff F, Iacopino V. Coercive US interrogation policies: a challenge to medical ethics. *JAMA* 2005; 294: 1544-9

psychological torture, becoming public knowledge. In India, television channels often broadcast these recordings to sensationalize the issue.

We encounter two main issues that undermine the rights of individuals in narco-analysis. Firstly, the procedure itself constitutes harassment and mistreatment towards the individual. Secondly, any revelations made by the person while in a semi-conscious state during narco-analysis, if broadcasted through mass media⁷¹, can severely damage the individual's reputation and moral integrity. The victim loses their right to be respected in such situations. Additionally, the victim of narco-analysis is essentially used as a means to uncover supposed truths, despite the method's lack of scientific reliability. During narco-interrogation, the accused is deprived of the freedom to exercise their reason, thereby violating their rights to freedom and expression. Narco-analysis violates both the physical and spiritual aspects of human beings, which are believed to be manifestations of divine creation.

5.1 VIOLATION OF HUMAN RIGHTS

It is widely acknowledged that narco-analysis tests are often seen as a valuable means of extracting significant information related to a particular case. However, despite its perceived relevance, narco-analysis is not considered a flawless method for gathering information due to its inherent lack of complete accuracy. Moreover, the purported effectiveness of a "truth serum" is frequently underestimated, as the subconscious mind of the accused can sometimes result in the provision of distorted information. This issue arises because determining the appropriate dosage of the serum is challenging, as it varies depending on the individual's psychological, physiological, and emotional resilience. To address this challenge, it is essential to have a skilled and capable interviewer who is not only qualified but also adept at asking questions that can effectively extract significant information from the accused.⁷²

Another question regarding its accuracy arises when comparing statements given during narco-analysis tests to those provided to the investigating agency prior to undergoing such tests. Often, these statements differ significantly, making it challenging to determine the truth. It is undeniable that the use of such tests has been widely abused by law enforcement and forensic experts, who may manipulate or coerce the accused into providing information or consenting to narco-analysis tests. Such actions can be regarded as mentally and physically torturous for the individual

⁷¹ The video of the Narco-analysis tests conducted on the accused in the Sister Abhaya murder case is broadcasted by Television Channels.

⁷² Sonakshi Verma, The Concept of Narco-Analysis in view of Constitutional Law and Human Rights, rmlnlu 1, 1-10

subjected to such tests. In the notable case of *Arun Ferreira*, a social activist from Mumbai, he was coerced into signing a consent letter for a narco-analysis test under duress. Despite his refusal to sign, his signature was forged and presented to the magistrate. The Supreme Court of India ruled that compelling individuals to testify, particularly in the context of conducting narco-analysis tests, constitutes a serious violation of the right to privacy and amounts to cruel and degrading treatment of the accused. Additionally, the Court declared it to be a breach of the right against self-incrimination guaranteed under Article 20(3) of the Constitution.⁷³

5.2 REPORT OF NATIONAL HUMAN RIGHTS COMMISSION⁷⁴

The concept of Human Rights encompasses a wide range of fundamental entitlements, including those concerning life, liberty, equality, and dignity. These rights are inherent to every individual by virtue of their humanity and are considered inviolable and essential. In cases where these rights are infringed upon, individuals have recourse to both the courts and the National Human Rights Commission for redress. Established on October 12, 1993, under the Human Rights Act of 1993, the National Human Rights Commission operates as an independent public body tasked with safeguarding and advancing the human rights enshrined in the Indian Constitution and international agreements.

Empowered to address cases either through suo-motu action or complaints filed by individuals, the Commission ensures that violations of human rights are effectively addressed. In the realm of criminal investigations, scientific methods are often employed for evidence collection. However, it is imperative that individuals are not coerced into undergoing such techniques, as this would constitute an infringement upon personal liberty and a violation of the right to privacy.

Recognizing this, the National Human Rights Commission issued guidelines in 2000 regarding the use of lie detector tests on individuals. These guidelines were later expanded to include Brain Electrical Oscillation Signature (BEOS) and Narco-analysis tests following the landmark *Selvi* judgment by the Supreme Court of India. These measures were implemented to ensure that investigative procedures remain in line with the principles of human rights and do not encroach upon individual liberties. The National Human Rights Commission has established strict guidelines for the administration of the Narco Analysis Test, which are rigorously followed.

⁷³ SAHRDC, *The Ferreira Case: All That Is Wrong with Torture and Narcoanalysis*, 45 E&PW 13, 13-15.

⁷⁴ National Human Rights Commission Guidelines relating to Administration of Polygraph Test, 2000 available at <https://nhrc.nic.in/sites/default/files/sec-3.pdf> last seen on 03-02-2024.

- a. Narco Analysis Tests should only be conducted with the explicit consent of the accused. The accused should have the choice to decide whether they wish to undergo such a test.
- b. If the accused willingly agrees to undergo a Narco Analysis Test, they must be provided with legal representation, and both the police and the lawyer should explain the physical, emotional, and legal ramifications of the test to the accused.
- c. Consent for the test must be formally documented before a Judicial Magistrate.
- d. During the proceedings before the Magistrate, the individual who has consented to the test should be adequately represented by a lawyer.
- e. During the hearing, the individual must be explicitly informed that any statement made will not be considered a confession before the Magistrate but will be treated as a statement provided to the police.
- f. The Magistrate must take into account various factors pertaining to the detention, including its duration and the manner of interrogation.
- g. The Narco Analysis Test should be recorded by an impartial entity, such as a hospital, and conducted in the presence of a legal representative.
- h. A comprehensive medical and factual account of how the information was obtained must be documented.

5.2 RELIABILITY AND ACCOUNTABILITY

The narco-analysis test has faced criticism due to its lack of reliability. Scientific research has shown that the test is not infallible and can even lead innocent individuals to confess, as the subject is highly suggestible and may provide false or misleading answers to improperly framed questions. Consequently, concerns have been raised about whether the test constitutes testimonial compulsion in the judiciary and violates human rights, individual liberty, and freedom. It indicates that individuals who offer genuine confessions are often those who would have likely confessed anyway if conventional interrogation methods had been used. Conversely, individuals who deceive can maintain their falsehoods even when subjected to substances purported to elicit truth. Additionally, there is concern that during questioning, memories might be implanted in the individual's mind, leading them to believe they committed a crime they did not actually commit. It highlights the substantial risk of miscarriages of justice due to excessive reliance on unreliable statements.

Under the Evidence Act, confessions obtained from individuals in a semi-conscious state are not permissible in court, although they may still guide the investigative process. While the findings of narco analysis hold some weight, they are not entirely admissible in a court of law. In specific

circumstances, an individual's beliefs may be reinforced through repetitive thinking, yet such beliefs are not necessarily truthful. Consequently, the outcomes of such tests should not be considered as admissible evidence. However, in certain instances, these results may be considered alongside other corroborating evidence.⁷⁵ According to Dushyant Dave, the information disclosed during a truth serum test holds no evidentiary significance in a court of law.⁷⁶ In my view, Articles 20 and 21 are inviolable, and they must remain untouched. If a court were to admit narco-analysis test results as evidence, it would contravene fundamental rights. Additionally, Parliament has not intervened by enacting any legislation regarding the use of narco-analysis tests without an individual's consent. Article 13 provides a perpetual prohibition on the admission of narco-test results as evidence, as they are ultimately viewed as coerced statements.⁷⁷ During the discussion, Dave also referred to former solicitor general Harish Salve's argument, stating that conducting narco tests on an individual without their consent violates their privacy. This argument relies on the premise that admissions are crucial evidence, and it is up to the person who made the admission to demonstrate their truthfulness. Admissions, even if proven to be true, should not be allowed.⁷⁸

In the *Ram Jawaya Kapoor*⁷⁹ case, the Court firmly asserted that the executive branch cannot infringe upon constitutional rights, including personal liberties, or any other rights of individuals. If an issue arises that challenges fundamental rights, it must be declared unconstitutional.

5.4 CASE STUDIES ILLUSTRATING HUMAN RIGHTS VIOLATION

Numerous court rulings in India have established significant precedents concerning the constitutionality of narco-analysis tests. These judgments have played a pivotal role in shaping the legal landscape surrounding the use of such tests within the country. They have addressed complex issues related to individual rights, privacy concerns, and the admissibility of evidence obtained through narco-analysis. Through these precedents, courts have underscored the importance of upholding constitutional principles, including the protection of fundamental rights and liberties.

Additionally, these rulings have emphasized the need for clear legislative frameworks governing the use of narco-analysis tests, particularly in cases where consent may be absent. Overall, the

⁷⁵ "Narco analysis and Its Admissibility in Court," *The Financial Express*, 20 March 2004, 10

⁷⁶ Available at <https://www.coursehero.com/file/p51pptk/According-to-JM-Donald-Psychiatrist-District-Court-of-Denver-27-says-that-drugs/> last visited on 02-02-2024.

⁷⁷ Available at <https://timesofindia.indiatimes.com/city/ahmedabad/Info-under-narco-test-cannot-be-treated-as-evidence/articleshow/5060721.cms> last visited on 02-02-2024.

⁷⁸ "Info under Narco Test Cannot Be Treated as Evidence," *The Times of India*, 27 September 2009, 10.

⁷⁹ *Ram Jawaya Kapur v. State of Punjab*, AIR 1955 SC 549.

jurisprudence surrounding narco-analysis in India reflects ongoing judicial scrutiny and deliberation aimed at balancing the demands of justice with the safeguarding of individual rights and freedoms.

The scope of an individual's right against self-incrimination has been firmly established in the landmark case of *Nandini Satpathy v. P.L. Dani*⁸⁰. This case placed significant importance on this provision, extending its relevance even to the interrogation stage. It expanded the understanding of "compelled testimony" and prioritized the accused's right to remain silent.⁸¹

The judiciary emphasized the fundamental principle that individuals cannot be compelled to provide testimony against themselves. This ruling underscored the significance of protecting individuals from self-incrimination, particularly during the interrogation process. The decision highlighted the broader implications of "compelled testimony," recognizing that any form of coercion or pressure to extract information from the accused undermines their right to remain silent.

The case established a robust framework for safeguarding the rights of the accused, ensuring that they are not subjected to undue pressure or coercion during interrogation. It emphasized the importance of respecting the accused's decision to remain silent as a fundamental aspect of due process and fairness in the criminal justice system.

Furthermore, it reaffirmed the principle that individuals have the right to exercise control over their own narrative and not be compelled to provide potentially self-incriminating information. This ruling set a crucial precedent in Indian jurisprudence, highlighting the need for strict adherence to constitutional protections, particularly in the context of interrogation and the right against self-incrimination.

The principle mentioned above was also upheld in the case of *Kalawati v. H.P. State*⁸², where the Supreme Court ruled that Article 20(3) of the Indian Constitution does not apply if a confession is voluntarily made by the accused without any form of inducement, threat, or coercion. This decision underscores that the protection against self-incrimination is contingent upon the absence of coercion or pressure, emphasizing the importance of voluntary statements in criminal proceedings.

There have been instances where this principle has been interpreted differently, as evidenced in the case of *Dinesh Dalmia v. State*⁸³. In this case, the Court noted that when an accused fail to

⁸⁰ Nandini Satpathy v. P.L. Dani, 1978 AIR 1025

⁸¹ Ananthi S Bharadwaj and Sumithra Suresh, Narco Analysis and Protecting the Rights of the Accused, 12 Nalsar Stu. Law Rev. 121, 121-133

⁸² Kalawati v. H.P. State, 1953 AIR 131.

⁸³ Dinesh Dalmia v. State, 2006 CriLJ 2401

disclose the truth, it becomes essential for the investigating agency to resort to scientific tests. Such actions do not necessarily infringe upon the right against self-incrimination unless the accused reveals information that violates Article 20(3) of the Indian Constitution.

The case introduced a nuanced perspective, highlighting the importance of employing scientific tests when the accused refuses to cooperate truthfully. According to this interpretation, the use of such tests is permissible as long as they do not compel the accused to provide self-incriminating evidence. The Court underscored the distinction between voluntary disclosure and coerced statements, emphasizing that only disclosures violating the constitutional provision of Article 20(3) would constitute a breach of the right against self-incrimination. This ruling underscores the balance between investigative necessity and protecting the accused's constitutional rights in criminal proceedings.

The concept of "informed consent" becomes crucial at this juncture, serving as a fundamental requirement for the exercise of the right against self-incrimination.⁸⁴ Notably, in the case of *Ramachandra Ram Reddy v. State of Maharashtra*⁸⁵, the Bombay High Court ruled that compelling the accused to undergo narco-analysis tests, particularly under coercive conditions, would effectively force the accused to incriminate themselves.⁸⁶

In the context of protecting the right against self-incrimination, the principle of informed consent assumes significant importance. This principle, exemplified in the *Ramachandra Ram Reddy* case, underscores that any form of coercion or compulsion to undergo narco-analysis tests violates the accused's fundamental right. The Bombay High Court's ruling highlights the inherent injustice in forcing individuals to provide potentially self-incriminating evidence without their full and voluntary consent.

By emphasizing the requirement of informed consent, the judiciary reaffirms the principle that individuals must have autonomy over their own decisions, particularly when it comes to matters that could impact their legal rights and freedoms. This precedent underscores the importance of upholding procedural fairness and safeguarding individual liberties in the criminal justice system.

In the case of *Smt. Selvi v. State of Karnataka*⁸⁶, the judiciary took a conservative stance on the notion of "compulsion" in the context of narco-analysis. The court expressed scepticism about the predictability of statements elicited under the influence of narco-analysis, asserting that it was uncertain whether such statements would ultimately inculpate or exculpate the individual. This

⁸⁴ Sonakshi Verma, The Concept of Narco-Analysis in view of Constitutional Law and Human Rights, rmlnlu 1, 1-10

⁸⁵ *Ramachandra Ram Reddy v. State of Maharashtra*, 5th March 2004

⁸⁶ *Smt Selvi v. State of Karnataka*, (2010) 7 SCC 263

uncertainty led the court to caution against prematurely deliberating on the constitutional validity of Article 20(3) of the Indian Constitution, which safeguards individuals against self-incrimination. It reflects a recognition of the complexities surrounding the use of narco-analysis in criminal investigations. The court highlighted the inherent ambiguity and unreliability of statements obtained through narco-analysis, emphasizing the need for caution in assessing their evidentiary value. By refraining from making definitive conclusions on the constitutional implications of narco-analysis, the court signalled a commitment to thorough deliberation and careful consideration of the legal and ethical ramifications involved. Furthermore, the decision underscored the importance of protecting individuals' rights against self-incrimination, even in the face of emerging forensic techniques. The court's cautious approach reaffirmed the principle that legal proceedings must adhere to fundamental rights and procedural fairness, particularly in matters as sensitive as criminal investigations. Ultimately, the ruling in this case served as a reminder of the judiciary's role in upholding constitutional principles and safeguarding the rights and dignity of individuals within the criminal justice system.

In the case of *M.P. Sharma v. Satish Chandra*⁸⁷, the Supreme Court underscored the importance of the phrases "to be a witness" and "to appear as a witness," giving precedence to these terms. The Court affirmed that constitutional protection against self-incrimination extends not only to the accused but also to individuals who are not directly implicated in the case. Additionally, the Supreme Court clarified that any statement with the potential to subject an accused person to criminal prosecution is shielded by the immunity provided under Article 20(3) of the Indian Constitution.

CHAPTER VI

ALTERNATIVE INVESTIGATIVE METHODS AND REFORMS

Alternative investigative methods encompass a range of techniques and approaches used by law enforcement agencies to gather evidence, identify suspects, and solve crimes without resorting to controversial or invasive practices. These methods prioritize adherence to legal standards, protection of individual rights, and effectiveness in criminal investigations. Here, we explore several key alternative investigative methods:

1. Forensic Science

Forensic science involves the analysis of physical evidence collected from crime scenes to establish facts relevant to criminal investigations. This multidisciplinary field includes disciplines

⁸⁷ M.P. Sharma v. Satish Chandra, (1954) AIR 300

such as forensic biology, forensic chemistry, and forensic pathology. Forensic techniques such as fingerprint analysis, DNA profiling, ballistics analysis, and toxicology testing are commonly used to link suspects to crimes, identify victims, and reconstruct the events surrounding criminal incidents.

2. Digital Forensics

Digital forensics focuses on the collection, preservation, and analysis of digital evidence from electronic devices and online platforms. This includes computers, mobile phones, storage devices, and social media accounts. Digital forensic experts employ specialized tools and techniques to recover deleted files, trace internet activity, and analyse digital communications. Digital forensics is particularly relevant in cases involving cybercrimes, intellectual property theft, and online fraud.

3. Behavioural Analysis

Behavioural analysis, also known as criminal profiling or offender profiling, involves analysing behavioural patterns, motives, and characteristics to develop profiles of potential suspects or persons of interest. This method integrates psychological principles, criminological theories, and empirical research to create profiles of perpetrators based on their behaviour. Behavioural analysis can assist investigators in narrowing down suspect pools, prioritizing investigative leads, and understanding the dynamics of criminal cases.

4. Witness Interviews and Statement Analysis

Witness interviews and statement analysis techniques are used to gather information from witnesses, victims, and suspects involved in criminal investigations. Trained investigators conduct structured interviews using open-ended questioning techniques to elicit accurate and detailed accounts of events. Statement analysis involves examining verbal and written statements for signs of deception or inconsistency, helping investigators assess the credibility and reliability of witness testimony.

5. Surveillance and Undercover Operations

Surveillance and undercover operations involve monitoring and gathering intelligence on individuals or groups suspected of engaging in criminal activity. This may include physical surveillance, electronic surveillance, or human intelligence gathering techniques. Surveillance and undercover operations allow investigators to gather real-time information, observe suspect behaviour, and gather evidence of criminal activities while minimizing the risk of detection or interference.

6. Community Policing and Crime Prevention

Community policing and crime prevention initiatives involve collaborative efforts between law enforcement agencies, community organizations, and local residents to prevent crime, promote public safety, and build trust within communities. This may include neighbourhood watch programs, youth engagement initiatives, and community outreach events. Community policing strategies empower residents to take an active role in identifying and addressing crime problems in their neighbourhoods, enhancing overall public safety and community resilience.

Alternative investigative methods offer diverse approaches to gathering evidence, identifying suspects, and solving crimes while upholding legal standards, protecting individual rights, and promoting public safety. By leveraging techniques such as forensic science, digital forensics, behavioural analysis, witness interviews, surveillance, and community policing, law enforcement agencies can enhance their investigative capabilities and effectively combat crime in a fair and ethical manner.

6.1 PROPOSED REFORMS AND REGULATIONS

To address the concerns surrounding narco analysis and enhance investigative practices, regulatory reforms are necessary. Clear guidelines and protocols should be established to govern the use of narco analysis, ensuring strict adherence to constitutional principles and human rights standards.

Narco analysis should be considered as a measure of last resort in investigative procedures. It should not be seen as a substitute for established investigative methods outlined in criminal procedural laws. Rather, its purpose is to invigorate and redirect investigations that have reached a deadlock despite exhaustive efforts and exploration of all available alternatives. The determination of whether to employ Narco Analysis should be made by the Trial Court after assessing the progress of the investigation and determining if traditional investigative avenues have been thoroughly pursued. Once again, the Court's decision will require the accused to provide their informed consent. This provision aims to deter police and investigative agencies from avoiding their traditional investigative duties. Without such a safeguard, Narco Analysis is vulnerable to misuse and exploitation. It is recommended that, considering these factors, Narco Analysis should only be allowed once during an investigation. This restriction will encourage investigative agencies to exercise greater caution when seeking this procedure, limiting it to a single opportunity. Nevertheless, the accused should retain the right to petition the Trial Court for Narco Analysis to be conducted on them. This petition must be endorsed by their attorney to

prevent any potential coercion by the State's investigative agencies. Granting this right would enhance the role of Narco Analysis as a tool for the accused's benefit and for the exoneration of the innocent. It is proposed that the Trial Court should assess such petitions using the same criteria applied to applications made by the prosecution for the procedure.

The legitimacy of Narco Analysis, without infringing on the rights of the accused, depends on obtaining the "informed consent" of the accused. The National Human Rights Commission has proposed guidelines for lie detector tests⁸⁸, which we advocate for extending to the procedure of narco analysis as well.⁸⁹ The guidelines are as follows:

1. The accused must be made aware of the physical, emotional, and legal consequences of undergoing such a test.
2. Primarily, it is crucial to inform the accused that any statements they make during the test will carry no legal weight in a court of law. They should also be informed about the relevant legal provisions outlined in the Code of Criminal Procedure and the Constitution that protect them from such statements being used against them.
3. It is premature to assume that the test will inevitably lead to the accused incriminating themselves. The process has an equal chance of exonerating those who are falsely accused by guiding the investigation in the correct direction. According to Dr. B.M. Mohan, Director of Forensic Science Laboratories in Bangalore, approximately 25 percent of individuals who undergo narco analysis are found to be "innocent."⁹⁰

The method of questioning the accused during the procedure should consist of open-ended questions, enabling the subject to disclose all recollections. This approach aims to prevent investigating officers from guiding the subject with particular or suggestive inquiries⁹¹, thereby exploiting the mental state of the accused under the influence of narcotics. The questionnaire used for this purpose is developed by officials at the State-operated Forensic Science Laboratory. To safeguard against exploitation of the accused's mental state, it is essential for the accused's attorney to review the questionnaire, assessing the type and sequence of questions. Furthermore, it is essential for the accused's lawyer to be present during the procedure to supervise the interrogation and verify that the authorities are not exploiting the mental condition of the accused.

⁸⁸ <http://nhrc.nic.in/documents/sec-3.pdf> last accessed 04-02-2024.

⁸⁹ Narco analysis takes scientific investigation a step further by eliciting information by injection of a narcotic substance. Polygraph on the other hand just monitors the responses during interrogation. Hence, if the polygraph test itself warrants informed consent, it becomes necessary for the same logic to be extended to narco analysis.

⁹⁰ Mohan, B.M., "Misconceptions about Narco Analysis", *Indian Journal of Medical Ethics*, Vol. IV No.1 January-March 2007, <http://www.ijme.injI51co07.html> , last accessed 04-02-2024.

⁹¹ Kebbell, Mark R, Gilchrist, Elizabeth, "Eliciting Evidence From Eyewitnesses In Court", Adler, Joanna R., (ed.), *Forensic Psychology Concepts Debates and Practices*, (1st edn, Willian Publishing, UK 2(04), 82-83.

Therefore, the presence of the accused's lawyer is crucial in ensuring adherence to the guidelines for the appropriate and lawful utilization of narco analysis, as failure to comply with these guidelines can harm the accused's case.

Most significantly, neither the prosecution nor the defence should be permitted to indicate during the trial that the evidence presented was obtained from information provided by the accused during narco analysis. In other words, there should be no mention of the results of narco analysis, even if the Court is aware that the procedure took place. If such a reference is made, the Court should deem the evidence inadmissible. This step will eliminate any potential bias in the judges' decisions by ensuring that the Judge remains unaware of the procedure's results. If, at any stage of the trial, the prosecution makes any allusion to the procedure's results (whether explicit or implicit), it would constitute an indirect infringement of the accused's right against self-incrimination. In such circumstances, the accused can seek protection under Article 20(3) of the Constitution.

Given the rising occurrence of organized crimes and terrorist incidents, numerous analysts of interrogation methods have discussed the "ticking bomb scenario." For instance, Alan Dershowitz outlines this scenario as follows: "A detained terrorist possesses information about the whereabouts of a ticking bomb that poses a threat to hundreds of innocent lives. There is no time for deliberation; a decision must be made urgently."⁹² In such dire circumstances, should there be an exemption from the standard procedure of obtaining consent for narco analysis if the terrorist refuses to provide it? In essence, should the State be granted the authority to enforce narco analysis on the accused in such instances in the interest of public safety?

In accordance with the directives established by the Supreme Court in the case of *Nandini Satpathy v. P.L. Dan*⁹³, Performing Narco Analysis on the accused without their informed consent would equate to 'forced self-incrimination,' even if the outcome is not admissible as evidence in a court of law. The Court in the aforementioned case noted that relevant responses that establish a genuine and distinct connection in the evidence chain to implicate the accused with the crime become incriminating and violate Article 20(3) if obtained through coercion from the accused.

Therefore, it is emphasized once more that subjecting the accused to Narco Analysis without their consent would constitute a clear violation of Article 20(3). The matter under consideration here is whether, in situations such as the 'ticking bomb scenario,' fundamental rights can be waived in the interest of national security.

⁹² Dershowitz, Alan M, "Is it Necessary to Apply "Physical Pressure" to Terrorists- and to Lie About It?", (1989)23 Isr.L.Rev.192

⁹³ (1978) 2 see 424.

Many questions arise, making it difficult to ascertain the precise scenario envisioned by Dershowitz.⁹⁴ Initially, we face uncertainties regarding whether the terrorist indeed possesses knowledge of the bomb's location and whether a bomb actually exists. Furthermore, there's ambiguity about the threshold of jeopardy required to trigger the "ticking bomb" scenario. Additionally, should we interpret the term "ticking bomb" literally? For instance, what if a suspect is aware of a planned smallpox release as a weapon?⁹⁵ Even if we could ascertain the number of lives in jeopardy and the degree of certainty regarding a crime or impending crime, along with the detainee holding crucial information, how do we gauge the urgency and the failure to obtain the information through conventional methods? Is it necessary for the bomb to be actively ticking? What if the information relates to a plot to plant a bomb within a week or a month?⁹⁶ Undoubtedly, the longer the timeframe, the higher the likelihood that conventional law enforcement methods will uncover the plot. However, the issue at hand is determining where to establish the threshold.⁹⁷

Therefore, it is argued that despite efforts to limit the exceptional circumstances justifying the imposition of Narco Analysis on the accused, there will inevitably be a temptation to expand these circumstances. If exceptions are granted, permitting the imposition of Narco Analysis without the accused's consent, there is a high likelihood of such exceptions being exploited. Professor Kadish aptly captures this risk by stating, "The acceptance of objectionable practices in specific instances inevitably weakens opposition to them in all instances."⁹⁸

6.2 ADVANTAGES AND DISADVANTAGES OF NARCO ANALYSIS

After examining cases from higher courts in India, it can be concluded that the Indian judiciary's stance on the process of narco analysis is not entirely consistent. While some courts have expressed a positive opinion on its use, others have outright rejected it, stating that it cannot be allowed. The courts have provided conditional guidelines for its utilization in their judicial rulings. It could be argued that the judiciary has adopted a balanced approach towards the use of this process, providing an interpretation of conditional utilization. This approach ensures that the process cannot be disregarded entirely, yet it also cannot be employed in every criminal case.

⁹⁴ Strauss, Marcy, "Torture", (2003-04) 48 N. Y.L.Sch.L.Rev 201.

⁹⁵ Ibid

⁹⁶ Kremnitzer, Mordecai, "The Landau Commission Report: Was the Security Service Subordinated to the Law, or the Law to the needs of the Security Service?", (1989) 23 Isr. L. Rev. 216,264, (Landau Commission states that it maybe justifiable to employ [Special investigative tools like torture, etc to discover a bomb about to go off in a crowded building, and that there is no significant difference between a bomb set to explode in five minutes and one set to detonate in five days).

⁹⁷ Strauss, Marcy, "Torture", (2003-04) 48 N. Y.L.Sch.L.Rev 201.

⁹⁸ Kadish, Sanford, "Torture, State and the Individual", (1989)23 Isr.L.Rev.345,352.

Through such interpretations, the judiciary has begun safeguarding the interests of both individuals and society. Ensuring protection from crime and upholding law and order is paramount for every state, serving the social interest. Simultaneously, maintaining human dignity and safeguarding human rights is also a priority. The judiciary plays a crucial role in regulating the conflict between social and individual interests. Examining judicial pronouncements reveals various advantages and disadvantages associated with this approach.

Advantages

- Considering the current dire state of society characterized by criminals, high crime rates, and the impact on innocent individuals, it appears to be an opportune moment to explore ways to mitigate these issues. Providing advanced technology to investigative agencies, including Narco analysis, could be one approach to achieving this goal.
- To assist investigative agencies, there is a requirement to offer scientific tools that can be utilized in situations where evidence is completely lacking.
- The conventional approach of extracting truth through torture is extremely abhorrent, violating the rights of individuals and casting a stain on society.
- The process is only detrimental to the body when administered in excessively high doses, a practice strictly overseen by experts.
- The questions are formulated by trained individuals with expertise in the process, minimizing the likelihood of deceit, as noted by numerous foreign and Indian authors.
- While the evidence obtained through this method may not be deemed entirely reliable, it can still be utilized to obtain admissible evidence, corroborate other evidence, or support existing evidence.
- Merely questioning an individual by a police officer when the person is a suspect in a crime, and the statements made are voluntary, cannot automatically be considered incriminating. This was evident in the Abu Salem case, where he divulged significant information and confessed to his involvement in the crime.

Disadvantages

- During the process, a chemical is introduced into the individual's body, with the dosage being determined based on factors such as physique, mental disposition, and determination of the person. Incorrect administration of the chemical can result in the person falling into a coma or even facing fatal consequences.

- If the individual is addicted to drugs, the effectiveness of the process in gathering evidence may be compromised and may not meet the required level of success.
- The reliability of information provided by the subject is also questioned, as the subject is in a semi-conscious state when the information is gathered, casting doubt on its accuracy.
- According to the widely recognized principle of the criminal justice system, individuals providing information should be in a state of full mental acuity and physical well-being. However, during the narco analysis test, the person is in a state of partial consciousness.
- From a legal perspective, Article 20(3) of the Constitution of India explicitly states that no individual shall be compelled to be a witness against themselves. The process may be deemed a violation of constitutional fundamental rights.
- Section 25 of the Indian Evidence Act, 1872 stipulates that confessions made by individuals under police custody are not admissible as evidence. This implies that there is a possibility of the evidence obtained through the entire process being deemed inadmissible.
- In accordance with Section 161 of the Criminal Procedure Code, a police officer authorized for investigation has the authority to orally question any individual who is aware of facts and circumstances related to the case. The individual is obligated to answer all questions except those whose answers could potentially incriminate them or subject them to a penalty or forfeiture.

CHAPTER VII

PUBLIC OPINION AND POLICY DISCLOSURE

The mere mention of narcoanalysis has a soothing effect on the public, possibly serving its ultimate purpose of captivating public imagination regarding extracting truth from individuals, especially in high-profile cases. If direct physical coercion is not feasible, this technique is employed in a medicalized manner.

Narcoanalysis has become a prevalent term in India, referring to a psychotherapeutic process where subjects are induced into a sleep-like state using barbiturates. In notable cases like those involving the Nithari killers and the Mumbai train blasts, suspects have been subjected to narcoanalysis, often with the drug sodium pentothal. Despite controversies, certain state governments, the judiciary, and politicians have supported its use.⁹⁹ As law enforcement

⁹⁹ <https://frontline.thehindu.com/the-nation/article30191389.ece>

authorities resort to narcoanalysis to obtain crucial details from Aaftab Poonawala, the suspect in the brutal killing of his partner Shraddha Walkar, it's pertinent to revisit the controversial background of this investigative method. With each occurrence of a heinous crime, such as the 2008 *Aarushi-Hemraj double murder case*, the 2006 *Bombay blast case*, or the 2006 Nithari killings, there has been a notable inclination towards employing narcoanalysis as a panacea.

The scientific and ethical implications of narcoanalysis have sparked debates. While some view it as a valuable investigative tool, others question its reliability and ethical implications due to the altered consciousness induced by the drugs. The practice's acceptance in courts and investigations highlights the need for critical discussions on its scientific, legal, and evidentiary aspects.¹⁰⁰

The distinction between the *Poonawala case*¹⁰¹ and the aforementioned incidents lies in their timing. Unlike the others, which occurred in the 2000s, the Poonawala case unfolded after a significant judicial milestone. In 2010, the Supreme Court intervened in an ongoing discourse, exemplified by the *Selvi vs State of Karnataka* case. This landmark ruling addressed the constitutionality of various evidence-gathering techniques, including what I refer to as "truth machines." These machines comprise a unique amalgamation of lie detectors (established since the 1970s), brain scans, and narcoanalysis (utilized since the early 2000s). They have become prominent in legal, law enforcement, and public discourse as primary methods to uncover the truth.¹⁰²

The techniques were endorsed by the high courts as substitutes for physical torture within a medical framework. This is because medical professionals such as doctors, anesthesiologists, and psychiatrists are involved in overseeing the accused during the administration of sodium pentothal. Meanwhile, a forensic psychologist poses questions to the individual who is in a semi-conscious or twilight state, ostensibly incapable of deceit.

The high courts acknowledged the contention that these techniques facilitate uncovering the truth, likening them to other medical examinations like MRI scans, which may not necessarily require consent. However, narcoanalysis has drawn criticism from numerous scholars for its invasive nature, potential for physical harm, and perceived infringement upon the constitutional right against self-incrimination. Consequently, in the *Selvi* case, the Supreme Court intervened to clarify that these techniques cannot be employed without the consent of the accused. As a result, the evidence obtained through such means is deemed inadmissible in court, albeit with

¹⁰⁰ Ibid.

¹⁰¹ *Joshini Tuli v State (Nct of Delhi) & Ors* (2022), W.P.(C) 16104/2022.

¹⁰² Ibid.

certain exceptions.

Despite predictions from both critics and supporters about its demise, narcoanalysis remains prevalent in India over a decade after the Supreme Court's decision, contrasting sharply with its declining usage globally. While the SC's ruling did restrain its widespread adoption, narcoanalysis and similar techniques persist in notable cases such as the 2020 Hathras gang rape, the 2012 Sheena Bora disappearance, and the 2021 hit-and-run involving Jharkhand judge Uttam Anand. Although not the sole method employed, narcoanalysis, along with polygraph testing, maintains a significant influence on the perceptions of law enforcement and the public, even if not always from a legal standpoint.

7.1 FUNDAMENTAL RIGHTS V HUMAN RIGHTS

Upon birth, individuals inherently possess certain rights that constitute the basic entitlements of every civilized society. These rights, often deemed as fundamental, are essential and must be ensured by any society claiming to be civilized. Just as a written Constitution originates from the principle of natural law as a superior form of law, fundamental rights stem from the concept of natural rights. As articulated by the Supreme Court of India in the *Golak Nath* case¹⁰³, fundamental rights are essentially the contemporary manifestation of what has historically been referred to as natural rights.

Human rights, regarded as the most basic entitlements of individuals, are as ancient as the concept of 'natural rights', deriving their foundation from natural law. These rights constitute the essential entitlements that every individual inherently possesses vis-à-vis the State or any other public authority simply by virtue of being a part of the human community, independent of any other factors.¹⁰⁴ The concept of 'Vasudhaiv Kutumbkam' in Indian philosophy reflects a principle that has been upheld since ancient times. It signifies that every human being is considered a member of the global human family, and as such, the rights of each individual are safeguarded, regardless of any other factors. Since the Vedic era, the fundamental rights articulated have embodied the fundamental principles of human existence. Justice Bhagwati elaborated on this notion in the case of *Maneka Gandhi*¹⁰⁵, stating:

“The fundamental rights symbolize the fundamental principles deeply esteemed by the populace of this nation since ancient Vedic times. They aim to uphold the dignity of every individual and establish circumstances conducive to the complete development of each person's personality.

¹⁰³ I. C. Golak Nath v. State of Punjab, AIR 1967 SC 1643

¹⁰⁴ 427 Prof. S. R. Bhansali, *The Constitution of India*, 5(2nd Ed. 2014)

¹⁰⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

These rights construct a framework of assurance concerning the fundamental structure of human rights, imposing restrictions on the State to refrain from infringing upon individual liberty in its diverse aspects.”

The Constitution of India ensures that individuals are granted certain rights, known as Fundamental Rights, which are derived from the principles of 'natural law'. This natural law transcends the laws established by political authorities and encompasses rights that precede the formation of political systems, serving as fundamental prerequisites for civilized existence. These rights are termed 'Fundamental Rights' because they are not safeguarded by ordinary legislation but by a fundamental law, typically embodied in a Constitution, which cannot be easily amended through regular legislative processes.

It is noteworthy to mention Section 2(d) of the Protection of Human Rights Act, 1993, which defines 'human rights' as rights pertaining to life, liberty, equality, and dignity, as guaranteed by the Constitution or enshrined in international agreements, and enforceable by Indian courts.

The definition of 'International Covenants' is provided in Section 2(f) of the aforementioned Act as follows:

“International Covenants refer to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, both endorsed by the United Nations General Assembly on December 16, 1966. Additionally, any other Covenant or Convention adopted by the United Nations General Assembly, as notified by the Central Government, is also included in this definition.”

Hence, even if a right is not explicitly recognized by the judiciary as a constitutional or statutory right in India, if it falls within the scope of the International Covenants as defined earlier, it will be safeguarded in India as a Human Right under the Human Rights Act, 1993.

The right against self-incrimination is enshrined as a fundamental right in Article 20(3) of the Constitution of India and is also included in Article 14(3)(g) of the International Covenant on Civil and Political Rights (ICCPR).¹⁰⁶

Section 2(f) of the Human Rights Act, 1993, the right against self-incrimination is additionally recognized as a human right.

The Narco-analysis test, which involves administering drugs to extract specific information, allows a trained psychologist to pose targeted questions and receive what are considered 'truthful' responses, with the entire process recorded on video. It is pertinent to reiterate some of the criticisms voiced by human rights activists and scholars in response to these techniques, which

¹⁰⁶ Art. 14.3(g) of ICCPR - In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (g) Not to be compelled to testify against himself or to confess guilt

have led courts to respond in specific ways. Human rights organizations and scholars have emphasized the potential violation of human rights posed by these new methods and have unequivocally labeled Narco-analysis as a form of torture. For example, Amar Jesani, a scholar and activist in medical ethics, describes Narco-analysis as a type of 'pharmacological' torture. He contends that torture remains torture regardless of whether it causes physical harm, and even if it is carried out in clinically sterile and air-conditioned operating rooms.¹⁰⁷ Jesani's critiques encompass two main aspects: firstly, he questions the scientific credibility of these methods, and secondly, he raises ethical concerns regarding their utilization. Jesani contends that thus far, the scientific validity and dependability of these techniques have been subject to significant doubt. For instance, he points out that even if a person's brain reacts to specific questions during brain scanning, it could be attributed to external factors, akin to a physiological response triggered in a doctor's office or in response to the intimidating environment of an MRI machine, or even from apprehension about being labeled as dishonest. Likewise, while it's widely acknowledged that the injection of Sodium Pentothal during Narco-analysis can heighten a person's excitement and coherence, this doesn't automatically guarantee truthfulness in their responses. Jesani proposes that the individual could just as easily be influenced by hypnotic suggestions from the interrogator.¹⁰⁸

P. Chandra Sekharan, who serves as the president of the Forensic Science Society and previously held the position of director at the Forensic Sciences Department of Tamil Nadu, highlights that narco-analysis primarily constitutes a psychological form of third-degree interrogation. He elaborates by saying,

“The results obtained during a 'sleep-like state' may be tainted by deception, imagination, incoherent speech, and similar factors. Sodium pentothal, the drug employed in this test, facilitates the retrieval of repressed emotions, memories, and thoughts. However, it only uncovers 'psychological truth' and not the 'probative truth' sought by law enforcement.”¹⁰⁹

In addition to questioning the scientific validity of these tests, Jesani emphasizes the significance of ethical considerations, particularly regarding the involvement of medical professionals in the procedure. Due to the potential risks associated with the drug, individuals must undergo

¹⁰⁷ Dr. Amar Jesani, Dr. Ramandham Memorial Lecture in Twenty Second Dr. Ramandham Memorial Lecture, 26 (Delhi: People's Union for Democratic Rights, 2008) available at https://www.researchgate.net/publication/258936719_Dr_Ramanadham_Memorial_Lecture_by_Dr_Amar_Jesani last seen on 05-02-2024.

¹⁰⁸ Supra 84.

¹⁰⁹ M. Raghava, Narco-analysis, Other Tests are psychological Third Degree Mode, The Hindu, (05/03/2004) available at <https://www.thehindu.com/todays-paper/tp-national/tp-karnataka/expertquestions-use-of-psychological-third-degree-methods/article27572475.ece> last seen on 05-02-2024.

preliminary testing with small doses to assess for allergic reactions. Furthermore, meticulous and continuous monitoring is essential to prevent sudden drops in blood pressure, respiratory cessation or apnea, and laryngeal complications such as constriction or spasms.¹¹⁰

As per Jesani's perspective, engaging in such a hazardous procedure without obtaining informed consent constitutes a significant breach of medical ethics. This standpoint aligns with the principles outlined in the World Medical Association's 1975 Tokyo Declaration, which prohibits the involvement of doctors in torture. This declaration was subsequently reinforced, particularly in the aftermath of the post-9/11 era.

In addition to highlighting the medical repercussions of the Narco-analysis test, the civil liberty group Peoples Union for Democratic Rights, based in Delhi, categorizes Narco-analysis as a form of torture. They perceive the test as infringing upon the self-incrimination clause of the Constitution of India as outlined in Article 20(3), along with the corresponding provision in Section 161(2) of the Criminal Procedure Code.¹¹¹ These principles are fundamental tenets of criminal law, guaranteeing the accused the right to remain silent during investigations. However, Narco-analysis undermines these protections by rendering the right to silence of the subject moot. When questioned while in full control of their faculties, the subject may opt to withhold information by remaining silent.

However, by dismantling rational defenses, Narco-analysis undermines not only an individual's right to silence but also the underlying principle behind this right.

Hence, People's Union for Democratic Rights (PUDR) underscores that these constitutional and procedural safeguards hold significance only when an individual's autonomy remains unaffected by the utilization of such techniques. Moreover, they highlight that despite efforts to emphasize consent in employing these methods, it often holds less weight, particularly for marginalized segments of society. PUDR also critiques the public disclosure of results from these techniques, especially the Narco-analysis test, which has led to media trials, thereby compromising the fairness of actual legal proceedings.

7.2 IMPACT OF PUBLIC PERCEPTION ON LEGAL REFORMS

In the annals of legal history in India, the trajectory of public perception on self-incrimination, particularly in the context of narcoanalysis tests, has undergone significant evolution. This journey, spanning from the *Kharak Singh case* in 1961 to the landmark *Selvi v. Karnataka case* in 2010, mirrors the evolving understanding of human rights and dignity within the framework

¹¹⁰ Supra 84.

¹¹¹ Supra 84.

of the legal system.

The *Kharak Singh case* marked a pivotal moment where the Supreme Court grappled with the concept of self-incrimination. In this case, the court ruled that the right to privacy and dignity was not absolute, thereby setting a precedent that allowed for potential violations of human rights by law enforcement agencies. The absence of explicit protections for individuals against self-incrimination laid bare the vulnerability of citizens to coercive interrogation methods, including the use of narcoanalysis tests.

However, the legal landscape began to shift with subsequent rulings that recognized the inherent dignity of individuals. The *Nandini Satpati case* in 1985 affirmed the right to dignity as an essential aspect of human existence, laying the groundwork for a more robust protection of individual rights. Building upon this foundation, the *Kathi Kalu Ogaad case* in 1986 marked a turning point as the Supreme Court explicitly acknowledged that the right to self-incrimination was not absolute. Law enforcement authorities were granted certain powers to compel individuals to provide information, albeit within defined legal boundaries.

The culmination of this evolution came with the *Selvi v. Karnataka case* in 2010, which provided a definitive stance on the issue of narcoanalysis tests and self-incrimination. The Supreme Court, cognizant of the potential for abuse inherent in such tests, emphasized that the right to self-incrimination cannot be violated arbitrarily. Narcoanalysis tests were deemed permissible only as a last resort, after exhausting all other investigative avenues. This landmark ruling underscored the importance of safeguarding individual liberties and ensured that the use of narcoanalysis tests was subject to stringent legal scrutiny.

The shifting stance of the Supreme Court reflects broader societal changes and the growing recognition of human rights as fundamental to a democratic society. As the concept of liberalism gained traction, so too did the understanding of the inherent dignity and autonomy of individuals. The evolution of legal doctrine, encapsulated in the Basic Structure Doctrine, served as a bulwark against encroachments on fundamental rights, including the right to self-incrimination.

Crucially, the evolution of public perception on self-incrimination reflects a deeper understanding of the interplay between individual rights and the functioning of the legal system. As the judiciary became increasingly attuned to the nuances of human rights, the law evolved to reflect these values. The recognition that narcoanalysis tests at the preliminary stage constitute a violation of human rights underscores the progress made in protecting individual liberties.

In conclusion, the journey from the *Kharak Singh case* to the *Selvi v. Karnataka case* represents a paradigm shift in the perception of self-incrimination and human rights in India. Through a series of landmark rulings, the Supreme Court has reaffirmed the centrality of individual dignity

and autonomy, setting a precedent for future legal developments. As the law continues to evolve, it is imperative that the principles of justice and human rights remain at the forefront, ensuring a fair and equitable legal system for all citizens.

7.3 ROLE OF ADVOCACY GROUPS AND CIVIL SOCIETY

Advocacy groups and civil societies play a crucial role in shaping the discourse around the use of narco analysis in India. The introduction of narco analysis in 2002 sparked significant debates on its constitutionality and ethical implications. Courts in India have allowed these tests without fully assessing the potential risks involved. The practice of narco analysis has been a focal point for advocacy groups and civil societies concerned with human rights issues and constitutional law matters related to this technique.

The legal and procedural intricacies extended across various departments within two federal ministries: finance and health. The potential for policy reform only emerged when the interrelation between the negative orientation of federal drug policy and its public health repercussions became apparent. Subsequently, concerted efforts were made to address and rectify the situation.

In 1997, the Delhi High Court issued a directive to state authorities to promptly process morphine license applications following a petition by advocate Ravi Ghooi. He sought access to opioid pain medication for his mother, who was suffering from severe cancer pain.¹¹² The positive outcome of this case garnered significant attention, inspiring and motivating medical professionals across India who were grappling with regulatory obstacles. It also sparked discussions among various stakeholders, including human rights lawyers, policy analysts, social workers, community-based organizations, patients, and their relatives. The official journal and annual conferences organized by the Indian Association of Palliative Care (IAPC) provided a platform for ongoing discussions on opioid availability, addressing legal, policy, medical, and humanitarian aspects.¹¹³ The collaboration between IAPC, PPCS, and PPSG offered the essential concentration and specialized knowledge required. These interactions gained momentum and gradually developed into a cohesive civil society alliance, collectively committed to transforming the situation.

Upon the revelation of the regulatory intricacies in the public sphere, the alliance members convened formally and recognized the imperative need to reframe the regulatory framework to achieve equilibrium in drug policy and enhance opioid accessibility nationwide. An opportunity presented itself in early 2012, when an amendment bill unrelated to the NDPS Act was sent back

¹¹² R.B. Ghooi, S.R. Ghooi A mother in pain *Lancet*, 352 (1998), p. 1625

¹¹³ Joranson, David. To the reader. *Indian J Palliat Care* 1998

by a parliamentary committee to the finance ministry. The committee instructed the ministry to realign the clauses to align with international conventions.¹¹⁴

The alliance, spearheaded by IAPC and two WHO collaborating centres, actively engaged in outreach efforts to educate and influence policymakers, political leaders, professional communities, and the general public regarding the urgent need to amend the NDPS Act. Policy advocacy initiatives emphasized three key themes: the challenges faced by patients suffering from chronic severe pain due to lack of access to opioid medications, the importance of aligning national drug policies with international mandates for balance, and dispelling misconceptions and fears surrounding opioid use. Campaigns were conducted in various regions of India, and pioneers collaborated with parliamentarians to raise awareness and garner support for the cause. Moreover, advocacy groups and civil societies have been involved in lobbying policymakers and government agencies to enact legislative reforms concerning narcoanalysis. They have called for greater transparency, accountability, and oversight in the use of narcoanalysis by law enforcement agencies. These organizations have advocated for the establishment of clear guidelines and protocols governing the use of narcoanalysis to ensure its ethical and responsible application.

CHAPTER VIII

CONCLUSION & RECOMMENDATIONS

The practice of narcoanalysis lacks proper regulation, posing a significant risk to the violation of fundamental rights. Despite the judiciary's crucial role in determining the necessity of subject consent, there's been a noticeable decrease in judicial oversight concerning these tests. The absence of stringent regulations raises concerns about potential abuses and infringements on individual liberties. While the judiciary's involvement in assessing the need for subject consent is vital, there's a concerning trend of diminishing judicial supervision over the administration of

¹¹⁴ Standing Committee on Finance the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011. Fiftieth Report (2011), p. 34 Available at [https://lawyerscollective.org/files/PSC%20report%20on%20NDPS%20Amendment%20Bill%20\(2011\).pdf](https://lawyerscollective.org/files/PSC%20report%20on%20NDPS%20Amendment%20Bill%20(2011).pdf) Last Accessed 16-02-2024.

narcoanalysis tests. This lack of oversight exacerbates the already precarious nature of the field, leaving individuals vulnerable to potential abuses of power. Hence, there's a pressing need for stronger regulatory frameworks to ensure the protection of fundamental rights and prevent potential misuse of narcoanalysis techniques. In both the *Rojo George v. Kerala High Court*¹¹⁵ case and the *Smt. Selvi v. State of Karnataka*¹¹⁶ case, the High Courts have mistakenly treated the administration of narcoanalysis tests as a means of gathering evidence. It is concerning that the Courts seem to have been swayed by government arguments without adequately addressing concerns regarding the reliability, utility, or safety of such tests. There appears to be a lack of critical inquiry into the matter. While it's understandable that the judiciary may lack detailed knowledge of forensic science applications, it is imperative that they utilize available resources to thoroughly examine potential violations of civil liberties. It is evident that narcoanalysis tests inherently undermine an individual's right against self-incrimination and have the potential to adversely affect trial fairness. The widespread adoption of such tests is likely to lower investigation standards within the police force. It is imperative for the Honorable Courts to reach a unanimous decision regarding the status of narcoanalysis as solely an investigative tool and to declare it inadmissible in court. However, this discussion provides limited reassurance, particularly because corroborative evidence obtained through narcoanalysis may still be considered admissible. This loophole could potentially undermine the concept of the right against self-incrimination, allowing for an indirect circumvention of legal protections.

That being said, to enhance the legitimacy and efficacy of narcoanalysis, it is essential to establish guidelines or recommendations for its use as an investigative tool. These guidelines could include the following:

- The Urgent Need for an Amendment to the Code of Criminal Procedure, 1973: While it is acknowledged that the Indian legislature has granted recognition to various scientific tools used in investigations, there is a pressing need for an amendment regarding Section 53 of the CRPC. This is because the current code lacks provisions ensuring informed consent, a crucial principle. Surprisingly, none of the provisions in the CRPC mandate the consent of the accused during the investigation process. Thus, there is a compelling need for an amendment in this regard. Mere inclusion of "such other tests" without addressing consent fails to establish the relevance of such procedures in criminal investigations.

¹¹⁵ *Rojo George v. Deputy Superintendent of Police*, 2006 (2) KLT 197.

¹¹⁶ *Smt Selvi v. State of Karnataka*, (2010) 7 SCC 263

- There is a pressing need for enhancing forensic science services in India: By implementing the recommendations of the Malimath Committee on Criminal Justice Reforms and the Menon Committee, which are already being followed in countries like Germany and France. It is essential to foster greater coordination and networking among State and Central Forensic Science Laboratories to improve efficiency and knowledge dissemination in the field of forensic science. Additionally, these services should cater to the technological and scientific requirements of criminal investigations comprehensively. Policy initiatives should prioritize accountability, efficiency, and professionalism in forensic science, emphasizing training, accreditation, and research and development. Furthermore, both the State and Central Governments should introduce initiatives aimed at enhancing manpower, infrastructure, and other facilities related to forensic science.
- The Requirement for an Improvement in the Functioning of Investigative Agencies: Improving the functionality of investigative agencies is imperative, and this can be achieved through various strategic steps. One essential aspect is enhancing the professional competency of agency personnel. This entails a concentrated effort towards providing thorough training to officers, particularly in the realms of scientific investigation, human rights, and psychology. Firstly, emphasis should be placed on equipping officers with the necessary skills and knowledge in scientific investigation techniques. This involves training them in the latest advancements in forensic science, including DNA analysis, fingerprinting, and digital forensics. By ensuring that investigators are proficient in these areas, agencies can enhance their ability to gather and analyze evidence effectively, thereby strengthening their investigative capabilities. Secondly, a deep understanding of human rights principles is crucial for investigative officers. Training programs should focus on educating personnel about the importance of upholding human rights standards during investigations, including the rights of suspects and victims. This includes ensuring that interrogation techniques are lawful and respectful of individual rights, and that evidence collection procedures adhere to legal and ethical guidelines. By instilling a strong awareness of human rights principles, agencies can prevent instances of misconduct and ensure that investigations are conducted in a fair and lawful manner. Lastly, training in psychology is essential for investigative officers to better understand human behavior and motivations. This knowledge can be invaluable in conducting interviews and interrogations, as well as in analyzing behavioral patterns and identifying potential suspects. By incorporating psychological training into investigative

training programs, agencies can enhance their ability to gather accurate information and make informed decisions during investigations.

While the Narco Test has proven beneficial in securing convictions in significant cases and is conducted with the mutual consent of the judiciary, police, and investigating agencies, any procedure that poses harm to the body or mind should be abolished. This necessitates ongoing efforts to uphold independent rights. The State and Central Government urgently need to establish comprehensive rules and regulations to ensure the safe conduct of these tests. It is imperative to integrate this practice within the framework of Article 20(3) to avoid constitutional inconsistencies.

8.1 RECOMMENDATIONS

The National Human Rights Commission should establish specific guidelines pertaining to the procedure of narco-analysis tests. These guidelines may encompass:

- a. Compilation of major offenses warranting narco-analysis testing
 - h. Protocol for court authorization of the procedure.
 - b. Stipulated conditions for conducting the test.
 - c. Precautionary measures for medical personnel administering the drugs.
 - d. Interrogation techniques employed by psychologists during the subject's drug-induced state.
 - e. Catalogue of grave offenses eligible for narco-analysis testing.
- The utilization of narco-analysis tests ought to be confined to cases of significant societal interest, such as terrorism or threats to national security, and when conventional investigative methods prove insufficient.
 - Findings from narco-analysis tests must not be deemed as "evidence" under the Indian Evidence Act, 1872, but rather employed as supplementary investigative tools.
 - Enactment of "Official Good Conduct Legislation" is recommended, stipulating that public servants acting in an official capacity forfeit protection under Article 20(3). Failure to comply would result in their removal from public service and treatment as ordinary citizens.
 - Although India has signed the United Nations Convention against Torture, it remains unratified since June 26, 1987. It is advisable for India to ratify the convention to enhance the scope of protection against torture within the country.

- Collaboration between State and Central authorities is imperative to enhance the investigative capabilities of police departments. State police forces should receive training funded by the central government to improve their investigative skills. This training should focus on information-gathering techniques, building rapport with subjects, facilitating accurate memory recall during interviews, and employing strategic evidence disclosure methods.
- Conduct training sessions for police officers to enhance the effectiveness and integrity of science-based interrogation techniques, along with coordinating experimental field studies to demonstrate their efficacy compared to current practices.
- Develop evidence-based interrogation methods to improve the collection of diagnostic confession evidence and accurate intelligence from human sources, and mandate the recording of custodial interrogations to ensure transparency and accountability.
- Enhance forensic laboratory infrastructure by providing funding from the Union Government to both central and state forensic laboratories, aiming to align them with international standards and improve forensic architecture in India.

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