
Narco Analysis: A Comparative Study with Respect to India and Western Countries

Jyaditya Dogra*

*BA.LLB, Delhi Metropolitan, GGSIPU, India.

Corresponding email: jyadityadogra@gmail.com

Received: 10 August 2023 **Accepted:** 28 October 2023 **Published:** 13 December 2023

Abstract: Microanalysis, a research method that uses pharmacological agents to induce a relaxed state in subjects to gather information, has become a controversial practice in criminal investigations worldwide. This research paper undertakes an in-depth comparative analysis of drug testing methods in the Indian context and Western countries and unravels the complex legal, ethical and procedural web surrounding its application. The historical development of microanalysis unfolds against the backdrop of differently developed legal frameworks in Indian and Western jurisdictions. This study moves through the maze of legal complexities, examining the legal provisions, court decisions and precedents that shape the permission and limitations of drug testing in both regions. A careful examination of procedural changes forms the backbone of this study, where we explore the step-by-step processes involved in drug testing. A comparative analysis reveals the different protocols followed in India and selected Western countries, revealing the roles of medical professionals and legal authorities in facilitating or controlling the procedure. Ethical considerations that explore the moral implications of using drug testing as an interrogation are central to this debate. Public and professional opinion in India and the West is considered, illuminating different perspectives that contribute to the ongoing debate on the ethics of drug testing. The study brings together clear case studies where pharmacological analysis has been used and highlights the similarities and differences between Indian and Western applications. As noted in the paper, it synthesizes key findings and considers the broader implications of comparative research. The study discusses the future trajectory of drug analysis, considering possible trends, emerging technologies and alternative methods that may shape the landscape of research practices in both India and the West.

Keywords: Narcoanalysis, Law, Historical Development, Legal Framework.

1. INTRODUCTION

Narcoanalysis, an investigative technique that administers pharmacological substances to induce a relaxed state in subjects for the purpose of information extraction, has become a

subject of intense debate and scrutiny on the global stage. The allure of obtaining valuable information through this method is kept together against the ethical and legal considerations that surround its use. As the historical roots of narcoanalysis intertwine with evolving legal frameworks, this study aims to untangle the complex tapestry of regulations governing its practice. With distinctions in statutory provisions and court precedents, a nuanced understanding of narcoanalysis emerges, revealing the varying degrees of acceptance and limitations in different jurisdictions. The procedural intricacies involved in narcoanalysis form a pivotal focus of this exploration, shedding light on the step-by-step processes employed in both Indian and Western contexts. The roles played by medical professionals and legal authorities in facilitating or overseeing the procedure add layers to the comparative analysis, emphasizing the divergent approaches to its implementation. Ethical considerations, a central element in the discourse surrounding narcoanalysis, are examined in the context of public and professional opinions. The ethical nuances that shape the ongoing debate on the moral implications of using narcoanalysis as an interrogation tool are dissected, providing a comprehensive view of the diverse perspectives that contribute to this ethical quandary.

Background

Narcoanalysis, a term derived from the words "narco" (meaning sleep-inducing) and "analysis"; (meaning research) refers to the use of drugs to render an individual unconscious for the purpose of obtaining information. Drug analysis has its roots in the early 20th century, when researchers studied the psychological effects of certain substances. But its use in forensic medicine became known much later. Some democratic countries, especially India, continue to use Narcoanalysis. Drug testing for research purposes is not publicly allowed in most developed and democratic countries. Interest in the drug analysis test was generated when it attracted the attention of the media and critics and raised several questions about its validity as a scientific research tool and its admissibility in court. violates the basic rights of an individual and calls into question the value of this evidence. In India, drug testing is done by a team consisting of an anesthetist, a psychiatrist, a clinical/forensic psychologist, an audio-videographer and medical assistants. The forensic psychologist prepares a report on the revelations, which is accompanied by a CD with audio-video recordings. If necessary, the strength of the revelations is further verified by subjecting the person to polygraph and brain mapping tests.

Historical Development in India

The historical development of narcoanalysis in India is marked by its introduction in the early 21st century as a controversial yet innovative investigative tool. The technique gained prominence in the aftermath of high-profile criminal cases, particularly those related to terrorism and heinous offenses. The rationale behind incorporating narcoanalysis lay in its potential to elicit information from suspects who might be uncooperative or resistant to conventional interrogation methods. However, this introduction sparked intense legal and ethical debates as critics argued that it infringed upon an individual's right against self-incrimination and raised concerns about privacy violations. The lack of a specific legal framework initially contributed to uncertainties regarding its admissibility in courts. Over time, legal precedents were established, attempting to strike a balance between the investigative

utility of narcoanalysis and the protection of individual rights. This historical trajectory underscores the evolving nature of forensic techniques in India and the ongoing dialogue surrounding the ethical and legal implications of narcoanalysis in the country's criminal justice system. In *Selvi and Others v. State of Karnataka* (2010) the Supreme Court of India addressed the constitutionality of narcoanalysis, along with other related techniques such as brain mapping and lie-detector tests. The court ruled that the administration of these tests without the subject's consent violated the right against self-incrimination under Article 20(3) of the Constitution. The judgment emphasized the importance of protecting individual dignity and privacy.

Legal Framework

In India: Narcoanalysis in India operates within the broader legal framework of criminal investigations. Initially, there was a lack of specific legislation governing its use, leading to a series of legal debates. In India, Narco-analysis was first used in 2002 in the Godhra carnage case. It was also in the news after the famous Arun Bhatt kidnapping case in Gujarat wherein the accused had appeared before NHRC and the Supreme Court of India against undergoing the Narco-analysis. It was again in the news in the Telgi stamp paper scam when Abdul Karim Telgi was taken to the test in December 2003. Though in the case of Telgi, immense amount of information was yielded, but doubts were raised about its value as evidence. Narco-analysis was in the limelight in the context of infamous Nithari village (Noida) serial killings. The two main accused in the Nithari serial killings Mohinder Singh Pandher and Surendra Kohli underwent a drug test in Gandhinagar, Gujarat. The implementation of a drug analysis test involves a fundamental issue related to legal issues as well as human rights. The legal status of using this technology as a questionnaire raises real questions such as the violation of individual rights, freedoms and liberties. In *State of Bombay Vs. Kathikalu* must be shown that the accused is forced to make a statement likely to incriminate him. Coercion means coercion that includes threatening, beating or imprisoning a woman, parent or child. Therefore, if the accused confesses without inducements, threats or promises, Article 20(3) does not apply. The watershed moment came with the Supreme Court of India's ruling in the case of *Selvi v. State of Karnataka*, which established guidelines for the admissibility of narcoanalysis test results in court. The court emphasized the importance of voluntary consent, the right against self-incrimination, and the need for the presence of a qualified medical professional during the procedure. Despite these guidelines, challenges persist in ensuring uniformity in the application of narcoanalysis across different states in India. The legal landscape continues to evolve as cases involving narcoanalysis reach the judiciary, shaping the contours of permissible use.

In Western Countries

The legal landscape in Western countries regarding narcoanalysis is diverse. Many jurisdictions, particularly in the United States, exhibit a cautious approach. Constitutional protections, such as the Fifth Amendment right against self-incrimination, have been interpreted to limit the admissibility of evidence obtained through involuntary or coercive means, including narcoanalysis. Additionally, the legal standards for the use of scientific evidence vary, and courts often scrutinize the reliability and scientific validity of narcoanalysis techniques. European countries generally adhere to the principles of human rights and privacy,

which may lead to greater skepticism regarding the use of truth serum or similar methods. The European Court of Human Rights has set a high bar for the admissibility of evidence obtained through techniques that may infringe upon an individual's right to a fair trial. Narco Analysis involving the use of the drug scopolamine on criminals in the United States was first reported in 1922. During and after the war years, United States armed forces and intelligence agencies continued to experiment with the truth drugs and this has been continued by the Central Intelligence Agency (CIA).

Ethical Considerations

Privacy and Autonomy: Narcoanalysis, by its nature, involves the intrusion into an individual's mental and physical autonomy. Critics argue that the induced state of altered consciousness may compromise an individual's ability to exercise informed consent fully. The ethical question revolves around the extent to which an individual can autonomously agree to undergo such a procedure, given the potential coercion or pressure they might face from law enforcement or other authorities. Moreover, the privacy of one's inner thoughts and memories is considered sacrosanct. Narcoanalysis, as a method that delves into the deepest recesses of an individual's mind, raises concerns about the invasion of this private sphere and the potential long-term effects on an individual's mental well-being.

Informed Consent:

Informed consent is a cornerstone of ethical medical and research practices. The challenge with narcoanalysis lies in obtaining genuine informed consent. Given that the procedure involves inducing a state of altered consciousness, questions arise about whether individuals can fully comprehend the implications and risks associated with the process. Furthermore, the power dynamics between law enforcement and individuals may impact the voluntariness of the consent. Individuals undergoing narcoanalysis may feel compelled to cooperate due to the perception that refusal could be viewed as an admission of guilt. Striking a balance between the needs of criminal investigations and the ethical imperative of informed consent is a complex challenge.

Reliability and Unreliable Memory:

The ethical implications of the reliability of information obtained through narcoanalysis are twofold. First, there's the risk that information obtained under the influence of the drugs may be inaccurate or even fabricated. This raises concerns about the potential for miscarriages of justice based on unreliable evidence. The procedure may uncover deeply repressed memories or traumas, leading to unintended psychological consequences for the individual. Ethical considerations extend to the potential harm that could arise from surfacing traumatic memories without proper psychological support.

Stigmatization and Psychological Impact

Undergoing narcoanalysis can carry a significant societal stigma. Individuals who have undergone such procedures may face judgment and assumptions of guilt, even if the information obtained is inconclusive or ultimately deemed inadmissible in court. This stigmatization can impact not only the individual's reputation but also their mental and

emotional well-being. Moreover, the psychological impact of the procedure itself is a crucial ethical consideration. The induced altered state may lead to disorientation, confusion, and emotional distress. The potential long-term psychological effects of narcoanalysis on individuals need careful examination, especially considering the vulnerable mental state induced by the procedure.

Procedural Variations:

Narcoanalysis Procedure in India:

Voluntary Consent: In India, obtaining voluntary and informed consent is a fundamental requirement for narcoanalysis. The individual must be fully aware of the procedure, its purpose, and potential consequences. The legal precedent set by the Supreme Court in the *Selvi v. State of Karnataka* case emphasizes the importance of explicit consent. Any statement obtained without the voluntary cooperation of the individual is considered inadmissible in court.

Qualified Medical Professionals:

The administration of narcoanalysis in India is typically conducted by qualified medical professionals, including an anesthesiologist or a psychiatrist. These professionals play a crucial role in monitoring the physiological responses of the individual during the administration of truth serum. Their involvement ensures the safety and well-being of the subject throughout the procedure.

Drug Administration:

Sodium Pentothal or Sodium Amytal, known as truth serum, is commonly used in India to induce a state of hypnotic sedation. The dosage is carefully administered to lower inhibitions and facilitate a more candid flow of information. The choice of drugs and their administration is critical for the effectiveness of the procedure.

Questioning Phase:

During the induced state, law enforcement or investigators pose questions relevant to the investigation. The responses are recorded, and the information obtained is later analyzed for its relevance to the case. The questioning phase is a crucial element in extracting information while the subject is under the influence of the truth serum.

Recording and Documentation:

The entire narcoanalysis procedure is recorded, both in audio and video formats. This documentation is essential for transparency, ensuring that the statements made during the procedure are accurately captured. The recorded material serves as a legal record and can be presented in court as evidence.

Post-Procedure Examination:

After the effects of the drugs wear off, the subject undergoes a thorough post-procedure examination. This examination is conducted to assess the individual's physical and mental well-being. The ethical considerations extend beyond the procedure itself to include the aftermath, emphasizing the need for proper medical care and psychological support.

Procedural Variations in Western Countries:

Legal Restrictions:

In Western countries, particularly in the United States, legal restrictions based on constitutional rights significantly impact the use of narcoanalysis. The *Fifth Amendment* right against self-incrimination and the Fourth Amendment protection against unreasonable searches and seizures have shaped the legal landscape. The use of truth serum is limited due to concerns about violating these constitutional rights.

Polygraph Examinations:

As an alternative to narcoanalysis, Western countries often rely on polygraph examinations. While controversial, polygraph tests measure physiological responses such as heart rate, blood pressure, and respiration to questions. They are deemed more acceptable in legal proceedings, and some jurisdictions use them as part of the investigative process. The use of polygraph tests in Canada is illegal and individuals may not use these tests in a proceeding. The test was used by corporate employers. Despite court rulings that the tests are illegal, they continue to be used in the country. The use of polygraph tests was made illegal by the Supreme Court decision *R vs. Beland* in 1987 in court as evidence. In the United States in 1998, the state made *United States v. Scheffer*, the decision was left to individual jurisdictions as to where they could use the tests if they approved it in their jurisdiction. The state continues to use these tests in criminal investigations and by state troopers, paramedics and firefighters.

Consent and Legal Standards:

Obtaining voluntary and informed consent is a universal requirement in Western countries as well. The legal standards for admissibility of evidence obtained through any form of induced altered consciousness are stringent. The reliability and scientific validity of the procedure are subject to rigorous scrutiny by courts.

Psychological Evaluations:

Rather than narcoanalysis, Western countries often turn to forensic psychologists for evaluations. These professionals use standardized psychological tests, interviews, and other non-drug-induced methods to assess a suspect's mental state. This approach aligns with legal standards while respecting individual rights and privacy.

Demerits of Narco-Analysis Test

The investigation uses the process drug analysis test as a simple method to obtain information about the suspect's involvement in the crime pending tips and evidence and to complete the time-consuming and delicate process of searching for physical evidence. Investigators, most of whom have no medical background, are unaware of the dangers and ill effects of administering barbiturate derivatives, which can sometimes prove fatal to the suspect.

2. CONCLUSION

In conclusion, this research provides a comprehensive comparative analysis of Indian and Western methods of drug analysis, shedding light on the legal, ethical and procedural

dimensions of this controversial research method. A review of historical developments, legal frameworks and procedural differences revealed a complex landscape shaped by cultural, legal and ethical considerations. Although drug testing has found a place in the investigative arsenal of some jurisdictions, its acceptance and use varies widely. In India, the legal world has evolved with guidelines emphasizing the importance of voluntary consent and the presence of qualified medical personnel during the procedure. Aspects of the procedure, including drug administration, interview steps, and documentation, have been refined over time. However, there are still challenges in ensuring consistency across states and in addressing the ethical issues of privacy and autonomy. In contrast, Western countries, influenced by constitutional rights and legal precedents, adopt a more cautious approach. The use of truth serum is limited and alternative methods such as polygraph examinations and psychological evaluations are recommended. Strict legal regulations emphasize the importance of voluntary consent and the reliability of investigative methods.

3. BIBLIOGRAPHY

1. “The Concept Of Narcoanalysis In View Of Constitutional Law And Human Rights” http://www.rmlnlu.ac.in/webj/sonakshi_verma.pdf
2. AIR 2010 SC 1974, (2010) 7 SCC 263 Article 20(3): Right Against Self-Incrimination
3. “Narco Analysis Test and Law in India” <https://madhavuniversity.edu.in/nacro-analysis-test.html>
4. AIR 1961 Cri LJ , Vol 2, 2007
5. AIR 2010 SC 1974, (2010) 7 SCC 263
6. Lakshmanan, Sriram, "Narco Analysis and some hard facts" <http://flonnet.com/fl2409/stories/2oo70518002109700.htm>
7. International Journal of Management and Humanities (IJMH) ISSN: 2394-0913 (Online), Volume-4 Issue-11
8. https://www.law.cornell.edu/wex/fifth_amendment
9. [1987] 2 SCR 398
10. 523 U.S. 303 (1998)
11. ADMISSIBILITY OF SCIENTIFIC EVIDENCE, https://shodhganga.inflibnet.ac.in/bitstream/10603/102549/10/10_chapter%203.pdf (Last seen on 22 November 2023)
12. International Journal of Management and Humanities (IJMH) ISSN: 2394-0913 (Online), Volume-4 Issue-11
13. <https://blog.ipleaders.in/validity-narco-analysis-india-crime-detection-technique/>
14. <https://burnishedlawjournal.in>
15. <http://www.rmlnlu.ac.in>