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# Narco-Analysis: A Guide To Investigation Officers And Lawyers

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## Introduction

To prove guilty of an accuse the prosecution uses different methods even some time there is use of third degree to get the confession. The ancient and famous methodology to prove facts was to prove facts by testimony of witnesses even today throughout the world testimony of the witnesses are relied more than any other evidence. Where eyewitnesses detailed narrates the story of commission of an offence there required no further evidence to prove the facts. Section 59 of Indian Evidence Act support the above assertion it says that all facts shall be proved by oral evidence... but in the world of corruption where caste, religion, race played important role in the criminal investigation it became important take help of science in finding truth although the prosecution objective may be to punish the suspect but the criminal justice system never allowed the prosecution to produce before the trial court only those facts which support the guilty[1]. We can say witnesses are more reliable but might be induced by corrupt means. On the other hand, scientific evidence having potential danger of procedural negligence in obtaining it. No doubt that where scientific evidence meets certain conditions they may create doubt over the trustworthiness of witness's disposition.

Another reason to take help of science in Court is that human memory fade up with passes of time in most of the countries there is provisions as to videography of witness statement like USA, UK, in India it is limited to certain cases where the person is disabled and other like cases not as matter of routine. On the ground of lack of resources videography of witnesses is avoided in almost cases. In some countries like China[2] investigation proceeds from 'confession to evidence' in India too suspect become guilty the movement allegation made against him.

To overcome the above problem, the court started to use scientific methods results in criminal as well in civil cases. Narco-Analysis is one the scientific methods used to find the truth. As

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[1] Brady v Maryland 373 U.S. 83 (1963).

[2] http//www.jstor.org/stable/43709961.



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it clear that when witnesses are available no further evidence but there is lack of witnesses, sometime false allegation in that case narco may save court and investigation agency time. The question as to Constitution validity of narco test had been already divided by the Supreme Court. "It is Constitution valid, the only condition is "it is being conducted with consent of person" (accuse, witnesses, or victims). Its results are admissions as evidence in the court. But the question as to in what cases it allowed by the court yet to be decided by the court and the question how beneficial it can be in criminal case yet to answered by the court practice, this paper will try to answer these questions with help of court cases and research papers of other world law university which is working on the subject.

Most of the state in India do not have facilities and resources to conduct narco-analysis even Haryana state forensic laboratory Madhuban do not have facilities to the test. Whenever any case came to the court and an application for narco test is allowed, it has to conducted by Forensic Lab situated in Delhi. It became costly and resulted delay in cases. So due lack of resources we are unable to take benefits of science which always ready to help us.

**Originand its active use**

Different kind methods were used to know the meanderings of neurotic mind. During 1839, "Breure and Freud used hypnosis in overcoming the resistance of his patients". The methods of psycho-analysis require skill, time and special training."The war compels to improvisetechniques which is less complex, more rapid tohandle the greater numbers of neurotics". Hypno-analysis technique was most effective during war of 1914-18. Barbiturates are the most useful drugs used for hypono-analysis, sodium amytal was first time used by Bleckwenn in 1929, nembutal in 1930, evipan in 1932, pentothal in 1934[3].

J. S. Horsley in 1939 for the first time used term "narco-analysis" of which he means "the technique which utilizes a narcosis artificially induced by a barbiturate to facilitate the analysis of a patient's mental content"[4].

Wilde used 'pentothal sodium' in treatment of fifty soldier suffering from neuroses and discussed his analysis in British Medical Journal, he described its advantages (…safer, less toxic, readily eliminated, respiratory depressant, lowers blood pressure temporarily,

[3] https://www.jstor.org/stable/20323550.
[4] *Ibid*.

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detoxicated...), and mortality while using small dose is nil, if avoidable not be used in varicose veins"[5].

**Basic essential for narco-analysis**

- Knowing and recording complete psychiatric history of subject.
- Physical examination.
- Psychological interview to explore the fact which subject conclusively know.
- Administration of drugs.

While J. S. Horsley analysing J. F. Wilde's article has points out the advantage of narco-test that it saves time…importantfactor in war. Hence, narco should be resorted in first instance rather than when all other methods have been failed. "The state of transference cannot be achieved in every patient"[6].

So we can say administrationof the drug causes the subject to enter into sleep (hypnotic trance) and become less inhibited,it helps to the authorised person because under its effectsthe person discloses information which is otherwise not possible. The drug (pentothal) used in test is dailyused by medical practitioner for inducing general anaesthesia in surgical procedures.

**Constitutional validity**

That conduct of narco test is constitutional valid if conducted with the consent of the person. Some guidelines have to be strictly followed by the authorities conducting narco test. NHRC guideline 2000, for conducting Polygraph test should be strictly adopted while conducting Narco-Analysis[7] these are in brief as under:

I. Consent of accused mandatory with an option that he does not want to undergo test he may deny.
II. Access to lawyer, nature of the test, it legal use should be explained to the accuse.
III. Recording of consent as above mentioned should be before the magistrate and accuse be duly represented by advocate.

[5] *Ibid*.
[6] https://www.jstor.org/stable/20323925.
[7] Selvi…vsState of Kar…SC 5/05/2010.

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IV. The accused should be informed that statement recorded will be considered as statement before police and not confession.

V. It should be conducted by an independent authority(hospital), in presence of an advocate. Medical procedure, facts disclosed and manner how information was recorded must be written.

**Salvi Case, 2010**[8]

In deciding the controversy as to constitutional validity of narco test, its use, it legal effect in trial, the court concluded that compulsory administration of the techniques is violation of Article 20(3). This protection is available to accuse, suspect and witness both during investigation and trial. Involuntary test will be amount to intrusion in to personal liberty. The results of the test (the information received) cannot be admitted in evidence but any information or discovery on the bases of test result is admissible under section 27 of the Evidence Act 1872.

**Germany, Sweden, France, USA**

Sec.136 (a) (Code of Criminal Procedure Amend.1949) in which the use of narco analysis, among other things, is forbidden[9]. It is as follow:

- The freedom of self-determination and of voluntary decision of the suspect may not be influenced by ill-treatment, by fatigue, by physical interference, by administration of medicines, by tormenting, by deception or hypnosis. Coercion may only be used as far as permitted in the Code of Criminal Procedure.
- A threat of measures not permitted by the Code or a promise of an advantage not legally justified is forbidden. Measures which influence the memory or the ability to form an opinion are forbidden.
- The prohibitions in (1) and (2) are valid regardless of the consent of the suspect. The use of statements made in defiance of this prohibition is not permitted even if the suspect should give his consent'.

**Germany** is the second country in Europe to give effect to this principle in its legislation. In 1942 the **Swedish** parliament laid down similar provisions[10].

[8] *Ibid.*
[9] http://www.jstor.org/stable/23640361.

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In the course of the judicial year 1947-48, the Council of the Bar Association of the Court of Appeal of Paris[11], **France,** carried a resolution: Article 1 proclaims that the employment of "narco-analysis " in forensic medicine and, in general, the utilization of all pharmacodynamics substances for the purpose of depriving the prisoner of his faculties of free determination in order to get a forensic information, is contrary to the Law and to the elementary guarantees of defence. Article 2 it is left to the President of the Corporation of Barristers to bring eventually the present "deliberation" to the attention of the Authorities and to intervene with all appropriate means, that methods of such a type should be suspended for medico legal surveys. In **USA**narco test result is admissible but it should be conducted with the conditions as discussed below relating to the result of scientific test. Despite the fact that some countries allow narco test some prohibited it, in India it allowed with the court permission and consent of the person who want to undergo it.

**International trends in admitting scientific evidence**

The admissibility of scientific evidence in USA has been discussed in “Forensic Evidence: Science and the Criminal Law” the book had tried to explain the court conclusion, objection, and the Federal Laws passed after the court decision, it application. To kwon the real practice as to the admissibility of scientific evidence we have first look the case laws.

Frye v. United States[12]

In this case a person was subjected to systolic blood pressure examination (lie detection test), his lawyer requested the court that the scientist who conducted the test should be allowed to give expert testimony as to its result. The request to admit theexpert testimony denied by both the court, trial as well as appellate court and it was concluded “to admit expert testimony based on scientific principle or discovery, the test from which the results derived musthave gained ‘general acceptance’ in the particular field to which it belongs”[13]*(Principal of general acceptance).*

In Daubert case, the victimssued a pharmaceutical company which marketed ‘Bendectin’…[14]. It was alleged that the ingestion of the drug by expecting mothers caused birth defects in the

[10]*Ibid.*
[11] http://www.jstor.org/stable/1138121.
[12] 54 App. D.C. 46, 293 F. 1013 (1923).
[13]*Ibid.*
[14] 509 US 579 (1993).

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children born. On behalf of the company an affidavit authored by epidemiologist submitted in the court. Victims also submitted 'expert opinion testimony' in support of their contentions. The trial court ruled that company's scientific evidence fulfil the standard of "general acceptance rule" and it is not met by the expert opinion testimony submitted by victims. The Appellate court upheld decision but it is vacated by the U.S. Supreme Court and case was remand backto the trial court. Frye Ruling 1923, is out dated and new enactment displaced it (Federal Rules of Evidence in 1975) it provides… ("If scientific, technical, or other specialized knowledge will assist the trier of fact…a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise") today this rulegovern the admissibility of expert opinion testimony based on scientific findings in USA. And the "trial court hasto evaluated the 'scientific evidence' as per Rule 702 of the Federal Rules of Evidence" it (rule)also mandates an inquiry to be conducted by court into the relevancy and reliability of the scientific technique in question.

What the trial court has to check out while admitting the scientific evidence?The first step according to Daubert ruling. To see "whether the reasoning or methodology adopted for testimony is scientifically valid and can be applied to the facts in issue". Other things are "Whether the theory or technique has been or can be tested". "It's error rate, it maintenance and controlling standard, its widespread acceptance among the scientific community".The above inquiry should be flexible and focus on principles and methodology used, not on the conclusions that they generate.

The above reasoning and conditions also applied while the Indian courts admits the scientific evidence. As above stated in guideline no fifth that the manner how information has been received, what procedure had been adopted should be on record

**Conclusion**

The benefits of the hard work done by the Supreme court in Selvi case have not completely utilized by the prosecution, accused, witness because whenever an application for conducting narco-analysis test is filed either it is for delaying of the trial or sometime it is denied by the court because prosecution does not want due lack of forensic lab and other resources in the state and thus it is try to rely on the witness statements. Most of the time police officers assume that it involves technicalities which will we not support what they want to prove or in

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other word it will defeat the tradition investigation results. Moreover, the court had already said that it is not right of the accuse, prosecution, witness to undergo the narco test, it the discretion of the court either to allow or deny an application for narco analysis. Even court said that narco test cannot be allowed to support either inculpatory statements or exculpatory statements. It is only for the purpose of preserving evidence and to know the truth where there is lack of evidence. This is theory behind the test. But actual reason to deny the conduct of test is lack of resources, lack of willingness to find out the truth, lack of knowledge about the test with the prosecution, accuse, witness. So the government of every state need to set up forensic lab where the narco test, lie detector, brain mapping test is accessible to prosecution, accuse, witnesses. Further, it is need to engage staff for conducting scientific test, to provide training to competent authority of above scientific test.

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