

Assessment of Narco Analysis from Human Rights

Perspective: A Comparative Study of India, USA and UK

A Thesis Summary Submitted

To

Sikkim University



In Partial Fulfilment of the Requirement for the

Degree of Doctor of Philosophy

By

Sharmista Sigdel

Department of Law

School of Social Sciences

May 2024

EXECUTIVE SUMMARY

1.1 Statement of Problem

The constantly evolving modus operandi employed by perpetrators of crime necessitates progress in methods of investigation. Indeed, the investigative landscape has witnessed a seismic shift in response to the rapidly changing nature of criminal activity. Adaptability and flexibility in the face of such developments are essential, as the traditional approaches to investigation may no longer suffice. The advent of new investigative tools such as narco analysis has brought to the fore the potential of scientific aid in criminal investigations. However, the use of these tools invariably raises concerns regarding their compliance with basic human rights and their accuracy in determining the veracity of evidence obtained through such means. This has posed a serious challenge to the criminal justice system. As such, using these techniques requires careful consideration of the ethical and legal implications involved, as well as an understanding of their limitations and efficacy in investigative proceedings. The development of narco analysis as a science has now been commonly applied in India as well as globally to solve crimes through abreaction techniques. Narco analysis may have adverse effects, such as limiting cognitive reasoning. Physical interrogation, which constitutes third-degree torture, is just replaced by the involved taking saying it softer alternative.

Narco analysis is a highly controversial interrogation technique that demands a critical assessment of its legal, moral, and medical implications. A contentious debate revolves around the acceptability of narco analysis in court and its major effect on human rights. Despite the numerous advantages, this test remains one of the most contentious issues within the legal community. the application of narco analysis in criminal investigations remains one of the most contentious issues among the legal community. It is imperative

to critically assess all evidence-based inquiries to ascertain the validity of this technique. In recent times, investigating authorities in various democratic countries, including India, have started using lie detector tests for high-profile criminal cases. These tests are considered an alternative to the harsh third-degree method of extracting a confession from a suspect. Investigative agencies conduct these tests as a systematic and scientific approach to get some evidence that assists them in carrying out thorough and effective investigations. It is important to differentiate between the safety of society and the value of human life. The current criminal justice system is focused on protecting the liberty and autonomy of individuals. The fundamental principle governing court procedures is grounded in the belief that it is more desirable to release a hundred guilty individuals than to convict even one innocent person. By adhering to this principle, the judicial system can maintain credibility, uphold justice, and safeguard the fundamental rights of all individuals.

The application of narco analysis tests to ascertain the veracity of a suspect's testimony poses a substantial threat to their dignity and privacy. This pertinent concern has been thoroughly explored in the study. Although the test has been recognized in the USA and UK and is frequently used as a diagnostic tool, careful analysis is scarce and courts often prioritize insistence and expediency. The question is whether it amounts to an infringement on an individual's right to privacy by placing them on an involuntary narco test. This issue holds certain significance for investigative authorities who employ drugs to elicit a confession from a suspect. In recent years, major scientific developments have revolutionized the way of solving crimes. In particular, these techniques have played a crucial role in identifying and prosecuting individuals responsible for heinous crimes like rape and terrorism. These advancements have had a significant impact on improving the efficacy of law enforcement and ensuring justice for victims and their families. The use of

scientific techniques has also raised questions about the legal system's traditional approach to assessing human values.

The test constitutes coerced compelled testimony under Article 20(3) of the Indian Constitution. It could potentially jeopardize the right to a fair trial under Article 21 of the Indian Constitution. The dilemma revolves around whether implementing this procedure is considered cruel or humiliating treatment. The fundamental tenet of self-incrimination in the United States is guaranteed under the Fifth Amendment to the United States Constitution. It also gives citizens the right to remain silent during investigations. The concept of due process is designed to safeguard individuals from state laws that infringe upon their constitutional rights and immunity. These rights are contingent on public interest concerns. Also, a prominent gap exists in the literature regarding the inadequacy of existing national and international laws to facilitate the suitable usage of the tests. The absence of clear national and international policies on conducting such tests is perceived as a significant drawback in the criminal justice system both in India and abroad. Literature is scarce regarding how cultural and social factors impact the efficacy and interpretation of narco analysis. Research on the psychological effects of narco analysis is limited necessitating further studies to explore its long-term and short-term effects on the memory, cognitive thinking, and mental state of the subject

The overarching objective of the study is to examine the assessment of narco analysis from a human rights perspective. A central dimension of the theoretical description is addressing the contentious issues and implications of human rights violations considering the narco analysis test's legal, medical and ethical incompetency. The study aims to elucidate the comparative study of narco analysis and its impact on the criminal justice system in India, USA and UK analyzing its assessment within its legal framework.

Currently, the criminal justice system confronts intricate and diverse challenges. However, it must persist in its fundamental duty of pursuing genuine truth and upholding justice. The findings of this comparative study contribute to a nuanced understanding of the multifaceted interplay between law, ethics and human rights in the context of the investigation. By elucidating divergent approaches, the research critically assesses the ethical implications of narco analysis within the context of criminal investigation. Through a meticulous comparative analysis, the study identifies key differences in the legislation, usage and oversight mechanism surrounding narco analysis.

1.2 Research Objectives

The study has been guided by the following objectives:

- To understand the key concepts and to analyze the various aspects of narco analysis.
- To examine the comparative study of narco analysis in the USA, UK, and India.
- To analyze the legislative intent and judicial approach to narco analysis in India.
- To get a holistic understanding of various human issues about narco analysis.

1.3 Hypothesis

The use of narco analysis as an investigative aid is violative of the human rights of the accused.

1.4 Research Methodology

Doctrinal legal research generally involves the interpretation of existing legal resources that include legislation, court decisions, and legal writings. The researcher employed the doctrinal research methodology throughout the study. This was accomplished through a comprehensive study of primary and secondary data sources including legislation, case

studies, books, journals, periodicals, articles, and online resources. The analysis relies on a synthesis of judicial approaches that have been reflected by court decisions both in India and abroad. The legal propositions are derived from judgments and statutes, including criminal laws, the law of evidence, the Constitutions, and International Conventions. The researcher applied the analytical and descriptive methods to examine the pertinent issues and gaps in the existing literature and to analyze the application of criminal jurisprudence concerning the human rights of the accused within the realm of criminal investigation.

The comparative method of analysis to evaluate the provisions of legislation across the three countries was adopted by the researcher. This method integrates theoretical concepts that compare legal rules and concepts across India, the USA, and the UK to discover similarities, discrepancies, and prospective areas for legislative change.

1.5 Chapterization

This study is divided into six chapters that are designed in a rational and comprehensible manner and aim to enable readers to discover the content with greater efficiency. Each chapter covers different aspects of the study. The structure of the chapter has been designed with the primary objective of facilitating readers' comprehension and engagement with the research findings.

The first chapter “*Introduction*” provides an overview of the thesis and outlines the literature review, research questions, research objectives, hypothesis, and research methodology adopted by the researcher. It sets the stage for the subsequent chapters by establishing the context and rationale for the research. Narco analysis test also known as truth serum test, uses psychotherapeutic procedures to create a stupor. It has recently been employed as an effective help to scientific research. The individual under the effect of

drugs loses control of himself. Narco analysis is a contentious procedure of psychotherapy that releases suppressed thoughts or emotionally charged and disagreeable notions through the use of drugs. It is a highly controversial interrogation technique that demands a critical assessment of its legal, moral, and medical implications. A contentious debate revolves around the acceptability of narco analysis in court and its major effect on human rights. Despite the numerous advantages, this test remains one of the most contentious issues within the legal community. The application of narco analysis in criminal investigations remains one of the most contentious issues among the legal community. It is imperative to critically assess all evidence-based inquiries to ascertain the validity of this technique. Recently, investigating authorities in various democratic countries, including India, have started using lie detector tests for high-profile criminal cases. These tests are considered an alternative to the harsh third-degree method of extracting a confession from a suspect. Investigative agencies conduct these tests as a systematic and scientific approach to get some evidence that assists them in carrying out thorough and effective investigations.

The second chapter “*Conceptual Framework of the Narco Analysis*” delves into the conceptual framework of narco analysis and digs into various perspectives of narco analysis tests like medical, forensic, and legal and explores their different aspects and implications to visualize the relationship between science and legal jurisprudence. The prevalence of crime and its new forms are detrimental to society. This necessitates the employment of scientific techniques in the investigation process. The scientific methods are distinct from the conventional research approach. The application of scientific methods has significantly improved criminal proceedings, but it is also crucial to identify which forensic science method would be most appropriate in certain circumstances. Narco analysis is a novel investigative technique, but it frequently casts doubt on

fundamental human rights as well as their veracity. The combined power of law, technology, and science has developed into the primary focus for the settlement of several significant matters. The advancement of medical science and its influence on legislation is a widely recognized phenomenon. The most potent field of medical research, known as neuro law, has advanced crime detection procedures as an outcome of medical science's progress. Medical jurisprudence has significance in assessing the real image of an incident, such as how a person may have suffered bodily injury and the causes leading to death. In addition, forensics focuses on the identity of the crime scene, helping to identify an accurate representation of the real incident and constricting the interpretation of the crime scene. Narco analysis tests and other scientific experiments involving anesthetic medicines must be balanced against social and individual determinants in the wider interest.

The third chapter “*Comparative Study of Narco Analysis in USA, UK and India*” focuses on the development of the narco analysis test and comparative analysis of constitutional imperatives of narco analysis in India, USA and UK covering a wide spectrum of human rights laws on the right to freedom, the right against self-incrimination, the right to privacy, right to health, right to a fair trial, etc. The chapter predominantly centers on conducting a comparative analysis of the legal frameworks of these countries. This chapter discusses the comparative analysis of legal provisions and principles in each of the three countries to identify the similarities, differences, and possible areas for concern and focuses on the development of narco analysis tests In India, the USA, and UK covering a wide spectrum of human rights laws on the right to freedom, right against self-incrimination, right to privacy, right to health, right to a fair trial, etc. So, it is essential to analyze its assessment within its legal framework.

In this context, the judicial system is increasingly utilizing technology to aid in deception detection during investigations and criminal processes. This shift toward technology-based approaches has the probable effect of improving the overall efficiency of the criminal justice system. However, these new technologies can potentially violate fundamental rights. Narco analysis is currently used within the context of the legal systems of India, USA and the UK, but they are not a mandated course of action in either of these countries. There is a need for substantial modifications in the criminal justice system. The narco analysis must be justified in a broader context to uphold constitutional requirements in these three countries.

The fourth chapter “*National Legislations and Judicial Approach on Narco Analysis in India*” elaborately deals with provisions under the Constitution of India as well as the criminal laws on narco analysis and the role of the judiciary in examining the narco analysis test. Furthermore, the chapter discusses the various legal challenges surrounding narco analysis including issues related to human rights and the admissibility of evidence. The chapter analyzes case law and judicial verdicts providing visions into how courts interpret and apply these laws in practice. Several legal issues assert that the test violates Indian Constitutional principles. Contemporary criminal statutes do not establish protection for inalienable freedom for various reasons. The provisions of the Constitution of India, Criminal Procedure Code and Indian Evidence Act are given supreme importance in this regard. This legislation safeguards individuals from violence and abuse while also allowing for the protection of confidentiality and civilized values in the criminal court system in India. However, upon a closer look, these regulations in India have been framed to enable the inclusion of scientific tests in certain cases. It is imperative to establish the standards of safeguards so that individual rights may not be desecrated.

The fifth chapter “*Human Rights Issues Relating to Narco Analysis*” underscores the importance of comprehending the human rights concerns that may arise during criminal investigations mainly concerning technology-related issues. This chapter further gives an insight into an overview of the pertinent international human rights instruments and emphasizes their significance within the realm of criminal investigation and deals with an elaborate analysis of narco analysis and its impact on human rights. It focuses on human rights issues in the context of narco tests and further provides some insights into the ethical and legal implications of the test and also provides an in-depth analysis of the laws regulating narco analysis from the perspective of international human rights law.

Over time, human rights concerns have grown and narco analysis has been accompanied by coerced or forced confessions and harsh methods of interrogation. The practice has been discredited internationally. It is pertinent to acknowledge the significance of both the right to privacy and the right to self-incrimination but paradoxically, there is also a need to recognize and admit the lack of explicit legal structure and policy that would prevent the third-degree approach even at the international level. The creation and implementation of a regulatory framework that upholds human rights is of utmost importance.

The sixth chapter “*Conclusion and Recommendation*” deals with concluding remarks and the findings based on the available sources. It discusses the results of the research, summarizes the main findings, reiterates the research questions, and discusses the implications of the study in terms of theory and practice. In the end, the chapter provides some recommendations based on the outcome of the study, the research objectives and the theoretical framework. The study presents key insights and potential areas for further exploration. It also discusses limitations and closing remarks.

The structured approach used in the research makes it easier for readers to navigate and comprehend the research findings. It provides a panoramic overview of the research content. The information has been meticulously presented eloquently to enhance the readers' comprehension and their understanding of the subject.

1.6 Findings of the Research

The findings from both the literature review and the descriptive analysis show that narco analysis is a scientific deception detection tool. At the same time, it is also considered a pseudo-science, besides being violative of human rights. The application of narco analysis gives rise to fundamental legal concerns and human rights violations. The constitutional framework developed for this procedure addresses pertinent issues, including encroachments upon an individual's rights, freedom, autonomy, and integrity. Also, the analysis of the study hinges on several features following certain international standards so that human rights should not be hampered owing to the practice of drug analysis in the interrogation process. Narco analysis is often viewed as a form of psychological torture, leading to its prohibition in most developed countries including the USA and the UK during criminal investigations. Compliance with these international rules is crucial in maintaining ethical standards confirming that the interrogation process does not infringe upon the human rights of the individuals involved.

The researcher has meticulously observed and documented the jurisprudential implications and application of several legal guidelines in the exploration of the study. The researcher has taken a comprehensive approach to examining the study, with an extensive focus on legal guidelines that have significant implications for the research. The researcher's thorough examination of these guidelines has resulted in a detailed and nuanced understanding of their application in the context of the study.

1.7 Recommended Suggestions

- During the administration of the narco analysis test, it is imperative to exercise utmost caution to ensure the effective method of truth extraction when examining the subject.
- Law enforcement officers must exercise extra care to prevent disruptions in the process of getting proactive facts from informants especially refraining from encouraging criminal or legal infractions.
- Investigators should seek independent proof to support or refute the testimony of the suspect/accused rather than placing undue reliance on them as their remarks/disclosures are crucial for the investigation.
- During the process of interrogating a suspect/accused, it is crucial to uphold and protect the fundamental rights that they are entitled to. This includes ensuring that they are treated fairly, with respect and dignity, and allowed to defend themselves against any accusations or charges.
- It is imperative that the interrogation process is carried out in a way that is just and lawful, and that the suspect is not subjected to any form of violence, coercion, or intimidation. Upholding these core rights prevails justice and the integrity of legal system remains intact.
- The integration of scientific progress and legislative evolution cannot be achieved without considering their implications on the general populace.
- The gathering of crucial proof in scientific inquiry requires the expertise of law enforcement officers or other specially trained individuals.
- The controversy over the use of narco analysis in criminal investigations has numerous facets, including the fact that if the method is eventually made legal, the complex issues may not be resolved for the foreseeable future.

- The Indian Criminal Justice System requires a significant overhaul to strengthen its core ideologies and should not be overlooked in its application of these scientific strategies.
- Narco analysis can expedite investigations, but it can also infringe on the inherent freedoms of the accused or suspects.
- Employing narco analysis in the criminal justice system poses a threat despite its extensive and seemingly attractive nature. The use of cruel third-degree tactics must be avoided in modern times. It emphasizes the requirement for the establishment of confidentiality standards followed by procedural safeguards.
- It is imperative that we prevent scientific tests from crossing the line and becoming torturous techniques that infringe upon human rights. We must ensure that ethical guidelines are strictly followed and respected to uphold the dignity and well-being of all individuals involved in scientific research. New guidelines and rules are needed for employing narco analysis and regulating it.
- A centralized organization in India is needed for conducting scientific method evaluation similar to the American Polygraph Association and UK Polygraph Association.
- Narco analysis, a form of prudent investigative aid to assist police may not be used as a tool to exercise in the hands of those who have an overpowering desire for power.
- Forensic science should be directed by legal procedures and scientific progressions backed by accredited forensic science teams.
- The politicization and political intervention in the criminal justice system have led to significant failures in justice delivery affecting all aspects of the system.
- This method requires adequate facilities, which are missing in laboratories and the testing facility assigns the individual in question to the hospital for the narco test which intimidates the individual undergoing the procedure. This has a detrimental effect.

- Judiciary officials should acquire expertise in both academic and practical aspects of scientific techniques through rigorous training and studies.
- These methods often alienate those involved and discourage them from disclosing information, particularly in cases of white-collar or terrorism-related crimes.
- The narco analysis as a psychological approach requires continuous review and evaluation of all relevant factors and the existing level of awareness before its approval.
- Narco analysis shall be undertaken in the 'rarest of the rare' cases, only when the investigation team is unable to resolve the case, and should be handled as an ultimatum in the investigation while considering the subject's psychological and physical characteristics.