

ANTAGONISM BETWEEN NARCO TEST AND THE RIGHT TO PRIVACY

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Every man has the right to life and this means that he has also a right to comfortable living

- Franklin D. Roosevelt

ABSTRACT

When humans were hunter-gatherers, there existed a concept of community-owned property. Though, when they started settling and became pastoralists, the concept of property emerged and emerged the concept of mine and thine. The simultaneous evolution of various rights marks this evolution of mankind. There was a time when privacy was supposedly an alien concept. Today, not just physical privacy but even mental privacy, as a right has emerged. We know, how psychotropic substances are banned in India, but tests like NARCO analysis, when done during the process of investigation by the police, may or may not bear the capability to invade the mental privacy of a person. This paper explores the concept of NARCO analysis and what aspect of privacy comes into its conflict.

KEYWORD

NARCO, Constitution, Human Rights, Privacy, Drug.

INTRODUCTION

The use of any type of psychotropic substance has been banned in India. It is strictly prohibited in the nation and carries legal penalties with it. Though, in rare cases, like, that of the police investigation, when the authorities are suspicious that the accused is concealing certain important information, which holds relevance in solving the criminal case at hand, certain drugs are used. It is a practice that is followed in only a few democratic countries, India being one of them. The term NARCO was coined by 'Horseley'. NARCO tests usually put forward a serious debate, as there takes place a cross-sectional discussion and deliberation, pertaining to law and medical science. With

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several landmark judgments, the courts in India have established the pillars of the right to privacy under article 21 of the Indian constitution. With this coming into being, the question has arisen that whether there exists a concept of mental privacy. If it does, Do the Narco tests infringe on the “mental privacy” of a person? This has kicked off serious discussions and points of ponder for the Indian Legal System.

WHAT IS NARCO ANALYSIS?

Narco tests have always been a serious topic of discussion, because of whether they are moral or not, and do they violate a person’s fundamental rights. In this, a drug known as sodium pentathol along with distilled water is injected in the veins of the person. It is also known as the serum test or truth test. This intravenous administration of drugs suppresses the suspected to an extent where they will divest all the information they would be having. This is because they are put into the It is suspected of infringing upon the privacy of the people. While the examination of a person is taking place, he is provided with the opportunity to speak up or remain silent, if, at any point in time, he feels that the questions which are being asked, are inculpatory or exculpatory. What would happen if the same is done forcibly or mandatorily to every person out there, they will be infringing upon the privacy of the people, which has been laid down as a fundamental right, under article 21, by the judgment of *KS Puttaswamy v. Union of India*² in 20. It is an invasion of the privacy of the person because one may or may not be willing to share something or tell something, it’s a mental and emotional state which they are in, which is very personal, and one can’t attempt to enter into that sphere. This was the reason why the supreme court declared even the polygraph tests as illegal in the case of *Selvi vs. the state of Kerala*³.

The exception to this rule is when the Narcotic test, is done with a person voluntarily, it stands to have a position in the eyes of the law. which means, if the subject has given permission for a narcotics test, then it will be valid. Now a logical question that flows out through this is, in what circumstances this permission of the subject was taken by the police? Whether he was compelled into giving permission for the same, or some other coercive measures were adopted, to force him into permitting the narco test. On the other hand, when it comes to the use of this test then it was used for the first time during the

² *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1

³ *Selvi v. State of Karnataka*, (2010) 7 SCC 263

Godhra riots case. Whenever it is used, even though the person in the hypnotic state may not be speaking 100 percent truth, they may say things that can help to establish the criminal attitude as well as the behavioural aspects of the subjects.

MENTAL PRIVACY

The physical privacy of a person is sacrosanct and is preserved under article 21 of the constitution. The issue arises, when it comes to this mental privacy as there is not any specific provision to safeguard it. It is always interpreted. Through, a catena of judgments it has been possible to explain different types of privacy that have evolved. Neuro-rights is a subject that is not extensively dealt with in India as well as in the world, so the concepts like mental privacy have not been discussed enough. Novel questions have rightly crept up, as mankind is being blessed with the tact of developing new technologies. When such a test, is forced upon the person, it obstructs human dignity of the person. Every person on this planet is entitled to live a dignified life. Thus, such an invasion is detrimental.

Given such problems, many times, the need has been put forward by different research groups, that there is a 'physiological aspect' to the concept of privacy, and it needs legal protection like any other aspect. The body and mind are inseparable elements of human dignity. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination⁴ The aspect of privacy can't be studied by severing the mental aspect from the physical. Both the mental and the physical sanctity solidify human dignity. human dignity. One cannot exist without the other. In *Kharak Singh vs The State Of U. P.*, the lingering of the policeman around the house of an acquitted person was also held to be in violation of privacy. Even involuntary polygraph tests and brain mapping have also been declared unconstitutional methods of invasion of a person's mental privacy.

Personal liberty in Article 21 is included in the most comprehensive terms as elaborated on by J.S. Mill. It includes the inward domain of consciousness; demanding liberty of conscience, as well as liberty of thought and feeling; absolute freedom of opinion and

⁴ *Supra 2 at pg. 2*

sentiment on all subjects, practical or speculative, scientific, moral, or theological⁵. It must be noted that this liberty as guaranteed by Article 21 is not circumscribed by any reasonable restriction such as those provided in Article 19. This implies that thought, however malicious or agitating it may be, cannot be punished until and unless the individual expresses or acts upon such thought. Such thought being an unexpressed mental process is well protected by the Right to Privacy of that individual. India still has not outrightly talked of legislation for the coverage of neuro rights, but through judgments, the courts have tried to identify the privacy of a person's mind. It is very important to understand that man can never be understood in mechanical terms and that breathing space must be given to human thoughts and emotions. This decryption of the mental space of a human can crimp down the wide outlook on privacy, which can have negative results on the human.

AFFECT OF NARCO ANALYSIS ON MENTAL PRIVACY AND ITS ADMISSIBILITY

Involuntary administration of the narco tests drugs to a person will count as a sheer violation of a person's mental privacy. Not just this, it also holds the capacity to violate Art. 20(3) of the Indian constitution. Such an administration is against the person's will. It does not matter how much importance the results would hold for the police authorities, they cannot in any way compel the person to do the same. "*Law disapproves of involuntary testimony ... It violates the prescribed boundaries of privacy. Forcible interference with a person's mental processes is not provided for under any statute It most certainly comes into conflict with the 'right against self-incrimination'*"⁶, When a person makes any statement, it should be out of their own will, resulting from their private choice. When the person is compelled, to make any statement and go through such a test, forcibly, the person's freedom of speech and to remain silent also gets affected. Also, whether voluntary or involuntary, administering drugs to a person so that they answer the questions, when they are not in the right subconscious state of mind, is immoral and should also stand out as illegal.

⁵ John Stuart Mill, *Bill of Rights in Action*, Constitutional Rights Foundation < <https://www.crf-usa.org/bill-of-rights-in-action/bria-24-4-john-stuart-mill-and-individual-liberty.html>> accessed 12 January 2023.

⁶ *Jitubhai Babubhai Patel v. State of Gujarat*, (2005) 10 SCC 545

Another, issue surrounding the same is the admissibility of these Narco tests. The courts do not completely accept the results of the NARCO Analysis. Even the Indian Evidence Act, does not mention anything regarding the NARCO test and its capacity as conclusive evidence in the eyes of the law. Though, sections 24-30⁷ talk about the confession of the accused. Section 29 of the Indian evidence act, also says that when the person's confession is taken under compulsion, the same has not to be considered admissible in a court of law. Also, the courts have the discretion to admit and reject the results of the test, depending upon their veracity, Though, through the court's judgments, the same has been upheld. Since the results are not 100 percent true, it can become doubtful to accept the accuracy of this test., and the same becomes.

The drug is administered and the reasoning capacity of a person is obstructed. It is just that the memory and the speech remain fine. Such drugs claim to bring out the truth from the persons since their reasoning capacity is lost. But this is a human psychology and a human brain that we are dealing with herein. The same should not be considered as easy. There can be situations, where people can make false statements even during the NARCO test, which makes it very doubtful. Forcibly restraining a person's liberty can account for the violation of Art. 21 of the Indian constitution.

CONCLUSION

NARCO Analysis has stood the test of law, becoming a valid and legal procedural investigation entity. In what circumstances the consent of the subject has been taken should also be taken into consideration. If even the consent is taken under threat and coercion, the accused would never be able to come out and accept in a court of law, that even his consent has been taken under coercion. Despite this, many times , even the accused have demanded the NARCO test, so they can come out guilt-free. Even if consent has been taken, as per the ethics the same should still not be done, as interfering with a person's mental space and drugging him to an extent where he speaks what he may not be speaking rightly, is not correct. A person should never be forced or induced to give any statement. Such non-scientific procedures make the work of the authorities easier.

⁷ Indian Evidence Act, 1872

Though, since the courts have upheld the procedure, the main concern now should be that they are not misused and are used for the benefit of the criminal, investigation system.

Even though NARCO Analysis has been a controversial topic of discussion, it has helped the police to reach conclusive proof, for example in the recent case of shraddha walker, the accused consented to NARCO and the police could find the right evidence. NARCO test holds the capacity to be beneficial.