Chapter V

Narco-Analysis: A Boon for Criminal Justice System
NARCO-ANALYSIS: A BOON FOR CRIMINAL JUSTICE SYSTEM IN INDIA

5.1 Introduction

Law is dynamic and not static and therefore, as society evolves, law has to keep in consonance with the changing social order. Law is the instrument of societal change and the judiciary has the responsibility of interpreting the law for the greater good. Therefore, it is clear that the judicial mind must stay in touch and keep in step with the advancement of humanity. To combat organised crime, its detection, investigation and prevention method have to be employed synchronously. If the criminals use new technology in committing the crimes, the enforcement agencies have to be used to the new techniques in solving such crimes. If the enforcement agencies do not use these new technologies for solving such complicated the crimes, it would be very difficult to detect the perpetrators of such crimes. Therefore, in the context of the changing organised modern criminal who are taking shelters behind and making full use of new sophisticated technologies. Krishna Iyyer J. Remarked, “the courts self-criminate themselves if they keep the gates partly open for culprit to flee the justice under the guise of interpretative enlargement of golden rule of criminal jurisprudence.

Across the globe, methods of law enforcement are witnessing colossal changes with progress in science and technology. The contemporary society needs recent scientific methods of crime recognition, in case the general public go unprotected. There are several methods for crime investigation to detect lying and deception by suspect and accused. Most of the techniques are founded on torture, either physical or mental. But modern techniques like Polygraph and brain–mapping test are non invasive method that will detect deception without causing physical or mental injury to the subject. Methods of investigation are witnessing rapid shifts with the amalgamation of scientific techniques and criminal procedure. Scientific techniques are necessary for proving the guilt as well as innocence of the accused. As science

1 Philosophy propounded by Jeremy Bentham and John StuArticle Mills.
has outpaced the development of law or at least the laymen’s understanding of it, there is inevitable difficulty concerning what can be acknowledged as proof in court. Narco-Analysis is one such scientific progress that has become an increasingly perhaps alarmingly, common in India.6

Narcosis is a state of stupor induced by drugs. The use of narcotics as a therapeutic aid in psychiatry was limited to the use of opium for mental disorder by the early Egyptians. J. Stephen Horsely introduced the term “Narco-Analysis” in 1936 for the use of narcotics to induce a trances like state in which the patient talks freely and intensive psychotherapy may be applied. Now days psychoanalytical and narcoanalytical tests are carried out to interpret the behaviour of the suspect, accused person or the criminals.7

The term Narco-Analysis though a misnomer is becoming very popular in law enforcement and judicial circle. Abreaction is a method of psycho-analysis practiced by psychiatrist, where in a short acting narcotic drug is administered to the patient to induce a hypnotic stage.8 Narco-Analysis is thus a mode of psychotherapy which is an aid to the scientific interrogation in reality. It is a process whereby a person is put to sleep or into semi-conscious state by means of chemical injection and then interrogated while in this dream like state. It is the view of the scientist who conducts the Narco-Analysis test on the person who is suspect, that in semi-conscious state person losses self control and speak truth.9

5.2 Meaning and Concept of Narco-Analysis Test

Generally it is viewed that if a drug is given to person which repress his power to reasoning without affecting the memory and speak, it is possible to made him to speak truth. The underlying theory is that a person is able to lie by using his imagination, but due to the influence of drug a person losses his self control as a result of which he fails to imagine the fact and would speak the truth. In this state it is very difficult for him to tell lies, rather he would talk about which he had the knowledge. The utilization of such drug in police work or interrogation is alike to the traditional

8  Supra 4, 22.
9  Ibid.
psychiatric practice of Narco-Assessment and the only difference in the two procedures is the difference in the objectives.  

A new terminology had been added in the field of Criminal investigation through forensic science in the year 1936 which is known as Narco-Assessment test. The term ‘Narco-Assessment’ is derived from the Greek word Narco (meaning “anaesthesia” or “torpor”) and is used to describe diagnostic and psychotherapeutic techniques that used psychotropic drugs, particularly barbiturates to induce a stupor in which mental element with strong associated effect come to the surface, where they can be exploited by the therapist. It is also known as drug hypnosis or a truth serum or a combination of hypnosis or narcosis. Thus it is method to make human thought and communication manageable. According to Webster Dictionary, “Narco-Assessment means psycho analysis in a state which is similar to sleep and this state is achieved by use of drugs. These drugs are known as ‘truth drugs’ or ‘truth serum’.

According to the online Merriam Webster’s Medical Dictionary, Psychotherapy that is performed under sedation for the recovery of repressed memories together with the emotion accompanying the experience is designed to facilitate an acceptable integration of the experience in the patient’s personality.

It can also be defined as a psychotherapy that is conducted while the patient is in sleep like state induced by barbiturates or other drugs, particularly as a means of releasing repressed thoughts, feelings or memories. It’s use is limited to such situation when there is compelling, instant requirement for a patient’s responses.

Narco-Assessment test is also known as “truth Serum test”. They are the drugs sometimes used clinically. Some of them are seconal, Hyoscine (scopolamine), Sodium Pentholon, Sodium Amythal and Phenobarbital. These drugs produce a state of semi-consciousness in the subject and the reasoning faculty of the individual becomes ineffective. These drugs works on the principle of inhibiting the thought filtration procedure of the brain. The principle behind this is that when we lie, our

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11 Gujarat Law Herald sponsored by the Bar Council of Gujarat, 2009(2), 44.
12 Robert house, a Texas obstetrician used the drug scopolamine on two prisoner in 1922.
thoughts are filter by the brain and decides by the brain what is to be exposed and what has to be unrevealed. By application of this procedure a person can no longer sift his idea and to speak the truth, or so is supposed.\textsuperscript{15}

Thus this test is a scientific procedure to obtain information from an individual in a natural sleep-like state and a person is liable to lie by using his imagination. In the Narco-Analysis test, the subject’s inhibition are down by prying with his nervous system at the molecular level. In this state, it becomes difficult although possible for him to lie. In such a sleep like state efforts are made to get “probative truth” about the offence.\textsuperscript{16}

Narco-Analysis test is conducted by 3 gram of Sodium Pentothal\textsuperscript{17} dissolved in 3000 ml of distilled water and the solution is administered intravenously along with 10\% of dextrose over periods of three hours with the help of a qualified anaesthetist.\textsuperscript{18} It is a barbiturate (thiopental sodium) making the neural membrane more permeable to Chloride ions, resulting in the general inhibition, starting with the cortex and working down to the lower brain regions with increasing biological effects at just neural inhibitory effect to create an alcohol-like disinhibition”. At of normal behaviours restraints. A higher dosage may create a stupor and inhibit independent thought and actions to a greater extent.\textsuperscript{19} Essentially, the drug is used to reduce resistance to the hypnotist, who then has to frame question and evoke response in a way likely to produce accurate answer. However this possess many problems. Too little narcotics and the subject may be able to fake through the situation, too much and they may become unconscious, the accuracy of answer may be effected. Sodium Pentothal binds GABA (gamma amino butyric acid) (Chloride channel super complex, which is the primary inhibitory neurotransmitter channel in brain) forming a complex at a site, which exerts control over the permeability of chloride ions in to neural membrane leading to the attainment of “the state of disinhibition”. At a dose, which does not cause sleep, or rather unconscious, disinhibition”. At does remove the barrier of inhibition and it is difficult for anyone to lie at this stage.

\textsuperscript{15} Rajesh Punia “Narco-Analysis Investigating Tool or A Torture?” 115CriLJ 22(2009).
\textsuperscript{17} Yellowish White powder Alliaceous, garlic like odor soluble in water alcohol.
\textsuperscript{18} Preparation is covered by US Patents 2153729(1939)2876225(1959).
Dr. Mohan, the Director, state Forensic Science Laboratory, Bangalore, opines that a person would not lie at all when administered with this drug. According to him the Narco-Analysis procedure depends upon the effect of bio-molecules on the bio-activity of an individual. This is evident as the drug depresses the central nervous system, lowers blood pressure and slow the heart rate, putting the subject in to a hypnotic trance resulting in a lack of inhibition. This subject is then interrogated by a team comprising of an anaesthesiologist, a psychiatrist, a clinical/forensic psychologist, an audio-video graphed and supporting nursing staff. The member of team monitor reaction facial expression, pulse rate, heart beat and body temperature of the accused. The entire conduct of the procedure is video graphed. The questions are designated carefully and are repeated persistently in order to reduce the ambiguities during drugs interrogation. The forensic Psychologist will prepare the report about the revelations. After the Narco-Analysis examination is over the suspect is made to relax for 2-3 hours. The report prepared by the expert is useful in the process of collecting the evidence. Based on the test report investigator corroborates information gathered previously on a person’s involvement in crime. The strength of the revelation, if necessary, is further verified by subjecting the person to polygraph and brain-Mapping test.

The subject is interrogated by the investigating agencies in the presence of the team of doctors. All the process during the test is recorded both in video and audio cassettes. The report prepared by the expert is used in the process of collecting evidence. This test is conducted by the expert in the government hospitals after a court order is passed instructing the doctors or hospital authorities to conduct the test. Personal consent of the accused person is also required. In this test dosages of drug may vary according to sex, age, health and physical condition of the subject. The drug depresses central nervous system (CNS) and makes the heart beat slower and blood pressure also lower down. When the person’s speech becomes slurred and he/she behaves in a cooperative manner and also becomes more talkative it may be presumed that he/she is under full control of drug. Slurred speech is generally a symptom of semi-narcotic state of patient. The examiner satisfies himself/herself by testing the

21 Ibid.
patient’s eye muscles with his/her finger. Needle is left in the vein of the patient as different persons need different doses of the drug and also for continued narcotic state, further administration of drug is necessary. Care is taken when drug is administered which may keep the patient in semi-awake state and he/she does not go in deep sleep state, the drug is safe.\textsuperscript{23}

In such hypnotic stage the investigation agencies ask the question from the suspect and the suspect give answer of the question without fabricating the false statement due to effect of medicine. Because it is believed that Sodium Pentothal, Sodium Amythal or Scopolamine makes the subject’s power to keep from divulging the required information. But it is not the complete truth. These drugs do relax the subject, but the researcher found that in a number of cases the subject retained their ability not to divulge the fact that these drugs have caused some persons who have totally forgotten the event and with the help of these drugs the subject was able to recollect the fact.\textsuperscript{24} The drugs used do not guarantee that the subject will speak only the truth.

\textbf{5.3 Success Rate of Narco-Analysis Test}

As long as the principles underlying the technologies are recognized as scientific, no parallel can be drawn with “torture”. In The Forensic Science laboratory, Bangalore, More than 300 people has subjected to this test for committing various crimes. The success rate of this test was about to 96-97 percent as evaluated by the investigating agencies. About 25 percent of the total numbers of individuals subjected to Narco-Analysis test were proved to be innocent. Therefore, the rights no of innocent individuals stand established when the public and human rights activists protest that investigating agencies adopt third degree method to extract information from the accused; it is time the agencies took recourse to the scientific methods of investigation, because this technique is really very helpful in crime investigation.\textsuperscript{25}

\textbf{5.4 History of Narco-Analysis Test}

A person when in narcotized of mind reveals the truth and those thought which he/she normally conceals. Thomas De Quincy had done 1804 experiment he

\begin{itemize}
\item \textsuperscript{23} \textit{Supra} 3,363.
\item \textsuperscript{24} \textit{Ibid}.
\item \textsuperscript{25} \textit{Supra} 13, 109.
\end{itemize}
wrote with these experiences that “opium like wine makes the heart expended and the person speak out his/her concealed feelings”. Narcosis can be achieved by using drug like cocaine, ether, alcohol, scopolamine, barbiturates, hallucinogens, etc. 1980 Sheer Chance used sodium cyanide for narcosis.26

In between 1903-1915, investigators used mild types of anesthesia commonly used in obstetrical practices. For extracting the truth or obtaining confession from suspect investigation used alcohol as a truth serum which depressed the central nervous system (CNS) because they believed on time-honoured aphorism in vino veritas which means “where there is wine there is truth”. The alcohol produces a remarkable condor or freedom from inhibition and under the influence of this a person looses his/her tongue and eliminates repressive influence.27

About a century ago with the advent of anesthesia it was observed that after administering drug the patients were prone to make extremely naïve remarks about personal matters which in their normal state would never have been revealed.28

In the late 19th century ether, chloroform or hashish were used to induce person and to deepen the hypnotic effect. In early 20th century, barbiturates were administered for the psychotherapeutic treatments, these experiments showed that most of the patients showed uninhibited flow thoughts were revealed under its influence. In Narco-Analysis barbiturates induced state of excitation is created and patients recall forgotten and repressed conflicts, events and experience. These details also help in treatment of traumatic combat neurosis. In 1931, Italian psychoanalyst for the first time used mixture of mescaline (a hallucination drug that is extracted from the button shaped nodules on the stem of the peyote cactus- Bloomsbury’s Concise English Dictionary, 2nd Edition, p. 906) and dhatura seeds for the purpose of psychoanalysis. It should be remembered that LSD (Lysergic Acid Diethylamide) was discovered in 1943 and it was then effectively used hallucination experience and later on this was used for psychotherapy. In 1953, it was observed that a single LSD application on neurotic patients was effective in abreactive memory activation. It was also found that by small dosages of hallucination useful images could be intensified and deepened. In 1960, the term “psycholysis” was in Fist European Symposium for

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27 Id. 432.
28 Ibid.
Psychotherapy under LSD- 25. Psycholysis includes psychoanalysis with low dosages of hallucinogens. These experiences were dreamlike but at the sometime it was a clear altered state of consciousness which could be processed.29

The procedure adopted is that the patient is kept lying on a bed almost darn and is attended by a trained nurse who talks with the patient and dosages of drugs are injected. The patient is reminded that he/she is under physician’s control and should surrender to the vision and images which appear before him/her without any reservation. His/her remarks during these processes is either tape-recorded or written and then handed over to a patient so that he/she may prepare a retrospective record. After that a drug free session of interview takes place. In this procedure drugs affected experience has a supporting role. These sessions continue for the several months and even up to a year. Psycholysis30 is considered for patients who were reluctant to use any kind of therapy. In 1960’s, psycholosis was used in 18 European centers and more than 7000 patients were treated within a periods of 15 years. In 1965, Alnaes and Grof suggested “a combination of psycholytic and psychedelic methods” and gave its name as ‘psychedelytic’.It is most modern concept.31

5.5 Chronological list of discoveries and development in the field of Narco-Analysis

- In 1903, the drugs like barbiturates were first synthesized.
- In the 1st half of 20th century, 2005 drugs of barbiturates class have been prepared but about 24 of the drugs have been prescribed as medicine.
- In 1918, these drugs had given an unbelievable result on catatonic patient who had given mute rigid. After the injection of sodium cyanide by Arthur S. Lovenhart of University of Wisconsin the patient suddenly relaxed, open his eyes answered a few questions.
- In 1922, a Dallas Texas Obstetrician Robert House scopolamine as a truth drug on two imprisoned soldiers whose guilt seemed clearly confirmed but after the administration of the drugs both of them denied the charges framed against them under the influence of drugs and upon trial the court found that they were not guilty and they were exonerated.

29 Ibid.
30 Ibid.
31 Id.434
• From 1922 to 1930, these drugs were effectively used by the police in the interrogation of suspect to extract the truth or to obtain confession.

• In 1929, scientist Bleckwenn used the sodium Amythal first time directly through the mouth of a patient.

• In early 1930s, many psychiatrists were experimenting with drugs as an adjust to establish methods of therapy.

• In 1932, Lindermann gave for the first time small dosages of sodium Amythal intravenously to the patient.

• In 1935, some of the barbiturates were used on reluctant suspects by Clarence W. Muehberger, Head of the crime Detection Lab, East Lansing.

• In 1936, J.S. Horsely introduced the term Narco-Analysis.

• In 1942, Grinker and Spiegal coined the term “Narco-Analysis technique”.

5.6 History of Novel Scientific and Technical Tools of Instigation with Reference of the Frye Case and Dubert Case

The history of the admissibility of scientific testimony involves two very instructive and interesting cases that illustrate the difficulties that courts have had in determining the standard for admissibility of novel scientific evidence.

The Frye case

Prior to 1923 in the United States, most courts treated scientific evidence the same as any other type. The rules governing the admissibility of evidence were derived from the Common Law. There was no codification of specific rules. In 1923, the landscape changed for novel scientific evidence, owing to a murder case in Washington, D.C. James Frye was on trial for murder. As part of his case, he sought to have introduced the result of a test that utilized a machine that could be considered the forerunner of today’s polygraph. He claimed that the result of the test helped to prove that he was innocent. The prosecution objected to the admission of his novel evidence, and the judge agreed. On appeal, the court upheld the trial judge’s decision. In effect the appeal court stated that, with respect to novel scientific evidence, not

only must it meet the relevancy slandered, but an additional hurdle must be overcome as revealed in its ruling.\textsuperscript{33}

Just when a scientific principle or discovery cross the line between the experimental and demonstrable stages is difficult to define. Some-where in this twilight zone the evidence force of the principle must be recognize, and while court will go a long way in admitting expert testimony deduced from a well recognised scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field to which it belongs.\textsuperscript{34}

Thus, the slandered for novel scientific or technical evidence that came out of this decision was that before new scientific technique could be introduced in court, the underlying principle that governed it, must have achieved general acceptance within the particular field to which it belongs. One important issue was not decided by the court, i.e. what constitutes general acceptance. In fact, this issue has never been clearly decided. It has come to mean, more or less by default, that the technique and principles should have been published in a peer reviewed journal or other equivalent exposure to the field. This implies that peer reviewed for a journal and publication means that a technique will be generally accepted. There are numerous examples in all scientific principle endeavors where this has not been borne out. Many valid and reliable scientific principles have never been published, and there are numerous examples of techniques that have been published and later shown to be unreliable.\textsuperscript{35}

Over the next 70 years, the federal courts and about half of the States used the Frye case as the yardstick to evaluate the admissibility of new scientific techniques. During that time a number of novel scientific techniques were subject to “Frye challenges” in various courts. They included Voiceprint Spectrography’ Blood Spatter Pattern Analysis, Polygraph analysis, and even DNA Typing techniques.\textsuperscript{36}

On, January 2, 1975, the Congress, the first time, approved an evidence code. This had been proposed by the U.S. Supreme Court in a preliminary draft from in 1969. Its effective date was July 1, 1975. The initial set of rules of evidence contained


\textsuperscript{34} Frye v. United States, 293F, 1013, 1014(D.C.Cir. 1923).

\textsuperscript{35} \textit{Ibid.}

\textsuperscript{36} \textit{Ibid.}
a specific rule 702, the proponent of expert testimony had the burden of demonstrating that the expert was qualified and that the opinion evidence would have been helpful to the fact finder (the judge). After the new evidence would code was adopted by Congress, federal and many state courts became divided as to whether Frye or the new Federal Rules should be used to determine the admissibility of the scientific evidence. The question was addressed and settled by the U.S. Supreme Court in *Dubert v. Merrill-Dow*  

**Dubert v. Merrill-Dow**

The plaintiff in Dubert v. Merrill-Dow, heard in federal District court, was a pregnant woman, who took Bendectin, a Merrill-Dow product that had been prescribed for many years to relieve Nausea that occurred during pregnancy. After her baby was born with birth defects, she sued Merrill-Dow, claiming that Bendectin caused the birth defect. Since biochemical causes of birth defects are not fully understood, there was no direct way for Deubert to establish directly that Bendectin was the cause of the defects. Instead, the plaintiff had to resort to epidemiology, the study of the cause and effects of disease on large populations. The plaintiff and defendant both retained statisticians to determine whether the instance of birth defects among women who took Bendectin during pregnancy were statistically greater than birth defects in the general population. The plaintiff’s expert conclude that there was a significant increase in birth defects among Bendectin user’s babies, whereas the defendant’s expert conclude that the plaintiff’s expert did not use methods that were generally accepted by the scientific community in reaching their conclusions; that is, they argued and, upon a motion for summary judgment, found for the plaintiff, Merrill-Dow. Dubert appealed and eventually the case reached the U.S. Supreme court. The court ruled that the trial judge had used the wrong standard of admissibility in reaching his ruling. The Supreme Court concluded that the federal courts could not use the Frye rule any more in deciding question about the admissibility of scientific or technical evidence, and that the doctrine general acceptance was not the proper yardstick. Instead, the courts must use the Federal Rules of Evidenced relevance

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37 *Id.*, 639.
standard when evaluating the admissibility of novel scientific or technical evidence. The Court drew particular attention to FRE 702, reproduced here:38

If scientific, technical, or other specialized knowledge will assist the trier-of-fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise.

In interpreting the federal Rules including 401, 402, 403, and 702, the court indicated that the judge must be the gatekeeper who decides when novel scientific evidence is admissible. In doing so, the court went as far as to suggest several criteria that a judge could use in the gatekeeper role. These criteria were not meant to be exhaustive, but not only suggestive:

(a) **Falsifiability**: If, the underlying theory or principle behind a novel technique has been repeatedly tested to see, if, it is false and in all cases the theory is verified, this can be a good measure of validity. This is not amenable to all principles, and proper research design must be implemented for this to be a valid criterion.39

(b) **Knowledge of error rates**: If, the error rates of the result of a technique are known or can be estimated, then a judge could presumably make some determination as to the reliability and validity of a technique. For some techniques however, there is little or no qualifiable data available to determine an error rate.40

(c) **Peer review**: Certainly, a technique or method or principle that has survived the peer review process and has been found worthy of publication has demonstrated some level of scientific validity. This is tempered, however, by the issue of the quality and scholarliness of the journal in the applicable field.41

(d) **General acceptance**: the Supreme Court of U.S. never meant discard general acceptance as an acceptable criterion for determining scientific validity. the court conclude that this should not be the only criterion and that there exist

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38 Id.,640.
40 Ibid.
41 Ibid.
other, perhaps better ones. The court did not, however, seek to define what it meant by general acceptance.\textsuperscript{42}

In addition, the court’s decision mandate that novel scientific techniques must be based on scientific principle, not speculation, and that the scientific basis for the principles had to be demonstrated.

5.7 Use of barbiturates in Narco-Analysis Test and its Effect on Human Body:

Now the police are using Narco-Analysis test as a handy method for investigation and substituting the physical coercion and time consuming inquiry through direct questioning (not to mention lack of skill and inefficiency being the reason in some cases) in to direct methods. When a person consumes or is being in injected with an intoxicating substance, such as Barbiturates etc., the blood takes that material to the brain. Every substance which is present in blood is not capable of crossing blood-brain barrier, but almost all intoxicants are capable of crossing the barrier. For these reason these material are used as Anaesthesia agents to produce unconsciousness in surgical operations to diminish pain\textsuperscript{43}.

While using this drug in Narco-Analysis Test, it has got depressant effect on CNS and also over cardiac and respiratory system. It interferes and depresses cytochrome enzyme system. It reduces renal output, temperature regulating canter fails and also cause rapid paralysis of the respiratory system.\textsuperscript{44} In this test as with most drugs, little is known about the way barbiturates work or exactly how their action is related to their chemistry. But a great deal is known about the action itself. They can produce the entire range of depressant effects from mild sedation to deep anaesthesia and death.\textsuperscript{45} In small doses, they are sedatives acting to reduce anxiety and responsiveness to the stressful situations; in these low doses, the drugs have been used in the treatment of many diseases, including peptic ulcer, high blood pressure, and various psychogenic disorders. At three to five times the sedative dose the same barbiturates are hypnotics and induce sleep or unconsciousness from which the

\textsuperscript{42} Ibid.
\textsuperscript{43} Yawer Qazalbash, \textit{Law of Lie Detectors} 49(Universal Law Publishing Co., 2011).
\textsuperscript{44} R.N Karmakar, Forensic Medicine and Toxicology 386, (Academic Publishers).
\textsuperscript{45} Any derivative of barbituric acid (an organic acid from which various sedatives and sleep-inducing drugs are derived) used in the preparation of sedative and sleep-inducing drugs.
subject can be aroused. In larger doses a barbiturate acts as an anaesthetic, depressing
the central nervous system as completely as a gaseous anaesthetic doses. In even
larger doses, barbiturates cause death by stopping respiration. The barbiturates affect
higher brain centres generally. The cerebral cortex that region of the cerebrum
commonly thought to be of the most recent evolutionary development and the centre
of the most complex mental activities seems to yield first to the disturbance of nerve-
tissue function brought about by the drugs. Actually, there is reason to believe that the
drugs depress cell functions without discrimination and that their selective action on
the higher brain centres is due to the intricate functional relationship of cells in the
central nervous system. Where there are chains of inter dependent cells, the drugs
appear to have their most pronounced effects on the most complex chains, those
controlling the most "human" functions. The lowest doses of barbiturates impair the
functioning of the cerebral cortex by disabling the asectionnding (sensory) circuits of
the nervous system. This occurs early in the sedation stage and has a calming effect
not unlike a drink or two after dinner. The subject is less responsive to stimuli. At
higher dosages, the cortex no longer actively integrates information, and the
cerebellum, the "lesser brain" sometimes called the great modulator of nervous
function, ceases to perform as a control box. It no longer compares cerebral output
with input, no longer informs the cerebrum command centres of necessary
corrections, and fails to generate correcting command signals itself. At this stage
consciousness is lost and coma follows. The subject no longer responds even to
noxious stimuli, and cannot be roused. Finally, in the last stage, respiration ceases.\textsuperscript{46}

In addition, it can be said that following danger may be caused out of Narco-Analysis
test:

1) As, said overdose of Barbiturates, and vasoconstrictive agent (likely to be used).
The total quantity and concentration, which may go much beyond dangerous
limits as in relation to age, stature, fitness, and weight etc. is hazardous.

2) Rapid absorption from highly absorptive area or as a result of local
Vasodilatation may cause a danger.

3) Accidental injection into a main vessel.

4) The subject may be hypersensitive to the particular drugs or a mixture of it.

\textsuperscript{46} Constitutional Validity of Narco-Analysis Test under Article 20(3) of the Constitution of India
with reference to Judicial Pronouncements available at http://www.oirj.org/oirj/March2014-
5) It becomes a hazard where Adrenaline is being injected close to an end due to error.

6) The general effect of any or the error or negligence, the central nervous system may behave exitory resulting in convulsion, or it may become danger to life from respiratory paralysis. In a remote chance the heart may also be affected.47

5.8 Narco-Analysis test and its application in Criminal Justice System: An Overview

5.8.1 Significance of Narco-Analysis test in Medical Science: An Appraisal

The deception-detection test (DDT) such as Narco-Analysis test have important clinical scientific, ethical and legal implications.48 Narco-Analysis has been used in the mental health cases for diagnosing the ailment. Its role is therapeutic and also interventional. Narco-Analysis is done for understanding psychodynamics behaviour of patient. It also help in understanding the psychological realities about the patient. In the medical field, Narco-Analysis is used for (1) for restoring speech to mute person, (2) in cases of amnesia, for reviving memory and (3) for expression of suppressed or repressed thought or conflict.49

For a psychiatrist, the distinction between amnesia and malingering is important. Narco-Analysis is not very helpful in case of malingering. Amnesia is also categorized as assumed amnesia, patchy amnesia or hysterical amnesia. An assumed amnesia is often exposed by some chance remark or written statement of the accused. A patchy amnesia is in which forgotten and remembered event follow each other indiscriminately and it is likely to occur in malingering. The genuine amnesia should not be contaminated by prolonged questioning and by suggestive remarks. Hysterical amnesia is followed by psychic trauma.50

Medicine and law are two different and sister profession and everybody needs and uses them in their daily life. When medicine and law combine it becomes medico-legal. Lawyers and judges are aware about it but an average man has no exact knowledge about these two basic professions. Even lawyers who do not deal with

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47 Supra 27, 50.
49 Supra 3,373.
50 1977 Senate Hearing on MKULTRA:“Truth” Drugs in Interrogation (The CIA’S Program of Research in Behavioral Modification).
medical issues in their profession know much about medicine. Although it is very much necessary for them to know about it. So in the case with doctors who know very little about law while it is necessary for both to know each other fully well. They do not realize the importance of the other profession. This gap is filled by medico-legal experts and they provide a smooth functioning between the two branches of profession. If doctors do not know about the particulars of law and appear to prove his/her report in court he/she may not be able to answer the question put to him/her by lawyer and judge. Similarly, lawyers who are ignorant of medical vocabulary would fail to defend their client properly. Both get together in court and one’s aid is sought by other. Both professions face each other when a person is injured or a narcotic addict is brought to the court or when evidence is presented for the purpose of analysis by a scientist. These are so many answers where both are profession; law and science meet each other.  

Sodium Pentothal drug is used in Narco-Analysis test is used as an induction agent for the general anaesthesia routinely contemplated in most of the surgeries and the psychiatrists routinely use Sodium Pentothal in the diagnosis and/or to evaluate the psychological realities.

5.8.2 Significance of Narco-Analysis test in legal science

Now a days, the importance of Narco-Analysis test is increasing with the time. It has great importance at the time of Crime investigation. Infact it has become an integral part of the crime investigation. It is generally thought that by conducting the Narco-Analysis test the truth may be successfully reveal. So the investigating agencies conduct the test for revealing the real truth from the accused person. There are so many cases in which Narco-Analysis test was conducted by the investigating agencies. It is used as a preventive forensic tool to apart the planned crime, bursting the conspiracies it can prove to be a valuable technique to prevent the organised crime in the hand of competent team of expert.

To find out the answer of the following three question, Narco-Analysis test is conducted on the accused person –

52 Supra 3,415.
53 Ibid.
(a) What is revealed in Narco-Analysis test?
(b) What is evicted in Narco-Analysis test?
(c) What is the outcome of Narco investigation?

In the first category, the person is accused because of enough material evidence and only some links are missing to connect the crime to the accused. In second category, he is an accused because of circumstances. In the third category, he is only a suspect because of the complaint and witnesses statement and there is no material evidence. Narco-Analysis test is basically practised by the psychiatrist to diagnose and treat the mentally ill subjects so that they can exactly know the psychological truth about the subject who is not able to reveal it. But at present, it is used by police as a method for investigation. In police investigation physical coercion has been substituted for pain staking and time consuming inquiry in the belief that direct method produce quick result. Sir James Stephen has well defined the practice of employing physical force and coercion during police investigation. While elaborating it in 1883, he lamented following word-“it is far pleasanter to sit comfortably in the shades, rubbing red pepper in a poor devil’s eyes than, to go about in the sun hunting up evidence. At present Narco-Analysis test is conducting by police authorities in place of third degree method on suspect, which seems much humanitarian method. Through these tests, the investigation officers are much concerned about the empirical facts or truth rather than psychological one so that it can be used against the suspect as evidence.

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According to J.M. Donald, Psychiatrist, District Court of Denver\textsuperscript{57} says that drugs interrogation is of doubtful value in obtaining confession to crime. Criminal suspect under the influence of barbiturates may deliberately without information, persist in giving untruthful answer or falsely confess to the crime they did not commit. The psychopathic personality, in particular, appears to resist successfully the influence of drugs. He concluded that a person who gives false information prior to receiving drugs is likely to give false informations under the effect of Narco-Analysis also, that the drugs are of little value for revealing deception and they are more effective in releasing unconsciously repressed material than in evoking consciously suppressed information.

In India, like other countries Narco-Analysis test is also conducted by police officer for assistance in extracting confession from the accused person. In India where drugs have gained only marginal acceptance in the police work, their use has provoked cries of “psychological third degree” and has proved to be a scientific method of interrogation, on other hand such drugs are used in Narco-Analysis test. However it has been in the news in the past few years as new effective interrogating techniques which was used by various investigative agencies in many cases. For example it was first used in 2002 in case of Godhra Carnage probe, in 2003 in case of Abdul Karim Telgi, Arushi murder case, Nithari case etc. In this way, it has wide importance in the field of legal science. Doubt have been cast on its reliability and legal validity i.e. admissibility in the court of law. The application of Narco-Analysis test involves the fundamental question pertaining to judicial matter and human rights. However, the legal position of applying this technique as an investigative aid arises genuine issues like encroachment of an individual’s rights, liberties and freedom. With crimes going hi-tech and criminals becoming highly trained professionals, the use of Narco-Analysis by the investigating agency can be very useful, because whereas the conscious mind does not speak out the truth, unconscious may reveal the information, which could provide vital lead in. Even under the best condition, these tests could result in an output contaminated by deception, fantasy and garbled speech.\textsuperscript{58}

\textsuperscript{58} Kalvakota Srinivas Rao “Narco-Analysis” ALTJ 14 (2008).
5.8.3 Application of Narco-Analysis test in Criminal Justice System - An Appraisal

The Criminal Justice System has an alarmingly low conviction rate and the situation desires to be rectifying with importance on actual science and state of the thing and technology. The Central Government must make a clear policy stands on Narco-Analysis. The legal system should imbibe the developments and advances that take place in science as long as they do not violate the fundamental legal principles and are good for the society. Narco-Analysis, for the criminal interrogations has proved to be a valuable technique, which greatly affects both the innocent and the guilty and thereby hasten the cause of justice. The manner in which modern day criminals make use of science and technology in perpetrating their criminal activities with the relative impunity has compelled a rethinking on the part of the criminal justice establishments to seek to the help of the police, prosecutors and the courts.

Every government whatever be its form, must uphold the law and maintain in the society which it govern. These are the basic functions which is essentially done through what is called “Criminal Justice System” (CJS). As per Oxford dictionary, the term ‘system’ means “set of connected things or parts” or “set of organ of body with common structure or function”. Criminal Justice System (CJS) is the combination of various organs of the Government, entrusted with the job of ensuring justice to the people. The functioning and the efficacy of this system is the backbone for the very foundation of any societies.

With the rapid increase in the activities of modern state, individualisation and changes in the socio-economic and political scenario, more and more new crimes are coming up such as the custodial crimes, insurgency, terrorism, organised crimes, political crime and cyber crime etc apart enormorous increase in the traditional crimes like murder, rape, cheating, dacoity, domestic violence against women and children etc. The Criminal Justice System has failed to deliver proper justice to people at large. The different sub-system of Criminal Justice System has not been able to meet their goals and people have lost their faith in the existing Criminal Justice System.

Justice Gajendragadkar made the following observations in 58th report of law commission of India which is quite noteworthy:

“We have sound judicial tradition and a rational and systematic judicial process. There is no doubt that these factors have conferred great advantage on the country. An independent and efficient judiciary, a unified judicial system and a modernized procedure use though legacies of the pre-independence era, have always been cherished by us. The judicial system has earned in respect so earned is well deserved.”

Science and Technology are the modern-day engines of change and they continue to turn relentlessly forwarded. The impact of change on all areas of human life has been dramatic. Advancing technologies, along with the legislation designed to control it, will create crimes never before imagined. The future will see a race between technologically sophisticated offenders and law the enforcement authorities as to who can wield the most advanced skill on either side of the age-old battle between crime and justice.

The present technique of Narco-Analysis test is now being used rampantly in Criminal Justice System. It is a effective technique with which help the crime can easily solved. In Criminal Justice System Narco-Analysis test is used for the investigation purpose. According to Dr. S. L Vaya, Deputy Director of DFS, Gandinagar, Gujarat, “Narco-Analysis” is a useful and non invasive asset for the investigation and for the prevention of crimes and if used in a scientific way, it can be very useful for the thorough interrogation of the suspect. There are so many other methods for interrogation of the suspects such as third degree methods, Polygraph examination, psychological profiling, electrical activation and hypnosis. But Narco-Analysis has so far proved to be test methods of all. Technology and Science are the modern-day engine of change, and they continue to turn relentlessly forward. The impact of changes in all areas of human life has been dramatic. Advancing technology, along with legislations designed to control it will create crimes never before imagined. The future will see a race between technologically sophisticated

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62 Id.p.7
offences and law enforcement authorities as to who can wield the most advance skill on either side of the age-old battle between crime and justice.\textsuperscript{65}

It is used for investigation purpose in criminal justice system. In the matter of criminal cases the accused is asked to submit himself or herself for Narco-Analysis. This test should not be used in all cases. It should be used in such cases where the interest of society at large is involved. In case of terrorist activities also it could be used for reading the brain of the suspect to avoid further terrorist activities.\textsuperscript{66}

Narco-Analysis test has been successfully conducted on the accused person in the various criminal cases.

The Gujarat H.C. has held in \textit{Santosh Sharmanbhai Ladeja v. State of Gujarat}\textsuperscript{67}, that the Narco-Analysis test is basically conducted under the supervision of doctors and proper care is taken and there is observation of the state of the accused and as such, the element of risk is minimal risk is in fact part of life and pervades in most of human activities and on this ground alone, therefore, the impugned test cannot be condemned.

In \textit{Abhay Singh v. State of U.P}\textsuperscript{68} It was held by Justice Barkat Ali Zaidi that hairs and nails of the accused can be taken for utilisation during the investigation even if the accused does not agree for the same. If that invasion of the accused is permissible, the principle should be applicable to Narco-Analysis and Brain mapping Tests also. It means that other scientific test may also be conduct on the accused person without his/her consent. The discovery of the truth is the desideratum of investigation ad all efforts have to be made to find out the real culprit, because one guilty person, who escapes, is the hope of one million. Court have therefore to adopt a helpful attitude in all efforts made by the prosecution for discovery of the truth. If the Narco-Analysis and Brain-Mapping test can be helpful in finding out the facts relating to the offence, it should be conduct on the accused person.\textsuperscript{69}

In \textit{Selvi Murugeshan v. State of Maharasht}\textsuperscript{70} Kavita Murugeshan, wife of Shiv Kumar and daughter of Selvi Murugeshan, a T.N sitting MLA lodged an FIR

\textsuperscript{65} Supra 62, 68.
\textsuperscript{66} Supra 45,438.
\textsuperscript{67} 2007 crILJ4566.
\textsuperscript{68} 2009 Cri.LJ2189 (All) LK Bench.
\textsuperscript{69} Ibid. 2190.
\textsuperscript{70} 2004(7) KarLJ501.
that her parents and their friend Govindraj, president of MGR Fans’ Association and President of Erode District unit of AIADMK have murdered of her husband. She had charged her parents for the murder of her husband as she has made love marriage with him, who belonged to the other caste, against the wishes of her parents. The victim was kidnapped while he was walking with his wife (the complainant) and next day he was found murdered at a field in attebele Police Station limit in Bangalore rural district. His head was smashed with a boulder and he was identified by his driving licence.

In this sensational case, the investigating agency made demand from the court for conducting Narco-Analysis test. In this case, the question before the court was that whether conducting of Narco-Analysis test on the accused person will be a violation of Article 20(3) of Indian Constitution? It was held by the Court that it will be depend upon the nature of the question which are to be asked from the accused person. Whether the statement made or any information given by the accused person will be either exculpatory or inculpatory and it is only inculpatory statement which is hit by the Article 20(3) of the Constitution. Whether the accused make inculpatory or exculpatory statement will be known only after the test is conducted and not before that. Therefore, it is premature to say regarding the nature of the statement or the information which the accused gives under Narco-Analysis test. Collection of evidence is permitted under the law by the police officer. Conducting the Narco-Analysis test on the accused person is also part of collecting the evidence. It was further held by the court that this test should be performed in the presence of expert team of doctors. In this case, court permitted the authority for conducting the Narco-Analysis test. The Narco-Analysis test showed the involvement of Selvi Murugeshan and her husband but they were let off due to the lack of other evidences.

In *Ranjit Singh Brahamjeet Singh Sharma v. State of Maharashtra and Another* which is also known as Abdul Karim Telgi case, the accused person was involved in the fake stamp paper case. The accused person was brought for the Polygraph test. He was first interviewed and interrogated and it was found that he was concealing some relevant information. It was also found that he was also suspected to be lying about involvement of politician and police officer in fake stamp papers. On next day he was produced for brain mapping test. It was held by the court regarding

71 AIR 2005 SC 2277.
the report of admissibility of brain mapping test that no material placed on report to show as to how far the report can be relied on. Whether the scientific tests are admissible or not, will depend upon its genuineness. Whether the brain mapping test is so developed that the report so as to enable a court to place reliance on it, is a matter which requires further consideration. In this case, the court left the question undecided about the admissibility of the brain mapping test.

In *Ramachandran Reddy v. State of Maharashtra*\(^2\), Bombay H.C. upheld the legality of the use of P300 or Brain mapping and Narco-Analysis test. It was held by the court that the evidence produced under the effect of Narco-Analysis test is admissible. With the passing of the time as crimes are going hi-tech, the criminals become professionals, who are taking new techniques into consideration in committing the crimes. So the use of Narco-Analysis has really been significant in detecting the crime. It was further held by the court that this test involve minimal bodily harm.

In the case of *State of A.P. v. Inapuri Padma*\(^3\), it was held by the Andhra Pradesh High Court that where the petitioners are not the accused arrested by the court, there is no need to obtain any permission from the court to undergo Narco-Analysis if they express no objection to undergo the same. Where the witnesses are not willing to undergo the test, the police is required to seek the permission from the court as to what the circumstances that made the police gain the impressing that there is likelihood that the person proposed to put test knows something about the commission of the offence.

In the famous case of *Santokhben Sharmanbhai Ladeja v. State of Gujarat*\(^4\), the Hon’ble Gujarat High Court has held that the Narco-Analysis test is conducted under the supervision of competent doctors and with proper care and as such, the element of the condition of the accused risk is infact part of life and pervades in most of the impugned test cannot be condemned. In this case the question before the court that whether the conducting the Narco-Analysis test and Brain Mapping test is violative of Article 20(3) and Article 21 of Indian Constitution. It was held by the court that conducting the Narco-Analysis test or Brain Mapping test on the accused

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\(^2\) 2004 All MR (Cri) 1704.
\(^3\) 2008 CriLJ 68.
\(^4\) 2008Cri.L.J.68.
person is the part of the investigation and for investigation there is no need to take permission from the court. Under Criminal Procedure Code, there is no provision given about taken permission from the court for investigation. Thus it cannot be said that only conducting the Narco-Analysis test and brain mapping test on the accused is violative of Article 20(3) and Article 21 of the Indian Constitution.

Likewise in *Abhay Singh v. State of U.P.* 75, it was held by Justice Barkat Ali Zaidi that it is now well settled that hairs and nails of the accused person can be taken for utilization for investigation even if the accused does not agree for the same. If that invasion of the accused is permissible, the principle should be applicable to Narco-Analysis and Brain Mapping tests also. The discovery of truth is the desideratum of out the real culprit, because one guilty person, who escapes, is the hope of one million. The Courts have therefore to adopt a helpful attitude in all efforts, made by the prosecution for discovery of the truth. If the Narco-Analysis and Brain Mapping test can be helpful in finding on the facts relating to the offence, it should be used and utilized and courts should not obstruct the conduct of the exercise.

Recently in the well known case of *Surender Koli v. State of U.P. and Others* 76, Surender Koli was the main accused in the Nithari case. In this case Narco-Analysis test was conduct on the accused person on January 2007 in Forensic Science Laboratory, Gandhinagar to ascertain the veracity of their statement made during their custodial interrogation. During the test various confessional statement were made by the accused person under the effect of the drugs. During the test, the accused person reveal the names of various females and children which were murdered by the accuse person. On the behalf of the test and various other evidences Supreme Court upholds death penalty for Nithari’s accused.

In *Rojo George v. Deputy Superintendent of Police* 77, the CBI can compel the suspect to undergo the polygraph test and Narco-Analysis test for revealing the truth. The suspect raised the plea that the proposed Narco-Analysis test is extremely problematical test which conducted after administering sodium pentathol due to which the central nervous system effect, heart rate slows and blood pressure low. It is further averred that it is very difficult to determine the correct dosage of the drug to be

75 2009CriLJ2189(All)LKO Bench.
76 AIR 2011SC 970 .
77 2006 (2)KLT 197.
administered on a subject since the same varies according to the age, sex, physical constitution and also mental attitude and will power. It is further averred that a wrong dose could send a subject into coma or even cause death. It is further averred that the petitioner apprehends that if he is subjected to Narco-Analysis at this young age of 24, it will have far reaching consequences on both his physical and mental constitution. It is averred that the attempt of the CBI is to fasten the criminal liability in the above crime to someone. It is also that averred one Krishna Pillai confessed that he committed the offence. But the officers are not prepared to investigate whether that confession is true or not. The petitioner whole heartedly co-operated with the Investigating Agency while conducting brain mapping as well as polygraph test but the Investigating Agency was not able to collect any material. According to the petitioner Investigating Agency is bound to follow the procedure established by law even in the case of a suspect. He may not be compelled to undergo the test without an undertaking from the Investigating Agency that no adverse consequences will result by undergoing that test. It is also averred that subjecting a person into Narco-Analysis will amount to violation of the fundamental right guaranteed to the petitioner under Articles 20(3) and 21 of the Constitution of India.

It was held by the court in this case that Narco-Analysis is a scientific test conducted by the experts in the subject after taking all possible precautions. It is true that it has got adverse reactions also. But such adverse reaction can happen while administering any medicine prescribed by doctors practicing modern medicine. So merely because there is a remote possibility of adverse reaction, use of such techniques in conducting investigation cannot be prevented. It is argued that recording of a statement of a person undergoing Narco-Analysis will amount to testimonial compulsion and the same is violative of Article 20(3) of the Constitution. The protection against compulsion to be a witness is limited to persons accused of an offence. There is no constitutional protection to persons other than the accused. The immunity under Article 20(3) does not extend to compulsory exhibition of the body or giving blood specimen. The court’s considered view is that the same principle should apply to Narco-Analysis also because it is also a scientific test conducted by a team of scientists and not will amount to custodial interrogation by Police. In present days the techniques used by the criminals for commission of crime are very sophisticated and modern. The
conventional method of questioning may not yield any result at all. That is why the scientific tests like polygraph, brain mapping, Narco-Analysis, etc. are now used in the investigation of a case. When such tests are conducted under strict supervision of the expert, it cannot be said that there is any violation of the fundamental rights guaranteed to a citizen of India.

5.9 Constitutional Validity and Evidentiary Value of Narco-Analysis Test

Law is for society and the society for law. Law has to keep with the changing social order because of evolutionary ethos of society. Judiciary has as an important organ of government, the responsibility of interpreting the law for the greater good of the society viewed in this proper perspective, judicial mind must remain in touch and be abreast of advancement of humanity. For combating emerging organised crimes having refined overtones, its detection, investigation and preventive method have to be used synchronously.\(^78\)

Admission and confession form an integral part of evidence whether in a civil or in a criminal one and can therefore be relied upon for proving the truth of the fact, incorporated therein. Since admission are an important piece of evidence. It is open to the person who made the admission to prove that those admissions are true. Even if proved to be true, admission are not conclusive but would be decisive of the matter.\(^79\)

The expanding horizon of science and technology has thrown new challenges to lawyers and judges dealing with the proof of fact in disputes, where advanced techniques in technology have been used.\(^80\) The use of technology under civil and criminal law does not restrict itself to the production of evidence for admission in the courts. With the growth in technology, the method of availing such confession is expanded from using lie detector to the using of truth serum which also called Narco-Analysis.

One of the fundamental principles of administration of criminal justice is based on the maxim *Nemo Tenetur Seipsum Accusare* that means “no man is bound to accuse himself”. Article 14(3) (g) of the International Covenant on civil and Political

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\(^78\) Manpreet Singh, “Constitutional Validity of Brain-mapping and Narco-Analysis Test” 301PULJ (2011).

\(^79\) Cri.L.J 2011, 121.

\(^80\) National Textile Workers Union v. PR Ramakrishna AIR 1983SC.
Rights also provides the rights, “not to be compelled to testing against himself or to confess guilt”. In Britain it is a fundamental principle of the common law that a person accused of an offence shall not be compelled to find out document or object, which incriminates him. The privilege is based on the policy of encouraging person to come forward with the evidence in the court of justice by protecting them as far as possible from injury or needles annoyance in consequence of so doing. the Fifth amendment of the U.S Constitution also provides protection against self incrimination by stating “no person shall be compelled in any criminal case to be a witness against himself.”

The Constitution of India has clearly stated under Article 20 (3) that a person cannot be compelled to be a witness against himself. The provision operates as a shield against the compulsion of testimony. It established the preposition that –

(a) Accused is presumed to be innocent  
(b) Prosecution has to establish his guilt  
(c) Accused need not make any statement against his will.

This provision of the Constitution has provided due protection against such compulsion “to be a witness” and protection against such “compulsion” resulting in his giving evidence against himself. The protection against compulsion to be a witness is confined to person accused of an offence. There is no Constitutional protection for witness i.e. person other than the accused. However, the Indian Evidence Act, 1872, in Section 132 and 148 confer a limited protection against self-incrimination to witness in civil and criminal courts.

In *Selvi v. State of Karnataka*, the SC has laid down the principle about conducting of Narco-Analysis that Narco-Analysis test cannot be conducted on the accused person without taking the consent from the accused person. If such test conducted on the accused person, it would be violative of Article 20(3) of the Indian Constitution. It was further held by the Court that this test should be conducted in the presence of the expert.

82 Rajesh Punia,”Narco-Analysis investigation tool or a torture”115 CriLJ 23(2009).  
83 AIR 2010 SC 340.
Chapter V

Supreme Court Verdict on Narco-Analysis, Polygraph and Brain mapping test

The right against self incrimination is designed to prevent the use of law or the legal process to force from the lips of the accused person the evidence necessary to convict him. Though the right has been defined broadly its scope has been confined by judicial interpretation to evidence that is testimonial in nature. In other words, it has been held that the protection is available only to evidence which require a volitional act on the part of the accused person thus rendering it testimonial or communicative in nature and it will not protect taking of blood sample, fingerprints etc from the accused. The protection would be available only from the time the person is charged of an offence.\(^84\) It does not extend to the pre-accusation or investigation stage, if a strict interpretation of Article 20(3) is done. The immunity will not be available to a person against whom no accusation has been made when a compulsory process or notice is issued directing him under pain or penalty to produce a document though ultimately it may incriminate him for the commission of an offence.\(^85\) The Constitution incarnation stimulating the ban on self-incrimination has been enshrined in Article 20(3) of the Constitution of India. However, the question that arises today is whether the law enforcement authorities can be allowed to garner truth from every quarter in order to discover guilt and fulfil the final tryst of the justice system with the society. Article 20(3) of Indian Constitution is based upon a maxim i.e. “no man, not


\(^{85}\) A search warrant leading to discovery of contraband is a perfect example.
even the accused himself can be compelled to answer any question, which may tend to prove him guilty of a crime he has been accused of". This right had its origin in a protest against the unjust method of interrogating accused person. The privileged against self-incrimination remain an important safeguard in the criminal jurisprudence. The right given under Article 20(3) is non-derogable basic Human Right and cannot be taken away under any circumstance whatsoever. Even in case of emergency, this right cannot be taken suspended. The provision given under Article 20(3) embodies the principle of protection against compulsion of Self-Incrimination, which is one of the fundamental Canon of the British system of Criminal jurisprudence and which has been adopted by the federal American system and incorporated in the Federal Constitution. The Fifth Amendment of the American Constitution provides that "no person shall be compelled in any case to be a witness against himself". It has also to a substantial extent, been recognised in the criminal administration of justice in this country by the incorporation into various statutory provisions.

Analysing the terms, in which the guarantee is contained in our Constitution, it may be stated to consist of the following three components-

- It is a right pertaining to a person accused of an offence.
- It is a protection against compulsion to be a witness,
- It is a protection against such compulsion resulting in his giving evidence against himself.

Article 20(3) would not include signature, thumb impression, impression of the palm or foot or fingers, or specimen of hand writing, or exposing a part of his body by an accused for the purpose of identification. This does not amount to furnishing evidence against himself. The self-incrimination must mean covering information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing document in court which may throw light on any point in controversy, but which do not contain any

87 Section 342and SS 5 and 6, Indian Oath Act, 1873.
The statements of the accused person based on his personal knowledge.\textsuperscript{90} The Narco-Analysis, P300 or Brain Mapping and lie detector tests are the main tests which are conducted by Forensic Experts. In case of lie detector and Brain Mapping test, the prior permission of the court is not required to be taken because in these tests, injection of any drug is not involved where in Narco-Analysis test, the subject is given an injection of a drug under the supervision of anaesthetist so the prior permission of the court is required. The Narco-Analysis test was subjected to great criticism by defence lawyers by whom it was termed as violation of Article 20(3) of Indian Constitution, but it has been permitted to be conducted on the accused person by various High Courts in India and it has been found to be very convicting. The argument about violation of Constitution has been repelled by holding that rights under Article 20(3) is not absolute.\textsuperscript{91} In this test the statement made by the accused person are recorded on audio and video cassettes, and the reports of the expert is helpful in collecting evidence.

In case of \textit{state of Bombay v. Kali Kathu Oghad}\textsuperscript{92}, it was held by the Supreme Court that taking a thump impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body from an accused person for purpose of identification is constitutionally valid. In this case it was further held by the Supreme Court that the self-incriminating statement given without threat would not attract Article 20(3) of the Constitution of India because it was not given under compulsion. It was also said by the court that mere fact that the accused was in police custody does not by itself imply that compulsion was used for obtaining the specimen hand writing. Even if there is compulsion, it does not amount to testimonial compulsion.

In case of \textit{M.P. Sharma v. Satish Chandra}\textsuperscript{93}, the decision was given by a Constitutional Bench of 11 judges of Supreme Court. In this case it was held by the court that protection under Article 20(3) of the Indian Constitution is available to a person against whom a formal accusation relating to an offence is pending. It would mean that if an FIR has lodged against a person then the protection would be available. It was contented before the Supreme Court that the guarantee in Article

\begin{footnotesize}
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  \item \textsuperscript{90} M.P. Jain, Indian Constitution law569 (Fourth Edition, reprint, 2000).
  \item \textsuperscript{91} Supra note 3,p.408.
  \item \textsuperscript{92} AIR 1951 SCI 808.
  \item \textsuperscript{93} AIR 1954 SC 300.
\end{itemize}
\end{footnotesize}
20(3) of the Constitution against testimonial compulsion is confined only to oral evidence of a person standing his trial for an offence when he is called to the witness-stand. Rejecting this contention, the Supreme Court has said that there is no reason to confine the content of the constitutional guarantee to its barely literal import and therefore, to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decision.

The taking of impression of part of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself as to arm the agents of law and the Courts with legitimate power to bring offender to justice. Furthermore, it must be assumed that the founding fathers of Constitution were aware of the existing laws, for example Sec 73 of the Indian Evidence Act 1872 or Sec 5 and 6 of Identification of Pensioners Act (XXXIII of 1929). Hence the underlying principle behind the judgement that declared P300 and Polygraph testing as Constitutionally valid as it is reasonable and require no statement to be made by the accused. Furthermore, its arms the agent of law and the law courts with legitimate power to being offender to justice.

In *Nandini Sathpathi v. P.L. Dani*[^96^], it was observed by the Apex Court that in order to bring the evidence within the self-consciousness of clause (3) of Article 20 it must be shown not only that the person making the statement was an accused at the time he made it and it had a material bearing on the criminality of the maker of the statement, but also that he was compelled to make that statement under compulsion in the context must mean what in law is called duress. In the dictionary of English law by Earl Jawitt duress is explained as follows:-

"Duress is where a man is compelled to do an act by injury, by beating or unlawful imprisonment (sometimes called duress in strict sense) or by the threat of being killed, suffering some grievous bodily harm or being unlawfully imprisonment (sometime called menace or duress per minas). Duress also includes treating, beating or imprisonment of the wife, parents or child of a person."

[^94^]: Ramachandran Reddy v. state of Maharashtra Cr.W.P.No.1924 of 2003 decided on 5-3-2004, Bom. H.C.
[^96^]: AIR 1978 SC1025 at 1032.
Chapter V

The compulsion is in the sense of physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by the some extraneous process as to render the making of the statement involuntarily and therefore, exorted.

By the various High Courts of India it has been decided that Narco-Analysis test is a valid test and it does not violate Article 20 (3) of the Indian Constitution like that of the Bombay, Madras, Kerala, Gujarat, Andhra Pradesh and Allahabad. Moreover they have held that the Narco-Analysis test and the use of P300 or Brain fingerprinting, lie-detector test and use of mouth serum to be perfectly valid under Article 20(3) of the Indian Constitution.

Similarly in State of A.P. v. Inapuri Padma, it was held by Andhra Pradesh High Court that where the petitioners are not the accused but arrested by the order of the court, there is no need to obtain any permission from the court to undergo Narco-Analysis test if they express no objection to undergo this test. Where the witnesses are not willing to undergo the test, the police has to convince the court as to what are circumstances that made the police to gain the impression that there is likelihood that the person proposed to be put to test knows something about the commission of the offence.

In the famous case of Mohinder Singh Pandher and Surender Singh Koli v. State of U.P., which is also known as Nithari Murder case Narco-Analysis test was conducted on Surender Koli and Mohinder Singh Pandher in Jan 2007, who were the main accused in the famous Nithari Murder case. This test was basically conducted in the Forensic Science Laboratory in Gandhinagar. This test was basically conducted to ascertaining the veracity of their statement during their custodial interrogation. During this test, the accused person disclosed the name of various females and children who had been murdered by them and also revealed his argue to rape them after murdering them. By the conducting of this test many relevant information were disclosed to the investigating authorities.

In Dr. Rajesh Talwar and Another v. Central Bureau Investigation through its Director and Other, which commonly known as Arushi Murder case. In this case

97 2008 CriLJ. 3992 (AP).
98 AIR 2011 SC 970.
99 2013(83) ALLCC 283.
Arushi, a 14 year girl was found to be dead in the home on 16-05-2008. The report was made by the parents of Arushi in the police station. In this case Hemraj, who was a domestic servant in the house of Arushi, was suspected of murder of Arushi. But after two days the dead body of Hemraj was also found on the terrace of the house of Arushi. The parents of Arushi were arrested by the police. In this case Narco-Analysis test, Polygraph test and Brain mapping test was conducted on the accused person. It was pleaded before the court that the report of these tests cannot be taken as an evidence in the court of law. It was held by the court on behalf of the judgement of Selvi v. State of Karnataka that such tests cannot be conducted by the authority if the consent has not been given by the accused person. Trial court held that the result of tests cannot be admitted as an evidence because the subject does not exercise conscious control over the responses during the conducting of the test.

In the case of Sasntokhen Sharmanbhai Ladeja v. State of Gujarat\textsuperscript{100}, the Gujarat High Court held that “the Narco-Analysis test is conducted under the supervision of doctors and proper care is taken and there is consent, observation of the State of the accused, and as such, the element of risk is minimal. Risk is in fact part of life and pervades in most of human activities and on this ground, alone, therefore, the impugned test cannot be condemned.

In Abhay Singh v. State of U.P.\textsuperscript{101}, it was held by Justice Barkat Ali Zaidi that “it is now well settled that hairs and nails of the accused cannot be taken for the utilization during the investigation even if the accused does not agree for the same. In this case the application was moved by the investigating authority for conducting the Narco-Analysis test and brain mapping test of the accused person. It was the question before the court that whether the accused may be compelled for the Narco-Analysis and Brain Mapping test against his will. It was held by the court that the investigation and all efforts have to be made to find out the real offender, because, one guilty person, who escapes, is the hope of one million. If the Narco-Analysis test and Brain mapping test may be supportive in finding out the facts relating to the offence then it should be used and the court should not impede the conduct of the exercise.

\textsuperscript{100} 2008CriLJ 68(Guj.).
\textsuperscript{101} 2009 CriLJ 2189(All)(LKO Bench).
Chapter V

In Criminal Justice System, forensic science occupies a very significant place and it admissible in the courts. Section 53(1) of Cr.P.C. (Criminal Procedure Code) provides for the medical examination of the accused by the medical practitioner at the request of the police officer. According to Section 53(1) of Criminal Procedure Code – “when a person is arrest on a charge of committing an offence under such circumstances that there are reasonable grounds for believing that an examination of the person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of the police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonable necessary in order to ascertain of the facts which may afford such evidence, to use such force as is reasonably necessary for that purpose”.

Through this Section the forensic science gets an entry into the field of criminal investigation. The recent Amendment of 2005 made to Section 53 of Criminal Procedure Court apart from others is positive and protective towards the recognition of the importance of scientific test which include Narco-Analysis, Brain mapping apart from others.  

By virtue of Section 161(2) of Criminal Procedure Code, the legislation has protected the citizen’s rights against self-incrimination. According to Section 161(2) – “every person is bound to answer truthfully all question, put to him by a police officer, other than question the answer to which, would have a tendency to expose that person to a criminal charge, penalty or forfeiture”. The right to silence has been granted to the accused and no one can forcibly extract statements from the accused who has the right to keep silent during the course of investigation.

Section 39 Cr.P.C. also casts a duty upon any person to give relevant information to the police. This Section as well as other Sections relating to information to investigators have not been held unconstitutional. For effective and efficient investigation, such a power to an investigator appears to be necessary for bringing the criminals justice.

It can be easily inferred from the bare reading of the aforesaid Section along with the explanation that the term ‘examination’ used in the explanation is very wide to include modern scientific techniques of investigation including DNA Profiling and Narco-Analysis test. A similar type of argument was advanced by Solicitor General Goolam E Vahanvati in a pending case before a Bench comprising of Chief Justice K.G.Balakrisnan, Justice R.V. Ravindram and Justice Panchat Vahanvati appearing as amicus curie justified the use of these three tests, saying that they have legal mandate under Section 53 of Criminal Procedure Code which lists a host of various modern techniques like DNA Fingerprinting and collection of blood sample as perfectly legal tools to probe a crime. He argue that the term “such other test” occurring in the explanation note of the Section 53 include are properly considered to be step in the aid of investigation and not for obtaining incriminate the statements there is no constructional infirmity whatsoever, said Vahanvati. These tests are scientific methods in furtherance of investigation. All these tests are considered to be the part of the process of collection of some subsequent evidence. These tests may provides some clue to the investigating agency to collect some evidence but the statement given by the accused themselves during these tests do not have any evidentiary value to clarified the law officer.

5.10 Narco-Analysis test and Indian Evidence Act

A human being is capable to recline by using his thoughts. During the Narco-Analysis test, the subject’s imagination becomes neutralized and the reasoning faculty is affected by making him semiconscious. The subject is not in situation so that he speaks lie by thinking but can answer specific of simple question. In this state, it becomes difficult for him to lie and his answer would be restricted to the facts he is already aware of. His answers are unplanned and accurate as a semi-conscious person is unable to manipulate his answer.

It is recognized that 20% of the total member of the individual subjected for Narco-Analysis are found to be innocent. Therefore these techniques not only helps to identify the real perpetrator of crime, motive and modus operendi, conspiracies, disfigurement and displacement of evidentiary items etc but also to identify the innocent within a short periods of time.
Section 3 of the Indian Evidence Act, 1872 defines Evidence. The question arises whether any answer received as a result of Narco-Analysis test would be evidence or not? Perhaps such answer or statement would not form part of ‘evidence’ unless it satisfies some other tests. The fact must be clear that whether court has permitted for the test or such test is required by the court or not? It does not become admissible as evidence, if the court has not given permission for the test. Thus the admissibility would depend upon the number of factors.

The provision relating with the admissibility of confession by the accused person in criminal cases has been given from Section 24 to 30 of Indian Evidence Act, 1872. But the expression ‘confession’ is not defined in the said Act. Mr. Justice Stephen defined confession in his digest of law of Evidence as ‘confession’ is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.\(^{103}\) It means that confession is statement made by an accused person admitting his guilt. The term statement includes both oral and written statement. Thus it is clear that the term ‘confession’ is very wide and it includes oral and written statement. In reference to Narco-Analysis test, it can be said that if the subject orally states or even write down something then both will be amount to confession. But proviso of Section to 27 of the Indian Evidence Act would bar statement from being admissible in evidence because if there is the slightest doubt about coercion or intimidation or any type of fear that the statement not free or that immediate before such test, the subject was harassed by the police or was coerced then such statement would be meaningless Section 24 of the Indian Evidence Act bar such statement.

A combined study of Section 25 and 26 of the Indian Evidence Act is that no confession either made to the police or in custody of police will not be proved against the person accused of any offence. The question arises that if such person has been subjected to weighty and brutal investigation by the police and the element of fear and coercion still exists in his mind and out of this fear, the person (subject) makes a confession of guilt through this test, it will not be acceptable.

The exposure made during the Narco-Analysis test has been found most often to be very useful in solving many significant cases. In most of these cases, the

statements made have led to the discovery of important informations and consequently various recoveries have been made under Section 27 of the Indian Evidence Act, in large number of cases. Thus it is clear that the information referred to in Section 27 is admissible because it is a voluntary deposition. But if the information has been obtained by the use of compulsion, Article 20(3) will be violated and the information will be inadmissible. The Supreme Court has recognized that the protective scope of Article 20(3) available to the accused in the investigation stage which is also in criminal cases and when it is read with Section 161(2) of Criminal Procedure Code then it will protect the accused and witness also who are examined during an investigation.\(^{104}\) According to Section 161 (2) of the Cr. P.C. a person is legally bound to answer every question put to him truthfully during the conducting of the test.

The greatest virtue of law is its flexibility and thus its applicability should not be rigid but be flexible. Moreover, law is not static but it is dynamic. Hence it should keep changing according to requirement and changes in society, science, technology, and ethics and so on. The legal system should absorb the developments and advances that take place in Science and others till they are for the welfare of the society and they do not violate the fundamental legal principles. Therefore there is a need that the better refined and sophisticated methods to replace the third degree methods. Narco-Analysis test can evolve as viable effective alternative to the barbaric third degree methods. If a question which does not have the tendency to incriminate the accused succeeds in extracting a confession or statement from him, the usage of the Scientific method cannot be said to violate Article. 20(3) of our Constitution.

Further in the above case it was held that the statements made in custody are considered to be unreliable unless they have been subjected to the cross-examination or judicial scrutiny. No person accused of any offence shall be compelled to be a witness against himself.\(^{105}\) The confessions made before the police officers are ordinarily not admissible in evidence and it is only the statements made in the confession was a result of any inducement, promise or threat, where charge against the accused person was having some reference. An

\(^{104}\) Selvi and others v. State of Karnataka AIR 2010 SC 340.
\(^{105}\) Articleicle 20(3) of the Constitution of India.
The accused shall be bound to answer truly all questions relating to such cases 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
accused shall not render him liable to the punishment by refusing to answer such
questions, or by giving false answers to them. The accused shall not be called as a
witness except on his own request in writing. His failure to give evidence shall not
be made the subject of any comment by any of the Article or the Court or give rise
to any presumption against himself or any person charged together with him at the
same trial.\footnote{106 “Critical Study on validity of Narco-Analysis with reference to Articleicle 20(3) of the Indian
Constitution”, \url{available at: http://www.legaltrigger.com/Articleicles/06.pdf} (last visited on 21
August 2014).}

5.11 Conclusion

The psychiatrists and investigators in most of the civilized countries seldom
use Narco-Analysis as it is risky procedure which yield unreliable result .But in
India, some investigating agencies resort to this method with the help of forensic
scientists and doctors .It is quite possible for the subject to develop fatal or serious
adverse effects, if it is not conducted with proper care.

It has become absolutely necessary for the State Governments to work with the
Central authorities to improve the investigative abilities of their police
departments. The Indian Criminal Justice System has an alarmingly low conviction
rate, so there is need of application scientific technique. The Central Government
must make a clear policy stand on Narco-Analysis. The legal system should imbibe
the developments and advances that take place in science on condition that they do
not violate fundamental legal principles and are for the good of the society. Narco-
Analysis for criminal interrogation has proved to be a valuable technique, which
intensely affects both the blameless and the blameworthy and by this means
accelerate the cause of justice which has seen in various cases like the well known
Arushi murder case, Nithari killings case, Telgi scam and Mumbai blasts case\footnote{107 Supra 90.}. It
is time for our legislature and judiciary to act immediately for the sake of justice
and fair procedure to bring Narco-Analysis within the scope of Article 20(3) of the
Constitution. The manner in which the modern-day criminals make use of science
and technology in perpetrating their criminal activities with relative impunity has
compelled rethinking on the essentials of the criminal justice establishment to seek
the help of the scientific community to come to the help of the police, prosecutors
and the courts. The criminal procedure, rules of evidence, and the institutional
infrastructure designed more than a century ago, are now found inadequate to meet
the demands of the scientific age. The absence of a national policy in criminal
justice administration in this regard, is felt to be a serious drawback.

The conclusion is that Narco-Analysis test is being practiced in India just
because of a mutual understanding between the judiciary, police, investigative
agencies, human rights activists, etc. Only strong public opinion in support of
human rights will be able to influence judicial decisions, and so also the decisions
and practices of various professions. A continuous movement should be taken up
by the people of India, in the movement for independent rights, against the use of
persistent methods like Narco-Analysis test. It is high time that we blend this test
with Article 20(3) in such a manner that no questions are raised as to its
Constitutional validity. For this purpose, it is essential that the Union Government
should come out with certain guidelines which are to be strictly followed while
conduction such a test.