CHAPTER SIX

Conclusion and Suggestions
Conclusion

As a hunter tracks a wounded beast to its liar by its drop of blood, so let a king track crime to justice by closed searched food.

(Manu’s Law Code)

Mankind began its journey on this planet Earth in a state of dominance. Man’s superior cognitive faculties, his ability to invent or discover had made him to achieve perfection in anything and everything which he aimed to pursue. Just as there are two sides of the coin, the thinking ability of the mankind too had two perspectives. The negative aspect of such ideas gave genesis to ‘Crime’ in the society while the positive aspect gave rise to set of rules to counter the corresponding crime which came to be known as the ‘Law’. Thus crime existed as an inherent part of societal existence of human civilization in the past for millions of years. The gradual development of the human faculties while on one hand always tried to find solution to the increasing crime prevalent in the society, the crime on the other became more complex, more sophisticated and more intricate to counter.

From all the branches of law that govern the conduct of individuals in a civilized society, the criminal law is that specific branch that is associated with the life of any individual from the beginning to the very end. It contains a set of rules for the maintenance of societal order which are susceptible to change. Whether one examines the legal socialization process or the judicial process or the criminal justice process, the concern about justice pervades in all these areas. In a democratic country like India, the system of governance is based on the concept of ‘Rule of Law’ which
ensures that the right of individual to life and security is respected and protected. In the words of Justice S.R. Bannurmath,

“The ultimate aim of criminal law is protection of right to personal liberty against invasions by others, protection of weak against strong, law abiding against law-less, peaceful against violent.”

The aim of Criminal law should always be to reduce the level of criminality in society by ensuring maximum detection of reported crimes; prevent and control the crime; maintain public order and peace; protect the rights of victim as well as person in conflict with the law; punish and rehabilitate those adjudged guilty of committing crimes and generally protect the life and property against crime and criminality. Rule of law, democracy, development and human rights are dependent on the degree of success that the governments are able to achieve on the criminal justice front. Even national security is now-a-days increasingly getting linked to the maintenance of internal security. Our Criminal Justice System should give particular attention to improve the investigation, prosecution and punishment of state officials who commit crimes and human rights violations. Crime control and criminal justice management are the products of a fair, efficient and effective Criminal Justice System as above defined. Insofar as Criminal Justice System is itself the product of multiple sub-systems such as the police, the prosecution, the judiciary, the prisons and a number of co-existing social control mechanisms outside the formal state system (education, family, media etc.), it is important that each of these sub-systems also accomplishes a desirable degree of efficiency and effectiveness in supporting the mission of freedom from crime. Also all these wings of Criminal Justice System
should clearly understand their role and limitations and act lawfully and ethically. Criminal Justice System in India is facing serious challenges and may lose the confidence of the people unless the challenges are addressed and met with the right type of prescriptions. The state in this respect should prescribe certain rules of conduct, sanctions for their violations and machinery to enforce sanctions and procedure to protect that machinery. Speedy justice and fair trial are parts of Criminal Justice System and different wings associated with that objective are expected to work in coordination to achieve the goal. The delay in administration of justice is taking away the sting from the Criminal Justice System.

Thus the penal law has its own importance to the sustainable survival of the society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. Its promise as an instrument of safety is matched only by its power to destroy. Since there was no criminal law in uncivilized society, hence the law of revenge was the only source of justice. With the advancement of time, more peaceful methods came to be accepted by the society for criminal justice. For a long time the application of these principles remained with the parties themselves, but gradually, the state took over to perform these functions. Post independence and after promulgation of our constitution, there has been a rapid growth in almost all the fields. Constitution has been embodied with many articles which envisioned making India possess a good Criminal Justice System; Article 21220 is one of them i.e. Right to Life and Personal Liberty. People of India have become more receptive to quick, fair and affordable justice. The entire existence of the orderly society depends

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upon sound and efficient functioning of the criminal justice system. Whether a guilty person is exonerated or an innocent is punished or there is an enormous delay in deciding the case, quality of justice suffers in all the cases. Since the objections of the Criminal Justice System are not codified anywhere hence they can be just inferred from different statutes. Every democratic country aims at providing maximum sense of security to the people at large by dealing with crimes and criminals effectively and legally.

For ensuring the paramountcy of the ‘Rule of law’ in the Criminal Justice System, it is imperative that crime control forms the basis of Indian Criminal Justice System where investigation by the police plays the central role. When an offence occurs, it is the duty of the police to investigate the matter to ascertain the suspected accused and apprehend him if necessary, determine the facts and circumstances of the crime and to collect and present whole set of these before the court to meet the ends of justice. But this seldom happens in Indian scenario. The main reason behind this anomaly is that criminals have become sophisticated and make use of state of the art technologies in commission of the crime. They hardly leave any trace of evidence at the crime site or otherwise. While on the contrary the law enforcement agencies are still stuck on traditional and obsolete techniques for investigation of crimes. They often use third-degree torture to extract information from the accused. Consequently, custodial violence and sometimes deaths occur which give a deathly big blow to the ‘Rule of Law’. Also, when the criminals leave no evidence of their alleged crimes, they escape punishments in the absence of solid proof sufficient enough to establish the guilt. This further emboldens the criminals and results into loss of faith in Criminal Justice System by victim, victim’s family and society at large.
Now with the progress of scientific development of technology, the notion and nature of crime as well as the methods used by criminals in committing of the crime have undergone a phenomenal transformation in the present world. There has been a conceptual shift in the terms of the cost of the criminal behaviour and the forms of criminality within the society. The scientific and technological advancement has assumed vast proportions, particularly in the past century leading to dependency of every governmental affair, business activity and even crimes around the world on technology. The criminals have become classier with so convincing deceptive techniques that exhumation of the truth is finding itself difficult with each passing day.

In a befitting reply, the Criminal Justice System administered by the law enforcement agencies has also changed a lot since the good old days of the Wild West when pretty much anything was legal. Criminals were dealt with in any fashion then as the law enforcement agencies saw fit. The scientific progress made in the field of electronics, space, computer, information technology, biotechnology and genetic engineering has created a revolution in the field of scientific criminal investigation and prosecution. The Criminal Justice System and Forensic science specialists are trying to update their techniques and tools for the investigation equipping them in a better way. The exercise of apprehending the criminals has also improved owing to the advancement of scientific techniques. To counter such a challenging crime scenario, the help of forensics by the law enforcement agencies has been regarded as the only viable option. Thus going by the change in crime patterns and “progress” of criminals, it is an imperative necessity to hold investigations scientifically and to
make all sorts of scientific evidences admissible in the courts. If we fail, we would be letting lawbreakers free in the society for committing more crimes. By using age old techniques of investigations, government is actually providing armour to these felonious people. It was aptly remarked in this context by the Hon’ble Supreme Court as:

“We must not forget that the object of criminal law process is to find out the truth and not to shield the accused from the consequences of his wrongdoing”

In most of the developed countries across the globe, forensic science establishments, are capable of not only handling the traditional clues but also the significant advancement using computer forensic, D.N.A. fingerprinting, image processing, speaker identification to name a few. There is a need for constant updating of the forensic techniques in India too for better crime detection, investigation and prevention compared to the traditional confessional evidence and eye witness testimonies. Adaptation of scientific advances in forensic science will enable the Criminal Justice System to effectively counter the ingenuity of criminal and would for sure facilitate in achieving the long cherished goal of crime and conflict free society. Forensic science must continue to develop and mature as the blend of science and technology can only enable police to solve crimes that once would have been considered beyond solution. Development of new scientific crime-fighting capabilities and methods, including the use of databanks, high-tech equipment, tele-forensics and training involving the use of simulated crime scenes would shortly become the order of the day.
In fine, it can be safely concluded that the science of forensics including techniques like Narco-analysis, Brain mapping, Polygraph technique, DNA test, Computer forensics and Electronic surveillance is now recognized as a critical ingredient in law enforcement, solving criminal mysteries, catching criminals, proving people’s innocence, and keeping track of inmates after they have been paroled. Protecting a crime scene from contamination, scientific gathering of evidences and use of modern technologies for their interpretation have become one of the important components of crime solving. Scientific techniques and aids have evolved into a necessity for the Criminal Justice system. These scientific techniques have given police officers the ability to efficiently and effectively collect, analyze and process evidence. Without these scientific techniques, criminal would indeed be committing the same crime repeatedly without any deterrence resulting into a chaotic societal order. For example, the scientific test about age as a result of epiphysis of the bones is held to be most trustworthy. In Harpal Singh v. State of H.P221, age of a girl was in question. The Radiologist after examination of the girl found that she was about 15 years of age and this was corroborated by an entry in the admission register in the government school wherein the girl was a student and by a certified copy of the relevant entry in the birth register. Similarly in the controversial case of the rape and murder of Priyadarshini Mattoo, the prosecution relied on the DNA test of the vaginal swab and the accused who was very influential got implicated by the High Court. Similarly in reaching to the late Rajiv Gandhi’s murderer Dhanu, DNA testing of her mutilated body was very helpful. The main accused of the terrorist attack on WTC building on 9/11 in New York identified as Atta was also confirmed by DNA test. One of the most recent examples of such DNA profiling relates to the sensational case

221 AIR 1981 SC 361
of *Rohit Shekhar v. N.D. Tiwari*\(^{222}\), in which it was confirmed on the basis DNA test that N.D. Tiwari was the biological father of Rohit Shekhar.

Now the cardinal principle underlying the use of scientific aids to investigation is the rule of fair play and unbiased approach of the investigators and forensic experts. Forensic science plays a vital role in crime detection as a potent and powerful tool in administration of justice. The scientific analysis and the forensic scientists provide the missing link and strengthen the weak chain of investigation. With the rapidly expanding field of criminology, the demand for supplemental methods of detecting deception and improving the efficiency of interrogation have also increased concomitantly in past few decades. Narco-analysis, Brain mapping, DNA analysis, Polygraph tests, Computer forensics are some of the valuable techniques for criminal interrogation, which can profoundly affect both the innocent and the guilty and thereby hasten the cause of justice. Taking into consideration the problems faced by investigation agency in interrogating non-cooperating accused, these modern scientific techniques can be extremely helpful in exhuming the truth. The Apex court too recognized the requirement and necessity of scientific investigation in the landmark case of *Som Prakash v. State of Delhi*\(^{223}\). The Law Commission also has emphasized on the need of training of law enforcement officers in using scientific methods of investigation.

Thus Narco-analysis, Brain mapping, Polygraph technique, DNA test, Computer forensics and Electronic surveillance can prove to be game changer in

\(^{222}\) *Supra 189*  
\(^{223}\) *AIR 1974 SC 989*
criminal investigation. The importance of the application of these techniques has been showcased in number of high profile cases in India some of the notable examples are the Narco-analysis, Brain mapping and Poly graph of Abdul Karim Telgi in a multi crore stamp paper scam; Narco-analysis of Ahmad Sheikh and Tanveer Ansari, prime suspects of Mumbai blast, 2006; Brain mapping of Preeti Jain, an actress accused of contracting the killing of Madhur Bhandharkar; Polygraph, Narco-analysis and Brain-Mapping of the husband of Shivani Bhatnagar in latter’s murder case; Polygraph test of former UP minister Amarmani Tripathi in Madhumita Shukla’s Murder case; Narco-analysis, Polygraph and Brain-Mapping of Nithari’s case prime accused Moninder Singh Pandher and his domestic servant Surinder Koli; Narco analysis of Ajmal Kasab and Malegaon blast accused. Rapidly and swiftly these scientific tools of investigation can become an alternate of third degree physical torture in police custody and reduce the number of custodial deaths. The emphasis on the need for developing scientific methods of investigation and interrogation of accused for preventing custodial deaths and torture was thus rightly observed by the Apex court in the landmark case of *D. K. Basu v. State of West Bengal*[^224^]:

The Judiciary, as a watchdog of individual rights under the Indian Constitutional scheme, has the primary duty to creatively fill the gap between the existing law and the law as it ought to be. The Constitution as the ‘grund norm’ should be interpreted by the Judiciary to suit the current societal standards. Since the complete justice cannot exclude morality and ethics from its ambit, the dearth of express statutory provisions in regard to these techniques must be constructively construed by the Judiciary. Moreover the legal maxim *ut res magis valeat quam
pereat regarding the rule of interpretation of the words in any enactment clearly states that where alternate constructions are possible, the court must give effect to that interpretation which will help in smooth working of the system rather than that construction which will be responsible for putting unnecessary hindrances in the way of statute for which it has been enacted. Another legal maxim Noscitur a sociis, which maintains that when two or more words are put together, they are to be understood in their cognate sense also supports the liberal interpretation by the courts. The Apex Court further had specifically held in Shreenath v. Rajesh225, that “where two views are possible, especially while interpreting a procedural law, the one which curtails the procedure without eluding justice should be adopted because procedural law is always subservient to and is in aid to justice”. The advancement of crimes and criminal is not a hidden fact. The Apex court is expected to interpret the legal provision in such a way that while on one hand the accused person may not get the advantage of obsoleteness of the Indian statues, the rights of Victim may also be reinstated to some extent on the other hand there is no denying from the fact that victim of a crime and victim’s family deserves our widest possible sympathy, care and attention. Victim of a crime find himself victimized not only by offenders but again by Criminal Justice System during the trial. In the present times, when conventional crimes are committed with the aid of advanced means, investigation of crimes should also be given effect with latest technology. Scientific and technological advancements can facilitate the investigation authorities to collect and analyse evidence thereby speeding the process of crime prevention and control.

However the biggest irony in India regarding the use of investigative techniques is that while the court allows the photographs of accused, blood samples,
finger-prints, voice samples, hair etc to be taken and analyzed without the accused consent, the scientific tools of Narco-analysis, Brain-mapping, Polygraph requires his express consent. The admissibility of these scientific evidences has attracted a serious debate in India especially post Apex court decision in the landmark case of Selvi v. State of Karnataka. The Supreme Court in this case interpreted the legal provisions keeping in view the rights of the accused but unfortunately totally forgot the pain, misery and trauma of a victim and victim’s family. There are various provisions which if given interpretation, keeping in mind the changed scenario, would make scientific evidence admissible in court of law without any amendment.

The argument that scientific techniques like Narco Analysis, Brain Mapping and Polygraph are violative of fundamental rights do not hold much water as the latter itself has no definition. It has been well established that these scientific technologies are helpful in detecting crime and criminals along with providing clue about the culpability of the accused which may corroborate other oral testimonies. While Brain mapping and Polygraph test is not a statement by the accused, the Narco analysis test cannot be termed as self incriminatory. These tests, in fact, only discloses existence of knowledge about crime in the brain which can form an important base for further investigation leading to new evidences and clues. In investigation of the crimes like terrorism, conspiracies to commit murder, cross border trafficking etc, these techniques can be of great vitality as usually law enforcement agencies do not have vital links in these cases. Taking refuge under Article 20(3) of the Indian Constitution, the Apex Court has given a restrictive interpretation to the provisions.

226 Supra 80
227 Supra 114
in the landmark case of Selvi v. State of Karnataka\textsuperscript{228} which seems asynchronous with rapidly changing times. It’s the duty of the Apex court to maintain the dynamism and liveliness of the Constitution alive. Also while accepting the principle that no innocent should be punished, it is also important that the court should ensure that no guilty man escapes from the clutches of the legal system. When security, protection and justice to the society is in conflict with the rights of accused, obviously the former should prevail over the latter. Moreover these techniques are not at all unlawful and they will just help the law enforcement agencies in investigation while the field would be open to the court of law to decide upon the admissibility of the evidences so procured within the precinct of the Constitution. Moreover, the courts should not forget section 27 of Indian Evidence Act\textsuperscript{229}, where in it is clearly mentioned that any discovery made by investigating authorities in pursuance of accused statement is admissible irrespective of the fact how it was extracted. This section is wide enough to include in its amplitude all the discoveries made by these techniques without violation of any provision of Law. It must be kept in mind that modern day developments were impossible to conceive when majority of present day Indian legal system architecture was framed. Thus the possibility of mentioning the scientific techniques in crime detection was certainly out of question. Now the only thing is the constructive interpretation of the provision that is tuned to the modern times. The legislature cannot be presumed to contradict itself by enacting apparently two conflicting provisions. By exaggerating rights of accused, the courts should not place obstacles into the way of scientific, efficient and effective investigation into crime. In every corner of the world, where law enforcement methods are witnessing colossal

\textsuperscript{228} Supra 80
\textsuperscript{229} Supra 150
changes with the progress in scientific technology, India should not lag behind in its pursuit of crime free society.

The decision made in *Selvi v. State of Karnataka* by the Hon’ble Supreme Court seems inflexible as the court did not consider the problems faced by the law enforcement agencies during investigation and did not consider all the contentions in favour of Narco-analysis, Polygraph and Brain mapping thoroughly and appropriately. If Article 20(3) will come into the way of every investigation, the police authorities would be forced to tread the path of custodial violence. In past too, the Apex court has embraced the idea of the application of novel and scientific tools in the criminal investigation. However in such a changing scenario, cooperation was expected from the judiciary in strengthening the Criminal Justice System by keeping room for the use of scientific techniques in criminal investigation and prosecution. When criminals are using science in the commission of crime, there is no reason to restrict police or investigation authorities in taking aid of scientific techniques.

Keeping this spirit, the Bombay High Court in *Ramachandran Ram Reddy and others v. State of Maharashtra* aptly held that “…in the course of investigation in relation to a crime or an offence, investigating machinery is entitled to undertake scientific tests in order to identify a guilty person and to collect the necessary evidence in the course of the investigation”. The Court was of the opinion that such statement will attract the bar of Article 20(3) only if it is inculpating or incriminating the person making it. Whether it is so or not can be ascertained only after the test is administered and not before. Therefore, there is no reason to prevent administration of this test upon the accused. Moreover enough protections are available under the

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230 Supra 80
231 Supra 114
232 Supra 79
Indian Evidence Act, Criminal Procedure Code and Indian Constitution to prevent inclusion of any incriminating statement, if one comes out after administration of the test. In the same breath, Bombay High Court further held that ‘Article 20(3) is to be considered in the light of other important provision of the Constitution as for instance clause 1 of Article 51(A) which says that it is the duty of the State to prevent crime and this duty cannot be properly done if unnecessary large protection is spelt out from other provisions like Article 20(3). Fetters on the duties can be put only in extreme cases where the protection of fundamental rights weigh more than fundamental duty cast upon the state.’ It was further observed by the court that the compulsion under Article 20(3)\textsuperscript{233} refers to physical act and state of mind does not come under its purview, so these tests do not violate provisions of the Constitution.

Similar were the observations of Madras High Court in \textit{Dinesh Dalmia v. State}\textsuperscript{234} at para 17 that “if accused has not allegedly come forward with the truth, scientific tests are resorted to by the investigation agency. Such a course does not amount to testimonial compulsion. When there is here and cry from the public and the human rights activists that the investigating sleuths adopt third degree methods to extract information from the accused it is high time the investigating agencies took recourse to scientific method of investigation”.

Thus for improving the Criminal Justice System, it is imperative that the application of scientific aid like Narco-analysis, Brain mapping, Polygraph technique, DNA test, Computer forensics are deployed at widespread level. In countries like United States, Canada, Israel these scientific evidence are highly considered as

\textsuperscript{233} Supra 114
\textsuperscript{234} Supra 121
accurate and reliable means of administering justice. Even in Great Britain, a law was passed by their Parliament in the year 2004 making it mandatory for each and every sex offender to go through the Polygraph test before letting him loose from detention. In India, the admissibility of these evidences has been upheld by the Hon’ble Apex court in the landmark judgement of Smt. Selvi and others v. State of Karnataka subject to the prior consent of the suspect or accused undergoing these tests. This is because of the reason of protection provided by the constitution under Article 20(3) against testimonial compulsion. Other than these judicial pronouncements, there is no express provision for the admissibility of these scientific techniques in Indian Penal Code, 1860, Criminal Procedure Code, 1973 and Indian Evidence Act, 1872. Also there is no clear policy regarding the use of these scientific techniques by the government making it very difficult for the law enforcement agencies to unearth the real intention behind any criminal activity.

Such type of tests will serve as path-making in the administration of criminal justice in India. In Criminal Justice System, these scientific evidences can successfully get to the bottom of intricate cases. These techniques can help in making administration of justice more accurate and flawless. For example in the Narco-analysis test, the underlying principle is based on fact that a person tells a lie using his imagination and under the influence of certain drugs, this capacity of imagination is blocked or neutralized leading the person into a some semiconscious state. In such a state, it becomes difficult for the person to lie and his answers would be restricted to facts he is aware of. Thus these scientific tests are like MRI or CT scan and subjecting the accused to undergo such scientific tests will not amount to breaking silence of the

235 Supra 80
accused by force. The accused may be taken to laboratory for such tests against his will, but the revelation during such tests is quite voluntary. The argument in favor of these scientific techniques relies on the fact that they are the best substitute for traditional physical torture and third degree methods used by interrogating agencies. After considering the various recent judgements of the Hon’ble Apex court and several High courts, it can be conclusively stated that the higher judiciary has highly underrated the potential of these techniques.

Though these scientific methods to investigation have their own merit, they certainly are not infallible. The Narco analysis, for example and as observed by the Apex Court in the case Smt. Selvi and others v. State of Karnataka\(^{236}\), cannot be considered as a scientific test as it involves interrogation of a person in a drugged state and amounts to torture. The Supreme further stated that,

“\textit{The methodology of the test is illegal, inhuman and unethical and is a gross violation of human rights. The main drawback of Narco Analysis test is that no persons is able to retain their ability to deceive even in hypnotic state, while others can become extremely suggestible to questioning. This is especially worrying, since investigators may frame questions in a manner that may prompt incriminatory responses. The statements made are not voluntary and are also not in a clear state of mind. Narco Analysis also raises certain issues like a physical assault of the body by giving injections and also multiple painful stimuli and such as slapping, pinching, pushing, hitting and shaking the body etc. to wake a person from hypnotic state to answer questions and mental assault thorough the effect of injection on persons mind.’’}\(^{236}\) Supra 80
It would not be out of place to mention the 185th Law Commission Report observation in this regard that the Law of Evidence is likely to undergo radical changes with the standardization of new scientific technologies. The report further states that the judge in future would be handicapped if he is unable to understand and appreciate the probative values of new standards and concepts of evidence. It can also be argued that Section 53 (1) of Cr.PC, 1973 permits the use of reasonable force to ascertain those facts which may be afforded as evidence. It has also been observed that these scientific techniques like Narco-analysis, Brain mapping, Polygraph technique, DNA test, Computer forensics and Electronic surveillance are far better than the third degree methods employed by our law enforcement agencies for extraction of truth from an individual. However in the given scenario, it is expected that the legislature would amend the given law to include evidence collected by Narco-analysis, Brain mapping, Polygraph technique, Computer forensics that will undoubtedly prove to be a milestone in criminal justice delivery in times to come. Moreover to allay the fear of the Apex Court, as expressed in Smt. Selvi and others v. State of Karnataka, it may be proposed that the National Human Rights Commission (NHRC) and the State Human Rights Commission (SHRC) must be empowered to control and supervise the forensic laboratories in India where these tests are being performed. Also the Commissions should issue specific guidelines under which such tests can be performed and the cases in which they should be allowed.

To conclude in the end, it must be emphasized that these scientific techniques should be made part of investigation process. The mandate of Section 2(h) of

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237 Supra 80
Cr.PC\textsuperscript{238} encompasses the collection of evidence and all these techniques can act as helping tools to the investigating authorities. Mere compulsion to undergo the test should not be regarded as testimonial compulsion. If an accused person is forced to undergo a test this does not mean that the accused person is being compelled to be a witness against himself. At the stage of subjecting a person to Narco-analysis, Polygraph or Brain mapping test, it cannot be even said that the statements which he would give would incriminate him, so the question of infringement of Article 20(3) is futile. It may be possible that during the test, the accused statement may lead to some clues and may help the investigating authorities. However, if during the said test, accused do makes a statement which incriminates him, then the court is free to reject that statement. Just on the pretext that the statement may establish some culpability of the accused, these scientific techniques should not be ignored as this would amount to gross injustice to the society at large. It must be remembered that the welfare of the society at large comes the foremost and Clause 3 of Article 20\textsuperscript{239} comes at the later stage. The observation made by Karnataka High Court in \textit{Selvi Murugeshan and others v. State of Karnataka}\textsuperscript{240} is most relevant to quote at this juncture:

“...Society has the right to be protected against the criminal, and all of society’s rights are manifestly superior to those of the criminal. There can be no gainsaying the fact that a suspect is either innocent or guilty, and no one knows the truth from the consciousness of the suspect, that society is entitled to have truth...If society has the right to take property, then society has the right to make, by trained men, the use of truth serum legal...”

\textsuperscript{238} Supra 96
\textsuperscript{239} Supra 114
\textsuperscript{240} Cri. P. No. 1964/2004 (Karnataka High Court)
Therefore, keeping in mind the explosion of crimes against society, the necessity of the society at large cannot be overlooked. A balance should be made between the need of a thorough and proper investigation and individual rights. In the words of Prof. Wicker of the University of Tennessee, “If and when convincing evidence is produced that is reasonably reliable scientific methods of exposing falsehoods either in or out of the court room are available, these methods should be promptly utilized in the legal profession”.

**Suggestions**

A strong and effective Criminal Justice System is a fundamental requirement of the Rule of Law. It not only provides the foundation to constitutionality in any political system but also impart a sense of security to its people. India has most recently emerged as the economic power house of the world which is evident from the resilience the country has shown to the global slowdown in past decade. However when it comes to the social sector, much is desired from a country of our stature. We cannot develop and progress socially until we modernize our Criminal Justice System to the level of western developed countries and scientific techniques could play a major role in it.

As far as the application of these modern and advanced scientific techniques to the problems of crime prevention and prosecution is concerned, it must be realized that these are not something that is new to our civilization. If we only neglect the sophistication of the modern scientific techniques, we can feel satisfied that our investigating institutions have been using number of scientific tools most often in
finding solutions to the impending law and order problems with our history replete with numerous examples. However we should not desist from accepting the fact that modern day law is silent on the use and admissibility of scientific tools like Narco-analysis, Brain mapping, Polygraph technique, DNA test, Computer forensics and Electronic surveillance as evidences. The most authoritative position has been expressed by the Apex court in the landmark judgement of Selvi v. State of Karnataka\textsuperscript{241} which largely goes against the spirit of scientific fervour in pursuance of speedy and cost effective criminal investigation and prosecution. It is most unfortunate that these techniques are considered as cruel and taken as the infringement of the private realm of an individual and captures the news headlines often for the wrong reasons. In today’s argumentative Indian society, we can find opinion both in favour and against the use of scientific techniques in investigation and prosecution though the former would certainly dominate the latter. However it is very conflicting in accepting the fact when the country is vying for leadership in scientific and technological realm across the globe and excelling in fields like medicines, defence and space, so much resistance is being faced by the Criminal Justice System when the application of the scientific principles to increase its efficacy is raised. Moreover the defence of the protagonist arguing against the application of the scientific technique further weakens in the present era when science has become the part and parcel of Indian legal system. There have also been cases in the past where conviction was awarded by the highest court solely on the basis of scientific evidences commonly referred as medico-legal evidence.

\textsuperscript{241} Supra 80
To remove this repugnancy from Indian legal system, this research respectfully submits the following suggestions:

i. A policy regime should be promulgated by the government with express provisions for admissibility of scientific tools like Narco-analysis, Brain mapping, Polygraph technique, DNA test, Computer forensics and Electronic surveillance as evidences in the court of law. The provisions should be so drafted as to provide enough room for future scientific endeavors in these fields as tools for supporting forensic investigation and criminal prosecution.

ii. If it appeals to the Parliament, a law can be brought forth containing the precise definitions of all the terms such as scientific evidence, scientific techniques, investigation, scientific expert witness, scientific examination, tools of investigations etc. The Act should also contain rules regarding the use of these scientific and modern techniques specifically for Narco-analysis, Brain mapping, Polygraph technique, DNA test, Computer forensics and Electronic surveillance so that all the confusion regarding the use of scientific techniques be put to an end.

iii. The techniques of Narco-analysis, Brain mapping, Polygraph technique, DNA test, Computer forensics and Electronic surveillance must be construed within the phrase ‘modern and scientific techniques’ in various judicial pronouncements while giving the latter the widest possible amplitude in interpreting various laws like I.P.C, C.P.C, Cr.PC, Law of Evidence etc. The findings of Narco-analysis, Brain mapping, Polygraph technique, DNA test, Computer forensics and Electronic surveillance must be recognized as discovered fact under Section 27 of Indian Evidence Act, 1861 for further help in the investigation by the law enforcement agencies.
iv. It is the respectful contention of the researcher that the legal ratio pronounced in the landmark judgment of *Selvi v. State of Karnataka*\(^{242}\) by the Apex court regarding the admissibility of scientific evidences like Narco-analysis, Brain mapping and Polygraph technique must be challenged by the government before a larger bench. This is because the rationale behind the judgment defies logic as to when the consent is obtained; the use of such techniques becomes valid while an involuntary application is considered to be invalid despite its utility in investigation and prosecution.

v. The researcher also feels that the judiciary has not respected the golden principle of ‘*Separation of Power*’ as envisaged by our Constitution as investigation falls entirely within the executive domain. Moreover the sanction of the court is not required in the investigation under section 156(1) of the Code of Criminal Procedure\(^{243}\). The Apex court also while recording serious observations regarding custodial violence, torture and deaths has earlier asked the law enforcement agencies to use modern techniques in investigation and prosecution. Contrary to its direction, the Apex court has placed restriction on the use of scientific techniques in Criminal Justice System. Instead the court should encourage the investigating authorities to use the modern tools of investigation in civil and criminal matters within the ambit of the spirit of the Constitution. Phased reformed application rather than total elimination of these scientific techniques should be the approach of the highest court. Rule of harmonious construction should be adopted by the Apex court in dealing with the interpretation of the laws prevalent in India regarding the relevancy

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\(^{242}\) Supra 80
\(^{243}\) Supra 96
and admissibility of scientific evidences like Narco-analysis, Brain mapping, Polygraph technique, DNA test, Computer forensics and Electronic surveillance so that investigating agencies can take the benefit of said techniques and get desired results.

vi. A training console for the investigating and prosecuting agencies should be formulated by the government for imparting requisite skills in field of collecting and lifting of samples, its preservation, sealing, labeling etc. This will not only increase the efficacy of the criminal investigation and prosecution within the country but shall also be path breaking in preserving the basic human right of violence free environment and maintaining the respect and dignity of the individual even in lawful custody of the police. This would also help in changing the outlook of the people towards the applicability of these scientific techniques as valid evidences in future.

vii. Although certain guidelines have been laid down by the National Human Rights Commission regarding the Polygraph test, the same is lacking for the other potent scientific techniques like Narco-analysis, Brain mapping, DNA test, Computer forensics and Electronic surveillance. So the central government should standardize the administration of these techniques across all the states through exclusive guidelines for all these techniques after taking into account the viewpoints of all the stakeholders.

viii. A network of standardized well equipped Forensic laboratories should be established at state and central level to handle DNA samples and evidences as well as fingerprints and these laboratories should operate under specific guidelines.
ix. A National Forensic Science Authority, a centralized body, should be established comprising of persons experienced in criminal justice issues as in USA and Japan for controlling the procedural standards of scientific techniques, ensuring the quality standards of the forensic laboratories and cater to the training need of criminal justice professionals across the country. Also a national DNA & Fingerprint databank should be catalogued by this central authority similar to CODES maintained by Federal Bureau Investigation in USA for speedy criminal investigation of cases posing threat to national security like terrorism. In pursuance of the above, a new subsection under Section 53 of Cr.PC\textsuperscript{244} as Section 53AA should be added by the way of amendment so as to make finger printing of the accused compulsory before the medical examination of the accused.

These are some of the suggestions humbly submitted by the researcher to make the administration of Criminal Justice System in India more flawless, speedy and cost effective.

\textsuperscript{244} Supra 96