CHAPTER I
INTRODUCTION
1. Introduction

Criminal activities are not new for any society. History witnessed that the moment, human life on this earth started, certain norms were structured and defined behavior was settled. This has been done to trace the thing which is in the interest of human being living in an organized society and which is dangerous for the existence of the human being.\(^1\) To identifying these all, this was mandatory that the people who do not watch and follow the defined societal norms should be identified and sanctioned to root out the offences from the society. This dream of crime free society has given genesis of procedures of detection, investigation and administration of criminal justice system.\(^2\) These Procedures are not new rather found in every society but developed according to the condition of human life of that particular society such as social, economic, cultural, historical and political. Because society always keeps changing, the laws cannot be static and it needs to flow according to the need and changing behavioral pattern of society.\(^3\) During this period, rate of crime has increased to a greater extent which has created challenges for the existence of criminal justice system; even law enforcement agencies such as police, investigating agencies are feeling toothless before serious problem. Offences like, 9/11 attacks, Mumbai attacks and corruption cases like stamp scam and bank corruption cases compelled the investigating agencies to improve and change the strategy of investigation, traditional methods of investigation only can’t serve the purpose of criminal justice system.\(^4\) The most reliable agencies like Central Bureau of Investigation and intelligence bureau are not able to solve many key questions, related to tipical crime by using traditional methods of investigation. The statistics reveals that the crime rate continuously increased and conviction rate continuously decreased, fear &

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deterrent effect of law was being lost. The common people started to lose the faith and trust on the criminal justice system. On the other hand the literacy rate and awareness about the rights among the common people is increased. The Human Rights Organizations, Non-Governmental Organization, media are playing key roles in the places where there was no law. These organizations made common people more security conscious, which has resulted either in surrendering to criminal elements or ignoring norms for their security or revenge which created another problem of criminality. This changing behavior of society compelled the criminal justice system to determine and focus on the rights of the person who may be found guilty in commission of any offence, sets penalties, and analyzes the way of enforcement. It compels the responsible agencies to watch the rights and duties while dealing with common people. It declares what act is criminal and procedure to determine the punishment for such an act. To a greater extent, it is concerned with the definitions of the various crimes, which act amounts to a particular offence and most important these all has to be done with certain specific procedure based on the principles of criminal justice system and constitutional safeguards. The procedure based on constitutional safeguard is sine qua non for the fair trial and for doing complete justice. The step of this procedure under any criminal justice system starts with the investigation. It is directly connected with the establishment of healthy criminal justice system which is need for the development of present society but looking towards the statistics of crime, rate of conviction and delivery of justice one can easily assume the condition of criminal justice system of the country. In the express terms of a famous jurist it is revealed that our criminal justice system is ruining. In the contemporary society the changing pattern of crime and huge use of recent developing technologies by the criminals leads another big problem to the investigating agencies. Now the concept of traditional crime has not as much grievous as new one and even traditional crime have been committed by the criminals with the new pattern and tracing


the criminals became a tough task with the traditional methods of investigation. This includes traditional evidences against accused, such as eye witnesses, confessions and statement of approvers. Eye witness has now become a rare species, the reason being due to the technological development modus operandi of committing crime has changed and now crimes are now committed in a well planned manner. Even if the eye witness is available he changes his version of statement day by day because of the fear of criminal elements or corruption. Therefore the Investigation became most fascinating act among the criminal justice system of any country in which whole justice delivery systems based. It is the process which utilized by the investigating agencies for the collection of evidence. The evidence which is used for the purpose of disclosing, the story behind a crime and to declare a person accused or innocent. It is a process on which the conviction of an accused totally depends. It means the action of investigation does not mere searching something or someone or a formal or systematic examination or research with traditional concept. It means all the systematic techniques which are advanced and effective one for the collection of evidence by the investigating agencies. The result would be to remove the shortcomings of the criminal justice system and to make crime free society. The criminal feels some deterrence before committing any crime. This had been reflected from the statement of Allan Darshowitz:

“The days of the ‘perfect crime’ are numbered. New Technological breakthrough in crime detection may soon render current police method obsolete. A careful criminal cover up obvious clues by wiping away his fingerprints or wearing shoes that make no distinctive marks. But nearly everyone leaves a small perhaps microscopic-part of themselves behind,

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especially following a crime of violence. And crime solving techniques now on drawing board or in the experimental phase hold good….9

A criminal justice system which is well acquainted with the technological advancement of the world is the need of the hour. These technologies can be used in the prevention of crime and bring the criminals in the arena of law. At the same time the technology should not lead towards violation of rights of citizens. In this era of globalization civil society organization has been given equal importance in any society which has to be analyzed in all the parameter of humanity and human rights. Investigation being important part of criminal justice system needs some reformation but these reformation should not be based on violation of any rights. Evidentiary clues are always available at the site of every crime.10 The science has progressed as much that it can identify, compare and link even tiniest connecting clue found. The Correct identification of culprits, victims and mutilated, putrefied corpses has always been a legal, social and emotional problem before the public, police and courts.11

In Indian scenario as far as investigation is concerned Code of Criminal Procedure, 1973 and Indian Evidence Act 1872 are the parent procedural laws which govern criminal trials. Criminal procedure Code prescribes the procedure from the point of taking cognizance of crime by appropriate judicial Magistrates till the delivery of final order of Conviction or acquittal and Indian Evidence Act is limited in its scope of leading evidences in civil or criminal cases either by the prosecution or defendant, applicant or

9 Allan Darshowitz, Chicago sun Times, 12 Aug. 1987
10 Prof. Edward Locard,(1877-1966, France) over two centuries ago, given observation that in every case of crime or for that matter in any type of interaction between people or between animate or inanimate objects there will be some form of exchange of materials between the two, even if in traces. This is known as ‘locard principle of exchange’. It is not possible that the criminal has not left the clues at the crime site. The clue may be on the corpus delicti or may be from modus operandi. The clue may be insignificant, invisible, left there unmindfully or scanty. Gathering bits and pieces of clues from the scene of crime or from the victim or from the accused and proper analysis thereof world clearly identify the criminal and crime problem may be tackled.
respondent. In India, law regarding evidence is uniform in both Civil and criminal cases, the degree of proof required may be somewhat different in civil and criminal cases but mode of giving evidence is governed by same legislation. As far as criminal jurisprudence in India is concerned doctrine of “onus probandi” is in the field and therefore “One shall be presumed innocent till his crime is proved” not only proved but proved beyond reasonable doubt. Some basic things like - what is Evidence as provided under section 3 of Indian Evidence Act, when the statements of accused persons cannot be used as evidence as provided in section 25 and 26, when and to what extent it can be used as evidence. Privileges for the accused persons under Indian Evidence Act have been discussed deeply. Section 132 of Indian Evidence Act tells that a Witness is not excused from answering on the ground that answer will criminate provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.” The most important aspect i.e. “Opinion of Experts” and various provisions related to this has also been introduced and discussed. Expert opinion is quite relevant here because the reports of Narco-Analysis test are the reports of Experts in Scientific Investigations. The Criminal Procedure Code deals with the procedural aspects of investigation and arrest of an accused person and provides various rights to accused persons while Indian Evidence Act, 1872 guides the procedure

12 Adarsh M. Dhabarde “Forensic evidences in Criminal Trial: Need of the Hour, Government Institute of Forensic Science, Nagpur

13 “ Evidence” means and includes—(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence; (2) all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence.

14 Confession to police officer not to be proved. —No confession made to a police officer, shall be proved as against a person accused of any offence. —No confession made to a police officer, shall be proved as against a person accused of any offence.”

15 Confession by accused while in custody of police not to be proved against him. —No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

16 Code of Criminal Procedure, 1973

17 Section 45 of Indian Evidence Act, 1872
of admission and confession of evidence and witness because the question of violation and protection of rights of accused persons arises with the process of investigation. Important aspect of Investigation is that it becomes very relevant for the conviction of any criminal and for any fair trial.

The investigation is defined under criminal procedure code, 1973 in Section 2(h)\(^{18}\) which is inclusive in nature, that means no specific definition of investigation given under Indian law though it includes all the proceeding under the criminal procedure code for the collection of evidence by a police officer or by any person other than a magistrate who is authorized by a magistrate in this behalf. So the objective of investigation for an offence is to collect the evidence, and present before the court and on the basis of collected evidence court convict or acquit a person. Since the civilization started there were some agencies that have duties to prevent criminal activities or to investigate crimes for the detection of the criminals and the basic reason behind the crime. Apart of this Section 53, 53-A and 54 of Criminal Procedure Code permits the examination include examination of blood, blood-stains, semen swabs in case of sexual offences, sputum and sweat, hair samples and finger nail dipping by the use of modern and scientific techniques including DNA profiling. But the scientific tests such as Polygraph test, Narco-analysis and BEAF do not come within the purview of said provisions.\(^{19}\) Section 161- tells about the Examination of Witness by police and Section 162 gives a privilege to the accused that statement to police not to be signed and use of statements in evidence. Section 50 of Criminal Procedure provides for the same right as Article 22 (1) of the Constitution provides that a person arrested for an offence under ordinary law should be informed as soon as possible the grounds of arrest. Right to be produced before a Magistrate without delay is provided under Section 56 and Right to be defended by a pleader of his own choice.\(^{20}\) Apart of this Section 303\(^{21}\) of the Code of Criminal Procedure, 1973 and Section

\(^{18}\) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

\(^{19}\) Smt. Selvi & Ors. v. State of Karnataka & Ors. 2010(2) R.C.R.(Criminal)896.

76 of Code of Criminal Procedure, 1973 also supports these rights of accused. The Code of Criminal Procedure, 1973 has provided the adequate methods to be followed in collecting the information from the witnesses and the accused. A provision directly related to scientific evidence is mentioned in Section 293 of the Cr. PC, 1973 by which the report of a Chemical Examiner may be used as evidence in any inquiry or trial.

In ancient times there were some agencies who were specifically working for this. Special person were recruited and there was specific department for the detection of crimes in the name of Guptachara and department was known as the Guptachara Department. There was different policy for the punishment and conviction. Kautilya wrote about the punishment and said that it must be regulated by a consideration of the motive and nature of the offences, time and places, strength, age, conduct, learning and monetary condition of offender. An old man over eighty, a boy below sixteen, women and person suffering from disease were to be given half of the punishment prescribed for the particular crime. Like modern criminal justice system a child below five years is not liable for any crime and exempted from punishments. In certain cases court had special power to grant compensation to the aggrieved party in addition to awarding punishments to the offenders. Examination of witness and evidence had been taken so seriously that if a person found guilty for giving false evidence or failure to give evidence is liable for heavy punishment. Witnesses were under legal compulsion to give evidence before the court. The party whose witness deposed against him could examine further and has opportunity to give better evidence to prove his case and also prove the

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21 Rights of person against whom proceedings instituted to be defended. Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

22 Person arrested to be brought before Court without delay. The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person: Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.

23 G.P. Singh Political Thought in Anicent India, D.K. Print world, (P)Ltd., Delhi 1993 P.-53

24 Section 82 of Indian Penal Code, 1860

guilt of earlier witness for perjury but all this is to be done during the procedure of trial. Before trial there is a procedure of investigation which has to be conducted by the investigating agencies and this is the fact that police and other investigating agencies treated interrogation and third degree torture as a principal means for determining facts and collecting evidences which plays most important role in resolving the cases. A very famous writer Gerald Posner in his writing mentioned about the third degree torture of the Indian police.26 It is well known that the criminal procedure code enumerates the procedure from registration of crime to conviction of criminals.

It has been provided that case must be registered by police-officialsand they should commence the investigation procedure if the case of cognizable nature27 and if the case of non-cognizable though it can be registered the case but same can only be investigated if the judicial magistrate gives his assent28 for. During investigation no one even judiciary can direct any investigating agencies regarding cognizable cases including judiciary, judiciary can only direct when the same has to be submitted before it. This gives an autocracy in the part of police personnel and investigating agencies, they have right to call any witness, visit the location of crime and can collect information from the people whom they feel involved. This gives ample power to the police or investigating agencies and this power is being misused many times. After registering an FIR there is procedure of deputation of one police personnel for investigation who with the permission of officer incharge of particular police station can do what is required to be done for collection of evidences, this leads to misuse of power and pressure to collect the evidence and submit before the court. During this procedure investigating agencies started using third degree torture for collection of evidences though the law gives procedure of collection of evidence in the sound and healthy manner but this is not so with the Indian police, rather going with the technicality of crime they are frequently using third degree methods. This contains several notorious methods like wrongful confinement, beating, applying electric shocks, roller treatment, ingenious misuse of


sex and use of ice slabs and many other unimaginable brutalities which cause humiliation, physical injury and even death in extreme cases. Denials of sleep, food water, uses of strong lights etc are the moderated form of torture which being used by the police for the extraction of truth from the suspected accused during investigation. There are situation when the police used torture which degrade social status of person like to eat things such as excreta or drink urine. Many have been forced to perform oral sex on the cops.

The investigation is a battle of wits with the criminal and calls for sustained and prolonged efforts on the part of the police. Some of the methods like punching with cane, metal rods, weight, butts of the gun, tender coconut after covering in towel, handcuff, beating the person with the hands tied behind or manacled, hanging by the wrists, hanging with the arms stretched out on a bar, hanging by using a pulley after his arms, hanging a person upside down, forced immersion of head in often contaminated water, covering the face with shopping bags stuffed with chilly powder, chilly essence, pepper essence, application of chilly essence, pepper essence etc. in the eyes or pennies, placing a goli between the finger bones in the palm and inserting the same between the bones by applying hammer or by placing heavy articles like table chair etc. over the palm but in present era these third degree torture has no more valid and slowly becomes past. The reason is not as such that there were change of heart among the police personnel rather these torturous methods even does not have such an effective role for being it has been applied and the evidence could not be collected because of using such methods, apart from this complexity of crime and origin of civil society organization played important role for prevention of such third degree torture on suspected person so the agencies started to search new substitutes for this third degree methods and which will be effective in the collection of evidence in the grievous crime. The New scientific techniques took place for the collection of evidence in present era such as DNA profiling, Finger printing, Lie detector, Narco Analysis Test, but these techniques can only be possible when our system supports and at the same time which needs

cooperation of suspected person. One of the very debatable technique which investigating agencies used in high profile cases as an alternative of third degree torture, these days is Narco Analysis Tests, which involves the intravenous administration of a drug that causes the subject to enter into a hypnotic trance and become less inhibited. The drug-induced hypnotic stage is useful for investigators since it makes the subject more likely to divulge information. The drug used for this test is sodium pentothal, higher quantities of which are routinely used for inducing general anesthesia in surgical procedures. Though relatively new in the field of criminal investigation in India the narco analysis has been used in the field of psychiatry since long. The drug like Barbiturates were used in the field of psychiatry since the revelations can enable the diagnosis of mental disorders. In this technique the substances like Scopolamine and Sodium Amytal are also utilized.31 This results the hypnotic stage of suspected person. The Narco Analysis was hailed in the field of psychiatry as compared to other psychotherapeutic procedures as it saved time by helping the patient overcome reluctance in talking freely about their inner most feelings and experiences. By means of narco analysis it was possible to achieve a state of 'transference' in many patients whose previous state was apathy, inaccessibility, or even negative transference.32

The Narco Analysis Test is conducted by administering 3 gms of Sodium Pentathol or Sodium Amytal dissolved in 3000 ml of distilled water depending upon the person's sex, age, health and physical condition and this mixture is administered intravenously along with 10% of dextrose over a period of 3 hours with the help of an anaesthetist.33 The rate of administering the doses is controlled to drive the accused slowly into a hypnotic trance. The effect of the bio-molecules on the bio-activity of an individual is evident as the drug depresses the central nervous system, lowers blood pressure and slows the heart rate, putting the subject into a hypnotic trance resulting in a lack of

inhibition. The subject is then interrogated by the Investigating Agency in the presence of the doctors. The revelations made during this stage are recorded both in audio and video cassettes. The report prepared by the experts is what is used in the process of collecting evidence. Under the influence of the drug the subject talks freely and is purportedly deprived of his self control and will not be able to manipulate his answers. The underlying theory is that a person is able to lie by using his imagination. In the Narco Analysis Test, the subject's imagination is neutralized and reasoning faculty affect by making him semi-conscious. The subject is not in a position to speak up on his own but can answer specific and simple questions. In this state it becomes difficult for him to lie and his answers would be restricted to facts he is already aware of. His answers are spontaneous as a semi-conscious person is unable to manipulate his answer. Injected in continuous small dosages it has a hypnotizing effect on a person when responds loquaciously when questioned. The ECG\textsuperscript{34} and blood pressure are monitored continuously throughout the testing procedure. The entire conduct of the procedure is video graphed.

The questions are designed carefully and are repeated persistently in order to reduce the ambiguities during drug interrogation. After the Narco examination is over the suspect is left for being relaxed for 2 - 3 hours. The team which conduct the test consists of an anesthetist who administers the drug and regulates its dosage, a physician who certifies the fitness of the subject before the administration of the test, and a clinical/forensic psychologist who interrogates and interacts with the accused, Audio-video recorder, Nurses and experts from particular field conduct the interview through prepared question-answer model. Furthermore, the drug used in low concentration during narco analysis, does not have any adverse effect on the body.\textsuperscript{35} This has been done in number of cases in India and various countries but as a tool of criminal investigation long before its entry in India the Narco Analysis involving the use of the drug scopolamine on criminals in the United States was first reported in 1922. During and after the war years,\textsuperscript{34,35}

\textsuperscript{34} \textbf{Electrocardiograph} is the process of recording the electrical activity of the heart over a period of time using electrodes placed on a patient's body. These electrodes detect the tiny electrical changes on the skin that arise from the heart muscle depolarizing during each heartbeat.

United States armed forces and intelligence agencies continued to experiment with the truth drugs and this has been continued by the Central Intelligence Agency (CIA). As compared to other scientific test such as lie detection test, Polygraph test and the Brain Mapping, Narco Analysis is based on entirely different principles. Where the lie detection tests are based on the monitoring of physiological/autonomic responses while answering questions framed by the clinical psychologist, narco analysis is based on how sodium pentothal handles GAABA (gamma amino butyric acid), a neuro-transmitter inhibitor and thereby reduces the inhibitory character of the individual. The Arushi Talwar murder Case, Tandoori Murder Case, Godhara Carnage, Arun Bhatt Kidnapping Case, Malegaon Bomb Blast Case, Ajmer Dargah Blast Case and many other important cases in India, the techniques had been used. However the technique raises constitutional, legal and Ethical questions. The administration of drugs such as Scopolamine and Sodium amytal is not good for the health; it may cause Coma, permanent lost of memory and even death.

There is another issue like it is also against the doctrine of self incrimination given under Art. 20(3) and Right to life under Art. 21 of Indian Constitution. Therefore the main controversy that governs the use of this test is it's seemingly violation of the fundamental rights of an individual guaranteed by the Constitution. Apart from violation of right against self-incrimination, this test also raises issues regarding ‘right to human dignity’ and ‘inviolability.’ The technique was questioned by the National Human Rights Commission as well. The administration of drugs in the individual body needs prerequisite condition of consent and it is at this point that the concept of 'informed consent' of the accused should come into play, by becoming a prerequisite for carrying out the procedure on the accused. 'Informed Consent' means that the accused

38 Dr. Mrs. Nupur Talwar vs CBI Delhi And Anr., on 6 January, 2012.
39 State Vs. Sushil Sharma, 2007 SC.
should be made” well aware of the technicalities of the procedure, the effect of the narcotics under whose influence he/ she’ shall be interrogated as well as the physical, psychological and legal ramifications of undergoing the procedure, this knowledge becoming the basis on -which he renders his voluntary consent.\textsuperscript{41} This is to say that the consent of the accused to undergo narco analysis will extend to answering the questions in the uninhibited state of mind. This procedure is done with inducing the narcotics when the subject is not able to modify the answer. As our country follows adversarial system of law, under this system state has to gather the evidence and accuse the suspect and follows the principle of presumption of innocence. It means “no person shall be guilty unless the guilt will prove beyond any doubt” is the core value of the system.\textsuperscript{42} Therefore the whole system either one way or other gives fair opportunity to the proposed accused. In this condition Application of Narco Analysis involves the fundamental and the most pertinent question related to judicial matters concerning the basic principle and human rights.

The legal position of utilizing this technique as an investigative aid raises genuine concerns such as ‘infringement of an individual’s right’, ‘personal liberties’ and ‘freedom.’ It has also been considered to be a blatant violation of Article 20 (3) of the Constitution of India. The view has also been adopted in relation to the technique in European Countries as well as other countries of the world. The Inter-American Convention on prevention and punishment of torture has defined torture as “torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose.”\textsuperscript{43} Torture shall also be understood to be the use of methods upon

a person intended to obliterate the personality of the victim or to diminish his physical and mental capacities even if they do not cause physical pain and mental anguish.\textsuperscript{44}

The enforcement of basic human rights is a subject matter of grave importance in modern democratic world. As there is principle of natural justice which says justice delays justice denies and same has been expressed by the Honorable Supreme Court in various judgment while interpreting the fundamental rights under the Indian Constitution, at the same time Supreme Court of India is frequently motivated by the International Declaration on Human Rights to define the scope and content of fundamental rights in India.

At the international level the laws like Universal Declaration of Human Rights, 1945, International Covenant of Civil and Political rights, 1966 emphasizes some basic rights for providing justice and in the protection of human rights of the individuals. Basically rights not to testify against oneself and the right not to confess guilt are expressed in Article 14(3) (g) of the International Covenant on Civil and Political Rights,\textsuperscript{45} Article 8 (2)(6) of the American Convention on Human Rights,\textsuperscript{46} and Principle 21 of the Body of Principles for the Protection of All Persons under any form of detention or imprisonment. While these rights are not expressly provided in the European Convention on Human Rights but European Court for the protection of Human rights and Fundamental Freedoms has declared that the rights not to be compelled to testify against oneself and the rights not to confess guilt are implicit in the right to a fair trial set out in the Article


\textsuperscript{45} In the determination of any criminal charge against him, everyone shall be entitled to the minimum guarantees, in full equality, not to be compelled to testify against himself or to confess guilt, http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx visited on 16/02/2015.

\textsuperscript{46} Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees which includes right not to compel to be a witness against himself or to plead guilty.
6(1) of the convention. Right not to be compelled to testify against oneself and the right not to confess guilt include two elements: the right to freedom from self-incrimination given under article 20(3) of Indian Constitution and the right to silence which has been included under article 21 of Indian constitution through judicial interpretation. These components are related and at times overlapping, but they are distinct. The right to silence encompasses only oral representations made by a person and refers to a person’s right not to make oral statements to the police or any other criminal justice actor during the investigation of a criminal offence. The freedom from self incrimination is broader in scope and refers both oral representation and to the provision of any materials that may tend to incriminate a person.

Under international human rights law, what is excluded from the freedom from self-incrimination are materials that are legally obtained from the accused under compulsory powers of criminal investigation such as breath, blood, urine samples and bodily tissues for the purpose of DNA testing. The right to silence is recognized as absolute rights in many states. Under international human rights conventions there is no limitation placed on these rights. In some domestic jurisdictions, statutory provisions have been included to the effect that a person has the right to silence and the freedom from self incrimination, but if the person does not provide information to the authorities or at trial, then adverse inferences may be drawn from the failure to provide information. So where a person’s right to silence is compromised, allowing adverse inferences means that the silence of a person is taken as an admission of guilt and thus the person’s right of innocence is violated. As the universal principle of criminal law is presumption of innocence and being related to this right to silence and freedom from self-incrimination are also related to the right to freedom from coercion, torture or cruel, inhuman or degrading treatment contained in Article 58 under MCCP. However, the criminal justice system is criticized

49 Article 58 MCCP, All persons have right to be free from any form of coercion, duress or threat of duress and all persons have the right to be free from torture, threat of torture, or any other form of cruel, inhuman or degrading treatment or punishment.
for slow progress of investigation and trial. There are large numbers of people who are languishing for years for want of proper evidence also. In these circumstances, the scientific methods of investigation may prove to be extremely useful. If an accused, gives valuable information regarding the commission of crime due to narco analysis Test & some discoveries are made which are relevant for the police this will be benefit to the society as a whole. The technique will also beef up the protection of accused against torture and inhuman treatment of police.

The inordinate delayed in the investigation and prosecution of criminal cases seriously affecting the criminal justice system of the country and a blot on justice system. This is the reason various committees have been constituted to bring improvements in the criminal justice system. Among these “MALIMATH COMMITTEE” ⁵⁰ has given a lot of valuable recommendations regarding Criminal Justice System. The Committee was constituted by the Government of India under the chairmanship of Justice Malimath for analyzing the Indian Criminal Justice System. The national criminal justice system policy prepared by Professor N.R. Madhavan has recommended ⁵¹ that evidence collected through scientific method must be admissible in courts as substantive evidence and not just opinion evidence. The Malimath Committee has also recommended that there must be greater participation of the accused in the investigation. This will ensure that scientific tests are utilized more and more in the investigation process. The major difficulties in criminal law are tracing of a crime and to find out the criminals which can be made much easier if the scientific tests are adopted. As such, though the scientific test may not be enough evidence to convict a person, yet it can be looked upon as a tool or aid towards guiding the police and prosecution in the right direction. The Committee has given its anxious consideration to the question as to whether this system is satisfactory or whether

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we should consider recommending any other system. The Committee examined in particular the inquisitorial system followed in France, Germany and other Continental countries. It also added some suggestions regarding some important amendments in the Code of Criminal Procedure.

The Committee has also felt some changes should be done in the very constitutional Rights of Accused Persons most important of all these are Right of Accused persons i.e. Right to Silence (Art. 20(3). It feels that without subjecting the accused to any duress, the court should have the freedom to question the accused to elicit the relevant information and if he refuses to answer, to draw adverse inference against the accused. The Committee has felt that the accused should be required to file a statement to the prosecution disclosing his stand. The Committees has also suggested some measures to be taken to improve quality of investigation. It has also favored comprehensive use of Forensic Science and modern technology must be used in investigations right from the commencement of investigation. The committee recommends that the Government may come out with a policy statement on criminal justice and a provision be incorporated in the Constitution to provide for a Presidential Commission for a periodical review of the functioning of the Criminal Justice System.52

Other committees which recommended some reformations in Criminal Justice System are **Padmanabhaiah Committee on Police Reforms** which recommends various changes in Police system in India.53 It emphasized on some very needed changes like every police station should be equipped with ‘investigation kits’ and every sub-division should have a mobile forensic science laboratory, Law Commission of India should review the entire classification and the powers of the police to investigate, CBI in investigation, Intelligence Bureau in cyber surveillance and the National Crime Records Bureau in cyber technology/forensics should be enhanced. Apart of this there are recommendations & suggestions of **239th Report of Law Commission** of India on reforms of Investigation and Criminal Justice System which emphasis on quality of investigation and

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52 Supra note 40

53 Ibid
It was felt that Police are quite often handicapped in undertaking effective investigation for want of modern gadgets such as cameras, video equipment etc. Forensic science laboratories are scarce and even at the district level; there is no lab which can render timely assistance to the investigating Police. Some reasons for low rate of convictions have been told like- unscientific investigation by the police, lack of proper coordination between police and prosecution machinery, Police stations understaffed and manned by inadequately trained Police personnel, lack of trained and efficient prosecutors.

The Constitution and judiciary is acting as a paramount Guardian of common people by providing various rights to the citizen. Indian Constitution also provides some basic protections to accused persons in the shape of Fundamental Rights like - Right to Privacy, Right to silence, Right to life and Personal liberty, Protection from arrest and detention and so on. Right to silence, which is a cardinal principle of criminal law jurisprudence, is also known as “right against self-incrimination” or “privilege against testimonial compulsion”. The privilege against testimonial compulsion is based on the principle “Nemo Tenetur Seipsum Accusare. The privilege against testimonial compulsion could be claimed not only in relation to facts which were directly incriminating but also in relation to so-called clue facts. Article 20(3) of the Indian Constitution embodies the principle of protection against self-incrimination. In the famous case of Nandini Satpathy v. P.L. Dani the word “compelled testimony” was discussed as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion tiring interrogative prolixity, over bearing and intimidatory methods and like not legal penalty for violation. In general, this doctrine states that ‘no person, accused of any offence, shall be compelled to be a witness against himself, In India, the right against self incrimination is incorporated in clause (3) of Art.20.

55 Cullier v. Cullier, (1582-1603) 78 ER 457 (c)
57 AIR 1978 SC 1025
Art. 21 of Indian Constitution guarantee a fundamental right to life and liberty. The legal implications of applying these techniques as an investigative aid raises genuine apprehensions regarding infringement of individual’s rights, liberties and freedoms, including the “Right to live with human dignity” as enshrined in Art.21 of Indian Constitution. After Post-Menka, the scope of Art.21 was enormously increased so that this Article could include certain rights as fundamental rights. Right to Privacy is one of those rights which have been evolved by The Supreme Court of India and which is implicit in Art. 21. The Right to Privacy substantially as defined in Govind v. State of Madhya Pradesh & Another, 58 by Mathew, J. who accepted that this right to privacy is an emanation from Art. 19(a), {d} and 21, but right to privacy is not absolute right. The scientific tests have not been challenged on the ground of violation of the right to privacy, the Right to Liberty (in the context of a forced movement of the accused to different parts of India to carry out the tests), 59 and the Right to Health. 60

In PUCL V. Union of India 61 Supreme Court observed and reasonably conclude that, “the brain-mapping and the lie detector do not infringe the right to privacy of an individual. The right to privacy has been held to protect a “private space in which man may become and remain himself”. Further Article 22[1] and 22[2] of the Indian constitution provide some rights to the person arrested and detained in custody under the ordinary law of crime. The words used in Art., 22 (1) are ‘as soon as may be’ which means nearly as is reasonable in the circumstances of a particular case. 62 This Right of being informed of the grounds is not dispensed with by offering to make bail to the arrested persons. 63 In Joginder Kumar vs. State of U.P. 64 & D. K. Basu vs. State of W.B. 65 Supreme Court provided detailed guidelines regarding arrest and treatment of

58 AIR 1995 SC 495
59 Arun Gulab Gavali v. State of Maharashtra, 2006 Cri LJ 2615,
60 Rojo George case.
61 AIR 1997 SC 568
64 A.I.R. 1994 S.C. 1349
65 AIR 1997 S.C. 610
accused persons. “Right to consult and to be defended by a lawyer of his own choice” and “Right to be produced before a magistrate within 24 hours” is also provided under this article. However in India, the Judiciary has finally put some condition for scientific method of narco analysis in criminal investigation after case of Smt. Selvi and Others v State of Karnataka. But looking the past experience of criminal Justice System in India it can be said that if some guidelines are issued to conduct the test and some changes are made in the existing methods of criminal investigation. This technique may prove to be of great value in the criminal justice system. For this, complete restrictions of existing mechanisms of investigation and enquiry under the existing laws and the Police Act are not required. Thus the Narco Analysis raises many ethical and constitutional issue in which the decision of various High Courts has varied. The Supreme Court in its wisdom has given long arm and scope for further interpretation while concluding that voluntary administration of these techniques. The Court permitted the Test though the evidence extracted would not be admitted in the court and only material evidence which subsequently discovered that would be admitted before the court. It further raises an issue, that how a wrong becomes right if consented.

1.1 Review of Literature

Nabar, B.S. (2015) in his book Forensic Science in Crime Investigation writes that the ancient Chinese people believed that fear and anxiety in man stopped release of saliva in the mouth. Consequently, suspects were made to chew dry rice powder. If the powder remained dry, individual considered guilty. The narco analysis is based on the principle of pyshosomatic interaction of an individual. This means if a person consciously wanted to hold his/her feelings, many changes take place in the body of the individual. The Central Bureau of Investigation claims its accuracy of 90-98%.

66 SLP Criminal Appeal No. 987, 990 (2010) SC.
criminal Justice Tenets in the Ancient Indian Hindu Code* reveals the ancient condition
of criminal justice system and wrote that the Manusmriti defined the punishment and
crime according to each Varna in a hierarchical mode which was the very basic of ancient
Indian criminal justice system. Indian tradition and culture based on fair and justice
which can be seen in during Vedic period and afterwards. The state performed its duty of
protection of society and the individual through coercive enforcement of the standards of
justice which continuously reduced for the purpose into the minutiae of positive law.

Allan Lind, John Thibaut and Lauren walker (Verginia Law Review, 2004) in the
article ‘The Adversarial system in India: Assessing challenges and alternatives’ it is
declared that the Indian criminal justice system suffers from serious under-funding and
understaffing and continues to be extremely slow. There is need for training of all judicial
personnel and court administrators beyond what is being provided. The author further
reveals that the police in India are poorly trained on investigation methods which lead
torture and maltreatment. Corruption among police personnel equally provides a ground
for the practice of extortion and threats.

Keith A. Findley (2011), in his article on ‘Adversarial Inquisitions: Rethinking the
Search for the Truth’ argued that if one were asked to start from scratch and devise a
system best suited to ascertaining the truth in criminal cases, and to ensuring that, to the
extent any unavoidable errors in fact-finding occur, they do not fall on the shoulders of
innocent suspects, what would that system look like? It is inconceivable that one would
create a system bearing much resemblance to the criminal justice process. In his
conclusion, he concluded that the inquisitorial system focuses on truth-finding and its
commitment to objectivity and shared information, promises greater access to the truth. But the adversarial system’s reliance on adversaries who are committed to seeking evidence and interpretations of the evidence that favour competing outcomes offers the best mechanism for ensuring that all possibilities are considered, thereby guarding against tunnel vision and confirmation biases. The search for the truth, therefore, should be enhanced by combining these strengths from both systems; the openness and commitment to neutrality in investigations from the inquisitorial system and the forced open mindedness that would be brought by permitting adversaries to jointly control that investigation.

Sonakshi Verma in its article ‘The Concept of Narco Analysis in view of Constitutional Law and Human Rights’ writes that the present Indian criminal justice system is obsessed with individual liberty and freedom and in this context a safe passage forgone and criminals due to weakness in the criminals justice system leading to dilution of evidence. Author further expressed that the validity of test and admissibility of narco analysis is upheld taking into consideration the circumstances under which it was obtained; there is little possibility of miscarriage of justice when administer as per procedure prescribed and observing the due safety precautions, the apprehension on the part of counsels of accused and critics is unwarranted. The use of scientific techniques in criminal justice system will bring a quality change in the system and death chambers of police stations are replaced with the operation theatres administering the truth serum to the criminal and raise a hope of ray about the justice.

K.G. Balakrishnan, Chief Justice of India, New Delhi (2009) in his lecture on Criminal Justice System: Growing responsibility in light of contemporary challenges stated that
the Indian criminal Justice system given more focus to the rights of the accused such as presumption of innocence, right to self-incrimination, right to legal assistance, right to fair trial, standard of proof beyond reasonable doubt and so on. These all have been developed with the common law principles which has been given in our constitution and subsequently interpreted by judiciary which is natural feature of any liberal democracy where individual has been given protection against the criminal law machinery controlled by state but in the era of widespread organized crime, terrorist attacks and use of fast technology in commission of crime compel the state to think about the rights of individual on the basis of public interest.

Shiv Kumar Dogra, (2015) in his article *Criminal Investigation in Criminal Justice System: A Comparative Study* expresses that the effective, efficient and just criminal justice system is the backbone of any democracy. The effective system not only committed to deliver justice but also deliver on time. India has inherited and borrowed law from its colonial power of criminal justice system and procedures as well as rules of evidence, courts, police and correctional system. Crime control implies on various things and one of them is investigation, on the basis of which the person may be declared as offender or not. Therefore the protection of individual rights is a necessary to guard the accused against the arbitrary exercise of power of state. Author further raise the issue that today what we understand by criminal justice system is somewhat fractured and centrifugal system with all the segments of the system forcing away from each other leaving at its very focal point and it is necessary to review the criminal justice system.

Dr. Dalbir Bhandari (2002) in his book *The Constitution and Criminal Justice Administration* expresses the view that the criminal Justice Administration plays very
crucial role in maintaining the people’s faith in whole justice delivery system. A weak criminal justice administration do not able to deter the criminals and law abiding citizens live under the constant threat of life, liberty and property which shakes the constitutional authority and erodes people’s faith in whole state machinery. The author expresses the needs of improvement in the Criminal Justice System in India on the basis of the constitutional goal of Justice provided by the constitution maker and the spirit of the constitution. While evaluating the performance of criminal justice Administration in India author writes that, if a single component of system became failure the same is being undermined the success of all other components.

Hans Cross (1924), in his written book on *Criminal Investigation: a practical handbook for Magistrate, Police Officers and Lawyers* noted generally the techniques of criminal investigation. He worked generally of all the duties that an official can be called upon to perform in the course of investigation of an offence, those of an Investigating Officers are certainly not the least important. That is, his services to the public are great and his labours full of interest will be generally admitted, but rarely, even among specialists, is full credit given to the difficulties of the position. An Investigating Officer must possess the vigour of youth, energy ever on the alert, robust health, and extensive acquaintance with all branches of the law. He ought to know men, proceed skillfully, and possess liveliness and vigilance. This is a general concept of criminal investigation. He did not work on human rights aspects and its protection rather the author given more focus on the investigation techniques and importance to include new technology for investigation.
John Andelin (1988) in his report ‘Criminal Justice, New Technology, and the Constitution’ revealed that the new technologies are transforming every component of the criminal justice process and potentially make law enforcement much efficient and more effective. In investigating a crime, identifying suspects or collecting evidences these new technologies made tremendous changes and enhanced the capabilities of police. There might be possibility for misused of these techniques and it needs on the part of lawmakers and courts to reexamine both the scope of constitutional limitations on police power and their application in the particular activities and procedures. Government also must establish protective boundaries within which these new technologies will operate. Technology throughout history has been a double edged sword, equally capable of improving or endangering a civilized world. The benefits of these technologies are clear and should not be lost through fear of potential abuses.

John H. Gibbons (Special Report, U.S. Congress, 1988) in the report titled “Criminal Justice: New Technologies and the Constitution” concluded with the statement of Justice Brandies that the men born to freedom are naturally alert to repel invasion of their liberty with evil minded rulers. Therefore in the introduction of new technology in a democratic society government must establish necessary boundaries within which new technologies will operate. Technology throughout history has been double-edged sword, equally capable of improving or endangering a civilized world. The benefits of these technologies are clear and should not be lost through potential of abuse. The abuse of such technologies can be avoided with the diligent attention and training of criminal justice administrator, Court personnel and common citizen at large.
Vishal Sharma (Altius Shodh Journal of Management and Commerce ISSN 2348-8891) in his Article “Needful changes required in criminal justice system of India with reference to the recommendations of Malimath Committee” expresses their views that the quality of investigation in India is very poor which leads the low rate of conviction and needs a great change in the approaches and strategy through law and improve competency and proficiency in the investigating agencies. This is the reason the statement given to the witness or bystanders to the police officer is not admissible except some condition.

Avirook Sen (2015) in his book ‘Aarushi’ expresses about the present criminal justice system in India and focused on investigation of very famous case Aarushi Talwar. Author while discussing the work culture of investigating agencies in Indian Criminal Justice system concluded that the investigating Agencies how far under pressure while doing investigation and this turns the agencies to collect evidences at any cost. Author further writes that when any such crimes like murder or offences committed with brutality, agencies in the pressure started working as an agent of public, media or Government and only they want to prove or disprove where justice is lacking.

Arun Fereira (Nagpur Jail, December 2008), in the letter titled “My Experience with Forensic Tests” writes his experience with forensic tests while he is interrogated by the Maharashtra Police. He expresses his experience after meeting number of inmates who has gone through the tests. The author reveals that the investigating authorities with the coordination of forensic science laboratories misusing their powers and treating the techniques as a form of torture. He further shares that he met number of inmates in the jail where he was and found that the subject given consent for single time but many of
them were subjected for narco analysis more than seven though the consent has been
given for single time. The same was forced by the forensic science expert and
government security agencies without looking the rights of individual. The techniques are
used for some other purposes like fabricating the evidence or desired evidence. As
experience written in his letter author shares that neither the Magistrate nor authorities of
forensic science laboratories checking the veracity of consent letter and sometime forcing
for the consent letter.

J. Rolin’s (New York, 1956) book on ‘Police Drugs’ reveals that it was a clinical
psychiatry which is use to establish contact with more or less inaccessible patients by
using Alkalide drug Scopolamine, a sedative of nervous system. It has been used in the
USA for the treatment of Cocaine and Morphine addicted patients. The first use of
Scopolamine as an instrument of analysis took place in Dallas Texas and Calvin
Goodard termed this as a truth serum and made the claim that under the influence of
Scopolamine it is impossible to lie.

Webster William (2002), former director CIA and FBI and former judge in his article
“The use of Truth Serum Urged” writes that the narco analysis test has significant role
in exposing the heinous crime going to commit in coming period by the terrorist and
urged to the Pantagon for the administration of truth serum to the Taliban and al qaeda
prisoners for

C. B. Hanscom (1956) Director of the Department of Protection and Investigation of the
University of Minnesota, in his Book ‘Narco Interrogation’ concluded that more than
thirty different tests under narcosis he has himself conducted, and says that he has made
"a study of more than 230 references to Narco analysis for criminal investigation."
author speaks of his "missionary duty" to promote the drug technique in criminological activities. "The possibilities and potentialities are so broad and sweeping that just a brief review and summary are possible today.

S. Malini & B.M. Mohan (2007) Forensic Science Laboratory, Bangalore in the book *Narco Analysis* writes that Narco analysis test result may be doubtful if the test is used for the purposes of confession of crimes. Suspects of crimes may, under the influence of drugs, deliberately withhold information or may give untrue account of incident persistently. The Narco analysis is not recommended as an aid to criminal investigation.

Gerald Posner (2004) in his book *confessions of a Terrorist* expresses the view that the US administration privately believes that the Supreme Court implicitly approved using such drugs in matters where public safety is at risk because changing paradigm of law and technological advancement is became a need in the criminal justice system for speedy justice.

Jacqueline Hodgson (2006), in his comparative study on *Investigation and Prosecution in France and England* concluded that the judicial role in France is very different from that in the England. Rooted in an inquisitorial procedure, it is part of the pre-trial investigation as well as the trial. Whilst our own judiciary has become increasingly implicated in the management of cases prior to hearing, this remains linked to the trial process and not to the preparation of the case by the parties. To descend into the pre-trial, the proper mean would be to move away from the independent function of arbiter and into the domain of the adversarial parties in the case. In France, this is not considered problematic as the investigation is characterized in more neutral terms as a search for the truth in which prosecutor, suspect and victim may participate. He worked
about criminal investigation and prosecution in France and some comparative aspects to English systems. He entirely covered the roles of police, Investigating Judges and prosecutor in France.

**Madan Lal Sharma Joint Director Central Bureau of Investigation (International Annual Report, 1997)** in *United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders*, Japan expresses their view in his article ‘The role and function of Prosecution in Criminal Justice’ that the delay in trial is the fundamental reasons for acquittals in criminal cases and for this it is necessary to improve the quality of investigation. The special emphasis must be given on using modern scientific methods of investigation to implement the fundamental rights like speedy trial to the citizen. Author further expresses by quoting the statement of Russian Nobel laureate Solzhenitsyn ‘A society based upon the letter of law, and never reaches any higher is taking very scarce advantage of high level of human possibilities. The letter of law is too cold to have any beneficial influences on society. Whenever the issue of life is woven in legalist relations, there is an atmosphere of moral mediocrity, paralysing man’s noblest impulses.

**Nitya Ramakrishnan (2013)**, in his book on *Custody: Law, Impunity and prisoner, Abuse in South Asia*, shared the points of Investigation by the Indian Police given by the experience of former director CBI, D.R. Karthikeyan, who headed the Special Investigation Team in the Rajiv Gandhi Assassination Case and pointed out that the job of police is to investigate the case and not to torture a detainee to extract a quick confession to try and crack a case in the court but police used such methods to get out of the hard, Laborious and time consuming task of Investigation. Author shared her
defensive ideas of cases like Parliament Attack Case and Haren Pandya Murder Case of Gujarat for which she is the defence Lawyer. Author thoroughly mentioned the complex dynamics related to the torture, tracing the past and present day nature of conflict between the law and practice of investigating agencies.

Sarah-Annay Bradbury Andy Feist in his writings *The Use of forensic science in volume crime investigations: A review of the research literature* (Crown Copyright, 2005) wrote that the forensic techniques traditionally are being concentrated in more serious offences such as rape and homicides. The proportions are being increased with the passage of time and now this is used in the collection of evidence and not only corroboration of evidence. The author in the study shares that the forensic techniques revealed greatest impact on criminal justice system and increased the conviction rate. The outcomes of courts are seriously affected because of the forensic techniques but at the same time the general police appreciation regarding forensic science is inadequate and lack of understanding exist among investigating agencies about the techniques. The author in his research reveals that the integration between forensic expert and investigating agencies is not found as it requires, it needs efforts and desire from both sides which were lacking. It was also revealed by the author while explaining the scope that a clear lack on the part of appreciation of forensic techniques found in post charges process and convictions.

Yamini Rajora (2015) in his article *scientific evidence in criminal trial: Narco analysis* expresses that there is urgent need of policy regarding application of forensic science in criminal justice system. This is not only identifies the actual guilt but also prevents innocent from being convicted wrongly. The author further expresses the view that the
legal system must imbibe the developments and technology that take place in science as long as they do not violate fundamental rights of the individual.

**Robert Ernest House** (1959) in *Texas State Journal of Medicine* reveals that in the state induced by the drug, the individual will reply to questions with childlike simplicity and with childlike honesty, without evasiveness, guile, deceit or fraud, as the answer to a query that is stored in his mind as memory.

**R.E. House** (1998) delivered at 10th Annual Convention of the International Association for Identification, **Houston, Texas**, reveals that when scopolamine, Pentothal, amytal, etc., is used outside of psychiatric clinics, and in connection with criminal investigation or the courts, they become simply means of extortion, the medical expert becomes a policeman, and all possibility of justice is destroyed. It is granted that there is a theoretical distinction between the use of these drugs as a medico-legal method of diagnosis and as a method of police interrogation but in practice, when the drugs get into the hands of the interrogator, the distinction disappears.

**Prof. Jagmohan Singh** (1997), in his book *‘Law and Justice in Jammu & Kashmir’* categorically argued about the criminal justice system in Jammu & Kashmir during ancient Hindu times, how the adjudicators or those who were known as the law givers not only concern with frequent granting of adjournment but also with the time period for which an adjournment could be granted. The author describes the condition of criminal justice system and trials during Mughal, East India Company and during British period. The reformation in criminal justice system by Lord Hestings and Lord Cornvallis and recommendation of different law commission regarding criminal justice system India
though the author described specifically about the undertrials and jail system but a part of this he also explained about the investigation and criminal trials.

 Amir Ratna Shrestha (1992), in his handful thesis on *Constitutional Rights of an Accused: a comparative study under the Constitutions of Nepal and India*, observed that the concept of protection of human rights in the administration of criminal justice has been changed, gradually. The cardinal principle of criminal justice administration is to be presumed an accused innocent till he is proved guilty. He is required to prove on involvement in an offence and such proving must be conducted in fair and just manner in accordance with procedure established by law of that country. The state has to collect evidence against him and has to prove that alleged accused is involved in an offence at the same time, the accused has the right to keep silence while interrogation or at any other stage of criminal proceedings and also exclusive right to defend his case before the court. In this work researcher has done a comparative study of the Indian and Nepalese criminal justice system focusing on rights of accused.

 Ananthi S Bhardwaj & Sumithra Suresh (NALSAR Law Review) in the article ‘Narco Analysis and protecting the rights of Accused’ concluded that the law is a living process and law of country should evolve according to the changing needs and demands of the society, criminal justice system is one among them. The legislature has given recognition by amending the provision of Criminal Procedure Code, 1973 but mere recognition under ‘such other test’ given under the provision is not sufficient and needs a clear provision for the use of scientific technology in criminal justice system.

 Raed. S.A. Faqir (2008), in thesis on *Protection of the Rights of Accused in India and Jordan (a comparative study)*, worked on the whole issue of rights of accused in
protection against unlawful procedures, such rights of accused included right to be informed by the authorities on grounds of arrest, right to bail, right against unlawful search and seizure, right of accused to be presumed innocent and the right against illegally obtained statements, right against self-incrimination and to remain silent.

**Barcelona Panda (2011)** in his article *Narco Analysis and its evidentiary value* expresses his view that the Indian criminal justice system has alarming low conviction rate and the situation needs to be rectified with emphasis on real science and state of art of technology. The government must make a clear policy looking the proved significance of technology in criminal justice system having great impacts on both criminal and honest person. This has to be seen in various cases of apex courts in India.

**Malimath Committee (2003)** in the Report on *Reforms of Criminal Justice System in India* expresses that the criminal justice system in India is having two major problems like inordinate delay in disposal of cases and very low rate of conviction in cases involving serious crimes. This has encouraged the criminals. Violent and organized crime became order of the day. As chances of convictions are remote, crime has become profitable business. Life has become unsafe and people live in constant fear. Law and order situation has deteriorated and the citizens have lost the confidence on Criminal Justice System. Committee has given various recommendations for inclusion of new techniques in Indian criminal justice system.

**Padmanabhaiah Committee (2000)** in the report on “*Police Reforms*” expresses that there is need of institutional arrangements to ensure the legitimate control and use of the police for public good. The committee has given broad recommendation regarding police
reforms like training skill, eligibility criteria, accountability and prevention of political interference in the appointment and transfers of police officers.

**Law Commission 239th Report (2012) on “Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities,”** writes that the inordinate delays in the investigation and prosecution of criminal cases involving serious offences and in the trial of such cases in the Court is a blot on Criminal Justice System. The objective of penal law and societal interest in setting the criminal law in motion against the offenders with reasonable expedition is thereby frustrated. The adverse effect of delay on the society at large is immeasurable. The fear of Law and faith on criminal justice system is eroded irretrievably. Public interest demands that the criminal cases which are grievous in nature should be concluded within reasonable time and guilty are punished. It is recommended by the commission that there is need of periodical exercise and training to upgrade the techniques of investigation. There is dearth of forensic expert in the police departments which should be appointed.

**National Human Rights Commission Report (2000) on “Use of Narco Analysis Test and Brain Mapping,”** expresses the views about the importance of liberty in the human rights perspective. Commission issued guidelines for the use of new techniques during investigation by the investigating agencies like during Narco Analysis, person should be given access of advocate and same should be conducted in the presence of his lawyer.

### 1.2 Objective of the study

The objective of this research work is to cover the legal and scientific aspects of Narco-Analysis test and its application in administration of justice as a measure to control the crime and to resolve the cases of complex in nature. Though the scientific approaches
have become need of present society but the implications can also not be ignored. Looking towards both these aspects of scientific approach in the administration of justice following aim and objective has been enumerated:

(a) To study the source, causes, methods and effect of Narco Analysis Test in administration of Justice for the constitutionality of the test.

(b) To analyze the important supportive legislative enactments and other provisions existing under Indian legal system relating to crime control and their effects for the evidentiary value of the Narco Analysis Test

(c) To study the need and applicability of Narco analysis Test for present criminal justice system and role of different Indian High Courts and Supreme with regard to Narco Analysis Tests in India

(d) To examine the approaches of various committees on criminal justice system constituted by different Indian governments on criminal justice system like Malimath Committee and recommendation of National Human Rights Commission regarding Narco Analysis test.

1.3 **Hypothesis:** The following hypothesis was examined for the purpose of this research.

- Narco Analysis Test is the infringement of fundamental rights against Self-incrimination as mentioned in the Article 20(3) of Indian Constitution.

- Narco Analysis Test is the violation of dignified life and right to privacy given under Art.21.

- In the modern era of technology Narco Analysis Test is useful to the investigation Authority in finding and establishing the truth.

1.4 **Methodology of the study**

In devising the methodologies of present work, the researcher have had due regard to the fact that the social research such as this must be designed to gain information and hence, insight into the subject under investigation so that the existing social reality is
established. Throughout the work, researcher has been guided by the cardinal principle that the research must be aimed at discovering fact rather than confirming whatever existing pre-conceptions. Hence the particular method adopted in this study was descriptive cum exploratory.

In keeping with and to address the purpose of the research in the Doctrinal part, researcher applied descriptive and analytical methods of study of the problem and concentrated on Books, Articles, Reports of commissions & various committees, Cases of Different High Courts and Supreme Court and cases of some of the developed countries and ideas of different news papers of India like The Hindu, The Times of India etc. While emphasizing the provisions of Constitution of India, Criminal Procedure Codes as well as Indian Evidence Act, 1872 and International Convention, the jurisprudential aspects of apex court of some developed countries are taken into account. The primary aim of present research is to discover by explaining, analyzing and illustrating in a systematic form of the facts, jurisprudential concept of fair, just and reasonable procedures established by law as an aspect of criminal proceedings, constitutional provisions of the rights of accused person’s provided in a fair and effective investigation and finally one can access justice equally as others. The legal propositions and doctrines are gathered through the judgments, Statute laws which include constitution, criminal laws, conventions, books, articles, research papers as well as reports of officials of various institutions.

Thus the researcher used Descriptive cum exploratory approaches to determine the inadequacies or gaps of existing law, to analyze the criminal jurisprudential concept of the rights of accused to fair and affective investigation and various judgments of the apex courts. In all the criminal justice system the basic of fair trial depends upon the fair investigation and the fair investigation depends on the fair, effective and just procedure in its arts of investigating officers. Through analytical approaches the researcher analyzes the existing applicability of rights of the accused and need of scientific technology for the fair and effective investigation which has been provided by the law and adopted by the apex court of the country.
In the Non-doctrinal Part for identifying, number of cases of narco analysis test the researcher adopted Case study method by non-participatory observation and interview technique. The Observational checklist and open ended questionnaire has been used for the same. The Case studies have been done from the Forensic Science laboratories of Lucknow, Gandhinagar, Banglore and Delhi. These laboratories were selected with a view to obtain a national representative data where accused or witness has undergone for Narco Analysis Test. The Researcher collected data, interviewed experts of the concern laboratories and on the basis of analysis, inadequacies, disadvantages, advantages, weakness and strength of the systems and to express opinion on rational basis of both doctrinal and non-doctrinal study, a conclusion has been derived.

1.5 Scope of the Study

The present research problem identified through review of literature and case laws. The researcher made a detailed survey of cases of different High Courts as well as Supreme Court and also the cases of some developed countries such as U.S.A., Canada, and U.K. The Researcher studied numerous articles, Books on the subjects, reports of different law commissions, Governmental Committees, Non-Governmental Organizations, National Human Rights Commission and other Organization related to the administration of Justice.

In this study an attempt has been made to highlight the problem relating to the scientific approaches of criminal justice system regarding Narco analysis test as well as issues relating to the rights guaranteed under constitutional law of India and general law. Merits and demerits of the scattered criminal legislations and laws relating thereto has been undertaken.

Further an attempt has been made by the researcher to examine that how executive could work in the criminal justice system in the consonance of fundamental rights and duties given under constitution of India to protect the society and made criminal free society so that no criminal can move freely after committing a crime and the present judicial system is in a position to deliver justice without victimization of any innocent which is key concept of any criminal justice system.
1.6 Limitation of the Study

The present study is based on both doctrinal and non-doctrinal methods of research. Therefore while doing the study there are some practical implications came out this putted some challenges in the study in one way or other. Following are the limitation found while doing this study:

Firstly, as the study concerned with the modern scientific techniques of investigation (Narco Analysis Test), a very few literatures are available in the form of books and scholarly articles which was one of the hurdle for the researcher in analyzing and writing the research work.

Secondly, the findings of the study are basically based on doctrinal and non doctrinal. In non doctrinal part data had been collected from forensic science laboratories. In some laboratories revelation of data was denied due to security reasons. From some forensic science laboratory data was collected through Right to Information Act following section 8 of the Right to information Act.

Thirdly, while collection of data from various laboratories, some of the laboratories like forensic science laboratory Lucknow, Banglore and Gandhinagar provided data but they avoided providing other information such as background of subjects including past activities which were significant for the study.

Fourthly, for giving rich conclusive remarks of the study, researcher sought opinion of judicial officers in this regard but after multiple approaches, no replies were given by the officers. This having practical implication towards the study.

Fifthly, though there should be a manual for each laboratory yet approaching the forensic science laboratory, no laboratory having such kind of laboratory manual specifically for these techniques found except Central Forensic Science Laboratory, New Delhi. The available forensic laboratory manual is also not clear with its objects. This further creates practical implication in the findings of the present study.

1.7 Framework of the study
Despite recommendations of various committees on criminal justice system and safeguards in the Indian constitution the justice delivery system is not as easy, to give relief to the poor, needy and real victim though the concept “justice delayed is justice denied” frequently used by government, judiciary, the police and civil society. It is still remaining in darkness, still facing problems of fair trial and justice. In the Krushi Cooperative Bank Case the managing director refused to undergo for the narco analysis test, the facts shows that the thousands of poor farmers deposited their money in the cooperative bank and when time came they found their money was nowhere. No one is bothered about, many poor farmers committed suicide. People do not follow the Ramrajya where no one wanted to cheat others; no one wanted to do an act which leads a person guilty before the society. In the present technical era people are using all those method of committing crime which leads avoidance from punishment. At the same time the agencies made responsible through the manuals, rules and constitution which given the people fundamental rights. Situation hurts when the crime has been committed and state feels helpless to convict the accused person in absence of evidence.

The widespread ignorance about the basic concept, meaning, Nature and application of new scientific test like Narco Analysis Test leads towards many misconceptions inhibiting any meaningful debate at the national level in India. Resulting effect is that instead of having independent interaction of thought process, academics, executives and investigating agencies trapped into the web net spread over by players of crime politics. These are the provocation to select this topic for study which is one of the contemporary issues relating to the application of Narco Analysis Test in India and criminal justice system for the administration of justice.

The Study is divided into seven chapters.

67 AIR 2006, 294 Supreme Court.
The FIRST CHAPTER gives the perspective in the light of which the detailed analysis has to be made. It mentioned the complicated problems relating to Narco Analysis Test in general and its application in particular. The chapter includes introduction, Scope and Methodology, Objective, Hypothesis of the study and Review of Literature.

The SECOND CHAPTER makes an attempt to trace the evolution of the concept of Criminal Justice system and investigation, its nature along with needs for application is clearly explained. This traces the role of Dharma and Vedas in the prevention of crime and development of criminal justice system. The criminal justice system during Ancient period, Medieval and Modern has been discussed and the reformation of different kingdom and empire has also been briefly discussed in the chapter. The justice delivery system from ancient to modern with developing stages has been included for the better understanding of the present study. Indian Criminal justice system is mostly effected from British Legal System and many laws are still same as during the British rule. In the chapter includes- criminal justice system of British period and reformations made by different Governor General for better ruling of the dominion states.

The THIRD CHAPTER deals with the conceptual analysis of Narco Analysis Test in the special context of criminal administration of justice. For the meaningful discussion in the area of Scientific Tests, there is need to described each and every aspect of the test that is why the chapter includes- the History, Origin and Development of Narco Analysis Test, its procedure and method of interviewing a suspected person or accused, pattern, role and function in the present criminal justice system in India and some developed countries like USA, UK and Canada along with the leading judicial pronouncement of these countries for the better understanding about the importance and use of the Narco analysis test in present criminal justice system in India.

The FOURTH CHAPTER deals the various laws and provisions in the Indian perspective regarding investigation and use of these techniques therefore the topic is basically focused on Indian constitution. It is significant to elaborate each and every aspects of Indian legal system related with the rights of the people and which give some protection in the form of fundamental and constitutional rights. Looking this objective, the chapter includes the different related provisions of Constitution of India such as
Article 20(3) which expresses about the rights against self incrimination; Article 21 right to life and personal liberty, extended form is right to privacy, live without torture and right to health, Right against arbitrary arrest and detention. Apart of this, chapter includes the various provision of Criminal procedure Code, 1973 and Indian Evidence Act, 1872 for the better analysis and understanding of the rights of the individual and collective rights of the society.

The FIFTH CHAPTER deals the practical approaches of Narco analysis tests containing organizational structure, Laboratory visits, data collection and interaction with the experts of the visited laboratories such as Forensic Science Laboratory, Bangalore; Forensic Science Laboratory, Gandhinagar; Forensic Science Laboratory, Lucknow and Central Forensic Science Laboratory, New Delhi. On the basis of collected data and experiences gained from the interaction with different experts of the laboratory, data analysis has been done.

The SIXTH CHAPTER deals the judicial interpretation of the scientific technique in the light of the basic principle of the criminal law that thousands of criminal can exempt but no single innocent punished. The chapter deals important decision of various High Courts and Supreme Court. This includes the controversy and issues relating to the Narco Analysis Test and conflicting approaches of the criminal jurisprudence and constitutional rights. The chapter emphasizes the developing philosophical aspect of judiciary where the collective rights and individual rights are in conflict and approaches of the court in the light of the various provisions of Law and doctrine of criminal justice system.

In the LAST CHAPTER an attempt has been made to give some tentative remarks and conclusion with valuable suggestions. The steps have been taken by the Government towards making certain statutory exercise to update the Indian criminal justice system in consonance of the present need and recent development of society. The whole attempt in this study would give a complete and clean picture of the concept and application of Narco Analysis Test with special reference to the constitution of India and criminal justice system as a whole.

### 1.8 Significance of the study
As society advances, it becoming more complex with every passed moment, crime is committed in different forms and newer mode of perpetration is developing.

This correspondingly necessitated the employment of the modern scientific techniques in investigating the crimes & judicial processes and one among them is Narco-Analysis Test. These techniques are equally relevant in the cases where conventional forms of crime have assumed immense proportion, say in the form of public outcry or to make up for shortfalls in investigative processes. The technique involves revelation of certain pertinent information about the suspected accused or witness. They differ from traditionally used technique by the investigating agencies like third degree torture and needs certain degree of cooperation from suspected accused. It can be seen in the writing of Sir, James Stephens 1883 who rationalizes the grisly examples of “third degree” practiced by the Indian police. If we look at the history of police investigation, physical coercion (third degree torture) has been preferred to painstaking and time-consuming inquiry in the belief that direct methods produce quick result. In the new techniques like Narco analysis gives quick result avoiding third degree torture of investigating agencies.

Through this comprehensive topic an attempt has been made to inculcate the issues regarding Narco Analysis Test, provisions given under Constitution of India, Indian Criminal Procedure Code, 1973 and Indian Evidence Act, 1872. The issue with respect to the international perspective and international legal documents has also been seen.

This research does not mean to take the accused or suspected person or witness to the heaven where there are no words like problems and scarcity and criminal justice system

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immediately transformed from justice delaying to justice delivery. It may not able to give permanent solution to the investigation and use of technology in criminal justice system but it will attain a significant importance as it aims to look out all the decisions of various High Courts and Supreme Court, the approaches of scientific techniques in the present criminal justice system in delivering justice and to find out the loopholes and to provide suggestions to cope up with the situations for the cause of the society at large. The researcher has tried his best to bring some sort of solution which will go a long way in either regulating the investigating agencies and justice delivery system or problems that had arisen while using the narco analysis test in criminal justice system. The researcher has come out with the solutions to remove those which can be removed and to reduce those which cannot be removed. The present study about the validity of narco analysis test with reference to Indian Constitution: A critical study will be useful to deal with the complex criminal cases in which there is no clue left by the criminals while committing crimes so for tracing an evidence and investigating agencies has only hope to go through the suspected person and accused. This will help the machinery where there is no option of collecting evidence and bringing the accused behind bar. This will also help in the prevention of further crime with the help of the information collected from the subjected person and thereby provide justice to the sufferer.

The present study is related with the use of scientific methods in the criminal justice system in the contemporary India. As the criminal justice system facing multiple crisis in India and becomes overburdened because of pendency of cases, low conviction rates and growing crime rates which reduces the faith on the constituent organ of the state. One can count number of reason for these all.75 One of the major lacunae of Investigation is the procedure of collecting evidence by agencies appointed and regulated by the state. The crime pattern is continuously changing with the innovative development of the world by the use of new and recent technique which is out of reach from the investigating

Though India have world’s good investigating agencies in numbers like Central Bureau of Investigation, Research Analysis Wing and some other important and skilled intelligence bureau but even if the crime rates is increasing and conviction rate is decreasing. The investigating agencies at the basic level are not much aware about the new technique which needs to be utilized in the grievous and unique cases. The argument has been given that the test is against the rights of self incrimination under Art. 20(3) and Right to life which includes right to health and right to privacy under Art.21 of Indian Constitution. The present study is “Validity of Narco Analysis Test with special reference to the constitution of India: A Critical study”. Debate arising out of the test is its legality of using inhuman degrading methods of confession which is taken through injecting some chemical like sodium pentothal and sodium amytal. The study needs special highlights when number of high profile cases came before the Apex court on the basis of denying the right of an accused which is basics of any criminal justice system. The Apex court and various High Courts have given their opinion looking towards the status of crime of present society and need of this particular test. It has been submitted that the court didn’t denied for the use of narco analysis test though the consent is must from the subject for the going through this test but the significant one is that can a test which is illegal or unconstitutional can be made legal or constitutional mere because of consent.

The study is related with the investigation and procedure of investigation which includes use of some scientific test for the extraction of truth in the grievous cases. This veracity of test which is known as the truth serum test and one cannot avoid from truth if subjected and argued that the same can be used in the further prevention of crime and crime free society. In a civilized nation police torture is unacceptable to extract

77 Right against self incrimination- “No person accused of any offence shall be compelled to be witness against himself.”
78 No person shall be deprived of his life and personal liberty except according to the procedure established by law.
information about the crime but at the same time if the accused remains silent then how the agencies will disclose the criminal cases and upto what extent an investigating agency can coerce or force the accused to reveal the information. There are many who have viewed that in this age of ever increasing crime rate this helps investigating agencies while other rejects with the view that it is a clear violation of constitutional rights. These all has been seen in the present study which has enormous important for the criminal justice system.