CHAPTER IV

PROVISIONS RELATED TO THE INVESTIGATION AND NARCO ANALYSIS TEST
4.1 Introduction-

"...throughout the web of criminal law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt."

Crimes are omnipresent in every society. As told by Aristotle, “man is the noblest of all animals, but if he is separated from the law, he is the worst”. There is an animal beneath every human; the fear of consequences work as shackles for an individual, but still some individuals exists in our society who doesn’t bother any consequences. This kind of people are threat to our society because the acts committed by them are either not acceptable or they are considered as illegal before the law. An individual ends up doing something illegal or unethical, which a person of normal prudence would not have done, may be because of his enmity against someone or because of his daily needs or something committed in cold blood. In neither of the cases an illegal or unethical act can be justified.

To maintain the harmony and tranquility of any society, it is very essential that every citizen can live fearlessly. At present time the idea of having a ‘crime free society’ is just a myth. As our society is marching ahead in a fast pace, the criminals are also not lagging behind, rather the present crime scenario clearly predicts that criminals are a step ahead. To tackle these criminals, advanced methods of criminal investigation are required. Recent inventions in forensic science have proved to be efficient in dealing with criminals. Even though crime rate hasn’t gone down drastically, but it has proved to be a great success to trace the criminal and impart justice to a victim. The administration


268 Ibid.

of criminal justice in the common law system is bottomed on shielding the innocent, not convicting the guilty. To affect this purpose truthful facts concerning the crime are vital. Scientific investigation can be a major source of truthful facts. Herein lies the greatest protection which science can give to a person accused of crime.

The element of criminal instinct is present in the nature of human being since the birth of the cosmos. An effort has been made to discover the root cause of crime but the search, so, for has been in vain. When crimes are emerging on every inhabited path of the globe, further more attempts to stop crimes are made. The revolution in scientific technology is waving like fast flowing air and water in the modern world of advancement. Scientific inventions and discoveries are growing at much faster speed in every sphere of life. Science and technology has made life of people luxurious in numerous ways. The intersection of law, science and technology has flourished to become a focal point for resolution of many important issues such as scientific evidences, genetic and biological research, cloning and privacy of nervous system of person. Science and law are inter-dependable. The field of law is also under the shadow of scientific advancement. Judicial system, particularly the criminal justice system, is not untouched with the advancement of science. A volcano has emerged in the age old laws of crime detection (investigation), long established laws of evidence and criminal jurisprudence with the introduction of new techniques of crime detections. These advanced crime detection tools has emerged as the most powerful branch in law which are termed as Neuro Law helping the law enforcement agencies in administration of the criminal justice system. The most important function of scientific investigation is to convert suspicion in to reasonable certainty of either guilt are innocence.

4.2 Principles of Criminal Justice System

The criminal justice system is as old as society but at every stage of the society it has been sharpened by intellectuals. The object is to prevent the person from committing

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wrong and if someone found wrong they would have been given full opportunity to defend. While going through this journey some basic principles has been enumerated to achieve sound criminal justice administration. Following are the doctrines which can be explained below:

4.2.1 Presumption of Innocence

The Justice delivery system is based on the principle that, “ten guilty persons may be left but one innocent should not be punished.” Generally a person is presumed to be innocent until he is proved guilty.

The presumption of innocence is seen to stem from the Latin legal principle that is *incumbit probatio qui decit, non qui negat* (the burden of proof rests on who asserts, not on who denies) means every person (accused) is presumed to be innocent until he is proved guilty. It is the right of every person charged with a criminal offence to be presumed innocent until and unless proved guilty according to law after a fair trial being treated as innocent is fundamental to fair trial and intrinsically related to the protection of human dignity. Above all it guarantees against abuse of power by those in authority and ensures the preservation of the basic concept of justice and fairness. The rules of evidence and the conduct of a trial must ensure that the prosecution bears the burden of proof throughout the trial. Intertwined with the presumption of innocence is the right not to be compelled to testify against oneself or confess guilt. This means that authorities are prohibited from engaging in any form of coercion, whether direct or indirect, physical, mental or Psychological. Furthermore judicial sanctions cannot be imposed to compel the accused to testify.

4.2.1.1 ORIGIN OF CONCEPT


To suggest that the philosophy of presumption of innocent be protected against the danger of the offender being escaped in the garb that no injustice be caused, is of a recent bearing, would be on erroneous interpretation of the same. The reliance over law and man of owner, placed on the protection of innocence is so deep and vast that the concept can be traced back to the inception of civilization itself i.e. since the institution of justice and law materialized as a necessary concomitant to peaceful cohabitation of the member of the society.274

It is since the Roman and Greek times, as reflected through various maxims in this direction, that this concept of an innocent being protected, has assumed the foundation of criminal law while even earlier as well, it played a substantial role in the justice and administration system in earlier times, where it was not confined to criminal law alone and extended as a general principle of law.275 The oldest bearing that the concept can be perceived in the old saying Prestat reum nocentem absolvi, quam ex prohibitis Indiciis illegitima probatione condemnari which lays that ‘it is better that a Guilty Person should be Absolved, that he should without sufficient ground of Conviction be condemned.’ Though the exact balancing of interest, i.e. between one innocent against as many as hundred offenders, was not done in this case, however, it significantly discloses the protection that was extended to innocence.

Then again it was laid, in the ancient Greek jurisprudence that Le vieil adage, `Mieux vaut cent coupables en liberté qu'un innocent en prison,' ferait plutôt sourire puisque, justement, on n'est jamais innocent quand on est en prison, même à titre provisoire which means, ‘better 100 guilty men are at liberty than one innocent man in prison. It again went that Ilest aussi inacceptable de condamner un innocent que de libérer


uncoupable. (It is as unacceptable to condemn an innocent man as to free a guilty man).\textsuperscript{276}

In 1471, an English judge, John Fortescue suggested that \textit{Mallen reuera vigita facino rosos mortem pietate euadere, quâ iustu vnu condempari}. (Indeed I would rather wish twenty evildoers to escape death through pity, than one man to be unjustly condemned.)

Then, Blackstone, in his Commentaries in 1765 wrote, "The law holds that it is better that ten guilty persons escape than that one innocent suffer."\textsuperscript{277} In the seventeenth century, Matthew Hale, a famous English jurist, in support of his argument for the presumption of innocence cites a Latin maxim \textit{Tutius semper est errare in acquietando quàm in puniendo, ex parte misericordiae, quàm ex parte justitiae}. (It is better five guilty persons should escape unpunished, than one innocent person should die.\textsuperscript{278}

In a famous Italian debate over the matter as to the validity of the concept in the times of increasing crime rate and conviction being low due to undue protections being extended to innocents, three jurists decisively led the battle for the doctrine. Few of their remarks have been cited herein. \textit{Es preferible que salgan libres cien culpables a que se condene a un inocente. A traves de mas de doscientos anos de practica, se ha demostrado que el sistema funciona}. (It is better that a hundred guilty people go free than that one innocent be condemned. Over two hundred years of practice have shown that the system works.\textsuperscript{279} Also, \textit{Sería tan pernicioso dejar sin castigo a los culpables, como castigar a personas inocentes}. (It would be as pernicious to leave the guilty unpunished as to punish innocent people.)\textsuperscript{280}

\textsuperscript{276}Tarun, Jain, “Let Hundred Guilty be acquitted but one Innocent should be Convicted: Tracing the origin and implications of Maxim,” Dec, 2007, ICFAI University Publications.
\textsuperscript{277}Coffin Vs. U.S., 156 U.S. 432 (1895).
\textsuperscript{279}Comment of El Diario and La Prensa, (2003).
\textsuperscript{280} Stated by Renward Garcia Medrano (2004).
In a recent debate in the French society upon the validity of the presumption of innocence in the national legal system, which being the Civil Law system of jurisprudence and being guided by truth, is inconsistent ipso facto to any presumption as such, an earlier observation was used as a decision battle in the fight.281 A judge was cited to observe

*Lieber einen Schuldigen laufen zu lassen, als einen Unschuldigen zu verurteilen.* (Better to let a guilty man go than to convict an innocent man.) It is also heartening to note that the French system finally adopted the presumption. Even the Russian legal system has come to hold that *Lieber zehn Unschuldige exekutieren, als einen Schuldigen laufen lassen* i.e. it is better that ten innocent men suffer than one guilty man escape. In the discussion upon the formulation of International Conventions (during 1966) that various legal luminaries raised voice for the presumption of innocence to be made an obligation under International Law. One such call was supported as, *C'est de Zadig que les Nations tiennent ce grand principe, qu'il vaut mieux hazarder de sauver un coupable que de condamner un innocent.*” (It is from Zadig that the Nations hold this great principle, that it is better to risk saving a guilty man than to condemn an innocent.) Furthermore, Italian saying holds that *Meglio è liberar dieci rei, che condannar un innocente* i.e. the disutility of convicting an innocent person far exceeds the disutility of finding a guilty person to be not guilty. The statement can be said to be made more in economic terms than otherwise and this is an important factor to argue that the protection can be said to have also been extended to slaves, who were considered as chattels and mere commodities of economic utility. In a mammoth work of tracing the origin of the concept, substantial findings were made by Kenneth Pennington282 as to how the concept materialized.

One of the Italian maxim *Piu d’un testimonio e necessario, parceo fintanto che uno asserisce e l’altro neganiente v’e di certo e prevale il diritto che aiascuno ha d’essere creduto innocente* (i.e. More than one witness is needed, because, so long as one party

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affirms and the other denies, nothing is certain and the right triumphs that every man has
to be believed innocent) and tries to prove that the principle has formed the core of legal
philosophy from the very beginning. He comes to a conclusion that the right to the
presumption of innocence had a long history that stretches back to the thirteenth century.
It is to the jurisprudence of the Ius commune\textsuperscript{283} that this principle debates\textsuperscript{284}. He also lays
that Blackstone’s ratio: “the law holds that it is better that ten guilty persons escape than
one person suffer,” entered the English law from the Ius commune. It can thus state that
the notion, of presumption of innocence and protection of an innocent even at the cost of
acquittal of hundred convicts, in the current Indian Legal system, is not of recent origin.
It originated in early civilizations as a protection to accused against arbitrary exercise of
punishing power of the state, dwindled in its march to the current era, and now forms the
base of many legal systems, who consider this sacrosanct notion as the base and
underlying theme of their legal systems\textsuperscript{285}.

4.2.1.2. IMPLICATIONS OF THE BELIEF:

Making an interesting observation in a criminal trial, a German judge observed, “I will
almost say of myself, I will not be a thief or a murderer. I will not one day be punished as
such is to speak quite boldly. A lamentable condition is that of an innocent man, to whom
haste and procedure have found a crime can that of his judge be more so?”\textsuperscript{286}

\textsuperscript{283} The Ius commune was the common law of Europe from the twelfth to the 17th centuries. It was
formed by the fortuitous and contingent conjuncture of Roman law, canon law, and, later, feudal law in the
schools and courts of medieval Europe. Its birth took place in an age when momentous changes in the
practice of law were taking place when law was evolving from unwritten customary usages to written
customary and legislated law.

\textsuperscript{284} In an attempt to identify as to who first uttered the principle i.e. ‘Innocent until proven guilty’, the
author concludes it was a French canonist Johannes Monachus. The author states that since Monachus’
gloss was read by the jurists of the Ius commune, it was a primary vehicle for transmitting the principle to
later generations of jurists

\textsuperscript{285} Supra note 193.

The observation quoted above gives a critical insight into the belief. After all, are we justified in allowing hundreds of accused to purchase their acquittal, though they may be the perpetrators of the offence? How far should we allow such violators to go unpunished? Is the need for the innocent to be protected so important that he can provide a ground for offender to go scot-free? Moreover, with the implicit delay in the system, which renders every trial to conclude in a period of not less than years (and even decades in some cases), are period of under trail imprisonment is nevertheless a sort of punishment to the innocent. Therefore, are we justified in having a half-hearted commitment to the upholding of the belief where, we allow the benefit of this belief to permeate to the entire offender class while we deny the protection from the innocent, for whom the protection is actually aimed at, when it comes to determining the advantage being given to the innocent.

It was this concern that Allahabad High Court held that “it was never intended (under the Code) that persons committing offences should escape punishment on technical grounds which did not affect the substantial justice of the case.” Extending further, the Supreme Court has opined there must be a fact of prejudice being caused. A mere possibility of prejudice being caused is not enough to occasion a failure of justice. These are a few opinions among a heap of such concerns where the Courts have shown their concern to the ease with which convicts have been raising the plea of innocence and thus escaping punishment.

The matter doesn’t stop at that. There have been instances where abuse of process of law has occasioned in the manner that the protection of innocence has been unduly tried to be invoked, as it happened in the case of Habibul Kareem v. Assistant Director, Enforcement Directorate, Chennai. In this, case under Foreign Exchange Regulation Act, 1973, the accused was dreadfully seeking relief from the sentence imposed upon him. The accused filed, one after another, writ petitions such as to delay the sentence and

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287 Hira Lal v. State AIR 1938 ALL 395
288 State v. Mathew AIR 1956 SC 536
289 1999 Cri LJ 2209 (Mad.)
be released. The High Court opined, and rightly too, that this act of the accused amounted to the abuse of the process of the court and he was denied any relief in the petitions.

Another argument which acts contrary to the invocation of the doctrine is that, the fact that an acquitted defendant might be guilty is a red herring. If the accused is guilty, he should be given the due punishment and must be made to pay the cost of trying to avoid it. However, if he is innocent, he must escape the penalty and be recompensed for any losses he might have suffered from the wrongly directed trial. It is one of the cardinal principles of natural justice that justice should not only be done but also appear to be done. Thus, if an innocent is convicted, it would tantamount to violation of this principle in entirety. But also, the same argument applies to release of a convict. Why should he be allowed clemency at all? Allowing him to free, though it his crime being done is apparent and manifest, is the same as doing injustice to the victims of the offence which that convict might have occasioned to commit. Do we necessarily need this severe mandate because saving an innocent necessarily requires hundred convicts to be released like in the Bible where one notorious criminal was released when Christ was sentenced to be crucified?

Nevertheless, the other side of the coin is equally strong. Their argument goes that when the presumption of innocence becomes an empty idea and prejudice is allowed inside the courtroom, the integrity of the criminal justice system fails. It is almost unnecessary to have a trial when the accused is already presumed to be guilty (as opposed to considering him innocent) and he has a slim, if at all any, chance of being able to prove his or her innocence before a biased jury. It is important to note that the doubt we have been raising regarding the need and justification of the belief in the Indian context is not confined to us alone. The Courts in India have found this question equally perplexing. They too have expressed their concerns and somewhere have also criticized the same. Their Lord Justices, in the case of *Amrita Lal Hazra v. Emperor* observed that,

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290 Avinash Sharma & Prachi Gupta Right to silence; An indispensable right of criminal jurisprudence; Nayya

Deep 72

291 42 Cal 957 at 993-994
“The current philosophy underlying criminal procedure is epitomized in the dictum: let hundred guilty men escape but let no innocent man suffer. It seems to overlook the fact that there cannot be a single guilty person without atleast having one innocent person having suffered already, and to let hundred guilty persons escape is to let at least a hundred innocent persons suffer.”

However, the Law Commission of India has held such criticism as baseless and unfounded. The reason advanced herein by the Commission is that, ‘it no doubt undesirable and extremely unfortunate in the interests of the society that guilty men should escape and the conviction of guilty men will not necessarily be assisted by the weakening of the principle that we are discussing namely that a man who has been convicted must be proved to have been guilty by those who accuse him of the guilt. The relaxation of this principle will not result in the conviction of more guilty men. By its modification, we would rather make it easier for more innocent men to suffer the penalty of law.’

4.2.1.3 FURTHER DEVELOPMENT OF THE PRINCIPLE

The expression presumption of innocence has no statutory origin. It is an expression in the terse language of the principle that the duty lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. It has achieved the status of a principle of law in the English system of jurisprudence and also in our own, solely for the reason that the burden of proving every ingredient of the offence, even though “negative averments are involved therein”, is cast on the prosecution.

The reasons of association of this presumption of innocence with our area of question i.e. acquittal of even hundred convicts is just if done to save an innocent, is simple and decisive.

Firstly, laymen are not lawmen. They do not weigh the pros and cons of an activity, before doing an activity. For them, it is the simplicity of outlook that matters the most.

292 14th Law commission Report, pp. 837.

293 However it needs to remembered that the presumption of innocence is normally only applies to the criminal matters and must not be extended to civil matters.
Unnecessary hassles, unwarranted precautions, as relevant for the lawmen, are all uncalled for. It is for a lawman and not a layman, who keeps track of the evidences in his protection. In such circumstances, if a layman is accused of as being the perpetrator of an innocence, it seems unjustified to call for him evidences in his favour such that it is from the evidences presented by him that he proved beyond reasonable and probable doubt of his innocence.

Secondly, it is the fundamental principle of that land that ‘all things are presumed to have been rightly and duly performed until it is proved to the contrary.’ (*omnia proesumuntur rite et solemniter esse acta donec probetur in contrarium*). Therefore, unless the contrary is proved, to a fair degree of satisfaction that the accused is an offender, it has to be assumed that the accused is innocent and all favour must be extended to him, as to an innocent.

Thirdly, the presumption of innocence, constituting the underlying philosophy of trail and conviction and has stood the test of time, as a necessary and indispensable mechanism advanced for the protection of the accused, in the interests of justice and for maintaining our standpoint, which we have defended from the very inception of state concept, that innocent must not be punished, as a necessary exception to the sovereignty theory of state.\(^{294}\)

Fourthly, non-allowance of opportunity to the accused to prove his case is an impediment in the path of justice. So long as the accused is seen with an eye of suspicion and even a touch of this belief is allowed to creep into the decision making process, before allowing him to prove his innocence, a prejudice is always going to end as against the accused, which can never be tolerated, if we consider ourselves as the guardians of liberty and epitome of justice.\(^{295}\)

\(^{294}\) John A. Self; The presumption of innocence; Journal of Criminal Law and Criminology (1931-1951)
Vol. 25 No.1 (May-June 1934) Pp.53-64

\(^{295}\) The reason for such statement is simple. It is only upon the application of the doctrine of presumption of innocence in a criminal offence that the party bringing the case is made to power all of the element of the offence including that all the charge levied against the accused are true, by adducing the evidence which
Fifthly, while the accused is under trial, he is the responsibility of the state, which has to take adequate care of its. Now, if the presumption of innocence is denied to him, there is every chance that he would suffer under the yoke of serious discrimination that is expressed in both law and practice. He would be an object of persistent oppression, which would seem unjustified, so long as the trial is not concluded, declaring him to be guilty.

Sixthly, the right to be presumed innocent does not begin at the moment the trial begins. Rather, it begins well in advance of the filing of an accusatory instrument (charge sheet). Indeed, it guides the way the facts are gathered and disseminated throughout an investigation. Thus, any abrasion to this presumption may lead the accused to conviction because of a bias creeping in, while he may be innocent.

4.2.2 PROOF BEYOND REASONABLE DOUBT

The primary ingredient that needs to be satiated for establishing an offence is the requirement of a proof beyond reasonable doubt. Here, a ‘reasonable doubt’ is just what the words would ordinarily imply. The use of the word ‘reasonable’ means simply that the doubt must be reasonable rather than unreasonable; it must be a doubt based on reason. It is not a frivolous or fanciful doubt, nor is it one that can easily be explained away. Rather, it is such a doubt based upon reason as remains after consideration of all the evidence that the prosecution has offered against it.296

The test for ascertaining this is simple. If the judge has a reasonable doubt as to whether the prosecution has proved any one or more of the elements of the crime charged, he must find the defendant not guilty. However, if it is found that the prosecution has proved all of the elements of the offence charged, beyond a certain limit whereby, the accused being the offender is evident, he must be held guilty. Also, ‘proof’ in this case only

prove the guilt beyond all reasonable and probable doubt as to the identity of the accused to have perpetrated the offence

296 “Beyond Reasonable Doubt, Using Scientific Evidence To Advance Prosecutions” at The International Criminal Court, Human Rights Centre School Of Law University Of California, Berkeley 2850 Telegraph Avenue, Suite 500 Berkeley, Ca 94705-7220
means a proof beyond reasonable doubt.\textsuperscript{297} It does not is should not be confused with beyond all doubt. The latter would sound too harsh for any prosecution, to satisfy every query of the defense. However, it does not mean that glaring and vital areas are overlooked. The test of proof is based on a reasonable satisfaction, where the term reasonable is subjective again. Nevertheless, ‘to prove’ means ‘to convince to the extent that other believes it’ though acceptance of the strength of evidence is subjective. However, a crystal clear test to prove what is a proof which establishes the guilt beyond reasonable doubt is not available.\textsuperscript{298}

Now, as our champions of justice have been arguing that innocence is to be saved at any cost, it is for this very reason that proof beyond reasonable doubt is only required in criminal cases and certain quasi-criminal cases such as contempt of court. This ensures that an accused is not punished until his guilt is established beyond a position of doubtful proposition. As the proof beyond reasonable doubt means proof to a moral certainty although not necessarily to an absolute or mathematical certainty, if from the evidences presented, it seems reasonable and probable to the judge that the accused is guilty of the offence, he shall order conviction.\textsuperscript{299} However, even if a hint of doubt remains, criminal charges must be withdrawn from his, as it is familiar in common legal parlance, ‘acquitted for want of evidence.’ However, if the judge has an abiding conviction on the guilt of the accused guilt then he has no reasonable doubt.

We have to note that proof beyond a reasonable doubt was initially defined in terms of proof upon which the jury would be "willing to act," and reasonable doubt was twice equated with "substantial doubt." It is also known as "proof to a moral certainty.” The prosecution must prove beyond reasonable doubt that the accused was disposed to commit the criminal act and in fact did commit the said criminal act for which he has


\textsuperscript{298} Andrew Hemming, ”Reasserting the place of objective Tests in Criminal responsibility: Ending the Supremacy of Subjective Tests, Criminal Code 1892 (Canada).

been indicted. It necessarily implies that if the defense contends or otherwise, that from the credible evidence, as stated before the court, two reasonable inferences may be drawn, i.e. one of guilt and the other of innocence, the latter must be taken for the very fact that the second inference can reasonably be made, signifies that there remains a straw of evidence, which go in favor of the accused and thus have to relied upon. To put it differently, the facts proven must, by virtue of their probative force, establish guilt in all sense.

4.2.3  **REVERSE ONUS CLAUSES, SHIFTING BURDEN OF PROOF:**

Though it has been laid down that the presumption of innocence is the basic and fundamental rule behind every criminal trial, yet in certain specific circumstances, this presumption is reversed. In such situations, it is presumed that the accused is guilty and it has to be proved before the Court that he is not the offender instead the prosecution establishing the guilt of the accused. The reason inherent in this whole concept is a search for the fair balance between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. That is, it has to be seen that in graver offences, the accused has to prove that he is innocent, in order to give a fair deal to the interests of the general public. There is, however, an obvious danger that such a concept provides the Court with a degree of flexibility, which is fundamentally inconsistent with vigorous protection of so basic a right as the presumption of innocence.

The presumption of innocence is clearly of vital importance in the establishment and maintenance of an open and democratic society based on freedom and equality. However, to balance the interests of the society, some situations where we do away with the presumption of innocence and shift the burden of proof are necessary. If the prosecution retains responsibility for proving essential ingredients of the offence, the less likely it is that an exception will be regarded as unacceptable. In deciding what the essential ingredients are, the language of the relevant statutory provision will be important. However what will be decisive will be the substance and reality of the language creating the offence rather than its form.
In short, if an accused bears the burden of disproving on a balance of probabilities an essential element of an offence, it would be possible for a conviction to occur despite the existence of a reasonable doubt.\textsuperscript{300} This would arise if the accused adduced sufficient evidence to raise a reasonable doubt as to his or her innocence but did not convince the jury on a balance of probabilities that the presumed fact was untrue. This would tantamount to injustice being caused and in this manner, the reverse onus clause, would disprove our theme of no innocent being punished.

### 4.3 Provisions Related to Investigation and Narco-Analysis Test:

With the aim of avoiding arbitrariness with accused persons during the process of investigation some safeguards has been provided to them under various laws. Though at national level Constitution is the supreme law of the land yet The Code of Criminal Procedure 1973, The Indian Evidence Act, 1872 also contains various provisions for the protection of accused persons. Herewith the provisions of Indian Constitution available for the protection of accused will be started.

#### 4.3.1 CONSTITUTIONAL SAFEGUARDS:

The Indian Constitution provides some protections to accused persons in the shape of Fundamental Rights like - Right to Privacy, Right to silence, Right to life and Personal liberty\textsuperscript{301}, Protection from arrest and detention and so on. These rights may be discussed as follows:

##### 4.3.1.1 RIGHT TO SILENCE:

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 “\textit{Nemo Tenetur Seipsum Accusare}\textsuperscript{302}”, which means that no man, not even the accused himself can be compelled to answer any question, which may tend to prove him guilty of

\textsuperscript{300} Maither. Lyndon, “The 325”: The Supreme Court and Our Criminal Code & Others, Pp. 38-52.

\textsuperscript{301} Article 21 of Indian Constitution, 1950.

\textsuperscript{302} Cullier v. Cullier, (1582-1603) 78 ER 457 (c)
a crime he has been accused of. The origin of this right can be traced to the principle “Nemo Debet Prodere Ipsum”, i.e. the privilege against testimonial compulsion. The characteristic feature of this principle is that a person who is accused of an offence is presumed to be innocent and it is for the prosecution to prove his guilt. The person so accused is not required to make any statement against his will. The right against self-incrimination has various facets.

Firstly, is that the burden is on the State or the prosecution to prove that the accused is guilty.

Secondly is that an accused is presumed to be innocent till he is proved to be guilty and thirdly it is the right to be silent, namely, the right of the accused against self-incrimination. There are also exceptions to the rule. An accused can be compelled to submit to investigation by allowing his photographs taken, voice recorded, his blood sample tested, his hair or other bodily material used for DNA testing etc. 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.

4.3.1.2 PROTECTION AGAINST TESTIMONIAL COMPULSION:

Article 20(3) of the Indian Constitution embodies the principle of protection against compulsion of self-incrimination which reads as follows- “No person accused of any offence shall be compelled to be witness against himself.” This is one of the fundamental canons of the British System of Criminal Jurisprudence and which has been adopted by the American Criminal Justice System and incorporated as an Article of its Constitution. It has also to a substantial extent, been recognized in the Anglo-Indian administration of Criminal Justice System in this country by incorporation into various statutory provisions. Broadly stated the guarantee in Article 20(3) of the constitution of India is against testimonial compulsion but there is no reason to confine it to oral evidence of a person standing his trial for an offence when called to the witness stand. The protection afforded to an accused in so far as it is related to phrase “to be a witness”

303 180th Report Law Commission of India.
is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him.\textsuperscript{305}

\textbf{4.3.1.2.1. COMPELLED TESTIMONY:}

In \textit{Nandini Satpathy v. P.L. Dani}\textsuperscript{306} the court opined that, it was disposed to read “compelled testimony” 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. So, the legal perils followings upon refusal to answer. Answer truthfully, cannot be regarded as compulsion within the meaning of Article 20(3). The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then a stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude mental or physical, direct or indirect but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes, “compelled testimony” violation of Article 20(3).\textsuperscript{307}

\textit{Yusuf Ali v. State of Maharashtra}\textsuperscript{308} it was argued that by the active deception of the police the appellant was compelled to be a witness against himself. Bachawat, J. said:

“We cannot say that the appellant was compelled to be a witness against himself. He was free to talk or not to talk. His conversation with Shaik was voluntary. There was no element of duress, coercion or compulsion. His statements were not extracted from him in an oppressive manner or by force or against his wishes. He cannot claim the protection of Article 20(3). The fact that the tape recording was done without his knowledge is not of itself an objection of its admissibility in evidence.”

\textsuperscript{305} M.P.Sharma v. Satish Chandra, AIR 1954 SC 300
\textsuperscript{306} AIR 1978 SC 1025
\textsuperscript{307} Jagdessh Swarup, Constitution of India Vol.1 Edition 2\textsuperscript{nd} reprint 2007
\textsuperscript{308} AIR 1968 SC 147 (150)
4.3.1.2.2. SELF INCrimINATION DOCTRINE:

The right against ‘Self Incrimination’ when it applies is an absolute right and is subject to no exceptions. A review of this right leads us to the traditional reliance of the State on confessions as most convenient in getting criminal convictions. Torturing a person to extract information from him has been resorted to by law enforcement agencies as a convenient, fast and direct method of investigation to bypass the expensive and arduous processes of lengthy investigation. The line to be drawn by the courts was in the form of the ‘Right against Self Incrimination’; 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.

It is initially necessary to bear in mind the difference between burden of proving an issue (known as the legal or persuasive burden of proof), a burden which never shifts and the burden of adducing credible evidence (known as evidential burden), which can go on shifting during the trial. Several modern statutes, while maintaining the burden of proving a pleading or charge, alter the evidential burden. In the Indian context, clause (3) of Art. 20 of the Constitution of India guarantee a fundamental right against self incrimination. The principle is one of the fundamental canons of the British system of criminal jurisprudence and has been incorporated in Article 20(3) of our Constitution. The Constitution of India raises the rule against self-incrimination to the status of constitutional prohibition. The prohibitions imposed by Article 20(3) are directly relevant to the criminal procedure during investigation by police and trial before court. The purpose of this protection is to prevent torture and inhuman treatment of the accused at the hands of investigating agencies to extort confessions. The guarantee in Article 20(3) in substance is against


310 Justice Markandey Katju “Torture as a challenges to civil society and Administration of Justice” 2002 (2)SCC

(jour.) 39
testimonial compulsion and in order to claim benefit of the guarantee against testimonial compulsion embodied in Article 20(3) of the Constitution, it must be shown:

- That the person who made the statement was “accused of any offence”;
- That he made that statement under compulsion.
- The statement so made was self-incriminating in nature.

The privilege under clause (3) is confined only to an accused, i.e. a person against whom a formal accusation relating to the commission of an offence has been leveled which in the normal course may result in prosecution. But it is not necessary, to avail the privilege, that actual trial or enquiry should have commenced before the court. Thus, a person against whom the first information report has been recorded by the police and investigation is ordered by the Magistrate can claim benefit of this protection as he is a “person accused of an offence” within the meaning of Article 20(3). Article 20(3) can be invoked in a case where the statement in question was made by a person at a time when he was accused of an offence. In Balkishan A. Devidayal Etc v. State of Maharashtra on the aspect of “person accused of an offence” in Article 20(3) it was observed by the Supreme Court speaking through Justice Sarkaria, “that determination of the issue whether a person is said to be an accused for any offence will depend on whether at the time when the person made the self-incriminatory statement, a formal accusation of the commission of an offence had been made against him.” Where a customs officer arrests a person and informs him of the grounds of arrest, there is no formal accusation of an offence and the person cannot be said to be an accused. When a person is called upon under Section 240 of the Companies Act to give evidence and

311 M.P Sharma v. Satish Chandra AIR 1954 SC 1077
312 Veera Ibrahim v. State of Maharashtra, 1976 INDLAW SC 539
314 R.K Dalmia V. Delhi Administration 1962 INDLAW SC 534
315 1980 INDLAW SC 298
316 Ramesh Chandra Mehta V. State of West Bengal 1968 INDLAW SC 2
produce documents, he cannot be said to be a person accused of any offence within the meaning of Article 20(3)\textsuperscript{317}.

4.3.1.2.3. PERSON ACCUSED OF AN OFFENCE

The privilege under Article 20(3) is available to an individual as well as an incorporated company, if accused of an offence. In order to avail the protection available against self-incrimination, the person claiming the same should be one “accused of an offence” at the time when he makes the statement. This means a person against whom a formal accusation relating to commission of an offence has been leveled and although actual trial may not have commenced yet, but may in normal course result in prosecution\textsuperscript{318}. The privilege in Article 20(3) is undoubtedly available at the trial stage but is also available at the pre-trial stage i.e. during police investigation if the person concerned can be regarded as an accused.

The phrase “accused of an offence” includes within its ambit only a person against whom a formal accusation relating to the commission of an offence has been leveled which in the normal course may result in prosecution. A more logical interpretation was given to ‘person accused of an offence’ and it was held that if a person who is not accused of any offence, is compelled to give evidence, and evidence taken from him under compulsion ultimately leads to an accusation against him, that would not be a case which would attract provisions of Article 20(3) of the Constitution\textsuperscript{319}. The court categorically laid down that this provision protects a person who is accused of an offence and not those questioned as witnesses. A person who voluntarily answers questions from witness box waives this privilege, which is against being compelled to be a witness against himself because he is then not a witness against himself but against others\textsuperscript{320}.

\textsuperscript{317} Raja Narayanlal Bansilal V. Maneck phiroz mistry AIR 1961 SC 29
\textsuperscript{318} supra note 18
\textsuperscript{320} Laxmipat Choraria v. State of Maharashatra, 1967 INDLAW SC 393
Mere issuance of notice or pendency of contempt proceedings does not attract Article 20(3) of the Constitution as the contemnors were not accused of any offence. A criminal contempt is punishable by fine or imprisonment, has many characteristics, which distinguishes it from ordinary offence. A contemnor is not of an accused merely on account of issue of notice by the court.\footnote{Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Others, 1991 INDLAW SC}

4.3.1.3 RIGHT TO LIFE & PERSONAL LIBERTY (ART.21):

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 which reads as follows-

“No person shall be deprived of his “life” and “personal liberty” except according to the procedure established by law.”

It has been interpreted that the term ‘life’ includes all those aspects of life which go to make a man’s life meaningful, complete and worth living. A very fascinating development in the Indian Constitutional jurisprudence is the extended dimension given to Article 21 by the Supreme Court in post Maneka era. The Supreme Court has asserted that Art. 21 is the heart of the Fundamental Rights. The extension in the dimensions of Art.21 has been made possible by giving an extended meaning to the word ‘life’ and ‘liberty’ in Article 21. These two words in Art.21 are not to be read narrowly. These are organic terms which are to be construed meaningfully. After the delivery of landmark judgment known as \textit{Maneka Gandhi v. Union of India},\footnote{AIR 1978 SC 597} the scope of Art. 21 was enormously increased so that this Article could include certain rights as fundamental rights. And 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.

\footnote{Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Others, 1991 INDLAW SC}
\footnote{AIR 1978 SC 597}
4.3.1.3.1 RIGHT TO PRIVACY:

An attempt of defining privacy is of no use if the levels of abstraction do not translate into concrete specifics. Broadly speaking, privacy law deals with freedom of thought, control over one's body, peace and solitude in one's home, control of information regarding oneself, freedom from surveillance, protection from unreasonable search and seizure, and protection of reputation. The Right to Privacy substantially as defined in Govind v. State of Madhya Pradesh & Another, 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. He stated as follows:

“The Right to Privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute.”

The cases concerning the validity of scientific tests present an opportunity for crystallizing the boundaries of the right to privacy in the light of scientific and technological advancements. The scientific tests have not been challenged on the ground of violation of the right to privacy. They have been challenged largely on the ground of

323 The early Indian privacy cases dealt exclusively with police surveillance of habitual criminals. See e.g. Kharak Singh v. State of U.P., AIR 1963 SC 1295 (challenging Chapter XX of the U.P. Police Regulations which placed possible criminals under surveillance); Gobind v. State of M.P., (1975) 2 SCC 148 (challenging the validity of Regulations 855 and 856 of the M.P. Police Regulations, which permitted the police to keep an uncomfortable surveillance on individuals suspected of perpetrating crime)

324 The Fourth Amendment of the US Constitution provides a safeguard from unreasonable search and seizure, and no search can be carried out without a warrant issued on probable cause. The Supreme Court has not allowed Fourth Amendment developments to percolate into the Indian Constitution. See M.P. Sharma v. Satish Chandra, AIR 1954 SC 300 (rejecting the premise that search and seizure violates the principle of self-incrimination embedded in Article 20(3) of the Constitution). But see District Registrar and Collector v. Canara Bank, (2005) 1 SCC 496 (finding the Andhra Pradesh Amendment to Section 73 of the Stamp Act, 1899, to be unconstitutional since it permitted search and seizure on private premises).

See infra I.B.2. Search and Seizure: The Fourth Amendment

325 AIR 1995 SC 495

326 Ibid
violation of the protection against self-incrimination under Art. 20(3) and in some cases on the ground of violation of Article 21, where the rights alleged to have been violated are the Right to Liberty (in the context of a forced movement of the accused to different parts of India to carry out the tests), and the Right to Health. It has been stated, however, that the lie-detector does not directly invade the body, and that the brain-mapping test involves no direct violation of the body in the real sense of the term, but merely touching the physique of the person. However, the opinion was restricted to a contention that the tests involve invasion of the body and are violative of Article 20(3) by being compulsive, and not the right to privacy under Article 21. Nevertheless, courts have given their opinion on whether the right to privacy would be violated by the administration of scientific tests in cases where the challenge was not on that ground, which may be treated as obiter. It has been opined that the right to privacy is not violated based on the ground that it is not an absolute right, and it is the statutory duty of every witness who has knowledge of the commission of the crime to assist the State in gathering evidence on it. However, a citizen cannot be placed under statutory duty which results in the violation of a fundamental right. Though the right to privacy is not absolute, it is possible that the right may be violated by the unregulated administration of scientific tests in certain cases, say, to extract personal information. Like in the case of right to life, a procedure established by law in terms of Article 21 which is fair just and reasonable may curtail the substantive exercise of the right. In PUCL V. Union of India Supreme Court observed we may reasonably conclude that, “the brain-mapping and the lie detector do not infringe the right to privacy of an individual. However, we believe that the Narco-analysis test is

327 Arun Gulab Gavali v. State of Maharashtra, 2006 Cri LJ 2615,
328 Rojo George Vs. Deputy Superintendent of Police 2006 (2) KLT, 197.
329 Ramchandra Reddy V. State of Maharashtra,
330 Selvi v. State, also quoted with affirmation in Santokben Sharmanbhai Jadeja v. State of Gujarat
331 Ibid.
332 Ibid. This observation was made after reliance on § 39 of the Criminal Procedure Code and the State v. Dharmapal, AIR 2003 SC 3450.
333 Govind v. State of M.P., AIR 1975 SC 1378,
334 AIR 1997 SC 568
different from the other two tests because it involves compulsory injection of a substance into the body of an accused.\textsuperscript{335} We are of the opinion that it always infringes a person’s privacy. Cases of search and seizure, and ones subjecting an individual to compulsory medical tests are most closely related to the subject of the interference by the State with an individual’s privacy. The narco analysis test requires injection of a substance which has the effect of curbing one’s imagination and autonomy of answering. It directly involves a violation of a person’s bodily autonomy. Of course, the same is usually done only when there seems to be a reasoned accusation or allegation against a person, even though it is possible that the allegation may later turn out to be incorrect, as the right to privacy can be restricted by a reasonable procedure. However, in the absence of express and unambiguous procedural safeguards, which may be in the form of mandatory rules to be followed by both, the medical personnel and the investigating agency, the test is susceptible to abuse. Despite all the scientific and legal drawbacks which prevent the results of a Narco-analysis test from being effectively used in Court as evidence, the administration of the test almost always affords reasonable grounds to believe that it will give clues for investigative processes since the same degree of precision as needed in judicial proceedings is not required in investigation.

The High Courts have concluded that the examination under the Criminal Procedure Code would include administration of the narco-analysis test. The argument that injecting a drug into the body of the accused was different from taking a sample of his blood or semen was rejected by the Karnataka High Court in \textit{Smt. Selvi v. State}.\textsuperscript{336} The right to privacy thus has been held to protect a “private space in which man may become and remain himself”. The ability to do so is exercised in accordance with individual autonomy’. If such an expansive approach was adopted by the Indian Supreme Court, it is capable of developing in the direction of something like the ‘right to informational self determination’ of the German Constitutional Court. Recently chief minister of J& k taken the name of rape victim in the assembly but before this matter get hyped he apologized. The notion of fundamental rights, such as a right to privacy as part of right to life, is not merely that the State is enjoined from derogating from them. It also includes the

\textsuperscript{335} ibid

\textsuperscript{336} 2004(7) Kar LJ 501; MANU/KA/0588/2004,
responsibility of the State to uphold them against the actions of others in the society, even in the context of exercise of fundamental rights by those others.

4.3.1.3.2. The Right To Health:
Right to Health has been held to be a part of Right to Life. 337 An argument that barbiturates administered during narco-analysis have detrimental side effects 338 was advanced before the Kerala High Court in Rojo George v. Deputy Superintendent of Police. 339 It could have been more appropriate to take the view that the right to health may be restricted in terms of Article 21, that is, by procedure established by law. As a requirement added by the judiciary to interpret the Article, the procedure would also have to be fair, just and reasonable. 340 Such a procedure would not be difficult to devise. It could involve an allegation of a serious offence which has a prescribed punishment of certain minimum severity, and may require mandatory authorization by a Court. Conditions under which the test may be conducted, precautions to be taken by the medical personnel while administering the drugs to the accused and the methods of interrogation by the police while the accused is under the influence of the drug may be prescribed to prevent abuse of power and excesses by the police and unwanted mishaps.

4.3.1.4 SAFFEGUARD AGAINST ARBITRARY ARREST AND DETENTION-
ARTICLE-22:
Article 22[1] and 22[2] of the Indian constitution provide the following rights to the person arrested and detained in custody under the ordinary law of crimes.

337 State of Punjab v. Mahinder Singh Chawla, AIR 1997 SC 1225
338 The side effects of sodium pentothal, the active chemical used in most narco analysis examinations are circulatory depression, respiratory depression with apnoea and anaphylaxis. Its effects on the Central Nervous System may produce head ache, retrograde amnesia, emergence delirium, prolonged somnolence and recovery. See generally P. Chandra Sekharan, Untruth Serum, COMBAT LAW, Vol.6 Issue 4, July-August 2007.
339 2006 (2) KLT 197
4.3.1.4.1 RIGHT TO BE INFORMED OF THE GROUNDS OF ARREST: Article 22[1]

Article 22 (1) of the Constitution provides that a person arrested for an offence under ordinary law be informed ‘as soon as may be’ the grounds of arrest. 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.\(^{341}\) This Right of being informed of the grounds is not dispensed with by offering to make bail to the arrested persons.\(^{342}\)

In *Joginder Kumar v. State of U.P.*\(^{343}\) the Supreme Court held that right of arrested person upon request, to have someone informed about his arrest and right to consult privately with lawyers are inherent in Articles 21 and 22 of the Constitution. The Supreme Court observed that no arrest can be made because it is lawful for the Police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest should be made by Police Officer without a reasonable satisfaction reached after some investigation as to the genuineness and *bona fides* of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. The Supreme Court issued the following requirements:

1. An arrested person being held in custody is entitled, if he so requests, to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to *flow from Articles 21 and 22*

\(^{341}\) Tarapada v. State of West Bengal, AIR 1951 SC 174.


\(^{343}\) A.I.R. 1994 S.C. 1349
(1) and enforced strictly. The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. There is a shift in judicial concern in Joginder Kumar’s Case\textsuperscript{344} for ensuring constitutional right to arrested person. A new angle of approach was adapted to the interpretation of Article 22(1) but with the help of Article 21. The Supreme Court recognised three incidental rights of arrested person in this regard such as:

i. The right to have someone \textit{i.e.} his relative or friend \textit{informed} about his arrest;

ii. The right to consult \textit{privately} with lawyer;

iii. The right to \textit{know} from the police officer about this right. The Supreme Court imposed corresponding duties on the police officers. The precious right guaranteed by Article 21 of the Constitution\textsuperscript{345} cannot be denied to convicts, under-trials, Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as practicable except detenue and other prisoners in custody, except according to procedure established by law by placing such reasonable restrictions as are permitted by law. Therefore, the Supreme Court issued in \textit{D.K. Basu v. State of W.B.}\textsuperscript{346} Following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

\textsuperscript{344} Joginder Kumar Vs. State Of U.P. 25 April, 1994.

\textsuperscript{345} No person shall deprived from life and personal liberty except according to the procedure established by law.

\textsuperscript{346} AIR 1997 S.C. 610
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The “Inspection Memo” must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody, by a doctor in the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to illaqa Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room should be provided at all Districts and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the Officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.\textsuperscript{347}

The Court emphasized that failure to comply with the said requirements shall apart from rendering the concerned official liable for departmental action\textsuperscript{348}, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. The requirements flow from Articles 21 and 22 (1) of the Indian Constitution needs to be strictly followed. The requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

**4.3.1.4.2 RIGHT TO CONSULT AND TO BE REPRESENTED BY A LAWYER OF HIS OWN CHOICE: ARTICLE 22[1]**

It is one of the fundamental rights enshrined in our Constitution. Article 22 (1) of the Constitution provides, \textit{inter alia}, that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice.

The right of the accused to have a counsel of his choice is fundamental and essential to fair trial. The right is recognized because of the obvious fact that ordinarily an accused person does not have the knowledge of law and the professional skill to defend him before a court of law wherein the prosecution is conducted by a competent and experienced prosecutor. This has been eloquently expressed by the Supreme Court of

\textsuperscript{347} Guidelines of Supreme Court in D.K. Basu’s Case.

\textsuperscript{348} Ibid.
America in **Powell v. Alabama**. The Court observed that “The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and the knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step of the proceeding against him. Without it, though he is not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect?”

In **Huassainara Khatoon (IV) v. Home Secretary, State of Bihar**

the Supreme Court after adverting to Article 39-A of the Constitution and after approvingly referring to the creative interpretation of Article 21 of the constitution as propounded in its earlier epoch-making decision in **Maneka Gandhi v. Union of India**, has explicitly observed as The right to free legal services is, therefore, clearly an essential ingredient of reasonable, fair and just” procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21.

4.3.1.4.3 **RIGHT TO BE PRODUCED BEFORE A MAGISTRATE WITHIN 24 HOURS: ARTICLE- 22[2]**

Article 22(2) of the Constitution provides that an arrested person must be taken to the Magistrate within 24 hours of arrest. Similar provision has been incorporated under Section 56 of Criminal Procedure Code. A police officer making an arrest without

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349 287 US 45 (1932).


351 1980. 1 SCC 98: 1980 SCC (Cri) 40, 47: 1979 Cri LJ 1045

warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

**Article 22(2)** of the Constitution provides: “Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.”

The right to be brought before a Magistrate within a period of not more than 24 hours of arrest has been created with aims:  

i. To prevent arrest and detention for the purpose of extracting confessions, or as a means of compelling people to give information;

ii. To prevent police stations being used as though they were prisons – a purpose for which they are unsuitable.

iii. To afford an early recourse to a judicial officer independent of the police on all questions of bail or discharge. If a police officer fails to produce an arrested person before a magistrate within 24 hours of the arrest, he shall be held guilty of wrongful detention.

# 4.3.2 INDIAN PROCEDURAL LAWS AND NARCO-ANALYSIS TEST:

Men are the most intelligent animal in this world but it is so till he is bound by rules, regulations and laws. He becomes worst as soon as he is separated from the laws and rules. In ancient times there was no criminal law in uncivilized society. Every man was liable to be attacked on his person or property at any time by any one. The person attacked either succumbed or overpowered his opponent. “A tooth for a tooth, an eye for an eye, a life for a life” was the forerunner of criminal justice. As time advanced, the

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353 Constitutional Law of India, Bare Act
injured person agreed to accept compensation, instead of killing his adversary. Subsequently, a sliding scale of satisfying ordinary offences came into existence. Such a system gave birth to the archaic criminal law. This criminal law started dealing with the procedure after commission of crimes. With the passing of there was worth mentioning progress in every sphere especially in the field of science. Various kinds of developments and scientific inventions took place methods of committing crime could not remain untouched. Progress in the field of science has outpaced the development of law there is unavoidable complexity regarding what can be admitted as evidence in court. Narco-analysis is one such scientific development that has become an increasingly common term in India. Recent times have witnessed a spate in the use of modern scientific techniques by the criminals. The investigation agencies are also required to deal the criminal with the help of modern technologies. Lie-detector, brain-mapping and Narco-analysis are some of the examples use in criminal investigation. Although the legal and ethical propriety of their use has been in doubt, they may in fact be a solution to many a complicated investigation. Investigation is also a part of procedural.

The Criminal Procedure Code and Indian Evidence Act 1872 are the parent procedural laws which govern criminal trials in India, while 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 or any appropriate order looking into the fact of the case. Indian Evidence Act is limited in its scope of leading evidences in civil or criminal cases either by the prosecution or defendant, applicant or respondent. Act also deals with kind of evidences and relevancy of any fact which can be brought as evidence in any case. The relevant provisions related to investigation, rights of accused persons, evidences and their admissibility in courts may be discussed under following two heads:


4.3.2.1 PROVISIONS RELATED TO INVESTIGATION AND CRIMINAL PROCEDURE CODE, 1973:

The three segments of Criminal Justice System viz., the police, the judiciary and the correctional institutions ought to function in harmonious and cohesive manner. But in practice, one finds that it is not the case. The prosecution has to stand on its own legs so as to bring home the guilt of the accused conclusively and affirmatively and it cannot take advantage of any weakness in the defense version. The intention of the legislature in laying down these principles has been that, “Hundreds of guilty persons may got scot free but even one innocent should not be punished.”

The Criminal Procedure Code deals with the procedural aspects of investigation and arrest of an accused person and provides various rights to accused persons. There are some provisions which expressly and directly create important rights in favor of the accused person. Following are some important provisions creating rights in favor of the accused persons. Here we are required first to know what the investigation is because the question of violation and protection of rights of Accused persons arises with the process of investigation.

Investigation as defined in Section 2(h) of Criminal Procedure Code 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.”

Investigation may be carried out either by a police officer or by any person other than a judicial Magistrate, who is authorized in this behalf.

The officer-in-charge of a Police Station can start investigation either on information or otherwise (section 157 Cr.pc). The investigation consists of the following steps starting from the registration of the case:

i. Registration of the case as reported by the complainant u/s 154 Cr.P.C.,

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358 Human rights of accused in India available at-http://www.shodhganga.inflibnet.ac.in, visited on 17/07/2015.
359 Code of Criminal Procedure, 1973
360 Pitamber Mishra v. Chandra Shekhar Panda, 1990Cr. L.J. 1892
ii. Proceeding to the spot and observing the scene of crime,

iii. Ascertainment of all the facts and circumstances relating to the case reported,

iv. Discovery and arrest of the suspected offender(s),

v. Collection of evidence in the form of oral statements of witnesses (sections 161/162 Cr.P.C.), in the form of documents and seizure of material objects, articles and movable properties concerned in the reported crime,

vi. Conduct of searches of places and seizure of properties, etc.

vii. Forwarding exhibits and getting reports or opinion from the scientific experts (section 293 Cr.P.C)

viii. Formation of the opinion as to whether on the materials collected, there is a case to place the accused before a magistrate for trial and if so, taking necessary steps for filing a charge sheet, and

ix. Submission of a Final Report to the court (section 173 Cr.P.C.) in the form of a CHARGE SHEET along with a list of documents and a Memo of Evidence against the accused person(s) or in the form of a REFERRED CHARGE SHEET or a report referring the case as UN, MF, ML, Civil nature and Action dropped, as the case may be, on the basis of the evidence collected during the course of the investigation.\(^{361}\) Investigation means all process which are helpful in collection of Evidences which also includes examination of accused persons.

### 4.3.2.2 Provisions related to Examination:

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.\textsuperscript{362}

Section 53\textsuperscript{363} reads as follows:

**Examination of accused by medical practitioner at the request of police officer:**

1. When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably for that purpose.

2. Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner. **Explanation-** In this section and in section 53A and 54:

   a. "**examination**" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;\textsuperscript{364}

   b. **"registered medical practitioner"** means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register.\textsuperscript{365}

\textsuperscript{362} Smt. Selvi & Ors. v. State of Karnataka & Ors. 2010 (2) R.C.R. (Criminal) 896.

\textsuperscript{363} Code of Criminal Procedure, 1973

\textsuperscript{364} Substituted by the Code of Criminal Procedure (Amend.) Act, 2005, S.8(w. e. f. 23-6-2006)

\textsuperscript{365} Code of Criminal Procedure, 1973
Section 53 A Examination of person accused of rape by medical practitioner:\(^{366}\):

1. When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

2. The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:

   x. The name and address of the accused and of the person by whom he was brought
   xi. The age of the accused
   xii. Marks of injury, if any, on the person of the accused
   xiii. The description of material taken from the person of the accused for DNA profiling, and
   xiv. Other material particulars in reasonable detail.

3. The report shall state precisely the reasons for each conclusion arrived at.

4. The exact time of commencement and completion of the examination shall also be noted in the report.

5. The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section."

\(^{366}\) Inserted by the Code of Criminal Procedure (Amend.) Act, 2005, S.8(w. e. f. 23-6-2006)
Section 54 Examination of arrested person by medical officer:  

1. When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made: Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

2. The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

3. Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the registered medical practitioner to the arrested person or the person nominated by such arrested person.”]

Section 161 Examination of Witness by police:  

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Section 162 Statements to police not to be signed: Use of statements in evidence:  

1. No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided

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367 Substituted by the Code of Criminal Procedure (Amend.) Act, 2008, S.8
368 Code of Criminal Procedure,1973
369 ibid
that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

2. Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act. Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.\textsuperscript{370}

**Person arrested to be informed of grounds of Arrest:**

Section 50\textsuperscript{371} 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 be informed as soon as may be the grounds of arrest.

According to Section 50(1) of Criminal Procedure Code, every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

**Right to be defended by a Lawyer:**

It is one of the fundamental rights enshrined in Article 22 (1) of the Constitution.

\textsuperscript{370} Supra Note -310

\textsuperscript{371} ibid
Section 303 of the Code of Criminal Procedure, 1973 reads as follows- Any person accused of any offence before a criminal court, or against whom proceedings are instituted under this code, may of right be defended by a pleader of his own choice.\(^{372}\)

Section 303 of Criminal Procedure Code deals with the provisions relating to right of person against whom proceedings are instituted to be defended, it provides that any person accused of an offence before a criminal court, or against whom proceedings are instituted under this court, may of right be defended by a pleader of his choice. The right begins from the moment of arrest i.e. pre-trial stage.\(^{373}\) The arrestee could also have consultation with his friends or relatives. The consultation with the lawyer may be in the presence of police officer but not within his hearing.\(^{374}\)

**Right to be produced before a Magistrate without delay:**

Section 56 of Code of Criminal Procedure, 1973 read as follows:

**Person arrested to be taken before Magistrate of officer in charge of police station:**

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Further Section 76 of Code of Criminal Procedure, 1973 also supports this right of accused person.

**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.”\(^{375}\)

Besides above given provisions which seems supporting rights of accused persons and just like a protection to them so that police-officers and investigation agencies cannot

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\(^{372}\) Ibid 312  
^{374} Sundar Singh v. Emperor 32 Cri LJ 339.  
^{375} Supra Note-76
compel them to accept anything against their will the code of criminal procedure also supports value of evidences given by scientific experts.

**Provisions related to reports of Experts in Code of Criminal Procedure, 1973:**

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 Criminal Procedure Code, 1973\(^{376}\) by which the report of a Chemical Examiner may be used as evidence in any inquiry or trial.

Reports of certain Government scientific experts:

1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code may be used as evidence in any inquiry, trial or other proceeding under this Code.

2) The Court may, if it thinks fit, summon and examine any such expert as to the subject- matter of his report.

3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

4) This section applies to the following Government scientific experts, namely:-
   a. Any Chemical Examiner or Assistant Chemical Examiner to Government;
   b. The Chief Inspector of Explosives;
   c. The Director of the Finger Print Bureau;
   d. The Director, Haffkeine Institute, Bombay;
   e. The Director (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

\(^{376}\) Says about the reports of certain Government scientific experts.
f. The Serologist to the Government.\textsuperscript{377}

g. Any other government scientific Expert specified by notification by the Central Government for this purpose.\textsuperscript{378}

\textbf{4.3.2.3 NARCO ANALYSIS TEST VIS-A-VIS INDIAN EVIDENCE ACT, 1872:}

In the middle of 19th century natural science began to develop by leaps and bounds. The mystic theories theretofore advanced to explain the scheme of things began to lose ground as the clear, cold logic of scientific experiment gradually shed a new light on the mysteries of universe. The change in point of view from the mystic to the scientific soon became apparent not only in criminal investigation but in the different facets of the legal system. Now there emerged two facets of a single case. The facet stated and the facet proved from scientific viewpoint. The era of forensic science had arrived.

Indian Evidence Act is uniform Evidence Act for whole of India. 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 govern by same legislation. So far as criminal jurisprudence in India is concerned doctrine of onus probandi is in the field and therefore “One shall be presume innocent till his crime is proved” not only proved but proved beyond reasonable doubt.\textsuperscript{379} Before venturing in the fascinating and intriguing world of Scientific methods of investigation and their status as admissible Evidence we should know what evidence is in legal sense and what the link between evidence and forensic science is. Strictly in legal context, evidence can be defined as various things presented in court for the purpose of proving or disproving a question under inquiry. It includes testimony, documents, photographs, maps and video tapes. These are termed as evidence of the case.\textsuperscript{380}

According to the section 3 of the Indian Evidence Act, 1872, "\textit{Evidence}" means and includes:

\begin{itemize}
  \item \textsuperscript{377} Inserted by the Code of Criminal Procedure (Amendment) Act,2005, S. 26(w.e.f.23.6.2006)
  \item \textsuperscript{378} Code of Criminal Procedure,1973
  \item \textsuperscript{379} Supra note 65
  \item \textsuperscript{380} Dutta Arindam on Forensic Evidence: The Legal Scenario, (2011) Legal service of India also visit \url{http://www.legalserviceindia.com/article/l153-Forensic-Evidence.html}
\end{itemize}
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 produced for the inspection of the Court; such documents are
called documentary evidence.\(^\text{381}\)

India has adversarial criminal justice system. The well recognized fundamental principles
of criminal jurisprudence are -

- ‘Presumption of innocence and
- Right to silence of the accused’,
- ‘Burden of proof on the Prosecution’ and
- The ‘right to fair trial’.

The criminal jurisprudence has given a wider area to the accused. The burden of proving
the guilt of the accused is always on the prosecution and in case of any doubt the accused
would get the benefit of acquittal. Any confession made by the accused before the Police
officer is not admissible and cannot be made use of during the trial of the case.\(^\text{382}\) The
statement of the accused recorded by the police cannot be used as provided under Section
25 of Indian Evidence Act. Section 25 to 27 of the Evidence Act gives special privileges
to the accused persons.

Section 25 of Indian Evidence Act reads as follows:

**Confession to police officer not to be proved:**

“No confession made to a police officer shall be proved as against a person accused of an
offence.”\(^\text{383}\) Confessions made to police personnel regarded as involuntary. Section 25
expressly declares that such confessions shall not be proved.\(^\text{384}\)

**Statements during Investigation and before accusation:**

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\(^{381}\) Bare Act, Indian Evidence Act, 1872

\(^{382}\) Is The Indian Criminal Justice System More Inclined Towards The Accused? By- Monika Verma-
available at – mightylaws.in

\(^{383}\) Supra note, 66

\(^{384}\) Such confessions cannot even be used to corroborate any other evidence. See Gulam Haidher V. State of
Maharastra, (1979) 4 S.C.C.
A Confessional statement made by a person to the police even before accused of any offence is equally irrelevant. This section clearly says that such a statement cannot be proved against any person accused of any offence. This means that even if the accusation is subsequent to the statement, the statement cannot be proved.\(^\text{385}\)

Statements made during an investigation are likely to suffer from the same blemish. “A confession is considered involuntary if it is made during an investigation which by its nature, duration or other attend circumstances creates hopes or fears or so affects the mind of the suspect that he will crumble.”\(^\text{386}\) The statement of the inspector (crimes) that the accused admitted to him that he was in possession of counterfeit coins was not admitted in evidence.\(^\text{387}\)

**Use of Confessional Statement by Accused:**

Though the statements to police made by the confessing accused cannot be used in evidence against him, he can himself rely on those statements in his defense. The statement of the accused in the FIR that he killed his wife in giving her a fatal blow when some tangible proof of her indiscretion was available was not usable against him to establish his guilt. But once his guilt was establish through other evidence, He was permitted to rely upon his statement so as to show that he was acting under grave and sudden provocation.\(^\text{388}\) There is nothing in the Evidence Act which precludes an accused person from relying upon his own confessional statements for his own purpose. Similarly Section 26 of Indian Evidence Act Strengthen this above Right of Accused persons. It reads as follows:

**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 is made in the immediate presence of a magistrate, shall be proved as against such person.”\(^\text{389}\)

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\(^{385}\) Ramesh Chandra Mehta V. State of West Bengal, A.I.R. 1970 S.C. 940

\(^{386}\) LORD MAC DERMOTT in an address to the Bentham Club (1968) 21CURENT LAW PROBLEMS 10.


\(^{388}\) Madaiah V. State, 1992 Cr. L.J. 502 (Karn.)

\(^{389}\) The Indian Evidence Act, 1872
No confession made to anybody while the person making it is in police custody is provable. The section will come into play when the person in police custody is in conversation with any person other than a police officer and confession to his guilt. The section is based upon the same fear, namely, that the police would the accused and force him to confess, if not to the police officer himself at least to someone else. The confession made to a police officer or to anyone else while the accused is in police custody is not different in kind and quality. Both are likely to suffer from the same blemish of not being free and voluntary.

Statements made to TV and press reporters by the accused person in the presence of police and also in police custody were held to be inadmissible. Further Section 27 of the Indian Evidence Act, 1872 prescribes the limit how much information received from the accused can be used by the police personnel’s. It reads as follows:

**How much of information received from accused may be proved:**

Provided that, when any fact is deposed to as discovery in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of much information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

The section is quite apparently laid out as a proviso or an exception to the preceding section which deal with confessions in the police custody and other involuntary confessions. Thus it seems that the intention of the legislature is that all objections to the validity of that part of the statement are washed off which leads to the discovery of an article connected with the crime. “The finding of articles in consequences of the confession appears to render trustworthy of that part which relates to them.” Whether such a statement proceeds out of inducements, threats or torture are absolutely immaterial. Statements made by the accused in connection with an investigation in some other case which lead to the discovery of a fact are also relevant.

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390 See Queen v. Sangeena A.I.R. 1948
392 Supra Note 283.
393 Cockel, s. cases and statutes on evidence, 199. See Narayan Singh v. State of M.P.,A.I.R. 1985S.C. 1678
involuntary confession confirmed by the discovery of real evidence is admissible because the truth of the statement is established by that evidence.

Though the above given section of Indian Evidence Act seems favoring accused persons and providing them special privileges but parallel under Section 132 it is also prescribed that, “A witness is not excused on the ground that his answer will be of criminating nature.”

Section 132 of Indian Evidence Act reads as follows-

Witness not excused from answering on the ground that answer will criminate- “A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, such witness or that it will expose, or tend or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

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.”395

In the above given section though it is prescribed that a witness can be compelled to answer a question relevant to the matter in issue yet the proviso protects the witness in an important way. The protection arises only as against answers which a witness is compelled to give and not as against those he voluntarily answers without any compulsion.

“The object of the law is to afford to a party, called upon to give evidence protection against being brought by means of his own evidence within the penalties of law.”396 The general principal of the law of Evidence is that every witness is a witness of fact and not of opinion. This means that a person who appears before a court is entitled to tell the court only the facts of which he has personal knowledge and not his opinion about the facts. His beliefs are irrelevant and have no meaning in the court.

While this is the general rule it will have to be admitted that it operates within its narrow limits. The exceptions to the rule are more prominent than the rule itself. Indeed, The

395 Supra Note 283.

Indian Evidence Act without stating any such rule states only the circumstances in which the Evidence of opinion is relevant.

**Section 45: Opinions of experts**\(^{397}\)

When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting [or finger impressions]\(^{398}\), the opinions upon that point of persons specially skilled in such foreign law, science or art, [ or in questions as to identity of handwriting]\(^{399}\) [or finger impressions] are relevant facts. Such persons are called experts.

**Section 46: Facts bearing upon opinions of experts**\(^{400}\)

“Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

**Section 47: Opinion as to handwriting, when relevant**

“When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.”

Thus the ingredients of section 45, section 46, and section 47 highlights that:

1) The court when necessary will place its faith on skills of persons who have technical knowledge of the facts concerned.

2) The court will rely the bona fide statement of proof given by the expert concluded on the basis of scientific techniques.

3) The evidence considered irrelevant would be given relevance in eyes of law if they are consistent with the opinion of experts.

4) The Court may rely on the opinion of a person acquainted with the handwriting of another person when such handwriting is in question.

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\(^{397}\) Indian Evidence Act,1872

\(^{398}\) Inserted by Act 5 of 1899, Sec.3. For discussion in Council as to whether” finger impressions” include” thumb impressions,” see Gazette of India, 1898, Pt. VI, p. 24.

\(^{399}\) Inserted by Act 18 of 1872, s.4.

\(^{400}\) Supra note 301.
Further after passing of Information technology Act 2000, Indian legal system has recognized forensic evidences categorically and specifically Amendments to the Indian Evidence Act 1872 are amended by schedule-II relevant portion is reproduced here as under:

1) In the definition of "Evidence’, for the words "all document produced for the inspection of the Court", the words "all documents including electronic records produced for the inspection of the Court” shall be substituted.

2) After section 47, the following section shall be inserted, namely:

**Section 47A: Opinion as to digital signature when relevant**

“When the court has to form an opinion as to the digital signature of any person, the opinion of certifying authority which has issued the Digital Signature Certificate is a relevant fact.”

Once electronic evidences form part of the term Evidence, Indian Judicial system introduced more and more reliance on Forensic science as there is no other way out to prove the authenticity of such electronic record.

This is the legislative record of Indian Procedural Laws recognizing protections to the accused persons, participation and reliance of forensic science in Criminal Trials.

**4.4 REPORTS AND RECOMMENDATIONS OF VARIOUS COMMITTEES:**

Inordinate delays in the investigation and prosecution of criminal cases involving serious offences and in the trial of such cases in the Courts is a blot on justice system. The objective of penal law and the 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 the faith in the criminal justice system is eroded irretrievably. Though their seems ample safeguards which protect rights of accused persons still due to the various lacking in Indian Criminal Justice system most of the times people suffer. Criminals remain successful in saving themselves and innocents got punished. In the present era due to use of scientific tests and evidences it has become easy to grab the actual guilty. In spite of this a huge reformations are required to make this criminal justice system more effective and up to date. To fulfill this requirement various committees have been constituted many times to

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401 Supra note 304.
give suggestions and recommendations for making the present laws, rules regulations and justice delivery system and the most importantly the police system. Further is the elaboration of recommendations various committees constituted to meet this need.


Looking the condition of criminal justice system and contemporary situation of criminal administration the Committee on Reforms of the Criminal Justice System was constituted by the Government of India, Ministry of Home Affairs by its order dated 24 November 2000, to consider measures for revamping the Criminal Justice System under the Chairmanship of Justice V.S. Malimath, former Chief Justice of Karnataka and Kerala High Courts, Chairman, Central Administrative Tribunal and Member of the Human Rights Commission. Sri Durgadas Gupta, Secretary of the Committee was made the Member Secretary of the Committee. Sri C.M. Basavarya, former District Judge and Registrar of the Karnataka High Court were appointed as Executive Director so that the Committee has the benefit of trial court experience in criminal matters. The term of the Committee, which was six months from the date of its first sitting, extended upto 31 March 2003.

**NEED FOR REFORM OF CRIMINAL JUSTICE SYSTEM**

“\textit{Law should not sit limply, while those who defy it go free and those who seek its protection lose hope}”.\footnote{(Jennison v. Baker (1972) 1 All ER 997).}

1. It is common knowledge that the two major problems besieging the Criminal Justice System are huge pendency of criminal cases and the inordinate delay in disposal of criminal cases on the one hand and the very low rate of conviction in cases involving serious crimes on the other. Quality of justice suffers not only when an innocent person is punished or a guilty person is exonerated but when there is enormous delay in deciding the criminal cases.

2. The foundation for the Criminal Justice System is the investigation by the police. When an offence committed is brought to the notice of the police, it is their responsibility to investigate into the matter to find out who has committed the
offence, ascertain the facts and circumstances relevant to the crime and to collect
the evidence, oral or circumstantial that is necessary to prove the case in the court.
The success or failure of the case depends entirely on the work of the investigating officer. But unfortunately, the Criminal Justice System does not trust the Police. The courts view the police with suspicion and are not willing to repose confidence in them. Section 161 of the Code\textsuperscript{404} empowers the investigation officer to examine any person supposed to be acquainted with the facts and circumstances of the case and record the statement in writing. However section 162 of the Code provides that it is only the accused that can make use of such a statement. So far as the prosecution is concerned, the statement can be used only to contradict the maker of the statement in accordance with Section 145 of the Evidence Act, 1872.\textsuperscript{405} Any confession made by the accused before the Police officer is not admissible and cannot be made use of during the trial of the case. The statement of the accused recorded by the police can be used as provided under Section 27 of the Evidence Act\textsuperscript{406} to the limited extent that led to the discovery of any fact. The valuable material collected by the investigating officer during investigation cannot be used by the prosecution. This makes it possible for the witnesses to make a contradictory statement during trial with impunity as it does not constitute perjury. The accused now-a-days are more educated and well informed and use sophisticated weapons and advance techniques to commit the offences without leaving any trace of evidence. Unfortunately, the investigating officers are not given training in interrogation techniques and sophisticated


\textsuperscript{405} Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

\textsuperscript{406} How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.
investigation skills. All these factors seriously affect the prosecution. This is a major cause for the failure of the system.

3. Apart from the main functionaries of the Criminal Justice System, others who have a stake in the system are the victims, the society and the accused. Other players are the witnesses and the members of the general public.

4. Criminal cases largely depend upon the testimony of witnesses. Witnesses come to the court, take oath and quite often give false evidence with impunity. Procedure for taking action for perjury is not simple and the judges seldom make use of them. Witnesses turning hostile are a common feature. Delay in disposal of cases affords greater opportunity for the accused to win over the witnesses to his side by threats, or inducements. There is no law to protect the witnesses.

These are some of the major problems that have contributed to the failure of the Criminal Justice System.

**Adversarial System:**

The Committee has given its anxious consideration to the question as to whether this system is satisfactory or whether we should consider recommending any other system. The Committee examined in particular the inquisitorial system followed in France, Germany and other Continental countries. The inquisitorial system is certainly efficient in the sense that the investigation is supervised by the judicial magistrate which results in a high rate of conviction. The Committee on balance felt that, a fair trial and in particular, fairness to the accused, are better protected in the adversarial system. However, the Committee felt that some of the good features of the Inquisitorial System can be adopted to strengthen the Adversarial System and to make it more effective. This includes the duty of the Court to search for truth, to assign a proactive role to the judges, to give directions to the investigating officers and prosecution agencies in the matter of investigation and leading evidence with the object of seeking the truth and focusing on justice to victims.

Accordingly the Committee has made the following recommendations:

i. A preamble shall be added to the Code of Criminal Procedure on the following lines:  

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system for punishing the guilty and protecting the innocent. "Whereas it is expedient to prescribe the procedure to be followed by it. "Whereas quest for truth shall be the foundation of the criminal justice system. "Whereas it shall be the duty of every functionary of the criminal justice system and everyone associated with it in the administration of justice, to actively pursue the quest for truth.

ii. A provision on the following lines be made and placed immediately above section 311 of the Code: "Quest for truth shall be the fundamental duty of every court." 408

iii. Section 482 of the Code be substituted by a provision on the following lines: "Every Court shall have inherent powers to make such orders as may be necessary to discover truth or to give effect to any order under this Code or to prevent abuse of the process of court or otherwise to secure the ends of justice."

Right to Silence Article 20(3) 409:
The right to silence is a fundamental right guaranteed to the citizen under Article 20 (3) of the Constitution 410. As the accused is in most cases the best source of information, the Committee felt that while respecting the right of the accused a way must be found to tap this critical source of information. The Committee 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. At present the participation of the accused in the trial is minimal. He is not even required to disclose his stand and the benefit of special exception to any which he claims. This results in great prejudice to the prosecution and impedes the search for truth. The Committee has therefore felt that the accused should be required to file a statement to the

408 Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.


410 Menka Gandhi Vs. Union Of India, 1978 (1) SCC 248.
prosecution disclosing his stand. For achieving this, the following recommendations are made:

i. Section 313 of the Code may be substituted by Sections 313A, 313B and 313C on the following lines:

(a) 313A: In every trial, the Court shall, immediately after the witnesses for the prosecution have been examined, question the accused generally, to explain personally any circumstances appearing in the evidence against him.

(b) 313B: Without previously warning the accused, the Court may at any stage of trial and shall after the examination under Section 313A and before he is called on his defense put such questions to him as the court considers necessary with the object of discovering the truth in the case. If the accused remains silent or refuses to answer any question put to him by the court which he is not compelled by law to answer, the court may draw such appropriate inference including adverse inference as it considers proper in the circumstances.

(c) 313C: No oath shall be administered when the accused is examined under Section 313A or Section 313B and the accused shall not be liable to punishment for refusing to answer any question or by giving false answer to them.

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, or any other offence which such answers may tend to show he has committed.

Rights of the Accused:

The accused has several rights guaranteed to him under the Constitution and relevant laws. They have been liberally extended by the decisions of the Supreme Court. The Accused has the right to know about all the rights he has how to enforce them and who to approach when there is a denial of those rights. The Committee therefore felt that all the rights of the accused flowing from the laws and judicial decisions should be collected and put in a Schedule to the Code. The Committee also felt that they should be translated by each State in the respective regional language and published in a form of a pamphlet for
free distribution to the accused and the general public. The following recommendations are made in regard to the rights of the accused:\footnote{Recommendation by Malimath Committee constituted by Govt. Of India on Criminal Justice System available on \url{www.mha.ac.in} visited on 10/02/2015.}  

i. The rights of the accused recognized by the Supreme Court may subject to the clarification and the manner of their protection be made statutory, incorporating the same in a schedule to the Criminal Procedure Code.

ii. Specific provision in the Code be made prescribing reasonable conditions to regulate handcuffing, including provision for taking action for misuse of the power by the Police Officers.

**Presumption of Innocence and Burden of Proof:**

There is no provision in the Indian Evidence Act prescribing a particular or a different standard of proof for criminal cases. However, the standard of proof laid down by our courts following the English precedents is proof beyond reasonable doubt in criminal cases. In several countries in the world including the countries following the inquisitorial system, the standard is proof on 'preponderance of probabilities.' There is a third standard of proof which is higher than 'proof on preponderance of probabilities' and lower than 'proof beyond reasonable doubt' described in different ways, one of the being 'clear and convincing' standard. The Committee after careful assessment of the standards of proof came the conclusion that the standard of proof beyond reasonable doubt presently followed in criminal cases should be done away with and recommended in its place a standard of proof lower than 'proof beyond reasonable doubt' and higher than the standard of 'proof on preponderance of probabilities.' The Committee is therefore favors a mid level standard of proof of 'courts conviction that it is true.' Accordingly, the Committee has made the following recommendations:

i. The Committee recommends that the standard of 'proof beyond reasonable doubt' present followed in criminal cases shall be done away with.

\footnote{Kaplow. Louis, “Burden of Proof” John M. Olin centre for Law, Economic and Business, Harvard, ISSN 1936-5357 Online.}
ii. The Committee recommends that the standard of proof in criminal cases should be higher than the 'preponderance of probabilities' and lower than 'proof beyond reasonable doubt.'

iii. Accordingly, the Committee recommends that a clause be added in Section 3 on the following lines:” In criminal cases, unless otherwise provided, a fact is said to be proved when, after considering the matters before it, the court is convinced that it is true." (The clause may be worded in any other way to incorporate the concept in Para 2 above).

iv. The amendments shall have effect notwithstanding anything contained in the contrary in any judgment, order or decision of any court.

**Police Investigation:**
The machinery of Criminal Justice System is put into gear when an offence is registered and then investigated. A prompt and quality investigation is therefore the foundation of the effective Criminal Justice System. Police are employed to perform multifarious duties and quite often the important work of expeditious investigations gets relegated in priority.
A separate wing of investigation with clear mandate that it is accountable only to Rule of Law\(^\text{413}\) is the need of the day. Most of the Laws, both substantive as well as procedural were enacted more than 100 years back. Criminality has undergone a tremendous change qualitatively as well as quantitatively. Therefore the apparatus designed for investigation has to be equipped with laws and procedures to make it functional in the present context.\(^\text{414}\) If the existing challenges of crime are to be met effectively, not on the mindset of investigators needs a change but they have to be trained in advanced technology, knowledge of changing economy, new dynamics of social engineering, efficacy and use of modern forensics etc. Investigation Agency is understaffed, ill equipped and therefore the gross inadequacies in basic facilities and infrastructure also need attention on priority.
There is need for the Law and the society to trust the police and the police leadership to ensure improvement in their credibility. In the above backdrop the following recommendations are made:

\(^\text{413}\) This is a principle says “No one should be above law of whatever position one is holding”.

i. The Investigation Wing should be separated from the Law and Order Wing.

ii. National Security Commission and the State Security Commission at the State level should be constituted, as recommended by the National Police Commission.

iii. To improve quality of investigation the following measures shall be taken:
   a. The post of an Additional SP may be created exclusively for supervision of a crime.
   b. Another Addl. SP in each District should be made responsible for collection, collation and dissemination of criminal intelligence; Maintenance and analysis of crime data and investigation of important cases.
   c. Each State should have an officer of the IGP rank in the State Crime Branch exclusively to supervise the functioning of the Crime Police. The Crime Branch should have specialized squads for organized crime and other major crimes.
   d. Grave and sensational crimes having interstate and transnational ramifications should be investigated by a team of officers and not by a single Investigation Officer.
   e. Sessions cases must be investigated by the senior most police officer posted at the police station.
   f. Fair and transparent mechanisms shall be set up in places where they do not exist and strengthened where they exist, at the District Police Range and State level for redressal of public grievances.
   g. Stringent punishment should be provided for false registration of cases and false complaints. Section 182\textsuperscript{415}/211\textsuperscript{416} of IPC is suitably amended. Police

\textsuperscript{415} False information, with intent to cause public servant to use his lawful power to the injury of another person, Indian Penal Code, 1860.

\textsuperscript{416} False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person.
Establishment Boards should be set up at the police headquarters for posting, transfer and promotion etc. of the District Level officers.

h. The existing system of Police Commissioner's office which is found to be more efficient in the matter of crime control and management shall be introduced in the urban cities and towns.

i. Dy. SP level officers to investigate crimes need to be reviewed for reducing the burden of the circle Officers so as to enable them to devote more time to supervisory work.

j. Criminal cases should be registered promptly with utmost promptitude by the SHO's

k. For liquidating the existing pendency, and, for prompt and quality investigation including increase in the number of Investigating Officers is of utmost importance. It is recommended that such number be increased at least twofold during the next three years.

l. Specialized Units/Squads should be set up at the State and District level for investigating specified category crimes.

m. A panel of experts be drawn from various disciplines such as auditing, computer science, banking, engineering and revenue matters etc. at the State level from whom assistance can be sought by the investigating officers.

n. With emphasis on compulsory registration of crime and removal of difference between non-cognizable and cognizable offences, the workload of investigation agencies would increase considerably. Additionally, some investigations would be required to be done by a team of investigators.

o. Similarly for ensuring effective and better quality of supervision of investigation, the number of supervisory officers (additional SPs/Dy. SPs) should be doubled in next three years.

p. Infrastructural facilities available to the Investigating Officers especially in regard to accommodation, mobility, connectivity, use of technology, training facilities etc. are grossly inadequate and they need to be improved on top priority. It is recommended that a five year rolling plan be prepared
and adequate funds are made available to meet the basic requirements of personnel and infrastructure of the police.

iv. The training infrastructure, both at the level of Central Government and State Governments, should be strengthened for imparting state of the art training to the fresh recruits as also to the in service personnel. Handpicked officers must be posted in the training institutions and they should be given adequate monetary incentive.\(^{417}\)

v. Law should be amended to the effect that the literate witness signs the statement and illiterate one puts his thumb impression thereon. A copy of the statement should be mandatorily given to the witness.

vi. Audio/video recording of statements of witnesses, dying declarations and confessions should be authorized by law.

vii. Interrogation Centers should be set up at the District Hqrs. in each District, where they do not exist, and strengthened where they exist, with facilities like tape recording and or videography and photography etc.

viii. Forensic Science and modern technology must be used in investigations right from the commencement of investigation. A cadre of Scene of Crime officers should be created for preservation of scene of crime and collection of physical evidence there from.\(^{418}\)

ix. The network of CFSL's and FSL's in the country needs to be strengthened for providing optimal forensic cover to the investigating officers. Mini FSL's and Mobile Forensic Units should be set up at the District/Range level. The Finger Print Bureaux and the FSL's should be equipped with well trained manpower in adequate numbers and adequate financial resources.

x. Forensic Medico Legal Services should be strengthened at the District and the State/Central level, with adequate training facilities at the State/Central level for the experts doing medico legal work. The State Governments must prescribe time frame for submission of medico legal reports.

\(^{417}\) Supra note, 319 Pp.315

\(^{418}\) Ibid.
xi. A mechanism for coordination among investigators, forensic expert and prosecutors at the State and District level for effective investigations and prosecutions should be devised.

xii. Preparation of Police Briefs in all grave crimes must be made mandatory. A certain number of experienced public prosecutors must be set apart in each District, to act as Legal Advisors to the District police for this purpose.

xiii. An apex Criminal intelligence bureau should be set up at the national level for collection, collation and dissemination of criminal intelligence. A similar mechanism may be devised at the State, District, and Police Station level.

xiv. As the Indian Police Act, 1861, has become outdated, a new Police Act must be enacted on the pattern of the draft prepared by the National Police Commission.

xv. Section 167 (2) of the Code be amended to increase the maximum period of Police custody to 30 days in respect of offences punishable with sentence more than seven years.

xvi. Section 167 of the Code which fixes 90 days for filing charge sheet failing which the accused is entitled to be released on bail be amended empowering the Court to extend the same by a further period up to 90 days if the Court is satisfied that there was sufficient cause, in cases where the offence is punishable with imprisonment above seven years.\(^{419}\)

xvii. A suitable provision is made to enable the police take the accused in police custody remand even after the expiry of the first 15 days from the date of arrest subject to the condition that the total period of police custody of the accused does not exceed 15 days.\(^{420}\)

xviii. A suitable provision is made to exclude the period during which the accused is not available for investigation on grounds of health, etc. for computing the permissible period of police custody.


\(^{420}\) Ibid.
xix. S. 438 of the Code regarding anticipatory bail is amended to the effect that such power should be exercised by the Court of competent jurisdiction only after giving the public prosecutor an opportunity of being heard.\textsuperscript{421}

xx. Section 161 of the Code is amended to provide that the statements by any person to a police officer should be recorded in the narrative or question and answer form.

xxi. In cases of offences where sentence is more than 7 years it may also be tape / video recorded.

xxii. Section 162 is amended to require that it should then be read over and signed by the maker of the statement and a copy furnished to him.

xxiii. Section 162 of the Code should also be amended to provide that such statements can be used for contradicting and corroborating the maker of the statement.

xxiv. Section 25 of the Evidence Act\textsuperscript{422} may be suitably amended on the lines of Section 32 of POTA 2002 that a confession recorded by the Superintendent Of Police or Officer above him and simultaneously audio/video recorded is admissible in evidence subject to the condition that the accused was informed of his right to consult a lawyer.

xxv. Identification of Prisoners Act 1920 is suitably amended to empower the Magistrate to authorize taking from the accused fingerprints, footprints, photographs, blood sample for DNA, fingerprinting, hair, saliva or semen etc., on the lines of Section 27 of POTA 2002.

xxvi. A suitable provision is made on the lines of section 36 to 48 of POTA 2002 for interception of wire, electric or oral communication for prevention or detection of crime.

\textsuperscript{421} Direction for grant of bail to person apprehending arrest: Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail.

\textsuperscript{422} 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.
xxvii. Suitable amendments be made to remove the distinction between cognizable and non-cognizable offences in relation to the power of the police to investigate offences and to make it obligatory on the police officer to entertain complaints regarding commission of all offences and to investigate them.

xxviii. Refusal to entertain complaints regarding commission of any offence shall be made punishable.

xxix. Similar amendments shall be made in respect of offences under special laws.

xxx. A provision in the Code is made to provide that no arrest shall be made in respect of offences punishable only with fine, offences punishable with fine as an alternative to a sentence of imprisonment.

xxxi. In the schedule to the Code for the expression "cognizable"\textsuperscript{423}, the expression "arrest without warrant" and for the expression "non-cognizable"\textsuperscript{424} the expression "arrestable with warrant or order" shall be substituted.

xxxii. The Committee recommended for the review and re-enactment of the IPC, Cr.P.C. and Evidence Act may take a holistic view in respect to punishment, arrestability and bailability.

xxxiii. Consequential amendments shall be made to the first schedule in the column relating to bailability in respect of offences for which the Committee has recommended that no arrest shall be made.

xxxiv. Even in respect of offences which are not arrestable, the police should have power to arrest the person when he fails to give his name and address and other particulars to enable the police to ascertain the same. Section 42\textsuperscript{425} of the Code be amended by substituting the word "any" for the words "of non-cognizable."

\textsuperscript{423} Section 2(c) of Criminal Procedure Code, 1973 "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

\textsuperscript{424} Section 2(l) of Criminal procedure Code, 1973 "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant.

\textsuperscript{425} Says about the arrest of person on the refusal of giving name when asked by the officer under colour of his office.
xxxv. As the Committee has recommended removal of distinction between cognizable and non-cognizable offences, consequential amendments shall be made.

xxxvi. The first schedule to the Code is amended to provide only the following particulars. 426
   a) Section
   b) Offence
   c) Punishment
   d) No arrest / arrestable with warrant or order / arrestable without warrant or order
   e) Bailable or Non-Bailable
   f) Compoundable or Non-Compoundable
   g) By what court triable.

xxxvii. Consequential amendments shall be made to part II of the First Schedule in respect of offences against other laws.

xxxviii. Rights and duties of the complainant/informant, the victim, the accused, the witnesses and the authorities to whom they can approach with their grievances should be incorporated in separate Schedules to the Code. They should be translated in the respective regional languages and made available free of cost to the citizens in the form of easily understandable pamphlets.

xxxix. Presence of witnesses of the locality or other locality or neighborhood is required under different provisions of the existing laws. The committee recommends that such provisions be deleted and substituted by the words "the police should secure the presence of two independent witnesses." 427

COMPREHENSIVE USE OF FORENSIC SCIENCE FROM THE INCEPTION

It can hardly be gainsaid that the application of forensic science to crime investigation must commence from the stage of the very first visit by the Investigation Officer to the crime scene so that all relevant physical clues, including trace evidence, which would eventually afford forensic science examination, are appropriately identified and collected. This can best be done if the IO is accompanied to the crime scene by an appropriately

trained scientific hand. The standard practice in most of the advanced countries is to provide such scientific hands, variously designated as ‘Field Criminalists’, ‘Scene of Crime Officers’ (SOCO), Police Scientists etc., in the permanent strength of each police station. In some cases, these personnel are drawn from scientific cadre, while in some others, they are policemen themselves, specially selected for their flair for scientific work and their academic background of science subjects. These personnel are then provided in-depth training in crime scene management and in the identification of different types of scientific clues to be looked for in different types of crimes.\textsuperscript{428}

i. The present level of application of forensic science in crime investigation is some-what low in the country, with only 5-6\% of the registered crime cases being referred to the FSLs and Finger Print Bureau put together. There is urgent need to bring about quantum improvement in the situation, more so when the conviction rate is consistently falling over the years in the country and the forensic evidence, being clinching in nature, can reverse the trend to some extent.

ii. There are only 23 Forensic Science Laboratories /Forensic Science. It can hardly be gainsaid that the application of forensic science to crime investigation must commence from the stage of the very first visit by the IO to the crime scene so that all relevant physical clues, including trace evidence, which would eventually afford forensic science examination, are appropriately identified and collected.

iii. Less availability of Laboratories in the country. On the other hand, USA has about 320 Forensic Science Laboratories (including private sector Laboratories). It would, thus, appear that the number of Forensic Science Laboratories in the country is grossly inadequate and certainly not commensurate with our requirements. The Committee strongly recommended that the Forensic Science facilities in India need heavy augmentation.

It may be added that a National Seminar on “Forensic Science; Its Use and Application in Investigation and Prosecution; was organized by this Committee and the Bureau of Police Research and Development at Hyderabad on 27 July 2002. A number of Judges

\textsuperscript{428} Supra note 325.
(including High Court Judges), Senior Police Officers and Directors of most of the Central and State Forensic Science Laboratories of the country participated in the seminar and made valuable suggestions for improving the Forensic Science scenario in the country. The members of the Core Group constituted by this Committee formulated the recommendations in this matter and submitted to our Committee. The Committee is of the opinion that the following recommendations of the Core Group should be implemented:

i. Police Manuals and Standing Orders of different States/Union Territories need to be amended to make the use of Forensic Science mandatory, as far as practicable, in investigation of all grave and important crimes such as those involving violence against the persons, sexual offences, dacoity, robbery, burglary, terrorists crimes, arson, narcotics, poisons, crimes involving firearms, fraud and forgery and computer crimes.

ii. Police Manuals and Standing Orders should mandate the supervisory officers to carefully monitor and scrutinize, if or not the IOs have exploited the possibility of the use of forensic science in the investigation of each crime right from the threshold of investigation.

iii. The State Governments should immediately create appropriate forensic science facilities in each District. This should include one or more Mobile Forensic Science Units, depending on the size of the District, the incidence of crime, terrain and communication conditions in each District. Each unit should have a Forensic Expert, a Finger Print Expert, a Photographer and a Videographer. The job of these mobile units would be not only to identify, collect and preserve the evidence but also to tender necessary opinion, on the spot, to the IO, if scientifically feasible.

iv. Each police station should be provided with a set of Scientific Investigation Kits for identification and lifting of scientific clues from the crime scene.

429 Supra 336. Also see, Report of National Seminar on “Forensic Science; Its Use and Application in Investigation and Prosecution; was organized by this Committee and the Bureau of Police Research and Development at Hyderabad on 27 July 2002.
v. Arrangement should also be made to create proper facilities for packaging, storage and preservation of scientific clue material collected from the crime scene or suspects, to ensure their protection against contamination, degradation or damage at the police station or in the District Headquarters. Standard material for packaging and preserving scientific evidence should be supplied for this purpose from time to time by the State FSLs.

vi. Appropriate number of Regional FSLs at the headquarters of each Police Range should be set up by the State Govt.

vii. The Central and State FSLs are facing acute shortage of men power. According to a study conducted by NICFS, the vacancies in the FSLs range from 17 to 71% of the sanctioned posts of scientists. The Governments concerned should take appropriate steps to fill up these vacancies. Further, the sanctioned strength itself is pegged at far below the yardsticks formulated by BPR&D. The States must, therefore, revise the sanctioned strength of their respective FSLs in the light of the BPR&D guidelines.\(^\text{430}\)

viii. There are virtually no facilities for training of Forensic Scientists in the country and they mostly learn on the job. It must be noted that a trained scientist is far more productive than several untrained or semi-trained hands. Therefore, committee recommended that the NICFS should take upon its shoulders the responsibility of imparting professional training to the scientific personnel. The committee also recommended that NICFS\(^\text{431}\) must expand and strengthen its core facilities in emerging areas such as forensic DNA, Forensic Explosives and Computer Forensics etc.\(^\text{432}\)

ix. The Finger Print Bureau in the country are generally undermanned and are storing and analyzing data manually. The analysis and retrieval, therefore, takes a long time and the storage capacity is also limited. It was there fore,
recommended that modern electronic gazettes must be used in collection, storage, analysis and retrieval of finger print related data.

x. Most of the FSLs suffer from financial crunch. The budgetary position of the FSLs should be reviewed and sufficient funds should be made available to them.

xi. A mandatory time limit should be prescribed for submission of reports to the police/Courts by the FSLs.

xii. A national body on the pattern of Indian Council of Medical Research should be constituted in the country to prescribe testing norms for the FSLs and ethical standards for the forensic scientists.

xiii. Forensic Science, unfortunately, has not assumed the status of an academic discipline in India. Therefore it is recommended that the UGC should consider creating the departments of Forensic Science in at least all the major universities. Later, Forensic Sciences could be introduced as subjects at the school level. Funds should also be ear-marked and allotted for research in these departments.433

xiv. A polygraph machine434 for lie detector test should be provided in each district. The regular use will obviate the need for extra legal methods of interrogation.

TRAINING – A STRATEGY FOR REFORM

Government and Judiciary are advised to invest in training according to the eight point agenda (set out in the section on ‘Training strategy for Reform’) for reaping the benefits of criminal justice reforms in reasonable time.

FUTURE VISION

433 Subject has been introduced in various universities in India and department has been created providing degrees and training to the students and officers regarding forensic technology and its use in the criminal justice system.

434 A polygraph machine is an instrument based on changes in pulses and skin including heartbeating of the subject while giving a statement, also known as Lie detector machine.
Society changes, so do its values. Crimes are increasing especially with changes in technology. Ad hoc policy making and piecemeal legislation is not the answer. The Committee therefore recommended the following improvements:

i. That the Government may come out with a policy statement on criminal justice and,

ii. That 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.435

4.4.2 Padmanabhaiah Committee Report436

Looking towards the increasing crime status and decreasing rate of conviction in the country, the Government felt necessity to look the weaknesses and improvement in the police system. The ministry of Home Affairs constituted a committee for analyzing the whole circumstances of the police system under the chairmanship of Justice Padmanabhaiah. The committee submitted its report in October, 2000 and gave some major recommendations regarding various steps and functions of the police system. The investigation is one of the important functions of Indian police so committee also recommended for the scientific approaches of the police which includes use of forensic science and training of forensic technology to the police personnel. Following are the recommendations made by the committee:437

1) The existing constabulary should be retrained to enable them to imbibe right attitudes to work. Those who do not successfully complete training should be compulsorily retired.

2) A Police Training Advisory Council should be set up at the centre and in each state to advise the Home Ministers on police training matters.

3) The eligibility criteria for recruitment to the level of Sub-Inspectors should be 12th class pass and an upper age limit of 21 years. They should be recruited on

the basis of a common written qualifying examination. The successful candidates must pass a final examination after undergoing a 3-year training programme. 50% of vacancies of Sub-Inspectors should be filled by direct recruitment and 50% reserved for promotions.

4) A constable should be classified as a ‘skilled worker’ in view of the skills required and risks involved in the job.

5) All promotions should be subject to completing the mandatory training programmes and passing of promotional examinations.

6) The Indian Police should adopt the philosophy of community policing. The Government of India should support this by bringing out a handbook on the subject, providing training inputs and funding pilot projects.

7) Lack of a proper tenure policy for posting of officers at different levels and arbitrary transfers have been used by politicians to control and abuse the police for their own ends. To deal with this problem, following actions are required:

a. A body headed by the Chief Justice of the State High court as Chairman, State Chief Secretary and an eminent public person as members should be constituted to recommend a panel of two names for appointment to the post of the Director General of Police.

b. A police Establishment Board, consisting of DGP and three other members of the police force selected by him, should be constituted to decide transfers of all officers of the rank of Deputy Superintendent of Police and above.

c. The minimum tenure of all officers should be 2 years.

d. Another Committee under the Chief Secretary, with Home Secretary and the DGP as members, should be constituted to hear representations from police officers of the rank of Superintendent of Police and above alleging violation of rules in the matter of postings and transfers.

8. To deal with the problem of corruption in the police, who lead to the criminalization of the force, the committee has recommended a more serious

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438 Supra note 341, Recommendation of Committee on police reforms.
enforcement of the code of conduct and simpler but more effective procedures for removing corrupt officers.

9. Since police work cannot be organized on an 8-hour shift basis, police personnel should be given a weekly off and compulsorily required to go on earned leave every year. Holiday homes may be constructed for police personnel.

10. Investigation should be separated from law and order work. In the first phase, this separation should take place at police station level in all urban areas. An Additional Superintendent of Police should be exclusively responsible for crime and investigation work.

11. Sections 25 and 26 of the Indian Evidence Act\(^{439}\) should be deleted and confessions made to police officers of the rank of Superintendent of Police and above should be made admissible in evidence.

12. **Every police station should be equipped with ‘investigation kits’ and every sub-division should have a mobile forensic science laboratory.**\(^{440}\)

13. The police leadership, through proper manpower and career planning, improved training, effective supervision and by inculcating a sense of values amongst the members of the force, can play an important role in encouraging specialization, promoting professionalism and increasing morale in the force.

14. There is an urgent need to encourage specialization in various aspects of policing.

15. In each district, there should be a crime prevention cell manned by officers who have specialized in crime prevention work.

16. To deal with cyber crime effectively, police capabilities in various areas need to be developed. Capabilities of some police institutions, like the National Police Academy in the field of training, CBI in investigation, Intelligence Bureau in cyber surveillance and the National Crime Records Bureau in cyber technology/forensics should be enhanced.

\(^{439}\) 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.

\(^{440}\) Supra note 343, recommendation made by Padmanabhaia Committee.
17. The present classification of offences into cognizable and non-cognizable made 150 years ago is not very relevant today. The Law Commission of India should **review the** entire classification and the **powers of the police to investigate**.

18. The concept of VIP security has been grossly, blatantly and brazenly misused. The entire concept of personal security needs a careful review and dismantling.

19. Certain offences having inter-state, national and inter-national repercussions should be declared ‘federal offences’ to be investigated by the Special Crimes Division of the CBI, which should function under the administrative control of the Ministry of Home Affairs.

20. Taking into account the wide ramifications of the terrorist crime, there have to be different norms regarding the burden of proof, degree of proof and the legal procedures in regard to trial of terrorist cases. There is a need for a special and a comprehensive law to fight terrorism.

21. There should be a national counter terrorism coordinator to prepare a comprehensive counter-terrorism plan and budget.

22. A statutory independent Inspectorate of Police should be set up to carry out annual as well as thematic inspections of the police force and to report to the state government whether the police force is functioning efficiently and effectively.

23. A non statutory District Police Complaints Authority (DPCA) should be set up with the District Magistrate as the Chairman and a senior Additional Sessions Judge, the District Superintendent of Police and an eminent citizen nominated by the DM as members. Investigations into public complaints against the police should in the first instance be done by the police department itself. Those who are not satisfied can approach the DPCA.

24. There should be a mandatory judicial inquiry into all cases of alleged rape of a woman or death of any person in police custody.

25. The Government of India should establish a permanent National Commission for Policing Standards to lay down norms and standards for all police forces on matters of common concern and to see that that the State Governments set up mechanisms to enforce such standards.
26. The release of central grants for modernization or upgradation funds should be dependent upon compliance by state governments with certain basic issues, like each state having a manpower and career planning system, a transparent recruitment, promotion and transfer policy and meeting certain minimum standards for training.

27. The Police Act of 1861 should be replaced by a new Act.

28. The State Government must give high priority to the allocation of resources to the police.

29. There should be a permanent National Commission for Police Standards and (NCPs) to set standards and to see that State Governments set up mechanisms to enforce such standards.

30. “There is need for comprehensive reforms in criminal justice administration. Public would soon lose faith in the criminal justice system unless the other components of the systems are also thoroughly overhauled simultaneously”.  

Therefore the committee while analyzed the performance of police in India it was explicitly recommended that the improvement in the efficiency and skill of police has only option for the better performance of police either as a investigating agency or to maintaining law and order.

4.4.3 Report of Law Commission of India (239th)  

The fear of law and faith in the criminal justice system is being continuously eroded. The adverse effect of delay on the society at large is immeasurable. On one hand it has been seen that crimes are enormously increasing while at the same time the conviction rate has become low which shows the absolute frustration of criminal justice system. The Law Commission of India gave special focus in its 239th report concentrating on investigation

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441 Supra note 343, Recommendation of Padmanabhaiah Committee Report.
442 ibid.
443 Expeditious Investigation and trial of criminal cases Against influential public personalities, Report No 239, Law Commission of India, Government of India, Submitted to the Supreme Court of India, in WP(C), No. 341/2004, March 2012.
and criminal Justice system and made certain major recommendations which are as follows:\footnote{\url{http://lawcommissionofindia.nic.in/reports/report239.pdf}, visited on 15 Dec.2015.}:

**Quality of investigation and documentation:**

I. 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. Further, it is common knowledge that there is dearth of forensic and cyber experts in police departments of various States. The result is that Police heavily lean towards oral evidence, instead of concentrating on scientific and circumstantial evidence.

II. Sufficient care and effort is not devoted for examining and recording the statements of witnesses. Further, promptness in this regard is found to be wanting.

III. Sufficient care and time is not bestowed in drafting the final reports/charge-sheets. Defective charge-sheets without narration of all relevant facts and charge-sheets unaccompanied by annexure are reported to be very common and tend to delay the proceedings. This important document which is normally prepared by a ‘Writer’ at the Police Station is not carefully scrutinized by the Station House Officer. The ‘Writer’ posted at heavy Police Stations is overworked and can hardly spare the needed time.

IV. The photographs of accused (not to speak of witnesses) are not affixed to the charge-sheets/arrest Memos etc. nor even the identification marks are noted, making it difficult to identify the accused in the course of trial or to trace the absconding accused.

**The principal causes of low rate of conviction are:**\footnote{Supra note, 347.}

1. In dept, unscientific investigation by the police and lack of proper coordination between police and prosecution machinery;

2. Police stations understaffed and manned by inadequately trained Police personnel; lack of trained and efficient prosecutors;
3. Inordinate delay in disposal of cases by Courts resulting in witnesses not being available or changing the version;
4. Adducing fabricated evidence.

Rationale behind keeping track of the cases of influential Public men pros and cons:

It needs to be considered whether the criminal cases against influential persons in public life should be treated as a class and special attention should be paid to prioritize disposal of such cases. In other words, whether the delays shall be viewed more seriously in such cases when compared to delays in other cases and whether they should come up for special scrutiny. In this context, there can be two views reflecting the pros and cons of the issue. They are summarized below:

1. Criminal justice has to be administrated with even hand and there cannot be a different treatment of classes of accused. The fact that the accused are public persons occupying the positions of authority in the governmental structure should not normally be a ground to devise a special procedure for investigation or trial of such persons. One has to view the issue from the perspective of Article 14 as well and steer clear of the dimension of that Article. It is trite that expeditious investigation of offences and trial is a facet of rule of law and a component of Article 21 of the Constitution. The society at large has legitimate interest that the persons accused of serious crimes should be proceeded against with promptness and expedition and the process should not get tainted by undesirable or extra-legal practices. Further, viewed from the point of view of the accused, speedy trial is a fundamental right under Article 21. For the achievement of these objectives, it does not matter who the accused is, whether an important person or a common man. Public interest demands that investigation, prosecution and trials ought not to be allowed to drag on for years together. The causes for delays should be identified and remedial measures should be taken to remove all bottlenecks coming in the way of speedy investigation and trial. Special Courts for the so-called influential persons cannot be constituted without reference to nature of offences or class of offences as it would be against the basic principles of criminal

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446 Supra Note, 350.
justice. Any such differential treatment would attract the wrath of Article 14. There shall be uniform application of criminal law irrespective of the status of the accused. If there is material suggestive of the fact that the investigation is not being done swiftly at the instance of such influential public men or they are resorting to dilatory or intimidatory acts, that may be a ground to put in place such measures as are necessary to remove obstacles, but not to place all the cases involving Public men en bloc on fast-track irrespective of the age of the case.

2. In this context, it is useful to refer to the pertinent observations made by the Supreme Court. The Supreme Court in Ganesh Narayan vs. S. Bangarappa, observed: “the slow motion becomes much slower motion when politically powerful or high and influential persons figure as accused”. The Supreme Court cited with approval the following observations of Krishna Iyer, J. in Re Spl. Courts Bill, 1978: “Courts are less to blame than the Code made by Parliament for dawdling and Government is guilty of denying or delaying basic amenities for the judiciary to function smoothly. Justice is a Cinderella in our scheme. Even so, leaving V.V.I.P. accused to be dealt with by the routinely procrastinating legal process is to surrender to interminable delays as an inevitable evil. Therefore, we should not be finical about absolute procedural equality and must be creative in innovating procedures compelled by special situations”.

**Approach to be adopted:**

Further the committee raised the question as to whether and to what extent directions should be given within the framework of existing laws to ensure that Public men do not, by virtue of their influence and power, interfere with the process of investigation and do not create impediments in the way of expeditious and continuous trial. Though there could be special focus on the criminal cases involving influential public men, the steps to be taken should be part of the larger plan to check delays and deficiencies in investigation into serious crimes and to ensure progress of trials without hindrances and hurdles placed by the accused.

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447 (1995) 4 SCC 41
448 (1979) 1 SCC 380
449 Supra Note, 351.
Other important measures to improve Criminal Justice System:
The committee submitted that two important steps are ideally required for speeding up the criminal justice in the hope that this will also augment the conviction rate. These are as under:

a. Deployment of technology at the level of police stations.

b. Strengthening Criminal Courts’ infrastructure and upgrading facilities and amenities therein.

These steps have to be taken up in a phased manner after due planning.

The detailed suggestions under the above two heads are as under: 450

a. Deployment of technology at the Police Stations:

i. Recording of FIRs: It is found that many of the acquittals are due to the delay, ante timing and absence of the necessary details of the incident in the FIRs. This one single factor can be eliminated by providing for compulsory and automatic recording of all landlines provided in the Police Stations. There should also be a provision for automatic relay of the telephone conversation between the caller and Police Station operator to all the Patrol vehicles of the police deployed in the area to reduce the response time of police. The patrol vehicles should also have connectivity with the police net for knowing the antecedents of the suspects/vehicles/documents etc. on the spot and instantly. FIRs shall be recorded on the computer and they shall be instantly sent to the Magistrates’ Courts by e-mail. The practice of sending FIR through e-mail should be legally recognized. Similarly, Section 161 Criminal Procedure code 451, statements should also be placed on the computer and posted on the website of the concerned court.

ii. Police Stations: Modernization:

a) Networking of all police stations to establish a link with all the courts.

b) Digital videography to be installed at police stations. At the time of receiving FIR/complaint, videography should be made compulsory. By this process, the earliest version of the informant will be evident. So also,

450 Ibid.

451 Deals the Examination of witnesses by police.
at the time of inspection of the scene of offence and recovery of material objects, videography should be insisted upon.

c) Interrogation Rooms: Each Police Station should be provided with secure interrogation rooms, with simultaneous audio-visual recording facilities by two cameras, one focusing on the close-up of the face of the witness or the suspect and the second giving a wide angled picture to show that there is no coercion to influence the statement of the witness or the suspect. Statement of all suspects and witnesses should, by law, be required to be recorded in such windowless interrogation rooms with mirrors on the two walls. The question of treating as admissible the statements of the accused and witnesses examined in secure interrogation rooms deserve serious consideration.

iii. Mobile Forensic Vans: At least, all District Headquarters should be provided with mobile forensic vans which should accompany the homicide teams to the place of occurrence. The mobile forensic vans should be equipped with equipment for instant blood test and finger print comparison, on the spot, in addition to the facilities of lifting the finger prints and blood samples from the scene of crime. The vans should also have provision for video-recording of the scene of crime as well as that of searches and seizures on the spot. In the Districts where NDPS crimes are more, narcotics testing kits should be provided to every Police Station.

iv. Charge-sheets by CDs: All charge sheets should be required to be submitted in electronic form on a non-re-writable compact disc wherever such facility exists. A suitable amendment to S. 173 of Criminal procedure Code, 1973, can be thought of for this purpose. Police can be required to submit as many CDs as the number of accused figuring in the charge sheets. This will reduce considerable delays that take place in the cases triable by Court of Sessions.

b. Strengthening criminal courts’ infrastructure & upgrading facilities therein:
   i. Properly designed Court Complexes: It is essential that a standardized design of the criminal court complex be prescribed by the High Court

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452 Deals about the report of police investigation and instructed to the investigating officer that Report of police officer on completion of investigation should be sent without any delay and in a proper format.
which shall *inter alia* take care of separate rooms for witnesses, under trial prisoners, Police personnel, advocates and prosecutors and shall provide for sufficient number of washrooms and filtered drinking water facilities.

ii. **Summons**\(^{453}\) etc., **Service**: All court notices, summons for appearance or summons for production of documents may be served through e-mail and in the absence of the e-mail of the addressees, through the e-mail of the police station, which must report compliance with regard to the service on a weekly basis through e-mails. As regards official witnesses, in order to avoid delays in service, the summons can be sent through email or if the email ID is not ascertainable, the summons can be sent to the Head of Office (for instance, District Medical Officer who has administrative control over the hospitals.) All bail orders to be communicated to the Jail through e-mail for delivery to the under trial prisoners.

iii. **Recording of evidence**: All criminal courts ought to be provided with Audio recording through tamper-proof technology for recording of statements of witnesses so that the appellate courts can also refer to the same for determining the exact statement made by the witnesses.\(^{454}\)

iv. **Machines**: All criminal courts ought to be provided with transcription machines with the help of which the Audio-recorded statements can automatically be transcribed and supplied to the counsel & witnesses on the same day.

v. **Conferencing**: In order to interact with under trial prisoners and police officials, video-conferencing facility needs to be provided. So also, videoconferencing will be very useful for the interaction between High Court and District Judges. It would save lot of time and resources and help in fulfilling the formalities without delay.

vi. **Witness Rooms**: All criminal courts ought to be provided with a separate witness room where witnesses, who have been summoned in different courts, be provided with the facilities of comfortable seating, drinking

\(^{453}\) A summons is a request or order for someone to show up, especially for legal matters.

\(^{454}\) Supra note 355.
water, urinals, tea/coffee machine & some reading material. It needs to be appreciated that witnesses are the eyes and ears of the court and the court needs them more for dispensing justice than they need the court. This will also enable them to be saved from the harassment they have to face at the hands of the accused as they also wait in the same corridors.

vii. **Centralized Registry**: All criminal courts located in a single or nearby complex must have a centralized record room instead of separate record keeping for each court. The centralized record keeping will ensure that the relevant part of the file is placed before the concerned court as and when required.

viii. **Stenographers**: Competent stenographers with good knowledge of computer operation and maintenance to be attracted to judicial service by offering higher pay and facilities.\(^{455}\)

### 4.4.4 Report of National Human Rights Commission

Human Rights has broad connotation which includes rights relating to the life, liberty, equality and dignity of an individual or the rights which a person gets being a human, an individual gets these rights by birth. It is a right which is inalienable and indispensable in nature so if any of these rights violated the National Human Rights Commission provides remedy. The National Human Rights Commission is an autonomous public body constituted in 12 October, 1993 under the protection of Human Rights Act, 1993. The Commission is responsible for the protection and promotion of human Rights guaranteed by the Constitution of India and International covenant. The Commission and has power to entertain cases through Suo-moto as well as complain made by the individual in respect to the violation of any rights.\(^{456}\) As the scientific investigation has been using by the investigating agencies for the purpose of the collection of evidence but there are provision that no individual should be forcibly subjected for any of these technique whether in the context of investigation or otherwise. Doing this may be amounted to the

\(^{455}\) Supra note 349 See also, LAW COMMISSION OF INDIA Report on-Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities-Report No.239

intrusion in the personal liberty and violation of right to privacy. The National Human Rights Commission looking the status of complaints and gravity issued guidelines for the use of scientific techniques on the individual which is strictly adhere to and if violated amounted to the violation of Law. Following are the recommendation made by the National Human Rights Commission for the Narco Analysis Test:

- No Narco Analysis Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
- If the accused volunteers for a Narco Analysis Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
- The consent should be recorded before a Judicial Magistrate.
- During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
- At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a ‘confessional’ statement to the Magistrate but will have the status of a statement made to the police.
- The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
- The actual recording of the Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.
- A full medical and factual narration of the manner of the information received must be taken on record.

Thus the above description of various laws relating to investigation, admission and the rights given under Indian constitution has been focused on the use of scientific techniques of Narco-analysis test. The recommendations of various committees such as Malimath committee, Padmanabhaiya Committee and Law commission Report, related to the criminal justice system and police reform has been emphasized and it

can be said that a major requirement for the improvement of criminal justice system is, to include the scientific approaches in the system though the individual rights must be taken into consideration but at the same time to regain the faith on the criminal justice system and to reduce the crime rate and increase the conviction rate there is need of inclusion of scientific approaches in the system with the clothing of constitutional rights and various provision of Laws though this affirmation should be done with adoption of some valid and legally approved procedure which is recommended by the agencies like National Human Rights Commission.