



## Narco analysis test: A blessing to criminal justice system, its reliability and admissibility in light of various Judgements

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### Abstract

Crime in some form or the other has existed since the beginning of human race. With the advancement in science and technology the concept of crime as well as the methods adopted by criminals in its commission have undergone a phenomenal change. With the changing scenario and the life style of human being every individual wants himself to domicile in place which will be having all the ambiances and luxuries of life ranging from his zone of comfort ability to a huge economy covering all aspects including his culture, way of living and lifestyle. With this desire of a strong well-being of an individual he invites huge competition of dominating others and developing newer technologies of doing same. As our society has grown more complex, it has become more dependent on the rules of law to regulate the knowledge and technology of science and the enforcement of such laws. Each year, as government finds it increasingly necessary to regulate those activities which intimately influence our daily life, science merges more closely with civil and criminal laws. The criminal justice system is no more different from it and it has also been effected by the changing scenario of newer technologies. Deception detection tests is one of those new technologies which are employed by the criminal justice system to know about the truths behind various crimes committed. This includes narco analysis, lie detection. Brain mapping and polygraph tests.

The present paper is an endeavor to deal with various aspects of narco analysis test, various chemicals used in this particular test to extract truth from the suspect, effect of those chemicals on the human body. The paper will also throw light upon admissibility of the evidence obtained with the help of narco analysis test, its constitutional validity, the evidentiary value of such piece of evidence and judicial response.

**Keywords:** narco analysis, truth serum, investigation, criminal justice system, deception detection test

### 1. Introduction

Law is pulsating and not static and therefore, as society evolves, law has to keep in consonance with the changing social order. Law is the device of communal change and the judiciary has the responsibility of understanding the law for the greater good. Therefore, it is clear that the judicial mind must stay in touch and keep in step with the progression of humankind. To combat organized crime, its detection, investigation and prevention methods have to be employed synchronously. If the criminals use new technology in committing the crimes, the enforcement agencies have also to use the new techniques in solving such crimes. On one hand the intelligent criminal has been quick to exploit science for his criminal acts, on the other hand the investigator is no longer able to rely on age old art of interrogation and methods to detect crime. Krishna Ayer J. Remarkd, "the courts self-criminate themselves if they keep the gates partly open for culprit to flee the justice under the guise of interpretative enlargement of golden rule of criminal jurisprudence <sup>[1]</sup>. The word narco has been derived from a Greek word *Narck* meaning anesthesia or torpor and is used to describe a diagnostic and psychotherapeutic technique that uses

psychotropic drugs particularly barbiturates to induce a stupor in which mental elements with strong associated effects come to surface <sup>[2]</sup>. The term narco analysis has been coined by Horseley <sup>[3]</sup>. Narco analysis first reached the mainstream in 1922, when Robert House, a Texas Obstetrician used the drug scopolamine on two prisoners. Narco analysis test involves injection of certain substances in controlled quantities for two or three hours. This puts an accused into hypnotic trance <sup>[4]</sup>. The accused is then interrogated, the statements made by accused are recorded in audio or video cassettes. The first narco analysis in India was done in Bangalore Forensic Science Laboratory in 2001 on an individual associated with offences committed by Veerappan <sup>[5]</sup>. In narco analysis test the subjects inhibitions are lowered by interfering with his nervous system at the molecular level. In this state it becomes difficult though not impossible for him to lie. In such sleep like state efforts are made to obtain "probative truth" about the

<sup>2</sup> G. Monika "narco analysis in light of constitutional law and human rights" IJMER vol 1 issue 2 june 2013 page no 158

<sup>3</sup> R.S David "Scientific techniques in crime investigation" New York publication page 234

<sup>4</sup> S. Acharya, "Is narco analysis a reliable science" available at <http://ezinearticles.com>.

<sup>5</sup> A. Abhudaya and G. Prithwajit "Use of modern scientific tests in investigation and evidence: mere desperation or justifiable in public interest" vol 2 NUJS law review 2009.

<sup>1</sup> Nathuniyadavvs State of Bihar.

crime. The search for effective aids to interrogation is necessary so that traditional methods of mental torture or physical coercion can be stopped<sup>[6]</sup>.

According to C.B. Hanscom, Author and director of the department of protection and investigation, university of Minnesota in his article refers that “more than thirty narco analysis tests were conducted by him and made more than 230 references for criminal investigation and came in the conclusion that it is missionary duty of state to promote the drug technique in the criminological activities. The potentialities and possibilities are so broad these days<sup>[7]</sup>.” According to a report issued by Seattle based Brain fingerprinting Laboratories, the technology can be utilized to:

- Aid in the determination of individual participated in the terrorist activity directly or indirectly.
- Aid in identifying trained terrorists who has intention to commit terrorist acts in future though presently in sleeper cell and have not been active for years.
- Help in identifying people having knowledge or training of banking, finance and other communications and who are associated with terrorist activity.
- Help to determine the individual who has leadership role in a particular terrorist organization<sup>8</sup>

## 2. Narco analysis test in brief: scientific perspective

The narco analysis test is conducted by mixing three grams of Sodium Thio Pentothal<sup>[9]</sup> or Sodium Amytal<sup>[10]</sup> dissolved in 3000 ml of distilled water<sup>[11]</sup>. Sodium Pentothal is a barbiturate which sedates only for a few minutes. It slows down the heart rate, lowers blood pressure and inhibits brain and spinal cord activity. The injection is administered under controlled conditions to reduce or eliminate the reasoning power of the subject without effecting his memory. Diazepam compound notably known as benzodiazepine is considered safer. However in India sodium pentothal is the drug used generally. The narcotic affects that part of the brain of the subject which discriminates between what is good or bad for him: according to his own values or thinking. In short the drug suppresses his reasoning and thinking powers.

The narcotic used for the purpose is given a fancy name of *Truth Serum* by story writers and media persons to attract attention. They also name the entire process as Truth Serum Process. In India the word Narco analysis is the popular name for the process.

### 2.1 Process for Narco analysis test

#### 2.1.1 Narco analysis Interrogation

Narco analysis is a technique of interrogation under modified brain or mental conditions of the subject, to prevent him from

telling lies. The preliminaries required for the administration of narco analysis test are:

- Permission of magistrate is to obtained to carry out the said test
- Consent of the subject is recorded to satisfy the need of article 20 (3)<sup>[12]</sup> of the Constitution and that of Supreme Court directions that the subject is not being compelled to undergo the test.
- Fitness of the subject, to undergo the test, is checked by the general physician. He gives a certificate to that effect.

#### 2.1.2 Narco analysis Room

The test is carried out in an operation theatre, ordinarily, so that in case a need of medical help arises, the same be sorted out at first instance without any kind of delay. A general physician keeps a watch on the subject and an anesthetist who administers the drug are the only persons present in the room in addition to the narco analyst. The room is free from noises and other disturbances.

#### 2.1.3 The Drug

The drug for narco analysis interrogation is usually sodium pentothal which is injected intravenously in a vein on back of the hand slowly by an anesthetist. The dose is usually 0.025 to 0.50 grams. In some cases the dose may be even 1 gram. The anesthetist determines the quantity of the dose to ensure creation of trance like state in the subject. He monitors and modulates the degree of unconsciousness during the interrogation<sup>[13]</sup>.

Dose strength is the most critical part of the test. A higher dose can kill the subject and a lower dose can cannot cause the desired semi consciousness in the subject. In such a case subject can pretend that he is in the state of trance, without being so. He then gives the answers just to mislead the investigator, explicate himself and may implicate some other person(s). If desired trance is achieved he answers the questions without any deliberations. These answers are believed to be truthful<sup>[14]</sup>.

The drug dose varies from person to person and depends upon his health, will power and his health and his attitude towards life in general and to test in particular. The anesthetist takes age, weight and general body built into consideration while determining the dose for a particular subject.

#### 2.1.4 The Subject

The subject has to be in good physical and mental health. A general physician certifies the same after carrying out the medical examination of the subject along with some bio medical tests if necessary. He should be free from heart diseases, diabetes, blood pressure and liver and kidney problems. In case women subjects they should not be pregnant or lactating mothers at the time of narco analysis

<sup>6</sup> Glow, Steve, “Criminal Justice” second edition, London Sweet & Maxwell, 2002.

<sup>7</sup> C.B. Hanscom, “Narco Interrogation,” Journal of forensic sciences 1 (1956) 37-45. 5 S

<sup>8</sup> Report of brain finger laboratories available at: <http://www.brainwavescience.com/executivesummery.php>.

<sup>9</sup> It’s the most common barbiturate used in narco analysis. It is ultra-short acting barbiturate and its effect lasts only few minutes. It causes a state of semi conciouness in the subject.

<sup>10</sup> The barbiturate makes a person more talkative and he may reveal truth.

<sup>11</sup> Preparation is covered by US Patents 2153729(1939) 2876225 (1959)

<sup>12</sup> Article 20(3) “No person can be compelled to be a witness against himself”. Administering hypnotic drug is not compulsion under Article 20(3) laid under case of state of Mumbai vsKathiKalu, 1961 (2) Cr Lj 856 (SC)

<sup>13</sup> Vikas Gupta, “constitutional validity of Narco analysis test in forensic science” 49 Journal of Indian Law Institute 531 (2008)

<sup>14</sup> Lakshman Sriram, “ Narco analysis and hard facts” 24 Frontline 97.(2007)

interrogation. The subject should not be under any kind of drug addiction or on barbiturates therapy. The subject should not be suffering from any kind of depression.

### 2.1.5 The Examiner

- a. The medical professional.
- b. The anesthetist.
- c. The forensic psychologist.

### 3. Success rate of Narco analysis test:

As long as the principles underlying the technologies are recognized as Scientific, no parallel can be drawn with "torture". In The Forensic Science Laboratory, Bangalore, More than 300 people has subjected to this test for committing various crimes. The success rate of this test was about to 96-97 percent as evaluated by the investigating agencies. About 25 percent of the total numbers of individuals subjected to narco-analysis test were proved to be innocent. Therefore, the rights of innocent individuals stand established when the public and human rights activists protest that investigating agencies adopt third degree method to extract information from the accused; it is time the agencies took recourse to the scientific methods of investigation, because this technique is really very helpful in crime investigation <sup>[15]</sup>.

### 4. History of Narco-analysis test

A person when in narcotized of mind reveals the truth and those thought which he/she normally conceals. Thomas De Quincy had done 1804 experiment he wrote with these experiences that "opium like wine makes the heart expanded and the person speak out his/her concealed feelings". Narcosis can be achieved by using drug like cocaine, ether, alcohol, scopolamine, barbiturates, hallucinogens, etc. 1980 Sheer Chance used sodium cyanide for narcosis <sup>[16]</sup>. In between 1903-1915, investigators used mild types of anesthesia commonly used in obstetrical practices. For extracting the truth or obtaining confession from suspect investigation used alcohol as a truth serum which depressed the central nervous system (CNS) because they believed on time-honored aphorism in vino veritas which means "where there is wine there is truth". The alcohol produces are mark able condor or freedom from inhibition and under the influence of this a person loses his/her tongue and eliminates repressive influence. About a century ago with the advent of anesthesia it was observed that after administering drug the patients were prone to make extremely naïve remarks about personal matters which in their normal state would never have been revealed <sup>[17]</sup>. In the late 19<sup>th</sup> century ether, chloroform or hashish were used to induce person and to deepen the hypnotic effect. In early 20<sup>th</sup> century, barbiturates were administered for the psychotherapeutic treatments, these experiments showed that most of the patients showed uninhibited flow thoughts were revealed under its influence. In Narco-Analysis barbiturates induced state of excitation is

created and patients recall forgotten and repressed conflicts, events and experience. These details also help in treatment of traumatic combat neurosis. In 1931, Italian psychoanalyst for the first time used mixture of mescaline (a hallucination drug that is extracted from the button shaped nodules on the stem of the peyote cactus- Bloomsbury's Concise English Dictionary, 2<sup>nd</sup> Edition, p. 906) and datura seeds for the purpose of psychoanalysis. It should be remembered that LSD (Lysergic Acid Diethylamide) was discovered in 1943 and it was then effectively used hallucination experience and later on this was used for psychotherapy. In 1953, it was observed that a single LSD application on neurotic patients was effective in abreactive memory activation. It was also found that by small dosages of hallucination useful images could be intensified and deepened. In 1960, the term "psycholysis" was in Fist European Symposium for Psychotherapy under LSD- 25. Psycholysis includes psychoanalysis with low dosages of hallucinogens. These experiences were dreamlike but at the sometime it was a clear altered state of consciousness which could be processed <sup>[18]</sup>. The procedure adopted is that the patient is kept lying on a bed almost darn and is attended by a trained nurse who talks with the patient and dosages of drugs are injected. The patient is reminded that he/she is under physician's control and should surrender to the vision and images which appear before him/her without any reservation. His/her remarks during these processes is either tape-recorded or written and then handed over to a patient so that he/she may prepare a retrospective record. After that a drug free session of interview takes place. In this procedure drugs affected experience has a supporting role. These sessions continue for the several months and even up to a year. Psycholysis <sup>[19]</sup> is considered for patients who were reluctant to use any kind of therapy. In 1960's, psychosis was used in 18 European centers and more than 7000 patients were treated within a periods of 15 years. In 1965, Alnaes and Grof suggested "a combination of psycholytic and psychedelic methods" and gave its name as 'psychedelic'. It is most modern concept <sup>[20]</sup>.

### 5. Narco analysis test and its effect on human body

Various kinds of drugs which are narcotic in genus are used during narco analysis test. These barbiturates apart from extracting truth from the person also have some other effects upon his body. As with most drugs, little is known about the way barbiturates work or exactly how their action is related to their chemistry. But the great deal is known about the action itself. They can produce entire range of depressant effects from mild sedation to deep anesthesia- and death. In small doses they are sedatives acting to reduce anxiety and responsiveness to stressful situations; in these low doses, the drugs have been used in the treatment of many diseases, including peptic ulcer, high blood pressure, and various psychogenic disorders. At three to five times the sedative dose the same barbiturates are hypnotics and induce sleep or unconsciousness from which the subject can be aroused. In larger doses a barbiturate acts as an anaesthetic, depressing the central nervous system as completely as a gaseous anaesthetic

<sup>15</sup> Naresh Kumar and Ved Pal Singh, "Narco analysis Test in investigation process". Law and Judicial XIV, MDU, Law Journal 108 (2009).

<sup>16</sup> Satyendra Kaul Zaidi and Mohd., Hasan Zaidi, Narco anlysis, Brain Mapping, Hypnosis and Lie Detector Tests, In *Introduction of Suspect 432*(Alia Law Agency, Allahabad, 2008).

<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*

<sup>20</sup> Id 434

does. In even larger doses barbiturates cause death by stopping respiration<sup>[21]</sup>.

The barbiturates affect higher brain centres generally. The cerebral cortex - that region of the cerebrum commonly thought to be of the most recent evolutionary development and the centre of the most complex mental activities - seems to yield first to the disturbance of nerve-tissue function brought about by the drugs. Actually, there is reason to believe that the drugs depress cell function without discrimination and that their selective action on the higher brain centres is due to the intricate functional relationship of cells in the central nervous system. Where there are chains of interdependent cells, the drugs appear to have their most pronounced effects on the most complex chains, those controlling the most "human" functions<sup>[22]</sup>.

The lowest doses of barbiturates impair the functioning of the cerebral cortex by disabling the ascending (sensory) circuits of the nervous system. This occurs early in the sedation stage and has a calming effect not unlike a drink or two after dinner. The subject is less responsive to stimuli. At higher dosages, the cortex no longer actively integrates information, and the cerebellum, the "lesser brain" sometimes called the great modulator of nervous function, ceases to perform as a control box. It no longer compares cerebral output with input, no longer informs the cerebrum command centres of necessary corrections, and fails to generate correcting command signals itself. At this stage consciousness is lost and coma follows. The subject no longer responds even to noxious stimuli, and cannot be roused. Finally, in the last stage, respiration ceases<sup>[23]</sup>.

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

1. As, said overdose of Barbiturates, and vasoconstrictive agent (likely to be used).
2. The total quantity and concentration, which may go much beyond dangerous limits as in relation to age, stature, fitness, and weight etc. is hazardous.
3. Rapid absorption from highly absorptive area or as a result of local Vasodilatation may cause a danger.
4. Accidental injection into a main vessel.
5. The subject may be hypersensitive to the particular drugs or a mixture of it.
6. It becomes a hazard where Adrenaline is being injected close to an end due to error.
7. The general effect of any or the error or negligence, the central nervous system may behave excitatory resulting in convulsion, or it may become danger to life from respiratory paralysis. In a remote chance the heart may also be affected<sup>[24]</sup>.

## 6. Narco-analysis in India

Although Narco-analysis is banned in many countries, a few democratic countries, India most notably, still continue to use Narco-analysis. Now in India, Narco-analysis is steadily being

mainstreamed into criminal investigations, court hearings, and laboratories and has also passed under the judicial scanner. The application of such tests has become increasingly, perhaps alarmingly, common term in India. In a spate of high profile cases, such as those of the Nithari killers and the Mumbai train blasts, suspects have been whisked away to undergo Narco-analysis. This has come under increasing criticism from the public and the media in that country. In India, the Narco-analysis test is mainly done in Forensic Labs at Bangalore and Ahmadabad.

In India, the Narcoanalysis test is done by a team comprising of an anesthesiologist, a psychiatrist, a clinical/forensic psychologist, an audio-videographer, and supporting nursing staff. The forensic psychologist will prepare the report about the revelations, which will be accompanied by a compact disc of audio-video recordings<sup>[25]</sup>.

In India, like other countries Narco-Analysis test is also conducted by police officer for assistance in extracting confession from the accused person. In India where drugs have gained only marginal acceptance in the police work, their use has provoked cries of "psychological third degree" and has proved to be a scientific method of interrogation, on other hand such drugs are used in Narco-Analysis test. However it has been in the news in the past few years as new effective interrogating techniques which was used by various investigative agencies in many cases. For example it was first used in 2002 in case of Godhra Carnage probe, in 2003 in case of Abdul Karim Telgi, Aarushi murder case, Nithari case etc. In this way, it has wide importance in the field of legal science. Doubt have been cast on its reliability and legal validity i.e. admissibility in the court of law. The application of Narco-Analysis test involves the fundamental question pertaining to judicial matter and human rights. However, the legal position of applying this technique as an investigative aid arises genuine issues like encroachment of an individual's rights, liberties and freedom.

With crimes going hi-tech and criminals becoming highly trained professionals, the use of Narco-Analysis by the investigating agency can be very useful because whereas the conscious mind does not speak out the truth, unconscious may reveal the information, which could provide vital lead in. Even under the best condition, these tests could result in an output contaminated by deception, fantasy and garbled speech<sup>[26]</sup>.

According to J.M. Donald, Psychiatrist, District Court of Denver<sup>[27]</sup> says that drugs interrogation is of doubtful value in obtaining confession to crime. Criminal suspect under the influence of barbiturates may deliberately without information, persist in giving untruthful answer or falsely confess to the crime they did not commit. The psychopathic personality, in particular, appears to resist successfully the influence of drugs. He concluded that a person who gives false information prior to receiving drugs is likely to give false information's under the effect of Narco-Analysis also, that the drugs are of little value for revealing deception and they are

<sup>21</sup> Geo Francis E, "Ethics And Efficacy Of Narco Analysis" *An International Journal of Culture, Philosophy And Theology*. No.25, 15 Mar 2012

<sup>22</sup> Grinker and Spiegel, *Men under Stress*, 389 – 394.

<sup>23</sup> Freedman, "'Truth' drugs," 145 – 154.

<sup>24</sup> Supra 14,50

<sup>25</sup> Sonakshi Verma, 'The Concept Of Narco analysis In View Of Constitutional Law And Human Rights' available at [http://www.rmlnl.ac.in/webj/sonakshi\\_verma.pdf](http://www.rmlnl.ac.in/webj/sonakshi_verma.pdf)

<sup>26</sup> Kalvakota Srinivas Rao "Narco-Analysis" ALTJ 14 (2008).

<sup>27</sup> J.M. Mac Donald, "Narco-Analysis and Criminal Law", A.M.J. Psychiatry 1954:111:283.

more effective in releasing unconsciously repressed material than in evoking consciously suppressed information.

### 6.1 Narco-analysis and its admissibility in courts

Lawyers in India are divided on whether the results of Narco-analysis test are admissible as evidence in courts. Confessions made by a semi-conscious person are not admissible in court, it merely aids the investigation procedure. A Narco-analysis test report has some validity but is not totally admissible in court, which considers the circumstances under which it was obtained and assesses its admissibility. Under certain circumstance, a person may hold a certain belief. By repeatedly thinking about an issue in a particular way, he begins to believe that what he is thinking is right. But it need not necessarily be the truth. Results of such tests can be used to get admissible evidence, can be collaborated with other evidence or to support other evidence. But, some argue, if the result of this test is not admitted in a court, it cannot be used to support any other evidence obtained the course of routine investigation<sup>[28]</sup>.

According to Dushyant Dave<sup>[29]</sup> the information revealed during truth serum test cannot have any evidentiary value in a court of law.

"Articles 20 and 21 are sacrosanct to my mind and nobody is allowed to touch them. The moment courts accept Narco-analysis results as evidence, it will be violation of the fundamental rights," the senior lawyer told students, adding that the only admissible evidence is oral statement made before court as per Indian Evidence Act.... He added, "Parliament, too, has not stepped in by making any legislation on the issue of Narco-analysis test without consent of a person." According to him, Article 13 offers a permanent injunction on making narco test result admissible evidence, as ultimately it is considered "a coerced statement". During the discussion, Dave also fell back on former solicitor general Harish Salve's argument that performing narco tests on a person without his consent is infringing on his privacy, which should not be permitted<sup>[30]</sup>.

### 6.2 Standing for Narco analysis test as per Provisions of Constitutional Law and Evidence law:

Law is for society and the society for law. Law has to keep with the changing social order because of evolutionary ethos of society. Judiciary has as an important organ of government, the responsibility of interpreting the law for the greater good of the society viewed in this proper perspective, judicial mind must remain in touch and be abreast of advancement of humanity. For combating emerging organised crimes having refined overtones, its detection, investigation and preventive method have to be used synchronously<sup>[31]</sup>.

Admission and confession form an integral part of evidence whether in a civil or in a criminal one and can therefore be

relied upon for proving the truth of the fact, incorporated therein. Since admission are an important piece of evidence. It is open to the person who made the admission to prove that those admissions are true. Even if proved to be true, admission are not conclusive but would be decisive of the matter<sup>[32]</sup>.

The expanding horizon of science and technology has thrown new challenges to lawyers and judges dealing with the proof of fact in disputes, where advanced techniques in technology have been used<sup>[33]</sup>.

One of the fundamental principles of administration of criminal justice is based on the maxim *Nemo Tenetur Seipsum Accusare* that means "no man is bound to accuse himself". Article 14(3) (g) of the International Covenant on civil and Political Rights also provides the rights, "not to be compelled to testing against himself or to confess guilt". In Britain it is a fundamental principle of the common law that a person accused of an offence shall not be compelled to find out document or object, which incriminates him. The privilege is based on the policy of encouraging person to come forward with the evidence in the court of justice by protecting them as far as possible from injury or needles annoyance in consequence of so doing. The Fifth amendment of the U.S Constitution also provides protection against self-incrimination by stating "no person shall be compelled in any criminal case to be a witness against himself<sup>[34]</sup>". The Constitution of India has clearly stated under Article 20 (3) that a person cannot be compelled to be a witness against himself. The provision operates as a shield against the compulsion of testimony. It established the preposition that –

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

This provision of the Constitution has provided due protection against such compulsion "to be a witness" and protection against such "compulsion" resulting in his giving evidence against himself. The protection against compulsion to be a witness is confined to person accused of an offence. There is no Constitutional protection for witness i.e. person other than the accused. However, the Indian Evidence Act, 1872, in Section 132 and 148 confer a limited protection against self-incrimination to witness in civil and criminal courts<sup>[35]</sup>.

In *Selviv. State of Karnataka*<sup>[36]</sup>, the SC has laid down the principle about conducting of Narco-Analysis that Narco-Analysis test cannot be conducted on the accused person without taking the consent from the accused person. If such test conducted on the accused person, it would be violative of Article 20(3) of the Indian Constitution. It was further held by the Court that this test should be conducted in the presence of the expert.

In case of *state of Bombay v. Kali Kathu Oghad*<sup>[37]</sup>, it was held by the Supreme Court that taking a thump impression or

<sup>28</sup> "Narco analysis and Its Admissibility in Court," *The Financial Express*, 20 March 2004, 10.

<sup>29</sup> Mr. Dushyant Dave is a Senior Advocate practicing in the Supreme Court of India and he is a leading practitioner on the commercial side.

<sup>30</sup> "Info under Narco Test Cannot be Treated as Evidence," *The Times of India*, 27 September 2009, 10.

<sup>31</sup> Manpreet Singh, "Constitutional Validity of Brain-mapping and Narco-Analysis Test" 301PULJ (2011).

<sup>32</sup> Cri.L.J2011, 121.

<sup>33</sup> National Textile Workers Union v. PR Ramakrishna AIR 1983SC

<sup>34</sup> 81 Charanjiv Singh "Narco-Analysis –Anew Trend in Forensic Science As A Tool of Investigation"240 PULJ(2007).

<sup>35</sup> Rajesh Punia,"Narco-Analysis investigation tool or a torture"115 CriLJ 23(2009).

<sup>36</sup> AIR 2010 SC 340.

<sup>37</sup> AIR 1951 SCI 808.

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

In case of *M.P. Sharma v. Satish Chandra* [38], the decision was given by a Constitutional Bench of 11 judges of Supreme Court. In this case it was held by the Court that protection under Article 20(3) of the Indian Constitution is available to a person against whom a formal accusation relating to an offence is pending. It would mean that if an FIR has been lodged against a person then the protection would be available. It was contended before the Supreme Court that the guarantee in Article 20(3) of the Constitution against testimonial compulsion is confined only to oral evidence of a person standing his trial for an offence when he is called to the witness stand. Rejecting this contention, the Supreme Court has said that there is no reason to confine the content of the constitutional guarantee to its barely literal import and therefore, to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decision. The taking of impression of part of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself as to arm the agents of law and the Courts with legitimate power to bring offender to justice.

Furthermore, it must be assumed that the founding fathers of Constitution were aware of the existing laws, for example Sec 73 of the Indian Evidence Act 1872 or Sec 5 and 6 of Identification of Pensioners Act (XXXIII of 1929). Hence the underlying principle behind the judgment [39] that declared P300 and Polygraph testing as Constitutionally valid as it is reasonable and require no statement to be made by the accused. Furthermore, it arms the agent of law and the law courts with legitimate power to bring offender to justice [40].

In *Nandini Satpathy. P.L. Dani* [41], it was observed by the Apex Court that in order to bring the evidence within the self-consciousness of clause (3) of Article 20 it must be shown not only that the person making the statement was an accused at the time he made it and it had a material bearing on the criminality of the maker of the statement, but also that he was compelled to make that statement under compulsion in the context must mean what in law is called duress. In the dictionary of English law by Eart Jawitt duress is explained as

follows:-

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

Similarly in *State of A.P. v. Inapuri Padma* [42], it was held by Andhra Pradesh High Court that where the petitioners are not the accused but arrested by the order of the court, there is no need to obtain any permission from the court to undergo Narco-Analysis test if they express no objection to undergo this test. Where the witnesses are not willing to undergo the test, the police has to convince the court as to what are circumstances that made the police to gain the impression that there is likelihood that the person proposed to be put to test knows something about the commission of the offence.

In the famous case of *Mohinder Singh Pandher and Surender Singh Koli v. State of U.P.* [43], which is also known as Nithari Murder case Narco-Analysis test was conducted on Surender Koli and Mohinder Singh Pandher in Jan 2007, who were the main accused in the famous Nithari Murder case. This test was basically conducted in the Forensic Science Laboratory in Gandhinagar. This test was basically conducted to ascertain the veracity of their statement during their custodial interrogation. During this test, the accused person disclosed the name of various females and children who had been murdered by them and also revealed his argue to rape them after murdering them. By the conducting of this test many relevant information were disclosed to the investigating authorities.

In *Dr. Rajesh Talwar and Another v. Central Bureau Investigation through its Director and Other* [44], which commonly known as Arushi Murder case. In this case Arushi, a 14 year girl was found to be dead in the home on 16-05-2008. The report was made by the parents of Arushi in the police station. In this case Hemraj, who was a domestic servant in the house of Arushi, was suspected of murder of Arushi. But after two days the dead body of Hemraj was also found on the terrace of the house of Arushi. The parents of Arushi were arrested by the police. In this case Narco-Analysis test, Polygraph test and Brain mapping test was conducted on the accused person. It was pleaded before the court that the report of these tests cannot be taken as an evidence in the court of law. It was held by the court on behalf of the judgment of *Selvi v. State of Karnataka* that such tests cannot be conducted by the authority if the consent has not been given by the accused person. Trial court held that the result of tests cannot be admitted as an evidence because the subject does not exercise conscious control over the responses during the conducting of the test.

In the case of *Sasntokhben Sharmanbhai Ladeja v. State of Gujarat* [45], the Gujarat High Court held that “the Narco-Analysis test is conducted under the supervision of doctors

<sup>38</sup> AIR 1954 SC 300.

<sup>39</sup> Ramachandran Reddy v. state of Maharashtra Cr.W.P.No.1924 of 2003 decided on 5-3-2004, Bom. H.C.

<sup>40</sup> Constitutional and Evidentiary Validity of New Scientific Test, 49 Journal of Indian Law Institute 537, (2007).

<sup>41</sup> AIR 1978 SC1025 at 1032.

<sup>42</sup> 2008 CriLJ. 3992 (AP).

<sup>43</sup> AIR 2011 SC 970.

<sup>44</sup> 2013(83) ALLCC 283.

<sup>45</sup> 2008CriLJ 68(Guj.).

and proper care is taken and there is consent, observation of the State of the accused, and, as such, the element of risk is minimal. Risk is in fact part of life and pervades in most of human activities and on this ground, alone, therefore, the impugned test cannot be condemned.

In *Abhay Singh v. State of U.P.* <sup>[46]</sup>, it was held by Justice Barkat Ali Zaidithat “it is now well settled that hairs and nails of the accused cannot be taken for the utilization during the investigation even if the accused does not agree for the same. In this case the application was moved by the investigating authority for conducting the Narco-Analysis test and brain mapping test of the accused person. It was the question before the court that whether the accused may be compelled for the Narco-Analysis and Brain Mapping test against his will. It was held by the court that the investigation and all efforts have to be made to find out the real offender, because, one guilty person, who escapes, is the hope of one million. If the Narco-Analysis test and Brain mapping test may be supportive in finding out the facts relating to the offence then it should be used and the court should not impede the conduct of the exercise.

In the case of *Rojo George Vs. Deputy Superintendent of Police* <sup>[47]</sup>, while allowing the narco analysis test Court is of the opinion that in present day the criminals started to use very sophisticated and modern techniques for committing the crime. So the conventional method of investigation and questioning to the criminals will not be successful for solution and there is need to utilize some new techniques such as polygraph, brain mapping and narco analysis. Court also said that when such techniques used in the presence of expert then it can't be raised that the investigating agencies violated the fundamental human rights of any citizen of India.

## 7. Conclusion

As the society is altering from one age into another there is a change in every aspect of life and these changes are not regarding only in positive effects only but also with regard to negative characteristics of society. As the society is changing very fast, the crime pattern is also rapidly changing. In the present setup, where the qualified trained criminals started substituting the criminal with outdated investigation methods seems to be very difficult. In this situation it is needed that the investigation agencies to update the process according to the social pattern and criminal behavior and it can be done only by assuming scientific technique in the investigation process. The Supreme Court of USA also privately approved the use of scientific technique in the investigation technique while public safety is at risk. This is the reason the apex Court never absolutely denied the use of Narco Analysis Tests. Various committees and commissions have issued strategies for the use of these scientific methods. On the whole Indian judiciary has consented conditional use of these tests for extracting truth. In fact, some of the laws relating to criminal justice system need amendments so that scientific methods of investigation can become part of the laws thereby they can be utilized for the benefit of the society at large and to have a crime free society.

There is urgent need for the application of forensic science in the criminal justice delivery system. The use of scientific or forensic evidence in criminal trials not only identifies the actual guilty but also prevents the innocent from being convicted wrongly. The principle of the Indian legal system is based on the fact that until proved guilty, a person is innocent and an innocent cannot be convicted even if a hundred criminals are surrendered.

With the above objective in mind, subjecting a person to Narco analysis without his consent will be surely undermining his individual rights which are absolutely negating the principle of a right based society.

The use of scientific proof in a forensic setting has proven problematic for both judges and attorneys because most of them are not technically trained. Much of the difficulty encountered by courts when facing scientific evidence lies not in a lack of understanding the underlying science but in the task of choosing between competing scientific explanations.

Law is a living process, which changes according to the changes in society, science, and ethics and so on. The Legal System should imbibe developments and advances that take place in science as long as they do not violate fundamental legal principles and are for the good of the society. The Central government must make a clear policy stand on narco analysis because what is at stake is India's commitment to individual freedoms and a clean criminal justice system.

## 8. References

1. Abhudaya A, Prithwajit G. Use of modern scientific tests in investigation and evidence: mere desperation or justifiable in public interest. *NUJS law review*. 2009; 2.
2. Hanscom CB. Narco Interrogation. *Journal of forensic sciences*. 1956; 1:37-45. 5S.
3. Monika G. Narco analysis in light of constitutional law and human rights. *IJMER*. 2013; 1(2):158.
4. Glow, Steve. *Criminal Justice* second edition, London Sweet & Maxwell, 2002.
5. Mac Donald JM. *Narco-Analysis and Criminal Law*, A.M.J. Psychiatry. 1954; 111:283.
6. Kalvakota Srinivas Rao. *Narco-Analysis* ALTJ 14, 2008.
7. Lakshman Sriram. *Narco analysis and hard facts*. 24 *Frontline* 97, 2007.
8. Naresh Kumar, Ved Pal Singh. *Narco analysis Test in investigation process*. Law and Judicial XIV, MDU, Law Journal. 2009; 108.
9. David RS. *Scientific techniques in crime investigation*. New York publication, 234.
10. Acharya S. *Is narco analysis a reliable Science?* Available at <http://ezinearticles.com>.
11. Satyendra Kaul Zaidi, Mohd, Hasan Zaidi, *Narcoanalysis, Brain Mapping, Hypnosis and Lie Detector Tests*, In *Introduction of Suspect 432* (Alia Law Agency, Allahabad, 2008).
12. Sonakshi Verma. *The Concept Of Narcoanalysis In View Of Constitutional Law And Human Rights* available at [http://www.rmlnl.ac.in/webj/sonakshi\\_verma.pdf](http://www.rmlnl.ac.in/webj/sonakshi_verma.pdf)
13. Vikas Gupta. *Constitutional validity of Narco analysis test in forensic science* 49 *Journal of Indian Law Institute*. 2008; 531.

<sup>46</sup> 2009 CriLJ 2189(All)(LKO Bench).

<sup>47</sup> AIR 1953 SC 131