

NARCO ANALYSIS TEST IN INDIA- A REVIEW

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ABSTRACT

The search for effective aids to interrogation is probably as old as man's need to obtain information from uncooperative persons. The foundation of criminal justice system is to prove the guilt of accused beyond all reasonable doubt and to protect the innocent from wrong conviction. This is all possible by the search of truth. Early from last century, investigating officers in many countries have turned to drugs for assistance in extracting confessions from accused persons. Drugs or truth serums, which are presumed to relax the individual's defences to the point that he unknowingly reveals truths he has been trying to conceal. Once the drug takes hold, they say, an insurmountable urge to pour out speech traps the malingerer. The use of so-called truth drugs in police work is similar to the accepted psychiatric practice of narco-analysis; the difference in the two procedures lies in their different objectives. Police departments in India have poor track record when it comes to collection, collation, and presentation of evidence before the courts. Consequently, when there is enormous pressure on a police department to solve a case, sending suspects to Narco analysis not only buys time but also gives the impression to the society that something concrete has been done about the case, say, the instance of Abdul Karim Telgi in the stamp paper scam and several other suspects in the Aarushi murder case. While there have been many clinical studies on the efficacy of narco analysis in interrogation or lie detection, there is no agreement that any of them qualifies as a randomized, controlled study, which is the scientific standard for determining effectiveness.

In this paper, the researcher has discussed the importance, need and the validity of Narco Analysis Test under Article 20(3) of the Indian Constitution as well as its statutory sanction under the Code of Criminal Procedure with reference to judicial pronouncements. Also, the paper advocates the use of narco analysis as a feasible alternative in place of third degree methods in investigation.

Key words: Constitution; Judiciary; Fundamental Rights; Investigation; Criminal Law

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INTRODUCTION:

The search for effective aids to interrogation is probably as old as man's need to obtain information from uncooperative persons.² The foundation of criminal justice system is to prove the guilt of accused beyond all reasonable doubt and to protect the innocent from wrong conviction. This is all possible by the search of truth. It is well known that physical coercion has at times been substituted for painstaking and time-consuming inquiry in the belief that direct methods produce quick results. Judicial system, particularly the criminal justice system, is not untouched with the advancement of science and the introduction of scientific investigation. The Most important function of scientific investigation is to convert suspicion into reasonable certainty of either guilt or innocence. The intersection of law, science and technology has flourished to become a focal point for evolution of many important issues on scientific evidences, like reliability and admissibility, on genetic, biological, cloning and of nervous system of person. Scientific evidences such as biological evidence cannot tell a lie and decision arrived at by such an evidence is said to be justice through science. The latest technique to elicit truth from suspect has become a topic of debate in context of its admissibility is Narco Analysis.³

Early from last century, investigating officers in many countries have turned to drugs for assistance in extracting confessions from accused persons. Drugs or truth serums, which are presumed to relax the individual's defences to the point that he unknowingly reveals truths he has been trying to conceal. Once the drug takes hold, they say, an insurmountable urge to pour out speech traps the malingerer. The use of so-called truth drugs in police work is similar to the accepted psychiatric practice of narco-analysis; the difference in the two procedures lies in their different objectives. Police departments in India have poor track record when it comes to collection, collation, and presentation of evidence before the courts. Consequently, when there is enormous pressure on a police department to solve a case, sending suspects to narco analysis not only buys time but also gives the impression to the society that something concrete has been done about the case, say, the instance of Abdul Karim Telgi in the stamp paper scam and several other suspects in the Aarushi murder case. While there have been many clinical studies on the efficacy of narco analysis in interrogation or lie detection, there is no agreement that any of them qualifies as a randomized, controlled study, which is the scientific standard for determining effectiveness.⁴ The essence of varying comments from professionals of long experience is that drugs provide rapid access to information that is psychiatrically useful but of doubtful validity as

² George Bimmerle, Effects of narcosis and considerations relevant to its possible counterintelligence use. CIA Historical review program, 22 Sep, 1993.

³Narco Analysis: A Volcano In Criminal Investigation System by Gagandeep Kaur, legal services india.

⁴ Wikipedia, last visited 2nd July,2017.

probative truth. This investigative technique, a result of advances in science, though more humanitarian as an alternative to physical coercions, still raises serious questions of individual rights and liberties, with some upholding its validity in the light of legal principles and others rejecting it as a blatant violation of constitutional provisions. In USA, police departments used it, in a few cases judges permitted it throughout the 1920s and 1930s. But by the 1950s, most scientists had declared the very notion of truth serums invalid, and most courts had ruled testimony gained through their use inadmissible.⁵ Whether such a substance could ever be used legally is a question some legal scholars believe is still open. In USA, no law at either the state or national level makes the use of truth serum a crime per se.⁶

Information gotten through drug-aided interviews would not be allowed in a trial because of the Constitution's privilege against self-incrimination, but it might be legal to use truth serum "solely for intelligence-gathering purposes"⁷. According to C.B. Hanscom, Author and director of the department of protection and investigation, university of Minnesota in his article came to 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.⁸ Ajay Kr. Barnwal, S.N.Ambedkar). Gerson and Victoroffopined that persistent, careful questioning can reduce ambiguities in drug interrogation, but cannot eliminate them altogether. In one study of their psychiatric use Brussel et al. maintain that stimulants added with regular drugs, gives the liar no time to think or to organize his deceptions. The test is a scientific method of investigation and prove useful in the part of investigation.

⁵ David Brown, Washington Post Staff Writer, November 20, 2006.

⁶ Jason R. Odeshoo ,the Stanford Law Review , 2004.

⁷Dr. M.S. Rao, Chief Forensic Scientist, Govt. Of India said " Narco -analysis and brainwave fingerprinting can reveal future plans of terrorists and can be deciphered to prevent terror activities. Traditional methods have proved to be a failure to handle them. Forensic activism is the solution for better crime management."

⁸ IOSR Journal Of Humanities And Social Science, Volume 19 Issue 10,(Oct. 2014).

Importance of Narcotic Test:

The scientific tests may be employed in two ways, that is, they may directly be used as evidence in court in a trial or they may be used merely as clues for investigation. Where the tests involve the making of a statement, they may be directly adduced in evidence, provided they do not amount to a confession because proof of a confession before a police officer or in the custody of a police officer is prohibited. However, if the statements are merely admissions, they may be adduced in evidence. Alternately, where no statement has been made or the statement cannot be adduced without an interpretation of the report prepared at the end of the test, the results of the test as interpreted by an expert may be furnished to the court. A third alternative is whereby the statements may be used as proof of the specific knowledge of the accused with regard to those facts, information about which has resulted in subsequent discoveries during the course of the investigation. Lastly, they may be used merely as clues for the investigation, where the statements are not adduced at all in evidence. However, the evidence gathered from the investigation is independently used in evidence, without the statements. As long as criminals and terrorists seek to misuse technology in pursuance of their evil motives, the Governments the world over will continue to use technology to invade our private spaces, which incidentally, are rapidly shrinking. This brings us to the question; does it take a thief to catch a thief?

Constitutional & Legal Stand Points on Narcotics:

The application of narco analysis test involves the fundamental question pertaining to judicial matters and also to Human Rights. The legal position of applying this technique as an investigative aid raises genuine issues like encroachment of an individual's rights, liberties and freedom. Subjecting the accused to undergo the test, as has been done by the investigative agencies in India, is considered by many as a blatant violation of Article 20(3) of Constitution which deals with the privilege against self-incrimination which reads, as "No person accused of any offence shall be compelled to be a witness against himself".

This provision contains the following components:

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

All the three ingredients must necessarily coexist before the protection of Article 20(3) can be claimed. If any of these ingredients is missing, Article 20(3) cannot be invoked.⁹ If the confession from the accused is derived from any physical or moral compulsion, it stands to be rejected by the court. The main issue thus is the question of its admissibility as a scientific technique in investigations and its ultimate admissibility in court as forensic evidence. Section 45 of the Indian Evidence Act, 1872 does allow experts' opinions in certain cases.¹⁰ However this section is silent on other aspects of forensic evidence that can be admissible in court in criminal proceedings. The right against forced self-incrimination, widely known as the Right to Silence is enshrined in the Code of Criminal Procedure (CrPC) as well.¹¹ It is well established that the Right to Silence has been granted to the accused by virtue of the pronouncement in the case of NandiniSathpathyVs. P.L. Dani,¹² no one can forcibly extract statements from the accused, who has the right to keep silent during the course of interrogation (investigation). By the administration of these tests, forcible intrusion into one's mind is being restored to, thereby nullifying the validity and legitimacy of the Right to Silence. The phrase 'compelled testimony' must be read as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like not legal penalty for violation. So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Article 20(3).

⁹Subhojyoti Acharya, Legal service India, Last visited on 3rdJuly,2017.

¹⁰ Section 45 of Indian Evidence Act reads:

“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 impression, the opinions upon that point or persons especially skilled in such foreign law, or of science, or art, or as to identity of handwriting or finger impressions are relevant.”

¹¹ In section 161 (2) of the CrPC which states that every person “is bound to answer truthfully all questions, put to him by [a police] officer, other than questions the answers to which, would have a tendency to expose that person to a criminal charge, penalty or forfeiture”.

¹² 1978 2 SCC 424

Indian Judiciary & Narcotic Test:

The Indian courts have given variable opinions in different cases and circumstances. The narco analysis test was introduced in India in 1936 but it was first used in 2002 in Godhara Carnage Case¹³. It was in 2004 when Bombay High Court gave judgement in Ramchandra Ram Reddy Vs. State of Maharashtra,¹⁴, people started debating this issue. In this case main issue was whether use of scientific technology specially brain mapping and lie detector is violation of Article 20(3) or not, the Bombay High Court opines that “No person accused of any offence shall be compelled to be a witness against himself”. It provides a privilege against testimonial compulsion. The court made a technical distinction between a Statement and a Testimony and said “What is required to be made under compulsion by an accused is a statement. In our opinion undergoing tests targets certain framed questions which drawn by expert after treatment that the person possess certain knowledge about the crime and in relation to targeted question put before him. So no way it can be said that any stretch of imagination which end result is statement. At the most it can be call as information received or taken out from witness. In our opinion they do not violate right against self-incrimination given under article 20(3) of Indian constitution.”

In M.P.Sharma Vs. Satish Chandra,¹⁵ there was a issue that Article 20(3) provides right to the person witness in courtroom and not beyond that and same issue has been raised by the respondent in the KathikaluOghad case¹⁶ to which apex court clearly observed that since Article 20(3) has words “to be a witness” and not “to appear as a witness” so the protection is extended to compelled evidence obtained even outside of courtroom. The privilege against self - incrimination enables the maintenance of human privacy and right to silence, said the Supreme Court. In the case of NandiniSatpathyVs. P.L. Dani¹⁷, the Supreme Court said that “No one can extract statements from the accused, who has right to silence during the course of interrogation (investigation)”. It was also claimed that the right to keep silence is by the virtue of Article 20(3) of the constitution of India and section 161(2) of Criminal procedure code and same was upheld by the apex court. In the case of Ram Jawaya Kapoor¹⁸, Court clearly said that the executive power can’t intrude on constitutional rights and liberty or any other rights of the person and if it is related with fundamental rights then must struck down as unconstitutional.

¹³ 2002 Sabarmati Train Carnage

¹⁴ 2004 Bom 23.

¹⁵ AIR 1954 SC 300.

¹⁶ *The State Of Bombay Vs. KathiKaluOghad And Others* (AIR 1961 SC 1808, 1962 SCR (3) 10).

¹⁷ AIR 1978 SC 1025, 1978 SCR (3) 608.

¹⁸ *Rai Sahib Ram JawayaKapurAndOrs. vs The State Of Punjab* (AIR 1955 SC 549, 1955 2 SCR 22)

However, there is an argument from the investigating agencies that the Narco analysis test is used as an aid for collecting evidence and helps the investigation so it cannot amount to testimonial compulsion as given under Article 20(3). In the case of Dinesh DalmiaVs. State,¹⁹ the Madras High Court while hearing the case held that the scientific tests such as polygraph, Brain Mapping and narco analysis conducted on accused to bring out truth would not amount to breaking his silence by force.

In the case of Rojo George Vs. Deputy Superintendent of Police,²⁰ 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. In the case of SantokbenSharmabhaiJadeja Vs. State of Gujarat,²¹ the court while upholding the order for conduction of Narco Analysis test on the accused, it observed that when after exhausting all the possible alternatives there was no possibility to find out the truth or nab the criminals and it is found by the prosecuting agency that there is no further headway of investigation, they are absolutely in dark then it is necessity of such tests. On the basis of this revelation if investigating agency finds some clues or records, some statement which helps or assists for further investigation of crime then there will not be any violation of Article 20(3) of constitution of India. In the case of DharampalVs. State,²² it was clearly said by the Apex court that the criminal justice system cannot act properly if the person living in the society would not be cooperative so it is the duty of every person to assist the state in bringing criminal justice and detecting the crime. It must be known that no one can withhold criminal information and escape from social responsibility by avoiding such information in the name of right to privacy which itself is not an absolute right.

In State of Gujarat Vs. Anirudh Singh,²³ the Supreme Court of India held that, it is statutory duty of every witness who has knowledge of commission crime to assist the state in giving evidence and it seems justified that if a person is not willing to give information which is necessary for investigation then adverse impression must be taken against them and no Article 20(3) has stop to do this. In this way

¹⁹ 2006 Cr.L.J. 2401.

²⁰ AIR 1953 SC 131.

²¹ 2008 Cr.L.J. 3992.

²² AIR 2003 SC 620.

²³ 1997 SC 749.

Supreme Court harmonised between protection given under Constitution and narco analysis. However, in *SelviVs State of Karnataka*²⁴, in a major blow to investigating agencies, the Supreme Court held the use of narco analysis, on any person without their consent as unconstitutional and violation of the 'right to privacy'. Supreme Court said: "We hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty." The learned judges leaned heavily on various judgements in USA on the undesirability of employing narco- analysis holding them to be "cruel, inhuman and degrading treatment". The Supreme Court's decision disagreed with the reasoning of the various High Court judgments in three main areas: a) the reliability/unreliability of the tests, b) self-incrimination protections,c) substantive due process rights.²⁵ The first area in which the Supreme Court strongly disagreed with many of the Courts in question related to the degree of validity and reliability of Norcoanalysis test. In questioning the scientific reliability of Norco analysis, the Court noted that there is no uniform opinion among the scientists on the reliability of the tests. The Court also noted that some subjects of narcoanalysis "can become extremely suggestible to questioning" while others might "concoct fanciful stories. The Supreme Court overruled various High Courts in declaring that the administration of drugs violated subjects' rights against self- incrimination in contravention of Article 20(3) of the Indian Constitution. The Court ruled that since the answers given during the administration of the test are not consciously and voluntarily given, and since an individual does not have the ability to decide whether or not to answer a given question, the results from the tests amount to the requisite compelled testimony to violate Article 20(3). Even if a person voluntarily agreed to undergo any of the tests at the outset, the responses given during the tests are not voluntary. While the High Courts addressing the issue of substantive due process rights gave scant attention to potential rights violations under Article 21 of the Constitution, the Supreme Court found that narcoanalysis violated individuals' right to privacy and amounted to cruel, inhuman or degrading treatment. The Court found the test to amount to an invasion of privacy by intruding into a "subject's mental privacy," denying an opportunity to choose whether to speak or remain silent, and physically restraining a subject to the location of the tests. The Court stated, "forcible intrusion into a person's mental processes is... an affront to human dignity and liberty, often with grave and long-lasting consequences.

²⁴ Smt. Selvi&Ors. v. State of Karnataka, Criminal Appeal No. 1267 of 2004.

²⁵ The Milli Gazette Published Online: May 22, 2013.

Analysis of the verdict:

Since the above judgement of the apex Court is still standing, it needs to be analysed on its merits. The Court skipped to note that all the scientific analysis methods such as finger prints, handwriting are not with their own short comings. In finger prints, there is no generally agreed-on standard for determining precisely when to declare a match. It is well known fact that fingerprinting has not been adequately tested and the claims of its experts have not been sufficiently examined according to the tenets of science. In one test conducted by FBI in 1995, an awful 34 percent of test-takers made an erroneous identification. The reason fingerprinting was not subject to scrutiny by judges was not because it obviously worked; in fact, it may have become obvious that it worked in part precisely because it was not subject to careful scrutiny.²⁶ As for handwriting analysis which the courts accept as evidence, the field assumes that each person has a unique handwriting pattern that allows the person to be identified through a comparison of proper handwriting specimens. Analysts subjectively assess the qualities and quantities of characteristics such as pen lifts, shading, pressure and letter forms. All acknowledge that this is not an exact science and that different experts can reach different conclusions. Hence no science is perfect and has its own limitations and so narcoanalysis. The prudent way will be to utilise the services it offers to the extent it will be useful rather than banning it completely with total disdain.

The Lords noted that it is plausible that investigators could obtain statements from individuals by threatening them with the possibility of administering either of these tests. They further said that it is also conceivable that an individual who has undergone either of these tests would be more likely to make self-incriminating statements when he/she is later confronted with the results. However, the Court seems to have not taken the fact the individual is always under the council of his lawyer. The remedy over the intimidation is always available from the court (similar to the remedies available when faced with physical intimidation from investigating officers). The person will get all the advice from his lawyer to answer the questions after the examination. To facilitate the advice from his lawyer, all that is needed is that a copy of the examination report given to the person which the court can order the police department to provide with. This is a practical problem which has a clean solution.

Section 161(2) CrPC provides that any person supposed to be acquainted with the facts and circumstances of the case shall be bound to answer truly all questions put to him other than questions which would expose him to a criminal charge. On the other hand, Article 20 (3) of the Indian Constitution provides that no person accused of an offence shall be compelled to be a witness against

²⁶ Jennifer I. Mnookin, Issues in science and technology, Vol XX, issue 1, 2003.

himself. The rule therefore, is to answer truly all questions with only one exception: the questions put should not have a tendency to self –incriminate. In contrast, under section 27 of the Indian Evidence Act (IEA) ,if any information revealed by an accused in police custody whether as a confession or otherwise, subsequently leads to the discovery of a relevant fact or facts in issue, the fact so discovered will be admissible as evidence in the court . Only a person against whom a formal accusation of the commission of an offence has been made can be a person accused of an offence within the meaning of article 20(3). Such formal accusation may be specifically made against him in an FIR or a formal complaint or any other formal document or notice served on that person, which ordinarily results in his prosecution in court. It emerges from the above that the protection under article 20(3) cannot be extended to suspects and witnesses not facing any formal accusation. In other words, the expression “accused of any offence” in article 20(3) must mean formally accused in praesenti and not in future. It follows that suspects and witnesses who are not otherwise accused do not have a fundamental right against self –incrimination guaranteed in article 20(3). The right guaranteed is a statutory right flowing from Section 161(2) of the CrPC which is broader in ambit and includes not only the accused but also persons who are likely to expose themselves to a criminal accusation. In other words, persons claiming under Section 161(2) of the CrPC need not be formally accused at the time of making self –incriminating statements but can also be potential candidates for criminal accusation.²⁷ In this sense, section 27 of the IEA will also have no application qua suspects and witnesses who although may or may not expose themselves to a criminal charge, are certainly not formally accused at the time of making any statement in police custody. This imply that Section 27 of the IEA will have no force with respect to self –incriminatory information obtained as a result of involuntary tests conducted on accused persons against the mandate of article 20(3). Also, suspects and witness are not covered from involuntary tests.

The use of words “witness against himself” and “expose him [self] to a criminal charge” occurring in article 20(3) and Section 161(2) of the CrPC respectively, signify that the protection guaranteed is only against making a statement which is self –incriminatory and not a statement which incriminates “any other person”. This is because Section 161(2) read with Section 161(1) of the CrPC casts an obligation on a person “acquainted with the facts of the case ”to “answer truly all questions relating to such case put to him”. Another important provision, Section 179 of the Indian Penal Code (IPC) may be mentioned here. This section criminalizes refusal to answer questions demanded by a public servant and provides for punishment which may extend to six months. Section 179 of the IPC when read with Article 20(3) and Section 161 (2) of the CrPC gives only one conclusion: a public servant

²⁷ Ashish Goel, *Verfassung und Recht in Ubersee*, Journal of Law and Politics in Africa.

can compel any person to state information relevant to a particular case in order to “expose” all persons of criminal worthiness save only his accomplice, if any. And if such information is revealed in police custody by an accused, Section 27 of the IEA will be attracted. It follows that compulsion is justified to extract information, in or outside police custody, which incriminates “any other person” not being the subject himself or his accomplice. In this sense, Judge Balakrishnan failed to observe that compulsion in the form of involuntary administration of tests to be a witness in a criminal case is not always against Article 20(3) and Section 161(2) of the CrPC. Involuntary administration of such tests can be lawful if administered to extract information from persons who are supposed to be acquainted with the facts and circumstances of the case but are not exposing themselves or their accomplices, if any, to a criminal charge by such revelation. So any person can be compelled to be a witness against any other person save his accomplice, if any. Secondly, any person other than a person facing formal accusation does not have a fundamental right against self –incrimination but only a statutory right against involuntary self –incrimination” flowing from Section 161(2) of the CrPC. That the right originates from a statute, it has to be read in conformity with the underlying scheme of the enactment with the help of statutes in parimateria.

In India, there is no enumerated right in the Constitution preserving privacy of persons. Right to privacy is not a guaranteed directly as a right under our Constitution. But even assuming that right to personal liberty guaranteed under Article 21 of the Constitution creates an independent right of privacy as an emanation, privacy cannot be an absolute right. Right to privacy therefore, is subject to reasonable restrictions “on the basis of compelling public interest”. Such compelling interest can also be identified with the need to prevent crimes and expedite investigations. Suspects and witnesses not facing any formal accusation cannot exercise the right to privacy when demanded information is not self –incriminatory. In this sense, even accused persons cannot exercise privacy if police interrogation does not adversely affect their case but has a tendency to expose any other person. Privilege of privacy against forceful self –incrimination cannot be exercised unconditionally. This is because privacy like any other right, can be restricted or curtailed by the effect of a law. Indian law books are replete with examples on restrictions to privacy in compelling state interest. For instance, under the Immoral Traffic Prevention Act, the sex workers can be compelled to undergo HIV tests. Likewise, a person can be compelled to undergo medical tests if charges are framed against him for rape, negligent act of spreading infectious diseases, drunken driving, Indian Telegraph act etc.

Admissibility” and “constitutionality” of scientific tests are two different things and must be treated accordingly. Under the Indian evidence law, results of scientific tests may not be admissible in

courts due to the presence of compulsion but that does not make it unconstitutional. Likewise, evidence collected by investigating officers contrary to law may still be admissible in a court. The idea is to weigh the actual evidence placed before the court by applying its judicial mind irrespective of the source. In other words, “relevance” and not “source” of the evidence is important while admitting it in trial. Under the IEA, scientific opinion cannot be a conclusive proof of the crime and is used only for the purpose of collecting further evidence if the results lead to truth; then not using the truth in the trial would be against civic decency.

Need of Narcotic Test:

By looking the present pathetic condition of society, on crime rate and subsequent conviction rate which is abysmally low, it is high time to improve the criminal investigative system. The main factor responsible for this gap is poor investigation system. To facilitate the investigating agencies there is need to provide an option of scientific tools which can be applied when there is absolute darkness to discover evidence. The traditional method of extracting truth by torture is very heinous which violates the rights of individuals and it is also blot in the society and for this reason scientific method like narco test is a must. The developments and scientific use of such developments should be welcome step in the criminal justice system. Various cases like Abu Salem, Nitharicase, Arun Bhatt Kidnapping case etc. the narco analysis was very much useful in solving the cases. The questions framed by the specialized person and expertise of the process so there is very less possibility to tell a lie, as indicated by many foreign and Indian writers. The evidence extracted through this process may be denied as reliable but it can be used to get an admissible evidence, to corroborate with other evidence or in support of other evidence. World’s best investigation agency in US had used the narco analysis test for extracting truth after September 11 incident and it was written by Gerald Posner that US agency also privately believes that the Supreme Court of US also implicitly approved using such test where the public safety is at risk. The head of drafting Committee of the National Criminal Justice System Policy Prof. N.R. Madhavan also recommended for the utilization of scientific method in investigation process in India. Demands for this test could also be made for purposes such as gauging the credibility of testimony, to refresh the memory of witnesses or to ascertain the mental capacity of persons to stand trial. Such uses can have a direct impact on the efficiency of investigations as well as the fairness of criminal trials.²⁸ In today’s complex social milieu with proliferating crimes against the society and the integrity of the country, it is necessary

²⁸ George H. Dession et al., Drug-Induced revelation and criminal investigation.

to keep in mind the interest of the society at large and the need for a thorough and proper investigation, as against individual rights, while ensuring that the individual constitutional rights are not infringed. If these tests are properly considered to be steps in the aid of investigation and not for obtaining incrimination statements, there is no constitutional infirmity whatsoever.²⁹

Conclusion:

The irony of the modern law jurisprudence is that there are many learned counsels engaged to defend the rights of the accused while there is none to defend the public cause and interest. In Krushi and Chairman Bank Scam, thousands of depositors lost their life time earnings and savings shattering their dreams and pushing them to the brink of bankruptcy and suicides. Yet when the M.D of Krushi Bank was nabbed, he refused to undergo narco analysis procedure. In such instances, if the right against self-incrimination is upheld against the public interest, it would weaken the evidence and thereby denial of justice to the public. Murderers, money launderers, terrorist are allowed to walk away scot free exploiting the loopholes in the legal system. Ironically in all these issues we apply criminal procedures only to protect the individual freedom of the accused while rights and lives of many people have been sacrificed. The present criminal justice system is obsessed with individual liberty and freedom and in this context a safe passage for criminals due to the inherent weakness in the criminal justice system leading to dilution of evidence. If the validity of the test and admissibility of narco analysis is upheld taking into consideration the circumstances under which it was obtained , there is a little possibility of miscarriage of justice. When administered as per procedure prescribed and observing the due safety precautions, the apprehension on the part of counsels of accused and critics is unwarranted. This move will bring about a qualitative change in the criminal justice and the erstwhile death chambers of police stations are replaced by operation theatres administering truth serum on the criminals and thereby offering a ray of hope that justice at last will prevail. After all, the criminal justice system is all about search for the truth and not the discouragement of it. It is the duty of a court to find the truth and do justice. And justice will not be done if the guilty is acquitted for unjustified failure to produce available evidence. In its overzealous pursuit to protect rights of the accused, Indian courts have forgotten that the victims also have rights. Refusal by persons to voluntarily state the truth on demand by the investigating officers constitutes non –observance to an important fundamental duty and the State, as a preserver of the fundamental duties, has the authority to compel observance from deviant citizens. If

²⁹ParcelonaPanda,Narco analysis and its evidentry value in India, 2011 PL July.

the citizens fail to perform their fundamental duties that they owe to the State then it is likely that the latter would not be able to live up to its promise in regard to fundamental rights of citizens.

