

IMPORTANCE OF NARCO ANALYSIS TEST IN INVESTIGATION AND IT'S ADMISSIBILITY

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ABSTRACT:

Narcoanalysis has been introduced as a tool in the investigation before a few year ago. Under this test the person goes into the subconscious state by passing the serum and answer the questions on the basis of knowledge, whatever present in their mind. Now, the question arise, is third degree better than the Narcoanalysis test? Narcoanalysis test is one of the topic of debate for its uses in the investigation. In India the main issues in context of this test are firstly, whether the Narcoanalysis is hit by article 20 of the Constitution i.e self-incrimination? And secondly, whether the statement made under the above mentioned test, come under the purview of section 25 and 26 of the Indian Evidence Act? Under this article the author will research, on these issues and upon remedies to remove the hurdles in the implementation of Narcoanalysis.

Keywords: Narcoanalysis, Third degree torture, self-incrimination.

1.1 INTRODUCTION

Few years ago a new technology has been introduced in the field of investigation through forensic science i.e. 'Narcoanalysis'¹. The term Narcoanalysis is derived from the Greek word 'NARKE' which means Anesthesia or Torpor and was used to describe a diagnostic psychotherapeutic technique that uses psychotropic drugs to introduce a stupor suspension or great diminution of sensibility, a state in which mental element with a

¹ Ekrama H Qureshi, "Article 20(3) And Narco Analysis Test" 29(2) *Gujarat Law Herald* (2009).

strong associated affects come to the surface where they can be exploited by the therapist (or investigating agency.² The Narcoanalysis³ test is also known as Lie Detector Testing or Truth System⁴ Testing. Under this test the person goes into the unconscious state by passing the serum and speaks whatever is present in their mind⁵. This high technology forces two professions, which are law and science, to work together in the array of cases⁶.

To regulate the society there are the need of various things, which also include the criminal free society⁷. Thus the criminal free society is based upon the sound criminal justice system and the successful and fair investigation is the main ingredient of the sound justice system.⁸ No, doubt the successful trial and conviction in criminal cases depends upon the proper investigation and the collection of evidence by the investigating officers⁹. It is easy for the investigating officer to collect the evidences and information from the crime scene or by other sources but it is difficult to extract the hidden

² Dr. Shakeel Ahmad, "Narco-Analysis and Rights of Accused: An Appraisal 50 *Civil & Military Law Journal* (2014).

^{3 3} According to Webster's Dictionary, the word Narcoanalysis had its origin in the 20th century and its coined from 'narco' + 'analysis'. It means psychoanalysis using drugs to induce a state akin to sleep.

⁴ The interest in truth serum was generated when in 1922 Robert House discovered that a patient under the influence of drug administered "cannot create a lie and there is no power to think or reason. The phrase 'truth serum' a first time appeared in the news in 1935. Clarene W. Munenberger started using barbiturate drugs on reluctant subjects which was only upheld in few cases. Soon it evolved into practice to extract truth from suspects using truth serums. (See (2007) *Cri LJ*, Journal Section at page 138.

⁵ As far as Narco Analysis Test is concerned it is conducted by injecting sodium pentothal in the body of proposed accused or subject. The amount of sodium pentothal varies from person to person but generally it is of 3 grams dissolved in 3000 ml of distilled water and injected with the help and presence of anaesthetist intravenously along with 10% solution of dextrose over a period of three hours. In this test probes are attached to various nerve endings by passing a serum through the blood. Under this test when emotions occur, physiological changes happen automatically without choice or deliberation. The literature indicates that a person who is lying tends to have a higher -pitched voice than truth-teller because of stress. This allows a thorough analysis of the truth about lie -detectors.

⁶ Dr. Jitendra Tiwari and Abhay Chand Mall Visen, "Narco Analysis and Article 20(3) of the Constitution of India, 50 *Civil & Military Law Journal* (2014).

⁷ Ajay Kr. Barnwal, Dr.S.N. Ambedkar, "Narco-analysis Test: An analysis of various Judgements of Indian Judiciary" 19 *Journal of Humanities and Social Science* (2014).

⁸ *Ibid.*

⁹ R.Ramachandan, "Scientific Techniques for Criminal Investigation" Kamal Publishers (New Delhi) 2012.

information.¹⁰The hidden information is extracted from the human by the Deception Detection Test (here in after DDT).The Narco analysis is one of the DDT test¹¹, Polygraph¹², brain mapping¹³ are the other two test of the DDT¹⁴.But here author deal with the Narcoanalysis test only¹⁵.

In the modern technology era, it is difficult task for the investigating officer to extract the information from the suspect by the traditional tools and there may be chances to erase all the evidences by the culprit¹⁶. Thus in complicated criminal cases, the scientific methods like Narcoanalysis test used by the investigating officer to trace the involvement of criminals and to cross check their findings and to determine whether suspect made the true statement or not¹⁷.Lie Detection technique can be aid in the criminal investigation to prevent the innocent person from the conviction and by proving the guilt of real culprit¹⁸.

¹⁰ As from the Right to information Act gives right to know the information of public importance which can be demanded from offices and which is in document form but the information only known to self is very difficult to extract and becomes crucial for criminal investigation.

¹¹ The symposium "The Physiological Detection of Deception: Where Are We and What Lies Ahead" focused on exactly these questions. Each year, people in police stations and even in their own offices are questioned about their involvement in criminal activity and workplace misconduct. To this end , a number of tests have been created to determine if an individual is telling the truth or lying , these test are called Deception Detection Test.

¹² A polygraph machine records the body's involuntary responses to an examiner's questions in order to ascertain deceptive behaviour. The test measures physiological data from three or more systems of the human body-generally the respiratory, cardiovascular, and sweat gland systems-but not the voice. There are other tests that test the voice for deception. "Polygraph "means literally "many writings," referring to the method of recording several physiological activities at the same time.

¹³ Brain mapping is a procedure that can help identify the functions of different regions of the -

- The exact location of various functions differs quite a bit from person to person. The presence of tumour, seizures, or other brain abnormalities may distort the usual location of some functions. General rules may not a apply.
- Mapping the brain by stimulating certain brains areas can help create a map for that person. The map tells the doctors just what parts of the brain are responsible for critical functions such as movement, sensation, speech or other functions.

¹⁵ *Supra* note 8.

¹⁶ *Supra* note 5.

¹⁷ www.thinklegal.co.in; posted in category national judiciary comments off.

¹⁸ In the *Aarushi murder case* somehow the evidences were collected by the CBI through the Narcoanalysis test. Scientific tests, including narco analysis, on Rajesh Talwar and Nupur Talwar gave the CBI a lead in the Aarushi murder case. During the narco test, Nupur admitted that the curved injury marks on Aarushi's forehead was caused by the golf stick. She had also ruled out the possibility of the involvement of the domestic helps in the crime.

Like the coins this test also have two sides due to which the test is in controversy, on the one hand scientist support the test and other hand criticism have been levelled against it¹⁹.

Recently, in many countries including India police officers have turned to use the drugs to extract the confession from the accused person. Thus, in India, the police officer uses the drugs in limited cases²⁰. In the past Narcoanalysis was unheard in India, but now it has been in the news from many years as a new technique of investigation used by the investigating officers²¹. The reason for the immense use of said test is increasing the gap between the rate of accusation and the rate of the conviction²². Dr. M.S Rao, chief forensic scientist, the government of India ²³ also suggested that-

“Forensic psychology plays a vital role in detecting terrorist cases. Narco-analysis and brainwave fingerprinting can reveal future plans of terrorists and can be deciphered to prevent terror activities. Preventive forensics will play a key role in countering terror acts. Forensic potentials must be harnessed to detect and nullify their plans. Traditional methods have proved to be a failure to handle them. Forensic facilities should be brought to the doorstep of the

And during the narco test, Rajesh talked about Hemraj and showed resistance and antipathy on the mention of his name. While describing the sound he heard at night (when Aarushi was killed), Rajesh mentioned “socha police aye hogi.” This, according to the CBI, appeared strange as to why a person thought about the police on hearing some sound in his flat.

¹⁹ See 2007 Cri LJ, Journal Sections ,at page 171,172.

²⁰ In India where drugs have gained only marginal acceptance in police work, their use has provoked cries of “psychological third degree” and precipitated medico-legal controverseries on one hand and has been proved to be a scientific method of interrogation on the other hand.

²¹ It was first used in 2002in the Godhra Carnage probe. It was also in news after the famous *Arun Bhatt kidnapping case* in Gujarat where in the accused had appealed to the NHRC and the Supreme court against undergoing the Narcoanalysis test. It was again in news in the *Telgi stamp paper case* and was made famous when Abdul karim Telgi was subjected to the said test in December,2003 at a government hospital in Bangalore.(see 2005 Cri LJ, Journal Section, at pages 150,151).

²² *Supra* note 6.

²³ Keynote address given to the 93rd Indian science congress. (See <http://mindjustice.org/india2-06.htm>)

*common man. Forensic activism is the solution for better crime management."*²⁴

From the above, it must be said that Narcoanalysis test is the important tool of the investigation, rather it is better than the third degree torture used by the police officers, to detect the crime and to prevent the crime in future and importance of the test is also accepted by the police officers also²⁵. In India third degree torture is prohibited then also it is used by the police officer. Thus if this test is allowed, then it will reduce the use of third degree by the respective authorities.

The core issue in the context of the Narcoanalysis test are the effect of the test in the body but according to the experts the test left no side effects on the body because the dose of the drugs is given according to the age, sex and hence there is the controversy in the admissibility of the test.²⁶ On the other hand, in many cases the accurate veracity of the confession has been proved such as in the Nithari killing case.²⁷

Thus the issues which will be discussed here are firstly what is the importance of Narcoanalysis test, secondly Narcoanalysis would be evidence or not, thirdly whether

²⁴ *Ibid.*

²⁵ 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 article he himself conducted under narco analysis 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.

²⁶ Experts and forensic scientists observed that the technique like Narcoanalysis plays very important role in extracting truth from peoples who have under suspension or anywhere linked with terrorist activity at the same time such information can be used to detect and prevent the criminal and terrorist activities. The technique is not as fair as stated by experts rather it has another face also, which puts a big question mark in the whole process. In the process of Narco analysis investigating agencies or experts tries to reach directly to the mind of the individual through some chemicals such as sodium pentothal or scopolamine. These are the drugs which used to establish contact with more or less inaccessible patients. Scopolamine is an alkaloid drug and a sedative of nervous system. It has been used generally in the treatment of cocain and morphin addicted persons and as an analgesic in obstetrics so in the process of making neutralized, imagination of a human mind by injecting these dreadful chemicals and extracting truth when the person is in semi-conscious stage raises many questions on the facts.

²⁷ The best example is *Nithari killings case* in which Mohinder singh pander and Surinder Kohli were subjected for narco analysis. But the information extracted was not prima facie used as evidence rather it was used only to support the existing evidence. (<http://www.thehindu.com/news/national/nithari-killings-case/article4235311.ece>).

the statement revealed from the test is hit by article 20(3) and 21 of the constitution and the last is admissibility and the combined effect of section 24 to 27 of IEA, 1872 would bar the statement.

2.2 OBJECT OF THE TEST

Object behind the Narcoanalysis test is that to resort the lying uses by a person through his imagination but in the Narcoanalysis test this imagination is neutralized as the person goes into the sub conscious stage. Hence it is believed that the person cannot tell lie and whatever he answers is spontaneous and true²⁸.

2.3 NEED FOR THE NARCOANALYSIS

No doubt, the way to commit the crime has been changed. In the Nutshell, during the last few years, the field of criminology has expanded rapidly²⁹. Thus there is a need for the detecting deception test and to improve the efficacy of the investigation to detect the crime. Thus the traditional methods of investigation including the third degree torture given by the police officer to extract the confession is harmful for the persons, where in this test the dose is injected by the experts or in the presence of the experts only and the questions ask in the above said test are prepared by the experts only³⁰. Under the Criminal Procedure Code, 1872 (here in after Cr.p.c) the statutory power given to the investigating officer to investigate the crime, to find out the truth and to reach the accused. Narcoanalysis test is a valuable technique, especially at the time when the investigating agency in the dark and after all the efforts and exhausting use of all the alternatives still there is no progress in the investigation³¹. When the agency is not in a position to find out the accused and the truth, in those cases the test helps in find out the

²⁸ 2007 Cri LJ, Journal Section, 172.

²⁹ By looking the present pathetic condition of society regarding criminals, crime rate and affected innocent people, it seems to be right time to check the ways by which this can be reduced. It can be possible by giving rich technology to the investigation agencies and Narco analysis is one of them.

³⁰ *Supra* note 6.

³¹ When the accused are not coming forward with the truth and to have a further clue in the matter further investigate the crime.

truth and to apprehend the real culprit by getting some clue after the test³². The conducting of Narcoanalysis is in the process of collection of evidence by the investigating agency. The scientific test helps the investigating agency in the collection of the hidden evidences and to prove the guilt or innocence of the accused³³, as the modern scientific test helps to protect the society also from the third degree methods of the Police officers³⁴.

NARCOANALYSIS FROM CONSTITUTIONAL POINT OF VIEW

RIGHT AGAINST SELF INCRIMINATION

The DDT test i.e. Narcoanalysis, brain mapping and lie detector test does not have any validity in the eye of the law. The reason behind the non legality is the confession which made in the sub conscious stage of mind³⁵. The right to self incrimination is based on the maxim 'Nemo temture Seipsum accusare' which means no one can be compelled to be his accuser. The Narcoanalysis test was came to India in 1936 but it was first time conducted in 2002, in the case of Godhara carnage case³⁶. Thus to determine the legality, firstly analysis the Article 20(3)³⁷ is important. Article 20(3) is providing the 'Right against Self Incrimination' i.e. Right to Silence³⁸, to the accused³⁹. Section 161(2)⁴⁰ of the Cr.p.c. deals with the protection against self incrimination for every person. The right to self

³² *Aarushi Murder Case* and Mere questioning of a person by a police officer while the person is suspected in a crime and the same is voluntary statement can't reveal as incriminatory. As in *Abu salem Case*, he disclosed many important information and his involvement of crime.

³³ *Santokben Sharmanbhai Jadeja v. State of Gujarat*, 2009 Cri LJ 68.

³⁴ 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.

³⁵ The court may, however, grant limited admissibility after considering the circumstances under which the test was obtained. (*Supra* note 4).

³⁶ *Supra* note 19.

³⁷ The Constitution of India; Article 20(3): "No person accused of any offence shall be compelled to be witness against himself".

³⁸ The right to silence said our constitutional court, like the presumption of innocence, is firmly rooted in both our common law and statute. The common law principle is that no one can be compelled to give evidence incriminating him, either before or during the trial. (*R v Camane and others* 1925 AD 570, 575) .

³⁹ The Constitution of India ,1949.

⁴⁰ The Criminal Procedure Code, Section 161(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.

incrimination embodies the general principles of English⁴¹ and American⁴² jurisprudence⁴³. Hence like the other countries, in India also debate is going on upon the admissibility of the Narcoanalysis.

In India the Courts, have been given several rulings time to time for the admissibility of the Narcoanalysis test. In the case of Ramachandra v. State of Maharashtra⁴⁴, the Bombay High Court held that Narcoanalysis test did not violate the right given under article 20(3) specifically the right against the self incrimination. The court further said that article 20(3) is available only against the compulsion of accused against himself self incrimination. The accused waive the protection by voluntary entering into the witness box. Therefore, evidence given on request is admissible against that person on administer the truth serum⁴⁵.

In the another case of Dinesh Dalmia v. State of Madras⁴⁶ the Madras high court held that DDT test which conduct on the accused to bring the truth would not be against the principle of 20(3) and i.e. right to remain silent and not against the section 45 of IEA. Even

⁴¹ In England, prerogative courts such as the Star Chamber and the High Commission and ecclesiastical courts used the oath ex-officio. In this procedure, any person on the street could be picked up, asked to take oath and answer questions for finding out if they were in disagreement on questions of theology with the Crown. The Privy Council on a motion from the House of Commons asked Coke and Chief Justice Popham when the oath could properly be administered. They replied, "No Man.... shall be examined upon secret thoughts of his Heart, or of his secret opinion".

⁴² According to the Fifth Amendment in the USA Constitution is that " The Constitution grants this right quite simply: "[No person]...shall be compelled in any criminal case to be a witness against himself..." However, as with most other constitutional rights, it is subject to interpretation by the courts and often inspires fierce debate".

⁴³ B.A.LL.B (Hons.) – III Year, Dr Ram Manohar Lohiya National Law University, Lucknow , Uttar Pradesh.

⁴⁴ (2004) Bombay High Court.

⁴⁵ *Ibid*. "No person accused of any offence shall be compelled to be a witness against himself". It provides a privilege against testimonial compulsion. The apex 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 posses 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."

⁴⁶ (2006) Cri L J, 240.

in this case court said that special rules have been made to convince the accused for the test⁴⁷.

Further in the case of Nandini Sathpathi v. P.L. Dani⁴⁸ the court observed that-

*“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 intimidator 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)”.*⁴⁹

The present criminal justice system is more towards to the accused and obsessed the individual liberty, due to which the evidence are diluted easily⁵⁰. This is based on the famous judicial dictum that “let the hundred guilty go unpunished rather than an innocent is punished”. Thus the over cautions for the individual liberty in the criminal cases also is facilitating the escape of terrorist and criminals⁵¹. Here the question which arises is that is there any right for the public against the individual.

Further the issue is Narcoanalysis is not completely prohibited in the country rather it is prohibited up to the testimonial compulsion. In one of the case the Andhra Pradesh high court ⁵²held that -

“Since the respondents are not the accused arrested by the police officer, there is no need to obtain any permission from

⁴⁷ *Ibid.*

⁴⁸ AIR 1978 SC 1025.

⁴⁹ *Nandani Sathpathi v.P.L. Dani* AIR 1978 SC 1023.

⁵⁰ The Indian system is based on the adversarial system which is more towards to the accused. All rights are given in favors of the accused not the victim. But due to this accused has been success in diluting the evidences.

⁵¹ See 2007 Cri LJ, Journal Section 140.

⁵² *State of A.P. v. Smt. Inapuri Padma and ors*, 2008 Cri LJ A.P 3992.

the court to undertake Narcoanalysis test, if they express no objection for undertaking the test. In cases where the witnesses are not willing to undergo the test, then only it is required by the police to make an application to the court seeking permission for undertaking a test against such persons. The Police are required to convince the court as to what are the circumstances that made the police to get an impression that the persons proposed to be put to Narcoanalysis test, likelihood of knowing something about the commission of the offence. Since the respondents are not the accused or suspects in the above crime, the question of putting the test of testimonial in these application does not raise⁵³.

In another case of *Kalawati v. State of H.P.*⁵⁴, the respected high court held that for 20 (3) there must be a compulsion upon the accused if there is no such compulsion then the matter doesn't fall under the purview of 20(3).

From the above it must be said that no doubt if there is compulsion against the accused to conduct the test, it will be hit by 20(3) but if it is given voluntary then it will not come under 20(3) and the test will be allowed. If the test is harmful then it will be completely prohibited not the partial prohibition. In the case of *Smt. Selvi and ors. V. State by Koramangala Police Station*⁵⁵, the issue of Narcoanalysis in the context of 20(3) was raised. The court observed that-

“ The term narco-analysis was introduced in 1936 for the use of narcotics to induce a trance like state wherein the person is subjected to various queries. The material (literature) produced shows that in the Narco-

⁵³ *Supra* note 49.

⁵⁴ 1953, A.I.R 131.

⁵⁵ 2006(6) AIR Kar 788.

analysis Test conducted under medical supervision, an accused will be injected with Sodium Pentathol or Sodium Amytal and thereafter the accused will be subjected to interrogation by the investigating agencies in the presence of expert doctors. But, this will be only after carrying out a detailed medical examination of the accused. If accused is found medically fit to undergo the procedure, then only it will be done, otherwise not. After finding an accused medically fit to undergo the test, the accused will be administered small doses of intravenous infusion of sodium pentathol."⁵⁶

Sodium Pentathol is the most commonly used drug as an induction agent for general anaesthesia routinely contemplated in most of the surgeries and the psychiatrists routinely use sodium pentathol in the diagnosis of mental illness and/or to evaluate the psychological realities. Under the influence of the drug, the patient talks freely and is purportedly deprived of his self-control and will power to manipulate his answers. This is because, few drugs are known to relax individual's defence so that unknowingly the person reveals the truth, which he has been trying to conceal⁵⁷.

So, during the search for effective aids to interrogation, which is probably as old as man's need to obtain information from an unco-operative subject, more recently, police officials in some countries have turned to the assistance of such drugs in the interrogation of unco-operative accused persons. The investigating agency uses such drug (of its choice) for getting information from persons/accused from their subconscious level at which it may be difficult for accused to lie. This is said to be due to lack of inhibition produced by the drug and the accused talks freely and respond truthfully to verbal questions. Thus, the use of such drug in police work/interrogation is similar to the accepted psychiatric practice of Narco-analysis and the only difference in the two procedures is the difference in the objectives. But the question is, whether, as a scientific technique in investigations,

⁵⁶ *Smt. Selvi and others v. State by Koramangala Police Station*, 2006(6) AIR Kar 788.

⁵⁷ *Ibid.*

Narco-analysis Test on an accused could be permitted? In other words, the issue is, whether administration of drug to an accused against his consent or wishes during Narco-analysis Test amounts to compulsion?⁵⁸

It is true that the information collected from the test include both inculpatory⁵⁹ and exculpatory⁶⁰ statements . The inculpatory statement is hit by article 20(3).But what statement is useful or not for the interrogation , it will be decided after the test only. In the case of Smt. Selvi and ors., the court allowed the Narcoanalysis test and held that the test is not hit by article 20(3) of the constitution⁶¹.In the case of Rock v. Arkansas⁶² the U.S supreme court held that hypnotically refreshed testimony could be used as a evidence.

Hence the constitutional validity of the test lies in the hands of the judiciary, but there is a tie between the societal interest and the individual interest⁶³. As discussed above that the sodium pantheon uses in medical also this is given according to the medical condition of a person in the presence of the doctors⁶⁴. This test is better than the third degree torture

⁵⁸ *Supra* note 8.

⁵⁹ Inculpatory means causing blame to be imputed to;to incriminate. For example, inculpatory statement is a statement which attribute liability on the person making such statement. It incriminates or places guilt or responsibility on someone. Likewise, inculpatory evidence is evidence that establish the guilt of an accused. It indicates that a defendant committed a crime.

⁶⁰ Exculpatory evidence comes in a number of different forms. It may be testimony from a **witness** who states that she saw someone other than the defendant commit the crime or that the defendant was with the witness when the crime occurred. It may be real evidence or an object from the crime scene, such as fingerprints lifted from a weapon that don't match the defendant's fingerprints. It may be security video footage that shows whoever committed the crime doesn't match the description of the defendant. Exculpatory evidence may be real or documentary, direct evidence or circumstantial evidence, testimony or a physical exhibit presented in court. If it tends to show the defendant might not be guilty of the crime, it is "exculpatory."

⁶¹ *Supra* note 52.

⁶² 1987 44 US 483 .

⁶³ *Sampatro R.Arveli v. State of Maharashtra* 2009 Cri LJ Bom 457.

⁶⁴ Sodium Pentathol is the most commonly used drug as an induction agent for general anesthesia routinely contemplated in most of the surgeries and the psychiatrists routinely use sodium pentathol in the diagnosis of mental illness and/or to evaluate the psychological realities. Under the influence of the drug, the patient talks freely and is purportedly deprived of his self-control and will power to manipulate his answers. This is because, few drugs are known to relax individual's defence so that unknowingly the person reveals the truth, which he has been trying to conceal.

given by the police officer to the accused for the confession. Thus there should be balance between the individual right and the societal interest⁶⁵.

PREPARATION FOR THE NARCO ANALYSIS

There are the three stages which is followed in the Narcoanalysis-

The Laboratory Procedure Manual of Forensic Narcoanalysis published by ministry of home affairs, New Delhi, in 2007 which provides for the constitution of the expert team to conduct the Narcoanalysis test. Further clause 4⁶⁶ provides that Constitution of the Team of Experts:-

The team of experts to conduct Narco analysis must comprise of:-

" i) Anesthesiologist degree/diploma (MD/DA) from recognized medical college (ii) experience of handling individual for Narco Analysis is desirable.

ii) Clinical/forensic Psychologist/Psychiatrist (M.Phil or Ph.D in either clinical or forensic psychology or MD/DPM in psychological medicine from a recognized university/institution (ii) experience in handling individuals for various aspects of clinical/forensic psychology is desirable).

iii) Supporting Nursing staff in O.T, if needed.

iv) Interpretation, if needed

v) General Physician, if needed." 4 provides that"⁶⁷

⁶⁵ *Supra* note 59.

⁶⁶ CrI.M.C.1218/2009 & W.P.(C)8273/2009 27 .

⁶⁷ Clause 4 The Laboratory Procedure Manual of Forensic Narco- Analysis published by the Ministry of Home Affairs, Government of India, New Delhi 2007 .

Clause 6⁶⁸ of the manual provides for the preparation of the Narcoanalysis test

- “ i. Medical examination for fitness- which includes routine lab investigations and special investigations, if necessary.
- ii. Instruction to the subject to- submit himself in an empty stomach for Narcoanalysis.
- iii. Mental status examination for- mental fitness by clinical psychologists/forensic psychologist / psychiatrist.”⁶⁹

From the basis of the above it must be said that Narcoanalysis test is far better than the Third degree torture given by the Police officer to extract the confession as third degree torture is illegal⁷⁰. This test is conducted in the presence of the experts, as above mentioned and there would be no harm if precautions will be taken according to the doctors. According to the author there is no reasonable reason to denial of the test which would be detriment to the accused.

NARCO ANALYSIS FROM THE EVIDENCE PROSPECTIVE:

There is no law which deal with the admissibility of scientific evidence including the Narcoanalysis test. Still the law is not clear about the admissibility of the Narcoanalysis. But in some case court allow the above said test when there are no evidences except the circumstantial evidence⁷¹. Thus in rare cases court allow the test to fill the vacuum in the evidences.

⁶⁸ CrI.M.C.1218/2009 & W.P. (C)8273/2009 28.

⁶⁹ Clause 6 : The Laboratory Procedure Manual of Forensic Narco- Analysis published by the Ministry of Home Affairs, Government of India, New Delhi 2007 .

⁷⁰ *Sister Sherly v. Central Bureau of Investigation*, Kerala high court(1218/2009).

⁷¹ Barcelana Panda, “Narcoanalysis and its evidentiary value in India”, *The Practical Lawyer* (2011).

The statement is classified into two parts i.e. admission⁷² and confession.⁷³ Further the confession made to the police officer or in the presence of the police officer⁷⁴ and in the custody of the police officer⁷⁵ is not admissible under Indian Evidence Act except it is made in the presence of the magistrate⁷⁶. When the accused is made the confession before the magistrate, the magistrate is duty bound to warn the accused that he is not bound to make the confession⁷⁷. Now from the earlier discussion it must be said that the Narcoanalysis is the important tool of the investigation especially the cases when there is a lack of evidences⁷⁸. The core issue is that the evidences collected from the test is hit by section 25 and 26 of the Indian Evidence Act, 1872. But if the Narcoanalysis test will be conducted in the presence of the magistrate then it would be a valid confession and it will

⁷²Indian Evidence Act, 1872; Section 17: Admission defined. – An admission is a statement, [oral or documentary or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned. Comment s Admissibility is substantive evidence of the fact Admissibility is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt.

⁷² Indian Evidence Act, 1872; Section 25: Confession to prove the veracity of the witness; *Bishwanath Prasad v. Dwarka Prasad*, AIR 1974 SC 11.

⁷³ A statement by the accused admitting in terms that he has committed the offence is a confession. See generally, *State of U.P. v. Deoman Upadhyaya*, AIR 1960 SC 1125 : 1960 Cri LJ 1504.

⁷⁴ The Indian Evidence Act, 1872; Section 25: 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."

⁷⁵The Indian Evidence Act, 1872; Section 26: 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. – 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." 2 [Explanation. – In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George³ or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882)⁴].

⁷⁶ *Ibid.*

⁷⁷The Criminal Procedure Code, 1973; Section 164(2): The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

⁷⁸ These techniques are equally relevant in cases where conventional forms of crime have assumed immense proportion, say in the form of public outcry, or to make up for shortfalls in investigative processes, say, the instance of Abdul Karim Telgi in the stamp paper scam and several other suspects in the Aarushi murder case.

not be hit by section 25 and 26. In the case of *Selvi and ors. v. State of Karnataka*⁷⁹ the court held that-

“it was held by the Supreme Court of India that the results of the test cannot be admitted as an evidence even though consented by the accused because there is no conscious control is being exercised by the subject during the course of test but the court left one option that if the subject consented for the test then any material or information discovered that can be admitted under section 27 of the Indian Evidence Act, 1872. Further it was also held that according to section 25 of Evidence Act “Confession made before any police officer are not admissible as evidence before the court.” Thus the court is of the view that the statements made by the subject during custody are not admissible as evidence unless same has to be cross examined or judicially scrutinized.”⁸⁰

Further in the case of *Dharampal v. State*⁸¹ the court held that-

“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.”⁸²

⁷⁹ AIR 2010 SC 1974.

⁸⁰ *Selvi and ors. v. State of Karnataka* AIR 2010 SC 1974.

⁸¹ MANU/SC/0260/2003.

⁸² *Ibid.*

In the case of *State of Gujarat v. Anirudh Singh*⁸³ the Supreme Court held that every witness has the duty to aid in the interrogation⁸⁴. In the *Shashi Murder case*, the court allowed Narcoanalysis test, the CJM permitted the police to conduct Narcoanalysis test on Vijaysen Yadav, the main accused. In another case *Satakben Sharm and Hailodeji v. State of Gujarat*⁸⁵, the hon'ble high court granted permission for Narcoanalysis test in spite of the opposition made by the accused. As in the case of *selvi* the Supreme Court also held that if the accused voluntarily give consent to conduct Narcoanalysis test upon him then that later on statement use as a discovery statement under section 27⁸⁶ of the IEA.

Thus the Supreme Court left open the possibility for the admissibility of the test with one exception i.e. "voluntary administered test" which means discovered with the help of the information obtained from such test can be admitted as evidence⁸⁷. Hence the question rises if it is harmful in nature and effect to the body then why it is admissible when people give voluntary. Then like the other illegal act such as suicide, euthanasia, it should be completely prohibited, not partially prohibited.

1.5 CONCLUSION AND SUGGESTIONS

As we all know that the technology is changing very fast. Due to the advanced technology the crime pattern also has been changed.⁸⁸ In this scenario the criminals replaced the

⁸³ MANU/SC/0749/1997.

⁸⁴ *Ibid.* 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 Supreme Court harmonised between protection given under Constitution and Narcoanalysis.

⁸⁵ 2008 Cri.LJ 68 (Guj).

⁸⁶ Indian Evidence Act, 1872; Section 27: How much of information received from accused may be proved. – Provided that, when any fact is proved to be 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.

⁸⁷ Dr. Jitendra Tiwari and Abhay Chand Mall Visen, "Narco Analysis and Article 20(3) of the Constitution of India, 50 *Civil & Military Law Journal* (2014).

⁸⁸ A. Jesani, "Narco Analysis, Torture and Democratic Rights", 22nd Dr. Ramanadham Memorial Meeting, 13 (2008).

traditional methods from the advanced technology to commit the crime. These changes of crime pattern shake the conscience of the society⁸⁹. Thus there is a need to change the tools of the interrogation, because now the criminals know the way to escape from the apprehension. There are various modern tools of the investigation, which helps in the interrogation. Narcoanalysis is one of the tool of modern scientific tools. As discussed earlier, in the cases where there no such evidences are available, Narcoanalysis can play an immense role in the investigation. But in India there is huge cry for admissibility of the test. There are no particular provisions which deal with scientific tools. The discretion lies in the hands of the judiciary to allow or not to allow the Narcoanalysis test. Further we can say that Narcoanalysis test is being practiced in India because of the mutual understanding between the judiciary, police, investigative agencies, human rights activist etc⁹⁰. There are mainly two issues in these contexts firstly the self incrimination and secondly the statement hit by section 25 and 26 of the IEA, 1872. From the above discussion, it must be said that no doubt according to article 20(3) the Narcoanalysis test violate the right to self incrimination of the accused which include the suspect also. But as in the case of Rohit shekhar v. N.D Tiwari ⁹¹the Delhi high court held that where there is a conflict between the individual right and societal right then in those case the societal interest will be prevail over the individual interest. Thus the Supreme Court also left the door open for the admissibility of the voluntary test⁹². Author suggesting firstly that if the legislature allow the Narcoanalysis test before the magistrate and allow to it as evidence then it is beneficial in the cases like terrorism, rape and such other heinous crime which is shaking the conscience of the society. Secondly the test is not so much harmful as compare to the third degree torture given by the police officer and hence if the test is allowed then the accused would be save from the third degree torture which are violation of fundamental rights in the real sense. Thirdly there should be a series of crime in which

⁸⁹ *Ibid.*

⁹⁰ Ahmad, "Narcoanalysis and Rights of Accused: An Appraisal" 50 *Civil and Military Law Journal* (2014).

⁹¹ 2012, Delhi High Court.

⁹² *Smt. Selvi & ors v.. State of Karnataka* AIR 2010 SC 1974.

Narcoanalysis should be conduct. Fourthly, the statement reveal from the test should not be disclosed to anyone except the judicial officers and the experts who will be present there. And the last is that there should be a team of experts at the time of test who provide the drug according to the mental and physical condition of the accused.

At world level also, some country completely restrict the scientific tools and some other made laws for the proper admissibility of the test. But In India the legislature and the judiciary does not completely allow or disallow the scientific methods as a investigation tool.

