



Email:editorijless@gmail.com

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NARCO-ANALYSIS TEST IN INVESTIGATION

J.RAJA KUMAR

Research Scholar, P.G. Dept. of Legal Studies and Research, Acharya Nagarjuna University,
Nagarjuna Nagar, Guntur

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ABSTRACT

In the changing paradigm of society the individual started to search their place in the domain of comfortability and for these they want to be strong economy, strong in politics and strong in the culture. This leads a huge competition among the people and people started using newer technologies in every area so that one will always dominate others. The criminal justice system is no more different from other systems and it has also affected from new technological advancements. Development of new tools of investigation has led to the emergence of scientific tools of interrogation like the Narco-analysis or 'truth drug/serum' test. The notion of drugs capable of illuminating hidden recesses of the mind, helping to heal the mentally ill and preventing or reversing the miscarriage of justice, has provided an exceedingly durable theme for the press and popular literature when Narco-analysis tests are common. As interrogators fail to find the offender and make series of embarrassing bungles, they are under pressure to find the culprit, and so they turned to a practice long since banned in most democracies, but on the rise in India: the Narco- analysis. Such tests are a result of advances in science but they often raise doubts regarding basic human rights and also about their reliability.

The search for effective aids to interrogation is probably as old as man's need to obtain information from an uncooperative source and as persistent as his impatience to shortcut any tortuous path. Any technique that promises an increment of success in extracting information from an incomplicant source is ipso facto of interest in intelligence operations. In the annals of police investigation, physical coercion has at times been substituted for painstaking and time consuming inquiry in the belief that direct methods produce quick results. The deception detection test is one of the technologies which utilizes as a tool in the extraction of truth in the investigation process. It includes Narco analysis, Lie detector and brain mapping. As in present complex society numbers of new criminal activities have grown up and criminals have started using new techniques for hiding and committing crime making it very difficult for investigating agencies to solve these complex cases with traditional methods. One of the consequences is that there is great demand of new technologies in the criminal justice system. Even various experts and committees have also recommended for the use of these technologies. These technologies are not only important for investigating the crimes but also helpful in the tracking out the future criminal activities going to commit by the criminals in the society. Though

there is a demand for the use of these techniques but at the same time it raises legal, ethical and some medical issues regarding use and implication of these techniques. Through this article we made an attempt to analyze the issues and some important decisions of Judiciary which greatly affected the criminal justice system in India. Legal questions are raised about their validity with some upholding its validity in the light of legal principles and others rejecting it as a blatant violation of constitutional provisions. We cannot close our eyes against the ethical concerns of Narco-analysis test too. Narcoanalysis raises a host of ethical, legal, and medical issues, hence its pertinence as the topic for this publication.

Keywords: Narco-analysis, Truth-serum, Investigation, Criminal justice system, Lie detector, Brain mapping, Legal evidence.

" ... Society has the right to be protected against the criminal, and all of society's rights are manifestly superior to those of the criminal. There can be no gainsaying the fact that a suspect is either innocent or guilty, and no one knows the truth better than does the suspect himself. It, therefore, stands to reason, that where there is a safe and humane measure existing to evoke the truth from the consciousness of the suspect, that society is entitled to have the truth..... If society has the right to take property, liberty, and life for its protection, then society has the right to make, by trained men, the use of truth serum legal. The framers of the Bill of Rights believed the rights of society were paramount to the rights of the criminal. It was an instrument for the protection of the innocent and not intended for the acquittal of the guilty". - Dr. R.E. House's address to the First Annual Meeting of the Eastern Society of Anaesthetists in 1925 about the role of his scopolamine tests.

1. Introduction

Law is dynamic and not static and therefore, as society evolves, law has to keep in consonance with the changing social order. Law is the instrument of societal change and the judiciary has the responsibility of interpreting the law for the greater good. Therefore, it is clear that the judicial mind must stay in touch and keep in step with the advancement of humanity. To combat organised crime, its detection, investigation and prevention method have to be employed synchronously. If the criminals use new technology in committing the crimes, the enforcement agencies have to be used to the new techniques in solving such crimes. If the enforcement agencies do not use these new technologies for solving such complicated the crimes, it would be very difficult to detect the perpetrators of such crimes. Therefore, in the context of the changing organised modern criminal who are taking shelters behind and making full use of new sophisticated technologies . Krishna Iyyer J. Remarked, "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. Across the globe, methods of law enforcement are witnessing colossal changes with progress in science and technology. The contemporary society needs modern scientific methods of crime recognition, in case the general public goes unprotected. There are several methods for crime investigation to detect lying and deception by suspect and accused. Most of the techniques are founded on torture, either physical or mental. But modern techniques like Polygraph and brain-mapping test are non invasive method that will detect deception without causing physical or mental injury to the subject. Methods of investigation are witnessing rapid shifts with the amalgamation of scientific techniques and criminal procedure.

Scientific techniques are necessary for proving the guilt as well as innocence of the accused. As science has outpaced the development of law or at least the laymen's understanding of it, there is inevitable difficulty concerning what can be acknowledged as proof in court. Narco-Analysis is one

such scientific progress that has become an increasingly perhaps alarmingly, common in India. Narcosis is a state of stupor induced by drugs. The use of narcotics as a therapeutic aid in psychiatry was limited to the use of opium for mental disorder by the early Egyptians. J. Stephen Horsely introduced the term "Narco-Analysis" in 1936 for the use of narcotics to induce a trances like state in which the patient talks freely and intensive psychotherapy may be applied. Now days psycho analytical and narco analytical tests are carried out to interpret the behaviour of the suspect, accused person or the criminals. The term Narco-Analysis though a misnomer is becoming very popular in law enforcement and judicial circle. Abreaction is a method of psycho-analysis practiced by psychiatrist, where in a short acting narcotic drug is administered to the patient to induce a hypnotic stage. Narco-Analysis is thus a mode of psychotherapy which is an aid to the scientific interrogation in reality. It is a process whereby a person is put to sleep or into semi-conscious state by means of chemical injection and then interrogated while in this dream like state. It is the view of the scientist who conducts the Narco-Analysis test on the person who is suspect, that in semi-conscious state person losses self control and speak truth. **Meaning and Concept of Narco-Analysis Test** Generally it is viewed that if a drug is given to person which repress his power to reasoning without affecting the memory and speak, it is possible to made him to speak truth. The underlying theory is that a person is able to lie by using his imagination, but due to the influence of drug a person losses his self control as a result of which he fails to imagine the fact and would speak the truth. In this state it is very difficult for him to tell lies, rather he would talk about which he had the knowledge. The utilization of such drug in police work or interrogation is alike to the traditional psychiatric practice of Narco-Analysis and the only difference in the two procedures is the difference in the objectives.

2. Narco - Analysis

A new terminology had been added in the field of Criminal investigation through forensic science in the year 1936 which is known as Narco-Analysis test. The term 'Narco-Analysis' is derived from the Greek word Narco (meaning "anaesthesia" or "torpor") and is used to describe diagnostic and psychotherapeutic techniques that used psychotropic drugs ,particularly barbiturates to induce a stupor in which mental element with strong associated effect come to the surface, where they can be exploited by the therapist . It is also known as drug hypnosis or a truth serum or a combination of hypnosis or narcosis .Thus it is method to make human thought and communication manageable. According to Webster Dictionary, "Narco-Analysis means psycho analysis in a state which is similar to sleep and this state is achieved by use of drugs. These drugs are known as 'truth drugs' or 'truth serum'."

According to the online Merriam Webster's Medical Dictionary, Psychotherapy that is performed under sedation for the recovery of repressed memories together with the emotion accompanying the experience is designed to facilitate an acceptable integration of the experience in the patient's personality. It can also be defined as a psychotherapy that is conducted while the patient is in sleep like state induced by barbiturates or other drugs, particularly as a means of releasing repressed thoughts, feelings or memories. It's use is limited to such situation when there is compelling, instant requirement for a patient's responses. Narco-Analysis test is also known as "truth Serum test". They are the drugs sometimes used clinically. Some of them are seconal, Hyoscine (scopolamine), Sodium Penthonol, Sodium Amythal and Phenobarbital. These drugs produce a state of semi-consciousness in the subject and the reasoning faculty of the individual becomes ineffective. These drugs works on the principle of inhibiting the thought filtration procedure of the brain. The principle behind this is that when we lie, our thoughts are filter by the brain and decides by the brain what is to be exposed and what has to be unrevealed. By application of this procedure a person can no longer sift his idea and to speak the truth, or so is supposed. Thus this test is a scientific procedure to obtain information from an individual in a natural sleep-like state and a person is liable to lie by using his imagination .

In the Narco-Analysis test, the subject's inhibition are down by prying with his nervous system at the molecular level. In this state, it becomes difficult although possible for him to lie. In such a sleep like state efforts are made to get "probative truth" about the offence. Narco-Analysis test is conducted by 3 gram of Sodium Pentothal dissolved in 3000 ml of distilled water and the solution is administered intravenously along with 10% of dextrose over periods of three hours with the help of a qualified anaesthetist. It is a barbiturate (thiopental sodium) making the neural membrane more permeable to Chloride ions, resulting in the general inhibition, starting with the cortex and working down to the lower brain regions with increasing biological effects at just neural inhibitory effect to create an alcohol-like disinhibition". At of normal behaviours restraints. A higher dosage may create a stupor and inhibit independent thought and actions to a greater extent.

Essentially, the drug is used to reduce resistance to the hypnotist, who then has to frame question and evoke response in a way likely to produce accurate answer. However this possess many problems .Too little narcotics and the subject may be able to fake through the situation ,too much and they may become unconscious, the accuracy of answer may be effected .Sodium Pentothal binds GABA(gamma amino butyric acid) (Chloride channel super complex, which is the primary inhibitory neurotransmitter channel in brain) forming a complex at a site ,which exerts control over the permeability of chloride ions in to neural membrane leading to the attainment of "the state of disinhibition". At a dose, which does not cause sleep, or rather unconscious, disinhibition". At does remove the barrier of inhibition and it is difficult for anyone to lie at this stage. 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 no 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.

3. Chronological list of discoveries and development in the field of Narco-Analysis

In 1903, the drugs like barbiturates were first synthesized. In the 1st half of 20th century, 2005 drugs of barbiturates class have been prepared but about 24 of the drugs have been prescribed as medicine. In 1918, these drugs had given an unbelievable result on catatonic patient who had given mute rigid. After the injection of sodium cyanide by Arthur S. Lovenhart of University of Wisconsin the patient suddenly relaxed, open his eyes answered a few questions. In 1922, a Dallas Texas Obstetrician Robert House scopolamine as a truth drug on two imprisoned soldiers whose guilt seemed clearly confirmed but after the administration of the drugs both of them denied the charges framed against them under the influence of drugs and upon trial the court found that they were not guilty and they were exonerated. From 1922 to 1930, these drugs were effectively used by the police in the interrogation of suspect to extract the truth or to obtain confession. In 1929, scientist Bleckwenn used the sodium Amythal first time directly through the mouth of a patient. In early 1930s, many psychiatrists were experimenting with drugs as an adjust to establish methods of therapy. In 1932, Lindermann gave for the first time small dosages of sodium Amythal intravenously to the patient. In 1935, some of the barbiturates were used on reluctant suspects by Clarence W. Muehberger, Head of the crime Detection Lab, East Lansing. In 1936, J.S. Horsely introduced the term Narco-Analysis. In 1942, Grinker and Spiegel coined the term "Narco-Analysis technique".

4. Narco - Analysis in other countries

History of Narco-Analysis Test For those of us who grew up in sixties and seventies, things like "truth serum" were the stuff of James Bond, Cold War, CIA and KGB. It could not have been imagined that things would come to such a pass that the administration of sodium pentathol and admissibility of narco-analysis would have to be dealt with in the arena of law as a serious issue. About a hundred years back hypnosis was abandoned even by psychoanalysts and today we find that inducing a trance-like state through drugs or hypnosis is being looked upon as a scientific method and there is a debate as to whether the information extracted should be admissible in courts. The way things are going we may soon find courts upholding "free association" which occurs in psychoanalysis as evidence of crimes! Free association itself is a mixture of fact and fantasy and a far cry from evidence.

The increasing use of narco-analysis, including against political activists, seems to indicate the likely direction of things to come. It is probable that the police may find it more convenient to go in for narco-analysis rather than scientific investigation. Though there also seems some move to make it admissible as evidence, however, even if it remains inadmissible, the police can always introduce revolvers, knives, explosives supposedly recovered pursuant to revelations in narco-analysis as evidence. As a number of us know, the police is never short of un-accounted weapons and is not hesitant to plant and show them as recovered from accused persons. The ramblings of a drug induced trance leave a lot of potential to introduce almost anything as recovered pursuant to narco-analysis of the accused individual. Even the CIA concluded that the outpourings after the introduction of drugs like sodium pentothal may comprise hallucinations, illusions, delusions and psychotic manifestations. In fact, in a 1977 Senate hearing, the CIA declared that there is no such magic as a truth serum. That the notion of truth serum exists in popular imagination but has no basis in reality. It is ironic that the methods which were abandoned even by the CIA long back are now finding favour with our courts.

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. 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-honoured aphorism *in vino veritas* which means "where there is wine there is truth".

The alcohol produces a remarkable 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. In the late 19th century ether, chloroform or hashish were used to induce person and to deepen the hypnotic effect. In early 20th 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, 2nd Edition, p. 906) and dhatura 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. 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 is considered for patients who were reluctant to use any kind of therapy. In 1960's, psycholosis 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 'psychedelytic'.It is most modern concept.

5. Narco - Analysis in India

The term Narco analysis was first introduced in India in 1935 in the process of investigation. It was used to put a person in trance like state and subject him to queries. In the later period it was unheard of as an investigating tool in many years. It again surfaced in the Godhra carnage probe(Inter-communal violence in Gujarat following the burning of a train in Godhra on 27 February 2002, which caused the deaths of 58 Hindu pilgrims and religious workers returning from Ayodhya in 2002). Thereafter it is consistently being used as an investigating tool in many cases. Narco-analysis has been conducted in some major cases like, Godhra Carnage Probe in Gujarat, Multi Crore Rupee fake stamp murder, Shashi murder case, Noida serial murder i.e the infamous Nithari case, Abu Salem, The Arushi Murder Case in May 2008, Malegaon Bomb Blast Case, Mumbai train blast, Mohammed Ajmal Amir Kasab, a Lashkar-e-Taiba militant case etc.

Today, narco - analysis - the induction of a trance-like state through the use of drugs is not only being used as an investigative method but has also been upheld by a number of courts as valid and legal. The use of medicines and doctors for narco-analysis in the context of the purpose of the medical profession being "caring" reminds us that the purpose of the legal system is the reduction of crime. The blatant violation of the right against self-incrimination, which also comes into play in narcoanalysis, has played a big role in working directly against reduction in crime. This is to do with the manner in which investigation is done in India. The police find it easiest to extract a confession through the use of third-degree methods from the most vulnerable individual in the circumstances. For example, in a case of theft - a confession from the domestic servant. Once a confession is extracted from a person, the search to find out the real perpetrator is not undertaken.

6. Procedure followed in India

Following procedure is to be followed to conduct the narco-analysis test.

- Two grams of Sodium Pentathol is dissolved in 2000ml of dextrose.
- One boule (10 ml) of the above solution is injected intravenously, one ml per minute, at each time till the stage-II i.e. Trans is achieved.
- The above procedure is done in a hospital under medical supervision by a team consisting of an Anesthetic, a Physician and a Clinical/ Forensic Psychologist.

- Heart rate and blood pressure of the accused is continuously monitored.
- The dose of sodium pentothal is usually 5-10 times less than the dose of anaesthesia.

- Initially to establish rapport with the subject certain irrelevant questions are asked.

These questions are also known as Controlled questions, for eg. Name, birth place etc.

- The administration of drugs continues until the subject enters the state of trance.
- Relevant or specific questions are asked once the subject enters the state of trance.

- The procedure is recorded in audio and video format.

- A CD is to be provided along with the report. Duration of the test is based on the number of questions.

All through the test the required amount of sodium pentathol is administered to keep the subject in trance. No adverse effects are attributable to the chemical Sodium Pentathol have been noticed during the cardiac surgeries running for several hours, which will have patients, anaesthetized either by using large concentrations of sodium pentathol (anesthetic dosages) or in conjunction with other anesthetics. Generally, the confession is retracted in front of the magistrate and since there is little evidence beyond it, the result is an acquittal. This manner of investigation further aggravates the problem; however, independent of it the use of narco - analysis impinges on the right to life and liberty under Article 21 and the right to not to be a witness against oneself under Article 23 of the Constitution. The remedy in law for being illegally detained and for the enforcement of the right to life is the writ of habeas corpus – which literally means producing the body of the person. The right to life is intrinsically connected to the inviolability of the body. Even when a doctor has to perform a procedure which involves introducing a chemical in your body as in anesthesia, or cutting open the body to perform an operation to cure, the consent of the patient is required.

Thus it is observed that even in procedures performed for the welfare of a patient, consent of the individual is required for any invasion of the body. The introduction of sodium pentothal in the body of a person without his/ her consent for narco-analysis violates not just the right against self-incrimination but the right to life itself. Introduction of drugs like sodium pentothal in the body results in taking away control of the mind of the concerned individual. It is the coercive inducing of a trance-like state after which questions are asked of the subject. It is a violation of the body and the mind and akin to physical torture and extraction of confession. In fact, in physical torture, control of the mind is retained while narco-analysis results in loss of control and takes away any semblance of conscious 'volition'. However, looking to decisions of courts we find that judgments increasingly seem based on little more than drawing room opinions rather than judicious adjudication in the light of fundamental rights and principles of criminal jurisprudence. The administration of drugs in the body and subsequent narcoanalysis without the consent of the individual has been upheld by in three cases by two high courts.

7. Legality

The Madras High Court in the case of Dinesh Dalmia in 2006 has held narco-analysis is not testimony by compulsion. The reasoning offered by the court is that the accused person "may be taken to the laboratory for such tests against his will, but the revelation during tests is voluntary". This is specious, bordering on an absurd Catch-22 sort of reasoning: the court orders narco-analysis, the person is taken without consent to the laboratory. In the laboratory pursuant to the judicial order drugs are introduced without consent in the body. These drugs take away control of the mind. Thereafter, the revelations during narco-analysis are pronounced as voluntary by the court. It seems to be very much – like "a person is compelled to testify voluntarily" – a contradiction in terms. If we take this reasoning to the sphere of the use of third degree methods, it is like inflicting physical

torture on a person till he/ she breaks down and then terming the revelations as “voluntary confession”.

The second case is of Abdul Karim Telgi where the Bombay High Court says that certain physical tests involving minimal bodily harm like narco-analysis and brain mapping do not violate the fundamental right against self-recrimination embodied in Article 23 of the Constitution. Courts, specially the higher judiciary, do not just decide individual cases but their judgements enunciate principles of law applicable in general. In the Telgi case, the principle being laid down appears to be that methods which inflict minimal bodily harm are permissible. Again if we take this principle to the realm of use of third-degree methods it might assist us in looking at the implications. In constitutional and criminal jurisprudence the use of torture has unequivocally been looked upon as illegal and violative of the fundamental right to life and the right of the accused against selfincrimination. In the context of physical torture the interpretation of ‘minimal body harm’ to extract information is unclear.

The present categories in law are ‘simple hurt’ and ‘grievous hurt’. Or in terms of disability – causing temporary or permanent disability. Applying the enunciated principle of minimal bodily harm – is it that causing simple injury or causing a temporary disability to extract information in the course of investigation would be permissible? Would depriving a person of sleep for long time periods in order to get a confession be okay in the eyes of law? Enunciation of such a principle is a hazardous departure from the present consensus with respect to the illegality of third-degree methods as a tool of investigation and collection of evidence. In the third case, the judgement declares that the tests of brain mapping and lie detection are actually not the statements of the accused and therefore the right against being compelled to be a witness against oneself does not come into play. As per the reasoning a procedure showing the map of the brain of a person cannot be said to be the statement of the accused person. In a further twist, it observes that the statement has to be incriminatory and unless the information is there it cannot be said that it is incriminatory, and therefore the protection against self-incrimination is not available in case of these kind of procedures.

In the Krushi Cooperative Bank case, K Venketshwara Rao refused to sign his consent form and to the credit to the medical profession, the forensic science lab at Gandhinagar declined to conduct the test without his consent. However, the magistrate ordered the test of Rao to be done, which was subsequently stayed by the apex court. It is difficult to anticipate the decision of the Supreme Court; however, one can take a look at some of the past decisions with regard to the right of selfincrimination as possible pointers.

8. Views of Apex Court in India

One of the first cases was in 1953 and pertained to the issue of voluntary confession in the context of the constitutional right against self-incrimination. The judgement did not declare voluntary confession as repugnant to the Constitution with the caveat that the confession should be without threats, force and coercion. Then in 1954, the question of the constitutionality of the provisions for search and seizure in the Criminal Procedure Code (CrPC) came up before the court. Under the CrPC, the magistrate can order search and seizure of the house of the accused. These provisions were upheld as valid and the judgment declared that search and seizure were part of the overriding power of the state for protection of societal security and are regulated by law. This question again came up in 1980. The apex court again held that the search of premises occupied by the accused without the accused being compelled to be a party to the search is not violative of Article 23.

In reality, in almost each and every case, once an accused is remanded to police custody, invariably the police take the person to the house for search and seizure. The caveat which seems to be a basis for holding the provisions of search and seizure valid – that the ‘accused is not to be compelled to be a party to the search’ – seems to have little relevance in practice. The accused is offered little choice in the matter and taken to various places for search and seizure operations to

collect incriminating evidence. In the 'case of the concealed microphone', a microphone was concealed and the accused person did not know that the whole thing was being taped. However the court held secretly taping the statements of the accused did not amount to a violation of the right against self-incrimination because the conversation was voluntary. The issue of the validity of getting thumb impressions, foot prints, palm prints, specimen writings of the accused and the holding of identification parades came up before an eleven-judge Constitution Bench of the Supreme Court. The judgement first poses the question whether the taking of fingerprints, specimen writings and so on of the accused constitutes furnishing evidence and answers it in the affirmative and says, 'yes, he is furnishing evidence'.

The judgement then observes that Article 23 provides that the accused shall not be compelled to give 'witness against himself' and declares that though the accused is furnishing evidence but the evidence is not against himself. On this strange logic, the Court declared all these procedures to be not violative of the fundamental right against self-incrimination and constitutionally valid. There is an Andhra Pradesh High Court judgment that perhaps needs mention in the context of changes in law impacting basic principles of criminal jurisprudence. This also has a bearing for all of us in the broad stream of progressive movements for democratic rights. The judgment pertains to the constitutionality of Section 113 A of the Evidence Act. The provision relates to the suicide by a woman within seven years of marriage and creates a presumption of the husband and relatives being abettors of suicide. The provision was upheld by the high court on the ground of societal interests. In the context of custodial deaths a number of us have been demanding the introduction of a provision creating a presumption of guilt against the policemen. Section 113 A of the Evidence Act creating a presumption came in the context of dealing with the question of violence within the marital home. However, the implications of changes in the fundamentals of criminal jurisprudence are at times diverse and long term.

The right against self-incrimination is based on the presumption of innocence and the burden of proof being on the prosecution to establish the commission of an offence by the accused. A provision creating a 'presumption of guilt' may get introduced in the context of marital violence or custodial death but then provides a justification and finds a way into other laws like the Terrorist and Disruptive Activities (Prevention) Act (TADA) and Prevention of Terrorism Act (POTA) which are violative of democratic rights. The use of invasive methods like narco-analysis, brain-mapping and lie-detector test may have even deeper implications in the context of the reality of the manner of police investigations. Once TADA or POTA came as laws, the police found it more convenient to charge people under these laws. Anyone found with arms in a 'designated area', an offence that would generally fall under the Arms Act, would end up being charged under the more stringent TADA. Making confessions admissible as evidence resulted in shoddier investigations as the police found it easier, and TADA and POTA came to be used more and more. All preventive detention laws like Maintenance of Internal Security Act (MISA) and National Security Act (NSA) were initially introduced to be used against smugglers and hoarders and were extensively used against political opposition.

As the narco analysis test made individual semi conscious state where he has no control over his mind or thinking and they are unable to imagine anything. It has been proved that administration of such drug may suppress the power of thinking and reasoning of person subjected. This includes interference of nervous system of individual subjected for the test and his brain has no control over his own activity. It shows that the administration of such drugs in the body of a suspected person leads playing with the life and mind of such person. Thus the test raises fundamental issues such as right to life and liberty, Human Rights and privilege against self incrimination. The apex court of India has also given variable opinion in different cases and circumstances In the case of Dharampal Vs. State 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. State of Gujarat Vs. Anirudh Singh, 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 narco analysis.

9. Conclusion

As the society is changing very fast, the crime pattern is also rapidly changing. In the present scenario, where the professional trained criminals started replacing the criminal with traditional 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 behaviour and it can be done only by adopting scientific technique in the investigation process. The Supreme Court of USA also privately approved the use of scientific technique in the investigation procedure 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 guidelines 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.

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