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NARCO ANALYSIS TEST – A BOON OR A BANE

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Narco Analysis Test – A Boon or A Bane

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INTRODUCTION

Judiciary is an integral part of most of the country. India being a large as well as a democratic country, judiciary plays a quintessential role.

As India encompasses a vast territory, the judiciary is gigantic

It guarantees and safeguards all the rights of individuals, which has been enshrined in the form of articles in the Constitution of India. Moreover, the judiciary is the protector of the fundamental rights of the individuals. The judiciary has dealt with an arena of sensitive and landmark legal issues. The judiciary always keeps a check on the constitutionality, rights which arise in certain legal issues. It plays a diversified role in building the aspirations of individuals upon the judiciary. Hence, Judiciary is rightfully regarded as the

interpreter of the constitution. A criminal investigation is a wide process. It begins with nothing and ends with major revelations. Different types of techniques have been used broadly to initiate an investigation. A criminal investigation comprises of a bunch of techniques to be applied in an investigation. The inquest, collection of evidence, preservation of evidence, interrogation of the accused, interrogation of the witnesses etc. are some of the methods used in an investigation. In the contemporary age, the techniques have been widened a bit by adding certain scientific methods as well, which in general term is regarded as forensic science.

Before going into detail about the scientific techniques used in an investigation, it is important to know the concept of investigation and the processes applied in it.

Other than scientific techniques used in a criminal investigation, the process of investigation always follows a basic format. Investigation in general means to examine, study or inquire systematically

Search, enquire the particulars found in the crime scene, search and examine the particulars of minute evidence to know

about the crime in-depth. After all, the motive is to find things and generate it as evidence in an investigation. Section 2(h) of the code of criminal procedure states that the general investigation includes all the proceedings under this code for the purpose of collecting evidence in an investigation by the police officer or by any delegated authority other than a police officer (generally appointed by magistrate¹).

The basic steps taken in an investigation is as follows: -

- (1) Proceeding to the spot of crime
- (2) A search of the crime scene
- (3) Discovering the facts collected from the crime scene
- (4) Collect the evidence from the spot for further examination
- (5) The arrest of the suspected offenders
- (6) Interrogation of the accused and other witnesses.
- (7) Recording of the statements given by the accused as well as the witnesses.
- (8) Seizure of crime spot and certain things involved in the crime scene.

¹ Sec 2(h) of Civil Procedure Code, 1908 [CPC], Act no 005 of 1908

The forensic science has been generally included to get a scientific backup and sanction in the investigation. Collecting hair samples, blood samples, footprints, etc. were some of the basic forensic tools. Later, the courts thought of strengthening the basis of a criminal investigation. Following which, they stretched it a bit further by giving a thought, why not monitor thoroughly what is inside the brain. This thought paved the way for including the deception detection test which mainly comprised of Narco Analysis, polygraph, brain mapping. In this article, we will be discussing in detail about the pros and cons of deception detection test i.e. Narco Analysis Test in certain criminal investigation from the judicial perspective.

DECEPTION DETECTION TESTS

Narco Analysis, Brain Mapping and polygraph Test are the three kinds of so-called Deception Detection Test which have been used widely in the criminal investigations and it has its own scientific authenticity, technical validity, ethical and legal morals which form a concoction of all the legit implications. As our topic is Narco Analysis, we will stretch on these scientific techniques deeply. These techniques are

used to extract the deceptive information, to be precise probative evidence connected with a crucial crime in an investigation. It has been brought to abolish the third-degree treatment exercised upon the accused during the custodial interrogations during an investigation.

Although the deception detection tests have been used widely as an investigation aid, it is not considered as full-fledged evidence or information acquired through these scientific techniques. These scientific methods have been used by the investigation agencies to gather accurate information, facts, evidence in a crucial crime. It has also emerged as a significant measure to bring the guilty before the prosecution and to acquit the convicts

These methods have also been used in countries like the USA and Britain. In India, through a landmark judgement of Madras high court, the court held that DDT cannot be conducted in the criminal investigations without the consent of the accused. The Concept of deception detection Tests is a highly sensitive and amply debated concept since ages. The interrogation and the recording of evidence plays a prominent role in the collection of evidence. The Indian judiciary has provided with a large

set of investigation aid for the investigation agencies and DDT's are the extension of the earlier investigation aid. The judiciary here gave a thought to stretch this investigation aid by adding the scientific techniques for acquiring more reliable evidence in an investigation. As it has been stated earlier, a core debate was on the go for a long the time before a group of jurists. Some were of the view that these scientific techniques would eliminate lack of undisputed information which is required in a legal issue and it would generate a very authentic set of information or evidence. Also, they opined that it could also dissipate the third-degree punishments given to the accused. Whereas, on the other hand, some jurists made contradictory statements, as they felt it could largely interfere with the fundamental rights of the individual guaranteed under the Indian Constitution such as Right to Life under Article 21², Right to Privacy under Article 21³, Right to Self-Incrimination under Article 20(3)⁴ etc. Here right to privacy has an important role, as it has been said in one of the statement that neither the state nor the judiciary has the power to encroach into the nervous system of an individual and forcefully extract the information from them.

² Protection of Life and Personal Liberty – Article 21 of the Indian Constitution

³ Right to Privacy – Article 21 of the Indian Constitution

⁴ Right against self-incrimination under Article 20 (3)

In a landmark judgement given by the madras high court in the case Dinesh Dalmia v. State. Dinesh Dalmia v. State⁵, the madras high court held that there is a certain time period stipulated for the completion of the investigation and if not completed within that time the benefit will be given to the accused. Similarly, if the accused is not cooperating in the investigation, then there the scientific procedure can be implemented.

Hereby, the cases which will be discussed in two different scenarios will show the heated argument and contradiction that arose between some group of jurists. The supreme court in the case called Smt. Selvi & Ors Vs State of Karnataka⁶ gave a landmark judgement stating that on the argument of implementing speedy investigation procedure, the DDT was undoubtedly causing the infringement of fundamental rights under the constitution. The main Articles which were highlighted in this judgement was Article 20(3) and Article 21 of the Indian Constitution.

(1) Article 20 (3) - Right to self-incrimination

(I) The right to self-incrimination is an exclusive right given to the accused or

⁵ Dinesh Dalmia V. State [Crl. R. C. No. 259 of (2006)]

defendant in a case. There can be certain situations, where giving a statement would result in the incrimination of his own rights and here the accused can remain silent by not giving the statement. Here, no one can compel the accused to disclose that particular statement which would be derogatory to him. Therefore, Right to self-incrimination has been enumerated in the Constitution under Article 20(3) which states that no person accused of an offence shall be compelled to be a witness against himself/ herself. This right is not applicable to the witnesses.

(II) The right against self-Incrimination is one of the prominent right granted for the accused in a criminal trial under Article 20(3) in the Indian Constitution. The equivalent provision of Article 20(3) can be traced in the universal laws like Magna Carts, Talmud, and in other relevant laws.

(2) Article 21 - Right to Privacy:

The right to privacy which is enshrined in the constitution of India under Article 21 has been regarded as the heart of the Indian constitution. It has been considered as the most organic and progressive provision in the Indian constitution. This right is available to both citizens as well as aliens

⁶ Smt. Selvi & Ors V. State of Karnataka Judgment on 5 May 2010. (Criminal Appeal No. 1267 of 2004)

provided according to the procedure established by law. Article 21 is the requisite of the right to life and personal liberty. It simply means that no person shall encroach into the privacy of an individual and the individual will not be deprived of his right to privacy. The contention which was placed by the court with regards to Right to Privacy was, conducting DDT would result in the intrusion of one's privacy. The supreme court in the case called Selvi v. State of Karnataka⁷ held that the administration of narco analysis test, polygraph test, brain mapping upon the accused, suspects, or upon the witnesses without their consent would be injuring their fundamental rights. The court further held that the practicing of such scientific techniques without the consent would be unconstitutional and mere violation of Right to Privacy under Article 21 under the constitution of India. Article 21 was furthermore expanded and stated that conducting DDT would endanger the lives of individuals resulting in the infringement of Right to life and personal liberty under Article 21 of the Constitution of India.

Article 23- Right against exploitation:

No person shall be subjected to exploitation in one or the other way. Performing DDT

would result in the exploitation of the individual's right to live.

Hence, the Delhi high court in one of its judgement stated that such scientific test is neither authentic nor it is permissible in the constitution of India. The evidence collected through this means will be considered as inadmissible as evidence.

If the evidence is generated with the prior consent of the accused then in such a scenario, it will be regarded as admissible and non-violative of the constitution.

On the other hand, in a case called Sh. Shailender Sharma v. State⁸, the court held that narco analysis is the fine aid of investigation formulated for the speedy and reliable investigation. The DDT was considered to be an effective scientific technique which could generate authentic evidence required in an investigation. It formed the base of a bona fide investigation. The court, in this case, opined that, with the increase in the crimes, to safeguard the rights of individuals it is necessary to have such a scientifically proven test during the interrogation without infringing the rights of individuals. The court held that the DDT does not suffer from any constitutional infringements. From this, we could come into an

⁷ Id.

⁸ Sh. Shailender Sharma v. State [CrI. WP No. 532 of (2008)]

implication that the case in hand undoubtedly support the use of DDT in investigation

Let's discuss in detail about the deception detection test in detail namely Narco Analysis Test.

NARCO ANALYSIS

The term Narco Analysis has been derived from the Greek word narcks which means anaesthesia or torpor, precisely in a state of lethargy. The use of Narco Analysis is a highly debated topic for years in our legal system. Narco Analysis is a psychotherapeutic technique or a procedure, wherein a drug called Barbiturates is induced into the nervous system of the accused. Barbiturates are a kind of psychotropic drug which after injecting into the nervous system of the accused, makes the central nervous system depressant. It brings the accused into the state of stupor making him free from all the inhibitions and rapidly making him responsive to all the questions in an interrogation. Sometimes, the person will be completely in a state of unconsciousness making him unresponsive to the questions. It happens often due to the over dosage of barbiturates into the body of the accused making him less responsive. Barbiturates are often used for hypnotic and anticonvulsant alternatives.

In fact, the basic use of barbiturates is to make the accused free of passing the information by exploiting his mental state of mind. The most common drug used is pentothal sodium or sodium Amytal. The test is conducted by mixing 3 grams of sodium pentothal or sodium amytal in 3000 ml of distilled water. The term Narco Analysis was first coined by Horsely.

Narco Analysis got its recognition for the first time through Robert House, an obstetrician from Texas. He used the drug scopolamine on two prisoners. Scopolamine comes under the category of Hallucinogen. The usage of Hallucinogen affects the acetylcholine, a chemical found in the brain of both animals and human beings. Since then, Narco Analysis has been receiving backlash from medical and legal professionals.

A lie can be generated from one's imagination as well. Therefore, to stop such an attempt which is likely to be taken by the accused, the drug is induced by interfering with his nervous system at the molecular level and lowering his inhibitions, making him impromptu to converse in an interrogation. The applied implication in this test is that the answers can be extracted from the accused in an interrogation spontaneously as he is in a subconscious state which will make him unable to manipulate his answers. Sometimes, the

over dosage of this particular drug would result in death as well as coma. Hence, the administration of Narco Analysis was criticized and discredited in countries like the USA and Britain. The Narco Analysis test is conducted in the presence of a psychiatrist, anaesthesiologist, audio/videographer, forensic psychologist, a lawyer, an investigation agency, a staff nurse. This procedure is conducted in a government hospital after the court order is passed directing the hospital authorities to go ahead with the test. Later a report will be prepared and submitted before the concerned investigation agencies stating all the revelations made by the accused. This report prepared by the expert is the so-called evidence collected in the investigation process. Dosage of the drug is induced based on the person's age, sex, his physical and medical conditions. The consent of the person upon whom the test is going to be administered is required. There are contradictory views regarding the Narco Analysis Test. Some consider conducting Narco Analysis as life-threatening and exploiting the lives of people. Whereas, on the other hand, the evidence collected through the Narco Analysis test is considered to be an authentic process. Thereby, the evidence collected through this technique is considered to be admissible before the Court of law. Narco Analysis test is also called a Truth Serum

test. It makes the accused go into a hypnotic state making him subconscious. The court does not consider the statement provided by the accused in a subconscious mind as admissible. The administration of this test can cause adverse effects on one's health such as lowering the heart rate, low blood pressure, and hinder the spinal and brain activity. Though the test is not recognized by any of the courts, only under the necessary valid circumstance the test can be administered which will be mostly connected with the police investigations. The test has been still recognized and practised in many democratic countries especially, India. But, the supreme court gave the judgement that administering Narco Analysis is illegal. Although, it can be conducted with the prior consent of the accused. Narco Analysis tests are conducted mostly when the accused argue himself to be innocent and when the burden of proof lies upon the court of law. At times, by inducing this drug the person might provide vague information knowingly. As a result of that, the credibility of the test was questioned in countries like the United States and Britain later.

CONSTITUTIONAL
FUNDAMENTALITY AND
LEGAL PROVISIONS APPLIED
TO NARCO ANALYSIS

The Narco Analysis has not acquired any legal acclamation to date, except in certain cases where the administration of the test is urgently required to be done in some significant grave crimes. But, subjected only to the consent of the person upon whom the test is to be administered. The Narco Analysis test in prima facie is governed to be Constitutionally violative. Since ages, the test has been suffering gross constitutional infringements. The court only under certain circumstances considers the evidence collected through this test as admissible under Sec 27 of the Evidence Act⁹. Here, it has been substantially proven that the Evidence Act has remained completely silent on the administration of such scientific tests. The application of this test has led to the blatant violation of the tenets of the Constitution of India. The major Articles which were affected inadequately was Article 20(3)- Right to Self-Incrimination, Article 21- Right to Privacy, Article 14- Equality before the law¹⁰, Article 23- Right against Exploitation¹¹, and Section 161 (2) of Criminal Procedure Code¹²

Article 20(3) - Right to Self-Incrimination gives an exclusive right or power to the accused to remain silent and not to disclose

any such information which will expose that person to a particular charge, or offence, or forfeiture. An accused is always expected to speak out the truth in an interrogation. But there are certain scenarios, where giving a piece of information would badly expose him to a grave charge or an offence. To this, Article 20(3) comes to the rescue and protect the accused by granting the privilege of self-incrimination. Right to self-incrimination is also called as Right to silence and it has been widely ratified under the code of criminal procedure code (Cr PC) and Indian Constitution. Article 20(3) also provides the accused with a benefit to not to present as a witness against himself before the court. This right is exclusively available only to the accused and not to the witness. If the accused is compelled to be a witness against himself, it would be regarded as a blatant violation of the Constitutional tenets. While discussing in detail about the Right to Self-Incrimination under Article 20(3), there is an important case namely State Bombay v. Kathikalu¹³. The court here held that it must be shown that the accused was compelled to disclose the statements which would incriminate himself. Compulsion here means coercion,

⁹ Section 27 of the Indian Evidence Act, 1872

¹⁰ Equality Before Law: Article 14 of the Indian Constitution.

¹¹ Right against Exploitation: Article 23 of the Indian Constitution

¹² Section 161 (2) of Code of Criminal Procedure, 1973

¹³ State of Bombay V. Kathikalu [AIR (1961) SC 1808]

duress, threatening, beating, partial or total confinements, confinement of parents, wife or children. If the statement was disclosed without any threatening, beating, or coercion then Article 20(3) will not be applied over here. Right to Silence has been widely accepted through another case called Nandini Sathpathy v. P.L. Dani¹⁴, where the court held that no person can be forced to give the information when he has an exclusive right to remain silent. But, with the usage of these tests, it nullified the validity of Right to Silence. Here, the petitioner claimed the right of silence under Article 20(3) of Constitution, of India and Sec 160 (2) of Cr Pc. The court upheld her pleas, stating that the use of these tests would result in gross constitutional violations and the test was considered to be unreliable. Article 21 is the next important Article which has been dealt with the unlawful administration of the Narco Analysis Test. Right to Privacy under Article 21 states that no person has the right to encroach into other person's privacy or restricting that person. Right to Privacy is a generic term encompassing vast provisions enshrined under Right to life and personal liberty. It is unlawful and constitutionally invalid to publish certain information without the proper consent of that particular person. Whether be it a defamatory

statement or a laudatory statement, it is unlawful to disclose a statement without that person's consent. While taking into account the matter of Narco analysis tests, it is prima facie illegal and constitutionally ineffective to encroach into a person's nervous system and extract some confidentially important information or evidence during the course of an investigation. A person has to go through a lot of mental torture during this process and it makes the test violative under Article 21 of the Constitution of India. In another case named Ram Jawayya Kapur¹⁵, the court held that neither the executive body nor any other authorities have the right to encroach or intrude into the constitutional rights and liberties of individuals. Also, in the absence of any law, the intrusion into the fundamental rights must be struck down as unconstitutional. Right to privacy is implicit in the right to life and personal liberty enshrined under Article 14 of the Constitution of India. Administering the Narco Analysis test upon a person would be life-threatening by causing severe threats to his life from losing memory to throw him into the stage of coma. Sometimes the situation can get that worse, that the subject would lose his life as well. The subject will also be restricted from enjoying his personal liberty. All these situations

¹⁴ Nandini Satpathy V. Dani (P.L.) [AIR (1978) SC 1025]

¹⁵ Ram Jawayya Kapur V. State of Punjab [AIR (1955) SC 549]

gradually prove that it is completely violative of Article 14. Article 23 can also be taken into account during the administration of this test. Conducting the Narco Analysis would result in serious exploitation of one's life. Therefore, the court has been empowered with Right against exploitation under Article 23 to safeguard the subject from getting exploited during the course of this test. Section 161(2) of Cr. Pc states that a person is bound to answer all the question truthfully put to him by a police officer during an interrogation, except those questions which would expose the accused to serious charges or offences. The Narco Analysis test has also received major criticism from the Nation Human Rights Commission. Conducting a Narco Analysis test has been stated as a gross Human Rights violation resulting in the encroachment of an individual's life and personal liberty. It also brings fluctuations in the civil standards existing in a society. In a short, one can draw a conjecture that the administration of the Narco Analysis test would result in the blatant violation of major articles namely Article 14, 21, 20(3), 23, under the Constitution of India.

A bench comprising of K G Balakrishnan, R V Raveendran, J M Panchal observed that, no individual should be forcibly

subjected to any of the techniques in the context of criminal investigations or for any other purpose. Doing so would result in an unwanted intrusion into the personal liberty. The bench further said that the administration of involuntary scientific techniques such as Narco Analysis test, polygraph test, brain mapping, and BEAP Test would come within the ambit of testimonial compulsion¹⁶. Article 20(3) acts as a protective shield against the testimonial compulsion. In a judgement, Krishna Iyer observed that evidence procured not merely by physical threat or violence, but also by psychic torture, tiring interrogative prolixity, overbearing and intimidatory methods. Any mode torture be it mental, physical, subtle or crude, direct or indirect applied by an investigation agency to obtain information from a person strongly be recommended as a compulsion. He also held that an accused is entitled to remain silent, if that particular statement exposes him towards any guilt. At the same time, an accused has the complete right to speak out in an interrogation which does not come within the ambit of compulsion¹⁷.

The Narco analysis test has been widely discredited by the courts in India. They are of the view that administering Narco Analysis upon the subject would be a blatant violation of the constitution. while

¹⁶ The Economic Times, May 6th 2010

¹⁷ The Hindu, (*Frontline*) June 4th 2010

performing the truth serum test, the subject will have to go through excruciating pain. They will also be subjected to a lot of mental torture. The courts are of the view that the evidence collected through the Narco Analysis test would be inauthentic. The court also held that the evidence collected through this scientific test would be lacking reliability because the information extracted from the accused was in his subconscious state of mind making the information generated less authentic. Whereas on the other hand, some courts are of the view that conducting Narco analysis test would be an effective aid in the investigation process. They urge that as it is a scientific technique, the piece of information collected would be effective and scientifically proven. They believe that, as the subject is in the sedation of the drug, they will give spontaneous answers without manipulating it.

USAGE OF THE NARCO ANALYSIS TEST IN INDIA

In India, the Narco Analysis test was conducted for the first time in the Godhra carnage case in 2002¹⁸. Administration of the truth serum test provided the police officer with certain news leads in the investigation. The test was performed on five of the accused. The performance of the

truth serum test has proved the culpability of the offenders with reasonable evidence. From then on, the Narco Analysis test has been mainstreamed into the investigation.

The Narco Analysis was again performed during the course of counterfeit stamp paper investigations upon Abdul Kareem Telgi in December 2003¹⁹. In this case, the evidence collected through the truth serum test was in plenty and it was constituted to be scientifically proven and authentic. On this basis, the then police officials involved in this investigation tend to give much importance to that evidence. Narco Analysis again received recognition in the context of not so infamous case of Nithari village serial killings²⁰ which was held in Noida. The two main accused in the Nithari village serial killings Mohinder Singh Pandher and Surendra Kohli was subjected to Narco Analysis test held in the year 2007, January. Both the accused were taken to Gandhinagar, Gujarat for extensive narco analysis test by the U.P. police officials.

Narco Analysis test again came into the limelight through the famous case of Aarushi Talwar Murder Case²¹. In that case, the two main suspects Rajesh Talwar and Nupur Talwar (her parents) voluntarily surrendered for the Narco Analysis test to prove their innocence. However, the

¹⁸ Times of India, (Article) July 8th 2002

¹⁹ The Hindu, (Frontline) March 12th 2004

²⁰ Hindustan Times, Jan 7th 2007

²¹ Economic Times, October 12th 2017

information collected through their test lacked authenticity which made those evidences generated to be less effective. The CBI was criticised badly for using dubious techniques to extract the evidence.

In the Jhurjhura Tigress Case²², four suspects were charged and undergone the test for murdering a Tigress in the Bandhavgarh Tiger Reserve. One out of four suspects denied to undergo the test due to its post hazardous effects.

In India, The Narco Analysis test in some cases were considered as a helpful and important for the police officials and other authorities in an interrogation. Whereas, in some cases the test was an utter failure due to its lack of reliable evidences.

A court in Kerala recently propounded that to administer a narco analysis test, there is no need of issuing a court order. Once, when the CBI filed a petition seeking permission for conducting narco analysis test, the magistrate observed that, there is no need of filing a plea asking for the permission to conduct narco analysis test. The magistrate said that it would lead to unnecessary delay in the investigation resulting in pendency of the case. The court said that, no person or institution has the right to confront the investigation agency from doing their duty, when they consider

the narco analysis test as an effective tool. Later, it was held that, the stand taken by the court did not appear to be acceptable. The administration of test has no admissibility before the court, as it generates less reliable evidences. Therefore, it was observed that, the decision given by a court in Kerala was vague and vexatious on some relevant grounds.

WHETHER NARCO ANALYSIS TEST AMOUNT TO TESTIMONIAL COMPULSION?

Narco Analysis has always been a subject of scepticism for a long time. It has been subjected to different opinions and views. A group of jurists opine that the narco Analysis test has been a helpful aid used in investigation. Being a scientific technique, its reliability increased simultaneously. Similarly, the key factor for the emergence of narco analysis test was to eliminate the use of third degree treatment in an interrogation. On the basis of all these implications, the test was regarded as a protective umbrella against the testimonial compulsion. The provisions of this ground was substantially supported with the Article 20(3) i.e Right against Self Incrimination. Testimonial Compulsion²³ is an another barbaric process used in an investigation to

²² Times of India, October 23th 2012

²³ Section 11 (c) – Testimonial Compulsion

extract the evidence. In the case called *The State of Bombay v. Kathi Kalu Oghad and Others*, the definition of Testimonial compulsion has been specifically elaborated stating that the Testimonial compulsion is the process of obtaining specimen of writing and thumb impression from the accused. It is the Statement of accused in Police custody used in evidence. Thus, it has been stated that the implementation of the Narco Analysis test is undoubtedly a protective umbrella against the testimonial compulsion which protects the accused from the rigorous processes during an interrogation.

Whereas, on the other hand some jurists strongly believe that the use of such scientific techniques would amount to Testimonial compulsion. The contentions which they placed was, while an accused being subjected to the Narco Analysis test he has to go through a lot of mental torture and excruciating pain. It will also have post-test hazardous effects which would affect the functioning of their brain, heart and other organs severely. In short, according to their viewpoint, Narco Analysis was an extension of testimonial compulsion. The narco-analysis would cause grave injury to the public interest.

UNIVERSAL PROTECTION AVAILABLE TO THE ACCUSED AGAINST THE NARCO ANALYSIS TEST

The test has gained disapproval from the substantial universal laws as well. The international laws like universal declaration of human rights, the international covenant on civil and political rights etc. has provided the accused with certain immunities from undergoing the scientific tests in a criminal trial. Following are some of the universal law which prohibits the administration of narco analysis test:

- (I) Article 10 of universal declaration of Human rights, 1948- Every person is entitled in full equality to a fair and public hearing by an impartial or independent tribunal in the determination of his rights and obligations and of any criminal charge against him. It states that no person shall be treated unequally in a criminal trial. Every person is entitled to have a fair hearing from an impartial and independent tribunal without being biased. He is entitled to get all the necessary immunities in a criminal trial²⁴.

²⁴ Article 10 of UDHR, 1948

- (II) Article 11 of the Universal Declaration of Human Rights, 1948: - The article provides the accused with certain protections to be availed from the part of the judiciary during the trial of a penal offence. Article 11 of Universal Declaration of Human Rights says that Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to a law in the public trial, and he will be guaranteed with all the necessary defences in a criminal trial.

All persons shall be equal before the courts and tribunal. In the determination of any criminal charge against him in a trial, his rights and obligation will be protected and he will be subjected to a fair and public hearing by an impartial and independent tribunal or court established by the procedural law. The press and public will be excluded from the trial or from any part of it by taking into consideration some relevant grounds like protection of national security, morals, public order etc. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. The person

who is charged with a criminal offence should not be compelled to testify against himself or to confess guilt²⁵.

CRITICISMS OF THE NARCO

ANALYSIS TEST

The concept of the Narco Analysis test has been a widely debated topic all over the world. The test has been formulated to generate authentic evidence in an investigation. But, after a point of time, it started receiving backlash from a few jurists. The test was initially structured to strengthen the process of investigation and to bring out the actual truth of a crime. It was also brought to dissipate the third-degree treatment upon a person charged with a criminal offence. Later, it started causing errors in the information collected. Some jurists opined that scientific techniques are generally structured to ease the work of human beings. It is to reduce repetitions and indulge in automatisations. Narco Analysis test proved to be an authentic test in some cases, while in some cases it came out to be a big fiasco. The test was designed to strengthen the interrogation and FastTrack the investigation. The test has been criticised on the ground that it is neither accurate nor reliable. There are situations where the subject might hallucinate and fabricate the

²⁵ Article 11 of UDHR, 1948

information. Over dosage of the substance would also result in multiple medical conditions

While administering the test, the subject must be provided with a psychiatrist who would create a friendly environment with him making him less conscious. The only motive of this test is to procure the information linked with the crime and for that process of the test must be much more relaxed and persuasive. Due to its unreliability, it has been regarded as an ineffective aid in the investigation process.

CONCLUSION

The investigation process is always a rollercoaster ride. It begins from a normal scenario and ends at a suspicious point. Forensics are applied to generate more authentic information. The idea behind bringing the narco analysis test as an aid into the investigation was considered as a boon in the beginning. The application of the test in the high profile cases of Abdul Kareem Telgi, Mumbai serial blasts showed its efficiency. Gradually, it started losing its accuracy. As a result of this, after a point of time, it was regarded as an unreliable test. The implications which I drew is, the forensics applying in an investigation should be much more reliable and a relaxed instrument. Administering the Narco Analysis test would result in grave

violation of constitutional provisions. It infringes the fundamental rights of people. It intrudes into the personal liberty of individuals. Keeping aside the constitutional non-conformities, it would result in multiple medical conditions. While conducting the test, the subject has to go through excruciating pain. He would also be subjected to mental torture. For the purpose of procuring evidence related to the particular crime, administration of such a torturous test would be a blatant violation of constitutional machinery. Forensic Science had been upgrading day by day. As a result of this, it would be easier to implement any other effective scientific technique which would not cause any constitutional violation or serious medical issues to the subject. On the chase of finding evidence of a crime, it is also necessary to look into the health conditions of the subject. Therefore, if at all the narco has to be conducted, a suitable healthy environment must be created for the subjects. The test must be conducted after getting strict permission from the magistrate. There must be an equal intimation of national human rights commission while the test is being administered. The subject must go through a medical check-up to know whether his body is actively ready for the test. The subject must be made aware of his medical conditions. He must also be informed about

the effects of conducting the Narco Analysis Test. The last and important thing is he must have given his voluntary consent for the administration of test.

The legal system is flooded with a number of rights and immunities. While exercising any test, the authorities must surely keep in mind all those rights and immunities. Therefore, it is necessary to keep a note that while administering any test it should not injure any rights of individuals nor it should disrupt their personal liberty. Law is a living process and we evolve with that process. Unless and until the criminal trial gets over, we must stick to the presumption that every person is innocent until proven guilty and this aspect must be revised in every stage of the trial.