EDITORIAL NOTE

LEXKHOJ is delighted to launch its second volume of the criminal law journal. *Lexkhoj International Journal of Criminal Law* is the leading quality journal for all those involved in criminal law. Drawing all aspects of the law together in one regular publication, it allows quick and easy monitoring of all key developments. Our purpose is to provide a journal that offers a multi-disciplinary analysis of issues concerning Criminal Law. The journal strive to combine academic excellence with professional relevance and a practical focus by publishing wide varieties of research papers, insightful reviews, essays and articles by students, established scholars and professionals as well as by both domestic and international authors.

“An act is not guilty unless the mental state with which it is done is also guilty”. The crime is the combination of both *Actus reus* and *Mens rea*, and is a single unity. We live in a modern society which is subject to major changes that stem from, for instance, internationalization and technological development. In many aspects these changes also represent societal challenges that demand a rethinking of legal solutions. Our increased connectivity through internet has created new opportunities for criminals. Now the crime is not limited to the traditional ways.

We hope that you find Volume III Issue I valuable, that you will help inform others about the journal and will consider submitting your own work. The papers will be selected by our editors who would rely upon the vibrant skills and knowledge immersed in the paper. We welcome your comments so that we may improve the journal in future volumes.

*Needless to say, any papers that you wish to submit, either individually or collaboratively, are much appreciated and will make a substantial contribution to the early development and success of the journal. Best wishes and thank you in advance for your contribution to the Lexkhoj international journal of criminal law.*
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Laws grind the poor, and rich men rule the law. Law is order, and good law is good order. People are more afraid of the laws of Man than of God, because their punishment seems to be nearest. Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.

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. 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 legal, social and economical issues and some important landmark cases the support and uplifts deception detection tests in India.

Keywords: Technology, Criminal justice system, investigation process, Narco analysis.
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.

Across the globe, methods of law enforcement are witnessing colossal changes with progress in science and technology. The contemporary society needs recent 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. 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 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 trance like state in which the patient talks freely and intensive psychotherapy may be applied. Now days psychoanalytical and Narco analysis tests are carried out to interpret the behaviour of the suspect, accused person or the criminals.

Dr. M.S. Rao, Chief Forensic Scientist, Govt. Of India says “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 common man. Forensic activism is the solution for better crime management.”

**Meaning and concept of Narco Analysis:-**

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 make 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 lie, 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.

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’.”

**Need for the Narco-Analysis:-**

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 rapidly. Thus there is a need for the

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3. Robert house, a Texas obstetrician used the drug scopolamine on two prisoner in 1922
4. 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.
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 only. Under the Criminal Procedure Code, 1872 the statutory power given to the investigating officer to investigate the crime, to find out the truth and to reach the accused. Narco analysis 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 investigation. 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 truth and to apprehend the real culprit by getting some clue after the test. The conducting of Narco-analysis 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 accused, as the modern scientific test helps to protect the society also from the third degree methods of the Police officers.

**PROCEDURE:-**

The test of narco analysis involves the administration of small amounts of Sodium pentothal and Sodium Amytal dissolved in distilled water and mixed with dextrose, intravenously over a period of three hours. The psychological effect is that the subject loses all inhibition and does not have the ability to manipulate answers easily. This is why it is believed that the information revealed during such a test is mostly the truth. The subject is then interrogated by investigating officers in the presence of doctors and the same is recorded in audio and videocassettes. Also, experts prepare a report, which is used for the purpose of collecting evidence.

**NARCO ANALYSIS: NOT A HEALTH HAZARD:-**

It can be seen from the procedure that narco analysis goes a step further than lie detection.

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

6 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.
tests by the injection of a foreign substance. However this in no way makes narco analysis a health hazard, the following being reasons for the same. The dosage of the serum is carefully regulated depending upon the age, sex, health and physical condition of the accused. The test is conducted by a team consisting of an anaesthetist who administers the drug and regulates its dosage, a physician who certifies the fitness of the subject before the administration of the test, and a clinical/forensic psychologist who interrogates and interacts with the accused. Furthermore, the drug used in low concentration during narco analysis, does not have any adverse effect on the body. Sodium amatol and Sodium Pentothal, commonly used for narco analysis, is also used by psychiatrists in treatment of patients to help them recall traumatic experiences they are otherwise unable to remember. Anaesthesiologists have opined that these drugs have no side effects since the drug dissipates in the body within five minutes.

**APPLICATION OF NARCO ANALYSIS IN CRIMINAL JUSTICE SYSTEM- AN APPRAISAL** :-

The Criminal Justice System has an alarmingly low conviction rate and the situation desires to be rectifying with importance on actual science and state of the thing and technology. The Central Government must make a clear policy stands on Narco-Analysis. The legal system should imbibe the developments and advances that take place in science as long as they do not violate the fundamental legal principles and are good for the society. Narco-Analysis, for the criminal interrogations has proved to be a valuable technique, which greatly affects both the innocent and the guilty and thereby hasten the cause of justice. The manner in which modern day criminals make use of science and technology in perpetrating their criminal activities with the relative impunity has compelled a rethinking on the part of the criminal justice establishments to seek to the help of the police, prosecutors and the courts.

Every government whatever be its form, must uphold the law and maintain in the society which it govern. These are the basic functions which is essentially done through what is called “Criminal Justice System”(CJS). As per Oxford dictionary, the term ‘system’ means “set of connected things or parts” or “set of organ of body with common structure or function”. Criminal Justice System (CJS) is the combination of various organs of the Government, entrusted with the job of ensuring justice to the people. The functioning and the efficacy of this system is the backbone for the very foundation of any societies.\(^7\)

With the rapid increase in the activities of modern state, individualization and changes in the

socio-economic and political scenario, more and more new crimes are coming up such as the custodial crimes, insurgency, terrorism, organized crimes, political crime and cyber crime etc apart enomorous increase in the traditional crimes like murder, rape, cheating, dacoity, domestic violence against women and children etc. The Criminal Justice System has failed to deliver proper justice to people at large. The different sub-system of Criminal Justice System has not been able to meet their goals and people have lost their faith in the existing Criminal Justice System. 

Justice Gajendragadkar made the following observations in 58th report of law commission of India which is quite noteworthy:

“We have sound judicial tradition and a rational and systematic judicial process. There is no doubt that these factors have conferred great advantage on the country. An independent and efficient judiciary, unified judicial system and modernized procedure use legacies of the pre-independence era, have always been cherished by us. The judicial system has earned in respect so earned is well deserved.”

Science and Technology are the modern-day engines of change and they continue to turn relentlessly forwarded. The impact of change on all areas of human life has been dramatic. Advancing technologies, along with the legislation designed to control it, will create crimes never before imagined. The future will see a race between technologically sophisticated offenders and law the enforcement authorities as to who can wield the most advanced skill on either side of the age-old battle between crime and justice. 

The present technique of Narco-Analysis test is now being used rampantly in Criminal Justice System. It is an effective technique with which helps the crime that can easily be solved. In Criminal Justice System Narco-Analysis test is used for the investigation purpose. According to Dr. S. L Vaya, Deputy Director of DFS,Gandinagar, Gujarat, “Narco-Analysis” is a useful and non-invasive asset for the investigation and for the prevention of crimes and if used in a scientific way, it can be very useful for the thorough interrogation of the suspect. There are so many other methods for interrogation of the suspects such as third degree methods, Polygraph examination, psychological profiling, electrical activation and hypnosis. But Narco-Analysis has so far proved to be best methods of all. In the matter of criminal cases the accused is asked to submit himself or herself for Narco-Analysis. This test should not be used in all cases. It should be used in such cases where the interest of society at large is involved. In case of terrorist activities also it could be used for reading the
brain of the suspect to avoid further terrorist activities. Narco-Analysis test has been successfully conducted on the accused person in the various criminal cases.

The Gujarat H.C. has held in *Santosh Sharmanbhai Ladeja v. State of Gujarat*[^13], that the Narco-Analysis test is basically conducted under the supervision of doctors and proper care is taken and there is observation of the state of the accused and as such, the element of risk is minimal risk is in fact part of life and pervades in most of human activities and on this ground alone, therefore, the impugned test cannot be condemned.

In *Abhay Singh v. State of U.P*[^68] it was held by Justice Barkat Ali Zaidi that hairs and nails of the accused can be taken for utilization during the investigation even if the accused does not agree for the same. If that invasion of the accused is permissible, the principle should be applicable to Narco-Analysis and Brain mapping Tests also. It means that other scientific test may also be conduct on the accused person without his/her consent. The discovery of the truth is the desideratum of investigation and all efforts have to be made to find out the real culprit, because one guilty person, who escapes, is the hope of one million. Therefore court have to adopt a helpful attitude in all efforts made by the prosecution for discovery of the truth. If the Narco-Analysis and Brain-Mapping test can be helpful in finding out the facts relating to the offence, it should be conduct on the accused person.

**NARCO ANALYSIS FROM THE EVIDENCE PROSPECTIVE:**

There is no law which deals 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 cases court allow the above said test when there are no evidences except the circumstantial evidence. Thus in rare cases court allow the test to fill the vacuum in the evidences[^14]. A human being is capable to recline by using his thoughts. During the NarcoAnalysis test, the subject’s imagination becomes neutralized and the reasoning faculty is affected by making him semiconscious. The subject is not in situation so that he speaks lie by thinking but can answer specific of simple question. In this state, it becomes difficult for him to lie and his answer would be restricted to the facts he is already aware of. His answers are unplanned and accurate as a semiconscious person is unable to manipulate his answer. It is recognized that 20% of the total member of the individual subjected for Narco-Analysis are found to be innocent. Therefore these techniques not only helps to identify the real

[^14]: Barcelana panda, “narcoanalysis and its evidentiary value in India”, the practical lawyer (2011)
perpetrator of crime, motive and modus operandi, conspiracies, disfigurement and displacement of evidentiary items etc but also to identify the innocent within a short periods of time.

Section 3 of the Indian Evidence Act, 1872 defines Evidence. The question arises whether any answer received as a result of Narco-Analysis test would be evidence or not? Perhaps such answer or statement would not form part of ‘evidence’ unless it satisfies some other tests. The fact must be clear that whether court has permitted for the test or such test is required by the court or not? It does not become admissible as evidence, if the court has not given permission for the test. Thus the admissibility would depend upon the number of factors. The section relating with the admissibility of confession by the accused person in criminal cases has been given from Section 24 to 30 of Indian Evidence Act, 1872. But the expression ‘confession’ is not defined in the said Act. Mr. Justice Stephen defined confession in his digest of law of Evidence as ‘confession’ is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. It means that confession is statement made by an accused person admitting his guilt. The term statement includes both oral and written statement. Thus it is clear that the term ‘confession’ is very wide and it includes oral and written statement. In reference to Narco-Analysis test, it can be said that if the subject orally states or even write down something then both will be amount to confession. But proviso of Section to 27 of the Indian Evidence Act would bar statement from being admissible in evidence because if there is the slightest doubt about coercion or intimidation or any type of fear that the statement not free or that immediate before such test, the subject was harassed by the police or was coerced then such statement would be meaningless Section 24 of the Indian Evidence Act bar such statement.

The exposure made during the Narco-Analysis test has been found most often to be very useful in solving many significant cases. In most of these cases, the statements made have led to the discovery of important information and consequently various recoveries have been made under Section 27 of the Indian Evidence Act, in large number of cases. Thus it is clear that the information referred to in Section 27 is admissible because it is a voluntary deposition. But if the information has been obtained by the use of compulsion, Article 20(3) will be violated and the information will be inadmissible. The Supreme Court has recognized that the protective scope of Article 20(3) available to the accused in the investigation stage which is also in criminal cases and when it is read with Section 161(2) of Criminal Procedure
Code then it will protect the accused and witness also who are examined during an investigation. According to Section 161 (2) of the Cr. P.C. a person is legally bound to answer every question put to him truthfully during the conducting of the test.

The greatest virtue of law is its flexibility and thus its applicability should not be rigid but be flexible. Moreover, law is not static but it is dynamic. Hence it should keep changing according to requirement and changes in society, science, technology, and ethics and so on. The legal system should absorb the developments and advances that take place in Science and others till they are for the welfare of the society and they do not violate the fundamental legal principles. Therefore there is a need that the better refined and sophisticated methods to replace the third degree methods. Narco-Analysis test can evolve as viable effective alternative to the barbaric third degree methods. If a question which does not have the tendency to incriminate the accused succeeds in extracting a confession or statement from him, the usage of the Scientific method cannot be said to violate Article. 20(3) of our Constitution. Further in the above case it was held that the statements made in custody are considered to be unreliable unless they have been subjected to the crossexamination or judicial scrutiny. No person accused of any offence shall be compelled to be a witness against himself. The confessions made before the police officers are ordinarily not admissible in evidence and it is only the statements made in the confession was a result of any inducement, promise or threat, where charge against the accused person was having some reference. An accused shall be bound to answer truly all questions relating to such cases 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. The accused shall not render him liable to the punishment by refusing to answer such questions, or by giving false answers to them. The accused shall not be called as a witness except on his own request in writing. His failure to give evidence shall not be made the subject of any comment by any of the Article or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

The statement is classified into two parts i.e. admission and confession. Further the confession made to the police officer or in the presence of the police officer and in the

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15. Indian evidence Act 1872; section 17 admission defined—an admission is a statement which suggest any inference as to any of the person, under the circumstances hereinafter mentioned

16. Indian Evidence Act 1872; section 25 confession to p on the veracity of the witness
custody of the police officer is not admissible under Indian Evidence Act except it is made in the presence of the magistrate. 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 confession. Now from the earlier discussion it must be says that the Narcoanalysis is the important tool of the investigation especially the cases when there is a lack of evidences. 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 not be hit by section 25 and 26. In the case of Selvi and ors. v. State of Karnataka 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.”

Further in the case of Dharampal v. State 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.”

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 evidence. Hence the question rises if it is harmful in nature and effect to the body then why it is admissible when people give

17. the Indian Evidence Act 1872;section 25;confession made to police not to be proved; no confession made to police officer shall be proved as against a person accused of any offence
voluntary. Then like the other illegal act such as suicide, euthanasia, it should be completely prohibited, not partially prohibited.

**CONSTITUTIONALITY OF THE PROCEDURE: VIOLATION OF ARTICLES 20 (3)?**

One of the biggest legal controversies, which surround narco analysis, is its alleged violation of the Right Against Self incrimination guaranteed under Article 20(3) of the Indian Constitution. Article 20 (3) of the Indian Constitution gives the accused the immunity from "being compelled to be a witness against himself". It is now settled that the words “to be a witness” includes oral as well as written testimony. The statements made by the accused during narco analysis must amount to a testimony in order to attract Article 20(3). The ambit of protection of the Right Against Self incrimination enshrined under Article 20(3) has been clearly laid down by the Supreme Court in the case of *Nandini Satpathy v. P L Danil*[^18^]. Here, disagreeing with the narrow construction of the expression 'accused of an offence' by Courts in other cases[^19^], the Supreme Court clearly laid down that the protection under Article 20 (3) begins to operate at the pre-trial stage.

"Any giving of evidence, any furnishing of information, if likely to have an incriminating impact, answers the description of being witness against oneself. Not being limited to the forensic stage by express words in Article 20(3), we have to construe the expression to apply to every stage where furnishing of information and collection of materials takes place. That is to say, even the investigation at the police level is embraced by Article 20(3)."

Hence, Article 20 (3) may be attracted even at the interrogation stage. In this context, the Supreme Court held that the protection under Article 20 (3) extends to any compulsory process for gathering evidence against the accused. Further, 'compelled testimony' resulting in violation of Article 20 (3), was defined by the Apex Court as 'any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt'.

[^18^]: (1978)2 SCC 424
Narcoanalysis is not considered very reliable. Studies done by various medical associations in the US adhere to the view that truth serums do not induce truthful statements and subjects in such a condition of trance under the truth serum may give false or misleading answers. In USA, in the case of *Townsend v. Sain* it was held that the petitioner’s confession was constitutionally inadmissible if it was adduced by the police questioning, during a period when the petitioner’s will was overborne by a drug having the property of a truth serum.

The Constitution of India has clearly stated that a person cannot be compelled to be a witness against himself and therefore, any statement given during the narcoanalysis test cannot be considered evidence in the constitutional framework of the country. In fact, studies have shown that sometimes the subject (person undergoing the test) gives false statements during the test. If the test was given evidentiary value, the police would harass innocent persons under the garb of tackling terrorism.

Narcoanalysis test is a restoration of memory which the suspect had forgotten. This test result may be doubtful if the test is used for the purposes of confession of crimes. Suspects of crimes may, under the influence of drugs, deliberately withhold information or may give untrue account of incident precisely.

Such tests generally don’t have legal validity as confessions made by a semi-conscious person are not admissible in court. The court may, however, grant limited admissibility after considering the circumstances under which the test was obtained.

**ADVANTAGES AND DISADVANTAGES OF NARCO ANALYSIS IN INDIAN JUDICIAL SYSTEM :-**

After analyzing the cases of higher courts in India, it can be said that even Indian judiciary is not very much clear while in few cases court has affirmative view on the process of narco analysis but in some other cases court denied and clearly said it can’t be permitted. In their judicial pronouncements the courts have given conditional utilization of process. It can be said that the judiciary took harmonious construction regarding the use of this process and given interpretation of conditional utilization so that the process absolutely could not be ignored nor it can be used in each and every cases of crime. The judiciary by giving such type of interpretation started protecting the interests of individuals as well as society. Protection from crime and maintenance of law and order is the first priority of every state which is in
social interest and at the same time to maintain human dignity and human rights is also the priority of state so the conflict of social interests and individual interests can be regulated by the judiciary. By looking at the judicial pronouncements and literature, following advantages and disadvantages can be enumerated.

**Advantages:**

- 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.
- To facilitate the investigating agencies there is need to provide an option of scientific tools which can be applied when there is absolute darkness to discover evidence.
- The traditional method of extracting truth by torture is very heinous which violates the rights of individuals and it is also blot in the society.
- The process is only harmful to the body when the doses are very high which only injected in the presence of experts.
- The questions framed by the specialized person and expertise of the process so there is very less possibility to tell a lie, as indicated by many foreign and Indian writers.
- The evidence extracted through this process may be denied as reliable but it can be used to get an admissible evidence, to corroborate with other evidence or in support of other evidence.
- 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.

**Disadvantages:**

- In the process the chemical is administered in the body of a person so the dose of the chemical decides according to physique, mental attitude and will power of the person. A wrong dose of chemical may lead to a state of coma or even death of the person.
- If the person is drug addicted one then again the process is not as much successful as needed for collecting evidence.
Reliability of information given by the subject is also under some shadow because the subject from whom the information is collected is in semiconscious stage and hence the question of reliability of such information is being raised.

The well known principle of criminal justice system is that the person giving information should be ‘well and fit’ but in the narco analysis test the person is in semiconscious stage.

Legally speaking, the constitution of India part III Article 20(3) clearly says no person shall be a witness against himself. The process may declare as a violation of fundamental rights of Constitution.

Section 25 of Indian Evidence Act, 1872 says that the confession made by a person under police custody could not be admitted as evidence. It means there would be possibility of non-admissibility of evidence after performing the whole process.

Under section 161 of the criminal procedure code „the police officer authorised for investigation may ask orally any question to the person aware of facts and circumstances of the case and person shall bound to answer all the question except the questions, answer of which would have a tendency to expose him a criminal charge or to a penalty or forfeiture. Thus the Narco-analysis Test contains both advantages as well as disadvantage features. Law as a guardian of the society needs to be changed in science and technology, according to the social paradigm, ethics

**NARCO ANALYSIS IN INDIA :-**

A few democratic countries, India most notably, still continue to use narcoanalysis. Narcoanalysis is not openly permitted for investigative purposes in most developed and democratic countries.

In India, the Narcoanalysis test is done by a team comprising of an aesthesiologist, a psychiatrist, a clinical/forensic psychologist, an audio-videographer, and supporting nursing staff. The forensic psychologist will prepare the report about the revelations, which will be accompanied by a compact disc of audio-video recordings. The strength of the revelations, if necessary, is further verified by subjecting the person to polygraph and brain mapping tests.

Narcoanalysis is steadily being mainstreamed into investigations, court hearings, and laboratories in India. Narcoanalysis came in the limelight in the context of infamous Nithari village (Noida) serial killings. The two main accused in the Nithari serial killings Mohinder
Singh Pandher and Surendra Kohli had undergone narcoanalysis tests in Gandhinagar in Gujarat. Narcoanalysis was also used in the interrogation of Ajmal Kasab, the main accused in the 26/11 attacks in Mumbai.

CASE ANALYSIS :-

1. Nithari Serial Killings

The narco-analysis test of the prime accused in the Noida serial murder case Moninder Singh Pandher was conducted at the Directorate of Forensic Laboratory. Pandher and Koli had been accused of serial killing of women and children in Nithari village, in Noida, Uttar Pradesh. The Noida police had brought Pandher and his servant Surendra Koli to DFS for forensic tests. The tests are usually expected to go on for approximately eight hours. The two accused were probed on two angles. One was what the accused wanted to say and the other was what the investigators wanted to know.

Koli’s admissions during the tests indicated he used to rape and kill children as an ‘ego-satisfying habit’ as he was sexually deprived and feared that he was becoming impotent. Koli also admitted to systematically chopping the bodies of the children, including minor girls, and dumping them in the drain behind Pandher’s house on several occasions.

The results of the test were not admissible as evidence in court but are designed to help police with their investigation.

2. In a 2006 judgment *Dinesh Dalmia v State*, the Madras High Court held that subjecting an accused to narco analysis is not tantamount to testimony by compulsion. The court said about the accused: "he may be taken to the laboratory for such tests against his will, but the revelation during such tests is quite voluntary." In narco analysis, the drug contained in the syringe is the element of compulsion. The rest is technically voluntary.

3. SC decision in Smt. *Selvi vs State of Karnataka* Various High Courts had taken a stand in favour of these three tests. But the Supreme Court in its decision in Smt. Selvi vs State of Karnataka has overruled all these decisions stating that these tests violate Art. 20(3) and Art (21) of the Indian Constitution. The SC has taken the stand that no test will be conducted on the accused without his consent. The
Honorable Court has also held that no court can interfere in the personal rights of any accused person. This decision has proved to be set back for the test. The SC in its decision has not totally discarded the test. SC has said that the tests can be conducted but only with the consent of the accused. Prior to the decision in the said case on test was conducted on the accused without the permission of the accused as per the information given by Dr. Malini Former Director, Forensic Science Laboratory, Bangalore and Dr. A.D. Shukla Assistant Director of Gujarat Forensic Science Laboratory. They also said that there have been cases where the accused has refused to undergo the test on the test bed and the test was not conducted. The thing is prior to the decision of SC in Ms. Selvi & ors vs State of Karnataka, the police could take the permission from the Magistrate to get the test conducted on the accused which they cannot do so now. It is relevant to mention the observation made by Justice Krishna Iyer, a great champion of Human Rights especially of accused and under trial prisoners; in Nandini Sathpathi’s case that “More than human dignity of accused is involved; the Human personality of others in the society must also be preserved. Thus the values reflected by the privilege are not the sole desideratum; society’s interest is of equal weight. The accused as such have opposed these tests. But as told by both Dr. Malini and Dr. A.D. Shukla, many accused person undergo these tests to prove their innocence. The number is as much as 25% of their total tests conducted.

4. In Shashi murder case, Court allows narco-analysis. Vijaysen Yadav, the main accused in the disappearance and murder case of Faizabad law student Shashi, has gone through polygraph and narco-analysis test from January 12 to 26. Faizabad Chief Judicial Magistrate Shailesh Tiwari permitted the police to conduct the tests at the Central Forensic Laboratory in Bangalore.

In his order, the CJM said the tests on Vijaysen will be conducted in judicial custody and prohibited investigating Officer Sharat Chandra Pandey from intervening in any matter during the process of tests. The court also asked him not to accompany Vijaysen to Bangalore.

5. The Bombay High Court recently in a significant verdict in the case of Ramchandra Reddy and Ors. v. State of Maharashtra, upheld the legality of
the use of P300 or Brain finger-printing, lie-detector test and the use of truth serum or narco analysis. The court upheld a special court order given by the special court in Pune as mentioned above, allowing the SIT to conduct scientific tests on the accused in the fake stamp paper scam including the main accused, Abdul Karim Telgi. The verdict also said that the evidence procured under the effect of truth serum is also admissible. In the course of the judgment, a distinction was drawn between “statement” (made before a police officer) and “testimony” (made under oath in court). The Judges, Justice Palshikar and Justice Kakade, said that the lie-detector and the brain mapping tests did not involve any “statement” being made and the statement made under narco analysis was not admissible in evidence during trial. The judgment also held that these tests involve “minimal bodily harm”.

CONCLUSION AND SUGGESTION :-

As we all know that the technology is changing very fast. Due to the advanced technology the crime pattern also has been changed. In this scenario the criminals replaced the traditional methods from the advanced technology to commit the crime. These changes of crime pattern shake the conscience of the society. 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 etc. 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 Rohitshekhar v. N.D Tiwari the 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 test. Author suggests that if the legislature allows 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 saved 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 narcoanalysis should be conducted. Fourthly, the statement revealed 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 as an investigation tool. On the whole Indian judiciary has consented conditional use of these test 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.