MODERN INVESTIGATIVE TECHNIQUES AND ROLE OF INVESTIGATOR



**NARCO ANALYSIS: C O N S T I T U T I O N A L & L E G A L S T A N D**

**P O I N T O F S C I E N T I F I C I N V E S T I G A T I V E M E T H O D S**

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# INTRODUCTION

Scientific 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. In the main, these tests can only assist police investigations. A few democratic countries, India most notably, still continue to use these test in various cases. But the other view regarding the legal validity of these tests is that it is used as an aid for collecting evidence and helps in investigation and thus does not amount to testimonial compulsion. Thus it is still the question that whether these methods violate the constitutional provision regarding protection against self- incrimination.

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# CONSTITUTIONAL PROVISIONS

* + 1. **Article 20(3)**

The main provision regarding crime investigation and trial in the Indian Constitution is Art. 20(3). It deals with the privilege against self-incrimination. The privilege against self incrimination is a fundamental canon of Common law criminal jurisprudence. Art. 20(3) which embody this privilege reads, No person accused of any offence shall be compelled to be a witness against himself. On analysis, this provision will be found to contain the following components:

* + - * It is a right available to a person accused of an offence;
			* It is a protection against such compulsion to be a witness;
			* It is a protection against such compulsion resulting in his giving evidence against himself. All the three ingredients must necessarily coexist before the protection of Art 20(3) can be claimed. If any of these ingredients is missing, Art. 20(3) cannot be invoked. The legal position of applying these techniques as an investigative aid raises genuine issues like encroachment of an individual‘s rights, liberties and freedom.45

In the case of *Ramchandra Ram Reddy v. The State of Maharashtra*46, the Court posed with the question whether P-300, Lie Detector and Narco Analysis tests are violative of Article 20(3) observed. The question which falls for consideration therefore, is whether such statement can be forcibly taken from the accused by requiring him to undergo the Truth Serum Test against his will. It will be seen that such statement will attract the bar of Article 20(3) only if it is inculpating or incriminating the person making it. Whether it is so or not can be ascertained only after the test is administered and not before. Therefore, there is no reason to prevent administration of this test also because there are enough protections available under the Indian Evidence Act, under Criminal Procedure Code and under the Constitution (Article 20(3), to prevent inclusion of any incriminating statement if one comes

45Retrieved from <[http://www.articlesbase.com/law-articles/is-narco-analysis-a-reliable-science-the-present-](http://www.articlesbase.com/law-articles/is-narco-analysis-a-reliable-science-the-present-legal-scenario-in-india-334519.html) [legal-scenario-in-india-334519.html](http://www.articlesbase.com/law-articles/is-narco-analysis-a-reliable-science-the-present-legal-scenario-in-india-334519.html)> accessed on: 15 0ctober, 2010.

46 2004(1) Bom CR (Cri) 657

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out after administration of the test. In so far as the Narco Analysis is concerned enough protection exists, recourse to which can be taken if and when the investigating agency seeks to introduce such statement as evidence.‖ The Court dismissed the petitions filed against these tests and held that these tests do not compel the accused or witness to incriminate himself and there is therefore no question of violation of Article 20(3) of the Constitution.

The Supreme Court in *Swati Lohda’s case47* has held that taking of blood samples from accused person‘s body is not violate of Article 20(3), but at the same time, accused can refuse to give blood samples. However, where the Court makes direction for blood tests and the accused refuses then, the Court may use the refusal or failure of the accused as corroborative evidence or adverse inference against him can be drawn. The court may infer that some impediment was there, that is why he said no.

The Court said that blood sample is in itself no testimony at all. It is only material for comparison in order to lend the assurance to the Court that an inference based on other pieces of evidence is relevant.

However, in Narco Analysis test, the question of compulsion does not arise because the prior consent of the person who is supposed to undergo such a test is always taken. In fact, the Supreme Court in *State of Bombay v. Kathi Kalu Oghad*48, held that there is no compulsion when a police officer, in investigating a crime against, a certain individual, asks him to do a certain thing. The fact that a person was in police custody when he made the statement is not a foundation for an inference that he was compelled to make the statement. The mere questioning of an accused by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not compulsion. Considering, all these we can easily conclude that Narco Analysis does not violate Article 20 (3) to the extent that the person undergoing such a test is not compelled to do so; rather it is done with the consent of the person who has full knowledge of such a test.49

# PROVISIONS UNDER INDIAN EVIDENCE ACT,1872

47 1991 Cr LJ 939

48 AIR 1961 SC 1808

49Retrieved from <[http://www.legalserviceindia.com/article/l375-Article-20-(3)-Of-Constitution-of-India-And-](http://www.legalserviceindia.com/article/l375-Article-20-%283%29-Of-Constitution-of-India-And-Narco-Analysis.html) [Narco-Analysis.html](http://www.legalserviceindia.com/article/l375-Article-20-%283%29-Of-Constitution-of-India-And-Narco-Analysis.html)> accessed on: 15 0ctober, 2010.

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# Section 45 Indian Evidence Act: Opinions of experts.

When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts. Such person called experts Section 4550 does allow experts opinions in certain cases. However this section is silent on other aspects of forensic evidence that can be admissible in court in criminal proceedings. The right against forced self-incrimination, widely known as the Right to Silence is enshrined in the Code of Criminal Procedure (Cr.P.C) and the Indian Constitution.

# Section 27 Indian Evidence Act

Moreover, the information gathered from these scientific tests can obviously used for collecting further information or for getting some further leads or clues. This is empowered by Section 27 of the Indian Evidence Act. This sections says that ―when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.‖ That means that any incriminating evidence will not be used against the accused but so much information which leads to the discovery of an evidence is admissible in evidence.‖ Similarly, the scientific evidence collected from a person may not be admissible but if corroboration comes from other evidence this may be held admissible.

# Section 46: Facts Bearing Upon Opinions of Experts

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinion of experts when such opinions are relevant.

# Section 51: Grounds of Opinion When Relevant

Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant. Illustration: An expert may give an account of experiments performed by him for the purpose of forming his opinion.

50 The Indian Evidence Act, 1872

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Section 132 of *the Evidence Act*, 1872 provides that witness shall not be excused from answering on ground that answer will criminate. It says as follows: ―Witness not excused from answering on ground that answer will criminate.-A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.‖

# PROVISIONS UNDER CODE OF CRIMINAL PROCEDURE

In the Cr.P.C, the legislature has guarded a citizen‘s right against self-incrimination. It is well established that the Right to Silence has been granted to the accused by virtue of the pronouncement in the case of *Nandini Sathpathy v. P.L.Dani51,* no one can forcibly extract statements from the accused, who has the right to keep silent during the course of interrogation (investigation). By the administration of these tests, forcible intrusion into one‘s mind is being restored to, thereby nullifying the validity and legitimacy of the Right to Silence.

# Section 53 Examination of accused by medical practitioner at the request of police officer

When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence its to the commission of an offence, it shall be lawful for a registered medical practitioner, acting, at the request of a police officer not below the rank of sub-inspector, and for- any person acting in good faith in his aid and -under his direction, to make such all examination of the person arrested as is

51 AIR 1978 SC 1025.

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reasonable necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.52

* + 1. **Recommendations of the Malimath Committee: *Cr. P.C. (Amendment) Act*, 2005**

It was observed that there is no law binding the accused to give his specimen blood sample for DNA fingerprinting. Report of the Committee on Reform of Criminal Justice System, 2003 said that due to the above lacunae it is difficult to built up a strong case, based on Forensic Evidence, against the accused.

It was therefore recommended that a specific provision is incorporated in the Code of Criminal Procedure empowering the Magistrate to Order, an accused to give samples of handwriting, fingerprints, footprints, saliva, semen, hair, voice etc for the purpose of scientific examination. That is why the Cr.P.C (Amendment) Act, 2005 has radically contributed in providing of the law regarding scientific techniques by amending and introducing some important sections in the code. These sections are as follows:

# Amendment of Section 53

The Cr. P.C (Amendment) Act, 2005 has made the provision more relevant by substituting the Explanation in Section 53 of the principal Act,—

Explanation.—In Sections 53, 53-A and 54,—

(*a*) ―examination‖ shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case.

Insertion of New Section 53-A53. Examination of person accused of rape by medical practitioner**;**

1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person

52 Retrieved from <[http://www.merinews.com/clogarticle.jsp?articleID=131958.](http://www.merinews.com/clogarticle.jsp?articleID=131958)> accessed on: 15 0ctober, 2010.

53 Cr PC (Amendment) Act, 2005

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will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

1. The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:
2. the name and address of the accused and of the person by whom he was brought,
3. the age of the accused,
4. marks of injury, if any, on the person of the accused,
5. the description of material taken from the person of the accused for DNA profiling, and
6. other material particulars in reasonable detail.
7. The report shall state precisely the reasons for each conclusion arrived at.
8. The exact time of commencement and completion of the examination shall also be noted in the report.
9. The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in clause (*a*) of subsection (5) of that section.

Insertion of New Section 54-A

Identification of person arrested*:* Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the court, having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested.

# Section 161

In the test, the drug is administered which suppress the reasoning power without affecting the memory and speech. The test also goes against the maxim ―*Nomo tenetur se Ipsum*

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*Accusare”* which means no man not even the accused himself can be compelled to answer any question, which may tend to prove him guilty of a crime of which he has been accused. The previously mentioned principle of the maxim is also incorporated in the section 161(2) of the code of criminal procedure.

Sec. 161(2) of Cr. P. C says that such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than the questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

The most important case in this regard is that of *Nandini Satpathi v. P. L. Dani 54* Facts: Nandini Satpathi was a former chief minister of Orissa, against whom a case was registered under the Prevention of Corruption Act. She was asked to appear before the Dy. S. P for questioning. The police wanted to interrogate her by giving her a string of questions in writing. She refused to answer the questions because it was a violation of her fundamental right against the self-incrimination.

In the previously mentioned case Krishna Iyer, J. has widened the scope of the protection. The issue before the court was whether a potential candidate for accused can avail of the privilege. It was held that the right extends to witness & the accused alike. The expression

‗accused of any offence‘ must mean formally accused in presenti not in futuro. It applies at every stage at which furnishing of information & collection of material takes place.

Thus, Right to Silence has been granted to the accused by virtue of the pronouncement in the case of Nandini Satpathi. No one can forcibly extract statements from the accused, who has right to remain silent during the course of interrogation (investigation). By administration of narco analysis test, forcible intrusion into one‘s mind is being restored to, thereby nullifying the validity & legitimacy of the Right to Silence.55

# Section 293 Reports of Certain Government Scientific Experts

Any document purporting to be a report under the band of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or

54 AIR 1978 SC 1025.

55 Retrieved from <<http://www.articlesbase.com/criminal-articles/constitutional-validity-of-narco-analysis-test-> 1269836.html> accessed on: 16 0ctober, 2010.

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analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

The court may, if it thinks fit, summon and examine any such expert as to the subject matter of his report.

The Indian Courts have so far refused to admit the Narco Analysis as evidence, but Narco Analysis is being carried out by the investigators. The reason is that although confession made to the police or in the presence of police is not admissible in Courts, the information is admissible by which an instrument or object used in commission of crime is discovered. This is clear from the wording of Section 27 of the Indian Evidence Act, 1872. Section 27 of the Indian Evidence Act, 1872 is founded on the principle that if the confession of the accused is supported by the discovery of a fact, the confession may be presumed to be true, and not to have been extracted. It comes into operation only: (i) if and when certain facts are deposed to as discovered in consequence of information received from an accused person in police custody; and (ii) if the information relates distinctly to the fact discovered. If the self incriminatory information given by an accused person is without any threat that will be admissible in evidence and will not be hit by Article 20 (3).56

In fact, the revelations made during the Narco analysis have been found to be of very useful in solving sensational cases of Mumbai serial train blasts, blasts at Delhi, Malegoan and more recently in Hyderabad and in various other sensational cases of National and International ramifications. In most of these cases, the revelations made have led to the discovery of incriminating information‘s favouring probative truth and consequently recoveries have been made in large number of cases U/s 27 of IEA. Thus, Narco Analysis is proving to be a useful tool in the field of criminal investigation. However, the legal hurdles in use of this technique should be removed first before its application. It is high time that we blend this test with Article 20(3) in such a manner that no questions are raised as to its constitutional validity.

For this purpose, it is essential that the Union Government should come out with certain guidelines which are to be strictly followed while conduction such a test.

56 Retrieved from <[http://www.legalserviceindia.com/article/l375-Article-20-(3)-Of-Constitution-of-India-And-](http://www.legalserviceindia.com/article/l375-Article-20-%283%29-Of-Constitution-of-India-And-Narco-Analysis.html) [Narco-Analysis.html](http://www.legalserviceindia.com/article/l375-Article-20-%283%29-Of-Constitution-of-India-And-Narco-Analysis.html)> accessed on: 16 0ctober, 2010.

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1. The permission of the Court and the written consent of the person undergoing such a test should be made compulsorily.
2. The person who is supposed to undergo such a test must be given all the necessary details about the test before he is asked to sign the consent form.
3. Control and supervision of the forensic laboratories should be made under the autonomous bodies like NHRC and the States Human Rights Commissions.
4. NHRC has suggested that at the time of polygraph test a forensic psychologist, a psychiatrist and an anaesthetist should remain present. Similar team can be directed to remain present at the time of Narco Analysis with the additional safeguard of entire proceeding audio and videotape.
	* 1. **Crime detection and DNA technology**

Though there is no specific DNA legislation enacted in India, Sec.53 and Sec. 54 of the Criminal Procedure Code, 1973 provides for DNA tests impliedly and they are extensively used in determining complex criminal problems.

Sec. 53 deals with examination of the accused by medical practitioner at the request of police officer if there are reasonable grounds to believe that an examination of his person will afford evidence as to the commission of the offence.

Sec. 54 of the Criminal Procedure Code, 1973 further provides for the examination of the arrested person by the registered medical practitioner at the request of the arrested person. The law commission of India in its 37th report stated that to facilitate effective investigation, provision has been made authorizing an examination of arrested person by a medical practitioner, if from the nature of the alleged offence or the circumstances under which it is alleged to have been committed, there are reasonable grounds for believing that an examination of the person will afford evidence.

Sec. 27(1) of Prevention of Terrorism Act, 2002 says when a investigating officer request the court of CJM or the court of CMM in writing for obtaining sample of hand writing, finger



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prints, foot prints, photographs, blood, saliva, semen, hair, voice of any accused person, reasonable suspect to be involved in the commission of an offence under this act. It shall be lawful for the court of CJM or the court of CMM to direct that such samples shall be given by the accused person to the police officer either through a medical practitioner or otherwise as the case may be.57



**C R I T I C I S M O F S C I E N T I F I C M E T H O D S O F I N V E S T I G A T I O N**

As we know these scientific techniques are used to curtail unnecessary arrests, reduce response time, avoid use of third degree methods in detection and interrogation, improve prospects of proof through scientific evidence but at the same time these techniques are criticized on various points firstly on constitutional and legal validity which has been discussed in the earlier chapter.

Now if we talks about the one of method of scientific investigation i.e narco-analysis, as part of criminal investigative practice, is the administering of chemical drugs by the police to a suspect or witness in order to extract information from him/her by asking questions while in a drugged state. Three grams of sodium pentothal dissolved in 3 litres of distilled water are injected in one‘s veins along with 10 per cent dextrose, slowly over 3 hours. This injected cocktail is believed to depress the body‘s central nervous system, putting the subject in a state of trance, hence suppressing the rational faculties that would be present if questioned when fully awake.



57 Retrieved from <<http://www.legalserviceindia.com/article/l153-Forensic-Evidence.html>> accessed on: 16 0ctober, 2010

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While the dubious practice on injecting drugs such as scopolamine, sodium amytal and sodium pentothal has been practiced and discarded by a number of countries over the last century, it has

been prevalent in India for only half a decade. However it is gaining popularity in police investigations and has been used in a number of high-profile cases, including that of Abu Salem, Abdul Karim Telgi, the Hyderabad bomb blasts and the Nithari killings. Narco- analysis has also increasingly been used against activists, including against Arun Ferreira, Ashok Reddy, Naresh Bansod and Dhanendra Bhurle, who were arrested on 9 May 2007 by the Nagpur police under the Unlawful Activities (Prevention) Act.58

There certain issues of grave concern as formal law and modern jurisprudence include certain liberal principles, in theory – that a person is innocent until proven guilty; that a suspect or an under trial cannot be physically or mentally pressured in any way to extract information, that a witness or a suspect has the right not to incriminate oneself, that a witness has a right to remain silent. Narco-analysis violates all these principles.

Narco- analysis 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. Narco - analysis is not recommended as an aid to criminal investigation. In medical uses like in treatment of psychiatric disorder the narco- analysis may be useful. Unless the test is conducted with the consent of the suspect it should not be used in criminal investigation.59

In India sometimes narco-analysis appears a more refined form of torture. Further, the official sanction and institutionalization of such forms of torture too raises a number of grave concerns.

The question of consent is the important argument against these techniques in the well-known case against Gujarat DIG Vanzara, accused in the case of fake encounter killing of Sohrabuddin, the Ahmedabad Metropolitan Magistrate underlined that such tests cannot be carried out ―without the express consent of the accused‖. In November 2006, the Supreme Court ordered a stay on narco-analysis being carried out without consent on K. Venkateswara

58 Retrieved from <<http://www.pudr.org/index.php?option=com_docman&task=doc_view&gid=168>> accessed on: 20th October, 2010

59 Retrieved from <[http://www.rmlnlu.ac.in/content/sonakshi\_verma.pdf.](http://www.rmlnlu.ac.in/content/sonakshi_verma.pdf) > accessed on : 20th October, 2010.

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Rao, in a case involving the Krushi Cooperative Urban Bank. However, such welcome caution is likely to be thrown to the winds when the subject/ accused is dalit, poor, or are activists whose politics is considered suspect by the state, as happened in the case of Arun Ferreira.60

There are various dangerous side-effects. It is believed that sodium pentothal, if administered improperly, could lead to coma and even death. The possible life-threatening side effects of pentothal include harmful effects on blood circulation and breathing, apnoea (stopping of airflow during sleep) and anaphylaxis (a rapidly progressing, life-threatening allergic reaction of the immune system). According to one research, its effects on the central nervous system

―may lead to retrograde amnesia, emergence delirium, besides many other side effects‖. Consent implies informed consent, there is little doubt that the subjects are unaware of these dangers when their ‗consent‘ is being secured. 61

Scientific investigations techniques are criticized on the ground that it is not 100% accurate. It has been found that certain subjects made totally false statements. It has been found that a person who has given false information even after administration of drug. These techniques are not much help in case of malingers or evasive, untruthful person and moreover like in case of narco-analysis it is very difficult to suggest a correct dose of drug for a particular person. The dose of drug will differ according to will power, mental attitude and physique of the subject. For the success of these scientific techniques a competent and skilled interviewer is required who is trained in putting recent and successful questions.62

60 Retrieved from <<http://www.pudr.org/index.php?option=com_docman&task=doc_view&gid=168>> accessed on: : 20th October, 2010.

61 Supra, footnote no. 67

62 Ibid

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**C O N C L U S I O N**

The criminal justice system is based on the principle that ―let hundred guilty go unpunished rather than an innocent is punished‖. To uphold this principle scientific investigation methods have to be made compulsory in cases where the interest of public is involved. For this purpose, it is necessary to amend or to enact new laws for that purpose so that justice may be delivered in a fair manner.

Now as we all know that law is a living process, which changes according to the changes in society, science, ethics and so on. The Legal System should imbibe developments and advances that take place in science as long as they do not violate fundamental legal principles and are for the good of the society. The criminal justice system should be based on just and equitable principles. The issue of using these scientific tests as a tool of interrogation in India has been widely debated. The extent to which it is accepted in our legal system and our society is something, which will be clearer in the near future. In a situation where narco- analysis, brain mapping, DNA test are sometimes gaining judicial acceptances and supports despite being an ―unreliable & doubtful‖ science, we have to seriously rethink about its legal and constitutional validity from human rights perspective.

There has always been a search by investigating agencies for an effective method of interrogation because right from the historical world, man has tried to obtain information from an uncooperative source. For obtaining information, police have been using physical coercion. And where such coercion was not used, there were some time consuming inquiries. In such scenario, these techniques have emerged as a developed tool of investigation.

There is a unanimity that medical and forensic evidence plays a crucial role in helping the courts of law to arrive at logical conclusions. Therefore, the expert medical professionals

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should be encouraged to undertake medico legal work and simultaneously the atmosphere in courts should be congenial to the medical witness. This attains utmost importance looking at the outcome of the case, since if good experts avoid court attendance, less objective professional will fill the gap, ultimately affecting the justice. The need to involve more and more professionals in expert testimony has been felt by different organizations. This objective of greater expert participation can only be achieved by addressing to the apprehensions that ponder the mind of medical professionals. In the light of new developments in the forensic science, the home ministry, Govt. of India constituted a committee under the chairmanship of Dr. Justice V.S Malimath to suggest reforms in the criminal justice system. This committee suggested comprehensive use of forensic science in crime investigation. According to the committee DNA experts should be included in the list of experts given in section 293(4) of Cr.P.C, 1973.

Scientific methods of investigations are an aid to the interrogator and the investigating officer and they should resort to their use when all else has failed. The police officer should be sensitive to their use and should fully understand the physical, emotional and legal implication of conducting the lie-detector test and administering the truth serum.

In present scenario criminals are getting clever and technical day by day. They are making full use of scientific techniques to commit crimes, and to escape from detection. It has become quite hard to apprehend and prosecute criminals, because the evidence is not readily available. In such scenario, it will be highly undesirable in the interests of justice that law enforcement agencies are not allowed to make use of scientific evidence, to bring the guilty to the book, due to some confusing legal technicalities.

We should not ignore the positive aspects of such methods. The most significant of these being that it can be used to determine the innocence of the suspect quite effectively, which is in fact one of the main concerns of criminal justice system. Where other physical evidence is not available, evidence through these techniques can be readily found. In fact these should be admissible in the largest sense of good of society.

Adequate safeguards are required before acceptance of such evidence. Laboratories should have proper quality control and the finding should be free from error. Accused should be

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given opportunity to examine and challenge the authenticity of the test and report. The court may accept such evidence depending upon the authenticity of the source, satisfaction of having followed the established scientific procedure and correctness of the finding. An expert may help the court with his knowledge, skill, experience, training or education to form an opinion or otherwise. The views of the experts based upon scientific method also need to be relevant to the facts in issue and must be scientifically valid, free from errors and accepted by scientific community.

Now, there is a detailed judgment from the Apex Court on this point. Also a specific and comprehensive law on the admissibility of scientific techniques will settle the uncertainty regarding the admissibility. However, such law has to be framed with verifying all the scientific and legal aspects, diligently by the experts in both the fields. The Supreme Court has banned the lie detector, narco – analysis and brain mapping test. The judgement is viewed as a blow to the investigative agencies which have been restrained from ―intruding‖ into an individual‘s personal liberty. the court has upheld and endorsed the ageold and time tested dictums, guaranteeing the right of the accussed to maing a choice between remaining silent and speaking i.e. protectin against self incrimination.

With the latest bann on deception, detection techniques like polygraph, lie detector, narco – analysis and brain mapping test, investigating agencies may have suffered a blow in expeditiously reaching out the truth. However, keeping in view the self incriminating nature of this kind of evidence and consequences of employing these two on individuals liberty. The court said this judgement will not only restore people‘s faith in the system but also enhance all right thinking citizen‘s respect for human rights and values.63

63 The Tribune, 09 May 2010, pg. 12.

1. Indore institute of law [↑](#footnote-ref-1)