

# Narco Analysis

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## ABSTRACT

The element of criminal instinct is present in the nature of human being since the start of civilization. When crimes are emerging on every part of the globe, further more attempts to stop crime ought to be made. The revolution in scientific technology has progressed tremendously in the modern world of advancement. The field of law is also under the scanner of scientific advancement. Judicial system, particularly the criminal justice system, is not untouched with the advancement of science. There has been a revolution in the age old established laws of crime detection and investigation with the introduction of view techniques of crime detections like 'Narco-Analysis', in laws of evidence and criminal jurisprudence.

While treading the path of technology sometimes we tend to forget the procedure of usage of these methods which is likely to violate the basic human rights. On one hand it can be extremely helpful in speedy delivery of justice but on the other it can infringe upon the privacy of human mind, thus raising serious scientific, legal, and ethical issues.

**Keywords:** Narco, Evidence, Criminal jurisprudence.

## INTRODUCTION

As science has outpaced the development of law or at least the laypersons understanding of it, there is unavoidable complexity regarding what can be admitted as evidence in court. NARCO ANALYSIS, BRAIN ELECTRIC ACTIVATION PROFILE, POLYGRAP EXAMINATION are such scientific development that has become an increasingly. Perhaps alarming, common term in India.

Article 20(3) of the Indian Constitution prescribe that “no person accused of an offence shall be compelled to be a witness against himself”.

The constitution neither has nor merely declared that such law in force as are inconsistent with the fundamental right shall be void, it has also provided against similar future legislature, clause 2 of article 13 lays down:

“The state shall not make any laws which take away or abridges the right conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention be void”.

In any criminal investigation, interrogation of the suspects and accused plays a vital role in extracting the truth from them. The article 20(3) of the Indian Constitution gives protection:

- a) To a person accused of an offences,
- b) Against compulsion “ to be a witness”,
- c) Against himself.

The article 20(3) cannot be invoked unless all the above three ingredient exist.

The principle are embodied in clause 3 of article 20 which lays down that “no person accused of any offence shall be compelled to be witness against himself”; the privilege to an accused person contain three component, that he has a right of protection against “compulsion to be a witness, and against such compulsion resulting in his giving evidence- against himself.

In NANDINI SATHPATHY CASE, the court held that relevant replied which furnish a real and clear link in the chain of evidence to blind down the accused with the crime become incriminatory and offend article 20(3) if elicited by pressure from the mouth of the accused.

### **THE CASE AT HAND**

In the case of SRMT. SELVI and ORS. V. State of Karnataka, the supreme court of India had finally recognized the nature of NACRO ANALYSIS, BEAP, POLYGRAP Tests had abusive. These tests are not valid on the ground of constitutionality. The accused person had holding the cruel inhuman and degrading treatment. The Indian Judiciary had prohibited all involuntary administration of these examination as the leading judgement of this case.

NARCO- analysis, brain mapping, polygraph examination are such tests where the accused had given more and more information about the offences which may be relevant or not. The Supreme court of India had given its decision according to the line of constitution requirement and International human right law. NARCO- analysis, Brain mapping, Polygraph examination are conducted during the period of investigation, the information which are obtain from the accused that had not be relevant fact of that particular offences. These scientific tests reliability of these tests had more likely to be in the nature of inconsequence information about the subject of “person lives”. Now the major question are raising in front of Indian Judiciary that these test or examination are violation of “personal liberty”.

## THE SUPREME COURT OF INDIA ANALYSIS

The constitutional bench had analysis on the subject of NARCO- analysis, Brain mapping, Polygraph examination had that 'right against self incrimination of contravention of article 20(3) of the Indian constitution. The Supreme court of India had overruled various High courts declaring the administration of such tests. According to article 20(3) said that "No person accused of an offence shall be compelled to be a witness against himself. Now, under article 20(3) had the question which are raising on the constitutionality of NARCO- analysis and some other tests. The High courts had various argument for holding these tests constitutionality which may had not the violation of article 20(3).

The compulsion requirement under article 20(3) had the purpose of interrogation under the investigation process which may be "duress" having the physical injuries, harm or threat. But these test are not the compulsion of article 20(3). The High courts had the argument based on the point of that had found the mild pain from the administration of an injection necessary to in due of these tests while are not the requisite level of hurt to constitute compulsion.

Now, some other High courts had the view on compulsion which are under article 20(3) of the Indian constitution. The Madras High court had said that compulsion are generally means as a physical harm or threat under the third degree method of interrogation, where these tests are as NARCO- analysis, Brain mapping and polygraph examination undergo in first place, as the accused had the statement made during resulting tests themselves as voluntary.

The High court of Karnataka Bombay or Delhi had found the administration of these tests could not the violation of article 20(3). The Supreme court of India had giving its landmark judgement under case of SELVI V. State of Karnataka that had the result of this tests are the potential violation occurs by the fact which had to made as the evidence. Thus these arguments are rejected by the Supreme court of India and found that the subject of NACRO- analysis, Brain mapping and Polygraph examination are enforced by the requisite compulsion of article20(3) of Indian constitution. The court had also Clearfield in its statement that these tests are the compulsion on the ground of mental condition of an accused not as physical condition.

The physical injuries under interrogation had declared the level of compulsion during investigation. But these tests results had not the nature of answer given during the test which are not be relevant fact and had not also be admitted as an evidence in the courts.

## NARCO- ANALYSIS TEST WITHOUT CONSENT OF ACCUSED ILLEGAL : SUPREME COURT OF INDIA

The supreme court had given its judgement on the NACRO- analysis and other tests are illegal while without the consent of accused. The court had given the ground of personal liberty of a person as an accused also. Under article 21 of the Indian constitution had deal with the personal liberty, where these test are the violation of fundamental right and the right against self- incrimination of a person under article 20(3). The decision in SELVI V. State of Karnataka had justified all these argument by their analysis. The judgement given in this case had the landmark decision on the subject of NACRO- analysis, Brain mapping and polygraph examination in the paragraph of 250 pages.

According to this paragraph where the supreme court had explain the origin, process, effect disaffect or condition which are lying to the offences are important for NACRO- analysis. In para. 9 of the judgement had full justification on these tests. And para. 39 and 67 of the judgement had deal with the Brain mapping and polygraph examinations. The supreme court of India had said that these tests are :

- a) Violation of personal liberty (article 21)
- b) Rights against self- incrimination (article 20(3)).

The chief justice of India, K.G. BALAKRISHAN J., had also referred to the judgement of NANDINI SATHPATHY's Case on the compulsion which are related to the investigation while in this case KRISHNA IYER J., had explain the constitutional compulsion in form of Indian legal aspects.

The supreme court of India had also analysis the medical examination which are under section 53, 53A and 54 of the Code of criminal procedure, 1973. According to this sections are related to medical examination of the accused during the investigation had explained in brief. The question which are arising in this section are the NACRO- analysis, Brain mapping and polygraph examination are lying in this section. The court had disqualified this tests under section 53 A on the ground of unreasonable answering with had directly affect the victim's personal dignity during the investigation.

## **WHY SCIENTIFIC EVIDENCE ARE NOT ADMISSIBLE AS AN EVIDENCE IN INDIAN COURTS**

Scientific evidence such as NACRO- analysis, Brain Mapping and Polygraph examination are the important subject matter of debate in the post of SELVI. V. STATE OF KARNATAKA CASE, by the Hon'ble Supreme Court of India. The admissibility of scientific evidence in Indian context are involves the different provisions of laws. In India, the major problem that are faceted by accused under the various laws. There are various provision are given in process of investigation or during interrogation while it interpreted which are keep in mind at charge scenario would make scientific evidence admissible in courts of law without any amendment.

### **INDIAN LAWS VISE-A-VISA SCIENTIFIC EVIDENCE**

In case of STATE OF MAHARASHTRA V. INDIAN HOTEL AND RESTAURANTS

ASSOCIATION 2013(2) RCR (CIVIL) 859; where the Supreme court held that 'if must be presumed that the legislature understand and correctly appreciates the need of its own people that its law are directly to problem made manifest by experience'.

### **ADMISSIBILITY OF SCIENTIFIC EVIDENCE UNDER CONSTITUTION OF INDIA, 1950**

The constitution of India, 1950 had not clean slate on the scientific evidence. When the constitution are framed where the framer had kept in mind historical precedents, geographical necessities, social aspects and cultural diversities. Before the framing of constitution that had government under the act of 1919 and 1935.

In Indian constitution, some provisions of law are not be admitted the scientific evidence as the article 20(3) had stated that 'right against self-incrimination' and article 21 which say that 'No person shall be deprived of his life and personal liberty except according to the procedure established by law'. While this law had been interpretation had a person in this article which any citizen of the country as well as the foreigner who came to visit India.

### **ADMISSIBILITY OF SCIENTIFIC EVIDENCE UNDER INDIAN EVIDENCE ACT, 1872**

Under section 3 of this act had defined the word 'evidence' in chapter 2. While the evidence signifies that state of being evident.

Section 27 and 45 of the Indian evidence act are relevant to each others. While in section 27 had said about the disclosure and section 45 about expert evidence.

Section 27 of the Indian evidence act;

**"How much of information received from accused may be proved ....".**

This provisions had stated that the essential requirement are :-

- a) Accused is in police custody,
- b) Accused make a statement,
- c) Accused's statement leads to discover of a fact.

Section 45 of the Indian evidence act;

**“opinions of experts... when the courts has to form on opinion upon a point of foreign law, or of science or art, or as to identify of hand writing or finger impression, are relevant facts”.**

Such person called experts.

### **UNDER CRIMINALJUSTICE SYSTEM**

The system of criminal justice in India are totally depend on Indian Penal Code, 1860 and Code of Criminal Procedure, 1973. In this contest the scientific evidence are lay on the investigation. It define in section 2(h) of the Cr. P. C, 1973 said that;

**“investigation include all the proceeding under this code for the collection of evidence conducted by a police officer or by any person other than a magistrate, who is authorised by a magistrate in this behalf”.**

The related section which are provision of law according to scientific evidence are section 39, 53, 162(2) of Cr. P. C, 1973 and section 330, 331, 302 of I. P. C, 1860.

The National Human Right Commission had published guideline for the administration of these tests on an accused in 2000. The text of these guidelines has been reproduced below :

- i) No lie detector test should be administered except on the basis of Consent of the accused. An option should be given to the accused whether he wishes to avoid such tests.
- ii) If the accused volunteers for a lie detector test, he should be given access to a lawyer and the physical, emotional and legal implication of such as test should be explained to him by the police and his lawyer.
- iii) The consent should be record before a judicial magistrate.
- iv) During the hearing before the magistrate the person alleged to have agreed should be duly represented by a lawyer.
- v) At the hearings, the person in question should also be told in clear terms that the statement is made shall not be a ‘confessional’ statement to the magistrate but will have the status of a statement made to the police.
- vi) The magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
- vii) The actual recording of the lie detector test shall be done by an independent agency ( such

as a hospital ) and conducted in the presence of a lawyer.

- viii) A full medical and factual narration of the manner of the information received must be taken on record.

### **JUDGEMENT ON MEDICAL EXAMINATION IN CASE OF SELVI V. STATE OF KARNATAKA AIR (2010) SCC 263**

K.G.B ALAKRISHNA C.J.I, leave granted in SLP(CRL.) Nos. 10 of 2006 and 6711 of 2007.

The legal question in this batch of criminal appeals relate to the involuntary administration of certain scientific techniques, namely NACRO- analysis, polygraph examination and brain electric activation profile(BEAP) test for the purpose of improving investigation effort in criminal case. This issues has received considerable attention since it involves tensions between the desirability of efficient investigation and the preservation of individual liberties. Ordinarily the judicial task is that of evaluating the rival contention in order to arrive at a sound conclusion. However, the present case is not an ordinary dispute between private parties. It raises pertinent question about the meaning and scope of fundamental right which are available to all citizens. Therefore we must examine the implication of permitting the use of the impugned techniques in a variety of setting.

Objection have been raised in respect of instances where individuals who are the accused, suspects or witnesses in an investigation have been subjected to these tests without their consent. Such measures have been defended by citing the importance of extracting information which could help the investigation agencies to prevent criminal activities in the future as well as in circumstances where it is difficult to gather evidence through ordinary means. In some of the impugned judgement, reliance has been placed on certain provision of the code of criminal procedure, 1973 and the Indian evidence act, 1872 to refer back to the responsibilities placed on citizens to fully co-operate with investigation agencies.

The involuntary administration of the impugned techniques prompts questions about the protective scope of the right against self- incrimination which finds place in article 20(3) of our constitution. In one of the impugned judgement, it has been held that the information extracted through methods such as polygraph examination and the Brain electric activation profile (BEAP) test, cannot be equated with “testimonial compulsion” because the test subject is not required to give verbal answer, thereby falling outside the protective scope of article 20(3). If further ruled that the verbal revelation made during a narco- analysis test do not attract the bar of article 20(3) since the inculpatary or exculpatory nature of these revelation is not known at the time of conducting the test. To address these question among others, it is necessary to inquire into the historical origins and rationale behind the right against ‘ self- incrimination’.

The principle questions are whether this right extends to the investigation stage and whether this test result are of a testimonial character thereby attracting the protection of article 20(3). Furthermore, we must examine whether relying on the test result or material discovered with the help of the some creates a reasonable likelihood of incrimination for the test subject. We must also deal process which is part and parcel of the idea of personal liberty protected by article 21 of the constitution. The first question in this regard is Whether the provision in the code of criminal procedure, 1973 that provided for 'medical examination' during the course of investigation can be read expansively to include the impugned techniques, even though the latter are not explicitly enumerated.

The scientific validity of the impugned techniques has been questioned and it is argued that their result are not entirely and it is argued that their result are not entirely reliable. For instance, the NACRO- analysis techniques involves the intravenous administration of sodium pentothal, a drug which lowers inhibitions on part of the subject and induces the person to talk freely. We must be mindful of the fact that these requirement have been long been recognized as component of personal liberty under article 21 of the constitution. Hence it will be instructive to gather some insight about the admissibility of scientific evidences.

In the course of proceeding before this court, oral submission were made by Mr. Rajesh Mahale, Adv.( Crl. App No. 1267 of 2004) Mr. Manoj Goel, Adv. ( Crl. App No.56-57 of 2005) Mr. Santosh Paul, Adv. ( Crl. App No. 54 of 2003) and Mr. Harish solve, Sr. Adv. ( Crl. App No. 1199 of 2006 and No. 1471 of 2007) – all of whom argued against the involuntary administration of the impugned techniques.

Argument defending the compulsory administration of these techniques were present by Mr. Goolam E. Vahanvati Solicitor General of India and Mr. Anoop G. Andhyarujina Sr. Adv. Who appeared on behalf of the C.B.I and Mr. Sanjay Hegde Adv. Who represent the state of Karnataka. Mr. Dushyant Deve, Sr. Adv. Rendered assistance as amicus curia in the matter.

At this stage, it will be useful to frame the question of law and outline the relevant sub- questions in the following manners:

- I. Whether the involuntary administration of the impugned techniques violates the 'right against self- incrimination' enumerated in article 20(3) of the constitution.
- II. Whether the investigation use of the impugned techniques created a likelihood of incrimination of the subject? (accused)
- III. Whether the result derived from the impugned techniques amount to 'testimonial compulsion' thereby attracting the bar of article 20(3)?



- IV. Whether the involuntary administration of the impugned techniques is a reasonable restriction on ‘personal liberty’ as understood in the context of article 21 of the constitution.

In the Indian context, article 20(3) should be constructed with due regard for the inter- relationship between rights since this approach was recognized in MANEKA GANDHI CASE (1978) 1 SCC 248 :

We must examine the “right against self- incrimination in respect of its relationship with the multiple dimensions of person liberty under article 21 of the constitution which include guarantee such as the ‘right to fair trial’ and ‘substantive due process’”. As amendment of 42 act of 1978.

In this regard, article 359(1) of the constitution of India read as follows :-

359. Suspension of the enforcement of the right conferred by part III during emergence.

For instance has been placed on section 39 of Cr. P. C, which place a duty an citizen to inform the nearest magistrate or police office. Attention has also been drawn to the language of section 156(1) of Cr. P. C, which state that a police officer in charge of a police station is empowered to investigation cognizable offences even without an order from the judicial magistrate. Our attention was drawn to section 161(1) of Cr. P. C, which empower the police officer investigating a case to orally examine any person who is supposed to be acquainted with the facts and circumstances. For instance, section 161(2) of Cr. P. C, prescribe that when a person is being examination by a police officer, he is not bound to answer such question, the answer of which would have a tendency to expose him to a criminal charge or a Penalty or feiture.

At the trail stage section 313(3) of the Cr. P. C, place a criminal limitation on the power of the court to put question to the accused so that the latter may explain any circumstance appearing in the evidence against him.

The judgement in NANDINI SATHPATHY V. P. L. DANI (1978) 2 SCC 424 at pp. 438 – 439, referred to the following extraction from the decision of the united state supreme court in BROWN V. WALKER 161 US 591 (1896) which had later been approvingly cited by WARREN C. J, in MIRANDA V. ARIZONA 384 US 435 1966. The maxim “nemo tenetun seipsum accusare” has its origin in a protest against the inquisitorial and manifestly unjust method of interrogating accused person. These concerns have been recognized in India as well as foreign judicial precedents.

For instance, DAS GUPTA J., has observed in STATE OF BOMBAY V. KATHI KALU OGHAD (1926) 3

SCR 10 at pp. 43 – 44. V. R. KRISHNA IYER J. echoed similar concern in NANDINI SATHPATHY'S CASE at pg. 442 :

**“ And article 20(3) is a human article, argument of dignity and integrity and of inviolability of the person and refused to convert an adversary system into an inquisitorial scheme in the antagonistic ante- chamber of a police station. And in the long run, that investigation is best which uses stratagems least, that police men his wits restlessness. The police are part of us and must rise in people esteem through firm and friendly not foul and such strategy”.**

Applicability of article 20(3) to the stage of investigation :

The question of whether 20(3) should be narrowly constructed as a trial right or a broad protection that extend to the stage of investigation has been conclusively answered by our courts. In M. P. SHARMA V. SATISH CHANDRA (1954) SCR 1077, it was held by JAGANNADHADAS J., at pp. 1087-1088 : **“ Broadly stated, the guarantee in article 20(3) is against testimonial compulsion. It is suggest that this a confined to the oral evidence of a person standing his trail for an offence when called to the witness – stand. We can see no reason to confine the context of the constitutional guarantee to this barely literal impart. So to limit it would be to rob the substance for the sound as stated in certain American decisions...”.**

The observation were cited with approval by B. P. SINHA C. J., in STATE OF BOMBAY V. KATHI KALU OGHAD AND OTHERS. (1962) 3 SCR 10, at pp.26-28, In the minority opinion DAS GUPTA J., affirmed the same position Id at p.40 :

**“ ... If the protection was intended to be confined to being a witness in court then really it would have been an idle protection. It would be completely defeated by compelling a person to give all the evidence outside court and then, having what he was so compelled to do proved in court through other witness. An interpretation which so completely, defeats. The constitution guarantee cannot, of course, be correct. The contention that the protection afforded by article 20(3) is limited to the stage of trial must therefore be rejected”.**

The broader view of article 20(3) was consolidated in NANDINI SATHPATHY V. P. L. DANI (1978) 2 SCC 424 :

**“ ... Any giving of evidence, any furnishing of information, if likely to have an incriminating impact, answer the description to being a witness against oneself. Not being limited to the forensic stage express wards in article 20(3), we have to construe the expression to apply to every stage where furnishing of information and collection of material take place. That is to pay, even the investigation at the police is embraced by article 20(3). This is precisely what section 161(2) means. Therefore, we have to base our conclusion not merely upon section 161(2) but on the more fundamental protection,**

**although equal in ambit, contained in Article 20(3)”.**

If the police can interrogation to the point of self-accusation, the subsequent exclusion of that evidence at the trial hardly helps because the harm has already been done. The police will prove through other evidence.

An answered acquires confessional status only if, in terms or substantially all the facts which constitutes the offences are admitted by the offender. If his statement also contains self- exculpatory matter it cases to be a confession. Article 20(3) strike at confessions and self- incrimination but leaves untouched other relevant facts.

Section 27 of the Indian evidence act incorporate the ‘ theory of confirmation by the subsequent facts – statement made in custody are admissible to the extend that they can be proved by the subsequent discovery of facts.

The relationship between section 27 of the Indian evidence act and article 20(3) of the constitution was Clearfield in KATHI KALU OGHAD CASE (SUPRA.). It was observed in the majority opinion by JAGANNADHADAS J., at pp. 33-34 : **“ it must therefore, be held that the provision of the Indian evidence act are not within the prohibition aforesaid, unless compulsion has been used in obtaining the information’s”.**

The preceding discussion does not conclusively address the contentions before us. Article 20(3) protect a person who is formally “ accused” of having committed an offence or even a suspect or a witness who is question during an investigation in a criminal cases.

In order to account for these possibilities, we must examine whether the involuntary administration of any of these tests incompatible with the constitution guarantee of ‘ substantive due process’. We will proceed with this inquiry with regard to the various dimension of ‘personal liberty’ as understand in the context of article 21 of the constitution which lay down that :-

**“No person shall be deprived of his life and liberty except according to procedure established by law”.**

So far, the judicial understanding of privacy in our country has mostly stressed on the protection of the body and physical spaces from intrusive actions by the states. While the scheme of criminal procedure as well as evidence law mandates interference with physical privacy through statutory provisions that enables arrest, detention, search and seizure among others, the same cannot be the basis for compelling a person to impact personal knowledge about a relevant fact. The theory of interrelationship of right mandates that the right against self-incrimination should also be read as a component of ‘ personal liberty’ under article 21.

Hence our understanding of the right to privacy should account for its intersection with article 20(3). Furthermore, the ‘role against involuntary confession’ as embodied in section 24,25,26 and 27 of the Indian evidence act, 1872 seek to serve both the objective of reliability as well as voluntaries of testimony given in a custodial setting. A conjunction reading of article 20(3) and 21 of the Indian constitution along with the principles of evidence law leads us to a clean answers. We must recognise the importance of personal autonomy in aspect such as the choice between remaining silent and speaking . An individuals decision to make a statement is the product of a private choice and there should be no scope for any other individual to interfere with such autonomy exposure to criminal charges or penalties.

Therefore, it is our considered opinion that subjects a person to the impugned techniques in an involuntary manner violates the prescribed boundaries of privacy. Forcible interference with a person’s mental processes is not provided for under any statute and it must certainly come into conflict with the ‘right against self-incrimination’.

The appellants have also drawn our attention to some international convention and declarations. For instance in the UNIVERSAL DECLARATION OF HUMAN RIGHT [ GA.RES.217A(III) OF DECEMBER 10, 1948].

Article 5 states that :

**“No one shall be subjected to torture or to cruel, in human or degrading treatment or punishment”.**

Article 7 of the International covenant on civil and political rights (ICCPR) ( GA RES. 2200 A(XXI), entered into forced on March 23, 1976, also touches on the same aspect. It reads as follows :-

**“... No one shall be subjected to torture or to cruel in human or degrading treatment or punishment. In particular, no shall be subjected without his forced consent to medical or scientific experimentations.**

Such a possibility has been outlined by the ‘National human rights commission which had published guideline relating to administration of polygraph test on an accused (2000)’. The relevant extract has been reproduced below : The lie detector test is much too invasive to admit of the argument that the authority for lie detector test comes from the general power to interrogate answer question or make statements.(Section-160-167 of Cr. P. C). However, In India we must proceed on the assumption of constitution invasiveness and evidentiary permissiveness to take the view that such holding of tests is a prerogative of the individual, not an empowerment of the police.

In our considered opinion, the compulsory administration of the impugned techniques violates the 'right against self-incrimination. The court has recognized that the protective scope of article 20(3) extend to the investigation stage in criminal cases and when read with section 161(2) of the code of Cr. P. C, 1973, it protect accused persons, suspect as well as witness who are examined during an investigation. Article 20(3) protect an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. Article 20(3) aims to prevent to the forcible 'conveyance of personal knowledge that is relevant to the facts in issues'. The result obtained from each of the impugned test bear a 'testimonial' character and they cannot be categorised as material evidence.

The view that forcing an individual to undergo any of the impugned techniques violates the standard of 'substantive due process' which is required restraining person liberty. The impugned techniques cannot be read into the statutory provision which enables medical examination during investigation in criminal cases, i.e., the explanation of section 53, 53A and 54 of the Cr. P. C, 1973. Such an expression interpretation is not fusible in light of the role of 'ejusdem generis' and the consideration which the interpretation of status in relation to scientific advancements.

We have also elaborated how the compulsory administration of any of the techniques is an unjustified intrusion into the mental privacy of an individual. It would be also amount to 'cruel' in human or degrading treatment with regards to the language of evolving international human right norms. Furthermore, placing reliance on the result gathered from these techniques comes into conflict with the right to fair trail.

Invocation of a compelling public interest cannot justify the dilution of constitutional right such as the right against self-incrimination.

In light of the conclusion, we hold that no individual should be forcibly subjected to any of the techniques in questions, whether in the context of investigations in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty.

However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguard are in place. Even when the subject has given consent to undergo any of these tests, the test result by themselves cannot be admitted as evidence because the subject does not exercise conscience control over the responses during the administration of the test.

However, any information or material that is subsequently discovered with the help of voluntary administration test result can be admitted, in accordance with section 27 of the Indian evidence act, 1872. The National human right commission had published guidelines for the administration of polygraph test as lie detector test on an accused in 2000. These guidelines should be strictly adhered to and similar safeguard should be adopted for conducting the Nacro- analysis techniques and the Brain electric activation profile test.

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