

TRUTH SERUM: BOON OR JUST A VAIN GLORY?

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Abstract

Interrogation is an important aspect of criminal investigation. It plays a major role in investigation whenever there is little or no physical evidence. Police and other investigators depend on interrogation as principal means of determining facts and resolving issues¹.

The search for effective aids to interrogation is probably as old as man's need to obtain information from an uncooperative source and as persistent as his impatience to shortcut any torturous path^{2,3}. In the annals of police investigation, physical coercion has at times been substituted for pain staking and time consuming inquiry in the belief that direct methods produce quick results. Development of new tools of investigation has led to the emergence of scientific tools of interrogation like the narco-analysis test².

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Keywords: Truth serum, thiopental sodium, narco-analysis, criminal investigation, interrogation.

Introduction

*"It is far pleasanter to sit comfortably in the shade rubbing red pepper in a poor devil's eye than to go about in the sun hunting up evidence."*⁴

Humans always go for shortcuts and the same rule applies to criminal investigation⁴. Development of new tools of investigation has led to the emergence of scientific tools of interrogation like narco-analysis test².

A narcotic is a drug that dulls the senses, relieves pain, and induces sleep. Persons who were under the influence of narcotics entered a hypnotic –like state and spoke freely about anxieties or painful memories. Once the drug effect had worn off, the person had no recollection of what he or she said. Horselay coined the term "Narco-analysis"^{4,5,6}.

The term 'truth-serum' has been applied to drugs that are used in narco analysis. This term is a misnomer in two ways: the drugs used are not serums and the truthfulness is not guaranteed⁵.

Many researchers report that interrogators using truth serum are often successful in obtaining truthful information not only from those intending to withhold certain pieces of information, but even from those who had forgotten that information entirely. On the other hand, studies show that a significant number of subjects will sometimes inadvertently make false statements when questioned under the influence of truth serum⁷.

Medical aspects

There is no single drug called 'truth serum'. Rather, the term 'truth serum' has been used to describe a variety of substances. The most common of these are barbiturates such as sodium pentothal, sodium amytal and scopolamine^{6,7}.

Sodium pentothal (thiopentone) is an ultra-short acting barbiturate. It slows down the heart

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rate, lowers BP and slows down the brain and spinal cord activity⁵. It has anesthetic, sedative and hypnotic properties⁸. It is used for induction of anesthesia, euthanasia, psychiatry and also as truth serum in narco-analysis⁹.

Intravenous injection of 20 milliliters of 2.5% solution of the drug can cause unconsciousness in 15-30 seconds which lasts for 5-10 minutes. If drug is given in half state, the person enters a 'twilight stage'^{8,10} or a 'twilight zone'¹¹: state between consciousness and unconsciousness⁸. The subject's inhibitions are lowered by interfering with his nervous system at a molecular level. In this state, it becomes difficult though not impossible for him to lie². The reliability of the confessions is dubious^{8,9}. The drug tends to make subjects chatty and cooperative with interrogators, but a practiced liar or someone who has a false story firmly established would still be able to lie under the influence of the drug⁹.

Historical aspect

"In vino veritas (in wine there is truth)" observed Gaius Plinius Secundus, during the 1st century. In fact, alcohol given as intravenous ethanol, was an early form of truth serum^{1,12}. The phrase 'truth serum' appeared first in a news report of the experiments conducted on prisoners by Robert House, in Los Angeles Record, sometime in 1922¹.

Today, drugs such as sodium amytal and sodium pentothal are widely used as anaesthetics, and less commonly by psychotherapists in efforts to recover repressed memories⁷. In 1989, the New Jersey Supreme Court (*State v. Pitts*) prohibited the use of sodium amytal narco analysis because the results of the interview were not considered scientifically

reliable, although there was some use to the interviews¹³.

Scenario in India

India is one of the few democratic countries to practice narco analysis on its criminals⁶. In India, the judiciary (Supreme Court) has approved adoption of pseudoscientific techniques in crime investigation¹. It has an increasing presence in the country, inspite of the fact that it is widely criticized by public and media and experts decry lack of scientific evidence of its reliability and validity⁶.

Its fascination reached its peak when the Bangalore FSL launched its four-in-one package tests for investigating police officers¹ which includes the following tests in that order: a) psychological profile, b) polygraph test, c) brain fingerprinting test and d) narcoanalysis. Polygraph and brain fingerprinting are 2 popular non invasive techniques⁸. The tragedy is that the final analysis is made by narcoanalysis, the earliest to be thrown out¹.

In many cases, suspects and accused have been subjected to narcoanalysis in India. The Hindu reported a case¹⁴ where a lady suspect in a murder case, was subjected to narcoanalysis in Bangalore. Her revelations during the test were later found out to be totally false.

One IPS officer from AP has reported³ that an accused was subjected to narcoanalysis in the forensic lab after he was interrogated for 20 days in police custody. No new facts were revealed. These reports show that these experiments could endanger the life of the subjects⁸ and the truthfulness is not guaranteed.

Ethical considerations

For ethical reasons the psychiatrist is

advised against performing narcoanalysis when the examination is requested as an aid to criminal investigation^{1,4,15}. World Medical Association recently revised its Tokyo declaration^{1,16-19} on this subject.

Medical council of India has recently amended its official code of medical ethics by adding, "The physician shall not aid or abet torture or shall he be a party to either infliction of mental or physical trauma or concealment of torture inflicted by some other person or agency in clear violation of human rights¹."

Legal aspects

Narcoanalysis test violates various human rights. The legal position of applying this technique as an investigative aid raises genuine issues like encroachment of an individual's rights, liberties and freedom².

1. Consent of subject as stated in Section 88 of IPC^{20,21};

The consent obtained from the person for narcoanalysis is invalid as injection of dangerous narcotic drug is not done for the benefit of the person. It cannot be considered as an act done in good faith either.

2. Section 53 Criminal Procedure Code⁸:

Narco analysis cannot be constituted as a physical examination for collection of samples⁸.

3. Article 20(3) of Constitution of India/ Right against Self Incrimination^{2,8,22,23};

It deals with the privilege against self-incrimination. The privilege is also known as the Right to remain Silent. No one can forcibly extract statements from the accused, who has the right to keep silent during the course of interrogation. 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 Silence².

- 1) Article 21 of Constitution²⁴:

There is no enabling law to subject a person to a life threatening technique such as narco analysis⁸. He has the right to life and liberty.

- 2) Nemo Temetur se Ipsum Accusare⁸:

It states that, "No man, not even accused himself can be compelled to answer any question, which may tend to prove him guilty of a crime, he has been accused of"^{8,22}.

Narco analysis is a form of sophisticated torture where a dangerous drug is administered to relax the mind before the interrogation. It violates the human rights⁸.

- 3) Amnesty International^{8,25}:

It is a Human Rights Group that condemns narco analysis by stating that the use of drugs in interrogation was outlawed under international standards and is a breach of medical ethics. It constitutes cruel, inhuman and degrading treatment amounting to torture as per the Declaration of Tokyo^{1,16-19} 1975.

It is worthy to note that the impugned narco mechanism and its tyrannical procedure satisfy all the four components in UN Definition of Torture viz, it produces physical/mental suffering and is degrading; it is intentionally inflicted; it is intended for purposes such as getting information, confessions, etc; and it is inflicted by an official. **Article 7** of ICCPR clearly says that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment^{4,18,26,27}.

The admissibility of a science in a court of law demands that 3 major requirements be met: namely *validity, reliability and legality*²⁸. The same must be used to analyse the science of narco analysis and its prospective admissibility in our courts²².

"How can this procedure be called 'humane'? In such a situation, isn't the doctor violating the ethical principle of non-maleficence?"^{4,29} Thus even a doctor participating in narco analysis is participating in a psychological third degree procedure⁴. In India, horrifying video clips of the actual narco-analysis are telecast repeatedly, when the same is not even admissible as evidence in court⁴.

Events of narcoanalysis

In India, a few of those accused in the Godhra case were made to undergo narco-analysis in 2002 and since then, it has been used intermittently².

In 2004, the Bombay High Court ruled in the multi crore rupees fake stamp paper case that subjecting an accused (Telgi and his accomplices) to certain tests like narcoanalysis does not violate the fundamental right against self-incrimination. Statements made under narcoanalysis are not admissible in evidence^{2,4,13}. However, recoveries resulting from such drugged interviews are admissible as corroborative evidence. This is, arguably, a roundabout way of subverting the right to silence - acquiring the information on where to find the weapon from the subject when, in his right senses, he would not turn witness against himself^{4,13}.

In a 2006 judgment (*Dinesh Dalmia v. State*)³⁰, the Madras High Court held that subjecting an accused to narcoanalysis 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."^{2,13} There are two fallacies in this reasoning. First, if narcoanalysis is all that it is made out to be by the Bangalore FSL, the accused will involuntarily answer questions posed to him during the interview. The second fallacy is that it is incorrect to say that the accused is merely taken to the laboratory against his will. He is then injected with substances¹³.

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 have been accused of serial killing of women and children in Nithari village, in Noida, Uttar Pradesh.

The Bombay train blasts case, Surat(Gujarat)'s rape case of a young girl^{6,31} and the "beer killer" case in Mumbai (2007) are just a few examples of recent cases that involved narcoanalysis¹³.

Conclusion

In every reasonable sense, the Narco analysis is an unconstitutional and unscientific test, no matter its huge acceptance in the 'conviction market'. Human rights are not something to be experiment in laboratory, no matter what ever safeguards attached to it. It is to be noted that nations around the globe have deviated from this prohibitive path⁴. Scientific evidence against it as a method to reach truth has been consistent¹⁹. Yet we are pursuing it, as though it is the greatest scientific discovery of the millennium⁴.

Narco analysis is seldom used by

psychiatrists these days for fear of adverse effects. It is not openly permitted for investigation purposes in most developed and/ or democratic countries².

But, in India, various investigating agencies still resort to this method and they are not aware of the possible health hazards the subjects are exposed to. This method is illegal, unethical, and inhuman and leads to systemic violation of human rights⁸, liberties and freedom². It is necessary for the police organizations to take a serious view about these techniques in the guise of interrogation and evolve a common code in this regard¹.

“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” states Supriya Rai^{2,8,32}. The Central government must make a clear policy stand on narcoanalysis - because what is at stake is India's commitment to individual freedoms and a clean criminal justice system¹³.

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