

DISCUSSION

Narcoanalysis is neither effective nor ethical: Response to Dr Harish Gupta

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This is in response to Dr. Harish Gupta's letter [1] commenting on my editorial titled "Police investigation and unethical 'scientific interrogation'" [2] in the January-March 2023 issue of the *Indian Journal of Medical Ethics*. I had written in light of the resurgence in the use of narcoanalysis (truth serums) — especially in the Shraddha Walkar murder case, against the accused, Aaftab [2]. I appreciate the author's engagement with the editorial and his acknowledgement of the challenges within the Indian criminal justice system, including the large numbers of undertrials jailed for years together, and the many documented instances of police torture during investigation that go unpunished. The case of police torture from Tamil Nadu in which even an IPS officer was directly involved in the brutal torture is just one recent reminder of how prevalent custodial torture is [3]. Hence, the main point of disagreement appears to be regarding the use of narcoanalysis in investigations. I do agree with Dr Gupta that narcoanalysis is not just used for confessions but is also claimed to yield leads and information during investigation. However, the question remains whether the use of narcoanalysis is either ethical or effective, which is the focus in my editorial. Here I quote Dr. Gupta:

But such an approach is possible only when police have some leads, lest the investigation meets a dead-end, as has happened in the past. No one says that the rights of an individual (the accused in the instant case) should not be respected or protected merely on account of an accusation, but it is necessary to weigh the rights of the alleged perpetrator against those of the victim. Legal jurisprudence does not operate in a vacuum and rules are not framed for a Utopia; but all such regulations operate in the real world where we don't have a perfect remedy for all the ills. Hence we are forced to choose between a greater evil and a lesser one, as in this case too. [1]

Here the contention is that narcoanalysis is a lesser evil utilised for the sake of providing justice to the victim and respecting the rights of the accused. The author doesn't seem to disagree that truth serum is coercive and invasive and has to be used carefully; yet accepts it because there is some suggestion that it is better than physical torture: the lesser of two evils.

Let me not repeat the critique of narcoanalysis here, but reiterate two other points in my reply. One, what is the effectiveness of narcoanalysis and what is lost when narcoanalysis (and other truth techniques like polygraphs and brain scanning) are used? Two, why do we need to pay attention to the cultural/popular role of narcoanalysis that allows the state to make an argument about torture being replaced by truth serums?

I should also mention that an argument in favour of using the "lesser evil" (utilitarian argument) also justifies torture and coercive forms of interrogation, and one has to consider whether a particular technique is both morally and legally acceptable, as well as effective (pragmatic considerations). And yet, since the doctor's contention is mainly about narcoanalysis and not physical torture per se, I will restrict my reply to why narcoanalysis *should not* be used in criminal investigations. Here, of course, one argument by Dr Jesani, which I cited in my editorial, is that narcoanalysis is a form of pharmacological torture [4]. In addition, I will argue, based on what the accused themselves think of narcoanalysis, in a context where physical torture is also normalised. For instance, Abdul Waheed Shaikh — the only accused who was acquitted in the Mumbai blasts case — had initially demanded the use of narcoanalysis. As a journalist who interviewed him wrote: "Waheed was on a flight to Bangalore and he was being taken there for a narcoanalysis test. He remembers being excited and yet feeling remarkably relaxed. The narco-test, he believed, would clear the "misunderstanding" and he would be spared the ordeal. It would prove him to be innocent, he was convinced. He, in fact, greeted Dr Malini in Bangalore and blurted out "I am innocent, Ma'am." But the Doctor ignored him and did not seem to have taken any notice of what he said. That was when he began worrying." [5] And it is this belief and a desire to use any means possible to prove oneself innocent that results in the accused demanding narcoanalysis. But then there is a realisation that either the "expert" is not really interested in the truth or that the technique actually does not work. After all, this technique has always been seen as unreliable and invalid, especially for legal purposes [6].

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Here Dr. Gupta's assertion is puzzling. He writes, "Nonetheless, what we need to realise is that sometimes narcoanalysis may be the only way to connect pieces of circumstantial evidence to provide a lead to an investigating officer." [1] Why is Dr Gupta so confident that the lead is gained only from narcoanalysis and that other more routine methods of questioning or investigation independent of the body would not actually work? In fact, I would argue that the police turn to narcoanalysis because they find it easier to focus on confessions/leads from the body of the accused than to follow more arduous forms of investigation. Also, this preempts discussions on whether the police have adequate resources for other kinds of forensic investigation. As the *Status of Policing in India Report 2019*, published jointly by Common Cause and CSDS, notes, around 42% of police said that they have never had access to forensic technology, and 20% said they had it "sometimes" [7: p 71]. Reinforcing techniques like narcoanalysis diverts attention from the lack of existing resources for the police. It is worth stating that India is currently the only democracy that proudly uses narcoanalysis in criminal investigations. In the process, more recent efforts to replace torture with the use of more systematic methods based on the Mendez principles — an international initiative to replace torture and coercive questioning with effective and ethical principles — are also undermined. "One of the pillars of the principles is that interviewers should establish and maintain rapport with interviewees, as building rapport reduces interviewees' anxiety and stress, and leads to interviewers obtaining more comprehensive, more truthful, and more actionable information. Another pillar is strict adherence to procedural safeguards, including detainees' rights to access counsel, to remain silent, and to receive medical care." [8] This move towards non-coercive questioning is further thwarted if there is a continued encouragement of techniques like narcoanalysis which are invasive, coercive and unreliable.

Dr. Gupta also notes: "Those who commit such barbaric crimes should not be allowed to take undue advantage of the gaps in the evidence, so as to go scot-free. Although there is no perfect solution to the puzzle, we need to solve it in the larger interest of society." [1]

Here again the effectiveness of narcoanalysis is assumed. No studies suggest that truth serums actually work (just as torture doesn't). Rather, as I have argued elsewhere, it is often meant as a spectacular form of state action to calm the public and show that "something is being done". Nothing else explains the demand for narcoanalysis coming up in cases as disparate as the Hathras case [9] or the recent women wrestlers' complaint of sexual abuse [10] — where the intent is simultaneously to

suggest that these techniques work in getting to the truth (despite contrary evidence) and to cast doubt upon the victims and their families. Such glorification props up the state's claim that truth serums will help replace physical torture and so we continue to observe the desire for more narco facilities in Odisha [11] and Kashmir [12], and for more training in these techniques, neglecting all the other methods possible to effectively investigate in an ethical and non-coercive manner.

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