

Dr. Ramanadham Memorial Meeting, 15 September 2007

People's Union for Democratic Rights

Narco-analysis as a form of Torture and Democratic Rights

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.

While the dubious practice on injecting drugs such as scopolamine, sodium amytal and sodium pentothal has been practised 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.

It is inevitable that in the coming years, targeting of activists by the use of narco-analysis as a form of torture is only going to increase. In recent years, when repression is intensifying as resistance to displacement, SEZs, land acquisition, and other economic policies is growing every month, the rights of struggling people, of those who attempt to organize them, and now even of those who speak out in defence of people's rights, are getting more distant from public concerns. Elite societal support for, and at best indifference to, systemic violation of people's basic economic and political rights, both collective and individual, mirrors the role of state institutions – police, bureaucracy, judiciary, etc – in shrinking those rights. We fear that in this wider context of changed economic policy, repression of people's movements and indifference to violation of people's rights, narco-analysis as a form of torture will be increasingly resorted to. Narco-analysis raises a host of ethical, legal, and medical issues, hence its pertinence as the topic for the Dr Ramanadham Memorial Meeting this year.

Issues of Grave Concern

Formal law and modern jurisprudence include certain liberal principles, in theory – that a person is innocent until proven guilty; that a suspect or an undertrial 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.

In India, reality has always been different from theory. Over the last 25 years, PUDR has investigated a number of cases of custodial deaths and rapes in Delhi. Often these custodial

deaths were a result of intentional violence and torture inflicted on the poor in custody with the purpose of extracting confessions of presumed guilt. While narco-analysis appears a more refined form of torture, it remains torture nonetheless. Further, the official sanction and institutionalization of such forms of torture too raises a number of grave concerns.

1. The question of consent: 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 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.

2. 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 paper, 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.

3. Violates the constitutional right against self-incrimination: The use of narco-analysis violates Article 20 (3) of the Constitution, which states that “No person accused of any offence shall be compelled to be a witness against himself.” Similarly, section 161 (2) of the CrPC states: “Such person shall be bound to answer truly all questions relating to such case put to him ...*other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.*” These are fundamental principles of criminal law ensuring that the accused has the right to keep silent during the course of investigation. Narco-analysis negates such protections by making redundant the right to silence of the subject. If interrogated when in his/her full senses, the subject may choose to remain silent. However by breaking down rational defences, narco-analysis undermines both an individual’s right to remain silent and the principle behind this right.

The use of narco-analysis to effectively over-ride the right to silence of the accused must also be seen within the broader project of ‘reforming the criminal justice system’ to enhance convictions. In fact, both the recent Madhava Menon Committee and the previous Malimath Committee on the criminal justice system had proposed that silence maintained by an accused in response to questions during interrogation should be held adversely against the accused. While the Law Commission of India has previously rejected such a move, it appears that narco-analysis is being promoted as an indirect means to over-ride the constitutional right to silence and the right against self-incrimination.

The use of narco-analysis raises a number of other concerns as well. The recording and subsequent public release of statements made by drugged subjects adversely impacts their right

to a fair trial. The use of these statements for ‘recovery’ and ‘discovery’ of facts/ materials and as corroborative evidence where recoveries are made may also be permissible despite the highly dubious scientific value of the ‘evidence’ extracted, making it possible for third persons being charged or charges being added as a result of such statements.

4. Dubious scientific value: Several authorities, medical and otherwise, have questioned the accuracy of the information extracted under narco-analysis. Under these drugs, subjects are prone to delusions, hallucinations and tend to go along with suggestions made by interrogators. P. Chandra Sekharan, one of India’s foremost and most respected forensic experts, has said, “even under best conditions, they will elicit an output contaminated by deception, fantasy, garbled speech, etc”. His research paper gives examples of people under narco-analysis, one who claimed to have a child that did not exist, another who threatened to kill someone who had already been dead for over a year, and a third who confessed to robbing goods he had just bought. A paper for the CID by the Superintendent of Police M. Sivananda Reddy concurs, underlining the “baffling mixture of truth and fantasy in drug-induced output”.

5. Narco-analysis is nothing but a form of torture: The speaker today Dr Amar Jesani has rightly said that torture is not just physical, but also “includes the use of methods intended to obliterate the personality of the victim or diminish physical or mental capacities.” We believe that narco-analysis’ inhibiting of rational faculties and its potential medical side-effects effectively reduce narco-analysis to nothing but a form of torture. According to P. Chandra Sekharan, narco-analysis and related tests are merely replacing physical third-degree interrogation with a psychological third-degree mode. It is important to note that the United Nations has called upon medical doctors to abstain from participating in the use of such technologies, reiterating the importance of medical ethics.

Yet, a number of courts in India have allowed these tests to take place without examining the varied dangers of such tests. PUDR holds the view that narco-analysis and other ‘truth detection’ techniques including brain-mapping violate constitutional rights including the right against self-incrimination and amount to torture. They further have dubious scientific basis and place the subjects in a further vulnerable position vis-à-vis the police and other investigating authorities. **We demand that** narco-analysis, brain-mapping and other similar ‘truth-detection’ techniques presently being used be completely stopped by the Government, that doctors stop carrying it out; that Magistrates reject police requests for such interrogation and that the Indian Supreme Court rule against the constitutionality of such testing.
