

Deception Detection Tests: A Subdued Investigating Tool

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ABSTRACT

The increasing demand to dispose of the cases swiftly, police often resort to third-degree methods to extract information from the individual; and in the process violate the fundamental rights to life and personal liberty stated under article 21 of the constitution of India. With the development of science and technology quickly eliciting the information is possible by adopting methods of polygraph, brain mapping, and narco analysis. In the past various experts, committees and judgements in courts have recommended these technologies to be used. Though there is a demand, it also raises serious legal, ethical and medical issues. Through this article we attempted to analyze the issues from various angles, and should take steps in the future to implement them.

Keywords: Deception Detection Test (DDT), polygraph, brain mapping, narco analysis.

INTRODUCTION

Crime has existed and evolved in various forms, similar to the progression of the human race. The advancement in science and technology has played a significant role in criminals adapting to newer techniques in committing the crime. In contrast, the police have been stuck with old age methods of investigation to detect crime. The coalition between forensic science and investigation is of prime importance, which helps in the administration of criminal justice. The problem of using new forensic methods for investigation is due to a lack of research and

development in that field. It also becomes difficult for courts to assess the admissibility of such evidence; because the court has first to analyze whether such evidence goes with the Constitution of India.

The deception detection tests (DDT) like Polygraph, Brain-mapping, Narcoanalysis is helpful to know about the hidden information related to crime¹ and have an important role in an ethical and legal proposition.² It is unclear to what extent such techniques can be held reliable in today's criminal investigation. However, DDTs have been used widely by the investigating agencies despite knowing that the extracted information cannot be used as evidence. They have argued that it is better than third-degree methods and can help investigation team gather evidence.³ This article will be dealing with problems faced in using DDTs and the steps to be taken to address them in the near future.

Hindrance with regards to accepting Forensic Evidence:

The problem with the exercise of certain forensic evidence in courts can be attributed to a lack of research and development in that field, so it becomes difficult to assess the admissibility of such evidence as to whether the technique used is reliable for the collection and analysis of evidence. Even if the techniques are well established and, the evidence is reliable, still the court has to analyze it to know whether

it affects the fundamental rights and decide accordingly.^{4,5}

Conventional Evidences Vs Expert Opinions

Hard Science examples like DNA profiling and fingerprinting can be considered conclusive evidence because the results can be represented and used consistently to measure and calculate outcomes.⁶ On the other hand, soft science like DDTs is not so reliable in the eyes of the law because of its inexact conclusiveness.⁷ Since it deals with the psychology of a person, its results are not more than mere observation of the examiner which may vary from person to person.⁸ Hence it acts as the main reason for not accepting both as equal and not given equal reliability. The DDTs technique involves obtaining the evidence from the memories, and it can be altered wilfully or due to memory fade.

Major drawbacks of lab conducting DDTs:

There is no autonomy, uniformity or mandatory accreditation and certification done by the government. There are also no programs to train the persons involved. A field that is short of researches is not addressed sufficiently over a long period.⁹ Due to these lacunae in the court of law the experts of this field are considered witness who gives opinions without solid scientific proof.

DDTs and their drawbacks:

***Narco-analysis:*¹⁰**

Scientific procedure to obtain information from an individual in a sleep-like state. During the test, the subject's imagination is neutralized by making him semi-conscious and, efforts are made to obtain information about the crime. This test involves intravenous administration of *sodium amytal* or *thiopentone sodium* ('truth drug' or 'truth serum'). The main drawback of this test is that it depends on a subjective variation on their ability to retain

or to be deceived in a hypnotic state. The statements made in a hypnotic state are not voluntary and not in a clear state of mind.¹¹

***Polygraph/ Lie detector test:*¹⁰**

A polygraph ('*lie detector*') is a device that makes a continuous record of *blood pressure, heart rate, respiration* and *perspiration*. At the same time, a series of questions are being asked to detect lies. The main drawback of this test is that it is questionable because the measured changes in arousal state are not necessarily triggered by lying or deception. Moreover, it is not difficult to beat polygraph tests by a trained person. Its reliability has been repeatedly questioned in experimental studies.¹²

***Brain mapping:*¹⁰**

It measures the changes in the electrical field potentials produced by the sum of the neuronal activity in the brain. The main drawback is that it measures only the memory or knowledge of the crime scene and nothing else. It is not clear whether it can impact of viewing portrayal of the crime scene in the media.¹³

Why use DDT?

The information, known only to self (concealed), is sometimes crucial for criminal investigation. It is safer than 'third-degree methods' used time immemorial to extract information from the alleged person. Used properly can increase the rate of prosecution of the guilty and the rate of acquittal of the innocent.

Various Courts about DDT

The Honorable Madras High Court in *Dinesh Dalmia V. State* has directed investigating agency to complete the investigation within a reasonable time; if not, the benefit of the delay is given to the accused. Suppose the accused fails to cooperate with the investigation process during custodial interrogation, related to crime. In that case scientific investigation methods may have to be carried out to find the truth.¹⁴ Keeping this as precedence, the

court had held that the narco-analysis test is a step-in aid of investigation.¹⁵ The court ordered the accused to undergo the narco-analysis test in stipulated period⁵. These judgments were clearly supporting the use of DDTs in investigations.

In the case of Santokben Sharma bhai Jadeja Vs State of Gujarat, the Gujarat High court held that conducting/performing the aforesaid tests is a part of the investigation and the consent of the accused is not required.¹⁶

In Shailender Sharma Vs. State, Delhi High Court is upholding the constitutionality of involuntary administration of narco analysis. Stating it is necessary to keep in mind the society's need at large and proper investigation ensuring that constitutional rights are not infringed. During narco analysis any self-incriminatory statement made by the accused cannot be used by the prosecution.¹⁷

The Supreme Court judgment on 5th May 2010, in the case of Selvi Vs State of Karnataka, stated that DDTs could not be performed without consent. It also raised the serious concern of violation 'Right against self-incrimination' enumerated in Article-20(3) of the Constitution, which states that no person accused of an offence shall be compelled to be a witness against himself. Right to life and personal liberty given under Article-21, which was interpreted to include 'Right against cruel, inhuman or degrading treatment. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted, in accordance with Section 27 of the Evidence Act, 1872.¹⁸

A Supreme Court bench in 2017 dismissed a petition by Sidhu Yadav, who had volunteered to undergo a narco analysis test to prove his innocence. The bench said the investigation falls in the domain of police, and the court cannot order the mode and method of the probe.¹⁹

Involuntary administration of DDT is an intrusion into a person's mental

privacy, a Supreme Court judgement of 2010 was held in 2020 in Hathras case.²⁰

Research Methods should be taken for demonstrating accuracy⁹

- Peer-reviewed research: Randomized experimentation with adequate sample size.
- Necessary funds to be allocated to carry out research activities.
- Cross-validation of data obtained.
- Standardization
- Analysis of sensitivity and specificity.

CONCLUSION

DDT has faced several criticisms over the years, and it is still unclear to what degree it can be accepted in judicial proceedings. There is a need to explore the vulnerability and countermeasures of these techniques. DDT needs to undergo rigorous research in populations to know about the sensitivity and specificity. Standard operating guidelines for conducting DDT and a way forward in implementing it.

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