

DECEPTION DETECTION TESTS: VIEWS WITH RESPECT TO DIFFERENT ARTICLES OF CONSTITUTION

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INTRODUCTION

Deception detection tests (DDTs) such as Polygraph, Narco-Analysis and Brain Mapping have important scientific and legal implications. DDTs are useful to reveal out the hidden information from the accused. This information is sometimes crucial for investigation agencies to assist the investigation process in a number of ways. These DDTs have positive results as well as negative.

The information extracted by these deception detection tests cannot be used as evidence during the trial proceedings in the court. Sometimes investigation gets stuck and at that time investigating agencies needs a further clue to go ahead and solve the case, at this time these tests can be used by investigators. Using these scientific tests in interrogation process will directly help the investigating agencies to gather evidence, and thereby increase the rate of prosecution of the guilty as well as the rate of acquittal of the innocent. Usually, courts don't prefer to conduct such test on accused because of the infringement of rights of accused under constitutional law.

The difficulties before conduction of these tests on accused are Article 19, 1(a)²

(right to speech), Article 21³ (right to life and personal liberty) as well as the right to privacy, Article 20 [3] (prohibits compelled witness against himself)⁴. These all are constitutional rights of a person which restricts courts to perform such tests on accused. But some modifications in the conduction of these tests and different way of interpretation of some articles of constitution can make these tests reliable and can solve major problems of investigative process and judicial system.

DECEPTION DETECTION TESTS AND CONSTITUTIONAL BOUNDINGS ON IT :-

A deception detection test (Narco analysis, polygraph test and brain mapping test) is a debatable topic in India. Narcotics have important scientific implications in a medical and legal field, in its legal implications a person is given a dose of narcotic drug (Sodium Pentathol) to bring him in a position in which the person has little consciousness and in that state he/she could only be able to speak the truth, this test is known as Narco analysis⁵. It is very dangerous and can lead to the death of the person due to improper dosage of drug⁶ (which depends from person to person according to its physical structure and strength), if it is not done in the proper supervision of specialized doctor. In polygraph test (lie detector test) we measure changes in the physiological behavior of accuse person's body e.g. - analysis of blood pressure, heartbeat etc, to find out whether accused is speaking truth or lie⁷. Brain mapping (BEAP) is a test which measures the electric field potential changes produced by neuronal activity in the brain and detects whether the accused is speaking truth or lie⁸. The amount any kind of risk is negligible in both polygraph and brain mapping tests.

These tests are very useful to know the hidden information related to crime and are very crucial for the criminal investigation process. Due to these tests, many pieces of information comes out easily and quickly and sometimes these information comes out to be very helpful and can give a further lead to the stuck cases and can result out in cracking complicated cases.

But these tests are against the different articles of our constitution like article 19 1(a) (Right to Freedom of Speech) in this if accused doesn't want to answer any questions then accused can't be compelled to answer that question during the interrogation process. In the case of Nandini Sathpathy

vs P.L.Dani⁹, in the judgment it is mentioned that no one can forcibly extract the statements from the accused because accused has the right to keep silent during the course of interrogation.

Another is article 20 (3) and section 161(2)¹⁰ of Code of Criminal Procedures mentions that a person cannot be forced to be the witness against himself against his or her will. The person can be self-witness only with his will¹¹. In a landmark judgment Smt. Selvi & Ors Vs State of Karnataka¹², the apex court of India has clearly stated that DDTs cannot be administered without the consent of the accused because doing so infringes the article 20(3) of the Constitution. In the case of M.P.Sharma v. Satish Chandra¹³ the apex court observed that since the words used in Article 20(3)¹⁴ where to be a witness and not to appear as a witness, due to this interpretation the protection is extended to the evidence obtained outside the courtroom or during the interrogation process means now the person could not be forced to be a witness against himself against his will.

Article 21¹⁵ is Right to Life and Personal Liberty. This article in the context of these tests associated with the cruelty and inhuman behavior with the accused. In this article, a person has right to live his/her life till the court finds someone guilty and orders that person imprisonment or death penalty, but the process of Narco analysis could lead a person to death. Conduction of tests other than Narco analysis leads to the infringement of the personal liberty of accused.

CONFLICT OF REASONS :-

When these tests get performed during the interrogation, in the court's Article – 19 1(a), 20(3), 21 comes into the protection of person on which the deception detection tests have to be performed. Because of these rights given by the constitution the conflict between different sides arises.

According to the people against these tests, points stated by different articles of the constitution and the reasoning given behind it are correct and relevant. Persons who are undertrials should have these rights because the person is not guilty till he/she faces any conviction by the court. Doing these tests could be a harsh action on accused if he/she is innocent. It is the person's desire and right, to perform such tests on oneself which doesn't mean that the person not performing these tests on him/her is trying to hide something from the court and investigating agencies.

But on the other hand, people who support these tests have a perception that the accused tries to escape from the liability by hiding behind these protective articles so that they won't get exposed. These articles of the constitution are made to strengthen and protect the accused. They have a perception that if a person is not guilty of the crime committed, then the person would not refuse the conduction of these tests to reveal out the truth. Some person also sees these tests as an alternative to harsh torture process which is legally banned but in reality happens even today during the interrogation process done by police or any other organization.

MODIFICATIONS IN CONDUCTION AND PROCEDURES OF TESTS:-

But these tests could be fruitful if the tests are allowed with some modifications in it. Modifications should be done in these processes to make the deception detection test processes more reliable and better. The modifications should be in a way that they would not do much harm to the person on whom it is to be done and on the other hand, it should solve the problems we are having in our judicial system with the help of these tests. The things that should be modified in it are –

1) Polygraph and Brain mapping are not dangerous or life threatening in nature so they must not be considered similar to Narco analysis. They must be considered as good tests which must be allowed

more frequently by the courts in the presence of doctors, in the cases in which the investigative clues are twisted and difficult which doesn't lead to any clear result. "In USA, FBI uses brain mapping test to convict the criminals"¹⁶. In Japan polygraph has been received in evidence in courts¹⁷. In Canada, the use of a polygraph is sometimes employed in screening employees for government organizations¹⁸.

2) The polygraph and brain mapping tests must be allowed to perform on the person and the information must be taken as the clues and on the basis of these clues, the evidence must be presented in the court. But the information collected from person must not be allowed directly as evidence because science doesn't tell anything about the accuracy of these tests. So taking the result of these tests as a clue and not as evidence would solve the problem of relying on these tests because clues could lead to the evidence only if they are true.

3) Narco analysis must not be done on the accused because to find the truth we can't threaten someone's life. But this test should be allowed to be done only if it is very necessary for the case or in the cases in which investigation agencies want some important information regarding activities that pose threat to our country like terrorism, drug smuggling etc. One example is - *Md.Ajmal Amir Kasab vs State Of Maharashtra* on 29 August 2012¹⁹, by Narco Analysis, in this case, we got information about their ideologies, command centers, training etc which is very important for the safety of this country²⁰.

4) The polygraph test should go hand in hand with present interrogation methods in complex cases. Brain mapping must be followed if necessary with court orders so that the investigating team could get information with these two tests and relate the results of these two tests with each other to get a much clearer view of a case. By this question of reliability on these tests will be sought out because it's very less probable that two tests simultaneously would give wrong answers for the similar type of questions. For example- Consider black ball as lie and white ball as truth. Let there be two pots with 10 balls each (8 white and 2 black). Now if we draw a ball from each pot then the probability of drawing two balls simultaneously is $1/25$, which is the probability of lying after two tests done one after another (If the percentage of a lie in each test is 20%). By this example, we can see that how difficult it is to get lie or wrong answer in both the tests.

SUGGESTIONS ON INTERPRETATION OF ARTICLES OF CONSTITUTION IN A DIFFERENT WAY:-

These modifications mentioned above will make the investigation process more convenient and good. The modifications will make the investigations easier and due to this the mental harassment faced by the accused during the interrogative process can be reduced to larger extent²¹. Courts must allow the investigative agencies to initiate polygraph and brain mapping tests whenever they feel a need for such tests, with a condition that the questions must be first shown to the court to find and rule out irrelevant and offensive questions. The amendments in the interpretation of articles (for these tests only) will open the doors of these tests that can be a threat to guilty persons.

To make investigative process better we should think about some amendments in our method of interpretation of these articles of constitution (these interpretations are in relation with the modifications mentioned above, excluding Narco Analysis) –

- Article 19 is right to speech but in this, we must take it in a way that if a person is not guilty then why he/she is using this right if the questions are relevant. Even it would be a chance for innocents to prove their innocence. If the person is in trial or in front of investigating agencies, he/

she should not misuse his/her right to speech.

- Article 20 (3) says that the person should not be compelled to be a witness against himself/herself. This is a valid point because it carries a lot of complications in the case as the person could be threatened or in the case of these tests the person could give some statement which could land case to the wrong conclusion. But the court should not consider the collection of clues and process of finding data on the basis of clues as an infringement of article and should not relate it with self incrimination, only direct data presentation of results of these tests as evidence should be considered as self incrimination.

RESULT OF MODIFICATIONS AND INTERPRETATIONS WITH SOLUTION OF PROBLEMS:-

By making some amendments, we can make deception detection test conduction process easy in India, as we all know that court doesn't give permission of conduction of these tests easily because of the boundings on the court by these articles of the constitution. This could set an example of good laws which could lead us to a better future where complicated cases would be solved easily. These modifications and amendments would ensure that the accused would not be able to escape the liability using the article of the constitution in his/her favor. The best thing is that there can be space for the further modifications in these modifications and interpretations according to the convenience and future circumstances. We should go along with the use of science and technology in this field. Now the criminals are using new techniques to save themselves from conviction by making planning before a crime, using different ideas from television and the internet to destroy the proofs. So we must also move our step forward for the introduction of new and effective investigative processes.

This would help to solve following problems [only considering polygraph and brain mapping techniques because of modification (3)] -

1) Deception detection tests will reduce the time taken by the proceedings to complete a case, which is one of the biggest problems in Indian courts. If the investigating agencies would collect strong proofs in a lesser period of time, also the courts with that stronger proofs would be able to make corrects decisions in a shorter period of time. In Indian High Court and Supreme Court the total no of cases pending are - 2, 07, 54,200²², upon which Chief justice of Supreme Court has also shown his concern.

2) Deception detection tests can solve complicated cases much easily. These tests help to find the accused and the intention behind that crime. Simultaneously this test can also reveal the identity of the other persons involved in the crime, so by this investigators can collect evidences not only against persons suspected by the investigators but also against the other persons involved in that crime. After conduction of these tests investigating agencies and can put their focus on a particular set of people rather than finding the criminal from a large group of people.

3) In highly sensitive cases related to terrorists, smuggling etc, we can know their further strategies and can stop the future threats. This information is not only important for the investigative purposes but also for the intelligence agencies to protect our country from future threats, these threats can be dangerous for the common public if they are not taken into account before their commission.

4) Nowadays the criminals are using new methods to deceive investigating agencies. This is because of crime shows, internet, movies etc are teaching new methods of escaping a crime or making a crime look complex for investigating agencies. But by these tests, we can take help of technology to

solve these complex cases easily. Here irrespective of intense planning the person committing a crime can be caught by the help of these tests.

CONCLUSION

Deception detection tests have the capability to keep the investigative process in the right direction. These tests can turn out as a lifeline to unsolved or stuck cases. We have to understand that at the end of the day these tests help investigating agencies to reach truth and let criminals go behind the bar which is their right place. The above-mentioned modification and different view of the interpretation of articles of the Constitution is just an idea to make the investigative processes work better. The court is right in each and every decision given by it but we must ensure that accused is not misusing these articles of the Constitution to escape from the crime he has committed. We must think in a way that these tests will not only catch the criminals but will also release innocent people in a shorter period of time. The investigative process is one of the most important parts of the whole case with the interrogation process as a sub part of it and this part needs to be stronger and better.

Rather than prohibiting or limiting the use of these tests, we have to find some solution to this problem which can lead to the solution of many other problems. We must keep in mind that justice can be given only if there is a proper investigation, of which interrogation is an eminent part by which investigating agencies can get a lead in the case. We all know that law is blind and it only believes the proofs, evidence and witnesses which investigating agencies present to them, so we should let the investigating agencies to collect better proofs and evidence that can be presented in the court with the help of these tests.

(Endnotes)

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