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Expert Testimony and Sniffer Dogs: Evaluating the Role of Canine Evidence in Criminal Investigations

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Humans and dogs have interesting differences in how they detect smells, shedding light on the mechanisms involved in this process. In the field of detecting chemicals through the sense of smell, an intriguing comparison arises between humans and dogs revealing mechanisms at play. When it comes to olfactory experience, the detection of compounds involves a complex interplay, between two intricate systems; the olfactory system and the trigeminal system. On the other hand, dogs have an approach to smelling things. Their sense of smell relies on their olfactory neuroepithelium highlighting why they excel in tasks related to scents. Police sniffer dogs are highly skilled in investigations; they are recognized as well-trained animals due to their sense of smell, which aids in tracking down offenders. However, this evidence is not considered conclusive unless the court examines the reliability of sniffer dogs' abilities and their performance patterns. This short article attempts to analyze, the provisions under the Indian Evidence Act, 1872 with relevant case laws, and delves into the definition of an expert, emphasizing the balanced consideration needed when relying on expert testimony to ensure justice is not swayed away.

Keywords: *iea, sniffers, canines, criminal investigations.*

INTRODUCTION

In the expansive domain of criminal investigations, numerous techniques continually unfold, aimed at increasing the efficacy of these inquiries. The main aim of any criminal investigation is the paramount significance of evidentiary material, offering valuable insights into the identity of individuals or the type of materials under scrutiny. Among the enduring methodologies in criminal investigation, the method of sniffing has been used for the last so many years and is still being used without any dispute. The fundamental mechanism of sniffing is an intricate interplay of sensory receptors and neural processing. When it comes to this olfactory expertise, dogs reign supreme, highlighting a specialized proficiency that surpasses that of other animals. Shifting from the timeless role of humanity as a cherished companion to a pivotal ally in the relentless pursuit of justice, the sniffer dog took a new role as a faithful companion. This metamorphosis has seen these loyal companions emerge as indispensable assets, lending their unique olfactory powers to the forefront of investigative endeavours. Their acute olfactory abilities transform them into adept investigators, capable of sniffing out crucial clues and providing invaluable support to human counterparts in solving cases that might otherwise remain ambiguous.

CANINE OLFACTION: UNRAVELLING THE SCIENTIFIC FOUNDATIONS OF SNIFFER DOGS

Canine olfaction is the specialized cells in the nose called the olfactory receptor cells. They're the detectors for smell, equipped with receptors that can pick up on specific odor molecules. Moreover, dogs have a number of these cells, way more than most of the animals, even us humans. It is more likely they have a supercharged sniffing system¹. With so many receptor cells, it amplifies their ability to sniff out and tell apart all sorts of smells.

Dogs have a unique organ called the vomeronasal organ. It enhances their capacity for detecting pheromones – those chemical signals animals use to communicate. This additional sensory

¹ A Kokocinska-Kausik et al., 'Canine Olfaction: Physiology, Behaviour, and Possibilities for Practical Applications' (2021) 1(8) *Animals* (Basel) <<https://doi.org/10.3390%2Fani11082463>> accessed 10 January 2024

mechanism gives the canine remarkable awareness to differentiate between the subtle chemical senses and scents². The olfactory bulb, the part that processes all these scent signals, is much bigger in dogs compared to other species³. This means they can process and understand complicated smells superfast and super accurately. Some of the dogs have decent sniffing skills, but none of them comes close to the excellence of our canine companions.

CANINE EXPERTISE: A LEGAL PRECEDENT

Despite the precious contributions of the canine, it is crucial to recognize that, within the legal framework, their findings are still not considered conclusive evidence, but it has been put into the category of scientific evidence. The role of sniffer dogs in the pursuit of justice maintains a dynamic nature. This ongoing transformation prompts continual reflections and discussions within the ever-evolving landscape of criminal investigations, navigating the intersection of traditional methods and cutting-edge advancements. The Supreme Court, through a series of cases (*Bhagwat Kosaley v State of C.G.*⁴, *Ramdhan Kahra v State of Chhattisgarh*⁵), has consistently emphasized a critical distinction. While acknowledging the admissibility of sniffer dogs' services for investigative purposes, the Court has firmly held that the powers of these canines cannot be considered direct evidence for establishing the guilt of an accused. Potential sources of error, including the dog's or handler's misjudgement, the likelihood of misrepresentation, the possibility of drawing incorrect inferences, and the limited scientific understanding of the precise capabilities of these dogs, are among the identified concerns.

WHO IS AN EXPERT?

The Indian Evidence Act, of 1872 under Section 45, gives the court the power to call out the opinion of experts on matters related to science, art, etc., and handwriting when they need some help in forming an opinion on those subjects. While acknowledging that, despite the significance of the influence of scientific advancements on the evidence of law, it's crucial to emphasize that

² *Ibid*

³ *Ibid*

⁴ *Bhagwat Kosaley v State of C.G* (2015) 1 CGLJ 394

⁵ *Ramdhan Kahra v State of Chhattisgarh* 39 Cra/249/2013

the dominance of expert opinions should not determine the course of justice. The dependency on expert testimony should not unduly sway the scales of justice.

According to Section 45, 'When the court has to form an opinion upon a point of foreign law or of science or art, or as to the identity of handwriting, or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to the identification of handwriting, or fingerprint analysis are relevant facts. Such persons are called experts.⁶ In the legal context, an expert is someone having unique knowledge and skills in a specific field relevant to the subject of the investigation. Moreover, an expert witness is someone who shows a unique proficiency; especially in areas where they are asked to provide their opinion. The expertise of these witnesses is crucial, and the information they offer on specific matters is considered admissible in court to assist the tribunal in reaching a well-founded and satisfactory conclusion.

WHY DO WE NEED THESE EXPERT WITNESSES?

These expert witnesses play a pivotal role in legal proceedings, giving their specialized vision to help the court in solving tricky aspects of a case. Expert witnesses gain credibility and reliability by showing their commitment to in-depth in their respective fields. Their thoughts and insights perform as valuable tools for the tribunal, making the decision process more informed and nuanced.

Expert witnesses are the best hands in legal proceedings. In essence, using expert witnesses is integral to ensuring that legal proceedings are thorough, comprehensive, and well-informed. As such, including expert testimony in legal proceedings enhances the overall integrity and effectiveness of the legal system.

The Supreme Court, in the case of **Ramakant Rai v Madan Rai**⁷, stated that eyewitness accounts are more reliable than medical opinions. Even if there is a difference between doctors' opinions and witnesses' opinions, the court should not simply favor the accused by giving them the

⁶ Indian Evidence Act 1872, s 45

⁷ *Ramakant Rai v Madan Rai and Ors* AIR 2004 SC 77

benefit of the doubt. This emphasizes the importance of carefully considering both types of evidence.

In the case of **Shashi Kumar Banerjee v Subodh Kumar Banerjee**⁸, a remarkable legal principle has been put in place concerning trusting a piece of evidence. The Court emphasized the importance of corroboration when such evidence was considered. Before giving substantial weight to a particular piece of evidence, especially in situations involving expert testimony or specialized knowledge, the court typically looks for corroboration. Corroboration can manifest in the form of clear, direct evidence, or circumstantial evidence supporting and aligning with the expert's findings. This insistence on corroboration underscores the court's cautious approach and the desire for a robust evidentiary foundation. It suggests that a single source of evidence, especially one based on expertise, may not be deemed conclusive unless supported by additional, independent evidence. This requirement for corroboration aims to enhance the reliability and credibility of the evidence presented before the court.

DOGS TRACKING IN INDIAN SCENARIO

The case **Gade Lakshmi Mangraju v State of AP**⁹ highlights how criminal investigations are done with evidence involving sniffer dogs. The court expresses caution regarding the admissibility of sniffer dog evidence in criminal courts. While acknowledging the evidence of these canines during investigations, the court implies that judicial proceedings demand a higher level of scrutiny and reliability. The police dogs' evidence might be based on both natural behaviors and what they have learned during the training, which leads to complexities while making a decision. Therefore, these complexities should be taken into account by the criminal courts while considering the admissibility of evidence derived from sniffer dogs. In essence, the case indicates that the court needs to be careful while considering the evidence of sniffer dogs within the judicial realm. Therefore, it is crucial to maintain a balance between maintaining a

⁸ *Shashi Kumar Banerjee v Subodh Kumar Banerjee* AIR 1964 SC 529

⁹ *Gade Lakshmi Mangraju v State of AP* AIR 2001 SC 2677

balance between using the abilities of these canines and ensuring the reliability of evidence presented during criminal trials.

The case of **Abdul Rajak Murtaja Dafedar, v State of Maharashtra**¹⁰ tackles three concerns raised against the use of evidence obtained from sniffer dogs.

Firstly, one objection revolves around the fact that, typically the dog's handler provides the testimony in court on behalf of the dog. This is considered hearsay since the dog itself cannot directly take the stand to provide sworn testimony or undergo cross-examination. This objection highlights a challenge in presenting evidence derived from dogs following legal procedures.

Secondly, there is a belief that an individual's life and liberty should not solely rely on the conclusions drawn by a dog. This objection questions the reliability and significance placed on findings by sniffer dogs, emphasizing concerns regarding repercussions based solely on their actions.

Thirdly, an objection arises concerning the impact such evidence may have on a jury. Even if the evidence is strictly admissible according to rules, there is a suggestion that its impact might be disproportionately influential compared to its probative value. This objection reflects concerns about how dog-derived evidence could be, during trial deliberations.

In summary, these objections underscore the multifaceted challenges associated with introducing sniffer dog evidence in legal proceedings. They touch upon issues of hearsay, the reliability of canine conclusions, and the potential for undue emotional impact, emphasizing the need for careful consideration and scrutiny when admitting such evidence in criminal trials.

ADMISSIBILITY AND SIGNIFICANCE OF EXPERT EVIDENCE

The Indian Evidence Act 1872 deals with expert evidence from Sections 45 to 51¹¹, establishing the admissibility of opinions from individuals having unique knowledge in a particular field.

¹⁰ *Abdul Rajak Murtaja Dafedar v State of Maharashtra* 1970 SCR (1) 551

¹¹ Indian Evidence Act 1872, ss 45-51

The personal opinions of witnesses are not admissible in court. Over time, the admissibility of expert evidence has evolved.

It is challenging for the court to reach any judgment without the opinion of individuals who possess expertise in those areas. This is especially evident when dealing with trials involving sniffer dogs. The reliability and accuracy of these dogs' behaviour and their scent detection may sometimes be uncertain. To establish the court's confidence, in a sniffer dog's identification of a person or object it is crucial to provide grounds that support the reliability of the evidence.

Presenting expert evidence regarding tracking dog behaviour when claiming the dog accurately followed a scent poses a challenge. The difficulty lies in comprehending the dog's process during tracking. We are unsure if the dog evaluates its 'evidence' and communicates its decision-making process. It remains unclear whether the dog relies on probability or chance or simply perceives it as a game. This lack of clarity, about how the tracking dog thinks raises concerns about the reliability of evidence for convictions. It compels us to assess the risks associated with relying on such evidence, in the criminal justice system. This becomes especially important when convictions depend a lot on what these canines do and how their actions are interpreted. It emphasizes the need for a thorough evaluation of the complexities involved in presenting and assessing expert evidence in the legal field.

ENHANCING ADMISSIBILITY OF SNIFFER DOG EVIDENCE: KEY RECOMMENDATIONS

In light of the intricate intersection between sniffer dog evidence and the legal landscape, the following recommendations are proposed to enhance the admissibility and reliability of such evidence in criminal investigations.

Corroborative Role: Emphasize the supporting role of sniffer dog evidence. Acknowledge their importance as investigative tools but for a fair legal process, their evidence should act as corroboration, not the primary basis for conviction.

Avoiding Sole Reliance: In the interest of justice, such evidence should never be the sole basis for conviction.

Severity Consideration: Particularly caution against sole reliance in cases of severe penalties, including death sentence.

Error Awareness: No doubt that they are indispensable investigative tools, but we also need to underscore their training, the possibility of an error on the part of the dog/master, misrepresentation, etc.

Corroborative Role: In criminal investigations, sniffer dogs' evidence serves as a valuable tool for law enforcement. However, to ensure a fair legal process, it is imperative to recognize the supporting role of this evidence. While sniffer dogs play a crucial role in detecting illicit substances or materials, their findings should be considered corroborative rather than constituting the sole basis of evidence. By acknowledging the importance of sniffer dog evidence as part of a broader investigative framework, the legal system can strike a balance between leveraging their capabilities and safeguarding against potential misrepresentation.

Avoiding Sole Reliance: To uphold the principles of justice, it is essential to avoid placing sole reliance on sniffer dog evidence in criminal proceedings. Dogs are not infallible and their findings can be influenced by various factors such as handler cues, or even intentional misdirection. The court, by not taking the sniffer dogs' evidence as a conclusive piece of evidence, minimizes the risk of wrongful conviction and promotes a more reliable judicial process.

Error Awareness: While sniffer dogs are indispensable tools in criminal investigations, it is crucial to acknowledge the potential. While sniffer dogs are indispensable tools in criminal investigations, it is crucial to acknowledge the potential for errors. This includes errors in the dog's training, misinterpretation of cues by the handler, or intentional manipulation of the evidence. Legal professionals, law enforcement agencies, and the judiciary should be well-versed in the limitation of sniffer dog evidence and actively work to mitigate the risk of errors.

Transparency regarding the reliability and training of the sniffer dog, as well as ongoing efforts to improve accuracy, can contribute to a more informed and equitable legal system.

CONCLUSION

In the context of using evidence from sniffer dogs, the High Courts and Supreme Courts highlighted concerns, regarding the lack of information about the skill of the tracking dogs and the training of its handler. These raised doubts about the trial court's classification of evidence as expert testimony. Despite recognizing and valuing sniffer dogs' undeniable contributions to criminal justice matters, the court argues against relying on their abilities when convicting an accused person- a stance aligned with established principles. While acknowledging these dogs as tools it underscores factors such as training, potential errors, and incorrect interferences that need to be taken into account. The fact that we have limited knowledge, about the abilities of these dogs emphasizes the need for caution when interpreting their findings.

The examination of sniffer dogs in criminal investigations sheds light on their remarkable olfactory abilities. These dogs play a crucial role in detecting substances and aiding law enforcement. However, the court underscores the need to view their findings as supporting evidence rather than the sole basis for conviction, acknowledging potential errors like handler influence. The Indian Evidence Act allows expert opinions, but the court exercises caution in relying solely on them. The Courts highlighted concerns, regarding the lack of information about the skill of the tracking dogs and the training of its handler. These raised doubts about the trial court's classification of evidence as expert testimony. Despite recognizing and valuing sniffer dogs' undeniable contributions to criminal justice matters, the court argues against relying on their abilities when convicting an accused person- a stance aligned with established principles. While acknowledging these dogs as tools it underscores factors such as training, potential errors, and incorrect interferences that need to be taken into account. To enhance admissibility, recommendations include recognizing a corroborative role, avoiding sole reliance, and promoting awareness of potential errors. The fact that we have limited knowledge, about the abilities of these dogs emphasizes the need for caution when interpreting their findings.

Overall, the legal system should strike a balance between leveraging sniffer dogs' capabilities and ensuring a fair and reliable judicial process.