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"LEGAL ISSUES RELATED TO POLYGRAPH"

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Legal issues related to Polygraph

Abstract

Polygraph tests are used to detect truthfulness of individuals in such important fields as crime investigation departments, National security agencies, and business and industry. However, accuracy of polygraph tests and ethical issues associated with the tests are highly debated.

Introduction

This article describes the working, benefit and challenges of polygraph test. Polygraph tests are lie-detecting devices that help ascertain individuals' honesty based on physiological indicators. The heart rate/blood pressure, respiration, and skin responses are three indicators measured in the test to assess honest/deceitful behaviour. The underlying assumption behind the working of polygraph test is that the autonomic responses of dishonest individuals are distinctively different from those of honest people because the liars will be more nervous than truth tellers. Control Question Test (CQT), Guilty Knowledge Test (GKT) or Concealed Information Test (CIT) and Neuroscience-Based advanced Polygraph Tests are the important types of polygraph tests used these days.

Methods, Types, Applications and Challenges of Polygraph Tests

Polygraph method

The theory initiating this test is that when a subject (person) is lying to the questions asked by the examiner then his body will produce different physiological responses than he produces in normal course which would be detected by examiner by noting measures such as heart rate, blood pressure, respiratory rate, skin conductance and electromyography as few instrument are stick to the subject for recording these measures.

The lie-detector test is a kind of an activity where the accused, suspect, witness or any other person is supposed to tell truth when asked by examiner. They are also known as Deception Detection test and have wide moral, scientific, legal significance in the society.

These test such as narco analysis, polygraph, brain mapping are helpful to investigators in detecting the lies and finally, increase the efficiency of the investigation. It is ardently claimed by investigation agency that no doubt all the information received from the accused can't be used by them as evidence in the court but still it is a better way to extract information rather than using "Third-degree methods".

Now the main debate is whether the use of inhuman derogatory techniques justified by our constitution? Whether they are violative of basic fundamental rights of accused or any person who is a subject? This article is basically focusing on settled position of law of lie detectors in India decided by Apex court and its good and bad aspect.

Types of Polygraph Tests

Currently, there are different kinds of advanced polygraph tests being used in lie detection. Control Question Test, Guilty Knowledge Test or Concealed Information Test and Neuroscience-based advanced polygraph test are the important new versions of polygraph test.

Benefits of Polygraph Tests

Polygraph tests have great significance as they have several useful practical applications. They are valuable instruments used to detect truthfulness and deceitful behaviour in several fields. The crime investigation departments, national security agencies are some of the important organised sectors where the polygraph tests are being utilised.

Crime and Investigation

Criminal investigation is one of the major fields in which polygraph test are employed to detect lying. They offer governmental agencies and legal systems with a useful and simple way to extract the truth from crime suspects. Polygraph test are useful not only to identify the criminals who might try to deceive the legal systems, but it will also be helpful for providing justice to several innocent victims who are convicted due to the wrong verdict by the court.

Challenges to Polygraph Tests

Although polygraph tests have certain practical applications, there are several challenges. Accuracy and ethics are more frequently raised challenges to polygraph test. Validity is one of the important accuracy measures that makes instruments quality for wider practical applications. But polygraph tests do not satisfy this requirement. According to Saxe and Ben-Shakhar, Polygraph testes are invalid as there is no established relationship between the test items and dishonest behaviour.

Legal issues

In virtually every jurisdiction, the answer is a resounding no. Though called lie detectors, the reality is that a polygraph machine does not have any capacity for detecting the truth or falsity of a statement. Rather, it measures a person's biological processes to determine if they are experiencing a physiological event, such as an increase in blood pressure or heart rate. These conditions are considered to be indicators that someone may be lying, as the increased stress of telling a falsehood creates a subtle, but measurable change in one's vital readings.

Unfortunately, dozens of other factors can also affect the readings detected by a polygraph machine. For instance, nervousness of any kind could read with the same increase in activity as a lie. This nervousness could simply be caused by being concerned about the test giving a false positive, creating a self-fulfilling prophecy. In fact, some polygraph administrators, particularly in law enforcement, are given training on how to induce a false positive response or to ask questions in a fashion that makes them difficult to answer with a yes or no. On the other hand, those taking the test have reported being able to evade the detection of a lie by using various techniques such as faking a cold, squeezing the muscles of one's posterior, and so forth. These techniques would cause a reading on the polygraph that would show increased physiological activity even when the person is not lying, making it difficult to detect any variation when the person does tell a falsehood.

As a result, polygraphs have been successfully challenged on several occasions in various jurisdictions on the basis of their scientific uncertainty. Because the results of a polygraph test can mean many things and are so unreliable in detecting actual lies, they do not rise to the level of reliability required for scientific evidence in a courtroom and polygraph test results are usually inadmissible as evidence.

This does not stop many from asking that someone undergo a lie detector test though, often as part of a criminal investigation. A little known trick of interrogators when administering a polygraph is to convince the person undergoing the examination that the lie detector has shown results that do not bode well for the subject, and that he or she should simply come clean. This induces a large number of people to confess, even though the lie detector test may have shown no falsehoods or been inconclusive.

Of course, as with most things in a courtroom, every rule has its exception. In the rare instance that both parties agree that the results of a polygraph exam should be admissible for some reason, the court could allow it as evidence. Polygraphs are also commonly used as part of the screening process for certain types of jobs, such as law enforcement and some high level security positions. Nevertheless, for purposes of court procedures, absent a stipulation of the parties, the results of a lie detector test are likely never admissible.

The theory initiating this test is that when a person is lying to the questions asked by the examiner then his body will produce different physiological responses than he produces in normal course which would be detected by examiner by noting measures such as heart rate, blood pressure, respiratory rate, skin conductance and electromyography as few instrument are stick to the subject for recording these measures.

As we know in theory everything looks easy but in practice, it is quite difficult to implement. This same problem is attached with all these Deception Detection Tests. Let's have a look at what problem could arise while conducting this test. The measured changes in physiological responses

Let's have a look at what problem could arise while conducting this test.

- The measured changes in physiological responses are every time not aroused because of lying and deception but sometimes it could be provoked by anxiety, fear, nervousness, confusion or any other emotions.
- As well as condition of examination room can also build falsification in reply recorded by the examiner. In spite of this the mental condition of subject plays a most important role.

If a person is in depression or not sane or in a state of hyperactivity then it could produce much-distorted results which would ultimately frustrate the core reason of conducting this test. There can be errors because of loss of memory of subject or any other factor which maintains the person's mental state. But the main failure of this test arises when person deliberately attempts to produce different physiological responses to the question in order to manipulate the examiner so that he can mark the answer as truth rather than a lie. The drawback is examiner can't make difference between manipulative and genuine responses of the subject. So by looking at all its drawbacks, it can be concluded that they can't be used as error free pieces of evidence in the court.

Court judgment on polygraph

The deception detection tests (DDT) such as polygraph, narco-analysis and brain-mapping have important clinical, scientific, ethical and legal implications . The core debate arising out of the DDT is its legality of using inhuman degrading methods to confess. In a landmark judgment the Madras High Court conveyed that investigating agency is required to complete investigation within a reasonable time, if not, the benefit of delay is given to the accused. If accused fails to co-operate with the investigation process undertaken during custodial interrogation, to unravel the mystery surrounding the crime, scientific investigation methods may have to be carried out to find the truth.

Keeping the same spirit in another judgment, the court had held that the narco-analysis test is a step in aid of investigation . It forms an important base for further investigation as it may lead to collection of further evidences. Therefore, with reference to the proliferation of crimes against society, it is necessary to keep in mind the necessity of the society at large and the need of a thorough and proper investigation as against individual rights while ensuring that constitutional rights are not infringed. Consequently, in the court's opinion, the narco-analysis test does not suffer from any constitutional infirmity as it is a step in aid of investigation and any self incriminatory statement, if made by the accused, cannot be used or relied upon by the prosecution. The court ordered the accused to undergo the narco-analysis test in stipulated period.

Recently, The Supreme Court judgment on May 5, 2010 related to the involuntary administration of DDT for the purpose of improving investigation efforts in criminal cases was questioned on the account of violation of fundamental rights such as:

- (i) '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/herself, and
- (ii) Article 21 (Right to life and personal liberty) has been judicially expanded to include a 'right against cruel, inhuman or degrading treatment'.

DDT also raises serious concerns related to the professional ethics of medical personnel involved in the administration of these techniques and violation of human rights of an individual. Concerns regarding human rights violations in conducting DDTs were raised long back and the National Human Rights Commission had published Guidelines in 2000 for the Administration of Polygraph tests . However, only few of the investigating agencies seen to follow these guidelines.

Significance & Practical Application

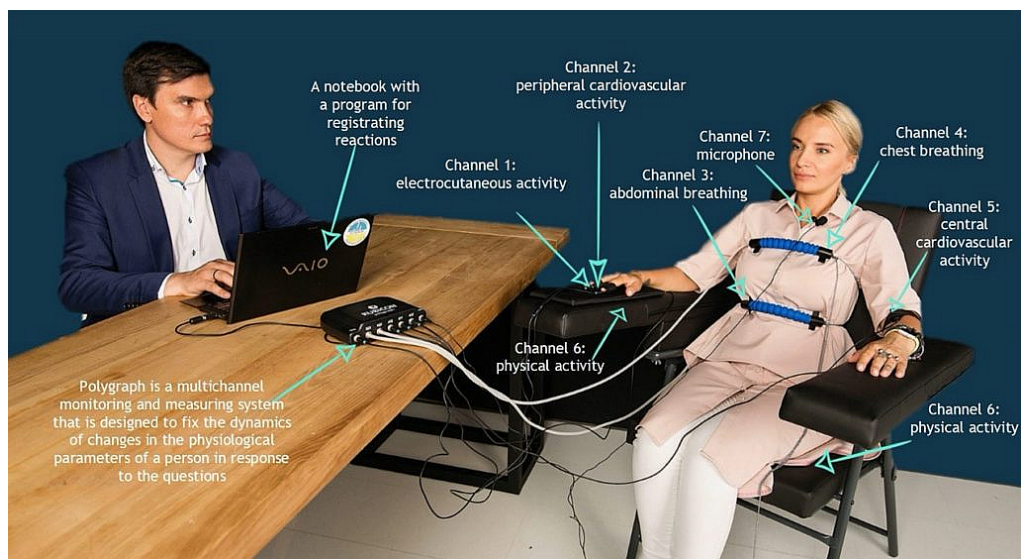
Polygraph testing has generated considerable scientific and public controversy. Most psychologists and other scientists agree that there is little basis for the validity of polygraph tests. Courts, including the United States Supreme Court (cf. U.S. v. Scheffer, 1998 in which Dr.'s Saxe's research on polygraph fallibility was cited), have repeatedly rejected the use of polygraph evidence because of its inherent unreliability. Nevertheless, polygraph testing continues to be used in non-judicial settings, often to screen personnel, but sometimes to try to assess the veracity of suspects and witnesses, and to monitor criminal offenders on probation. Polygraph tests are also sometimes used by individuals seeking to convince others of their innocence and, in a narrow range of circumstances, by private agencies and corporations.

The development of currently used "lie detection" technologies has been based on ideas about physiological functioning but has, for the most part, been independent of systematic psychological research. Early theorists

believed that deception required effort and, thus, could be assessed by monitoring physiological changes. But such propositions have not been proven and basic research remains limited on the nature of deceptiveness. Efforts to develop actual tests have always outpaced theory-based basic research. Without a better theoretical understanding of the mechanisms by which deception functions, however, development of a lie detection technology seems highly problematic.

Observation

A polygraph, popularly referred to as a **lie detector test**, is a device or procedure that measures and records several physiological indicators such as blood pressure, pulse, respiration, and skin conductivity while a person is asked and answers a series of questions. There have been several reviews of polygraph accuracy. They suggest that polygraphs are **accurate between 80% and 90% of the time**. This means polygraphs are far from foolproof, but better than the average person's ability to spot lies, which research suggests they can do around 55% of the time. There are few signs which indicate that someone is lying ;



- A Change in Speech Patterns. One telltale sign someone may not be telling the whole truth is irregular speech. ...
- The Use of Non-Congruent Gestures. ...
- Not Saying Enough. ...
- Saying Too Much. ...
- An Unusual Rise or Fall in Vocal Tone. ...
- Direction of Their Eyes. ...
- Covering Their Mouth or Eyes. ...
- Excessive Fidgeting.

Conclusion

With all due respect to the decisions given by the Hon'ble Supreme Court on the legality or illegality of lie-detector tests some questions still remain unanswered. The court left open the probability of wrong use of these test as they gave a narrow exception that if the test is carried out by voluntarily given consent of the subject to that test then it can be used as evidence in court. But the dilemma is that even the person is well informed with the consequence of his consent and thereafter voluntarily gave consent then also the consent can't be said to be given voluntarily. It is a problematic stance.

In conclusion, DDT has faced a number of criticisms and it is still unclear to what degree lie detectors and brain mapping can be used to reveal concealed knowledge in applied real-world settings. The Supreme Court judgment on involuntary DDTs is that it has no place in the judicial process. On the contrary, it will disrupt proceedings, cause delays, and lead to numerous complications which will result in no greater degree of certainty in the process than that which already exists.

It is apparent that the scope of polygraph tests would be quite broad especially in the modern world where people everywhere are subject to different kinds of security threats and terrorist attacks. If the national security departments use polygraph tests, they may be able to identify terrorists who may disguise their identities to deceive government agencies to some extent. Hence, despite controversy the role of polygraphs tests are in maintaining peace, national security and social stability is quite impressive.

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