



CONSTITUTIONALITY OF POLYGRAPH TESTS IN INDIA

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ABSTRACT

Poly graph tests have been used in India to detect whether a person is lying when he is subjected to questioning. The Supreme Court allows the test only if it is done voluntarily. The paper analyses the features, limitations and constitutionality of the test in the light of the case of Selvi v. State of Karnataka and Article 20(3) of the constitution.

Some suggestions are also made so as to make the test viable.

KEYWORDS : Voluntary, Evidence, Self-incrimination, questions, privacy, crime

Introduction

To attain best evidence is the goal of criminal investigation system. Evidence is the means to decide whether the accused is innocent or guilty. From time immemorial onwards, men used several techniques to reach the truthness of testimonies made by accused. Agni Pariksha in Indian methodology, Trial by ordeal etc are examples. With the advent of new techniques, modern devices replaced olden believes.

Polygraph Tests – Meaning and Types

The term 'polygraph' is derived from two greek words-'poly' meaning 'many' and 'grapho' meaning 'to write'. Polygraph is a scientific measuring device which will display, via ink pens into charts or via computer's visual display unit, a direct and valid representation of various types of bodily activity. It is an instrument that simultaneously records changes in physiological processes such as heart beat, blood pressure, respiration, blood flow, skin resistance etc. Polygraph test can be defined as a process of evaluation of psychological response of an individual by highly sophisticated instruments while answering questions on the basis which experts would be able to detect whether or not subject is lying or not. The main objects of polygraph tests is to gather clues which would lead to the discovery of relevant evidence, to assess the credibility of previous testimony or even to ascertain the mental state of individual. The poly graph test is also known as 'lie detector' test or Psycho Physiological detection of deception examination. The polygraph test does not detect lies, but only arousal which is assumed to accompany telling a lie.

The origin of polygraph test can be traced back to the efforts of Lombroso, a criminologist who experimented with a machine that measured blood pressure and pulse to access the honesty of persons suspected of criminal conduct. The theory behind the polygraph test is that when a subject is lying in response to a question, he/she will produce psychological responses that are different from those that arise in the normal course. During the polygraph test, several instruments are attached to the subject for measuring and recording the psychological response. The examiner, then reads these results, analyses them and proceeds to determine the credibility of the subject's answers. The truthfulness of the subject is assessed by relying on the records of the psychological responses. There are three prominent polygraph examination techniques:-

The relevant-irrelevant technique- In this technique, two types of questions are asked, crime-relevant question and crime-irrelevant question. Crime –relevant question ate related to crime under investigation, such as 'Did you Steal the money from the company office last night?' All the examinees, both innocent and guilty, say 'no' to this question. Irrelevant question is not related to the crime and the examiner knows that all the examinees will tell true to this questions. E.g.-'is today is Tuesday?' The examiner will then compare the physiological responses of both these questions. The rationale behind the techniques is that the larger response to relevant crime related questions than to irrelevant questions indicates that the examinee was lying while responding to the crime-relevant questions.

The control-question technique or comparison question test- The technique compares response to relevant questions with response to control question. The control questions are irrelevant to the facts being

investigated but they are intended to provoke distinct physiological responses. Theoretically, a truthful subject will show greater physiological responses to the control questions which he/she has reluctantly answered falsely than to the relevant questions. A deceptive subject will show greater physiological responses while giving false answers to the control questions. An innocent subject will have no trouble in truthfully answering the relevant questions but will have trouble in giving false answers to the control questions. The test is valued by assigning a numerical value, positive or negative, to each response given by the subject, after accounting for all the numbers, all result is compared to a standard numerical value to indicate the overall level of deception. The net conclusion may indicate truth, deception or uncertainty.

The directed lie control technique- In this test, the control questions are standardised and can be asked in all situations. E.g.-'During the first 27 years of your life, did you ever tell even one lie?' Examinees will be instructed to answer 'No' to these questions. They will also be instructed to think about particular situations in which they did tell a lie. The rationale behind the techniques is that the guilty suspects are thought to be mostly concerned with the relevant questions and are expected to show the strongest responses to these questions; innocent suspects are thought to be more concerned with the (control) directed lie questions since they will be concerned that their responses while lying (i.e. to directed lie questions) differ from their responses when telling the truth (i.e. to relevant questions).

All these techniques include a pre-test interview during which the subject is acquainted with the test procedure and the examiner gathers the information which is needed to finalise the questions that are to be asked. An important objective of this exercise is to mitigate the possibility of a feeling of a subject on the part of the subject which could be triggered by unexpected questions. This is important because an expression of surprise could be mistaken for physiological responses that are similar to those associated with deception.

Constitutionality of Polygraph Tests in India

India follows a balanced mode to preserve constitutional rights of the accused and the use of modern techniques such as narco-analysis, brain mapping, polygraph etc. Article 20 (3) of the Constitution guarantees right against self incrimination and Article 21 protects right to fair trial and privacy. As there is no law for regulating new techniques, the constitutional guarantees have to be balanced with these techniques to ensure that all these techniques are implemented in a just, reasonable and fair manner. The rationale behind the right against self incrimination under Article 20 (3) is (1) to ensure the reliability of the statements made by an accused and (2) to ensure that the statements are made by the accused voluntarily.

M.P Sharma v. Satish Chandra (1954) SCR 1077

In this case, court observed that Article 20(3) consists of the components such as (1) a right pertaining to a person accused of an offence, (2) as a protection against compulsion to be a witness and (3) as a protection against such compulsion resulting in his giving evidence.

State of Bombay v. Kathikalu (AIR 1961 SC 1808)

In this case, court held that self-incriminatory information given without any threat would be admissible as evidence and would not be

hit by Article 20(3). Self-incrimination means conveying information based on the personal knowledge of the person giving information and not merely the mechanical process of producing documents in court which may throw light on any point in controversy.

Nandini Satpathy v. P.L.Dani (1978) 2 SCC 424

Court observed that Article 20(3) is a guarantee of dignity and integrity and is a protection against compulsion, physical threats or violence, physical torture etc. Compelled testimony include evidence procured not merely by physical threats but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogatives, intimidatory methods etc.

Selvi v. State of Karnataka (2010) 7 SCC 263

In this case, the court held that the compulsory administration of the impugned techniques violates 'right against self incrimination and it amounts to an unwarranted intrusion into personal liberty. The court also held that the test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Court also upheld that Article 20 (3) protects an individual's choice between speaking and remaining silent and the results of the tests bear a 'testimonial' character and they cannot be categorised as material evidence. Court also upheld the following guidelines issued by the Human Rights Commission for the administration of Polygraph test on an accused, 2000 -

No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.

If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

The consent should be recorded before a Judicial Magistrate.

During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police.

The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

A full medical and factual narration of the manner of the information received must be taken on record.

Limitations of Polygraph Tests

The polygraph tests have certain limitations and may result in errors.

Firstly, the premises behind these test is questionable because the measured changes in physiological responses are not necessarily triggered by lying but, by nervousness, anxiety, fear, confusion or other emotions.

Secondly, the physical conditions in the polygraph examination room can also create distortions in the recorded responses. Privacy is to be maintained.

Thirdly, the mental state of the subject is also vital since a person in a state of depression or hyperactivity is likely to offer high disparate physiological responses which could mislead the examiner. In some cases, the subject may have suffered loss of memory in the intervening period between the relevant act and the conduct of the test. In such cases, the subject will have no self-awareness of truth or deception, thus leading to helpless situations.

Fourthly, errors may also result from 'memory-hardening' - a process by which the subject has created false memories about an incident. This occurs in respect of recollections of traumatic events and the subject may not be aware of the fact the he/she is lying. The errors associated with polygraph tests can be categorised into two groups: false positives -when the results indicate that a person has been deceitful even though he/she answered truthfully and false negatives- occur when a set of deceptive responses is reported as truthful.

The biggest concern about polygraph test is that an examiner may be able to recognise deliberate attempts on part of the subject to manipulate the test results. Such countermeasures may be deliberately used by the subject to create physiological responses in order to deceive the examiner. Such measures include creation of false sense of mental anxiety, stress etc at the time of the interview, so as that the responses triggered by lying cannot be readily distinguished.

Conclusion with Suggestions

The limitations of the Polygraph tests pose serious concerns about the scientific validity of polygraph tests. Serious efforts are needed to enhance its validity and accuracy. Some of the Suggestions includes:-

The polygraph tests shall be done only by competent examiner. He/she should thorough in preparing the questionnaire and must also have the expertise to account for extraneous conditions that could lead to erroneous inferences.

Research on polygraph shall be progressed in the scientific field so as to strengthen its accuracy and to improve it. Theoretical rationale for polygraph test is weak, especially in terms of differential fear, arousal or other emotional states that are triggered in response to relevant questions. Serious efforts are needed for the validation of polygraph tests.

Need for law to regulate modern techniques is also felt.

REFERENCES

1. a review of the current scientific status and fields of application of polygraph deception detection- final report (2004)// 2. Sameeksha Chowla & Girik Bhalla, "The Polygraph Test : Towards Progress or Regress?", International Journal of Applied Research and Studies, Vol.2, Issue 11 (November-2013)// 3. laboratory procedure manual - poly, graph examination , directorate of forensic science, Ministry of Home Affairs, Government of India, New Delhi, 2005// 4. retrieved from http://www.bps.org.uk/sites/default/files/documents/polygraphic_deception_detection_-_a_review_of_the_current_scientific_status_and_fields_of_application.pdf// 5. judgement of Selvi v. State of Karnataka (2010) 7 SCC 263//6. David Gallai, "Polygraph Evidence in Federal Courts: Should it be Admissible?", 36 American Criminal Law Review 87-116 (Winter 1999) p.91