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## Exploring the importance of forensic evidence in criminal justices system of India

**Chaurasiya AK, Bhat S and Mehra S**

### Abstract

Forensic Science is a multi-disciplinary subject like Physics, Chemistry, Biology, Computer Science, Psychology, Toxicology and Phonetics. The world of crime is changing very fast. Counterfeit currency trading, Hawala transactions, border infiltration, narcotics, cybercrime and crime against women are extremely hiked with the advancement of science and technology. Criminals use various scientific methods, advanced technology, and various toxicological substances to commit the crime. We need to use scientific methods in investigation for collection of evidence and to ensure that evidence is collected and retained without being contaminated and altered, packed and sent in a scientific and safe manner to the lab is a challenge before the investigating agency where the advanced techniques are used and applied to extract evidence that will link the evidence to the scene of crime and finally identify the criminal so that he or she may be successfully behind the bar of justice. It is observed that the use of forensic science has definitely helped in increased conviction rates and non-use of forensic science has resulted in increased acquittal rates because physical evidences cannot tell lies but man can do. The role of forensic evidences like DNA, ballistics, fingerprints, foot prints, brain mapping, polygraph test, skull mapping, toxicology and chemical analysis are extremely necessary due to hostility of witness, eye witness is not coming forward due to various reasons like witness security, harassment by investigating agency, and very slow and time-taking judicial proceedings. Therefore, the Indian court conviction rate data was reported 57 percent in 2021. So that we have need to integrate our criminal justice system with forensic science-based investigation. The conviction rate in Canada is 62 per cent, Israel 93 per cent, England 80 per cent and America 90 percent. They have used forensic-science based investigation so that the rate of conviction is much higher than India. Ministry of Home Affairs, Government of India to mandatorily use forensic techniques for all crimes where punishment is more than 6 years.

**Keywords:** forensic evidence, criminal justices and system of India

### Introduction

The word "forensic" is derived from the Latin word "forensis" which means "suitable or pertaining to court of law".

The word 'Forensic' is derived from the Latin word forum for "public" (Oxford English Dictionary, 2005).

In ancient Rome, the Senate met in the Forum, a public place where the political and the policy issues of the day were discussed and debated; Technically, "forensic" means as applied to public or legal concerns.

Together, "forensic science" is an apt term for the profession of scientist whose work answers questions for the courts through reports and testimony<sup>[1]</sup>.

"Evidence" means and includes

1. All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;
2. All documents produced for the inspection of the Court including electronic records; such documents are called documentary evidence<sup>[2]</sup>.

According to H. J. Walls' article "Whither Forensic Science?" it started as a hobby of a few scientists who liked to become mixed up in the proceedings of the police and "enjoyed the kind of problems this association brought them. Richard Saferstein writes a more specific definition than what was previously given in his book

Criminalistics: An Introduction to Forensic Science, which says that forensic science is the "application of science to those criminal and civil laws that are enforced by the police agencies in a criminal justice system." The origin of this type of science cannot be accurately pinpointed.

Forensic science is a multidisciplinary as well as intra-disciplinary subject comprising almost all branches of science like chemistry, physics, mathematics, biology, cyber technology but the basic principles of forensic investigations are the same for all branches like chemistry,

explosives, toxicology, ballistics, cyber-crimes, finger printing etc. Forensic science depends on physical evidences, their classification, identification (physical and chemical identity with proper comparison with known compounds) and individualization based on some cardinal principles.

1. Max M. Houck and Jay A. Siegel, Jay A. Siegel, Fundamentals of Forensic Science 4 (Elsevier, Oxford UK, 2nd edn., 2011).
2. The Indian Evidence Act 1872.

Constitutional validity of some forensic techniques, The Supreme Court had examined legal question relates to the involuntary administration of certain scientific techniques, namely narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) test for the purpose of improving investigation efforts in criminal cases. Nacro-analysis, brain-mapping and Lie-detector tests cannot be conducted on accused without his consent, its violate the Article 21 & 22 of Constitution.

Lilu @ Rajesh and another v. State of Haryana <sup>[3]</sup>, The Supreme Court ruled that the two-finger test is unconstitutional. It violates the right of rape survivors to privacy, physical and mental integrity and dignity. Virginity test violates right to privacy under article 21.

Shrda v. Dharampal <sup>[4]</sup>, A matrimonial court has the power to order a person to undergo a medical test. Passing of such an order by the court would not be in violation of the right to personal liberty or the right to privacy under Art.21 of the Constitution. It is significant to note that though no person can be compelled to give a sample of blood against him for this refusal, in case of divorce proceeding before a matrimonial court, the court can order an individual to submit himself to medical examination and in case of refusal, can draw an adverse inference from his refusal. Sherya Singhal v. Union of India <sup>[5]</sup> Right to privacy declared as an integral component of the right to life and dignity in Justice puttaswamy <sup>[6]</sup> case. Privacy and informed consent are intertwined concepts and both are to assist a magistrate to decide for directing the subject for tendering bodily samples for forensic examination. The apex court observed that fingerprints, DNA profile and cellular samples constitute personal data. The judicial interpretation to expand the scope of privacy as fundamental right has direct bearing on forensic sampling, search and seizer, disposal of residual samples etc. The law enforcement agencies must observe due process of law in addition to the standard protocol while dealing with various aspect of forensics evidence.

1. (2013)14 SCC 643
2. AIR 2003 SC 3450
3. AIR 2015 SC 1523
4. (2017) 10 SCC 1

#### **Tukaram S Dighole vs Manik rao shivaji Kokate <sup>[8]</sup>**

It was again observed by the Apex Court that new techniques and devices are order of the day and it will be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, Though such devices are susceptible to tampering, no exhaustive rule could be laid down by which the admission of such evidence may be judged. Standard of proof of its authenticity and accuracy has to be more stringent than other documentary evidence.

The Supreme Court has opined that the courts ought to be vigilant while appreciating electronic evidence.

Selvi & other v. State of Karnataka <sup>[9]</sup> Nacro-analysis, brain-mapping and Lie-detector tests cannot be conducted on accused without his consent, else it would violate Article 21 of the Constitution. No individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place.

#### **R.M. Malkani vs State Of Maharastra <sup>[7]</sup>**

Electronic evidences is admissible, provided first the fact is relevant to the matters in issue, secondly, there is identification of matter in issue, and thirdly, the accuracy of the electronic evidence. Electronic evidence is proved by eliminating the possibility of deletion, alteration or manipulation. Electronic conversation is, therefore, a relevant fact under section 8 of the Evidence Act and is admissible under s. 7 of the Evidence Act.

#### **Mukesh and another v. State (NCT of Delhi) others <sup>[10]</sup>**

The Court noted that India, like several other countries, is increasingly relying upon DNA evidence. It further emphasised on the importance of such evidence by referring to Sections 53A and 164A of Code of Criminal Procedure, 1973 which relate to examination of a person accused of rape and a victim of rape.

1. AIR1973 SC 157
2. 2010 4 SCC 329
3. 2010(7) SCC 263
4. (2017) 6 SCC 1

Respectively to hold that DNA profiling is now a part of the statutory scheme. After referring to various precedents, the Court held that a DNA report deserves to be accepted unless it is absolutely dented. In case the DNA report is rejected, it must be established that there had been no quality control or quality assurance. A DNA report should be accepted if there is no error in sampling and no indication of tampering of sample.

#### **Santosh Kumar Singh v. State through CBI <sup>[11]</sup>**

By referring to a large number of textbooks, the Trial Court gave adverse findings on the accuracy of the DNA examination and ignored the complexity and technical nature of the subject. The Trial Court was not justified in rejecting the DNA report because nothing adverse could be pointed out against the two experts who had submitted same report. Therefore, the Court accepted that the DNA report was “scientifically accurate and an exact science”.

#### **Ramesh Chandra Agrawal v. Regency Hospital Limited and Others <sup>[12]</sup>**

The Court noted the importance of expert evidence in cases of specialized science such as medicine, which is outside the knowledge and experience of a lay person. The Court recognized the following principles for the admissibility of expert evidence:

1. It should be a recognize field of expertise.
2. Evidence is based on reliable principles
3. The expert is qualified in that discipline.

The Court also noted that the credibility of expert opinion lies in the data or basis of the conclusions underlying the report, without which the evidence may be inadmissible. Considering that the expert before the National Commission did not have access to all necessary documents, the Court held that he was unable to form a proper opinion. Therefore, principles of natural justice required that a fair opportunity should be given to the appellant to prove his claim based on the report of the expert.

Discussing the argument regarding the absence of DNA profiling, the Court reiterated that it is the duty of an expert witness to assist the Court by furnishing the report based on their expertise along with reasons so as to enable the Court to form its independent judgment by assessing such materials. However, the opinion evidence is advisory and the Court is not bound by expert evidence. The Court further noted that while the accuracy of DNA evidence is increasing, it cannot be considered infallible. Therefore, the absence of DNA evidence would not lead to an adverse inference, especially due to the presence of other cogent and reliable evidence <sup>[11]</sup>.

### 11. Pattu Rajan v. State of Tamil Nadu (2019) 4 SCC 771

Challenges before the forensic in criminal justice system Forensic examination requires certified, well-equipped labs and infrastructure. they also have lack of staff and who reached the crime spot is generally police personal who have lack of equipment, lack of training to collect to the forensic evidence therefore court cannot relied wholly over such evidence and benefit of doubt goes to accused. Court shall not trust over the private party in criminal cases if any ambiguity is sustained then a innocent person is convicted or guilty person is acquitted. There are at present 7 Central Forensic Science Laboratories (CFSL) and 28 State Forensic Science Laboratories (SFSL). The State labs are not well equipped and also both State and Central labs are lacks of man power. Both labs, are already overburdened with backlogs case. Statistics show that 7135 cases were sent to Delhi State Forensic Laboratory between the year 2006 to 2018 and all of them are pending. In Delhi 9000 DNA analysis cases were pending in the year 2017, whereas in Mumbai 1700 DNA cases were pending in 2017. The same is the case with almost all CFSL and SFSL, which lack trained personnel, staff, equipment and also have poor infrastructure which do not handle to huge of cases each year they create backlog.

According to the latest National Crime Records Bureau (NCRB) records, the number of reported crimes incidences in India in 2021 was 36.28 lakhs of which a major cases related to murder, crimes against women and children, kidnapping and abduction, robbery. All these cases, as per the new mandate of Home Ministry would require mandatory forensic testing and examination in case of where the punishment is exceeding six years. India is second largest population and when a crime is done then the crime scene is not secure to collection of evidence number of people randomly visit the crime scene so that number of forensic evidence like foot print, finger print etc. are contaminated or destroyed and court shall not really over that evidence.

### Conclusion

Evaluate the judgments delivered by court to show that how and to what extent forensic evidence aids in criminal justice

system in India. Role of various types of forensic evidence in different case is studied and its significance was observed through court judgments 'Report of Justice Malimath committee on Reforms of Criminal Justice System' stated that, "The present level of application of forensic science in crime investigation is some-what low in the country, with only 5-6% of the registered crime cases being referred to the FSLs and Finger Print Bureau put together." (Malimath Committee, 2003). Above I also give the data of NCRB which stated that huge number of pending cases before the central and state forensic laboratories. Its clearly observe that our system have needed of trained police officers, and trained staff for forensic lab (like chemist, druggist, and toxicologist, etc.). In various case Supreme Court of India emphasized that to adopt the advance scientific approach, technology, and to reform our investigating agencies so that our conviction rate is increase.

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