

Critical Analysis of Admissibility of Forensic Evidence in the Indian Criminal Justice System

Nanda Kishore M

Student, CMR University School of Legal Studies, Bangalore, Karnataka, India

ABSTRACT

It is believed that forensics plays an important role in finding out the criminal and it has been legally operated. Forensic is a process by which it helps in the discovery of the crime and the criminal. The admissibility of evidence by the forensic experts and their analysis of a particular crime can be done in accordance with the evidence law. The forensic experts play an important role by following certain techniques by collecting the particular materials from the crime scene and preserving them further to investigate the crime. The collected materials will be categorized by the forensic experts which in turn helps to find the crime. In certain circumstances, the collection and preservation of the materials are not done by the experts properly as to a lack of knowledge or the influence of the external elements. Further, there are certain legal constraints in accordance with the criminal investigation being carried out by the experts and the officials. The legal constraints start from the discovery, search, and protection of forensic evidence till the investigation. This affects the proper legal action against the criminal and the evidence which are supposed to be produced in the court of law. The researcher would analyse the admissibility of evidence in a court of law as to its relevance, authenticity, and issue on it as evidence is subject to the legal constraints and its applicability of it.

KEYWORDS: Forensic Science, admissibility, criminal investigation, judiciary

Research Questions:

1. What is the legal principle which deal with forensic evidence and its admissibility?
2. What are the roles of forensic evidence to determine the conclusiveness of the case?

Research methodology:

The research methodology undertaken in this study is doctrinal in nature. The approach of study resorted to is critical and analytical. Materials and facts that are written here are taken from different books, articles and the internet.

INTRODUCTION:

The scientific methods to investigate the crimes and the evidence being collected be presented in the court of law is known as Forensic Science. In criminal proceedings, forensic experts are frequently involved in the search for and investigation of physical evidence that may be beneficial in establishing or disproving a relationship between a suspect and the crime scene or victim. Blood and other bodily fluids,

hairs, textile fibres from clothes, construction materials and tyre marks, and combustible chemicals used to ignite fires are all examples of such traces.¹The scientist may occasionally go to the crime site to offer advice on the probable chronology of activities, any clues of who the offender could be, and to assist in the first search for evidence. Other forensic experts examine potential abuse substances, as well as specimens from persons suspected of using them, driving after consuming alcohol, or being poisoned. Others specialise in weaponry, explosives, or papers of a questionable provenance. A plea bargain is almost always made in a criminal case, and the results obtained by forensic scientist's aid in the negotiations. Forensics experts must understand not

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¹Legal Aspects of forensic law, SinishaFranjic, (Dec.21, 2021, 11:54 PM)
<https://www.peertechzpublications.com/articles/FST-4-111.php>

only the scientific and regulatory based on evidence analysis but everything related to it. The laws and regulations which regulate their behaviour in a litigation court, and the norms that guide expert evidence.²As the criminal justice system has evolved, there has been an astonishing dissemination of crime investigation techniques in terms of scientific infusion, as shown in the preceding decade. The use of scientific tools and procedures by police officers in crime detection and identification of accused criminals/offenders' aids in the establishment of a vital relationship between the judiciary and the police force.³Furthermore, they take into account all the minute things which establish the correctness of the criminal/innocence offender's or guilt. Forensic science is a field that operates within the confines of the legal system and has the potential to make a significant contribution to assisting justice in the investigation of crimes and other severe transgressions. Statements and witnesses are utilised as sources of evidence in India, and those found guilty are punished. As a result, forensic science services may be the most essential crime-fighting tool available to law enforcement.⁴

FORENSIC SCIENCE IN THE CRIMINAL JUSTICE SYSTEM

The nature of crime and the evidence that helps convict the guilty and exonerate the innocent have gotten more sophisticated as our society has become more complicated and driven by science and technology. As a result, forensic science and the scientists who perform it have become more responsible and important. The use of forensic science in the investigative process is widely accepted. The investigative process begins the minute a criminal or civil infringement is found. Developing and interviewing witnesses, questioning suspects, and collecting and analysing evidence are all part of this procedure. The function of forensic scientists in the investigation process is discussed in this chapter, with a focus on the criminal investigation process.

The Criminal Investigation Process

The criminal investigation process begins when a criminal action is initiated as a consequence of police, prosecutor, or grand jury activities. This entails determining who committed a crime or, if a suspect has been apprehended, searching for evidence that will assist in convicting or exonerating that individual. The procedure of criminal inquiry is never-ending. It starts when the crime is initially

detected and can go until a preliminary hearing, grand jury hearing, trial, and beyond. In this procedure, forensic scientists are involved in a variety of ways, one of which is

- **Analysis of evidence-** This is the major function of forensic scientists. During the course of a criminal investigation, this is a continuous task. Investigators may bring evidence to the crime lab at any time throughout the investigation, and the results of the analyses can have a significant impact on the investigation's trajectory and the case's outcome. The prosecutor and criminal investigators will assess the forensic scientists' findings, which will be published in reports.

Section 112 of evidence act and its application of forensic:

Section 112 of the Act establishes a standard of "conclusive proof" for a child's authenticity⁵for the duration of the child's mother's legitimate marriage to any man or woman⁶If the kid was born 280 days after the marriage was dissolved and the mother was still single. The sole exemption is if "it can be demonstrated that the parties to the marriage had no access to each other at any period when the child may have been born." However, it should be brought to the attention of the general public that advances in technology have made it possible to definitively verify a child's paternity. Regardless, the same should be included in the scope of the nation's evidence legislation. As a result, the current research article examines the breadth of forensic and scientific evidence's applicability for the purposes of the relevant portion of Indian evidence laws.

Dna Test Administration to Be Done Only in Child's Interest

No party to a judicial case can be forced to take a DNA test in order to gather evidence without the will of the person.⁷The Dna sample to verify paternity of a kid can only be requested in exceptional and meritorious circumstances, and if it is not in the best interests of the child, it should not be ordered on a regular basis and the reasons should be noted⁸.Before a DNA finger printing test may be ordered, the plaintiff must show sufficient proof to persuade the court of the facts of the marriages and her

⁵National Textile Workers' Union v. P.R. Ramakrishnan, (1983) 1 SCC 228.

⁶ Indian Evidence Act, Act 1 of 1872. [hereinafter "the Act"]

⁷Teeku Dutta v. State, AIR 2004 Del 205 (207)

⁸ B.P. Jena v. Convenor Secretary, Orissa State Commission for Women, AIR 2010 SC 2851

²Id.,

³ Forensic science and legal, (Dec.22, 2021, 1:04 PM) <https://definitions.uslegal.com/f/forensic-science/>

⁴Supra note 3

accessibility to her.⁹To establish paternity of a kid, a DNA test can be requested only in exceptional and worthy circumstances, and only if it is in the best interests of the child; it cannot be ordered on a regular basis; the grounds for ordering the test should be recorded.¹⁰

Also, in *Bommi and another v. Munirathinam*,¹¹ it was held that because of technological development was not accessible at the time the Evidence Act was enacted, the Madras High Court concluded that advancements in science and technology should be employed instead of relying solely on presumption under section 112 of evidence act.

Can a Person be Compelled to go through DNA Tests?

The purported father applied for a scientific test to prove paternity since he disagreed with his son's paternity. The son was born during his father and mother's legal marriage. It would be solid confirmation of his son's legitimacy. A medical test to verify paternity cannot be forced upon the son. This was especially true when his mother was no longer living.¹² Although DNA testing provides proof of paternity, an order mandating the kid's DNA testing without first hearing from the mother and child would be a violation of natural justice.¹³ In *V.K. Bhurvaneswari v. N. Venugopal*,¹⁴ it was said that the Court's order for a party to submit to a DNA test that was deemed necessary for a fair determination in the case does not constitute an intrusion into the party's personal life. In *Teeku Dutta v. State*,¹⁵ No party to a judicial case can be forced to take a DNA test in order to gather evidence against his or her will. The fact that the wife refused to take the DNA test cannot be used against her.

The Value of The Positive Result of a DNA Test?

In the case of *Joseph v. State of Kerala*,¹⁶ Witnessed a lady seeking a declaration that she is the appellant's legally married wife and that the female kid is his legitimate daughter and it is said that a positive DNA test is confirmation of the child's legitimacy.

⁹Devu Gopal Lunani v. Siva Gopal Lunani, AIR 2014 AP 29.

¹⁰ Sunil Eknath Trambake v. Leelavati Sunil Trambake, AIR 2006 Bom 140 (142)

¹¹ *Bommi and another v. Munirathinam*, (2004) 3 MLJ 537.

¹² *G.M.S. Reddy v. M. Abhinay*, 2000 AIHC 4981 (4982) (Kant).

¹³ *Sunil E. Trambake v. Leelavati S. Trambake*, 2006 AIHC 1668 (1670) (Bom)

¹⁴ *V.K. Bhurvaneswari v. N. Venugopal*, AIR 2007 (DOC) 158.

¹⁵ *1 Teeku Dutta v. State*, AIR 2004 Del 205 (207).

¹⁶ *Joseph v. State of Kerala*, AIR 2006 Ker 191.

Impacts Of The Negative Result Of A Dna Test?

In the case of *Kamti Devi vs. Poshi Ram*,¹⁷ The Supreme Court refused to rely on the results of a DNA test, ruling that non-access between both the husband and wife is the only method to establish the presumption against legitimacy under section 112 of the Evidence Act. While admitting the correctness of the test, it also observed that while the result of a genuine DNA test is considered to be scientifically true, it is not enough to avoid the completeness of section 112 of the Evidence Act.

Legal embargo for Indian Judiciary

It is not always required to do D.N.A. tests on both the putative father and mother, and a DNA test on the husband will also reveal if a specific baby arrived to a person on whom test is conducted.¹⁸ If the mother is not accessible, the paternity test can be performed using a sample from the kid and the claimed father. As a result, if the DNA test is conducted without the mother's sample, it will necessitate additional processing and will take a few days longer to complete. The accuracy of the results, however, will not be altered.¹⁹ There is no legal restriction on courts ordering medical examinations based on DNA tests.²⁰ The Court might draw negative inferences about the spouse if he refuses to take a DNA test.²¹ The Court's order for DNA testing of both parties was declared legitimate in a partition case where the parties' maternity was in question. The plaintiff spouse was allowed to offer a DNA analysis in evidence where the grounds for divorce were that the wife was living an adulterous life and had given birth to another person's kid.²² When there was a disagreement between the parties over the kid's identification, a DNA test of the child and the parties was deemed required and ordered. Similarly, a DNA test to determine paternity is appropriate when the husband disputes his need to pay child support, claiming that the kid was not born to him and that the wife is not his wife.²³

Section 45 of the evidence act

When a court can depend on the views of the court, it is stated in Section 45 of the Indian Evidence Act, 1872. The court can establish views based on any foreign legislation, science, art, finger imprints, handwriting, and identification by an expert. The

¹⁷ *Kamti Devi vs. Poshi Ram*, (AIR 2001 SC 2226).

¹⁸ *Veeran v. Veeravarmalle*, AIR 2009 Mad 64 (67).

¹⁹ *Ibid*.

²⁰ *M. Karthika v. R. Manoha*, (2009) 7 MLJ 311 (Mad)

²¹ *Usman v. Badarunisa*, AIR 2007 (NOC) 371 (Ker).

²² *RadheyShyam v. Pappi*, AIR 2007 Raj 42 (46)

²³ *Banoth Krishna v. Banoth Vimala*, 2015 Cri LJ 1319 (Hyd).

experts, on the other hand, are merely advisors and not witnesses because they did not see the crime; they are only offering their thoughts based on their scientific studies. However, the idea of expert opinion is required. Expert counsel aids the court of law in reaching a decision. They depend on it mostly because these specialists have studied similar research in the past.

Sushil Mandal v. The State²⁴

In this case, the petitioner is the father of a deceased kid who is contesting the DNA results. The adolescent kid who died was on the verge of falling in love with a girl at his school. As a result, the school's administrator suggested that the parents of both families keep an eye on their children. The youngster went missing after a few days, and a week later, a corpse was discovered in a lake, completely decayed and so unidentified. The petitioner was unable to identify the body, and the clothing he was wearing did not indicate that he was his own kid. In the High Court, he filed a habeas corpus petition, accusing the girl's father and demanding that the probe be directed through the CBI (Central Bureau of Investigation). Experts then conducted a DNA test, which revealed that the dead person's DNA matched that of the petitioner and his wife. A skull superimposition test was also performed. This test also revealed a relationship between the dead and the corpse that was discovered. The petitioner, on the other hand, was unable to accept the facts. Only when the scientific testing were completed did the truth emerge. The apex court based its decision on the scientific tests that were undertaken, and so the case was concluded.

In India, the majority of the time, when it comes to criminal justice, the innocent are punished while the wicked are acquitted. As a result, the reform must be strengthened and made more effective. As a result, the 'Malimath Committee' proposed that forensic science be given greater prominence in current technology for investigations and criminal proceedings.

Role of Forensic Science in Criminal Investigations

The criminal justice system relies heavily on forensic science. It essentially entails delving into the scientific and physical evidence gathered at the crime site. Forensic science describes the character of the suspect who committed the crime. The evidence plainly demonstrates the nature of the crime committed. Even the timing of the incident is included in the circumstantial evidence. The forensic evidence points to the scene of the crime. Even the

offender's process is followed by the forensic investigation.²⁵ And the motive of the crime is found. The functions and responsibilities of a forensic scientist in a criminal case are critical, as they entail thoroughly analysing the evidence and ensuring that it is not falsified. Forensic pathologists, for example, are experts in performing autopsies to identify the cause of death.²⁶ By analysing bodily fluids and tissues, an autopsy can help determine the cause and manner of death. To identify suspects, forensic experts examine physical evidence obtained from the crime site in terms of fingerprint etc. Forensic professionals also employ image modification tools to look for long-term offenders who have gotten away from the police. This technology enables them to digitally age a photograph and comprehend how an elderly person would feel.

Importance of Forensic Science in Law

The legal system recognises the importance of forensic evidence in criminal proceedings. Throughout the world, forensic testimony is frequently utilised to condemn and exonerate people. As a result, forensic science labs have sprung up all over the world in recent decades. Expert testimony is an essential source of information in international criminal processes, and forensic expertise is no exception: findings from exhumations and exams have been used to support ad hoc trials and judgements. While concerns concerning the link between law and science have been investigated within the realms of national judicial systems, the mixed court system provides a robust discussion in new circumstances. With more forensic training, an officer may get overconfident and accidentally taint evidence, rendering it inadmissible. Instead, given the existing lack of sufficient collecting of meaningful evidence from the crime scene (if not stomped underfoot and entirely disregarded), good training, if carried out by experienced forensic science teachers, is more likely to help rather than aggravate the situation.²⁷

Conclusion:

The major reason for employing forensic science to produce evidence is to ensure that justice is served

²⁵ Admissibility of forensic evidence, STA law firm (Jan.3, 2022, 3:04 PM) <https://www.mondaq.com/unitedstates/crime/897356/admissibility-of-forensic-evidence-in-courts-usa-overview>

²⁶ Supra note 3

²⁷ Forensic evidence and admissibility and expert witness, National forensic science and research center, (Jan.3, 2022, 3:04 PM) <https://www.crime-scene-investigator.net/forensic-evidence-admissibility-and-expert-witnesses.html>

²⁴ Sushil Mandal v. The State, MANU/SC/0190/2014

fairly. This is done in order to penalise the perpetrator of the crime rather than the innocent party. In many situations, forensic evidence has always aided in identifying the real perpetrator, who is then sentenced by the court. The forensic evidence provided in court is more valuable than the general evidence presented in court. Though there are relatively few situations when there are errors in the evidence. More

specialists should be rewarded for consistently supplying important information and evidence about the case, allowing the case to be solved on that basis. Making our forensic science expand can lead to further growth in the country. Further the researcher would conclude saying that there should be a separate legislation to deal with the forensic evidence and its admissibility in the Indian legal system.

