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Laws Governing Admissibility of Forensic Evidence in India: An Analysis

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Abstract

The researcher has attempted to assess and evaluate the various laws, that are related to the use of scientific methods and techniques in one way or another and that may be used by the investigation agencies and courts as scientific aid, whether in the form of evidence or in another way. This researcher humbly submits that he has considered all significant laws currently in force in India that are directly or indirectly related to scientific assistance, either in the form of evidence before a court of law or which are useful as corrective or curative measures, in the courts as well as out of the courts, including crime.

Keywords: *Admissibility, Courts, Crime, Evidence, Scientific.*

I. Introduction

The term 'evidence' has been defined under Section 3 of Indian Evidence Act, 1872 to mean and include an oral and documentary evidence. There are various kinds of evidence under the law, the most important being the 'material evidence'. It is involved as a part of crime and is usually recovered from the crime scene or from a place where the accused or victim has been present either before or after the commission of crime. Blood, hair, semen, fingerprints, shoeprint etc. are all real evidence. There are many evidences which are used in a criminal trial. One such kind of evidence is scientific or forensic evidence. These evidences are important in proving a case as they are based on the knowledge that has been developed by using scientific method. Many types of evidence are considered as scientific evidence such as DNA fingerprinting, fingerprint identification, hair analysis etc. The term forensic evidence incorporates two distinct ideas. The 'forensic' part refers to the laboratory and observational processes utilized in the forensic science at issue from which necessary facts get generated. The manner in which DNA is extracted, tested, and subjected to population analyses is a primary example. The 'evidence' part refers to an impartial procedure of collection of information in a litigation which leads and guides a judge to reach a particular conclusion relating to a fact in issue. Forensic science is useful in all kinds of cases, but the information provided from scientific sources must be relevant to one of the issues in the case. In criminal cases, using forensic science involves some form of scientific work which is performed to resolve factual matters relating to the case itself. All the evidences including forensic evidence are used to reconstruct and connect to every event forming part of the crime committed. It should be noted that while the judge will ultimately decide on any point of contention, most scientific evidence presented in court to convince a judge that a certain fact exists will take the form of reports or analyses, which are merely the opinions of specific experts who are knowledgeable in their respective fields. It is referred to as "Expert Evidence" or "Expert Opinion" in legal jargon.

II. Role of Scientific Evidence in CJS

The aim of forensic science in criminal justice system is to link the potential offender to a crime scene with the help of physical evidence obtained from the suspect along with a similar sample recovered from the crime scene. The investigating officers and the courts place heavy reliance

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on such forensic evidence and testimony as it helps provide information about the crime, to the investigators. Forensic evidences are classified in two basic forms:

a. Class characteristic evidence- which does not refer to a particular suspect. For example, a cartridge found at the crime scene belonging to a certain type of firearm.
b. Individual characteristic evidence- which associates a particular individual with the crime. For example, the hair found on the body of victim or the fibres found on a victim's clothes are consistent with the fibres found on suspect's clothes. Whenever a serious crime is committed, the police personnel devote many hours to collect and analyse forensic evidence from the scene of crime and other places, till the conclusion of the investigation. The application of forensic sciences and the collection of forensic evidence have become an important part of criminal investigations in India. Forensic evidence plays various roles in criminal investigations. It –
    - Proves whether or not a crime is committed;
    - Highlights the relation between the accused and the victim along with crime scene;
    - Establishes the identity of people involved in the commission of the said crime;
    - Exonerates the innocent person; ¬ corroborates a victim's testimony;
    - Assists in proving the facts which are connected to the crime.[4]

Forensic evidence plays three important roles in the criminal judicial process. It –

- Establishes the element of a crime i.e., it helps in proving the commission of crime;
- Associates or dissociates the accused with the crime; and
- Helps in reconstruction of scene of crime. The prosecutors seem to evaluate forensic evidence differently. One group finds forensic evidence always trustworthy and the second group views forensic science as corroboration for other evidence. However, their views are debatable.

III. Law related to admissibility of Forensic Evidence

The Indian Evidence Act, 1872, sometimes known as the Evidence Act, is a significant Act in India that addresses the various issues relating to the relevance and admissibility of evidence in a court of law during a legal action. Although not exhaustive, it applies to all legal processes before any Ordinary Court, including court martials, with the exception of those held in accordance with the Army Act of 1950, Air Force Act of 1950, and Indian Navy (Discipline) Act of 193411. It contains clauses defining the terms "evidence" and "expert opinion." In this section, the researcher has only covered those parts of this Act that deal with "Evidence" or "Experts. "Expert advice becomes crucial when it comes to issues involving science and technology. "When the court has to form an opinion upon a point of foreign law, arts or science, or as to identity of handwriting or finger impressions, the opinion upon that point of person specially skilled in such foreign law, arts or science, or in questions as to identity of handwriting or finger impressions are relevant facts," states Section 45 of the Evidence Act, which defines an expert. Additionally, it states that "such people are termed experts.[5]

[4] Tom McEwen, "The Role and Impact of Forensic Evidence in the Criminal Justice System", National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.
[5] Indian Evidence Act, 1872; Section 45

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The necessary concept served as the foundation for the addition of section 45 to the Evidence Act. Help from an expert becomes essential when the issue before the court involves a body of general information or when specialised knowledge, expertise, or training is required, as in the case of a legal dispute requiring a scientific or technological explanation. However, the Federal Rules of Evidence of the United States of America emphasise the value of expert testimony in Rule 702, which reads as follows:[6]

"A witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if the Trier of the Fact will benefit from such knowledge in understanding the evidence or in determining the fact-in-issue."

(1) The testimony is supported by enough data or facts;

(2) The testimony is founded on trustworthy principles and procedures; and

(3) The witness has faithfully applied the concepts and procedures to the facts of the case.

After the US Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals*[7], Inc., the Supreme Court of Arizona noted in its ruling in *Lagerquist v. McVey*[8] that the application of Evidence Rule 702 had "become an issue of nationwide importance. Indeed, the Dauber case has had a significant impact on the legal landscape possibly more so than any other evidence law decision. Both in the legal and scientific communities, it has sparked a contentious dispute. It resulted in a thorough review of the criteria for the admissibility of scientific evidence by the States' Courts, the codification of the State rule on the issue, and a new federal rule on a uniform rule[9]. Although a person may be qualified as an expert in the eyes of the Court, it is contended that his or her opinion is often not admissible as evidence in a court of law ipso facto; rather, it must be acceptable as an expert opinion in line with the legal requirements.

Goddard, L.J., in *Hollington v. Hewthorn Co. Ltd*[10]. in England, dismissed the criminal court's verdict on the grounds that it was simply the criminal court's opinion, and he noted, "It frequently happens that a bystander has a full and complete view of an accident. It goes without saying that he can tell the court all he saw, but he can't comment on whether one or both parties were negligent. Although it is frequently stated that the court must decide this specific subject, the real reason is that his opinion is irrelevant. Any verifiable truth is relevant, but his opinion is not.

When it comes to the exclusion of opinion evidence, Section 45 is an exception to the rule. Expert opinions on a topic of international law, the arts, science, or the identity of handwriting and finger impressions are relevant[11]. Parties are permitted to introduce testimony from expert witnesses when settling a disputed issue necessitates knowledge or analysis that is beyond the range of experience or qualifications of a typical juror. In contrast to eyewitnesses or participants in the events that are the subject of a lawsuit, expert witnesses are permitted to apply their competence to the facts of the case and offer testimony based on their own personal

[6] Federal Rules of Evidence, 1975 (U.S.); Rule 702
[7] 509 U.S. 579(1993).
[8] 1 P 3d 113 (Ariz. 2000).
[9] Paul C. Giannelli, "Scientific Evidence in Civil and Criminal Cases" Arizona State Law Journal 103-119 (2001)
[10] Hollington v. Hewthorn, (1943) K.B. 507 (C.A.)
[11] Indian Evidence Act, 1872; Section 45.

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and general experience and knowledge. Identifying the critical problems surrounding the expert testimony includes

- What subjects belong in the expert testimony?
- Who should be allowed to testify as an expert?
- How reliable should the testimony be expected to be?
- What kinds of facts can an expert use to form an opinion, and
- Should the form or manner of the testimony be limited?

An issue is appropriate for expert testimony if the Trier would benefit from the expert's point of view. By demonstrating his expertise and experience, a person might become an expert witness. An expert's opinion may be founded on any information that professionals in the field typically rely upon, but it must apply trustworthy principles to adequate information pertinent to the issue. An expert may express an opinion or draw a conclusion based on data they consider to be accurate or may respond to a hypothetical query requiring them to make assumptions[12].

According to Section 46, facts that are ordinarily irrelevant "become important if they support (wholly or partially) or contradict (wholly or partially) the opinion of experts, when such opinions are relevant. " This paragraph makes it clear that everything that can be proven to be in conflict with or go against the advice of an expert—whether overtly or covertly—becomes significant.

In India most of the time in the case of criminal justice, the innocents are punished and the person who is guilty will escape. Due to this reason, the reform needs to be improved and effective. Hence, the Committee known as the '*Malimath Committee'* recommended that the importance of forensic science needs to be given in modern technology for investigations and criminal procedures.

IV. Role of Judiciary in advancing Scientific Evidence

In *Selvi v. State of Karnataka*[13], the court noted that as criminology has rapidly grown over the past several years, so too has the need for more techniques for spotting dishonesty and enhancing interrogation effectiveness. The use of narco-analysis during criminal interrogations is a valuable tool that would have a significant impact on both the guilty and the innocent, advancing the cause of justice. Furthermore, it was noted that there are sufficient safeguards in place to allow for an accused person to take legal action if and when the investigating agency tries to introduce information or a statement obtained through a narco-analysis test into evidence and it is determined to be incriminating or a confession. Aside from that, an accused person's remark or information during the test could potentially prove their innocence or point to evidence that was used in the crime.

Furthermore, the Supreme Court ruled in the case of *Gajraj v. State (NCT) of Delhi*[14] that irrefutable scientific evidence can be utilised to condemn an accused person. Any type of scientific evidence may be used, including Internet-connected devices, DNA samples, and mobile phones. Technology permeates everything, thus the criminal justice system should also adopt these scientific methods. Additionally, anyone who is neither an accused person nor a witness can be the subject of a polygraph, narco-analysis, or brain-mapping. This indicates that under these conditions, the test results are admissible in court under Sections 27 or 45. If investigating authorities desire to

[12] Arthur Best; Evidence: Examples & Explanations, 179 (Aspen Publishers, New York, 7th Edi, 2009)
[13] AIR 2010 SC 1974
[14] 2012(1) R.A.J. 28.

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subject the accused to these tests, court approval is needed; however, if the accused gives consent, the authorities may proceed with the testing.

V. Conclusion

Every area of life is changing as society swiftly transitions from one era to the next, and these changes are not just related to the positive effects of the society but also to its flaws. Because of how quickly society is changing, criminals' methods of operation are also evolving. It appears to be exceedingly challenging under the current system, where trained and skilled criminals have begun to take the place of the criminal using antiquated investigative techniques. In this case, the investigative agencies must update their procedures in accordance with social trends and criminal activity, and this can only be accomplished by incorporating scientific methodology into the investigation process.

The use of scientific methodology in inquiry techniques when public safety is at risk has also received secret approval from the Supreme Court of the USA. For this reason, the Supreme Court has never outright prohibited the use of narcotics analysis tests. The usage of these scientific methodologies has been outlined by numerous committees and commissions. Overall, the Indian judiciary has approved the use of these tests to uncover the truth under certain conditions. In order for scientific methods of inquiry to be used for the benefit of society at large and to create a society free of crime, several laws connected to the criminal justice system actually need to be amended.

To take into account the social dimension of both deceit and its detection, the notion that the detection of deception is purely a type of psychometric instrument or a psycho physiological approach needs to be significantly changed. Psychology now considers the study of social and other elements in deception to be a core topic of study. Law is a living process that evolves in line with societal, scientific, ethical, and other changes. As long as they do not violate fundamental legal principles and are beneficial to society, legal changes and advancements should be incorporated into the legal system. As long as they don't violate fundamental legal principles and serve the public interest, the legal system should be able to accommodate scientific advancements. For criminal interrogation, narco-analysis, brain mapping, and polygraph tests have proven to be effective techniques. These techniques have a strong impact on both the innocent and the guilty, hastening the process of justice, as seen in numerous cases including the well-known Arushi murder case, Nithari killings case, Telgi scam, and Mumbai blasts case.

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