

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 2 | Issue 2

2020

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Forensic Evidence and Their Admissibility

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ABSTRACT

Crimes has become a part of everyday matter in our society. Various steps are taken by the respective authorities to stop these increasing crimes. These steps are mostly followed through legislation, statues and other guidelines. With the advancing society, the ways of doing crimes has also been changing and to counter these changing ways the courts has to adopt various different types of new reliable sources. These sources mostly act as the evidences in the court proceedings. The process includes initiating the court proceedings, its interim proceedings and the final judgment. Scientific technology has affecting our daily life and same is the case with judiciary also. These type of evidences plays an important part in court proceedings as they give accurate results. The research paper has been made with the aim to study about the forensic evidences and their admissibility in the court proceedings.

I. INTRODUCTION

In today's world, science has become an integral part of our life's. Every single thing of our life is closely related to science directly or indirectly. Science has also become an integral part of law and the criminal justice system. Through various judgments the courts has repeated that these scientific evidences plays an eternal role in the court proceedings. Whenever a challenge came before the court, the forensic evidences emerges as a important aspect. They have now become an integral part of our criminal justice system and with the advancing technology it has also helping the courts to deal with complicated matters. Forensic evidence has become an eternal part of criminal justice system and thus its usage has become essential for the courts to move towards the conclusion. These evidences every time gives accurate results and are always reliable in nature. The reliability of an evidence can be checked through these forensic ways. It always emerges as a challenge before the Hon'ble courts and the advocates to deal with these ever changing ways of forensic science. One of the well established law of criminal jurisprudence is that before taking anything as evidence, the courts has to check its reliability and on what basis it is introduced. Their admissibility sometimes becomes a matter of conflict in the courts. The quality of an evidence is based

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mostly based upon its legal relevancy. The courts have relied upon various different types of forensic evidences in its different landmark Judgements and thus introduced the legal reliability of such evidences in the court proceedings.

II. DEFINITION OF EVIDENCE

Evidence is a type of object that has been presented before the court for the purpose of proving something or in against it. It is also made when some inquiry has been undergoing. It includes various types of objects like documents, fingerprints, DNA testing, testimony, photographs and CCTV footages. These are termed as evidence. The statements made by the legal practitioners will not be treated as evidences. Neither lawyer can become a witness of a case which he was contesting. The arguments that has been made by the legal practitioners are always been made to interpret the evidences and it should be taken as a evidence. This definition of the *evidence*² can also be understood through the Indian Evidence Act, 1872 which is not itself a act but a legal system.

The evidence which is obtained through some scientific observations or experiments is known as Forensic evidence. They are also known as scientific evidences. It includes various types of objects like fingerprints, DNA testing etc.

III. DNA TESTING

DNA Testing is itself an important part of forensic evidence. It can be described here as follows:

Deoxyribo Nucleic Acid is the full form of the popular term DNA. It is a type of essential component in the human body and remains different in different bodies. It is a type of organic compound. It is mostly found in the blood of the human body but also can be extracted through other ways. These DNA's are specific identical in nature which means every person has its own expect for identical persons and thus they attain great importance. One of the best thing about this is that it is permanent in nature and cannot be damaged by anyone. Mostly these type of DNA tests are used to be done to get the information about children's, in rape cases and in many other things. Their importance in the criminal justice system cannot be undertaken and they are also useful in civil disputes also sometimes. Thus, they are really helpful in making decisions by the court.

The importance of the DNA testing in the courts can also be understood as it has nowadays becomes a normal routine work in the courts. It plays an important role in the criminal justice

²Indian Evidence Act, 1872 S.3.

system. Its results greatly affects the decision of the court as they are accurate and specific in nature. Although, it has only be introduced with the positive thinking as it opens the new doors of scientific evidence it has some negative effects also. But they are yet to be discovered. To discover this aspect of DNA testing a detailed research has to be done and it further advancement in the technology has to be adopted so that its faults can be discovered and thus can be reduced. Although these aspects are yet to be discovered. The advancement of the forensic science has opened new doors for the evidences in our criminal justice system. It is an new era of evidences. One of the basic source of DNA testing is blood while many other sources are also there like bones, fingerprints and hair.

The scope of the DNA testing technology is although limited in nature and new aspects of the technology is yet to be discovered. But its use can be made in bad way also like it is mandatory for the executives to take samples of the rape victims within 96 hours of incidents but in most of the cases either samples are not taken or couldn't be processed in accordance with the time. It's because the law cannot be enforced by the executives as per the time and no authority is there for check and balances. Also, the scarcity of the laboratories and the time consuming reasons are the basic reasons why these things happens. In the practical way, it is not possible for the courts to entertain all the cases and thus responsible machineries has to work efficiently.³

With the technological advancements these problems can be overcome. The condition can be improved by making more laboratories and teams for the same purpose with having a proper mechanism for collecting the evidences. In Initial collection of evidence is improving as a result of the establishment in many jurisdictions of more structured crime-scene teams and more formalized evidence collection procedures. In the past few years alone, major developments has been shown by following a similar type of mechanism. One of the other developments in the field of fingerprints is also proving sensational help for the criminal justice system as they are also unique in nature.

The Indian Scenario:

Now, let us look upon the legal prospective of medical and forensic evidences in our country. One of the basic problem that law faces about the forensic evidences is that the Indian Evidence act doesn't mentions anything about the essential conditions that has to be followed by the court while examining a forensic evidence. The only thing which the act mentions is in its section 45 where it says that if a person becomes a expert an expert in a particular field

³NHRC Members Flag Lack of Forensic Labs (last visited on October 10, 2020)
www.thehindu.com/news/national/nhrc-members-flag-lack-of-forensic-labs/article32347562.ece/amp/

than his evidence should be considered relevant as per the law. On the similar note, section 51 of the Evidence Act says that an evidence will become relevant if it is issued by an expert in the subject. Other than this, no rule has been established by the legislature to address the admissibility of a forensic evidence and to check its reliability.

Thus the essential elements of the above provisions can be summed up as:

1. The people who have the required knowledge about the facts and in their respective fields should be considered relevant by the court of law.
2. On relying upon the forensic reports provided by the experts of the respective fields should be considered as a relevant document by the court of law.
3. If any forensic evidence should be projected as irrelevant before the court then it should be considered as a relevant document if they are with respect to the experts opinion.

Thus, it can be concluded from the above provisions of the law that the experts opinions should be considered as a relevant material if they are made with Bonafide intention and by the experts of their respective fields. Forensic science helps the courts to provide justice to the people in a more accurate, transparent and simple way. The experts themselves involve in day to day activities of the court.

IV. ADMISSIBILITY OF FORENSIC EVIDENCE IN THE COURT OF LAW

Forensic evidences play a major role in the matters of sexual assaults it provides accurate information to the court of law and helps them in providing justice to the accused. The forensic evidences mean all that information that is recovered through the accused in the case like clothes, medical examinations and other things. Various types of forensic evidences are available to the court of law for providing them with assistance. This greatly helps the court of law in providing justice in a transparent manner.

Forensic evidences play a vital role in providing justice to the accused in a more accurate and transparent manner. Through these evidences court of law can move towards a better conclusion in a fixed period of time. Whenever a forensic evidence comes before the court, the court finds it difficult to evaluate the evidences which are scientific in nature as they are ever changing in accordance with the time. The court has to first evaluate the validity of an evidence in depth in the trial then only that evidence will be considered by the court. In our country, the admissibility of an evidence is a complicated matter. The reliability of the forensic evidences are always under the whims of the court and thus its application doesn't

remains consistent along with the time. The situation becomes more complicated when a new type of technology is introduced in the society as judges as well as legal practitioners have to be made aware of it. Forensic evidences will only become admissible before the court of law when they are put forward with the relevant facts of the case. When an evidence is considered as relevant its authenticity, transparency and accuracy has been checked by the court of law. The evidences should meet the standards set forth by the court and should maintain the integrity.

Admissibility Standards of Forensic Evidences in Criminal Trial

The three basic things through which the admissibility of an forensic evidence is calculated is its accuracy, reliability and relevancy. These basic criteria have to be fulfilled by the evidences to become admissible in the court of law. The court finds it difficult to evaluate the evidences which are scientific in nature as they are ever changing in accordance with the time. The court has to first evaluate the validity of evidence in depth in the trial then only that evidence will be considered by the court. In our country, the admissibility of an evidence is an complicated matter. The reliability of the forensic evidences are always under the whims of the court and thus its application doesn't remains consistent along with the time. One of the basic problems that law faces about the admissibility of the forensic evidences is that the Indian Evidence act doesn't mentions anything about the essential conditions that has to be followed by the court while examining forensic evidence. The only thing which the act mentions is in its section 45 where it says that if a person becomes an expert in a particular field then his evidence should be considered relevant as per the law. On the similar note, section 51 of the Evidence Act says that evidence will become relevant if it is issued by an expert in the subject. Other than this, none rule has been established by the legislature to address the admissibility of an forensic evidence and to check its reliability.⁴

The evidence which is obtained through some scientific observations or experiments is known as Forensic evidence. They are also known as scientific evidences. The basic question which arises before the court of law is its admissibility. Measuring the accuracy or reliability of an forensic evidence sometimes becomes a matter of great complexion before the court and before the lawyers also. The lawyers and sometimes judges also are not so much aware of the daily affairs of the science and thus it becomes difficult for them to consider an forensic evidence as an authentic source of affecting the court trail. Accuracy is the basic essential element that has to be fulfilled by an forensic evidence to become admissible in the

⁴C.E. Pratap, *Reliability of Forensic Scientific Evidence in Criminal Trials: An Indian Perspective*(The International Manager, ISSN 2348-9413, July-September, Volume 3, Issue 11, 2016)

court. The courts usually prefers the opinion of an expert in an matter of conflict regarding the forensic evidences and not the reliability of the evidence. It doesn't considers various theories that are made regarding the forensic evidences. Usually it doesn't matter what specific guidelines has been issued regarding the reliability of an forensic evidence, at last it is the discretion power of the judges whether they have to rely upon the forensic or scientific evidences or not. It usually depends upon the mere facts of the case. In our country, the provisions of jury trials were not there and thus judges are at the sole consideration to determine the legal as well as factual issues of the case. Thus, the judges of the court should be make aware about the recent scientific technologies and their accuracy and reliability. Specific guidelines has not been issued regarding the usage of these type of forensic technologies and to examine their accuracy and reliability before the court the law. Under the basic law of Indian Evidence Act, 1872 no specific criteria are made to examine the reliability and accuracy of an evidence.

V. ADMISSIBILITY OF EXPERT EVIDENCE: INDIAN LEGAL POSITION

In our country, the general rule that has been followed by the court of law is that it needs assistance in the matters of forensic evidence by the experts. Thus, experts of a particular field acts as the amicus curie i.e. friend of the court. The opinion of the experts matters as they have the required knowledge about their fields. Assistance has been required by the courts which involves a vital role of the forensic evidences. The courts has always showed an unwilling behaviour where they are not sure about the forensic evidence and the decision has to be made upon the specific forensic evidence.⁵ The courts will always look for the help of the experts when they feels the need for the same. The courts will not consider the evidences until they become absolutely sure about its reliability and accuracy. The check and balances method has been adopted by the courts in our country regarding the admissibility of the forensic evidences.⁶ The admissibility of any forensic evidence has been always measured on the grounds of transparency, accuracy and reliability. The evidences will only be undertaken by the courts if they are in consonance with the facts of the case law. Sometimes, the case arises where the facts are not admitted by the courts unless of its relevancy. If in any case, the fact are relevant in nature but not as per the legislative procedure i.e. not as per the norms of Indian Evidence Act, 1872 the evidence will not be admitted by the courts. Thus, in our country the forensic evidences will always be measured on the grounds of transparency, reliability and accuracy. If the evidence fulfils all these grounds successfully then only the

⁵ S. Gopal v. State of Andhra Pradesh, AIR 1996 SC 2148

⁶State of Maharashtra v. Sukhdeo Singh, AIR 1992 SC 2100

forensic evidences will be considered by the court of laws.

The courts have always shown an unenthusiastic behaviour when the judgement has to be made solely on the basis of forensic evidences without any proper advice of the experts of the field. The same type of nature has been observed in the landmark case of *Magan Bhiarilal v. State of Punjab*⁷ in which the apex court of our country has upheld the conviction set forth by the High court of Punjab and Haryana. The court has observed that the opinion of the expert will only be taken with great caution. The conviction should not be made only on the basis of forensic evidences and it is also against the rule of law which is universally enacted across the countries.

In the matter of *Forest Range Officer v. P. Mohhamad Ali*⁸, the apex court of our country held that the admissibility of an forensic evidence should only be undertaken when assistance of expert will be taken. Then after only any conclusion should be made. But it will not affect the court in its interpretation. The court has made the principle themselves that expert view is necessary to be taken before moving towards a conclusion in the case. Although, the Indian Evidence Act doesn't mentions anything about the same. But this principal has been developed by the courts in its past judgements.⁹

VI. CONCLUDING REMARKS

Forensic evidences are presented before the court of law for its assistance. Various studies are made by the various scholars regarding the forensic evidences but these research's only focuses upon only the outcome. It is because for doing a detailed research of all the stages one has to analyse a huge amount of data from the initial stage of arrest to the final stage of jurisdiction. The studies move towards different conclusions for the different stages but one thing is common in them is the important role of forensic evidences. One of the most important characteristic of the forensic evidence is that they provides an accurate, transparent and reasonable thing which is based upon logical aspects. It directly links the accused to the victim of the case law. From the above contentions it is clear that forensic evidences plays an important role in the criminal justice system but on the other hand they raises hurdles before the court of law about its interpretations and reliability in the legal perspective. Their is a growing demand by the victims of the case about the forensic evidences as they provides transparent and accurate results.

⁷AIR 1977 SC 1091

⁸AIR 1994 SC 120

⁹*Palania Pillai v. State*, 1991 Cri LJ 1563