

A CRITICAL ANALYSIS ON THE EVIDENTIARY VALUE OF DNA IN THE INDIAN LEGAL SYSTEM

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Abstract

A DNA test plays a vital role in the Indian legal system. It is done with the help of many techniques and acts as a tool of justice for the victims. But when it comes to the admissibility of DNA testing in Indian courts there is no provision under The Indian Evidence Act, 1872 or under the Criminal Procedure Code, 1973 to lay down the legal framework and the mechanism to conduct the DNA testing, hence this becomes difficult for the investigating officers to collect the DNA in the form of evidence. So the admissibility of DNA in the form of evidence depends on the accuracy, documentation and preservation of such evidence. The judges of the High Courts and Supreme Court always end up giving conflicting decisions with regards to the admissibility of DNA as a shred of evidence as such evidence are questioned on the grounds of legal, constitutional and public policy notions. This paper critically analyses the evidentiary value of DNA and DNA testing in the Indian legal system. It also examines the position of DNA as a piece of evidence in the Indian legal system with the help of case laws. The paper further provides valuable suggestions to consider the evidentiary value of DNA and DNA test in the Indian legal system.

Key Words: DNA, Evidentiary, Constitutional, Admissibility, Accuracy.

Introduction

DNA means Deoxyribonucleic Acid. It is a double standard long molecule that appears in a twisted rope-like fashion mechanism and is essentially made up of amino acids. DNA can be extracted from various body parts of human beings such as hair, saliva, semen, blood etc. DNA is unique and plays a major role in the test of parentage.

When it comes to the evidentiary value of DNA tests in the Indian legal system it plays a vital role in criminal as well as civil cases. The DNA analysis system has created a great impact in the Indian legal system as it has offered many techniques to prove the offender guilty and serve as a tool of justice to the victims. It is considered to be a strong investigative instrument because no one has a similar DNA except identical twins¹. So when DNA is found from the crime scene location it makes it easy to reach the offenders or also it can remove certain persons who are under suspicion of committing the crime.

When it comes to DNA testing in India, it is done by the means of polymerase chain reaction (PCR) because this technique is reliable and is very efficient while doing the DNA test². In India, there are certain provisions under Cr.P.C that make it mandatory to DNA testing in certain cases. These provisions are section 164A³ and 53 of the Cr.P.C, 1973⁴ which play a key role when it comes to DNA testing in India.

But admissibility of DNA testing in Indian Courts is quite a troublesome task as there is no proper mechanism or any legal framework with regards to this testing⁵. So when it comes to the admissibility of such shreds of evidence in the court of law it often leads to conflicts as such actions are questioned on the grounds of legal and constitutional notions. The judges of the High Courts and Supreme Court always end up giving conflicting decisions with regards to the admissibility of DNA as a piece of evidence as such evidence are questioned on the grounds of legal, constitutional and public policy notions.

¹ Ashok Bhan, DNA and the Indian System, The Statesman, June 7, 2018, at A1

² Diva Rai, All about DNA testing in rape cases, iPleaders, (June 23, 2020, 11:00 a.m.), <https://blog.ipleaders.in/dna-testing-in-rape-cases-know-its-admissibility/>

³ Section 164A, CrPC, 1973- Recording of confessions and statements

⁴ Section 53, CrPC, 1973- Examination of accused by medical practitioner at the request of the police officer

⁵ Teresa Dhar, DNA Test and Criminal Law: Legal or Illegal, Latestlaws, (January 16, 2021, 11:16 a.m.), <https://www.latestlaws.com/articles/dna-test-and-criminal-law-legal-or-illegal-byr/-teresa-dha>

Research Question

What is the judicial approach towards the evidentiary value of DNA test in the Indian legal system?

Hypothesis

The judicial approach towards the evidentiary value of DNA test in the Indian Legal system is based on constitutional and legal grounds with regards to the admissibility of DNA as a piece of evidence. There is no specific mechanism or legal framework which makes DNA an admissible piece of evidence.

Objectives

1. To analyse the evidentiary value of DNA test in the Indian legal system.
2. To analyse the judicial approach of the Indian Legal system towards the admissibility of DNA as a piece of evidence.

Research Methodology

The paper has followed the secondary data collection. It is based on the doctrinal research method. The author has utilised various books, articles, notes and commentaries and other writings to incorporate the views of many juristic scholars to present a holistic view. The author has focussed extensively on case laws to understand the judicial pronouncements.

Judicial approach towards DNA legislation in India

There is no specific law with regards to considering DNA as a piece of evidence. But under the Indian legal system DNA testing had got legal validity in 1989. The DNA testing got validity in the case of Kunhiraman V. Manoj⁶. In this case, a paternity dispute had arrived and hence there was a requirement to consider DNA as a shred of evidence. The law commission in its 185th report had put forward a condition recommending for the inclusion of DNA as a piece of evidence in the Indian courts by amending section 112 of the Indian Evidence Act, 1872.

The report stated that the law of evidence undergoes many evolutionary changes by the introduction of many modern technologies. One of such modern technology is DNA

⁶ SC 1989

fingerprinting and thus has created a revolution in the legal field while considering DNA as a piece of evidence⁷. In the year 2017, the DNA profiling bill was introduced in the parliament but it is still in contention because of the privacy issues which are involved with the bill. It has been held by many people that this bill violates Article 21 of the Indian constitution⁸.

The Indian courts under their inherent powers order the parties to undergo a medical test for the DNA samples. But the Supreme Court in certain cases has held that;

1. Whenever there is an application in the court regarding the roving inquiry, the blood test order cannot be entertained.
2. There must be an existence of strong prima facie evidence as per section 112 of the Indian Evidence Act, 1872 to allow blood test in certain cases.

In the case of Amarjit Kaur .V. Har Bhajan Singh⁹, it was held by the court that section 112 of the Indian Evidence Act, 1872 came into force when DNA was not performed with the help of modern technologies.

In the case of Kanti Devi .V. Poshi Ram¹⁰, it was held by the court that though the DNA test proved to be accurate it cannot be accepted to determine the paternity dispute as it is against the privacy and public policy of the people. Hence by this decision, the court encouraged the lawmakers to strictly adhere to the unconventional and biased system of justice.

DNA as evidence and self-incrimination in the Indian Legal System

The discovery of DNA fingerprinting with its extraordinary properties and the need to use DNA as a piece of evidence proves to be a privilege against self-incrimination. When it comes to DNA fingerprinting the problem is related to the fabrication of DNA. As the suspect who is giving his DNA through the blood test or by any other means becomes quite apprehensive while understanding the procedure of the test. Hence, this also acts as a hurdle to consider DNA as a piece of evidence in the Indian legal system. In the case of Gautam Kundu .V. State of West Bengal¹¹, it was held by the court that no person can be forced to give a blood sample or any other test to acquire DNA against his/her wish. The constitutional

⁷ Dr. Himanshu Pandey & Ms. Anhita Tiwari, Evidential Value of DNA: A Judicial Approach, Bharti Law Review, 12-35 (2017)

⁸ Article 21 of Indian Constitution – Protection of life and personal liberty.

⁹ (2003) 10 SCC 228

¹⁰ AIR 2001 S.C 2226

¹¹ (1993) 3 SCC 418

validity of DNA fingerprinting was challenged in the case of State of Bombay .V. Kathi Kalu Oghad¹², in this case the Supreme Court held that Article 20(3) of the Indian constitution gives protection to a person so as not be a witness against himself¹³. But to be a witness against himself is not the same as furnishing evidence because being a witness means to give away a certain sort of knowledge as witness testimony. Therefore, collecting DNA samples and having a DNA test does not violate any provisions of the Indian constitution.

Legal Position of DNA test in Indian Legal System

The legal position of the DNA test has to go through certain parameters such as the constitutional validity of the DNA test is questioned which was answered in the case of State of Bombay .V. Kathi Kalu Oghad¹⁴. Then the evidentiary value of the information obtained from such a DNA test is questioned. It is mentioned under section 45 of the Indian Evidence Act, 1872 that the opinion of the person who is an expert in a particular field would be held admissible in the court of law. Though the information providing by such a test is not conclusive proof it can be used as a collaborative piece of evidence¹⁵.

At present in India, there is no concrete law which states the admissibility of DNA tests. Therefore, it is completely left on the judicial discretion to either accept or reject DNA as a piece of evidence. This ultimately leads to uncertainty among the decisions of the Indian courts.

The applicability of DNA as a piece of evidence under the Indian legal system

DNA can be used as a piece of evidence in both civil as well as criminal cases. When it comes to criminal cases, it helps successfully to identify the criminals especially in the cases of sexual assaults where identification of the criminal is the main issue. In civil cases, it can be used as a piece of evidence as it helps to settle the paternity issues which arise in the cases of divorce, maintenance, inheritance etc. To put it more elaborately the explanation of

¹² AIR 1961 SC 1808

¹³ Dr. Himanshu Pandey & Ms. Anhita Tiwari, Evidential Value of DNA: A Judicial Approach, Bharti Law Review, 12-35 (2017)

¹⁴ AIR 1961 SC 1808

¹⁵ Muddasir Nazir, Admissibility of DNA in civil and criminal cases in India, 3, JCIL, 1-18 (2017)

sections 53, 53A and 54 of the Criminal Procedure Code, 1973 was amended in 2005 to widen the scope of medical examination regarding the DNA profiling technique¹⁶.

Conclusion and Suggestions

DNA test acts as a boon for the Indian legal system but when the socio-economic conditions of the country test against human dignity and public policy. But in civil matters, under the inherent powers of the High Courts under section 151 of the Civil Procedure Code, 1908 it allows for the examination of DNA tests. So to consider DNA test and DNA as an admissible piece of evidence under the Indian courts there is a requirement of appropriate legislation. In the year 2017, a bill was discussed in parliament called the DNA Profiling Bill, 2017. This bill gives place to a wider scope of DNA test and to include DNA as an admissible piece of evidence under criminal cases. But this bill contains certain provisions which are considered to be against public policy. If these provisions are looked upon then this bill can be called the DNA and the dignity bill of India. The admissibility of DNA in the form of evidence depends on the accuracy, documentation and preservation of such evidence. The judges of the High Courts and Supreme Court always end up giving conflicting decisions with regards to the admissibility of DNA as evidence as such evidence are questioned on the grounds of legal, constitutional and public policy notions.

Some suggestions can be put forward to consider the evidentiary value of DNA. They are as follows;

1. Legislators are required to take certain necessary steps to legislate a uniform law on conducting DNA tests and its admissibility in the Indian courtrooms. Because in the absence of statutory recognition a situation of confusion and uncertainty arises over investigating agencies and subordinate judiciary.
2. A national commission must be established to regulate and monitor the DNA profiling laboratories. Process and acceptability to post-conviction of DNA testing be incorporated in Indian laws. DNA samples should not be collected as a matter of routine and they must be recommended when information is relevant to a specific crime in question.

¹⁶ Diva Rai, All about DNA testing in rape cases, iPleaders, (June 23, 2020, 11:00 a.m.), <https://blog.iplayers.in/dna-testing-in-rape-cases-know-its-admissibility/>

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