

# RELEVANCY OF FORENSIC SCIENCE IN INDIA

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**Abstract:** Forensic science embrace all branches of science and applies to the purpose of law. Forensic science though helpless in collection of evidences even from minute traces and, on the other hand pose surprised problem in its applicability, relevancy, and admissibility.

So long as evidence is directly and not hearsay in nature, or is primary evidence, the court may accept it, provided that the fact being through such evidence proves the existence or non-existence of fact in issue to be probable in the past, present or future, that is to say, it is a relevant fact.

Here, we can say that legal relevancy is a part and parcel of logical relevancy. However legal relevancy is different from logical relevancy because the former demands a close connection between the facts sought to be proved and the fact offered as evidence in proof of fact sought to be proved. Legal relevancy requires a high standard of evidentiary force. Moreover under legal relevancy court may reject many things as irrelevant, even though it is probable and highly connected with the fact in issue, on grounds of convenience. It is submitted that the proposition can't be said to be fully correct, because the test of relevancy is preliminary test for determining admissibility had some predominance over relevancy<sup>1</sup>. Therefore it is better for a judge while determining relevancy to foresee the question that may arise while determining admissibility. Therefore, here it is submitted that the question of relevancy is always dependable on the question of admissibility.

**Keywords:** Forensic, scientists, science, DNA, legal, judicial, judiciary, evidence, issue, crime criminal, relevancy, admissibility.

## INTRODUCTION

Forensic science, the sibling of science has transformed the criminal adjudication especially the criminal trial process, through forensic science. There is no doubt about the role of forensic evidence in helping the judiciary in setting issues which are outside the ken of judge. However, nowadays forensic evidence are facing serious criticism in legal community at different levels regarding its reliability and the capability of the legal community to screen it. Herein, researchers has tried to put forth a brief historical aspect of forensics in India, and therefore the admissibility and relevancy of forensic evidence.

The law of evidence has a long been guided by the rule of "best evidence" which is considered to have two basic paradigms-avoidance of hearsay and production of primary evidence. These rules are believed to weed out infirm evidence and produce and produce only that which cannot be reasonably be doubted. In light of Indian Evidence Act, 1872, this can be understood as only a person who has himself perceived the fact being proved can depose with respect to it, and not someone who has received the information second hand. Similarly, where a document is to be used to prove a point, the original should be produced in court, and not a copy or photography or any other reproduction of the same, not even the statement regarding the contents by someone who has seen it. For any reproduction of a statement or document is lower on the rung of authenticity than the original, giving opportunities of fraud or fabrication. India has a significant history of forensic science. Application of science and technology for the detection and investigation of crime and admissibility of justice is not new to us. Although our ancestors did know the forensic science in its present form, scientific methods in one way or other seems to have been followed in investigation of crime. Its detailed reference is found in "Kautilya's Arthashastra," which was written about 2300 years ago. For example, papillary lines (now known as 'rugoscopy') were studied thousands of years ago by Indians. The concept of forensic science is not new one in India, though its application was not known by our Indian, the use of fingerprint which was also known as 'Trija' by the ancient peoples was introduced centuries ago it was known at the time as well that time as well that the same is inimitable. The ancient world lacked standardised forensic practices, which aided criminal in escaping punishment. Criminal investigation and trials relied on forced concessions and witness testimony. However ancient source contains several accounts of techniques that foreshadow the concept of forensic science that developed centuries later 109

## Forensic science and the Indian legal system

In Indian legal system the burden of proving a certain facts lies on a person who alleges the existence of such fact. One of the primary element and consideration for burden of proof which exists in law is the degree of certitude proof must reach, depending on both the quantity and quality of evidence and this differs in civil and criminal cases. As a principle in criminal cases, evidence has to be adduced so far as to prove the facts in an issue beyond all reasonable doubts. It is the court which has to prove the facts in an issue beyond all reasonable doubts. It is the court which has to decide whether the burden of proving has been fully discharged or not by the party who is supposed to do so. This varies in strict liability matters and also criminal liabilities specified enactments

<sup>1</sup> Supra note 80 p.

like the ones on direct and indirect taxes, Labour enactments and drugs protection to name a few. Ultimately the success of proving evidence in a case depend on how the judicial forum weighs the preponderance of probability, mens rea (in simple terms guilty mind) and actus reus (in simple terms 'wrong doing'). The preponderance of probability in civil suits has different degrees of adherence than criminal matters.

The question of admissibility of evidence is frequently raised with regards to circumstantial evidence that looks irrelevant but otherwise relevant to facts in an issue, in which an inference is required to draw to connect it to a conclusion of fact. In India in recent decades, with advancement of new scientific technology, much attention has been focused on research and specific applications that promotes the use of forensic evidence. This has brought the change in the point of views from the mystic to the scientific apparent not only in criminal investigation but in different facet of legal system. Forensic evidence is also used to link crimes that are sought to be related to one another. For example, DNA (Deoxyribose Nucleic acid) evidence can link one offenders to several different crimes scenes. Linking crimes help law enforcement authorities to narrow the range of possible suspects and to establish pattern for crimes, which are useful in identifying and prosecuting suspects.

Constitution of India, by article 51A(h) and (j), commands that it shall be the fundamental duty of every citizen of India "to develop the scientific temper, humanism and the spirit of enquiry and reform" and "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements". Though there is no specific DNA legislation enacted in India, section 53 and section 54 of code of criminal procedure, 1973, (CrPC) provide for DNA test impliedly and they are extensively used in determining complex criminal classes.<sup>2</sup>

Although the scientific evidence as the result of DNA tests is widely accepted in criminal proceedings, such evidences has little relevancy in paternity disputes. In *Bhabani Prasad Jena v. Convener Secretary, Orissa State Commission for women* AIR 2010 SC 2851 the supreme court has, however, said that the court should never as a rule grant application directing one party or the other to undergo DNA test.

While dealing with the aspect as to whether subjecting a person to a medical test is violative of article 21 of the constitution of India, the supreme court in *Shadra v. Dharampal* AIR 2003 SC 3450 stated that the right to privacy in terms of article 21 of the constitution is not an absolute right. Passing of test order by the court would not be in violation of the right to personal liberty under Art 21 of the constitution. However in a matter where paternity of a child is in issue, the use of DNA test is to be resorted to only if such test is eminently needed.

## CONCLUSION

In democratic country, like India, the court belong not to the lawyers and judges but to the citizen, as Jerome Frank wrote, "The highest is not above the law, the humblest is not beneath the law". The true conception of administration of justice is that the lowly concern of the best person is of the highest consideration to the state and the court. The judges have a dynamic role in the dispensation of justice, a complex operatives that is wide-ranging and capable of specific and general application, and includes interpretation of law and assessment of facts and forensic evidence. It is the function of our court to keep up-to-date, turned to progressive mores of the society. The bench and the bar together have the grand task, to strive to ensure that justice is delivered to society, not only to individual with their grievances but to the larger community of victims of justice. Only a judicial culture which has a social justice, human dignity and egalitarian woven it can make the judiciary in a third world country, based on a socialist democratic order, functional and professional. A dynamic jurisprudence invigorated by a developmentally driven judicial process is the challenges of our age.