

# **ADMISSIBILITY OF GENETIC EVIDENCE IN INDIAN COURTS**

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Genetic evidence has never come before the courts in India till date, either as a defence request or on observations of the Courts. The only scientific data which has been admitted within the court pertains to results from DNA fingerprinting, which mostly relates to identification of whether a person was present at the scene of the crime or in issues relating to paternity disputes. Despite their application, courts are not too enthusiastic in admitting such evidence for several reasons. First, that the technology has still not developed in India with only institutes such as the Centre of DNA Fingerprinting and Diagnostics having the adequate infrastructure to carry out the tests. Secondly, the collection of samples requires skill and the ability to prevent contamination of samples. Courts are also uncertain about the accuracy and reliability of such test given the limitation in expertise and knowledge in this area. Another major obstacle to the widespread use of DNA testing is the non-availability of a comprehensive database leading to lack of consistency and the enormous backlog of cases in laboratories.

Section 45 of the Indian Evidence Act, 1872 provides that the Court can rely on expert opinion based on relevant facts pertaining to a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions. While this section allows the court to accept evidences pertaining to genetic disorders leading to the development of criminal behaviour, this area has never been explored by either the defence or prosecution. The expert testimony is accepted in the court for the reason that they are persons who have devoted time to the particular area of learning and has the requisite skill to form an opinion on a fact in his area of expertise. Expert testimony is still however not final but is left to the court's discretion as to rely on it or not. Expert opinion has always been viewed to have corroborative value and is not considered substantial evidence. The court's are of the view that the duty of an expert is to

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depose and not decide. The only function of the expert is to furnish the data with necessary criteria so as to enable the judge to come to an independent conclusion.

It is also a well established principle within the Indian courts that medical evidence does not itself prove the prosecution case, but is merely corroborative. When eyewitnesses account is found credible and trustworthy, medical-opinion pointing to alternative possibilities is not accepted as conclusive. If direct evidence is satisfactory and reliable, the same cannot be rejected on hypothetical medical evidence. If medical evidence when properly read shows two alternative possibilities but not any inconsistency, the one consistent with the reliable and satisfactory statement of the eye-witnesses has to be accepted.

Expert testimonies pertaining to science have been raised before the courts in India only in cases wherein questions relating to age, time of death, DNA analysis, handwriting, fingerprints, typewritten documents, ballistics and serological data have been disputed. In studying the psychological condition of an accused, experts have only been admitted in cases dealing with determination of insanity or disorders such as schizophrenia. Expert evidence to this effect has only been used at analysis of behaviour from a psychological perspective and courts at no time have ordered for genetic tests to be carried out. Also, in many of these cases expert opinion has not been relied upon. Instances can be cited wherein the Supreme Court disregarded expert testimony to the fact that the accused suffered from schizophrenia shows that expert testimony has not always been considered of high value in Indian courts.

Specifically relating to determination of parentage, the Court has extensively questioned the necessity and validity of admitting the results as also the circumstances wherein such tests may be ordered. In **Goutam Kundu v. State of West Bengal**<sup>1</sup>, the Court held that without making out any ground whatever to have recourse to the test, the application for blood test couldn't be accepted. It was also held that no person could be compelled to give sample of blood for analysis against his/her will and no adverse inference can be drawn against him/her for such refusal. This

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<sup>1</sup> Goutam Kundu V. State of West Bengal (1993) 3 SCC 418.

<sup>2</sup> Sharda V. Dharmpal, (2003) 4 SCC 493, Hajira Beevi & Ors. V. Shamila P. Iqbal & Anr, AIR 2004 Ker 240.

view however, underwent a change to a certain extent in 2003<sup>2</sup> where the Court approved the application of DNA technology in civil or matrimonial disputes. The Court dealt with the question of the Constitutional validity of the Court to direct the party to undergo medical examination. It was held therein that the Court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution or right against self-incrimination under Art 20(3), by ordering so.

As is evident from the above situations, courts in India are not too open in admitting scientific data in criminal matters whether they come in the form of DNA analysis or expert testimony. Therefore, in cases where acceptability of DNA evidence has come in question, reliance is placed more on traditional evidence rather than scientific evidence, and the accuracy of such scientific evidence has never really been considered. Reasons for this include lack of adequate knowledge in the specific area, non-availability of requisite infrastructure for carrying out the tests, probability of misuse of procedures not only by the counsels but also the experts themselves, the higher probability of social stigma and discrimination within the Indian scenario and gross non-compliance and violations of legal procedures leading to further miscarriage of justice. All these factors reveal that India has still not come to terms with technology which is evolving at a rapid pace. In order to admit such genetic data into the criminal justice system, not only does the judiciary need to change its view but also the scientific fraternity has to empower itself to prove to be reliable.

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