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## **DNA technology and the Indian legal system**

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### **Abstract**

DNA stands for Deoxyribo nucleic acid. The strategy helps the distinguishing proof of criminals on logical lines. Every single cell in the human body has a DNA sample. DNA method's authenticity is been appreciated throughout the world. But the admissibility of DNA proof in Indian courts is still a hazy area. Currently, there is no explicit law to oversee the suitability of forensic technique although the courts infer the legitimacy of criminological system from the provisions of Code of Criminal Procedure and the law of evidence. Because of absence of any specific law, it becomes difficult and inconvenient to gather proof that includes present day modern instruments to prove the accusation against a person. This paper will analyse the admissibility and job of DNA in the Indian legal justice system.

**Keywords:** DNA, admissibility of DNA, provisions, Indian legal system

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### **Introduction**

The effect of the advanced logical and technological changes on various parts of our social exercises may frequently lead us to discover a shift from our deep rooted customary thoughts dependent on subjectivism in our significant intellectual activities. Today, the most relevant question which produces a lot of discussion among the legal advisers, judges, researchers, attorneys and academicians independent of any legal framework, is the means by which the present value based arrangement of equity requires to be changed, or altered or reoriented to use the benefit of current logical revelations and innovative progression in equity based justice delivery framework. This new innovation can be utilized as a powerful apparatus in identification of crime and controlling it for an improved society.

Among the numerous new ways that science has given for the investigation of forensic evidence is the incredible and dubious examination of deoxyribonucleic acid, or DNA. DNA examination, additionally called DNA composing or DNA profiling, analyses DNA found in physical proof, for example, hair, semen and blood, and decides if it very well may be coordinated to DNA taken from particular person. DNA examination has become a typical type of proof in criminal preliminaries. It is additionally utilized in civil case, especially in cases including the assurance of Paternity of Identity. The use of DNA profiling in the criminal equity framework, i.e., the suitability of DNA proof in official courtroom is a significant issue which is being looked by the courts and criminological specialists overall today. In this manner, an appropriate legitimate standpoint is required while managing this sort of scientific proof.

### **Admissibility of DNA as evidence in Indian legal system**

The admission of the DNA proof under the steady gaze of the court consistently relies upon its exact and appropriate assortment, protection and documentation which can satisfy the court that the proof which has been placed in front it is trustworthy. There is no particular arrangement under Code of

Criminal Procedure, 1973 and the Indian Evidence Act, 1872 and to oversee science, innovation and technology issues.

The Section 53 of Code of Criminal Procedure, 1973 approves a cop to get the help of a medicinal professional in accordance with some basic honesty for the purpose of the examination and it doesn't empower a complainant to gather blood, semen and so forth for bringing the criminal accusations against the accused person. The amendment under Cr. P. C. by the Cr. P. C. (amendment) Act, 2005 has introduced two new sections which approve the researching official to gather DNA test from the body of the accused person and the person in question with the assistance of medicinal professional. These areas permit assessment of individual blamed for assault by restorative expert and the therapeutic assessment of the rape victims separately. The admissibility of these confirmations has stayed in a condition of uncertainty as the assessment of the Supreme Court and different High Courts in different decisions stayed clashing. Judges don't deny the logical exactness and indisputableness of DNA testing, however at times they don't concede these confirmations on the ground of legitimate or constitutional denial also and then the public policy. The most recent situation in India is that there is no particular law regarding the subject of DNA proof however DNA testing has got legitimacy in 1989. In India, Kunhiraman v. Manoj<sup>[1]</sup>, was the principal paternity dispute case which required the DNA proof. The DNA evidence is taken by courts as an expert's opinion like forensic experts, ballistic expert, biological expert, chemical expert; document writing expert, lie detector, and expert serological expert etc<sup>[2]</sup>. There are many judgements which support DNA as evidence. DNA test provides perfect identity and is admissible<sup>[3]</sup>. The Law Commission has likewise prescribed in its 185th report the consideration on DNA testing in the Indian Evidence Act by altering its Section 112. It is pertinent to note that of late, on the basis of the recommendations made by the Malimath Committee the Law Commission of India proposed that Section 112 of the said Act should be revised<sup>[4]</sup>. There is an acute need to reconsider these sections as there is no

rule present in the Indian Evidence Act, 1872 and Code of Criminal Procedure, 1973 to oversee science and technology issues.

In India, the lawful situation of DNA fingerprinting has generally stayed sketchy, outliving among two inverse posts of achieving truth or regarding privacy of an individual. It has presented grave challenges to individual's legitimate and crucial fundamental rights like Right to privacy and Right against self-incrimination.

### **Right to privacy**

Right to privacy is taken from Article 21 of the Constitution and also from Directive Principles of State Policy. In *Govind Singh v. Province of Madhya Pradesh* <sup>[5]</sup>, Supreme Court held that a fundamental right should be dependent upon limitation based on public interest. It is obvious from different choices which have been conveyed by the Supreme Court every once in a while that the Right to Life which has been ensured under our Indian Constitution not absolute and it tends to be dependent upon some limitation. It is on this premise that laws influencing Right to Life are maintained by the Supreme Court which incorporates medical examination. It is on this basis that different courts in the nation have enabled DNA innovation to be utilized in the examination and in creating proof.

In *M. Vijaya v. The Chairman, Collieries Co. Ltd.* <sup>[6]</sup> the Court, upon discussion of the contending rights of a public party and private party with reference to right to privacy of an individual suffering from AIDS held that it is essential for the State to observe that any move made in case of HIV constructive cases can't be named as illegal as under Article 47 of the Constitution, the State was under a commitment to make all strides for the improvement of the general wellbeing. A law intended to accomplish this, assuming reasonable and sensible, won't be breach of Article 21 of the Constitution of India. It is well-settled that privilege to life ensured under Article 21 is a privilege to appreciate all resources of life. As a fundamental conclusion, right to life incorporates right to healthy life.

No one shall be subject to arbitrary or unlawful interference with his privacy, family and home nor to unlawful attacks on his honor and reputation; does everyone have the right to the protection of the law against such interference or attacks <sup>[7]</sup>. The right to privacy has been created by the Supreme Court over some stretch of time. In the case of *Kharak Singh v. Province of Uttar Pradesh* <sup>[8]</sup>, the court held that right of privacy isn't an ensured directly under our Constitution and, in this way, the endeavour to determine the developments of a person which is simply a way in which privacy is attacked isn't an encroachment of fundamental right ensured under Part III.

The Supreme Court in the case of *Rohit Shekhar v. Narayan Dutt Tiwari and Anr* <sup>[9]</sup>, upheld the Delhi High court's judgement requesting veteran congress leader, N.D. Tiwari to go through the DNA test is significant from the perspective of the acceptability of such proof. In this case Rohit Shekhar has professed to be the biological child of N.D. Tiwari, yet N.D. Tiwari is hesitant to undergo DNA test expressing that it would be the infringement of his Right to privacy and would cause him embarrassment. In any case, Supreme Court dismissed this point expressing when the aftereffect of the test would not be uncovered to anybody and would be under a fixed envelope. The Court additionally expressed that we need this man to get equity; he ought not left

with no cure. It would be intriguing to see that how courts in India would permit the admissibility of DNA test later on.

### **Right against Self- Incrimination**

Article 20(3) gives Right against Self-Incrimination which ensures a charged person in criminal cases from giving proof against himself or which can make him liable. What is of importance here is that does compelling the charged person to give a sample to his DNA add up to an infringement of the insurance against self-implication or not.

The Supreme Court in *Selvi v. Territory of Karnataka* <sup>[10]</sup>, while testing the legitimacy of DNA tests on the iron block of Article 20(3) of the Constitution of India, observed that the DNA tests is developing as an essential instrument for connecting suspects to explicit criminal acts. On account of *Goutam Kundu v. Province of West Bengal* <sup>[11]</sup>, there was a question of contested paternity. The Court held that no individual can be constrained to give test of blood for investigation against his/her will and no unfavourable surmising can be drawn against him/her for this refusal.

The defendability in taking a fingerprint was tested on account of *State of Bombay v. Kathi Kalu Oghad* <sup>[12]</sup>. In which Supreme Court held that Article 20(3) of the Constitution offers assurance to an individual not to be witness against himself. Notwithstanding, to be a witness isn't proportional to "giving evidence" in its most stretched out term and importance. Giving thumb or finger impression or displaying portions of the body by method for distinguishing proof are excluded in the articulation "to be a witness". A witness has been translated to mean granting a type of information in declaration or testimony. From this apparently there will be no confinement on the assortment of samples for DNA investigation.

### **Admissibility of DNA as evidence in Civil Law**

DNA test under civil cases is commonly made to settle the paternity issue associated with instances of separation, support, legacy and progression and so on. It is significant that Section 112 of the Indian Evidence Act, 1872 accommodates the authenticity of a child conceived during wedlock and the main ground to invalidate this assumption is non-access of the spouse. Along these lines at one point of time it was an issue before the court managing paternity issues whether such test could be requested. This issue was examined finally in *Gautam Kundu v. Bengal* where the court held as pursues:

1. That courts in India can't instruct blood test as anticipated result
2. There must be a solid case in that the spouse must build up non - access in request to disperse the assumption emerging under Section 112 of the Evidence Act.
3. No one can be constrained to give blood sample for investigation.

In the subsequent case of *Sharda v. Dharmpal* <sup>[13]</sup>, the intensity of a marital court to command such test was considered and explained that *Goutam Kundu* case is not an authority for the recommendation that by no means the Court can coordinate that blood tests be directed. The Court after strong discourse summarized three huge conclusions:

1. Matrimonial court has the ability to command an individual to experience medical test.

2. Such order by the court would not be infringing upon the right to individual freedom under Article 21 of the Indian Constitution.
3. In any case, the Court should exercise such a power if there is a solid case by all aspects and there is adequate material under the watchful eye of the Court. On the off chance that regardless of the order by the court, the respondent won't submit himself to medical assessment, the court will be qualified for draw an adverse deduction against him.

The case of Rohit Shekhar v. Narayan Dutt Tiwari and Anr. is also a very important case with this regard. On account of Anita W/o. Eknath Hatkar v. Additional Commissioner Nashik and Ors<sup>[14]</sup>. The Supreme Court for this situation ordered the DNA and followed up on the report and expel the appeal. The kid got help and court held that the respondent is the mother of candidate.

### Admissibility of DNA as evidence in Criminal Law

DNA tests can be adequately utilized in criminal cases for recognizing the culprits of wrongdoing, especially in instances of rape and manslaughter where distinguishing proof is frequently a focal issue. Additionally, to recognize the remaining parts of victims of brutal crimes. The most reasonable use of DNA tests for these objects is clear on account of Santosh Kumar Singh v. State<sup>[15]</sup> where DNA test was utilized for building up commission of assault by the appellant. In the instance of Surendra Koli v State of U.P<sup>[16]</sup>, DNA test was applied to distinguish deceased victims.

The Supreme Court in the rape case of Krishna Kumar Malik v State of Haryana<sup>[17]</sup> observed that after the consolidation of Section 53(A) in the CrPC, with impact from 23.06.2006, brought to our notice that it has become important for the indictment to go in for DNA test in such cases, encouraging the prosecution to demonstrate its argument against the charged person. Before 2006, even without the previously mentioned explicit provisions in the CrPC prosecution could still have turned to this system of getting the DNA test or examination.

In most of the cases the court decided that blood test and DNA test can't be requested as a daily schedule. The consequence of a certifiable DNA test is said to be logically precise and accurate. In any case, that isn't sufficient to escape from the convincingness of Section 112 of the Evidence Act. In Kanti Devi v. Poshi Ram<sup>[18]</sup>, the Supreme Court held that in spite of the fact that DNA proof is logically precise, it can't be acknowledged in deciding the paternity debate on the ground of public policy. The Supreme Court, by this choice, urged the legislators to carefully hold fast to the ordinary, informal, conventional, inadequate and one-sided system of equity.

The Supreme court developed a significant notion in the case of Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik & Anr. i.e as follows: *"We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the legislature. Although Section 112 rises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. Section 112 of the Evidence Act does not create a legal fiction but*

*provides for presumption. The husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and in the face of it, we cannot compel the appellant to bear the fatherhood of a child, when the scientific reports prove to the contrary. We are conscious that an innocent child may not be bastardized as the marriage between her mother and father was subsisting at the time of her birth, but in view of the DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth<sup>[19]</sup>."* This above notion helps the guiltless spouse to demonstrate his non-access by method of DNA test. Just because, the Court supports the blameless spouse to demonstrate his paternity. Here, the court gives priority to DNA test under Section 45 of the Indian Evidence Act, 1872 over the authentic assumption under Section 112 of Indian Evidence Act, 1872.

### Conclusion

The Indian legal justice system needs to absorb the advancements in science of hereditary profiling and create procedural systems for tackling the developing juridical challenges. The critical standards of DNA fingerprints can't be disregarded to the courts to arbitrate with impermanent tailor made provisions. To make sure that modern technologies can be used effectively, there is an urgent need of a specific legislation which would provide the guidelines regulating DNA Testing in India<sup>[20]</sup>.

The author discovered some defects in leading DNA test on the blamed. In the event that these issues can be resolved, at that point this test can turn out to be a great weapon to bring equity and also justice can be done. Some of the recommendations are:-

1. An essential move needs to be taken by lawmakers to administer a uniform law i.e. to be followed by the nation on leading DNA tests and its admissibility in courts. Since without statutory acknowledgment, a circumstance of perplexity and vulnerability exists for judiciary.
2. To amend and alter current laws to fuse provisions with respect to allowing blood test for producing DNA profiling.
3. To control strategy in Forensic labs to build unwavering quality on its report. Labs ought to hold top notch standards; routinely partake in capability test, utilization of parting technique and uniform standard for DNA testing be received.
4. A commission at national level be made to direct and screen DNA profiling research centres. Procedure and agreeableness to post conviction DNA testing be added in Indian legal system.
5. DNA tests ought not be gathered as an issue of routine and they ought to be prescribed when data is significant to a particular wrongdoing being referred to. DNA tests ought to be gathered from suspect simply after earlier endorsement of a magistrate or judge.
6. Legitimate training is given to examining authorities to conquer defilement issues. Legitimate chain of custody ought to be kept up. Proper learning of legitimate brotherhood is required in order to defeat issues like prosecutor's error.

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