



**ORIGINAL RESEARCH PAPER**

**Law**

**ASSESSMENT OF ADMISSIBILITY OF DNA PROFILING IN INDIAN LEGAL SYSTEM**

**KEY WORDS:** DNA profiling, Criminal Justice System, Admissibility, Evidence, Investigation

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**ABSTRACT**

DNA profiling has very important place in administration of Justice. It resolves many issues in criminal trial as well as civil suits. We can't close our eyes and go through the conventional method of investigation. The crime has changed its face and to detect the new changed face crime, new modern technique must be inserted in the investigation. The object is not to prove everyone offender but to find the truth that now a days can be discovered by availing the service of new modern forensic science technique. The DNA is in every human being and identified at molecular level. The DNA is unique and cannot be equal in two or more persons and that is why it is very important in criminal investigation. It helps in identifying person by a small drop of blood particularly in the cases of rape, murder and sexual assault. The admissibility is sometime challenged by the defense counsel regarding reliability and relevancy to the case. The Court has to use discretionary power to accept it or not. Foreign courts in the various countries have also given due importance to the admissibility of DNA in the evidence. Its need of the time to insert the evidence procured by such forensic technique in Administration of Justice.

**INTRODUCTION**

Every living person has a cell and different types of codes are found in that cell. DNA is also a type of genetic code that is unique to each person's body cells. DNA is very important in the field of forensic science. Due to the progress in its molecular technique, it differs from all others technique. DNA or DEOXYRIBONUCLEIC ACID is the building block for the human body. The DNA in blood is the same as the DNA found in hair, skin, bone, saliva, semen. DNA does not change throughout a person's life and this modern technique is also called DNA profiling. The first description of DNA was made in 1953 by scientists Francis H. C. Crick and James d. Watson and later on in 1984, it was revolutionalised by Sir Alex. The structure of DNA resembles a double-helix which at first glance resembles a crooked ladder. DNA is mainly found from bodily fluids from human being.

DNA analysis has become one of the most common forms of evidence. It is used by the public prosecutor in Court to prove a criminal case. It is also used in civil proceedings when disputes over paternity and identity arise. Thus DNA tool is very useful to the police in investigation and to the public prosecutor in proving the case. This technique is also very helpful in matters like paternity or identity in civil proceedings also. The important question arise is that admissibility of evidence obtained through DNA technique. DNA is a technique that require sample from accused person. If accused refuses to give such substance or If evidence is collected through DNA technique and Court of law does not admit such evidence then result may be different.

**DNA in Criminal Trial**

No special law has been enacted in this regard in India and every piece of evidence has to be taken in every case under the Indian Evidence Act. The Court has to confirm a number of things before admitting evidence collected through DNA technique. The use of complex scientific processes as well as multi-disciplinary approaches in this scientific method requires a great deal of precision. Another important factor is the ability to take the sample that is taken for DNA analysis and to prevent it from becoming contaminated after taking it.

**Scenario in Developed Nations**

U.S. courts also follow three criteria for evaluating scientific DNA evidence. The General Acceptance test, Relevance test and The Daubert test are three major tests to evaluate DNA evidence adopted by US and Canada Court. The England Courts are using the helpfulness test as a standard for evaluating evidence where as additional test prejudicial effect test is adopted by Australian Court to evaluate DNA

Evidence. Columbia District Court had used General Acceptance Test in case of Frey v. United State and stated that this technique should be widely accepted and sufficiently established in particular field. The advocate must satisfy the Court that both principles and the technique has found general acceptance in between Leading DNA experts.

The U.S. Court of Appeals used the Relevance test in case of Coppelino v. State. This test defined the discretionary power of the Court to admit DNA evidence. When there is failure of the General Acceptance Test then this Relevance test is applied and very few Courts had applied liberal approach to admit this evidence in Court.

The Supreme Court of USA had used The Daubert test in Daubert v. Merrell Dow Pharmaceuticals case where Court had introduced four factors in admitting scientific evidence in trial. These factors are A. testing of technique. B. Publication and peer review of the technique. C. known error rate and D. General acceptance to technique in the Scientific Community.

**Dna Ticket In India**

The DNA technique has created several challenges to some legal and Constitutional rights of person in India. The right against self-incrimination and right to privacy and right to life etc. are some of the rights which are available to every human being under administration of justice. However, all the available rights are under some restriction and not absolute. The Supreme Court of India has held that a fundamental right must be subject to restriction and depend upon the public interest. The Supreme Court of India in Justice K S Puttaswamy Vs. Union of India case held that the right to privacy is the ultimate expression of the sanctity of the individual. However it is clear from various decisions of Supreme Court that rights guaranteed under Indian Constitution are not absolute and with reasonable restriction. The provision of Criminal Procedure code 1973 and Indian Evidence Act deals with the test of DNA technique in Court of Law. It is rights of every person to remain silent under article 20(3) of Constitution of India. In United State, the Fifth Amendment of Constitution of America states that no person shall be compelled in any criminal case to be witness against himself. In England, Common Law state that it is a basic principle that a person accused of any offence shall not be compelled to discover documents or objects which incriminate himself. The Apex court of India held that Right to privacy is not guaranteed under Constitution of India and that draw inferences that in special occasion, the court can order for DNA test to procure evidence.

**Sec. 53 of Criminal Procedure Code**

This section of CRPC empowers the officer to get the help of Medical Practitioner in good faith to carry out investigation. In the year 2005, the law was amended by inserting two new sections which enable the investigating authority to collect the blood sample from the person. It also states that medical examination of Accused and Victim of Rape offence to find out the evidences. Sometimes, the court does not agree to admit the evidence based on DNA technique due to various reasons. In the case of Kanchan Bedi vs. Gurpreet Singh Bedi, Delhi High Court held that when there is a question of identity of father of Child, the order to undergo for DNA test does not violate the any rights of a person.

**Sec. 45 of Indian Evidence Act.**

This section state that in some kinds of cases, the Court can rely upon the testimony of Expert. The opinion of the Expert can be admissible in the case and once the Court admit the opinion of expert in criminal trial then that opinion will be considered the opinion of the Court. In case of Emperor v. Kudrat, the Privy Council held that the opinion of expert about Age is solely based on height, weight and tooth then the court cannot rely upon that expert opinion. So admissibility of expert opinion depends upon many factors.

**Case Laws on DNA Admissibility**

In case of Dharam Deo Yadav vs. State Of U.P, the Apex court held that *in this age of science, we have to build legal foundations that are sound in science as well as in law. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection.* In this case, the court has given due weightage to the report of DNA profiling and opinion of Expert.

In the case of ND Tiwari, Rohit Shekhar had said that he is biological son of Ex CM N D Tiwari and demanded the DNA test to prove his claim. ND Tiwari refused to undergo such test on the ground of privacy and public humiliation. The Apex court order to DNA test and report will be submitted in the sealed cover so no question of humiliation will arise.

In the case of State vs. Santosh Kumar Singh known as Priyadarshini Mattoo Case, the Court ordered to make DNA test and report was admitted by the court. The accused person was sentenced on the basis of the report of DNA test.

The Nirbhaya case was most horrifying case on rape, sexual assault and murder. The Test was carried out in investigation and it was matched with the accused which leads towards the capital punishment of Accused. The Court further said that DNA technology not only provided guidance to investigation but also supplied the Court accrued information about the tending features of identification of criminals and such evidence was increasingly relied upon by the courts. It is quite clear that DNA report deserves to be accepted unless it is absolutely dented and for non-acceptance of the same, it is to be established that there had been no quality control or quality assurance. There are numbers of the cases which support the forensic technique to find the facts of the offence and Court also admits such report at the time of trial but such report shall have relevancy and reliability to the case.

**CONCLUSION**

The DNA profiling helps the investigating Agency and Court to determine the issues of offence. The Scientific technique is very important now days as we cannot ignore such technique in Administration of Justice. There shall be specific laws regarding the admissibility of evidence recovered by forensic science technique. It is also necessary to see the procedure to take sample till to end of the report by the Court. If there is any defect in the process of testing the sample, the result may leads innocent to offender. The evidence is only admitted after satisfying the Court about its reliability. The

admissibility of any evidence is a question of facts and depends upon each case. We cannot equally apply the same principles in all situations.

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