

EVIDENTIARY VALUE OF FORENSIC REPORTS AND LEGAL IMPLICATIONS

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Abstract: The detection of any crime is greatly aided by forensic science, which serves as a tool or aid in the investigation process. It is a science that forensic professionals use to gather and examine all physical evidence. The forensic expert serves as a tool or aid to assist the courts in determining justice. Experts use their knowledge and provide the courts with their reports. Forensic science is divided into many different categories, such as forensic medicine, ballistics, fingerprints, questionable documents, voice analysis, and narcotics analysis. All the tests are carried out in various forensic laboratories.

This article discusses the function of experts and the law governing the reports and opinions of forensic experts and other experts in Indian courts. The court has cited numerous cases in which it has taken into account and relied on the findings of various experts. The pertinent discussion is about the relevance and probative value of the expert reports and opinions in relation to the relevant law. This research addresses the crucial issue of whether forensic reports, expert opinions, or third-party opinions have any value as evidence (or relevance) in Indian courts. It also discusses what the courts look at when examining an expert's forensic report and what factors are taken into account when the courts request one.

Keywords: Forensic, Evidentiary value, Expert opinion, Relevancy, Courts

1. INTRODUCTION

Since forensic science is one of, if not the only field, that gives and provides evidence in form of report, as precise and as close to the truth as possible, while providing virtually no possibility of any discrepancy in their findings, the introduction of forensic science into the criminal justice system has given the judicial officers a significant opportunity to carry out their duty of providing justice. The reason being, the application of forensic science is based upon scientific method and the result of which, are universal in nature and cannot be manipulated or doctored.

Forensic science aids in the investigation of crimes and the prosecution of the guilty. The nature of the crime can either be in digital or physical, as:

a) **Cyber or Computer Forensics** - The use of investigation and analysis methods to collect and preserve data from a specific computing device in a way that is appropriate for presentation in court is known as cyber or computer forensics. To conduct a structured investigation and maintain a documented chain of evidence in order to determine exactly what occurred on a computing device and who was responsible for it, computer forensics is used. Essentially, computer forensics, also known as computer forensic science, is data recovery with

legal compliance standards to make the information admissible in court proceedings.

b) **Medical Forensics** - In this field, medical experts can examine the victim after a crime has been committed and identify the crucial pieces of evidence needed in that particular case. Further, the forensic analysis can also be helpful in investigating the general crime scene, for ex. Tire marks in an accident, or Alcohol level of the driver in a hit and run case, or ballistic report in gunshot accident, etc. The potential and application of forensic science in criminal justice system is endless, and provides a better opportunity to the investigating agency, to tighten their grip on the criminals.

Forensic science is not only limited to criminal justice system, but can also contribute in investigation of civil cases, such as in cases of corporate fraud using fake signature or digital hack or to figure out the parentage of a child, to help settle succession issues, etc.

2. EVOLUTION OF FORENSIC SCIENCE IN INDIA

Science and technology have long been used to detect things and conduct investigations; evidence of this can be found in Kautilya's Arthashastra. Before it was scientifically proven that identifying intruders through fingerprints was foolproof, the Indians knew for a very long time that handprints were peculiar and were

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used as signatures by illiterate people in India. Some people thought it was a ritual.

In 1849, the Department of Health established the first Chemical Examiner's Laboratory at the then-Madras Presidency for this purpose. Later, similar labs were established in Calcutta (1853), Agra (1864), and Bombay (1864). (1870). In order to provide scientific support to the criminal justice delivery system within their limited resources, these laboratories were set up to handle toxicological analysis of viscera, biological analysis of blood, semen, etc. stains, and chemical analysis of food, drugs, and various excisable materials. Additionally, these labs provided analytical resources to the surrounding States and Union Territories. The first chief explosives inspector was appointed in 1898, and he had his headquarters in Nagpur, laying the groundwork for the Department of Explosives. Later, there were three sub-offices in Shivkashi and five regional offices in Calcutta, Bombay, Agra, Madras, and Gwalior.

In 1910, a Calcutta institution known as the Serology Department was founded. In 1915, the CID, Government of Bengal, established the Footprint Section, which assisted the police in identifying criminals through the examination of footprints gathered from the scene of crime.

In order to examine fake currency notes, the Government of Bengal established a Note Forgery Section under the CID in 1917. The first state forensic science laboratory in India was established in Calcutta in 1952. In 1930, an Arms Expert was appointed, and a small ballistic laboratory was set up under the Calcutta Police to deal with the examination of firearms. In 1936, a Scientific Section was established under the CID in Bengal, and facilities were created for examination of bullets, cartridge cases, firearms, etc., used in committing crime.

The first Central Fingerprint Bureau (CFPB) in India was founded in 1905 at Shimla. This laboratory began to be fully operational in 1953. The first Central Forensic Science Laboratory was established at Calcutta in 1957, two years after the establishment of CDTS, Calcutta, a top detective training school in India. The forensic physics, forensic chemistry, forensic biology, and forensic ballistics disciplines were the initial divisions of this lab. On the model of the CDTS in Calcutta, the Central Detective Training School in Hyderabad was founded in 1964. A second one was established in Chandigarh in 1973.

In 1960, the Indian Academy of Forensic Sciences (IAFS) was founded. The Institute of Criminology and Forensic Science (ICFS) was founded in Delhi in 1971 with the specific goals

of providing in-service personnel with training and carrying out forensic science research.

3. LAWS GOVERNING THE REPORTS AND OPINIONS OF FORENSIC EXPERTS IN INDIA

With ever evolving legislature of the country, gathering of evidence through forensic reporting has gained significant momentum, along with the obvious success of the procedure. Indian judiciary has interpreted Section 45 of Indian Evidence Act into the ambit of accepting the forensic reports of an expert over cases such as of DNA profiling or fingerprint analysis etc.

Origin of legislation for Forensic science can be traced back to Constitution of India, which provides for Article 51A(h) and (j) which states that it shall be the fundamental duty of every citizen of the country “to develop the scientific temper, humanism and the spirit of enquiry and reform” as well as “To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.” Even though Constitution of India, providing the frame work of forensic sciences’ their still lacks a comprehensive legislation for purpose of regulating and mainstreaming forensic science in today’s criminal justice system. Despite the lack of specific legislation, sections 53 and 54 of Code of Criminal Procedure provides for scope of forensic science by examining the accused by medical practitioners, which can then check for DNA or fingerprints etc.

Section 53 of CrPC deals with the examination of the accused by a medical practitioner as per the request of the police officer, if there are reasonable grounds to believe that doing medical examination, might provide further evidence in the case, whether it be in against or in favor of the accused. Further, Section 54 provides for examination of arrested person, at the request of arrested person, where the arrested person believes that such examination will disprove any charges brought against him.

With Amendment Act of 2005, CrPC was amended and new section; Section 53A was introduced which mandated the medical examination of the person accused of rape and included in its ambit, examinations of blood, blood stains, sputum, swabs, sweat, semen, finger nails, hair samples as well as DNA profiling, as and when required by the cases. All of which can be examined in cases of sexual offence. Despite Sec 53A having limited scope of examination by the request of police officer, but the court has wider power for providing

justice to the victim, hence the court can issue directions to the investigating officer to collect various sorts of tests and conduct DNA test if needed under sections 173(8) and 293(4)(e) of CrPC.

With the launching of Criminal Procedure (Identification) Rules, 2022¹, the state can take measurements of the accused or arrested persons, measurements such as; fingerprint, footprint, palm print, photographs, iris and retina scans, signatures, writing scans, samples such as blood, semen, hair, swab or their analysis. The said measurements are expected to be collected and stored by National Crime Records bureau, in order to process and analyze the samples with forensic sciences' and aid in the investigation process, whenever needed or called upon. This set of rules also created some headlines and raised brows as the rules can also be viewed as violating the right to privacy of an individual².

In relation to the topic at hand, that is of evidentiary value of forensic report, we must also need to discuss the admissibility of forensic report in the court of law. As forensic reports, derive its authority to be admissible under section 45 of Indian Evidence Act 1872, which deals with "opinion of the expert" as it states "When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting the opinions upon that point of persons especially skilled in such foreign law, science or art are relevant facts." Here, it may be noted that opinion of the expert is being treated as a 'relevant fact' and not as an 'evidence'.

Court can further call upon specific governmental experts for their opinion in certain matters under sections 293 and 293(2) of the code of criminal procedure, in the interest of moving forward the investigation.

In order for Forensic reports to actually make an impact on the perpetrator and brought them to justice, it is vital for it to be taken as admissible in the Court of Law. In case of *Pantangi Balarama Venkata Ganesh vs. state of Andhra Pradesh*³ the DNA Export deposited in front of

the court and stated that "If the DNA fingerprint of a person matches with that of a sample, it means that the sample has come from that person only. The probability of two persons except identical twins having the same DNA fingerprint is around 1 in 30 billion world population." To which court held the DNA evidence to be admissible in court proceedings.

However, it is vital for the DNA evidence to be procured with caution and collected accurately in order to ensure no contamination of the samples, in case any inconsistency found with the same, the court can make the DNA evidence inadmissible in favour of defendant, as the reliability of the sample can be put into question which decreases its evidentiary value as compared to other evidence(s).

There is a lack of specific or centralized legislation concerning the provisions of preparations of forensic reports or gathering of evidence, etc. in Indian Legal system, even the lack of specific provisions in Evidence Act or Code of Criminal Procedure⁴ showcases a lack of modernization of the law related to scientific advancement, and can also put forth loopholes concerning the collection of such Forensic Evidence by the investigation officers'. Such as per CrPC⁵, the investigation officer can request the medical practitioner to help in examination of the accused, but it doesn't provide the authority to collect the semen or blood samples for DNA profiling purposes. Things did look good when with the amendment of CrPC in 2005⁶, Section 53A was added which gave power to medical practitioner to extract samples for DNA profiling but the implementation of the same has been more dubious as the opinions of different high courts of different states and supreme court varies on the subject matter as the constitutionality of such provision is constantly under review, as it is alleged that the police officer can misuse this provision as per his liking⁷, but in case of *Shreemad Jagadguru Shankaracharya v State of Karnataka*⁸ it was held that the said provision is necessary and constitutional.

¹ Criminal Procedure (Identification) Rules, 2022 (Act 11 of 2022)

² Karishma Shah, "The Criminal Procedure (Identification) Act, 2022 compromises constitutional rights", *The Leaflet* 10/08/22 available at <https://theleaflet.in/the-criminal-procedure-identification-act-2022-compromises-constitutional-rights/> (Last visited on 15/11/2022)

³ *Pantangi Balarama Venkata Ganesh vs. state of Andhra Pradesh*, 2003 crlj 4508(AP)

⁴ Ashok Bhan, "DNA and the Indian System", *The Statesman*, 07/06/2018, available at [https://www.thestatesman.com/supplements/law/dna-](https://www.thestatesman.com/supplements/law/dna-indian-system-1502645292.html)

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⁵ The Code of Criminal Procedure, 1973 (2 of 1974), s.53

⁶ The Code of Criminal Procedure (Amendment) Act, 2005 (25 Of 2005)

⁷ Editor, "Constitutionality of Sec 53A Upheld" SCC Online, 17/12/2014, available at <https://www.scconline.com/blog/post/2014/12/17/constitutionality-of-section-53-a-crpc-upheld/>

⁸ *Shreemad Jagadguru Shankaracharya v State of Karnataka*, 2014 SCC OnLine Kar 5639

In another case⁹, supreme court showed a reluctant attitude in application of DNA test in order to settle a paternity issues arising out of payment of maintenance under section 125 of CrPC, where father disputed against paying the maintenance and demanded DNA testing of a group, in order to get out of paying the amount. The court decided that, “where the purpose of the application was nothing more than to avoid payment of maintenance, without making out any ground whatever to have recourse to the test, the application for blood test couldn’t be accepted”

In another case¹⁰ presented before Orrisa High court, the court stated that before issuing any direction for collection of blood samples from accused for DNA test purposes, should be to balance the public interest as well protect the right available to arrested person under article 20(3) and 21 of the constitution.

4. EVIDENTIARY VALUE OF FORENSIC REPORTS IN THE INDIAN COURTS

Judiciary has been vigilant and somewhat cautious in granting excess evidentiary value to forensic experts or the reports, as the report or the expert can be believed to fall victim to ‘human error’ and only presence of Forensic report without any sufficient corroboratory evidence, to back up the report. As was held by the Supreme Court of India¹¹, “It is unsafe to base a conviction solely on expert's opinion without substantial corroboration. In the instant case, it would be extremely hazardous to condemn the appellant merely on the strength of opinion ‘evidence of a handwriting’ expert.”

With the landmark judgement above, the forensic reports and their evidentiary value witnessed a setback, as it lost the value of a ‘primary evidence’ and it alone, couldn’t result in a conviction. Further, Section 45 of the Indian Evidence Act, left out much of the power to determine the ‘evidentiary value’ of the report to the court, due to words used as ‘form an opinion’, establishing the expert reports, as more of suggestive in nature, rather than strong evidence.

Further in the case of *Dayal Singh vs State of Uttranchal*¹², the court reiterated that the entire

objective of the forensic report or expert testimony is to provide the trier of the fact with relevant information as well as to guide the court to reach at a final understanding of the ‘facts’ of the case. On the other hand, court held that such report won’t be binding upon the court, but would amount to have some evidentiary value, which will be decided by the court after careful examination. Court is supposed to read and comprehend the report, and then decide if the same can be relied upon or not.

The simple reasoning behind this treatment of ‘Forensic Report’ by Criminal Justice system of Judiciary, can be attributed to the fact that the objective of the forensic report is to provide relevant fact, as to what happened, which formulates only one part of essentials of criminal act, that is actus reas. Forensic science can tell us what happened, but not about why it happened. For ex. Forensic report can tell us if A had his fingerprint on the gun, but the fact that A had his/her hands of the gun for either murder or self-defense, is still unknown. Hence, forensic reports face lesser evidentiary value, until and unless backed up strongly by other corroborative evidence(s). As was held in case of *Senthil v. State*¹³, where the forensic report failed to be backed up by corroborative evidence, the court held that, “The discrepancies noticed in the evidence, the recovery witness, and also the Investigator and the contents of the recovery mahazar would also cast a doubt on the said recovery. Under such circumstances, the reports received from the Forensic Sciences Department, cannot be attached with any evidentiary value”

Evidentiary value of a forensic expert report is tied directly with the evidence or nature of evidence put forth in the court, as was held by Supreme Court in case of *Madan Gopal Kakkad v. Naval Dubej*¹⁴, where it held that “A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination” It was held that the expert opinion once examined and corroborated by the court with necessary evidence, the expert opinion becomes the opinion of the court itself.

⁹ Goutam Kundu vs State Of West Bengal And Anr 1993 AIR 2295, 1993 SCR (3) 917

¹⁰ Thogorani Alias K. Damayanti vs State Of Orissa And Ors 2004 CriLJ 4003

¹¹ Magan Bihari Lal vs State Of Punjab on 15 February, 1977 - 1977 AIR 1091, 1977 SCR (2)1007

¹² Dayal Singh vs State of Uttranchal (2012) 8 sec 263 : (2012) 2 sec (L&S) 583 : (2012) 3 sec (Cri) 838 : (2012) 4 sec (Civ) 424 : 2012 scc OnLine SC 580 : 2012 Cri LJ 4323 : AIR 2012 SC 3046

¹³ Senthil v. State, 2010 SCC OnLine Mad 5914

¹⁴ Madan Gopal Kakkad vs Naval Dubej And Anr 1992 SCR (2) 921, 1992 SCC (3) 204

The above opinion of the court was reiterated in case of *State of Himachal Pradesh vs Jai Chand*¹⁵, where it was held that post mortem report, in itself is not substantive piece of evidence, but the evidence or opinion of such doctor cannot be insignificant.

The opinion of proper judicial examination before admitting the forensic report was reiterated by Madhya Pradesh High Court, in the case of *Bhura v. State of Madhya Pradesh*¹⁶, it was held that “when there is insufficient quantity of the sample, it could not be examined to conclude that it was a human blood. Under such circumstances, when no human blood was found on the clothing of the appellant, its seizure has no evidentiary value.” In another case of *Jiya Ram v. State of Rajasthan*¹⁷, the blood was found on the clothes of the accused, and accused challenged the forensic reports, stating that the blood stains have deteriorated and forensic report failed to identify the blood group, hence it should not have any evidentiary value, but the court held that “The circumstance that the blood group could not be determined because the blood has disintegrated does not reduce the evidentiary value of the report of the Forensic Science Laboratory”

Most judges of the Indian Judiciary don't deny the scientific accuracy provided by the DNA fingerprinting but the worry remains on accuracy and efficiency in collection or procurement of the samples. Further admissibility of DNA samples can go against public policy and constitution such as forcing the suspect to provide the sample can be treated as violation of his constitutional right to not give any evidence which can be used against him¹⁸. There is a dire need to incorporate DNA profiling and modernize the statutes in order to close such loopholes and provide better access to justice.

5. THE EVIDENTIARY VALUE OF FORENSIC REPORTS IN OTHER COUNTRIES

In modern times, demand for forensic reports and expert opinion have increased significantly in order to help the court to determine the actual facts and deliver its' justice. This is majorly because the unbiased opinion of the expert as well as the scientific method behind the well

analysed forensic report. With time more and more jurisdictions around the world started adopting and admitting the forensic report followed by a major judgement in United States, in case of *Daubert v. Merrell Dow Pharmaceuticals*¹⁹, where the court fixed a criteria to decide how an expert opinion would be admissible. Courts of England have also allowed the forensic reports, while maintaining balance with common law. Further, careful evaluation of courts of Canada or Australia, also shows us that courts have taken a liberal approach in interpreting their common statutes, in order to allow for admissibility of the forensic reports into their criminal justice systems. To determine the extent of inclusion of forensic reports in various jurisdictions, we will focus on the admissibility of DNA test or Evidence, as a part of forensic science, in different countries:

a) America – In United States, all scientific evidence or forensic reports need to satisfy the test of admissibility in that jurisdiction. The tests again, are of two types, first being Frye test which is used in majority of jurisdictions in the United States, its origins lies in case of *Frye v. United States*²⁰, where it was held that the scientific technique used to analyze or extract forensic report or evidence, must be generally accepted in the relevant scientific community. The second test follows the relevancy standards of the federal state of evidence²¹ and is currently being used in most jurisdiction as it states that in order to establish the admissibility of a scientific evidence, it must have some relevancy to the issue at hand and that its probative value must outweigh any chance of prejudice. Following this, the court in another case²², the federal rules of evidence have replaced Frye rule and defined federal standards for admission of scientific evidence as “*trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable*”

Furthermore, court also provided a list of non-exclusive factors which can be relied upon to determine the evidentiary value of the scientific value, such factors are;

- i) Whether the said theory or scientific technique can be tested
- ii) Whether the said theory or scientific technique has been peer reviewed and published

¹⁵ State of H.P. v. Jai Chand, (2013) 10 SCC 298

¹⁶ Bhura v. State of Madhya Pradesh, 2014 SCC OnLine MP 8697

¹⁷ Jiya Ram v. State of Rajasthan, 1996 SCC OnLine Raj 136

¹⁸ The Constitution of India, art 20(3)

¹⁹ Daubert et ux., Individually and as Guardians ad Litem for Daubert, et al v. Merrell Dow Pharmaceuticals, Inc., 1993 SCC OnLine US SC 104

²⁰ Frye v. United States 293 F. 1013 (D.C. Cir. 1923)

²¹ Rule 401, 402, 403 and 702

²² Supra Note 19

iii) What are the potential rate of error in using the said scientific technique and the existence of the standards, maintaining and controlling the operation of the technique

iv) Whether the said theory or scientific technique has been generally accepted in the scientific community.

Despite most federal courts following the Daubert test to determine the admissibility of the scientific evidence, most state courts still follow Frye rule. Despite this, we can still observe that scientific evidence or forensic reports are widely accepted and admitted in most of the jurisdictions of United States. As it allows the scientific evidence into the court and hold it admissible, provided that the reports is generated through strictest of controls and measures, as was held in in case of *Schwartz v. State*²³, the Supreme Court of Minnesota refused to admit the DNA evidence as it was analyzed and processed by a private laboratory and not by a state regulated laboratory.

b) England – England is widely famous as most efficient and effective country when it comes to integration of Forensic sciences’ in the country’s criminal legal system, as since the establishment of National DNA Database back in 1995²⁴, the country has become world leader in finding out new and innovative ways of using DNA to find out the suspects and prove the innocence of the innocent. England also had the first conviction of Colin Pitchfork, who was identified and brought to justice because of DNA profiling, in case of murder of two people. Following appeals of *R. v. Reed* and *R. v. Garmson*²⁵, questioning the evidentiary value of forensic reports, the law commission²⁶ thoroughly examined the status of forensic reports in the country and is in favor of reforms. The proposed reforms would shed more clarity and certainty to the process of law revolving around admissibility and evidentiary value of Forensic reports.

c) Australia – Unlike courts of United Kingdom and United States, courts of Australia didn’t have to determine the fact of evidentiary value of forensic reports, but the question was merely, whether there is a test which can be relied upon. As was articulated in cases of *R. v.*

*Tran*²⁷ and *R. v. Lucas*²⁸, where the courts dismissed DNA evidence, as it couldn’t provide much details with absolute certainty. The criminal legal system in Australia was still developing at that point it time, when court, in a case²⁹, provided guidelines on admissibility of the scientific evidence, as follows

i) Once it is ascertained that the expert opinion is relevant to the fact in issue and that there is no policy or discretion based against the evidence, it will be admitted even if the evidence is being contested.

ii) When there is no issue of admissibility of the evidence but of the expert analyst of the method used to extract or derive the report, there should be *voir dire* on such issues

iii) Once the relevance and conditions for the admissibility are met and becomes difficult to ascertain how the expert opinion or forensic report have prejudicial effect, the expert evidence gains probative value.

iv) DNA evidence has probative value.

Admissibility of forensic evidence was again tested in case of *R. v. Pantoja*³⁰, where two scientific experts matched the DNA of suspect with the offender, whereas another scientist, using different method, didn’t find a match. The Appeal court ruled that whatever evidence received from other DNA test, only one positive exclusion is sufficient to exclude the suspect. This case provided the necessary caution required in determining the cases on the basis of forensic reports or expert opinions.

d) Canada – Canadian courts have taken wider and liberal approach in terms of admissibility of scientific evidence, as compared to the courts of United States, United Kingdom or Australia. While it is difficult to predict the impact *Duabert* case on Canadian legal system, it was held in a case³¹ that *Frye* test is not part of Canadian law and the criteria for ascertaining the admissibility of a scientific evidence are; relevance and helpfulness to the tribunal of a fact.

In order to determine the admissibility of a forensic report, the supreme court in *R. v. Mohan*³², decided the following criteria to be fulfilled;

²³ *Schwartz vs State* 447 N.W. 2d 422 (1989)

²⁴ Martin PD, Schmitter H, Schneider PM. A brief history of the formation of DNA databases in forensic science within Europe. *Forensic Sci Int.* 2001 Jun 15;119(2):225-31

²⁵ (2009) EWCA Crim 2698

²⁶ Law Commission Consultation Paper No. 190: The Admissibility of Expert Evidence in Criminal Proceedings

in England and Wales: A New Approach to the Determination of Evidentiary Reliability (2009)

²⁷ *R. v. Tran* (1990) 50A Crim R 233

²⁸ *R. v. Lucas* (1992) 55 A Crim R 361; (1992) 2 vr 109

²⁹ *R. v. Jarrett* (1994) 73 A Crim R. 160

³⁰ *R. v. Pantoja* (1996) 88 A Crim R 554

³¹ *R. v. Johnston* (1992) 69 CCC 395

³² *R. v. Mohan* (1994) 2 SCR 9; 1994 89 CCC (3d) 402 at 406

- i) Relevance
- ii) Necessity in assisting the trier of fact
- iii) The absence of any exclusionary rule
- iv) Properly qualified expert

This criteria has been applied and upheld in more cases such as *R. v. J-LJ*³³ and *R. v. DD*³⁴. *Mohan* case further did hold that *Frye* test could be admissible, if it showed more reliable with more varied criterions. As *Frye* standard was again applied in case of *R. v. Bourguignon*³⁵, where the scientific evidence was admitted (in part till qualitative statement, to describe the importance of matching profiles). In another case of *R. v. Legere*, it was held that science upholding DNA testing was credible and completely reliable, hence the evidence was held admissible, provided the fact that the tests run of DNA were relevant and helpful to the trier of the fact.

6. CONCLUSION & SUGGESTIONS

The research carried out by the authors, signifies that the evidentiary value of a forensic report is a discretion which solely lies upon the court, to either hold it admissible or not. As in the case of *Krishan Chand v. Sita Ram*³⁶, where there was a conflict of expert opinions, it was held by the court that the court is competent to form its own opinion as to who signed the document. The admissibility and evidentiary value of a scientific evidence totally depends upon the facts, circumstance of the case, as well as the opinion of the court, pertaining to that case.

There is no provision in Indian Evidence Act that states it expressly that an expert opinion or forensic report should be accepted only with the corroborative evidence, but with the research carried out by the author(s), the practical application is quite different. As the courts generally do not 'only' rely upon the expert opinion, to convict an accused of a crime, unless the charge is backed up by another evidence as well. It is further stated and observed by the apex court in numerous cases as well, that it is unsafe to convict an accused, solely on the basis of forensic report or an expert opinion.

In conclusion, the evidentiary value or probative value of an expert opinion or a forensic report is highly unstable and varies from case to case basis, but one thing is for certain, and that is it has no evidentiary value unless it is backed by some other corroborative

evidence. The role of expert opinion or forensic report is major of being a 'relevant fact', more than that of being an 'evidence', as when an expert opinion has been accepted by the court, it doesn't get distinguished as an expert opinion, but becomes the opinion of the court itself and in order to change the opinion, the burden of proof lies upon the opposing party.

Forensic reports or forensic science in general is still relatively new, as compared with our criminal justice systems, and requires technological leap to fully integrate with criminal justice system of not only India, but of the world, because as per observed by the author, the problem of admissibility of the evidence or expert opinion doesn't lie upon the fact whether it can be trusted or not, but it lies upon the fact whether it is accurate enough or not, whether the technique being used to derive the technology is capable enough or not. As determined in the article, when questions arise of DNA match or fingerprint match, forensic reports tends to be the last nail in the coffin, whereas in cases of handwriting analysis or footprint, reliance upon forensic report, seems to deteriorate.

SUGGESTIONS

We are still a long way to go for achieving the required technology to fully integrate the criminal justice system to that of forensic science, but in the meanwhile, what can be done is;

- i) A full-fledged and comprehensive legislation focusing solely on regulating the forensic sciences' in India.
- ii) Proper training of Medical practitioners in order to ensure no contamination of the scientific evidence in such a way, which can lead the court to declare the evidence as inadmissible.
- iii) Medical experts should undertake medico-legal work, as this would allow them to have deeper perspective of criminal legal system as well as their own field.
- iv) Judiciary can develop a test or a set of criteria to determine the conditions under which the evidentiary value of a forensic report would be ascertained.
- v) A comprehensive DNA database should be formulated and maintain, which would work of forensic experts more easier, as well as helpful in bringing the accused to justice.

³³ *R. v. J-LJ* (2000) SCC 51

³⁴ *R. v. DD* (2000) SCC 43

³⁵ *R. v. Bourguignon* (1991) O.J. No. 2670 (Q.L.)

³⁶ *Kishan Chand vs Sita Ram And Ors.* AIR 2005 P H 156