
THE CRIMINAL IDENTIFICATION PROCEDURES IN THE ERA OF SCIENCE AND TECHNOLOGY: AN ANALYSIS OF ASPIRATIONS AND APPREHENSION OF THE INDIVIDUALS

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ABSTRACT

Science and technology has a significant role to play in every walk of human life. The sophisticated methods and equipments are requirement of the day. We can apply such new things in collecting evidence that shall be helpful for disposal of the cases¹. Since, there are two conflicting interests exist in the society simultaneously, one to protect the right to privacy of the citizen from being invaded and second, to secure evidence against the offender. It requires reconciliation of two conflicting interests of society². The criminal law is intended to protect the society by penalising the culprits. However, natural justice demands that no individual should be punished without having a just and fair trial. The provisions of the penal law should be interpreted keeping in mind the changing circumstances of society, the advancement of offence and offenders, development in scientific methods etc., and therefore, the victims of offence should not be deprived of these development in the name of literal interpretation of the provisions of laws. The identification of the criminal is a big challenge that needs to be ascertained in a criminal trial³. The new legislation sets out its objectives to assimilate new measures of identification which have come out recently. Thus, advancement of technology and scientific temperament⁴ must be observed as a means of investigation that shall be a extraordinary assistance to an enquiry agency⁵. The paper makes a sincere

¹ Tukaram S. Dighole v. Manik Rao Shivaji Kokate, (2010) 4 SCC 329.

² Para 1.7 of the 87th Report of the Law Commission, 1980.

³ Gary L. Wells & Nancy K. Steblay, "Eyewitness Identification Reforms: Are Suggestiveness -Induced Hits and Guesses True Hits?", *Journal of Applied Psychology*, 799, 835–844 (2011).

⁴ Article 51-A (h) of the Constitution of India: "It shall be the duty of every citizen of India to develop the scientific temper, humanism and the spirit of inquiry and reform."

⁵ Tomaso Bruno and Anr. v. State of Uttar Pradesh, (2015) 7 SCC 178.

attempt to highlight the scope of application of science in the criminal identification procedures. Simultaneously, it underlines the challenges faced during investigation process and how to overcome them. The paper also highlights the aspirations and apprehension of the individuals while applying the scientific method for the collection of evidence to curb the crimes and criminals.

Keywords: Identification; Justice; Measurement; Paradigm; Technology.

Introduction

Investigation is a means to find out the truth for the purpose of successful identification of crime and prosecution of criminals. The new scientific techniques of investigation must be adopted to increase the rate of conviction and administration of justice. Since, there are so many instances where no direct evidence is available, and therefore, it becomes tedious job for the investigating authorities to detect the crime. In such condition, the court should allow the use of scientific techniques otherwise no miracle is going to happen to solve the blind cases. The main object of investigation is to find out the truth. It tries to lay the real offender before the law. Therefore, fair trial requires fairness in investigation of a case. Scientific tools and techniques may enhance the accuracy and transparency which may result into administration of justice. The development in the field of science and technology may contribute excessively in criminal investigation to collect evidences. These evidences may ascertain the criminality of the accused person of an alleged offence. Evidences collected through scientific methods are admissible in the court of law. The Criminal Procedure (Identification) Act, 2022 and its rules⁶ shall be very helpful in scientifically collection of evidence of a crime. The Central Government has started the process of restructuring the IPC, CrPC and Evidence Act to give adequate importance of scientific detection process of a crime in the days to come⁷. The time requires the radical changes in the process of investigation in order to strengthen the judicial system of our country.

Present days, surfacing new kinds of crimes and criminals poses a big challenge before the investigating agencies. Since, the conventional practices and techniques have become obsolete to deal with the new problems. Therefore, time and situation demand new tools and techniques to

⁶ The Criminal Procedure (Identification) Rules, 2022 (w. e. f. Sept. 19th, 2022)

⁷ Sanjeev K. Jha, Centre planning radical changes to IPC, CrPC, Evidence Act: Shah, HINDUSTAN TIMES (Feb. 17, 2023) 1.

strengthen the Police or investigating agencies for crime detection. Forensic science⁸ may be the solution for investigation and collection of evidence for administration of justice. Therefore, judicial system must be acquainted with new development occurring in the field of science. Since, scientific evidence may facilitate the judiciary in prohibiting the crime and criminal tendency of individuals in society. We should emphasise the necessity of promoting scientific evidence to discover and prove offences beyond the other proof⁹. As it is evident from the facts and circumstances of criminal cases that development in the field of sophisticated technology the idea of crime as well as the techniques adopted by offenders in its commission have gone through an extraordinary change. In most of the complicated offences, the smart offenders apply sophisticated tools and techniques for his criminal activities; whereas the police or investigating agencies apply the traditional methods of interrogation and detection of crime. Sometimes, they apply brutal and torturous techniques for identifying crime that has no space in a well educated society. The NCRB records show that there is high crime rate but low conviction rate due to faulty investigation methods. The existing situation demands that there must be some change in method of investigation and interrogation so as to secure the aim of crime and criminal free society.

Identification of Criminal

Generally, identification parades are conducted in criminal cases to prove or disprove either the guilt or innocence of the accused. It is held while the cases are under investigation. Section 54-A authorises the court which can order the apprehended person to present for identification parade on the requisition of the investigating officer. The main object of identification is to unearth the truth whether the apprehended person is actual criminal or not. The eye witnesses who assert to have observed the accused at the event of happening require to identify them amongst the other persons without any assistance from other source.

Section 9 of the Indian Evidence Act, 1872 provides admissible facts which are very crucial to describe or establish relevant facts. Such as name, date, place, identity of parties, situation and relations of the parties¹⁰. The identification of the apprehended person either in test identification

⁸ Forensic Science may be defined as “The application of science to those criminal and civil laws that are enforced by the police agencies in a criminal justice system”.

⁹ Dharam Deo Yadav v. State of UP, (2014) 5 SCC 509

¹⁰ Ratanlal & Dhirajlal, THE LAW OF EVIDENCE, 100 (2017).

parade or in the court is not a *sine qua non* in every case if from the circumstances the guilt is otherwise established. In *Hasib v. State of Bihar*,¹¹ it is observed that;

Now, identification parades are ordinarily held at the instance of the investigating officer for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the persons who are alleged to have been concerned in the offence. Such tests or parades belong to the investigation stage and they serve to provide the investigating authorities with material to assure themselves if the investigation is proceeding on right lines. It is accordingly desirable that the test parades are held at the earliest possible opportunity.

The identity of the accused can also be proved by scientific evidence like DNA, medical report¹². In *Rameshwar Singh v. State of Jammu and Kashmir*,¹³ the court observed that identification of arrested person by the witnesses immediately after the former's apprehension is very necessary. It shall be very important to uphold the interest of justice for the benefit of the arrested person and the prosecution.

The evidence collected through the test identification parade is not considered as the substantive piece of evidence. The eye witnesses, once again, have to identify the accused in the court. The evidence collected through test identification parades is admissible under section 9 of the Indian Evidence Act, 1982. It can be utilised exclusively to corroborate the substantive evidence given by the witnesses in court with respect to identification of the accused. Any document purporting to be a report of identification undersigned by the Executive Magistrate pertaining to a person may be utilised as evidence in any investigation, trial or other proceedings under the Cr.P.C., albeit such Magistrate is not called as a witness¹⁴.

Role and Importance of Evidence

The term 'evidence' refers to the proof whether oral, documentary or electronic records which may be lawfully received to prove or disprove some facts in discord. The evidences determine the facts of the case and help the court to reach at the truth. It assists the court to ascertain the offender of a crime. Since, the advocates and judged do not have adequate knowledge about the science and technology, and therefore, experts are consulted to seek their opinion on the subject matter. Such

¹¹ 1972 Cr.L.J. 233 SC

¹² In *Hardayal v. State of UP*, AIR 1976 SC 2027.

¹³ AIR 1972 SC 102

¹⁴ Section 291A of the Cr.P.C.

practices help the judge to find out the truth in most criminal cases. The deception detection tests (DDT) such as polygraph, narco-analysis and brain-mapping have significant clinical, scientific, ethical and legal effects. These techniques are helpful to know the hidden information pertaining to offence. This information is in some cases essential for criminal enquiry. The scientific procedures are applied for fact-finding in criminal cases. This will directly assist the investigating officers to collect evidences. It will enhance the rate of conviction of the offender and the rate of acquittal of the innocent. Recently, these techniques are being advanced as more exact and best to none, without convincing evidence¹⁵. A narco-analysis examination is the scientific method that is utilised to obtain hidden information from an arrested person in a criminal case for advancement of investigation.

The application of narco-analysis test seems apprehensive of the fundamental rights of individuals. Some legal luminaries put question mark on such examination of the accused. They think that the procedure followed in this test is against the provisions laid down under Article 20 (3) of the Constitution.¹⁶ The application of DDT technique as an investigative measure raises legal as well as constitutional questions like violation of right to privacy and freedom. Various human right activists and other legal professional have apprehension of misuse of such tests and violation of basic rights provided in Articles 20 (3) and 21 of the Constitution. It was held in *State of Bombay v. Kathi Kalu Oghad*¹⁷, by the SC that before the application of Article 20 (3), it must be shown that the accused was unvoluntarily subjected to undergo such tests by way of threat or intimidation. Thus, the right against self-incrimination authorises the maintenance of right to privacy and recognition of enlightened standards in the application of criminal justice. Nobody can roughly pull out statements from the accused who has the right to remain silent throughout the process of investigation especially interrogation¹⁸. Since, the protection of the society is considered as supreme consideration. The object of law is to apprehend the perpetrator of offence and punish

¹⁵ Suresh Bada Math, Supreme Court judgment on polygraph, narco-analysis & brain-mapping: A boon or a bane, (July, 2011) available at- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3171915/> (last visited April 16, 2023).

¹⁶ In the Cr.P.C, the legislature has guarded a citizen's right against self-incrimination under Sec.161 (2) of the Code of Criminal Procedure states that every person "is bound to answer truthfully all questions, put to him by (a police) officer, other than questions the answers to which would have a tendency to expose that person to a criminal charge, penalty or forfeiture".

¹⁷ 1962 SCR (3) 10

¹⁸ Nandini satpathy v. P. L. Dani, 1978 SCR (3) 608.

with utmost care. No innocent person be harassed or punished. Even if, 99 perpetrators can escape, but, one innocent should not be punished.

An Aid to Circumstantial Evidence

A witness may lie but not the circumstances. Human agency may be faulty in expressing image of actual incident but the circumstances cannot fail. The circumstantial evidence provides evidence of relevant facts. One can infer about the existence of facts in issue. There must be a series of evidence connected with each other so closely as not to leave any sensible ground for a conclusion compatible with the innocence of the accused. It must be such as to show that within all human possibility the act must have been done by the accused. The guilt of a person can be proved by circumstantial evidence¹⁹. The circumstances must be of a conclusive nature and inclination flawlessly directing towards the guilt of the accused²⁰. However, the court should adopt a careful viewpoint while basing its conviction completely on circumstantial evidence²¹. The science and technology are being applied for collection of evidence. The Malimath Committee²² suggested that the significance of forensic science needs to be acknowledged in modern technology for investigations and criminal processes.

The search of the truth is the requirement of investigation, and therefore, attempts are made to apprehend the actual offenders. An offender should not be permitted to run away from the responsibility of the offence. Hence, the court must embrace a supportive gesture, in all cases, brought by the prosecution for unearthing the truth. If the DDT may be useful in tracing the facts pertaining to the crime, it must be utilised and the courts must not restrict the conduct of the exercise.²³

The importance of circumstantial evidence can be realised by the judgment of Priyadharshani Matto case²⁴, “Though I know the defendant is guilty, my hands are tied. As a judge, I can only go by the evidence provided by the investigative agencies.” This line was uttered by Additional Sessions Judge G P Thareja who discharged Santosh Kumar Singh, the real culprit, due to lack of

¹⁹ Vilas Pandurang Patil v. State of Maharashtra, AIR 2004 SC 3562.

²⁰ Sharad v. State of Maharashtra, AIR 1984 SC 1622.

²¹ State of Haryana v. Ved Prakash, AIR 1994 SC 468.

²² The Committee has suggested that specific provisions be incorporated in the Cr.P.C. and the Indian Evidence Act to enable a magistrate to order an accused to give samples of handwriting, fingerprints and footprints for purposes of scientific examination.

²³ Abhay Singh v. State of U.P., 2009 (65) ACC 507 (All).

²⁴ Santosh Kumar Singh v. State through CBI, (2010)9SCC747.

evidence. The accused had committed rape and murder of Priyadharshani Matto. However, the Delhi High court held that the comprehensive perusal of the circumstances proved beyond doubt that Singh has committed rape and murder.

Many a times, the Court has to comply with circumstantial evidence and scientific evidence often plays a crucial role. In *Rajendra Pralhadrao Wasnik v. State of Maharashtra*²⁵, while acting with circumstantial evidence, the Supreme Court held as under: -

There is no doubt that it is not a case of direct evidence but the conviction of the Accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis i.e. the guilt of the Accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the Accused and the only possibility is that the Accused has committed the crime.

There are so many instances wherein the SC of India has directed the investigating officers to embrace scientific techniques in crime exposure to protect the judicial machinery from low sentencing rate.²⁶

Evidentiary Value of Test Identification Parade

The evidence collected through identification parades is admissible under section 9 of the Indian Evidence Act, 1982. This evidence can be applied only to corroborate or contradict the substantive evidence offered by the witnesses, under section 157 or section 145, in court regarding

²⁵ (2012) 4 SCC 37

²⁶ The criminal judicial system in this country is at a crossroads, a Bench of Justices K.S. Radhakrishnan and A.K. Sikri said, "Reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even hardened criminals get away from the clutches of the law. Even reliable witnesses for the prosecution turn hostile due to intimidation, fear and a host of other reasons. Investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence."

identification of the accused. It can also be applied for impeachment of the credit of the identifier in section 155 of the Indian Evidence Act.

In a very sensational case of gang rape and murder of an 8-year old girl in Kathua, the SC observed that one of the accused who had claimed to be a juvenile at the time of the commission of the crime, be tried as an adult. The Court acted upon the medical opinion of a team of five doctors on the basis of physical, dental and radiological examination. The age of the respondent was over 19 years. The Court also observed that better methods such as the “wisdom teeth” and the “epigenetic clock” technique, which examines DNA methylation levels and has a low margin of error, be applied in India²⁷. Before the narco test, Aftab was convinced to write exhaustively on a consent form, which was explained and read out to him by the Forensic Science Laboratory (FSL) team before the test process. The SC had held that narco-analysis, polygraph and brain mapping tests could not be used without getting the assent of the accused person.

Both the sections 53 and 53-A of the Cr.P.C. are very useful for DNA profiling of the offender. Because, there is no particular DNA enactment authorized in India, Sec.53 and Sec. 54 of the Cr.P.C. accommodates DNA tests intrinsically and they are widely used in deciding complicated criminal issues. Section 53 of Cr.P.C provides an examination of the apprehended person by a medical practitioner will provide evidence as to the commission of the offence. This provision is enacted to promote effective investigation. This power is given to a police officer because, investigation is a duty of the police and such work must be done by them alone²⁸. Besides, the general laws, section 73 of the Indian Evidence Act, 1872, and section 293 of the Code of Criminal Procedure, 1973, are related to other forensic techniques.

Aspirations and Apprehension of the Individuals

In the process of investigation whether it is criminal or any other investigation, interrogation plays a very crucial role. It is done to extract information from the accused, suspects or others involved in the crime. However, no person should be roughly subjected to any of the scientific method in respect of investigation for the collection of evidence in criminal cases. The subjection of the

²⁷ R. K. Vij, The difficulties in determining age, THE HINDU (Jan. 10, 2023, New Delhi) 8.

²⁸ Ratanlal & Dhirajlal, THE CODE OF CRIMINAL PROCEDURE, 74 (2017).

individual of such examination may amount to an unjustifiable interruption into his own freedom ensured in Articles 20 (3)²⁹ and 21 of the Constitution.

In *Selvi v. State of Karnataka*³⁰, the SC observed that no one can be roughly subjected to Narco-Analysis, Polygraph and Brain Mapping, whether with regards to examination in any criminal cases or otherwise. “The compulsory administration of any these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to cruel, inhuman or degrading treatment with regard to the language of evolving international human rights norms.”³¹ The SC has observed that narco-analysis, polygraph and brain mapping examinations on an accused are unlawful. However, the court allowed application of such methods in criminal cases on assent and with some precautions. A bench consisting of chief justice K G Balakrishnan, Justice R V Raveendran and Justice J M Panchal said, “we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty.”

Though, Section 6 of the Criminal Procedure (Identification) Act, 2022 permits it legally for the police to forcibly obtain ‘measurements’. It includes biological³² as well as physical samples and its analysis. This provision may be considered as transgressive of the right against self-incrimination provided in Article 20 (3) of the Constitution. Justice V. R. Krishna Iyer, at one time, designated this right as “a human article, a guarantee of dignity and integrity and of inviolability of the person and refusal to convert an adversary system into an inquisitorial scheme in the antagonistic antechamber of a police station.” This basic right doesn't just safeguard individuals formally accused, yet in addition suspects.

The SC, in *Tomaso Bruno and Anr. v. State of Uttar Pradesh*³³, has held that development of information technology and scientific temper should overrun the strategy for examination as scientific and electronic evidence can be an extraordinary assistance to an investigating agency so is electronic evidence relevant to establish facts. Electronic proof was allowed to be admissible

²⁹ The proviso to Section 132 of the Law of Evidence, 1872, is a facet of the rule against self-incrimination and the same is statutory immunity against self-incrimination.

³⁰ AIR 2010 SC 1974

³¹ Batuk Lal, THE CODE OF CRIMINAL PROCEDURE, 73 (2017).

³² Biological samples can even be taken forcibly from any person who is arrested for any offence against women and children, or if the offence is punishable for 7 years or more.

³³ (2015) 7 SCC 178

subject to precautions followed by the Court about the legitimacy of the same. In *Nandlal wasudeo badwaik v. Lata badwaik*³⁴, the SC observed that the DNA test is a perfect test. Section 112 of the Evidence Act was made at a time when the modern scientific development and DNA test were not even in consideration of Parliament. At the point when there is a contention between a conclusive proof contemplated under law and a evidence based on scientific advancement acknowledged by the world community to be correct, the last option should beat the previous. Aftab Amin Poonawala, accused of murdering his live-in partner Shraddha Walkar, subjected to narco analysis test on 1st December, 2022³⁵.

The sphere of forensic science and DNA profiling pertaining to the examination of semen, saliva, fingerprint, footprint identification etc., is an evolving concept of law. The collection of such substance for the aim of examination cannot be classified under testimonial compulsion, as it does not amount to ‘witness against self’. Hence, collecting and recording such impressions are not contrary to the provisions laid down in Articles 20 (3) and 21 of the Constitution. It is being developed as part of medico-legal advancement in order to do justice. Thus, the traditional method of investigation and questioning to the criminals will not be successful for the problem. The present time and situation demand new tools and techniques like DNA profiling, Narco test etc. These techniques may rapidly facilitate the investigating agencies to apprehend the perpetrators. It will not give adequate time to the culprit to conceal his crimes. Additionally, it will surge the rate of conviction or acquittal of the accused. Eventually, it will usher to dispense the justice to the people of India.

Conclusion

In the era of science and technology, the nature of crime and criminal is changing with the passage of time. In order to deal with such change, our legal system has to adopt the new means and methods to deal with the situation. Now offences are committed with such an intelligence that rarely any eye witness or physical witness or materials are available to help the investigating officers. In such circumstances, scientific approach may help the investigating agencies to collect the evidences. Even, the Commissions named on changes of criminal justice have repeatedly opined that the application of technology in crime investigation can assist the system to perform

³⁴ (2014) 2 SCC576

³⁵ The Hindu Bureau, Mehrauli killing | Aftab Poonawala's narco test successful, say officials, THE HINDU (Dec. 1, 2022, New Delhi)1.

effectively. Therefore, the significant enactments have been made now and again to clear a path for utilisation of new technologies in crime detection and trial.

Science & technology have freed humanity from many burdens & given us this new perspective & great power. This power can be used for the good of all. If wisdom governs our actions, but if the world is mad or foolish, it can destroy itself just when great advances & triumphs are almost without its grasp. — Jawaharlal Nehru

With the progress in the field of science and technology the idea of crime as well as the strategies embraced by perpetrators in its commission have gone through an extraordinary change. On one hand the smart perpetrator has rushed to take advantage of science for his wrong doing, on the other hand the police investigators as of now not ready to depend on his well established craft of cross examination, improvement of sources and observation to recognize wrongdoing. The brutal and torturous techniques of finding out the offence have also no space in a well educated society. Therefore, the use of new technologies should be a welcome step in criminal investigation and interrogation. We need to apply the new tools and techniques to punish the culprits of offences occurring in different part of India. The NCRB records show that there is high crime rate but low conviction rate due to faulty investigation methods. The existing situation demands that there must be some change in method of investigation and interrogation so as to secure the aim of crime and criminal free society.

Law is a dynamic concept, which keeps changing as per facts and circumstances of a particular society. Therefore, the legal system of a Country should adopt the developments and advances taking place in science and technology unless and until it violates fundamental rights of an individual and are for the good of the society. As it is evident that massive changes have been occurred in the science and technology over the years, and therefore, new tools and techniques are required to collect evidence for convicting the criminals of crimes. Thus, safety and security of the individuals are prime concern of the State. The data accumulated for the sake of the security of the country ought not be an endeavour to breach the basic rights of the citizens guaranteed by the Constitution of India.