

A Study of Criminological Evidence Indication in Criminal Judgments in India

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Abstract

An extreme hike in magnitude of crimes has been observed during last few years all over the nation. It is concluded from the review of literature in the present study that there are very less research work has been done in India especially considering the significance of forensic evidence. This scenario recommends the strong need of reviewing the present functioning of our crime investigators and forensics. Forensic science plays a crucial role in crime investigations and court proceedings. The present study is conducted to critically evaluate court judgments to find that up to what extent the Forensic Science Laboratory reports were useful and effective in delivering judgments to Criminal Justice System. The study is conducted on judgments delivered by High court and Supreme Court of India. The thorough evaluation of elected judgments with reference to research objectives was done. Among judgments mentioning forensic evidence, 20% cases has been found wherein forensic evidence got dropped and could not assist in delivering judgment due to loopholes/gap in the system at various levels. From the present research and its result, it is observed that use of forensic science has definitely helped in increased conviction rate and non-use of forensic has resulted in increased acquittal rate. Moreover, the role of forensic evidence is found inadequate and the gaps need to be filled by seriously considering the reality.

Keywords: *Criminological Evidence, Indication, Criminal Judgments, India, Forensic Evidence, Criminal Justice System.*

1. INTRODUCTION

Criminalistics is a discipline that operates under forensic science. The American Board of Criminalistics defines criminalistics as the science and profession dealing with the recognition, collection, identification, individualization, and interpretation of physical evidence, and the application of the natural sciences to law-science matters. It is the application of scientific techniques in collecting and analyzing physical evidence in criminal cases. Criminalistics is often termed as an applied science. (Forensic Law, 2017)

The quote of Mr. Paul L. Kirk is important to mention, "Wherever he steps, whatever he touches, whatever he leaves, even without thinking, will serve as silent evidence against him. Not only his fingerprints or his footprints, but his hair, the fibers from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen that he deposits or collects - all these bear mute testimony against him. This is evidence that does not recall. It is not confused by the stimulation of the moment. It is not absent because human witnesses are rather a factual evidence. Physical evidence cannot be wrong it cannot perjure itself; it cannot be wholly absent. Only its explanation can make a mistake. Only human failure to find it, study and understand it can diminish its value."

Criminalists use techniques learned in chemistry, molecular biology, geology, and other scientific disciplines to and solve crimes. For the criminalist, crime scene investigation involves the recognition, documentation, collection, preservation, and interpretation of physical evidence which may be as big as a truck or as small as a diatom or pollen grain. Recognition of items out of place, articles improperly located or items added to the crime scene are an

important part of crime scene processing. The criminalist collects, preserves, and makes interpretations about the evidence and their relation to the series of events resulting at the crime scene. The criminalist brings evidence back to the laboratory where examinations will be conducted. Interpretations are made about the relevance of a particular item from the crime scene by associating particular items of evidence to specific sources and reconstructing the crime scene. This means not only associating a suspect with a scene but also the telling of a story about what transpired before, during and after the crime. (Californian Association of Criminalists, 2017)

Following portion contends with admissibility of forensic evidence according to prevailing law, in Indian context. This part also focuses on generic responsibilities of prosecutors, Expert witnesses and judges to uplift such evidence towards successful verdict in court of law.

2. EVIDENCE

The Latin word “evidere” is the root of the term “evidence”, which means to prove something, to show distinctly, to discover as clear as possible, to create a neat view sight, to determine.

According to Sir Blackstone, the word “Evidence” means which makes clear, detects, reveals or exhibits the reality of the viewpoints or facts with subject to one or either side. (Blackstone, 2009)

According to Sir Taylor, to uphold or contradict any matter of fact by the means of argumentation is the law of Evidence. The truth of which is submitted to judicial investigation. (Kumar, 2012)

Evidence in Terms of Legal Language

Section 3 of The Indian Evidence Act, defines evidence in the following words. Evidence means and includes-

- (1) All the statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry; such statements are called Oral evidence;
- (2) All the documents including electronic records produced for the inspection of the court; such documents are called documentary evidence. (Legal India, 2017)

Different Forms of Evidence

There are many types of evidences defined in The Indian Evidence Act (IEA), 1872. Which are as follows:

Oral evidence.

Section 60 of the Indian Evidence Act, 1872 suggests the provision of recording oral evidence. “All those statements which the court permits or expects the witnesses to make in his presence regarding the truth of the facts are called Oral Evidence.” (Agarwal, 1961) It is the evidence which the witness has personally seen or heard. Verbal evidence is to be always to-the-point or positive, necessarily.

Documentary evidence.

Section 3 of The IEA says that all those documents which are presented in the court for inspection such documents are called documentary evidences. (Stephen, 2016)

Primary evidence.

Section 62 of IEA says “Primary evidence is classified as the supreme type of evidence. It means the document itself produced for the inspection of the court.” (The Indian Evidence Act, 1872, 2011) It is the evidence which provides the crucial indication in a controversial matter and establishes through documentary proof by providing an original document for investigation by the court.

Secondary evidence.

Section 63 of The Indian Evidence Act says Secondary Evidence is the inferior evidence. It is the evidence which holds a secondary position in the court. (Legal India, 2017) It is the evidence, after the demonstration of which, it is felt necessary to produce the supreme evidence. It is the evidence which is produced in the absence of the primary evidence. Hence, it is known as secondary evidence.

Real evidence.

The physical or material proof is termed as real evidence. Not by the information obtained from any person or witness, but by the examination of a substantial material, the real evidence of any case matter is brought to the knowledge of the court of law. (Legal India, 2017)

Hearsay evidence.

These are the proofs which are neither seen nor heard personally by the witness, nor has been realized by his senses. These are those which come to his/her knowledge by some other person(s). These falls in the feeble most class of evidences. (Lawnn, 2016) There is no provision to accept hearsay evidence except the fact that it has reasonability and accountability. It would be the most risky to take action upon the evidence, when there is no guaranteed assurance of its truthfulness.

Judicial evidence.

Evidence received by court of justice in proof or disproof of facts before them is called judicial evidence. The confession made by the accused in the court is also included in judicial evidence. Statements of witnesses and documentary evidence and facts for the examination by the court are also Judicial Evidence.

Non-judicial evidence.

Any confession made by the accused outside the court in the presence of any person or the admission of a party are called Non-Judicial Evidence, if proved in the court in the form of Judicial Evidence.

Direct evidence.

Evidence is either direct or indirect. In the judicial terminology, direct evidence is more frequently considered for describing the proof that directly supports the crime or innocence of the person during case trial. It can stand upon its own, and there is no requirement of any assumption. Audio tape recordings, Videos and various other forms of witness testimonies are to be used as direct evidence for supporting or opposing a claim.

Direct Evidence is that evidence which is very important for the decision of the matter in objection. The evidence whereby main facts and realities have proved that it is the proof of a person who had indeed, watched the criminal activity being committed and has given the description of offense. This presents the facts with sufficient back support.

Circumstantial evidence or indirect evidence.

The circumstantial or indirect evidence are the terms used for the evidences, which try to prove the truths of the case and are able to provide the certainty of the matter by the provision of other facts. The circumstantial evidence is the compilation of proofs, when taken into consideration together, are useful for inferring an essence about something which is unknown. It is used in the support of theory of a chain of incidents. The summation of multiple corroborative evidences, each part being circumstantial itself, constructs a proper logic for supporting the occurrence of any event. In civil and criminal investigations, corroboration is often supplied by one or more expert witnesses who provide forensic evidence. The statement before the police only is called circumstantial evidence of, complicity and not direct evidence in the strict sense. (Tahsildar Singh And Another vs The State Of Uttar Pradesh, 1959).

Forensic Evidence

Forensic evidence is the evidence obtained by the scientific examination of physical items to provide inferences of other facts and to recreate events. Forensic evidence often helps to establish the guilt or innocence of possible suspects. Analysis of forensic evidence is used in the investigation and prosecution of civil as well as criminal proceedings. Forensic evidence can be used to link crimes that are thought to be related to one another. For example, DNA evidence can link one offender to several different crimes or crime scenes, in traffic accident cases tyre and skid marks may be examined to determine direction and speed of a car prior to accident. Fingerprints at a scene indicate that a particular person was present. Such linking of crimes helps the police to narrow down the list of possible suspects and to establish modus operandi to identify and prosecute suspects.

Forensic evidence, presented by expert witness, is circumstantial evidence since it is presented to establish events that were not observed by the witness. Several forensic authorities (Fisher, 2004) (Gardner, 2004) (Lee, Palmbach, & Miller, 2004) have developed typologies for forensic evidence. These typologies cover the variety of forensic evidence collected at crime scenes: fingerprints, impression evidence, hair, fiber, firearms, biological evidence, drug evidence, and entomological evidence. Based on Fisher (2004) and Lee, Palmbach, & Miller (2004) and in conjunction with the parallel study by Peterson and Sommers, the following classification framework was employed for present study:

Biological evidence.

The most common types of biological evidence are body fluids like blood, saliva, semen, vaginal discharges, urine etc. Blood evidence comes in the form of wet blood or swabs of bloodstains collected from crime scenes. Buccal swabs are the most common way of collecting saliva evidence, usually from a victim or suspect. Other types of biological evidence include hair, nail, bones, faecal matter, perspiration etc. DNA profiling is also carried out in some cases from biological evidence.

Chemical evidence.

Any type of chemicals like acids/alkalis, hydrocarbons, petroleum products, Drug evidence including drugs (e.g., opium, cocaine, heroin and others) and drug paraphernalia (containers, spoons, etc.) discovered at the crime scene are classified as chemical evidence.

Physical evidence.

Natural and synthetic materials including clothing, metal objects, plastic, paper, soil, glass, wood, general objects including vehicles, containers, ornaments, and any other objects are called physical evidences.

Firearm (ballistic) evidence.

The artillery evidence including firearms (pistol, revolver, guns, rifles), ammunition (bullet traces, unfired bullets, empty cartridge cases, projectiles that have been fired) and the gunshot Residue (GSR) test. The main function of a GSR test is to determine if, a person was close to a firearm at the time of firing.

Fingerprint / footprint evidence.

Fingerprint evidence are divided into complete prints (whole fingerprints) and chance prints (only partial prints of one or more fingers). These prints can be found in forms of visible prints or latent prints. Latent prints needs to be treated with powdering (or other) technique on any physical material to make it visible.

Document evidence. Handwritten or Electronically printed data including any kind of documents, letters, registers etc. are considered in this category.

Toxicological evidence.

Any toxicological material like poisonous drugs, botanical material, viscera samples obtained after postmortem, gastric lavage etc. are categorized as toxicological evidences.

Medical evidence. All the physical examinations of victim or suspects by medical expert, post mortem examination reports, wounds and injuries etc. are considered as medical evidences.

Trace evidence.

Trace evidence is a general term for small, sometimes microscopic, material. It covers a wide variety of evidence, including fibers, hair, building materials (asbestos, paint, etc.), cigarettes, tobacco, glass, and others.

Other items.

Other items are a catchall category for evidence that does not fit in any of the above categories.

3. CRIMINAL JUSTICE SYSTEM

India is a Union of States and is governed by a written constitution which came into force on 26 November 1949. India consists of 29 states and 7 Union Territories. Due to its colonial heritage, India follows the Anglo-Saxon common law justice system. Article 246 of the Constitution provides for three lists which are enumerated in 7th Schedule of the Constitution. List-1 is the Union List which enumerates the subjects on which the Parliament of India has exclusive power to make the laws. List-2 is the State List which enumerates the subjects on which the legislature of a state has the power to make laws. The third list is the Concurrent list which enumerates subjects on which both the Indian Parliament and the Legislatures of the state can enact laws, but if there is any conflict or inconsistency between the laws made by the Indian Parliament and the legislature of any state, the law enacted by the Union Parliament will have overriding effect. Importantly, the "Public Order" and the "Police" are enumerated in Entries 1 and 2 respectively of the State List, meaning thereby that all matters relating to the organization, structure and regulation of the police force fall within the ambit of the states. However, the 'Criminal Laws' and the 'Criminal Procedure' are enumerated in List3, i.e., the Concurrent List. Both the Indian Parliament and state legislatures have the powers to make substantive and procedural laws in criminal matters. The states can also enact laws on local and special subjects. Thus, under the constitutional scheme, the basic criminal laws have been enacted by the Indian Parliament. (Singh, 2006)

4. BASIC CRIMINAL LAWS

The criminal law consists of the substantive law contained in the Indian Penal Code (IPC) as well as the special and local laws enacted by the central and state legislatures from time to time and the procedural law laid down mainly in the Code of Criminal Procedure, 1973 (Cr.P.C.) and the Indian Evidence Act, 1872. These three major Acts, i.e. the IPC, Cr.P.C and the IEA were enacted by the British during the second half of the 19th century. Out of these, the only major law that has been revised since Independence is the Cr.P.C, which was revised in 1973 on the recommendations made by the Law Commission of India. The other two laws, except for some minor amendments, have remained unchanged.

Substantive law.

The IPC defines different types of crimes and prescribes appropriate punishment for offences. Offences are classified under different categories- offences against state, armed forces, public order, public justice, public health, safety, morals, human body, property and offences relating to elections, coins, government stamps, weights and measures, religion, documents and property marks, marriage and defamation. The IPC has 511 Sections, of which 330 are about punishments. Besides IPC, the local and special laws also contain penal provisions.

Procedural law.

Procedural law describes the procedure to be followed in a criminal case from registration, investigation and to its final disposal after a proper trial by a court of law. Code of Criminal procedure and The Indian Evidence Act are two chief procedural laws in India. The police are not empowered to take cognizance of all penal offences. Criminal law makes a distinction between two categories of offences- cognizable and non-cognizable. The Indian Police Act has also been enacted by the Indian Parliament. The states have also enacted laws on several local and special subjects. Some states in India have also enacted their own Police Acts. The Indian Police Act, 1861, however, is the basic statutory law governing the constitution and organization of police forces in the states.

5. COMPONENTS OF CRIMINAL JUSTICE SYSTEM

The criminal justice system has four important components in India, namely, the Investigating Agency (Police), the Judiciary, the Prosecution Wing and the Prison & Correctional Services. A brief mention of their structure and their roles is made here below:

Investigating agency.

The police forces are raised by the state under the Indian Police Act, 1861. The basic duty of the police forces is to register cases, investigate them as per the procedure laid down in the Code of Criminal Procedure (to be referred to as the Code hereinafter) and to send them up for trial. In addition to the State Police Forces, the Government of India has constituted a central investigating agency called the Central Bureau of Investigation (CBI) under the special enactment called the Delhi Special Police Establishment Act, 1946. It has parallel jurisdiction in the matters of investigation in the Union Territories. It can take up the investigation of cases falling within the jurisdiction of the state only with the prior consent of the state governments concerned. There are certain other specialized investigating agencies constituted by the central government, in various departments, namely, the Customs Department, the Income Tax Department, the Enforcement Directorate, etc. They investigate cases falling within their jurisdictions and prosecute them in the courts of law. Thus, India has both the state police investigating agencies and central investigating agencies as mentioned above. CBI, however, is the primary investigating agency of the central government.

The courts.

The cases instituted by the state police and the Central Investigating Agency are adjudicated by the courts. We have a four tier structure of courts in India. At the bottom level is the Court of Judicial Magistrates. It is competent to try offences punishable with imprisonment of three years or less. Above it is the Court of Chief Judicial Magistrates, which tries offences punishable with less than 7 years. At the district level, there is the Court of District and Sessions Judge, which tries offences punishable with imprisonment of more than 7 years. In fact, the Code specifically enumerates offences which are exclusively triable by the Court of Sessions. The highest court in a state is the High Court. It is an appellate court and hears appeals against the orders of conviction or acquittal passed by the lower courts, apart from having writ jurisdiction. It is also a court of record. The law laid down by the High Court is binding on all the courts subordinate to it in a state. At the apex, there is the Supreme Court of India. It is the highest court in the country. All appeals against the orders of the High Courts in criminal, civil and other matters come to the Supreme Court. This Court, however, is selective in its approach in taking up cases. The law laid down by the Supreme Court is binding on all the courts in the country.

Prosecution wing.

It is the duty of the state to prosecute cases in the courts of law. The state governments have constituted cadres of public prosecutors to prosecute cases at various levels in the subordinate courts and the High Court.

Prisons and correctional services.

This is the fourth important element in the criminal justice system. The prisons in India are under the control of the state governments and so are the correctional services.

6. THE PROCESS OF CRIMINAL TRIAL

The procedure of criminal justice has the following key steps:

Step- 1: Registration of the First Information Report (FIR)

Police organization, in any society, is said to be the chief law enforcement agency of the criminal justice administration. Crimes and offences of general nature are, therefore, registered and investigated by the police stations. Police station is the primary and basic unit of crime registration in all civilized societies. Registration of

crime and recording of an FIR is thus, one of the fundamental duties of the police. Offences of various types, as per the provisions of CrPC, are classified as cognizable and non-cognizable offences. The offences in which police can arrest without warrant are classified as cognizable offences and the other ones are known as non-cognizable offences. On receipt of a report about commission of a cognizable offence, it should be recorded in the prescribed format, and this process is called recording of FIR.

Step- 2: Investigation of Crime

The concepts of Rule of Law, Due Process of Law and Natural Justice necessitate that all crimes should be registered promptly and they should be investigated impartially and competently. Police Station is the chief center of registration of crime and, accordingly, the staffs posted there have legal powers and prescribed duties to investigate the crimes and cases. Various provisions of the Cr.P.C. and other enactments empower police to register crimes and take up investigation for their legal and logical conclusion. After registration of the offence and sending FIR, the police officer has to proceed in person or he shall depute one of his subordinate officers to proceed to the spot for investigation and also for taking measures for discovery and arrest of the offender (section 157 Cr.P.C.). This would include functions like:

- Guarding and protecting the crime scene
- Recording of the crime scene
- Searching for the evidences
- Collection and packaging
- Maintaining chain of custody

Step-3: Filing of Charge sheet

After completion of investigation, the officer in charge of the police station sends a report to the area magistrate. The report sent by the investigating officer is in the form of a charge sheet, if there is sufficient evidence to prosecute the accused. If sufficient evidence is not available, such a report is called the final report.

Step-4: Court Trial

On receiving the charge sheet, the court takes cognizance and initiates the trial of the case. Common features of the Criminal Trial are:

- Framing of charge or giving of notice
- Recording of prosecution evidence
- Statement of accused
- Defence evidence
- Final arguments
- Judgment

Step- 5: Dispensing verdict

If the trial ends in conviction, the court may award any of the following punishments:

- Fine

- Forfeiture of property
- Simple imprisonment
- Rigorous imprisonment
- Imprisonment for life
- Death Sentence

In arena of criminal justice, laws are continually being broadened and revised to counter the alarming increase in crime rates. In response to public concern, law enforcement agencies have to expand their patrol and investigative functions, hoping to curtail the rising tide of crime.

7. CONCLUSION

The researcher has made in-depth study of court judgments from all possible angles to find out the importance and value attached to the Forensic reports by Investigating agency, public prosecutors and by the honorable court. All through this study certain important findings are observed. Thus it can be concluded that the role of forensic evidence is found inadequate and the gaps need to be filled by seriously considering the recommendation of Mali math committee report and implementation of the same. Forensic evidences, after being collected from crime scene, travel through various levels like Investigating agency, Forensic Laboratory, prosecution and court. They may reach up to final decision of court and help in endowing verdict or get dropped by any reasons. Among judgments mentioning forensic evidence, 20 % cases has been found wherein forensic evidence got dropped and could not assist in delivering judgment due to loopholes/gap in the system at various levels. This lacuna is observed at level of investigation, forensic laboratory, prosecution, witness (pancha) and/or court of law. The Supreme Court of India ruled that the accused had to establish that there were conditions that would lead to fair grounds for arguing that either death or grievous harm would be caused by the right to private protection extending into voluntary death. Private defence law does not require an attacker or an individual who is facing an attack to flee for safety. It entitles him to defend himself and law entitles him to defend himself privately. No private protection is appropriate if no danger is apprehended. There must be a need to avoid and imminent risk, actual or apparent.

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