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### THE STUDY ON RATIONALE FOR THE OPPOSITION TOWARDS ADMISSIBILITY OF DNA AS EVIDENCE IN INDIAN LEGAL REGIME

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#### **ABSTRACT:**

Deoxyribonucleic Acid is a basic genetic material in all human body cells. Each individual has DNA which is different from another. DNA analysis has turned into a typical form of evidence in criminal trials. It is also utilized in civil litigation, particularly in cases involving the determination of Paternity of Identity. The admissibility of the DNA evidence before the court always relies upon its accurate and legitimate accumulation, preservation and documentation which can satisfy the court that the evidence which has been placed in front it is reliable. DNA testing has occupied important position both in criminal as well as civil disputes, even though There is no particular legislation which is available in India which can give explicit guidelines to the investigating agencies and the court, and the procedure to be adopted in the cases involving DNA as its evidence. The several instances prove that various sect of society are against DNA Analysis, when DNA testing welcomed by some sections of society and thus the ambiguity prevails with respect to the conflicting opinion, Hence this research is carried out with an aim to understand and identify the rationale behind the opposition towards the admissibility of DNA as evidence in Indian Legal Regime. By virtue

of non probability convenience sampling method and using chi square test and symmetric measures, it could be found out that though a major population accept to the process of accepting DNA as a tool for administration of justice, it is interesting to find out that the younger generation agree in using DNA as a evidence before the court of law as evidence but the older generation doesn't agree to the same as it is violative of their privacy. Even if right to privacy is brought as opposition under the ambit of admissibility of DNA in court, it is objected only by the older generation and the main reason for such opposition is based on care and quality in performing the DNA tests. The study recommends that awareness must be made to all age groups so that the conflicting opinion may be avoided.

## INTRODUCTION

DNA is the abbreviation of DeoxyriboNucleic Acid (Omoto and Lurquin, 2004). It's a basic genetic substance in all human body cells (Griffiths, 2015). It's present in white corpuscles and not in red corpuscles. DNA structure determines human character, behavior and body characteristics. The structure of DNA varies from person to other (Sinden, 2012). Each individual has DNA which is different from another. DNA analysis, also called DNA typing or DNA profiling, examines DNA found in physical evidence, for example, blood, hair, and semen, and determines whether it tends to be matched to DNA taken from explicit individuals (John, 1981; Miller, 1990; Sinden, 2012). DNA analysis has turned into a typical form of evidence in criminal trials (John, 1981; Sinden, 2012). It is also utilized in civil litigation, particularly in cases involving the determination of Paternity of Identity (John, 1981; Miller, 1990; Allison, 2011; Sinden, 2012).

The admissibility of t

he DNA evidence before the court always relies upon its accurate and legitimate accumulation, preservation and documentation which can satisfy the court that the evidence which has been placed in front it is reliable (Moenssens, 2017). There is no particular legislation which is available in India which can give explicit guidelines to the investigating agencies and the court, and the procedure to be adopted in the cases involving DNA as its evidence.

Moreover, there is no particular arrangement under Indian Evidence Act, 1872 and Code of Criminal Procedure, 1973 to manage science, innovation and forensic science issues. Because of lack of having any such arrangement, an investigating officer has to face much inconvenience in collecting evidence which involves current mechanism to demonstrate the accused individual liable (Rajivan and United Nations Development Programme, 2010).

Section 53 of Code of Criminal Procedure 1973 authorizes a police officer to get the assistance of a medical practitioner in accordance with some basic honesty for the reason for the investigation. In any case, it doesn't enable a complainant to gather blood, semen and so on for bringing the criminal charges against the accused. The amendment of Cr. P. C. by the Cr. P. C. (Amendment) Act, 2005 has brought two new sections which authorize the investigating officer to gather DNA samples from the body of the accused and the unfortunate casualty with the assistance of a medical practitioner. These sections allow examination of individual accused of rape by medical practitioner and the medical examination of the rape unfortunate casualty

separately. Be that as it may, the admissibility of these evidences has remained in a state of uncertainty as the opinion of the Supreme Court and various High Courts in various choices remained conflicting. Judges don't deny the logical accuracy and definiteness of DNA testing, yet now and again they don't admit these evidences on the ground of legal or constitutional forbiddance and once in a while the general population strategy (Tucker *et al.*, 1996).

There is an earnest need to reevaluate these sections and laws as there is no standard present in the Indian Evidence Act, 1872 and Code of Criminal Procedure, 1973 to manage science and innovation issues (Lane, 1996; Tucker *et al.*, 1996). Many created nations have been forced to change their legislation after the introduction of the DNA testing in the legal framework. There are certain arrangements which are available in the Indian Evidence Act, 1872, for example, Section 112 which determine child's parentage and states that a child born in a valid marriage between a mother and a man within 280 days of the disintegration of the marriage, and the mother remaining unmarried demonstrates that the child has a place with the man, except if demonstrated generally yet again no particular arrangement which would cover present day logical methods.

DNA analysis is of most extreme importance in determining the paternity of a child in the cases of civil question (Lane, 1996; Tucker *et al.*, 1996; Shah, 1999). Need of this evidence is most significant in the criminal cases, civil cases, and in the maintenance proceeding in the criminal courts under Section 125 of the Cr. P. C. However studies show that there is opposition towards collecting and admitting DNA as evidence before the court of law and an ambiguity prevails with respect to the reasons for such opposition, hence this study is carried out with an aim to understand and identify the rationale behind the opposition towards the admissibility of DNA as evidence in Indian Legal Regime.

## **Review of Literature**

### **Legal position of DNA in India**

The call for DNA test on the civil side is generally made to settle the paternity issue involved in cases of divorce, maintenance, inheritance and progression and so on (Rights of Accused, 2009). It is noteworthy that Section 112 accommodates the legitimacy of a child born during wedlock and the main ground to disprove this assumption is non access of the husband. Along these lines at one point of time it was an issue before the court dealing with paternity issues whether such tests could be ordered (Bharti, 2006).

This issue was talked about finally in Gautam Kundu versus Bengal, where the division seat of apex court, inter alia, held as pursues:- —

- (1) That courts in India cannot order blood test as matter obviously
- (2) There must be a solid prima facie case in that the husband must establish non - access in order to scatter the assumption arising under section 112 of the Evidence Act
- (3) No one can be constrained to give a sample of blood for analysis.

Anyway in this manner a full bench of the Supreme Court in Sharda v Dharmpal, considered the intensity of a matrimonial court to order such test

and clarified that GoutamKundu (supra) isn't an authority for the recommendation that under no circumstances the Court can coordinate that blood tests be directed. It, having regard to the fate of the child, has, obviously, sounded a note of caution as regard mechanical passing of such order. The Court after powerful exchange summed up three significant ends, (India. National Human Rights Commission, 2007)

1. A matrimonial court has the ability to order an individual to undergo a medical test.

2. Passing of such an order by the court would not be in violation of the direct personal freedom under Article 21 of the Indian Constitution (Semple, 2007; Oliphant, 2012).

3. However, the Court should exercise such a power if the applicant has a solid prima facie case and there is adequate material before the Court. On the off chance that regardless of the order of the court, the respondent declines to submit himself to medical examination, the court will be qualified to draw an adverse inference against him (Semple, 2007).

### **Judicial Interpretation**

In *Bhabani Prasad Jena v. Convener Secretary, Orissa State Commission for Women and Another*, the Supreme Court portrayed the approach for courts while directing DNA tests. The apex court watched, —In a matter where paternity of a child is in issue before the court, the utilization of DNA is an amazingly delicate and touchy aspect. One view is that when present day science gives means of ascertaining the paternity of a child, there ought not be any hesitation to utilize those means at whatever point the occasion requires. The other view is that the court must be reluctant in utilization of such logical advances and instruments which result in invasion of directly to privacy of an individual and may not exclusively be prejudicial to the privileges of the parties yet may have devastating impact on the child. In some cases the aftereffect of such a logical test may bastardize an innocent child despite the fact that his mom and her mate were living together during the season of origination. In our view, when there is apparent clash between the directly to privacy of an individual not to submit himself forcibly to medical examination and obligation of the court to reach reality, the court must exercise its caution simply after balancing the interests of the parties and on due consideration whether for an only choice in the matter, DNA is eminently required. DNA in a matter relating to paternity of a child ought not be coordinated by the court as a matter obviously or in a routine manner, at whatever point such a demand is made. The court has to consider different aspects including assumption under Section 112 of the Evidence Act; advantages and disadvantages of such order and the trial of 'eminent need' regardless of whether it isn't feasible for the court to reach reality without utilization of such test.

It is worth making reference to the judgment of the Delhi High Court in *Shri Rohit Shekhar v. Shri Narayan Dutt Tiwari and Anr.* In which the court has gone above and beyond. In peculiar facts of this case, the applicant, who was born during a subsisting marriage of her mom, asked for DNA test on the respondent, claiming the latter to be his biological father. The Court has ordered DNA test on the respondent, an outsider to marriage, primarily

recognizing, from various international covenants, the directness of a child to know about his biological antecedents. Anyway the Court has been cautious to decisions of the Hon'ble Supreme Court in Sharda (supra) and Bhabani Prasad Jena and supported on reasons a prima facie case for ordering DNA test.

In the case of Anita M/O Eknathkatkar versus Addl. Commissioner Kashik and ors, the Supreme Court in this case ordered the DNA and acted on the report and expelled the appeal. The child got alleviation and the court held that the respondent is the mother of the candidate.

### **Statement of Problem**

Though various citations prove DNA is addressed as one of the most important form of evidence before the court of law in both civil as well as criminal cases. On the other hand it is also important to recognize that the late refusal of the Supreme Court to expel the Delhi High court's choice ordering veteran congress leader N.D. Tiwari to undergo the DNA test is important from the viewpoint of the admissibility of such evidence. In this case, Rohit Shekhar has claimed to be the biological child of N.D. Tiwari, yet N.D. Tiwari is reluctant to undergo such test stating that it would be the violation of his Right to privacy and would cause him open humiliation. However, Supreme Court dismissed this point stating when the aftereffect of the test would not be revealed to anyone and it would under a sealed envelope, there is no point of getting humiliated. Preeminent Court additionally stated that we want young fellow to get equity; he ought not left with no cure. It would be extremely interesting to see that how courts in India would allow the admissibility of DNA testing later on. These instances prove that various sect of society are against DNA Analysis, when DNA testing welcomed by some sections of society and thus the ambiguity prevails with respect to the conflicting opinion, Hence this research is carried out.

### **Research Methodology**

#### **Study area**

A. As the researcher intends to understand the rationale behind the opposition towards admissibility of DNA evidence, the study is divided into 2 categories

—

1. Public Opinion on Using DNA as evidence in court as violative of right to privacy
2. Public Opinion on proficiency and care in testing

#### **Methods of study**

1. Analytical Method
2. Quantitative method
3. Comparative method
4. Descriptive method

#### **Type of research**

1. Applied Research
2. Quantitative Research
3. Explorative Research
4. Comparative research

## 5. Descriptive research

### Data collection

Present study is based on Primary as well as Secondary sources of data, which are as –

1. Primary Sources – Primary data is collected by collecting questionnaire from general public
2. Secondary Sources – Secondary data is collected through literature of N.G.O. reports, Government Reports, Websites, Research Articles, and Newspapers

Variable used:

1. Independent variable: place of living
2. Dependent variable

### Statistical Tool used:

1. chi square analysis
2. symmetric measurers

## RESULTS AND DISCUSSION:

### Sample size and Frequencies

#### Age

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	18-30	1044	58.9	58.9	58.9
	31-40	623	35.1	35.1	94.0
	other	107	6.0	6.0	100.0
	Total	1774	100.0	100.0	

### Sample size calculation

The study includes a 1774 sample where the 1044 respondents are from the age group 18-30 years, 623 respondents are from age group 31 to 40 years and 107 respondents are from age groups 40 and above addressed as others. Since the study is based on non probability convenience sampling no specific calculations is used.

### Tables and calculations

In this study for each issue a survey is done where a sample size mentioned is taken and the percentage is also mentioned, to determine the validity and the determine the study results chi- square analysis and correlation symmetric measures method is used. When the pearson values 'Asymp. Sig' value is less than 0.05, the alternate hypothesis is considered and when the pearson value 'Asymp. Sig' value is greater than 0.05, the null hypothesis is accepted. For determining the hypothesis the variables are cross tabulated.

### Hypothesis

**H<sub>0</sub>:** admissibility of DNA as evidence is not opposed by all age groups under the reason of proficiency and care in testing

**H<sub>1</sub>:** admissibility of DNA as evidence is opposed by all age groups under the reason of proficiency and care in testing

### Concept Analysis

#### 1. Public Opinion on Using DNA as evidence in court as violative of right to privacy

**Table1. Public Opinion on Using DNA as evidence in court as violative of right to privacy**

Crosstab				
Count				
		Public Opinion on Using DNA as evidence in court as violative of right to privacy		Total
		yes	no	
Age	18-30	664	380	1044
	31-40	378	245	623
	other	5	102	107
Total		1047	727	1774

### Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square <sup>a</sup>	140.431	2	.000
Likelihood Ratio	156.749	2	.000
Linear-by-Linear Association	70.754	1	.000
N of Valid Cases	1774		

DNA is used before the court as a tool for determination of the case, though a major population accept to the process of accepting DNA as a tool for administration of justice, it is interesting to find out that the younger generation agree in using DNA as a evidence before the court of law as evidence but the older generation doesn't agree to the same as it is violative of their privacy. This proves that there is a conflicting opinion between the younger and the older generations.

Pearson chi square 'AsympSig' value is 0.00 which value is less than 0.05, which proves that there is a relationship between independent and dependent variables. The independent variable chosen is age group which is tested against the dependent variable Public Opinion on Using DNA as evidence in court as violative of right to privacy. therefore from the analysis statistics the could infer that there is a conflicting opinion between the younger and the older generations

## 2. Public Opinion on proficiency and care in testing

**Table2. Public Opinion on proficiency and care in testing**

Crosstab		
Count		
	Public Opinion on proficiency and care in testing	Total



		strongly agree	agree	neutral	disagree	strongly disagree	
Age	18-30	343	245	349	55	52	1044
	31-40	232	144	146	69	32	623
	other	102	0	4	1	0	107
Total		677	389	499	125	84	1174

### Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	3.001 <sup>a</sup>	1	.083		
Continuity Correction <sup>b</sup>	2.824	1	.093		
Likelihood Ratio	3.016	1	.082		
Fisher's Exact Test				.086	.046
Linear-by-Linear Association	3.000	1	.083		
N of Valid Cases	1774				

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 225.64.

b. Computed only for a 2x2 table

Symmetric Measures					
		Value	Asymptotic Standardized Error <sup>a</sup>	Approximate T <sup>b</sup>	Approximate Significance
Interval by Interval	Pearson's R	-.041	.024	-1.733	.083 <sup>c</sup>
Ordinal by Ordinal	Spearman's Correlation	-.041	.024	-1.733	.083 <sup>c</sup>

DNA testing is one of the most tedious processes which require a high requirement of care and proficiency while carrying out such a test. It could be seen that both older and younger generations unanimously agree to the fact that proficiency and care in testing must be ensured for the purpose of administration of justice.

Pearson chi square 'Asymp Sig Value is 0.083 which value is greater than 0.05, which proves that there exists no relationship between independent and dependent variable. the independent variable chosen is the age group which is tested against the dependent variable Public Opinion on proficiency and care in testing. Therefore from the analysis statistics they could infer that both older and younger generations unanimously agree to the fact that proficiency and care in testing must be ensured for the purpose of administration of justice.

The above cited case laws prove the fact that various sects of society are against DNA Analysis and DNA testing welcomed by some sections of society and thus the ambiguity prevails with respect to the conflicting opinion. The study reveals that the younger generations agree in using DNA as evidence before the court of law as evidence but the older generation doesn't agree to the same. This proves that there is a conflicting opinion between the younger and the older generations. But at the same time, both older and younger generations unanimously agree to the fact that proficiency and care in testing must be ensured for the purpose of administration of justice.

The current study is influenced by psychological approach and legal awareness towards the practice of DNA analysis for conviction, right to privacy may be relaxed when it comes to administration of justice because one who knows their legal rights and exceptions did not oppose the DNA testing at the same time those who don't know such liabilities oppose. At the same time, psychological approach is also important in this case, belief over one's perceptions as well as one's own fear brings such opposition to the glare of lime light.

The parameters that are included in this study are Public Opinion on Using DNA as evidence in court as violative of right to privacy and Public Opinion on proficiency and care in testing. These two parameters are chosen because objection towards any practice in trial shall occur because of three main reasons which include violation of rights, lacunae or arbitrariness in law or ambiguity over proficiency in such practice. The review proves that though there is no law present on DNA testing legislation on evidence as well as criminal procedure include this process, hence lacunae or arbitrariness in law is omitted.

IN USA, all scientific evidence in criminal trials, including evidence derived from DNA identification analysis, must satisfy the test of admissibility in effect in a particular jurisdiction. In general, courts use two tests. The Frye test was pronounced by the U.S. Circuit Court in the District of Columbia in *Frye v. United States*. The second rule follows the basic relevancy standard of the federal rule of evidence and is used in a majority of state jurisdictions. For admissibility under the federal rules, scientific evidence must have some relevance to the issues in the case, and its probative value must outweigh the potential for prejudice. In *Daubert v. Merrell Dow Pharmaceuticals*.

The study recommends that awareness must be made to all age groups so that the conflicting opinion may be avoided.

## **FINDINGS**

1. DNA Analysis and DNA testing is welcomed by some sections of society.
2. Younger generation agree in using DNA as evidence before the court of law as evidence but the older generation doesn't agree to the same.
3. Both older and younger generations unanimously agree to the fact that proficiency and care in testing must be ensured for the purpose of administration of justice.

## **RECOMMENDATIONS**

1. Awareness must be made to all age groups so that the conflicting opinion may be avoided.
2. DNA databases must be maintained.
3. Legislature must make certain guidelines for admissibility of DNA as evidence.

## CONCLUSION

The study reveals that the younger generations agree in using DNA as evidence before the court of law as evidence but the older generation doesn't agree to the same. This proves that there is a conflicting opinion between the younger and the older generations. But at the same time, both older and younger generations unanimously agree to the fact that proficiency and care in testing must be ensured for the purpose of administration of justice. When this study is compared to the situation in United States, the court have given tests for the purpose of DNA testing, thus there is no objection to this practice, therefore it is concluded that though right to privacy is brought as opposition under the ambit of admissibility of DNA in court, it is objected only by older generation because of the difference in psychological approach but the ensuring care and quality in performing the test is the main reason for such opposition. thus the study recommends that Awareness must be made to all age groups so that the conflicting opinion may be avoided and legislature must make certain guidelines for admissibility of DNA as evidence

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