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## THE ADMISSIBILITY OF DNA PROFILING EVIDENCE IN INDIAN CRIMINAL JUSTICE SYSTEM\*

### ABSTRACT

In criminal law, the most pertinent question which generates much debate among the jurists, judges, scientists, lawyers and academicians is how far the value based system of justice requires to be changed, modified or re-oriented for the purpose of utilizing the benefit of modern scientific discoveries and technological advancement in justice delivery system. Therefore, the problems which the law makers and judges would face in introducing the new technology, is how to strike a balance between the fundamental rights of the accused in a criminal case and the larger interest of society as well as ensuring infallible investigation, because sometimes it will be difficult to utilize the benefit of scientific methods in criminal investigation without touching the fundamental rights of the accused. One of the such controversial issues is admissibility of DNA Profiling in Indian Criminal Justice System. DNA fingerprinting is a method of identifying individuals by their DNA characteristics. In India, the process finds its maximum applicability in determining parental linkage and solving offences involving sexual assaults/ rapes.

Though widely used by investigating agencies in solving crimes The Code of Criminal Procedure in India and the Indian Evidence Act, 1872 do not provide for appropriate legal framework for application of forensic science and its latest tools, like DNA technology. When the previous CrPC and IEA came into being, forensic evidence had not been evolved and evaluated substantially. Later on also, these aspects were overlooked though certain modifications were introduced in law. Despite its widely acknowledged merits, there is no provision in our legal system for admissibility of DNA profiling evidence in the administration of justice.

After 2005 amendment to the Code of Criminal Procedure, there are provisions validating the collection of DNA samples for examination of accused and suspects. But, admissibility of DNA evidence has been left largely to the discretion of judges, which makes it highly unpredictable.

The paper after addressing the admissibility issue, focuses on benefits of applicability of DNA fingerprinting in criminal system, how the process confirms to the touchstone of classical principles of criminal law and the proactive steps of the legislature to advance the same. We then conclude on a positive note understanding that judiciary and legislature need to work together to end

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that confusion and uncertainty regarding the application of DNA profiling evidence and promoting its implementation in the criminal justice system.

## **Introduction**

The traditional evidentiary sources such as confessions and approvers, eye witnesses etc. have lost significance in the contemporary criminal justice system. The witnesses tend to turn hostile due to elongated trials. The prosecution must rely on more concrete, productive and authentic methods of extracting convictions wherein the police is not required to use third degree methods which are not only less productive but also violative of fundamental rights. However, science provides the answers to above mentioned issues. The scientific evidence is immutable and there are no chances for it to turn hostile. Moreover it is based on the perennially available clue materials.<sup>1</sup>

However, the vast potential of forensic science has not been realized and appreciated in India. We have failed to make our police authorities, advocates and judges adapted to them. The forensic evidence begotten on long trials in laboratories, consequently, is often rejected in the courtrooms.<sup>2</sup>

### **1.1 What is DNA Fingerprinting?**

DNA fingerprinting (also known as DNA testing, DNA profiling, or DNA typing) is a scientific method which identifies individuals by their DNA characteristics. In DNA fingerprinting a small set of DNA variations takes place which is likely to be unique from individuals who are unrelated to the subject. The technique is called DNA fingerprinting as the results of the method are equally unique to an individual as his fingerprints are.<sup>3</sup>

### **1.2 Evolution of DNA Profiling Technique**

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<sup>1</sup> B. R. SHARMA, FORENSIC SCIENCE IN CRIMINAL INVESTIGATION & TRIALS, Page (1&2), 4<sup>th</sup> Edition, 2003.

<sup>2</sup> *Id.*

<sup>3</sup> [www.britannica.com/science/DNA-fingerprinting](http://www.britannica.com/science/DNA-fingerprinting).

The initial use of the technique was made to determine the paternity; the samples were taken clinically to attain the genetic evidence in order to draw child parent linkage. It was first used in the criminal justice system in the year 1986, when the molecular biologist **Alec Jeffreys** was asked by the police forces to use forensic technique in order to corroborate the confession of the accused in two rape- murder cases. The accused was not found to be the actual perpetrator and the actual culprit was caught eventually through the application of the DNA Profiling in evidence extraction.<sup>4</sup>

Shortly after the above mentioned instance the courts in United States also made use of the DNA Profiling Technique. In 1987 Orange County Circuit Court of Florida found the accused guilty of rape as the DNA from the blood sample of the accused matched with the traces of semen found in the body of the victim.<sup>5</sup> The first high court pronouncement favouring the use of the technique was made in the state of West Virginia in the year 1989.<sup>6</sup>

In the initial years, post pronouncement of the abovementioned judgments, the admissibility of the technique in criminal justice system did not face any challenge. The situation, but, changed and the opposition arose from the defence on the conclusive nature of the DNA evidence, with time as the techniques was widely being used by the prosecution.

### **1.3 Application of DNA Profiling Technique in India**

The use of DNA profiling technique in India can be classified into below mentioned categories:<sup>7</sup>

#### Civil Cases

- i. Where the Paternity or Maternity is in question;
- ii. Where, in the immigration cases, the biological relationships are to be established;
- iii. Dealing with the swapping of children in the hospitals;
- iv. Where body identification is in question in aftermath of a disaster.

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<sup>4</sup>LISA CALANDRODENNIS J. REEDER KAREN CORMIER, EVOLUTION OF DNA EVIDENCE FOR CRIME SOLVING – A JUDICIAL AND LEGISLATIVE HISTORY.

<sup>5</sup>Andrews v. State, 533 So. 2d 841 (Fla. Dist. Ct. App. 1988).

<sup>6</sup>State v. Woodall 385 S.E.2d 253 (W. Va. 1989).

<sup>7</sup>SUKANYA PANI, CHETANA GANDHI, HARITA RAO, 'DNA FINGERPRINTING IN HUMAN HEALTH AND SOCIETY', Conference Paper on Impact of New Biology on Justice Delivery System held at NALSAR, Hyderabad, between 3-5 October, 2003.

## Criminal Cases

- i. Where mutilated remains are to be identified;
- ii. Cases involving sexual assault;
- iii. Criminal cases involving murder and resolution thereof;
- iv. Forensic medicine;
- v. Identification of exhumed bodies;
- vi. Cases involving Identification of Sexualities of remains of human bodies.

### **1.4 Admissibility of DNA Evidence in Indian Criminal Justice System**

Proper and reliable collection, documentation and preservation of DNA evidences are fundamental in determining their admissibility in the court of law. There exists no specific legislation on the topic in India and therefore the investigating agencies and the courts are devoid of specific guidelines on the procedure to be adopted while collecting DNA evidence. Moreover, the two major legislations in India dealing with the criminal trial (viz. the Code of Criminal Procedure, 1973 and the Evidence Act, 1872) are silent of accommodating these new advancements in evidence collection techniques. The investigating officer, therefore, suffers from trouble while collecting the evidences based in the forensic techniques due to lack of law and training on the subject.<sup>8</sup>

The introduction of the DNA Profiling Technique has posed serious challenge to some legal and fundamental rights of an individual such as “Right to privacy”, “Right against Self-incrimination”. And this is the most pertinent reason why courts sometimes are reluctant in accepting the evidence based on DNA technology.

## **CONCEPT OF DNA PROFILING**

### **2.1 Definition and Structure of DNA**

Each of the in-numerable cells composing the human body carries a complete sequence of chromosomes. Each cell in human body contains nucleus with in which lies the genetic materi-

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<sup>8</sup>DR. NIRPAT PATEL AND VIDHWANSH K GAUTAMAN, THE ROLE OF DNA IN CRIMINAL INVESTIGATION – ADMISSIBILITY IN INDIAN LEGAL SYSTEM AND FUTURE PERSPECTIVES, [www.ijhssi.org](http://www.ijhssi.org) Volume 2 Issue 7| July 2013| PP.15-21, Guest Lecturer at Department of Criminology & Forensic Science, Dr. Harisingh Gour Central University, Sagar.

al of the human body called the Deoxyribo-Nucleic Acid (DNA).<sup>9</sup> The DNA carries the genetic code of the human body and therefore determines the bodily and mental characteristics. DNA, for this reason, is considered as the building blocks of life.<sup>10</sup>

The DNA is the hereditary material, inherited from the parents and ancestors, which lies in a particular sequence of composing proteins in nucleus of each cell in human body. The DNA being found within the nucleus of the cell is known as nuclear DNA. DNA in the human body contains, majorly, four proteins (or bases) namely:

- Adenine (A)
- Guanine (G)
- Cytosine (C)
- Thymine (T).

The DNA base Adenine (A) pairs up with Thymine (T) and Cytosine (C) pairs up with Guanine (G). Each base apart from this attached to a phosphate and a sugar molecule. A combination of sugar, Base and Phosphate is called a nucleotide. DNA in human being contains about 3 billion bases and they are similar in two persons for about 99% of the cumulative bases. The sequence of bases in DNA is different for different information which is to be transmitted. This is analogical to how a set of alphabets form a word and a set of words form a sentence.<sup>11</sup> Nucleotides arrange themselves in two long strands which form spiral structure and known as the double helix. The structure resembles to a twisted ladder. The bases attached to each other form the rungs and the phosphate and sugar molecules bonded to each base form the sides of it.

DNA's present in the body can imitate and form copies of it. Both the strands of the DNA open up and make a copy of each and become two DNA stands. Therefore, newly formed DNA has one copy of the old DNA blueprint from where the copy is made.<sup>12</sup>

## **2.2 Where can DNA be found at a crime scene?**

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<sup>9</sup> DR. JAISING P. MODI, A TEXTBOOK OF MEDICAL JURISPRUDENCE AND TOXICOLOGY, (Pg-196), 24<sup>th</sup> Edition, 2011.

<sup>10</sup>JYOTIRMOY ADHIKARY, DNA TECHNOLOGY IN ADMINISTRATION OF JUSTICE, (Pg-21), 2007 edition.

<sup>11</sup>DR. ANANYA MANDAL, MD, NEWS MEDICAL LIFE SCIENCES, <http://www.news-medical.net/life-sciences/What-is-DNA.aspx>, last accessed at 3:10 PM on 14<sup>th</sup> October, 2016.

<sup>12</sup> *Id.*

DNA evidence can be found almost anywhere at a crime scene. Only a small amount of human cells is sufficient to provide DNA evidence that will help solve a crime. Much of the evidence may be found on a crime victim. Some examples of places where DNA evidence may be found include: Cigarettes, Clothes, Stamps, Bite marks, Weapons, Cups and Tissues.<sup>13</sup>

Since a person's DNA is located throughout his entire body, any materials left from his body at a crime scene will contain his DNA. Some examples of bodily materials that contain DNA evidence include: Blood, Saliva Perspiration, Hair, Teeth, Fingernails and Semen etc.<sup>14</sup>

### **2.3 Methods and Procedure of DNA Identification Tests**

DNA Profiling evidence could easily be extracted from a crime spot; as slight presence of human cells would be sufficient for the purpose. The victim of the crime could be a great source of DNA Evidence against the culprit. The DNA Evidence, for example, may be extracted from Clothes, Cigarettes, Bite Marks, Stamps, Cups/Tissues, and Weapons etc.<sup>15</sup> As presence of DNA is indispensable in all the parts of human body, any bodily material left by the culprit at the crime scene would be sufficient. The bodily material, for example, may include Saliva Perspiration, Blood, Teeth, Hair, Semen and Nails etc.<sup>16</sup>

The technique of DNA Fingerprinting involves division of DNA (extracted from the body of the suspect) in several fragments to make them form a unique pattern. The unique pattern so obtained is matched from the DNA sample extracted from the site of crime. If both the samples of DNA match with each other the evidence against the suspect is conclusive as the chances of the DNA sample not belonging to the suspect are lesser than one-in-thirty billion.<sup>17</sup>

A technique for examining the VNTRs (Variable Number of Tandem Repeats) was developed by Dr. Alec Jeffreys in the year 1985. The technique is known as Restriction Fragment Length Polymorphism (RFLP). The development of the technique gave birth to the DNA fingerprint-

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<sup>13</sup> Use of DNA in Criminal Investigations, <http://criminal.lawyers.com/criminal-law-basics/use-of-dna-in-criminal-investigations.html>.

<sup>14</sup> *Id.*

<sup>15</sup> Use of DNA in Criminal Investigations, <http://criminal.lawyers.com/criminal-law-basics/use-of-dna-in-criminal-investigations.html>.

<sup>16</sup> *Id.*

<sup>17</sup> K S N REDDY, THE ESSENTIALS OF FORENSIC MEDICINE AND TOXICOLOGY, Pg-39, 1 21<sup>st</sup> Edition.

ing process.<sup>18</sup> Polymerize Chain Reaction (PCR) is another effective method of identification of DNA for evidentiary purposes. The PCR method targets and selectively amplifies the short segments of sequences of DNA to a million times and therefore the technique is also called as 'gene amplification'. The technique is useful as the evidence could be generated even in cases where a very trivial amount of DNAs are found in bloods or hairs etc.<sup>19</sup>

## **ADVANTAGES OF DNA PROFILING AND CHALLENGES IN ITS USAGE IN INDIA**

### **3.1 Advantages of DNA Profiling**<sup>20</sup>

i. Accuracy:

The DNA of people other than that of criminal could be found at the crime scene. The investigation bodies use the technique of fingerprinting to identify the DNA of the culprit. The DNA profiling technique today has evolved enough to separate each sample of blood which is found mixed at the crime scene. The accurate conviction in the cases of rape has been on a constant rise.

ii. Reliability:

The DNA evidence because of its immutability holds greater acceptability and reliability over the techniques like NARCO Analysis test. The Narco Analysis, being a subjective test, leaves the room for manipulation which is not the case for DNA profiling. The advancements in technology has been able to shun the traditional doubts that two different individual may have similar DNA Sequences. Hence the courts hold more confidence in the DNA Profiling techniques as compared to the traditional Narco Analysis Reports.

iii. Limitations:

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<sup>18</sup> Supra ft no. 9

<sup>19</sup>Anupuma Raina, TD Dogra, 'Application of DNA Fingerprinting in Medico Legal Practice', Journal of the Indian Medical Association, Vol 100, no 12, December 2002.

<sup>20</sup>ABHIRAJ THAKUR, USE OF DNA FINGERPRINTING IN INDIAN CRIMINAL LAW, <http://blog.ipleaders.in/use-dna-fingerprinting-indian-criminal-law/>.

In cases of identical twins, which have similar DNA Sequences, the enforcement agencies are skeptical of using the DNA Profiling Methods in identifying the culprit. This is one of the greatest limitations of the DNA Profiling technique. In cases of identical twins where one of them has committed a certain crime, DNA sequencing fails to answer that which one of them is the real culprit. In such cases the fingerprints of the culprit, if found on the site of crime, are used as the identical twins hold slight variation in their fingerprints. In the courts, but, only the full fingerprints are admissible as partial finger prints do not have same reliability as full prints holds.

### **3.2 Challenges of its usage in India<sup>21</sup>**

i. Handling of samples:

The admissibility of DNA Profile evidences in India becomes difficult because of lack of knowledge and adequate training to police and other staff in regards to proper preservation, collection and documentation of DNA Samples.

ii. Storage of Samples:

The unfettered powers of the police in regards to retention and collection of DNA samples of the suspected individuals even on acquittal has raised concerns about misuse of the DNA evidences. This further raises the concerns of privacy of individuals.

iii. Lack of test centres:

India lacks in number of forensic centers capable of DNA Testing. It decreases the feasibility of extraction of the evidence. The extraction of DNA evidence, in the foreign countries, is highly feasible due to a large number of forensic centers capable of collecting the evidence. [www.lawmantra.co.in](http://www.lawmantra.co.in)

iv. Irregularities in the scientific processes:

Possibilities of laboratory error or human error pose a serious threat on the admissibility of DNA Profiling Evidence in the criminal justice system.

v. Socially low acceptance of this concept:

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<sup>21</sup> *Id.*

There may be possibility of infringement of certain fundamental rights such as right to privacy, right to self incrimination, the presumption of innocence and right to personal liberty. Therefore, society at large is reluctant in accepting DNA Profiling evidence.

## **ADMISSIBILITY OF DNA EVIDENCE IN CRIMINAL JUSTICE SYSTEM**

The sole criteria for admissibility of DNA evidence in the court rests on its accurate and proper collection, preservation and documentation which can satisfy the court that the evidence which has been presented before it is reliable. In our adversarial system, there is no adequate provision in the Code of Criminal Procedure or Indian Evidence Act to take into account DNA Profiling evidence. Due to which prosecution and investigating officers has to face difficulty, hence accused go scout free and justice was not done.<sup>22</sup>

### **1. Legislative Position regarding DNA Technology in CrPC and IEA**

After 2005 amendment to the Code of Criminal Procedure, 1973, two new sections namely Section-53A and Section-164A were added, which authorize the investigating officer to collect DNA sample from the body of the suspect as well as the victim with the help of a registered medical practitioner. The sections allow examination of accused and victim of rape by registered medical practitioner respectively on the request of police officer not below the rank of Sub-Inspector.<sup>23</sup>

The Supreme Court and High Courts in India still are reluctant in admitting DNA evidences, based on the belief that it is in contravention with basic fundamental rights of the accused as well as certain classical principles of criminal law. Hence, there are conflicting views regarding its admissibility in a court of law, not because Judges questions the scientific accuracy of DNA technique, but due to absence of any clear cut legislation. Therefore, there is a pressing need to address such issues.

Section 112 of Evidence Act; which is conclusive proof determining paternity of a child and states that if child born within 280 days of the dissolution of the valid marriage and the mother

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<sup>22</sup>C. D. FIELD'S, EXPERT EVIDENCE AND OPINIONS OF THIRD PERSONS (MEDICAL AND NON-MEDICAL), 4<sup>th</sup> edition 2005.

<sup>23</sup>Section-53A and Section-164A of the Code of Criminal Procedure (Amendment) Act, 2005.

remains unmarried for the entire period, is sufficient to prove that the child belongs to the man. The Supreme Court did not allow to adduce the DNA evidence disputing the provisions of the above mentioned section.<sup>24</sup>

## **2. Judicial decisions regarding conflict between fundamental rights and admissibility of DNA Profiling Evidence**

In the recent past, Courts are reluctant in admitting DNA evidence because the advancement of DNA Profiling technique has posed serious hurdles on individuals Right to Privacy and Right against Self-incrimination under Article 21 and Article 20(3) of the Constitution of India respectively. Right to Privacy is embodied under Right to Life and Personal liberty i.e. Article 21, and Right against Self- Incrimination which is a provision of fair trial and also a safeguard for an accused person in criminal cases from giving any evidence against himself which can make him guilty.

But the Supreme Court expressly held in various cases that Right to Life and Personal Liberty is not an absolute Right under Article 21. In **Govind Singh v/s State of Madhya Pradesh**,<sup>25</sup> the Hon'ble Court held that Part-III must be subject certain restriction based on the compelling public interest. Also, in another case **Mr. X v. Hospital**,<sup>26</sup> The Supreme Court balanced the two conflicting fundamental rights and held that if medical examination of a person will be allowed in necessary circumstances for public interest then there will be no infringement of the right to privacy. The recent judgement of the Supreme Court upholding Delhi High Court decision, directing Congress Leader N.D. Tiwari to undergo DNA test to determine the paternity dispute, which was alleged by Rohit Shekar to be his biological son. As he alleges DNA test to be violative of Right to Privacy and Right against Self-incrimination and will lead to public humiliation. But Supreme Court refuted the contention stating that it would not be revealed in public domain and will be confidential for the sake of justice.<sup>27</sup>

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<sup>24</sup>Dipanwita Roy vs. Ronobroto Roy in Civil Appeal no. 9744 of 2014.

<sup>25</sup> AIR 1975 SC 1378, 1975 SCR (3) 946

<sup>26</sup> AIR 1999 SC 495 ;1998 SCW 3662

<sup>27</sup> Rohit Shekhar v. Sri Narayan Dutt Tiwari, AIR 2012 Delhi 151

The Supreme Court in **Sharma v. Satish**,<sup>28</sup> enlarged the ambit of Art 20(3) by giving broad interpretation to it, where testimony of the accused includes almost everything. But again Supreme Court reconsidered its earlier decision in **State of Bombay v. Kathi Kalu Oghad**,<sup>29</sup> where the prime question was that whether directing the accused to give handwriting and signature sample will be violative of Art-20(3) of the Constitution. So, hon'ble court has held sole purpose of this provision is to provide accused adequate safeguard against custodial torture. Therefore, fingerprinting, handwriting and signature specimens will not be considered as violative of Art 20(3). Lastly, it should also be kept in mind that DNA evidence not only implicate an individual but also exonerate him/her of false charges.

In light of the above judgments, it can be concluded that in absence of legislative guidelines to the judiciary, the admissibility of the DNA Evidence is very unpredictable as it is dependent largely on the discretion of judiciary.

### **3. Whether DNA Evidence violate Classical Principles of criminal law**

The classical principles of criminal law are necessary to act as a restraint on the arbitrary powers of the state. It would be absurd to say that a statute must be in consonance with all the classical principles and on the other hand a single principle can't justify the statute. So, the draft bill is in consonance with the following principles:<sup>30</sup>

#### **A. Principle of Non-retroactivity:**<sup>31</sup>

According to this principle, a penal statute cannot have retrospective operation. It is so because an individual must know whether the conduct falls under the ambit of the Act so that he can avoid such conduct. It is based on the premise that a conduct which was lawful at the time of its commission cannot be held as an offence by subsequent legislation.

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<sup>28</sup> AIR 1954 SC 300

<sup>29</sup> AIR 1961 SC 1808

<sup>30</sup> ANDREW ASHWORTH, PRINCIPLES OF CRIMINAL LAW, 5<sup>th</sup> edition, 2006.

<sup>31</sup> *Id.*

It is nowhere being mentioned in the draft bill that it is going to have retrospective operation, therefore we can infer that this bill is in conformity with the principle of non-retroactivity.

B. Principle of Maximum Certainty:<sup>32</sup>

According to this principle, a provision must be definite as to its objective. It also implies that the definitions must not be wide. There is a close connection between Principle of non-retroactivity and Principle of maximum Certainty. If a provision is vague it may operate retrospectively as there would be confusion whether conduct falls under the provision or not.

Due to the advancement of DNA technology there is no vagueness in scientific terms and process. The Supreme Court through various judicial pronouncements, time and again reiterated DNA Profiling technique as conclusive and not vague.

C. Principle of Strict Interpretation:<sup>33</sup>

This principle applies to judicial interpretation, which implies that if there is any doubt with regard to any provision, it must be interpreted in favour of the accused. This principle also means that interpretation must be done so as to achieve the objective of the Act.

Therefore, the proposed DNA Bill is to achieve an efficient criminal justice system.

D. Mens Rea:<sup>34</sup>

According to the maxim, “Actus non facit reum nisi mens sit rea” an act is not punishable unless it is accompanied by guilty mind. It means that an act or a conduct will only be punishable if it done with an intention.

DNA evidence will assist in finding out the real culprit of the crime based on the circumstantial evidence and eventually the intention can be determined.

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

E. Burden of Proof and Presumption of Innocence.<sup>35</sup>

In a criminal trial, the burden of proof is always on the prosecution. It is so because; the state is in a better position to prove the guilt of an accused due to its available resources. It also implies that there must be presumption of innocence of the accused and guilt must be proved beyond reasonable doubt.

Therefore, the proposed DNA bill is in conformity with this classical principle of criminal law.

F. Principle of Autonomy.<sup>36</sup>

According to this principle, an individual shall only be punished for his conduct and not for the others. In the process of DNA Profiling, the real culprit of the crime can be ascertained and that person will only be punished. Thus DNA evidence will be in consonance with principle of autonomy.

**4. International Perspective on Admissibility of DNA**

In light of the advancement of the new technology many countries in the world have amended the existing law or added new DNA legislation in their legal framework to make an efficient criminal justice system. Countries like UK and USA have gone a step forward by making DNA sampling mandatory in criminal investigation, where they maintain a National Data bank of all the suspects, accused and acquitted persons for future reference. Therefore, we in India should also take an initiative for implementation of this new technique, which will ultimately expedite the disposal and lower down the burden of pendency of cases in a longer run and form an efficient criminal justice system.<sup>37</sup>

**FUTURE OF DNA PROFILING IN INDIA AND A WAY AHEAD**

**1. Recommendations on use of DNA technology in India**

A. Law Commission Report:

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Supra* ft no. 10.

The Law Commission was entrusted the task to review the Indian Evidence Act to incorporate the suggestions given by the 69<sup>th</sup> Report. Therefore, in Part-II and Part-III of 185<sup>th</sup> Report Law Commission mooted the idea of incorporating the use of DNA Profiling Evidence only in civil cases and left at the discretion of the court for criminal cases. The commission being skeptical on its accuracy comes to such conclusion based on a few Australian and English cases. But due to the advent of time it has become conclusive and infallible.<sup>38</sup>

B. Malimath Committee Report:

The Report submitted by the Justice Malimath Committee in 2003, suggested revamping the criminal justice system to overcome the lacuna. Accordingly it suggested the use of DNA profiling technique in our legal system.<sup>39</sup>

**2. Requirement for a specific DNA legislation in India**

The government first proposed the Human DNA Profiling bill in 2007, but its drafting began in year 2012 by Department of Biotechnology. The bill put forth the plan for establishment of National DNA Data Bank and a DNA Profiling Board for investigation purposes. But there was resentment from Citizens Forum for Civil Liberties for being violative of Right to Privacy. Therefore A.P. Shah Committee<sup>40</sup> submitted its report where it suggested necessary steps before implementation of DNA Evidence. So, it has to be introduced in the monsoon session, 2015 but so far it was not presented in the parliament.

From the above narrated arguments, we can see the emerging importance of use DNA evidence in India and abroad and also there is no doubt about the violation of age old classical principles of criminal law. It has also been seen by way of judicial pronouncements that it does not violate the fundamental rights of the accused, hence lead to a fair trial. Therefore, traditional criminal justice system has to be modified to seek the benefit of this new technology which is more accurate and efficient.

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<sup>38</sup> LAW COM. REP. NO. 185, at Part-II and Part-III (2003)

<sup>39</sup> MALIMATH COMMITTEE REP., at Part-I (2003)

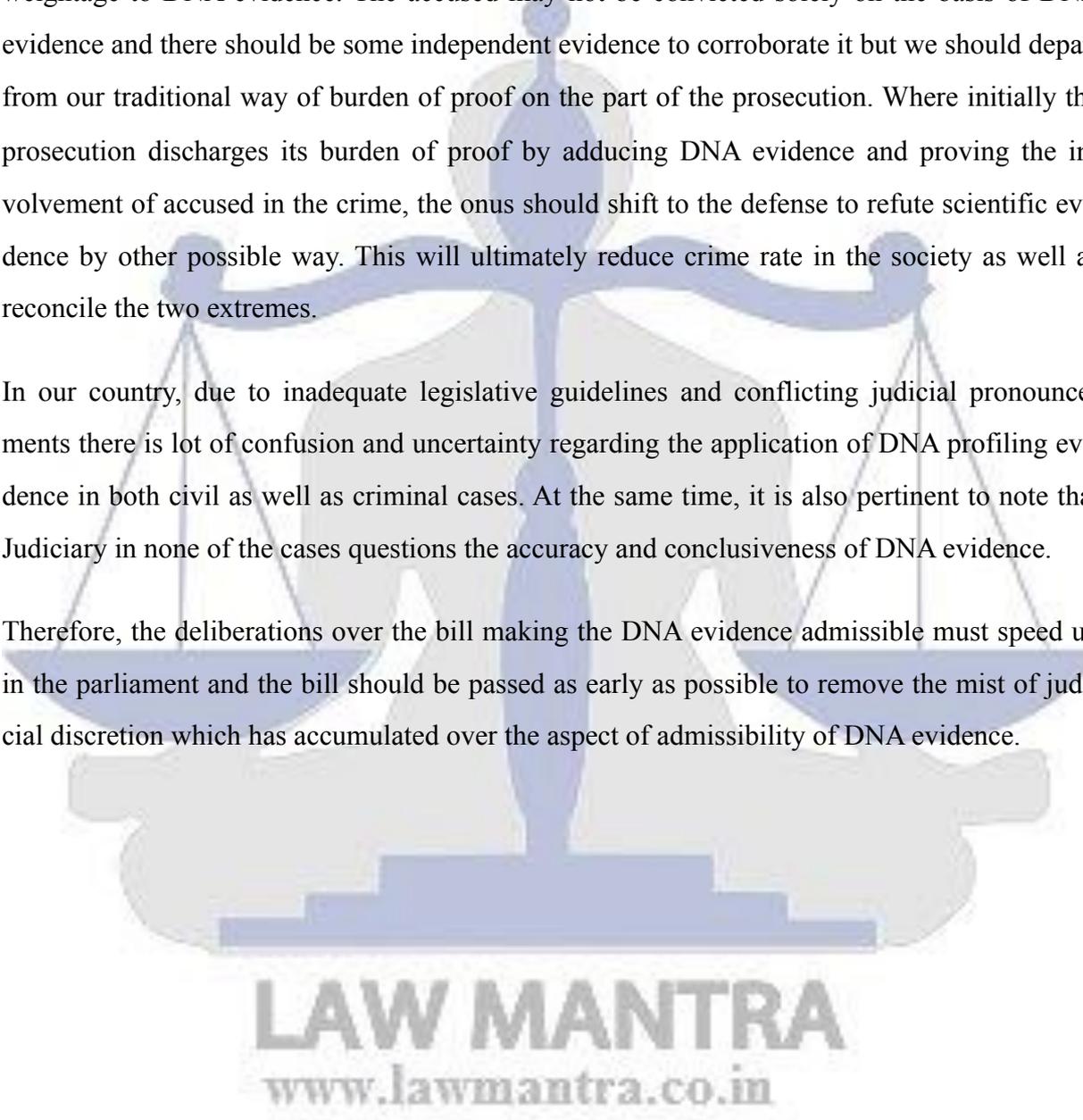
<sup>40</sup> Appointed in October, 2012

## CONCLUSION & SUGGESTIONS

Keeping in mind the above mentioned arguments, legislations, judicial decisions, law commission report and malimath committee report, I believe that law makers and Judiciary must try to strike a balance between the human evidence and scientific evidence, thereby giving adequate weightage to DNA evidence. The accused may not be convicted solely on the basis of DNA evidence and there should be some independent evidence to corroborate it but we should depart from our traditional way of burden of proof on the part of the prosecution. Where initially the prosecution discharges its burden of proof by adducing DNA evidence and proving the involvement of accused in the crime, the onus should shift to the defense to refute scientific evidence by other possible way. This will ultimately reduce crime rate in the society as well as reconcile the two extremes.

In our country, due to inadequate legislative guidelines and conflicting judicial pronouncements there is lot of confusion and uncertainty regarding the application of DNA profiling evidence in both civil as well as criminal cases. At the same time, it is also pertinent to note that Judiciary in none of the cases questions the accuracy and conclusiveness of DNA evidence.

Therefore, the deliberations over the bill making the DNA evidence admissible must speed up in the parliament and the bill should be passed as early as possible to remove the mist of judicial discretion which has accumulated over the aspect of admissibility of DNA evidence.



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