



**DNA AND PATERNITY ISSUES-
REFERENCE CASE: NANDLAL
WASUDEO BADWAIK V. LATA
NANDLAL BADWAIK & ANR AIR
2014 SC 932**

By Devika Arora

Abstract

The colossal progression within the zone of science and innovation has made it inevitable to apply modernised approaches therein to resolve cases of crime and has impressively bridged the gap between methods of innovation and the legitimate zone making them supplementary to one another. Before the dawn of forensic science as a separately acknowledged discipline, legal issues were troublesome to be settled and were time devouring. This paper is majorly based on one of the foremost basic viewpoints of pathological revolution, DNA. It will discuss DNA mechanisms' expanding solicitation for resolution of matters of crime and its far-reaching centrality. In spite of the mounting prominence of such pathological practises in the licit arena there stands no exclusive legislative enactment to differentiate and govern the former. In this manner, it is quintessential to give it the place it deserves in the legal field in order to enable the judicature to adjudge upon the matters and dispense justness to the lay man as expeditiously and effectively as possible.

Introduction

Medicinal jurisprudence is the department of the legislative framework that employs the doctrines of law to medicine and on the other hand, the knowledge of medicinal science to the legal glitches. The advent of this

discipline has considerably encouraged both the medicinal arena as well as the proficiency of law. An improved collaboration has stemmed and has smoothed the working of both the disciplines. Formerly insoluble cases are being solved with lesser hurdles owing to its remarkable progression. It envelopes the provision of evidence for a wide array of matters. It can be resorted to for clinching the bewilderment affecting the parenthood of children and also be employed for purposes of connexion of individuals' bodies, which get marred due to natural disasters, outbursts in factories, bomb flare-ups by terrorists and the like. In the arena of Evidence Laws, it is employed to resolve cases involving crimes such as murders, rapes etc.

Be that as it may, in spite of their cosmic advantages to the legal discipline, the practices of medicinal theories are not cogitated as primary evidence in the current era. The present Evidence Act still contemplates technical outcomes within the latitude of evidence established by experts. This legal setting will linger on unless an exclusive enactment is brought into execution by the law-making authorities, thereby giving the scientifically proven outcomes the place they deserve. The Indian Evidence Act, 1872, under section 45 has defined an expert and therein states that, when the court needs to shape a conclusion upon a point related to science, or craftsmanship, or as to character of penmanship or finger impression, the conclusions on the point of science, of such people who are particularly talented in science or craftsmanship or any issue as to personality of penmanship or finger impressions are important truths and such people are called experts. The expression opinion upon a point of science of personnel



particularly competent in science is capable of application to all future progresses in science which facilitate the drawing of experts' estimations on a specific issue at hand. Due to the overwhelming abuse and ignorance of the courts pertaining to scientific evidence, they tend to hesitate in applying these techniques.¹

The forensic science discipline is going through a period of revolution at the heels of the evolution in DNA related modern techniques. DNA innovations have taken a matchless locus in the medico-legal arena. A geneticist of British origin called Dr. Alec Jeffreys, was the first person to apply DNA mechanisms to an investigation of a crime in England. He is also renowned for developing methods of fingerprinting and profiling of DNA which are effectively employed throughout the world.

The case of Colin Pitchfork was the primary tall profile case where hereditary profiling was utilized to demonstrate the guiltlessness of one man and the blame of another. This case is considered to be one of the notorious cases of the decades. The murder as well as rape was committed on two teenage girls. A questionable person committed the murder of one girl and agreed to it. He didn't commit the murder of the other girl. The genetic profiling was used by the police for proving

him guilty; but it established him being innocent and held Pitchfork guilty.²

Jeffereys was requested by the police to make use of the evidence recovered from the teenagers and conclude accordingly. The DNA test undertaken by Jeffreys absolved the one that the cops doubted. A genetic quest was conducted by the cops which required the blood samples to be taken from thousands of male dwellers of that region. The conclusion of the search was that Pitchfork had asked one of his companions to replace a sample to intrigue everyone and evade from the heinous act. Consequently, the veil was lifted and Pitchfork was interfaced to all the murders of that region. Hence, Pitchfork became the first person in the world to be identified, captured and successfully prosecuted and sentenced to 30 years in prison as a result of DNA evidence.³

DNA analysis has ended up becoming a novel manner of gathering evidence. However, there is still no proper enactment has been brought for governing the mechanism of DNA and other scientific tests to be followed by the authorities who carry out enquiry which poses a serious setback in the framework of law. It is necessary and inevitable to evolve laws, rules and regulations consistently so that the outmoded ways of resolving issues get substituted with the improvised ones and therefore, the verdict

¹ Sneha Venkataramani. "Medical Jurisprudence: An Indian Law Perspective." Probation: A Study in The Indian Context - Probation of Offenders Act, www.legalserviceindia.com/articles/medooo.htm.

² "Profile: Sir Alec Jeffreys – the Pioneer of DNA Testing." DNA Legal, 15 Jan. 2015,

www.dnalegal.com/blog/profile-sir-alec-jeffreys-pioneer-dna-testing.

³ Vernon J. Geberth, M.S., M.P.S. "30 Years of DNA Technology." Forensic Magazine, Forensic Magazine, 20 Mar. 2017, www.forensicmag.com/article/2017/03/30-years-dna-technology.



process is not hampered in any manner whatsoever. The modulation of laws is vital to keep pace with the fluctuating factors such as social, political, economic and most importantly technological in the periphery of the legal system.

In this paper, I present background information on DNA, its advantages, the present law provisions citing it and the application of DNA analysis to legal problems pertaining to paternity issues.

Chapter 1- Meaning of DNA

DNA is a condense structure of Nucleic Acid. DNA is found in each and every living cell and it provides a hereditary blue print to individual. It is a natural organic substance. Human behaviour, character and bodily characteristics are formed by DNA. It can be released from saliva, hair, blood, bones, semen and other organs present in the human body. Each and every human on this earth has different and distinctive DNA. Its forms and structure varies from individual to individual.”⁴

1.1 DNA mechanism

DNA analysis, correspondingly known as DNA profiling or DNA typing, scrutinises the DNA established in physical evidence obtained from blood, hair, and semen, and concludes whether it is similar to the DNA

taken from other respective persons. It is also alluded to in instances of common nature, particularly in cases concerning the determination of parenthood, particularly fatherhood.⁵ DNA can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones.⁶

The process of DNA examination has extended the skyline of both medical treatment and law enforcement. At present, there is no particular law that regulates the tolerability of criminological systems and strategies like DNA investigation, in any case, it determines legitimacy by righteousness of different arrangements set down in The Criminal Procedure Code and The Evidence Act.

Chapter 2- DNA Test and the Legal System of India

The Criminal procedure code 1973 and Indian evidence act 1872 respectively were administered in a time when the law framing bodies were not successful to anticipate the remarkable progression that was to happen relating to developments. The term forensic science is generally new in connection to adjudication system and the legislature couldn't think about the fluctuated use of it in the organisation of justice as it is pervasive today. The solid law, owing its origin to outdated law principles has not joined a particular arrangement, for methods like

⁴ nazir, mudassir. “Admissibility of DNA in civil and criminal cases in India.” Isyndicate.com, Journal on contemporary issues of law Volume 3 Issue 5, jcil.isyndicate.com/wp-content/uploads/2017/06/Mudassir.pdf.

⁵ bhan, ashok. “WheresTheDNA: DNA & Indian Legal System: Code of Criminal Procedure &

Indian Evidence Act Must Be Amended.” Live Law, 30 Oct. 2017, www.livelaw.in/wheresthedna-dna-indian-legal-system-code-criminal-procedure-indian-evidence-act-must-amended/.

⁶ Dharam Deo Yadav Vs. State of UP, (2014) 5 SCC 509



DNA examination.

2.1 Provisions under The Code of Criminal Procedure, 1973

Section 53- Examination of accused by medical practitioner at the request of the police:

This provision gives entitlement to the police officer who is not beneath the level of a sub-inspector to make a request to the medical examiner to undertake the bodily examination of any individual who is arrested, if he is under the impression that such examination could unveil some information that could be used as beneficial evidence regarding the commission of the respective crime. Although a certain supremacy is emphasised on the investigating personnel by virtue of this provision but this supremacy cannot be considered as that of an unrestrained nature. It does not give any sort of permission to a complainant to collect the bodily substances like blood or semen from the charged individual for drawing and framing charges against him. Moreover, this section merely talks about the investigation of matters involving criminal nature which have been inaugurated by the police only. No weightage is given to those matters which get introduced to the stage of investigation by filing of complaints.

Since there were numerous deficiencies and inadequacies in the said provision, there was dire need to amplify its scope and make it significant by bringing it in conformity with

the standards laid down as a result of the improved methods of logical investigation. This was achieved with the amendment of the year 2005 which elaborated the meaning of the term 'examination' expended in Section 53 to be interpreted as widely as possible meaning, examination of bodily substances such as blood, stains of blood, swabs and semen in matters of sexual kind, sweat and sputum, strands of hair and toe and finger nail clippings by the employment of improved and modernised technical methods of innovation including DNA profiling and such other tests which in the opinion of a registered medical practitioner are to be considered as fundamental in the respective matter and its disposal.⁷

Moreover, in heinous offences such as rape followed by murder, the Apex Court has opined and ruled out that it is of utmost importance that the report of DNA tests is formulated with due care and caution so that its outcome is technically proper and genuine. The Apex Court also restricted the power of the judiciary by asserting that no judge would be entitled to have his own opinion preferred over the outcomes of such tests as they are very critical and technical in nature.⁸

53-A- Examination of person accused of rape by medical practitioner- Sub- clause iv to clause 2 has talked about DNA by averring that for the purposes of analysis of the genetic material, the medical practitioner is ought to provide the details and description of the

⁷ Swapnil S. Agarwal. "Recent Changes in Criminal Procedure Code and Indian Penal Code Relevant to Medical Profession." Medind.nic.in, J Indian Acad Forensic Med, 30(3), medind.nic.in/jal/t08/i3/jalt08i3p172.pdf.

⁸ Santosh Kumar Singh Vs. State through CBI, (2010) 9 SCC 747



material extricated from the charged individual.

Similarly, Section 164A (2) (iii) also talks about DNA and states that the medical practitioner examining the victim of rape is required to prepare a report of her DNA profiling at the earliest without any delay.

2.2 Constitutionality of DNA evaluation

The lay man perceives that the progression in DNA and its innovation renders his rights futile. They feel that with such progression, their “Privacy rights” and “Right against Self-insinuation” get vulnerable. Right to Privacy has been incorporated under Right to Life and Personal Liberty (Article 21) of the Indian Constitution. Right against Self-insinuation comes by virtue of Article 20(3) which aids the charged individuals from furnishing evidences against themselves as it could prove their guilt. Due to this foremost This is the foremost reason behind the courts being disinclined from accepting evidences in criminal trials based on DNA methods. However, the courts in the following cases have impliedly accepted the evolution in science and technology particularly, DNA analysis.

The Apex Court in *Sharda v. Dharnipal*⁹ case stated the following:

1. The Apex court has laid great emphasis on the prominence of the privacy rights over decades by the settlement of matters associated thereto. It has been embraced within the phrase “personal liberty” by interpreting it extensively by virtue of Article 21.

2. But even while construing Article 21 as widely as possible, the right to privacy cannot be given the power of an absolute right. In instances where a conflict cropped between fundamental rights of two parties, the judiciary always favours the right which upholds public morality.

3. The Parliament of our country has framed certain laws following which the charged individual might be subjected to medical tests or tests of a similar nature.

4. The disputes pertaining to matrimony especially those where some party is seeking divorce due to dejection of the partner being infertile or severely diseased it becomes highly necessary to draw conclusions following proper bodily examination for corroborating the allegation. If the respondent dodges such medical examination by reasoning that that it would violate his privacy rights as enshrined under Article 21, then it may in most of such cases become impossible to conclude the allegation. Therefore, because the right to privacy stands embraced in Article 21 and does not have an exclusive standing and has weightage merely due to the extensive interpretation of the phrase “personal liberty”, it would be wrongful to recognise it as an absolute right. Therefore, the court has to resolve these competing interests while balancing both as per the facts and circumstances.

5. A convincing case for drawing an adversarial supposition would be made out if despite an order passed by the court, a person refuses to submit himself to such medical examination. This has been made

⁹ *Sharda v. Dharnipal* (2003) 4 SCC 493



accomplishable by Section 114 of the Evidence Act which enables a court to draw an adverse inference where the party does not yield the relevant evidences which are in his clout and possession or evades them.

6. Resultantly, it is one of the implicit powers of the judiciary to direct medical examinations where required in matrimony litigation and the same cannot be held to be encroachment of an individual's privacy rights.

The Apex court in Smt. Selvi v. State of Karnataka¹⁰, stated that amongst the several methods of medical examination, DNA profiling has been explicitly incorporated in the revised explanation to Sections 53 and 53-A of the Code of criminal procedure. For the purposes of drawing conclusions, the comparison and identification of gathered samples cannot be said to be an endorsement or coercion or in other words self-insinuation. Hence, the taking and retention of DNA samples for evidentiary reasons do not face constitutional hurdles in the Indian context.

Chapter 3- Evidentiary value of DNA evaluation

DNA to be considered a form of evidence has to be to be gathered and well-preserved in an efficient and accurate fashion and the documents related to it must be filed properly. This is preferable so that admissibility of such gathered evidence can

be ensured in hearings. Otherwise they cannot be relied upon. Its admissibility has been in a doubtful state for years since there is no specific legislation pertaining to DNA and its use for evidence. The Apex Court and the High Courts in various judgments have been observed to be conflicting in their verdicts. Judges do not deny the scientific accuracy of DNA testing, but hold themselves back from permitting them in some situations to uphold the public policy.¹¹

3.1 Determination of parenthood by DNA test

It is laid down under Section 112 of the Indian Evidence Act, when an individual is born during the subsistence of a lawful wed-lock to a couple, or within the duration of 280 days after the termination such wed-lock and in those 280 days the lady remained single, it shall be a convincing and certain proof that the offspring conceived thereby is the lawful offspring of the man. The only exception to this presumption is when the parties can demonstrate that they did not have a sexual contact with each other during that period. To reiterate, The Indian Evidence Act, 1872 was enacted based on old-style morals and ethics of the society and hence the above-mentioned presumption was laid down upholding the public morality. However, the society and its people evolve consistently and over time their beliefs change owing to increasing literacy rate and development in all walks of life. Therefore, the law framing and executing bodies have been observed to

¹⁰ Smt. Selvi Vs. State of Karnataka, AIR 2010 S.C. 1974 (Three-Judge Bench)

¹¹ bhan, ashok. "DNA and Indian Legal System." Jammu Kashmir Latest News | Tourism |

Breaking News J&K, 2 May 2018, www.dailyexcelsior.com/dna-and-indian-legal-system/.



have recognised matters where the above-mentioned presumption has been debated and controverted. Hence, in instances where the man denies the fatherhood towards an individual, this presumption is capable of being rebuttable.

Paternity testing is carried out in order to reveal useful information about the biological relationship between a man and his alleged child.

What is DNA Paternity Test?

Section 112 of the Indian Evidence Act states that the fact that any person was born during the continuance of a valid marriage between his/her mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless it can be shown that the parties had no access to each other at any time when that child could have been begotten. To reiterate, The Indian Evidence Act, 1872 was enacted based on traditional principles of the Indian society and hence the above-mentioned presumption. In order to keep pace with the evolution of the society and to meet the changes brought thereby the courts have recognised cases where this presumption has been rebutted. The presumption is rebuttable in cases where the person concerned intends to deny paternity over a child. In *Amarjit Kaur v. Har Bhajan Singh*¹², the court observed that section 112 of the Evidence Act was enacted at a time when the prevailing scientific progressions with deoxyribonucleic acid (DNA) and ribonucleic acid (RNA) tests were not executed. A genuine DNA test is considered

to be scientifically accurate. But even that is not enough to escape from the conclusiveness of presumption of law about the legitimacy of the child. Under section 112 of the Act for example if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrefutable and erroneous.

3.2 Maintaining the credibility of evidence by incorporating renovated methods

Due to the fast pace of the development in the technical methods and innovation, it has become pre-requisite for the legal framework to evolve itself so as to enable the pavement for an effective system of settlement of disputes that the victims place before them. However, DNA analysis being a new concept of extracting evidence in the legal system of India it is not being easily adaptable due to the long and continuous prevalent outmoded practices since times immemorial. Thus, the courts have to bear in mind the beliefs of the common man upon which the laws are framed and at the same time comprehend the possible favourable and non-favourable consequences upon the lay man and on the society as a whole and only after such consideration order such a test to for the extrication of evidence.

“The Hon’ble lordships namely, Mr. Justice A. M. Ahmadi and S. Mohan. JJ of the Apex Court have enumerated the subsequent parameters:

(1) The judicature is not empowered to direct tests of examination as a standard and casual procedure

¹² *Amarjit Kaur v. Har Bhajan Singh* (2003) 10 S.C.C. 228: 2003 (2) A.I.C. 427 (S.C).



(2) They must not pay heed to applications seeking blood tests for mere inquiry.

(3) To dissipate the presumption of legitimacy of the offspring, the person who challenges it must ascertain that he had no chance of sexual contact with the partner.

(4) The judicature must be careful in weighting the potential outcomes of directing such tests. Ignorance of the potential outcomes could lead to labelling the offspring as misbegotten and his or her mother as a lady of low virtue.

(5) The judicature is not entitled to coerce any individual to make available his blood sample for examination.

The intriguing matter to be considered is that if such parameters are employed for the settlement of matters especially those that cannot be settled by mere fluke or ignorance, the very provision for investigation would be defeated. There are certain heinous offences such as rape, murder, disputes of parenthood and the like which require the aid of DNA methods to prove certainty”.¹³

The court should not direct DNA test or such other test for ironing out the contention merely because the parties involved in the case have disputed a factum of paternity. The parties should be directed to present evidence to prove or disprove the factum of paternity and only if the court finds it impossible to

draw an inference or adversarial inference on the basis of such evidence placed before it or the contentious issue is not able to be resolved without resorting to a DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes vital to resolve the controversy the court can direct such a test. DNA test, in any case, cannot be directed as a matter of routine or ordinarily. The court should provide and record reasons as to the essential need for such test in the respective case in order to resolve the controversy and is indispensable. That is necessary since a result of such test, in matrimonial and succession cases, being negative will have an effect of branding a child as a bastard and the mother as an unchaste woman as noted in Goutam Kundu v. State of West Bengal. That may also adversely affect the child psychologically. The courts, however, should not hesitate to direct DNA test if it is in the best interest of a child.¹⁴

The other objection that stands as a hurdle in applying DNA for obtaining evidence in paternity issues is that no person can be compelled to be a witness as against himself (self- incrimination) and that no person shall be deprived of his life and personal liberty (Article 21 of the Indian Constitution) except according to the procedure established by law. By directing the petitioner herein to undergo DNA test to prove the paternity of the first respondent, cannot be said to be affecting his fundamental rights and it is not

¹³ “Response of Indian legal system in adopting scientific DNA evidence in administration of justice.” Shodhganga.com, shodhganga.inflibnet.ac.in/bitstream/10603/155320/1/11_11_chapter%205.pdf.

¹⁴ Sunil Eknath Trambake v. Leelavati Sunil Trambake, AIR 2006 Bombay 140.



in violation of his right to personal liberty enunciated under Article 21 of the Constitution of India. The said issue came for consideration before the court in Bommi and another v. Munirathinam.¹⁵ In the said judgment, the respective court after going through various judgements delivered by the Apex court and other High courts, held that when the paternity of a child is challenged, there is nothing wrong in directing a DNA test, which would lift the veil and unfold the truth and it has been further held that such an act is not an interference with the personal liberty of the person concerned, who is required to undergo the test.

3.3 The Indian Evidence (Amendment) Bill, 2003¹⁶

As the Evidence laws have proved to remain backward and hesitant in accommodating the Owing to the inability of Section 112 to accommodate headways within the realm of science and innovation, the 185th Report of the Law Commission has propositioed an amendment bill of evidence in the year 2003 which recognises that in order to ponder upon the presumption of fatherhood there can be other grounds to be checked upon apart from no physical or sexual contact.

The revised provisions as per the Commission are written below which shall make up for the inadequacies in the present provisions:

112. The truth that an offspring was conceived at the time when the substantial

lawful wed-lock was subsisting amid a couple, or in the duration 280 days,

(i) once the wed-lock was terminated by law and the mother of the offspring remained single, (ii) after the wed-lock was maintained at a strategic distance by way of disintegration and the mother remained single,

would be considered as a concluding proof that the offspring mentioned above is the lawful offspring of that man, unless,

(a) the one who contests it proves that the couple did not have any sexual access or contact with each other when the offspring could have been conceived; or

(b) the alleged father is able to prove convincingly that he is not responsible for parenthood of the offspring with the help of tests enumerated below,

(i) medical tests that ascertain that the attacked individual was infertile in the duration when the wed-lock was subsisting; or

(ii) The couple in the suit conjointly took a decision to get blood tests so that they could figure out whether the respective individual is the parent of the offspring or not,

(iii) To be sure of the parenthood the couple conjointly agree to get their DNA analysed

These provisions, however, come with the conditions that the tests mentioned above ought to be undertaken as per the well-established technical procedures with due care and no irresponsibility. Moreover, minimum two tests must be undertaken which should give out the same conclusion

¹⁵ Bommi and another v. Munirathinam, 2005 (1) LW 713 (Madras).

¹⁶ "The Indian Evidence (Amendment) Bill, 2003."

[Http://Lawcommissionofindia.nic.in](http://Lawcommissionofindia.nic.in),

lawcommissionofindia.nic.in/reports/185threport-partv.pdf.



about the non- parenthood of the person attacked.

Therefore, in determination of parentage, homicide, rape and other cases of such nature which require identification, D.N.A evidence is bound to play an increasingly significant role. Though it alone does not prove without reasonable apprehension that a person was present at a crime scene or that he is guilty, it can be used in permutation with other evidence. While courts may be hesitant in accepting such novel scientific evidence, the reason may be that they are unable to appreciate its accuracy and applicability. The department of science must then take the initiative to enlighten the legal personalities about the nuances of D.N.A evidence and its potential. The legislature on its part must ensure that judges can incorporate the uses of D.N.A evidence within the legislative framework. Courts would then be more receptive to expert opinion under section 45 of the Evidence Act and would be able to develop an informed analysis about the respective issue.¹⁷

3.4 DNA test to controvert presumption under Section 112 Indian Evidence Act.

Section 112 of the law of Evidence, is based on renowned maxim *pater est quem nuptiae demonstrant*, meaning, the father is one whom the marriage indicates. Thus, a special protection has been provided by the law to the status of lawfulness of an offspring. However, the latter part of the section provides an outlet to the party to get away from the rigour of the decisiveness only by

¹⁷ Cri LJ, Journal Section, page no.54, 55, 56, 57 (2006).

¹⁸ Nayan Joshi, Medical Jurisprudence and Toxicology, page no. 135.

regarding the legality of a child cannot be allowed to be lightly repealed or allowed to be broken or shaken merely by probabilities. To dispel the presumption of legitimacy of a child the evidence must be direct, strong, distinct and conclusive. These rigours are justified by considerations of public for the stigma of illegitimacy is very severe and may affect not only the entire life of the child, his family but his future generation as well.¹⁸

3.4.1 Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik & Anr¹⁹

The Supreme Court, in this case, has given great importance to D.N.A test and placed it at an edge over the presumption envisaged by section 112 of the Indian Evidence Act, 1872.

Facts: Nandlal and Lata tied the knot in 1990. The relationship between them deteriorated in the nick of time and hence, the marriage fell apart. Consequently, an application seeking maintenance by virtue of Section 125 of the Code of Criminal Procedure was filed by the wife. The learned Magistrate of the Trial Court disdained her request by an order on 10th December, 1993. Thereafter, the wife resorted to a fresh proceeding under the same provision of the Code of Criminal Procedure, by which she claimed maintenance for herself as well as for her daughter. She purported that she resumed living with her husband from the date 20th of June, 1996 and stayed with him for about two years during which she got pregnant. Thereafter, she was sent to her parents' home for the delivery and eventually she gave birth to a girl child. The husband resisted the claim

¹⁹ Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik & Anr, AIR 2014 SC 932.



and contended that the contention of the wife having stayed with him since 20th June 1996 is fabricated. He also denied the parenthood over the girl borne to him as asserted by the wife.

Consequently, the husband approached the High Court and preferred a revision petition wherein he pleaded them to direct a DNA test so that he could prove that he had no responsibility of being a parent to the alleged offspring and at the same time asserted that no maintenance ought to have been awarded to the child. The High Court disdained his petition for the revision and denied his claim. The dejected appellant then resorted to a Special Leave Petition before the Apex Court in opposition to the order of High Court. The Apex Court overlooked the order of High court and favoured the appellant and directed the test on the condition that the appellant was required to deposit all the expenses in respect of the maintenance awarded to the wife and child in return. The appellant thus, paid the amount as directed by the judicature. As a result, the Apex Court approved the appellant's prayer for conducting DNA test for discovering the disputed and controversial parenthood of the alleged offspring. The test undertaken in the lab and the report made opined that the appellant was excluded to be the biological parent of the child and their samples did not match to one another. Since the respondent asserted him being the parent of her child she was not satisfied by the order and hence requested for re-test. The Court paid heed to her request for the last time and directed a further test to be conducted at the Laboratory for the same purpose at Hyderabad. The Central Forensic Laboratory submitted its report and opined that the appellant can be excluded from being the biological father of the child. The

respondent's counsel submitted that the direction for the test should not have been granted because the pre-requisite of ascertaining that he had no sexual contact with the partner was a fiasco and he could not be proved. In view of the aforesaid he submitted that the result of such a test should be ignored.

The appellant's counsel then raised the contention that when the DNA test had already been ordered by the judicature, the respondent did not deny it at that time, neither expressly nor impliedly. Since the outcome of the report was not favourable to the respondent, she challenged that the test should not have been ordered in the first place.

Judgment: The Apex Court observed and pointed out that while considering such questions of legality, we should acknowledge that the law of evidence was framed and brought into force over two centuries ago when the authorities responsible for enacting the laws could not even fathom the evolution of society as an upshot of literacy rate and education as well as consistent progression in innovation and logic. Although the section itself lays down that the judicature shall presume and consider without any doubt that the offspring conceived during the subsistence of the legal wed-lock would be genuine in the eyes of the legal framework along with the satisfaction of the conditions listed in the said provision, yet it leaves the room open to the technical methods of innovation to establish the contrary which are to be recognised as they yield full proof. Hence, the courts should give the opportunity to the victims to resort to the modern techniques so that evidence is gathered leaving no room for doubts. The Apex court



also opined that when the presumption and the evidence gathered by way of technical tests like DNA analysis are diverging from one another, the technical evidence gathered will be given an edge.

The judicature in the above discoursed matter gave the chance to the innocent individual the opportunity of being heard. He was able to justify that there was no sexual contact between the couple by DNA testing. Therefore, the court laid great weightage on this innovated method.²⁰ Coming to the conclusion, DNA techniques can also be employed for repudiating parenthood and not only for ascertaining the same.

Chapter 4- Merits of DNA evaluation

1. Research and development- It can be made use of for studying purposes such as evolution of human beings for centuries. Moreover, it is quite useful in gathering data on diseases inherited from predecessors including ailments as well as maladies such as Hemophilia, Down syndrome.
2. Resolution of heinous offences- Until a few years ago, the offences affecting females were not undraped straightforwardly. The preys to offences such as rape, trafficking, abuse of body and the like would hesitate to lift the veil over their suffering. This could be due to them not being able to be vocal about their miseries. Therefore, these methods

have remarkably streamlined the investigation procedure.

3. Aid to already convicted individuals- Matters wherein the individual is condemned by relying upon fabricated evidence. Therefore, to exculpate an individual who was detained wrongfully or by mistake, such tests can be employed.

4.1 The DNA Based Technology (Use and Regulation) Bill, 2017²¹

It was pondered upon by a commission belonging to the biotechnology division of the government that there must be a separate legislative enactment for the purposes of the rules and regulations to adhere to when it comes to employing DNA methods for resolution of cases and also for governing the procedure to be adopted for the search for people who cannot be found. This commission paved the way for the Law Commission of India to prepare a formalised version of a Bill for the exercise of the methods and mechanisms of DNA innovation. This Bill was brought into being after scrutinising the proclamations of the judicature on all levels of practice and also going through the provisions of the Constitution.

Principally, the following formalised version of these parameters have been discussed in the Bill:

²⁰ Mudassir Nazir, Admissibility of DNA in civil and criminal cases in India, Volume 3 Issue 5, JCIL, page no. 12.

²¹ Correspondent, Legal. "Govt to Table DNA Profiling Bill in Monsoon Session." *The Hindu*,

The Hindu, 1 May 2018, www.thehindu.com/news/national/govt-to-table-dna-profiling-bill-in-monsoon-session/article23739072.ece.



- It occasions necessities for formulating a Team of directors which would take up the onus of enclosing procedures charting the use of such mechanisms.
- At the same stretch, establish catalogues for launching labs for conducting the tests.
- The Bill also determined that no lab could function without being ascribed.
- The panel thus created would be under the solemn onus to render notifications to the Governments, both at the Centre as well as to those of all the States as per the operation of the labs.
- The tests in such labs must be conducted by obeying the international parameters inculcating respect for ethics.
- The Board should also have the responsibility to supervise, monitor, inspect and assess the laboratories.

Conclusion

Thus, considering the multiple excellences of the modernised system of gathering data, D.N.A profiling methods must be incorporated in the legal framework as an exclusive technique. Although this technique has been given recognition impliedly by the law-making authorities in the provisions of the Code of Criminal Procedure,1973 and the Indian Evidence Act,1872, discussed above, it still becomes inevitable to formulate a separate enactment. For the effective and efficient resolution of matters, the respective enactment needs to lay down the proper procedure to be followed in gathering samples for proofs, the test methods, and the deterrents in the execution. Moreover, laws must be amended and modified timely in order to keep pace with the consistent evolution and progress in the field of science and innovation.

By virtue of the objective, unbiased and infallible character of the D.N.A analysis methods it has undoubtedly revolutionised the administration of justice in our legal system. Some of the suggestions regarding care and caution to avoid its misuse by human agencies are:

- Ascendency of formulating a uniformly systematic and exclusive law on the conduct of proofs gathered by employing innovative mechanisms must be taken up by the law-making bodies.
- There should be spirit of brotherhood between the legal fraternity and the innovation personnel to foster collaboration between the two.
- To standardise procedures followed in Forensic laboratories in order to proliferate dependability on its report.
- Medical jurisprudence should be studied thoroughly for resolution of cases.
- The government should organise awareness programmes on forensic techniques for the judges.
- An authority must be entrusted with the onus of monitoring the profiling labs.
- There should be a systematic preservation of information on DNA at all levels.
- It is vital to create more formal interactive forums between the innovative institutes and Judicatures to enable increased dialogue between them so that a better understanding is embarked upon in drawing conclusions.
