



# Law Relating to Admissibility of Scientific Evidence: A Critical Analysis

**Dr. Bhupinder Kumar\***

*Assistant Professor, Department of Law, CDLU, Sirsa Haryana, India.*

\*Corresponding author

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## Abstract

Science become part and parcel of Indian legal system. Indian court are dependent on scientific evidence for deciding each and every case, due to the ancient procedure investigating agency are not able to collect sufficient evidence, beside crime are well planned and committing by using new technology. So, it is necessary for investigation agency to adopt modern and scientific rule in investigation for collecting sufficient evidence. Since the beginning of human race crime in some form or other has existed. With the progress of science and development of technology the notion of crime as well as the methods used by criminals in commission of crime has undergone a phenomenal transformation. The very nature of crime itself has undergone complete transformation. There is a conceptual shift in the terms of the costs of the criminal behavior and the forms of criminality. In the present era most of the human activities are carried with the aid of modern technology as a consequence dependence of humans on technology is increasing. In the celestial cosmos, the scientific and technological advancement has assumed vast proportions, which were unimaginable a few decades ago.

**Keywords:** Science, Crime, Investigation, Evidence.

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## 1. Introduction

The term evidence has derived from the Latin word expression evidens, videre, which mean the state of evidence being plain, apparent or notorious. The term 'evidence' means "anything by which any alleged matter of fact is either established or disproved". Whatsoever makes the controversial thing apparent and clear in the court of law is evidence. Where the question is whether the explosion took place before a fire occurred. The noise of the explosion and its flash are evident of it. Persons who saw the flash or heard the noise can give evidence of the fact of the explosion. Evidence can be two forms technically i.e. oral and documentary, additionally, electronic records can be produced as evidence including video conferencing. If the happening of a fact is recorded on anything apart from human memory, that record is an evidence of the happening. Evidence can be defined as any material which tends to persuade the court of the truth or probability of some fact asserted before it.<sup>1</sup>

According to Webster dictionary<sup>2</sup>, evidence is that which is legally submitted to a competent court or tribunal as a means of ascertaining the truth or otherwise of an alleged matter of fact under investigation.

According to Section 3 of Indian Evidence Act, 1872 defines evidence as "Evidence" means and includes (1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; (2) All document including electronic records produced for the inspection of the Court, such statements are called documentary evidence"; The section has not defined the term evidence in real sense but is rather a statement of what the term evidence includes, namely oral account of the happening of a fact given by those who have personally witnessed the happening and any document in which happening of the fact is recorded.

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<sup>1</sup> Avtar Singh, "Principles of the Law of Evidence", Allahabad: Central Law Publications, 19th edition, 2011, p 6.

<sup>2</sup> Jhala and Raju, "Medical Jurisprudence", Lucknow: Eastern Book Company, 6th edition, 1997, p 19.

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In *Pushpadevi M. Jatin v. M. L. Wadhwan*<sup>3</sup>, The Hon'ble Supreme Court has made it clear that where the evidence offered comes within the meaning of its definition, the court can act and need not to concern itself with the method by which it was obtained. In *Barinder Kumar Ghose v. Emperor*, The Hon'ble Court has observed that relevant evidence remains relevant despite the fact that it was not obtained by following proper procedure of law.

“The Latin term *scientia* gave the birth to the term science, which means knowledge. It is a systematic enterprise that builds and organizes knowledge in the form of testable explanations and predictions about the universe. In an older and closely related meaning, science also refers to a body of knowledge itself, of the type that can be rationally explained and reliably applied. In modern usage, science most often indicates to procedure of gaining knowledge, not only the knowledge itself. It is also frequently limited to those branches of study that tend to explain the phenomena of the material universe. On the other hand, science has also persisted to be used in a broad sense to symbolize reliable and teachable knowledge about a topic.”<sup>4</sup>

The term Science is used in Indian Evidence Act, 1872 under Section 45 as:

“When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, are relevant facts. Such persons are called experts”.

Scientific Evidence may be defined as fact or opinion evidence that purports to draw on specialized knowledge of science or to rely on scientific principles for its evidentiary value<sup>5</sup>.

In simple terms, scientific evidence is evidence used in courts and which is arrived at by scientific or technical means.<sup>6</sup>

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<sup>3</sup> AIR 1987 SC 1748

<sup>4</sup> Retrieved from <http://en.wikipedia.org/wiki/Science> visited on July 13, 2012

<sup>5</sup> Satyendra K. Kaul and Mohd. H.Zaidi, “Narcoanalysis, Brain Mapping, Hypnosis and Lie Detector Tests in Interrogation of Suspect”, Allahabad: Alia Law Agency, 2008, p 911.

<sup>6</sup> 27 Ishita Chatterjee, “Techno-legal aspects of Scientific Evidence”, Allahabad: Central Law Publications, 2012, p 16.

## 2. Research Methodology

The present research is primary based on secondary data. Case study from different sources has been taken into consideration which is then analyzed critically.

## 3. Historical Background

Scientific Evidence is a not of recent growth. Several of the old codes contain matters of Forensic medicine interest, though the mention of such subject is on the whole meager. However, references have been found in Vedas, in the code of Manu, in the Puranas and early Greek writers, notably Galen, discussed questions about legitimacy, simulated diseases etc. Manu also forbade corporal punishment of pregnant women and in Vedic literature (Circa 650-10 B.C) abortion or slaying of an embryo was a specified crime.<sup>7</sup>

The application of science and technology to the detection and investigation of crime and administration of justice is not new to India. Although our ancestors did not know the Forensic Science in its present form, scientific methods in one way or the other seem to have been followed in the investigation of crime. Its detailed reference is found in Kautilya's 'Arthashastra', which was written around 2300 years ago. Indians studied various patterns of papillary lines thousands of years ago. It is presumed that they knew about the persistency and individuality of fingerprints, which they used as signatures.<sup>8</sup>

## 4. Relationship between Law and Science

In recent time with the advancement of science and technology every aspect of human life has been revolutionized and the court room exercise is not an exception to this rule. Courts too have witnessed the widespread introduction of numerous scientific evidentiary techniques and

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<sup>7</sup> I.B. Lyon, 4

<sup>8</sup> Nayan Joshi, Medical Jurisprudence and Toxicology, Kamal Publishers: New Delhi, 2008, p 14

breakthroughs providing potentially valuable investigative tools. Nations across the globe are embracing the scientific techniques. They are resorting to the liberal approach towards scientific techniques. Existence of crime is established from the time of Adam. The Bible and the Quran give vivid examples of first crime committed by one son of Adam. It can be safely said that the crime, in one form or the other, was present from time immemorial, similarly, the investigation and detection of crime is also of same age as of crime. With the advancement of science and technology, the criminals have adopted new methods and techniques for committing offences, and science has also helped the investigation agencies in their efforts to nab the criminals or real culprits. Investigators are not lagging behind. The ways of interrogation of criminals by using third degree methods are now giving way to new scientific methods of investigation.

## 5. Present Need of Scientific Investigation

In present scenario investigation agency used Forensic Science which is the need of the modern times. In India, the investigation and crimes and prosecution of criminals are not up to the mark. Even in heinous crimes large number of criminals could not be prosecuted and a few percentage of trails end in acquittal as a result of which number of criminals as well as crimes are increasing day by day. These frequent acquittals are mainly due to obsolete techniques of investigation which leave many loopholes. Thus, for effective investigation, scientific ways of investigation is very necessary. The third degree methods used by investigating agencies in British period are not acceptable to the new generation of crime investigating agencies, judges and public at large.<sup>9</sup>

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<sup>9</sup> Satyendra K. Kaul and Mohd. H. Zaidi, *Narcoanalysis, Brain-Mapping, Hypnosis and Lie Detector Tests in Interrogation of Suspect*, Alia Law Agency: Allahabad, 2008, p 18.

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## 6. Narco-Analysis, Not Violation of Fundamental Rights

In *Som Prakash v. State of Delhi*, The Hon'ble Supreme Court recognized the requirement, the necessity of scientific investigation<sup>10</sup>. Law Commission also emphasized on the need of training of Police officers in using scientific methods of investigation. The present study is concerned with the commonly used techniques in India to adduce scientific evidences, Narco-analysis, Polygraph and Brain Mapping. Innovation of forensic tools like Narcoanalysis, Brain-mapping and Polygraph tests have proved to be the momentous progress of forensic science in the 21st century. Narcoanalysis has become an increasingly, perhaps most common term in India. It refers to the process of psychotherapy conducted on a subject by inducing a sleep like state with aid of drugs. Human beings have the tendency of speaking lies from the time immemorial.<sup>11</sup>

## 7. Conclusion

It can be concluded with the observation that when criminals are using science in the commissions of crime, there is no reason to restrict police or investigation authorities in taking aid of scientific techniques. It is not that science is altogether rejected in the courts of law, however there are some reservations when scientific tools come in conflict with the rights available to the accused. The rights available to the accused persons are treated almost divine. They are so widely interpreted that now inventions and discoveries are altogether rejected. One must not forget that our laws are centuries old. Present time developments could not be predictable at that time. How courts, can think that these modern techniques of crime detection should find clear mention in the bare acts. Keeping in mind the phase when our laws were made every possible thing is included in the law, now the only thing required is to

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<sup>10</sup> AIR 1974 SC 983

<sup>11</sup> 14th Law Commission Report

interpret the provisions of law in such a way so as to make sure that no guilty goes unpunished which is the ultimate object of the criminal law.

## 8. Suggestions

1. It is to be suggested that a policy should be formulated where expressly narco-analysis, polygraph and brain mapping should find clear mention and provisions should be made for the future developments also so that future scientific techniques may find room in the statutory law of the country and aid in investigation, collection of evidence that may lead to justice.
2. It is also suggested that the explanation attached with the Section 53, Section 53-A and Section 54 should be given wider possible interpretation. The techniques narco-analysis, polygraph and brain mapping should be included in the phrase 'modern and scientific techniques' in light of the rule of "ejusdem generis".

The current scenario in the country is that narco-analysis, polygraph and brain mapping is valid if the test is done with the consent of the subject undergoing the test but it cannot be done without the consent. The researcher respectfully submits that there should be no demarcation between voluntary and involuntary undergoing of techniques. It makes no sense that a particular technique is invalid because the subject did not consent and the same technique is valid when it receives the consent of the subject.

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