

Analyzing the Admissibility of Forensic Evidence in the Criminal Justice of Pakistan: Issues, Challenges and Scope

Muhammad Asif¹ & Sara Qayum²

Abstract

In Pakistan's criminal justice system, forensic evidence is crucial since it can be used to prove guilt or innocence and identify committers. But there are a number of problems and difficulties with the admissibility of forensic evidence in Pakistan. This article examines the use of forensic evidence in Pakistani criminal justice as well as the problems and difficulties with its admission. The article also examines the advantages and breaches of fundamental rights connected to the gathering and application of forensic evidence. Finally, it draws attention to the flaws in Pakistan's forensic apparatus, including insufficient funding and resources, poor forensic expert training and education, poor coordination and collaboration, a lack of standardization and accreditation, and insufficient use of innovative technologies and methods.

Keywords: Forensic evidence, criminal justice, admissibility, Pakistan, fundamental rights, shortcomings.

1. Introduction

The criminal justice system in Pakistan faces many challenges, including high levels of crime, corruption, and inefficiency. The practice of forensic evidence has become a significant apparatus for the administration of justice in Pakistan, as it can help identify suspects, link them to the crime scene, and provide evidence of guilt or innocence (Qanoon-e-Shahadat Order, 1984). However, the admissibility of forensic evidence in Pakistan is subject to several legal, scientific, and ethical considerations, which are the focus of this study.

Crime is now perpetrated using increasingly advanced methods, and new sorts of crime are continually occurring. Investigative authorities use cutting-edge scientific methods to successfully combat such scenarios while looking into crimes. To help investigators stay within the bounds of the legal system, forensic science offers recommendations on all the important characteristics of criminal identification. The criminal justice system is highly dependent on the scientific

¹The author is a PhD Scholar at the Department of Law Hazara University Mansehra. He can be reached at asiflawassociates22@gmail.com

²The author is an HEC-approved supervisor and Assistant Professor at the Department of Law Hazara University, Mansehra, KPk. She can be reached at saraqayum@gmail.com

analysis of evidence from a crime scene. The role played by forensic science in criminal justice system is of immense significance (Mennell, 2006). Application of forensic science has enabled criminal justice to penalize the guilty and exculpate the innocent successfully (Juyal, 2021). It has modernised the investigation process as investigation has the most crucial status in justice delivery system. The courts while administering justice rely upon evidence and evidence alone collected through different means (Afridi, 2021) Without scientific evidence neither the administration of justice nor the protection of fair trial rights could be established (Marks and Bowling et al., 2017). An investigation based on conventional methods of evidence collection along with personal biasness of prosecution witness would lead to violation of fair trial right of accused (Findley, 2008). Evidence based on modern scientific techniques can ensure the fair trial right in both situations of conviction and acquittal (Gianneli, 2004).

Forensic evidence gains most significance place in justice delivery system but the fact remains there that despite the advancement of prosecution and evidence collection techniques. Pakistan is still using conventional methods. The criminal justice system in Pakistan is not delivering at the grass-root level, which is evident from a low conviction rate (Sahoutara, 2018). One of the reasons behind this low conviction rate is its reliance on traditional evidence instead of modern forensic evidence (Munir *et al.*, 2020). The Supreme Court of Pakistan in the case of Watan Party (2011) observed that "Courts can only rely upon evidence presented before them, which is gathered by the police, therefore the Courts cannot be criticized if the police fail in their duty" (Watan Party vs Federation of Pakistan, 2011). Similarly Pakistan follows the adversarial system of legal jurisprudence in which the crime and its link to the criminal has to be proven "beyond reasonable doubt" in this context scientific evidence can play a very important role in dispensation of justice. Besides this in the context of application of rule "falsus in uno falsus in omnibus" by Supreme Court of Pakistan (2019 SCMR 79) there is a dire need to utilize scientific techniques of investigation in evidence collection to fill the gap. Reliance on scientific techniques of evidence collection also prevents resorting to the "third-degree methods" for interrogation of the suspects by the law enforcement agencies.

The judicial system currently relies on scientific methods to administer justice, yet it is still debatable how this information is accepted. The application of forensic science in the course of an inquiry typically begins at the scene of the crime. The primary duties of forensic science are the discovery, gathering, packing, transfer, and analysis of physical and biological evidence; if all of these tasks are carried out in accordance with established standards, forensic science will be considered legally sanctified.

Facilities available regarding utilization of forensic science in criminal investigation process are not satisfactory which adversely affect the admissibility and reliability of evidence in court of law. The Superior courts of Pakistan have expressed their reservations on such state of affairs in a number of judgements. The preservation and testing of DNA evidence is un-standardized sporadic and delayed, the facilities available for DNA testing are limited and dysfunctional (Kainat Soomro vs Province of Sindh 2022). This advanced approach requires ideal storage and transit conditions to rule out even the tiniest contamination, facilities that are scarce even at tertiary institutions (Yasir Ayyaz etc. against State 2022). The absence of DNA profile production is not necessary.

The DNA analysis report's validity and authenticity should not be viewed as definitive proof but rather as evidence supporting the eyewitness testimony (Mureed Hussain vs State 2019). Keeping in view the fact that the courts in Pakistan accept the scientific evidence as a secondary piece of evidence in cases relating to sexual offenses (Cheema, 2016).

Similar to how new scientific technology has seriously harmed fundamental human rights like the right to privacy and the right against self-incrimination, this is the main reason why courts occasionally are reluctant to accept evidence that is based on scientific methods. In the proposed research a detailed analysis regarding the significance of evidence based on new emerging techniques of forensic science with special reference to DNA profiling and polygraph test along with its admissibility, reliability, constitutionality and legal status in criminal justice system of Pakistan shall be undertaken.

2. Forensic Evidence:

The Latin word forensic, which meaning "of or before the forum," is where the word "forensic" originates. Currently, the term "forensic" denotes something that is "legal" or "related to courts." Science is valuable and capable of offering accurate, timely, and frequently decisive knowledge about a given subject. Several specialised disciplines of study or areas of expertise can be used to achieve this. The scientific approach to examining and interpreting an incident is called forensic science, commonly referred to as legal science. It is the use of science by law enforcement authorities during criminal investigations and court cases. All the scientific disciplines, including chemistry, anatomy, physics, physiology, medicine, and surgery, offer support when necessary and, in some cases, are necessary for the investigating officer or a court of law to come to a definitive conclusion about the crime and the perpetrator. Such proof is accumulated through scientific methods including ballistics, blood testing, and

DNA analysis. Typically, forensic evidence is used to determine a suspect's guilt or innocence. Both the investigation and prosecution phases of a criminal case heavily rely on forensic evidence. Before a court of law, legally presented evidence is admissible (Hassan, 2022).

3. Legalization of Forensic Testimony

When the courts require the assistance of a scientific or technical expert to explain a fact based on their specialist knowledge and aid the court in reaching a fair and just verdict. Although an expert opinion is not conclusive proof in Pakistan, the court considers it to be a relevant fact (Article 59 of the QSO 1984). As a matter of precaution and care, courts will sometimes confirm the expert opinion with additional evidence accessible to the judge. The expert opinion must be treated with extreme caution, and conviction cannot be awarded only on the basis of the expert opinion. The nature of expert opinion is corroboratory and explanatory to the direct evidence available to the court (Abdul Qadir vs. State 2015; Qazi Abdul Ali vs. Khwaja Aftab Ahmed 2015; Sanaullah vs. State 2018; Land Acquisition Collector, Sargodha vs. Muhammad Sultan 2014. (Zahra, 2022)

4. Admissibility

A new time of forensic evidence has begun in the field of criminal justice thanks to scientific innovation. Articles 46-A, 164, and 59 of the Qanun-e-Shahadat Order from 1984 discuss these modifications from earlier in time. The truth always comes out, and in the right situations, forensically verifiable incriminating evidence might provide the necessary confirmation that was previously sought through conventional methods. The following is the text of Article 164 of the Qanun-e-Shahadat from 1984: "Production of evidence that has become available due to modern devices, etc." The Court may allow the production of any evidence that has become available due to modern technology or procedures in such situations as it deems appropriate. This legal requirement has created a thorough system for documenting biological, auditory, and visual data. It also includes numerous technology-based techniques that could be used to preserve evidence and court proceedings in modern technology. Inadmissible evidence would no longer be recorded and would not be in violation of the provisions of Articles 131 and 133 of the Qanun e-Shahadat, 1984, if the Presiding Officer had control over the device and could pause it or request that it be paused at any time while recording testimony. (Zia & Ali, 2021)

5. Protocol

By letter No. 2045/MIT/HC/2017 dated 27.1.2017, the Lahore High Court ordered all trial courts in the Punjab to use contemporary technology to record the

testimony of magistrates.

Therefore, the following guidelines should be followed if a witness is necessary to be questioned by video link during an investigation, a trial, or other proceedings:

- (i) the location of the video conference must be the one chosen by the Court.
- (ii) If the witness is in Pakistan, the Magistrate of the First Class should be given a commission under Section 503 or Section 506 of the Code to facilitate and oversee the process as it is described below:
- (iii) If the witness lives in a nation with which Pakistan has reciprocal agreements, the court or judge designated in accordance with paragraph (2-B) of section 503 Cr.P.C. should be given the commission mentioned above. The statement of the witness must be recorded in a Pakistani Embassy/High Commission or Consulate, or, if the Court permits, at a Notary's office, in the presence of an officer from such Embassy/High Commission or Consulate or the Notary, as the case may be, if there are no such arrangements in place. (Zia & Ali, 2021)

6. Problems and difficulties with admissibility of forensic evidence

In most cases, the weapon is recovered at the request of the accused, and the empties and bullets recovered from the crime scene are frequently not sent for the ballistic expert's report until the weapon is recovered, casting serious doubt on the veracity of the report. For this reason, it is assumed that when the weapon is discovered, shots are fired in order to provide a favourable forensic result. In such a case, despite the fact that the forensic report was positive, the courts ignored it. The courts have not considered such report valuable for the doubt of manoeuvring the evidence is present in the situations of delay (Nauman Ullah vs. State 2019). In another case titled Nazim Ali versus the State the court held that the forensic report cannot be taken into consideration when police failed to send empties of weapon for forensic analysis before the arrest and discovery of weapon from the accused (Nazim Ali vs. the State 2019). (Zahra, 2022)

6.1 The delay in providing samples to the forensic agency calls the prosecution's case into question.

In the event of contrabands and narcotics, for example, the sample must be delivered to the forensic laboratory after 72 hours, as specified in the Control of Narcotics Substance Rule, 2001. In contrast, in a case where the drug was discovered on January 1, 2016, and the tests were delivered twenty-five days later, on January 26, 2016, the court granted the accused the benefit of the doubt. The prosecution case suffered since the safe custody and transportation of narcotics substances was not demonstrated. The delay was not explained by the police department (Ghulam Hassan vs. State 2019). (Zahra, 2022)

6.2 Fingerprint Identification

Based on the fact that a person's finger ridges do not agree with those of other people, finger printing is professional proof. It is undeniable evidence that is recognized all across the world. Fingerprints are often recognized, according to court decisions in *Bahader Khan v. The State and Others* [2012] P Cr. L J 24, however this evidence creates issues. The lack of additional evidence makes them questionable, even if they can demonstrate the person's presence at the crime scene and perhaps even disclose cooperation in the crime. For instance, where did the finger prints originate? Whose company were they taken in? Could they be gathered without the participants in question present? (Zia & Ali, 2021).

7. DNA profiling

At PFSA, DNA analysis has proven revolutionary in clearing the guilty and identifying the real criminal. *Ali Haider alias Papu v. Jameel Hussain and others* [2021] PLD 362, the judgments of the trial court, including the imposition of the death punishment, were upheld. The court's decision was aided by the DNA test findings from the bodies of the deceased and the accused.

Muhammad Mushtaq v. The State and Others [2020], M L D 588. Convictions and punishments handed down by the trial court were upheld. Lady Medical Officer submitted the victim's clothes for chemical analysis and DNA testing. The Chemical Examiner's report revealed that her garments were soiled with sperm. Semen was discovered on the victim's garments and the accused's shalwar. The woman Medical Officer's observation report was equally critical in this situation.

8. Courts' Reluctance with reference to DNA

According to a well-known saying of the Holy Prophet (PBUH), a child is given to the person in whose wedlock they are born. Presumption is utilized to compensate for the lack of factual proof when there is a dispute regarding a child's paternity and no direct evidence is available to establish paternity. Muslim scholars disagree on the appropriate time frame for extending fatherhood to a child born following the dissolution of a marriage. Hanafi thought that the Pakistani assembly had adopted Article 128 of the QSO. (Cheema, 2015).

The lower courts made a decision ordering assistance for a son in the case of *Khizar Hayat v. Additional District Judge, Kabirwala*. The petitioner in this instance denied his paternity eleven years after the son was born and requested a DNA test. The High Court ruled that a DNA test could not be requested after it was established that the boy was born during the marriage and the petitioner was unable to

provide any convincing evidence to challenge his legitimacy.

The Court disapproved of the unethical practice of denying one's own children legal status in order to forgo child support payments or exclude them from inheritance. (Cheema, 2015).

In *Sharafat Ali Ashraf v. Additional District Judge, Bahawalpur, 18*, the petitioner contested that the respondent was her husband and filed a lawsuit to have their union recognized. The respondent had filed a lawsuit for maintenance. While the dispute was ongoing, a daughter was added as a party. The Family Court's decision that the respondent and the daughter were eligible for support was upheld by the appeals courts as well.

The petitioner then contended before the Supreme Court that by excluding a DNA test, the lower courts had committed serious injustice. After studying the case file and discovering persuasive and substantial proof of marriage between the parties, the lower courts rightly decided that the couples were legally wed. The petitioner had denied the validity of his daughter and the existence of the marriage without offering any convincing proof to back up his claim. He was unable to provide evidence that the respondent had committed adultery or that the daughter was either born after the marriage had dissolved. Because the daughter was born after the marriage had been dissolved for two lunar years and less than six lunar months, the legitimacy of the girl and the consequent paternity could not be called into doubt by unsubstantiated claims. (Cheema, 2015).

9. Confidentiality

The basic duty of a forensic psychologist is to take reasonable precautions to preserve the client's confidentiality and must be clear about its parameters. The information may only be revealed with the client's consent or the consent of a legally authorized person; in some cases, such as

when the psychologist requires the information for client protection or consultation, it may also be provided without the client's consent. (Yadav, 2017)

10. Exploitation

The best interests of the research participants, students, or employees should always come first for forensic psychologists. This includes not abusing those they supervise or over whom they have authority, such as clients, patients, students, supervisees, and employees. This exploitation may take the form of client solicitation, sexual liaisons, or intimidating people into accepting services. (Yadav, 2017).

11. Forensic Evidence and Objectiveness

Forensic scientists must retain objectivity while making conclusions that can be attained by training and adherence to a universally acknowledged ethical code. The ethical forensic scientist strives to develop conclusions from investigations that are conducted objectively and within the scope of their training or skill. They must keep in mind that their primary trait is objectivity and that they must weigh all the relevant information before making a decision. They owe the public an account, thus they must be impartial in their research and assessments. (Yadav, 2017).

11.1. When accepting scientific evidence, the following principle should be taken into consideration as valid evidence.

Only independent evidence, either direct or indirect circumstances, might be utilised as evidence against the accused in relation to the guilt or innocence issue. In order to prove independent evidence, a strict burden of proof must be accepted. However, corroboration need not be adequate to prove beyond a reasonable doubt the facts supported by scientific evidence, even though independent evidence is required to do so.

11.2 Forensic Evidence and Right to Privacy (breaches of basic fundamental right)

The right to privacy of persons supplying samples and enabling authority's access to all of their personal information is the most crucial legal problem that looms in the backdrop of all the technological challenges that DNA evidence faces. The Supreme Court has decided that privacy is a fundamental right that may only be compromised by enacting a legally justifiable regulation. Complete faith cannot be placed in the government unless there is a particular legislation authorising the use of such data, ensuring that the data is safe, and holding the authority with access to that data accountable for the breach in the event of a leak or abuse (Airen, 2022).

12. Forensic Apparatus in Pakistan

Crime scenes are typically not thoroughly investigated in less developed countries like Pakistan because forensic science is rarely seen as an integral aspect of the investigation.

The significance of crime scene investigations has recently not only been disregarded but actively minimized. The lack of various crime-solving technologies presently used in industrialized nations is one reason for Pakistan's poor handling of crime scenes.

However, police agencies are under pressure to look beyond conventional investigation techniques due to the nature and scale of terrorist attacks, action in ju

dicial institutions, extensive media coverage, and raised public awareness. Even if forensic methods have their drawbacks, if the police are to keep up with changes in the criminal justice system, they must adopt them. Lack of forensic services, inadequate training, and subpar equipment severely limit Pakistani law enforcement's ability to solve a case. As everyone is aware, solving many horrible crimes requires a strong police force (Mateen & Tariq, 2019). The Crime Scene Units (CSU) of the Punjab Forensic Science Agency (PFSA), Lahore, are well established, with satellite stations located in the divisions of Lahore, Bahawalpur, Dera Ghazi Khan, Gujranwala, Multan, Sahiwal, Sargodha, Rawalpindi, and Faisalabad.

When a crime is committed, CSU reacts by going to the scene and collecting the evidence, which is then brought to the appropriate laboratory at PFSA in Lahore. The bulk of the city of Islamabad and its neighboring regions, including Rawalpindi district and a section of Attock district, are serviced by the CSU owned by the National Forensic Science Agency (NFSA) in Islamabad.

In Balochistan, local police officials who lack the necessary training and equipment undertake the majority of crime scene investigations. The United Nations Office on Drugs and Crime (UNODC) has sent two cutting-edge mobile CSUs to Pakistan's Baluchistan province in order to strengthen the province's capability for conducting crime scene investigations. The similar situation happens in Khyber Pakhtunkhwa Province, where local police officials also handle the crime scene investigation process. Despite having well-established crime scene investigation departments for the efficient processing of crime scenes, the Forensic Science Laboratory (FSL) in Peshawar does not cover the whole Khyber Pakhtunkhwa province. Sindh province of Pakistan does not currently have access to crime scene investigation units, and local police personnel often analyse crime scenes; nonetheless, the local government is making significant efforts in this area. (Mateen & Tariq, 2019).

13. Flaws in Forensic Advancement in Pakistan

a. Knowledge of police regarding forensic protocols

Sindh police investigators are hampered by a lack of forensic procedural knowledge, skills, resources, and a national database. The importance of forensic science education and training for police investigators and successful investigations cannot be overstated (Mangi & Khan, 2021).

b. Capacity Building of the Police

DNA databases, biological evidence preservation, and political influence may all improve forensic inquiry outcomes. Education, resources, training, financing, and

forensic laboratories may help police detectives solve a wide range of simple and difficult crimes (Mangi & Khan, 2021)

c. Logical Issues Policing in Pakistan

The Pakistani legislature has given the police not just security management but also certain legal authority. The police force is inefficiently trained, under-resourced, and underpaid, making it subject to corruption, bribery, and ineptitude at all levels. The police are responsible for more than just submitting the first criminal report. They also serve as the investigative authority for crimes and offences. Unfortunately, the police in Pakistan lack the required resources and are inadequately educated to perform effective investigations. Sindh's government has done little to train police officers for forensic investigations. It is critical that the necessary and adequate resources for police training and reform in Sindh province be established so that there is a strong rule of law in the province (Mangi & Khan, 2021).

d. Inadequate Security to Prosecution

Individuals participating in the criminal justice system, such as the plaintiff, defendant, prosecutor's counsel, and court personnel, will all confront security challenges at some time throughout their employment. Sindh High Court lawyers and police officers are the most vulnerable to security threats (Behrens P., 2016). Police cases involving terrorism or high-profile crimes suffer harsh implications. The witnesses face considerable security threats as well. The situation is significantly worse in Pakistan's metropolitan areas. Witnesses who testify imperil their own and their loved ones' lives. As a result, witnesses abstain from testifying, particularly in cases involving street violence. Unfortunately, the government has done very little to safeguard the safety and security of witnesses, as indicated by the partly or nearly unenforceable statute. (Mangi & Khan, 2021).

14. Conclusions

The use of forensic evidence has become an essential tool for the administration of criminal justice in Pakistan. However, the admissibility of forensic evidence is a complex issue that raises several legal, scientific, and ethical concerns. The reliability of forensic evidence, institutional problems with analysis, and reference of court decisions, and the balance between the admissibility of forensic evidence and the fundamental rights of the accused are some of the key issues and challenges in the admissibility of forensic evidence in Pakistan. Addressing these issues and challenges requires a comprehensive approach that involves improving the quality and reliability of forensic analysis, strengthening

the Legal framework governing the admissibility of forensic evidence, and ensuring that the fundamental rights of the accused are protected.

Recommendations

The following recommendation must be taking into consideration:

- Police organizations must focus on more dependable techniques like material evidence and crime scene science in order to survive as crime-control agents and adapt to a more vigilant society. Additionally, it is essential for Pakistan's counterterrorism efforts that evidence gathered from crime scenes be managed and preserved for later forensic laboratory testing so that the identification process may be finished.
- The PFSA, which was founded less than ten years ago, is Pakistan's only fully functional forensics setup, but it is insufficient to serve the country's 200 million people, necessitating the urgent development of additional forensic labs at the temporary level with operational CSU via regional satellite station in each province.
- It is recommended that CSU satellite stations be established in each district of Pakistan for quick and fast access on the spot, even if the PFSA CSU is modernized and up to date for efficient crime scene processing in the case of an unfortunate incidence.
- Prioritizing police force training for law enforcement organizations when they arrive at the crime scene first might be a wise strategy. It may have been accomplished by giving skilled professionals in this area a department inside the police force.
- Police must be given access to CSI vans as well as contemporary forensics equipment and supplies like evidence collection kits, UV flashlights, laser bullet trajectory devices, protective suits, latent print supplies, gunshot residue kits, blood stain evidence kits, presumptive blood detection kits, potable and remote area lights, and other items.

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