**Miscarriage of justice**

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The criminal justice system in Pakistan is not delivering much at the grassroots level, which is evident from the low conviction rate in the lower judiciary mostly in heinous crime cases.

One of the reasons behind this is reliance on traditional evidence instead of modern forensic evidence which is mostly unavailable due to the incapacity of investigation officers in police organizations and forensic laboratories to deal impartially with forensic evidence in heinous offences. Incapacity issues are related to the collection, preservation, transportation, analysis, and interpretation of the forensic evidence. Consequently, we have miscarriage of justice, and low conviction rates.

In Pakistan, there is no comprehensive nationwide DNA database for reference. In heinous crimes mostly cases are sent to the court without sufficient investigation and forensics, leading to lengthy delays in court cases. This also leads to a lack of trust in the system and most resort to other means of gaining justice. In the presence of proper evidence, the situation is likely to improve and have indirect dividends in the form of social justice that ensures a decrease in feuds. The available data supports the need for improving capacity, proper training of the law-enforcement agencies regarding use of forensics evidence in Sindh, and enhancement of forensic laboratories so that the criminal justice system is strengthened.

While there is a growing body of reported judgments dealing with questions concerning the admissibility and weight of DNA evidence in Pakistan, there is little scholarship available on the subject. DNA evidence has revolutionized the world of forensic science in technologically advanced countries. Many of them maintain DNA databases for the investigation of crimes. Many crimes that were once difficult to investigate due to lack of evidence are now being revisited, and offenders are being put behind bars. DNA databases enhance the probability of arrest of profiled offenders as compared to similarly situated un-profiled offenders.

There are many ethical and legal issues involved in maintaining a DNA database, but in the public interest it is gaining currency. In criminal cases like rape, murder etc, timely medical examination and proper sampling of body fluids followed by quality forensic analysis can offer irrefutable evidence. Through the use of forensic evidence, prosecutors can establish the guilt of the accused; at the same time, forensic science aids the search for the truth by exonerating the innocent.

In the recent past, the Supreme Court of Pakistan in 2021 PLD 362 SC held that admissibility of forensic evidence like any other opinion of an expert under Article 59 is relevant and thus admissible. Article 164 of the QSO further underlines the admissibility, reliability, and weightage of modern scientific forensic evidence, including the DNA test, as the said article provides that convictions may be based on modern techniques and devices. Over the years, DNA testing has also come to be recognized by our statutory criminal law in a crime like rape.

The availability of an encouraging legal framework for admissibility of forensic evidence in sexual offences does not mean that it is sufficient for awarding forensic evidence its due role in investigation of crime. This legal framework has adversely impacted forensic evidence in different ways. Treating forensic evidence as a form of expert evidence has eclipsed its significance and potential to be used as primary evidence. Expert evidence/opinion in Pakistan is regarded as corroboratory evidence, and thus cannot be treated as primary evidence. This implies that no case can be decided on the basis of expert evidence exclusively in the absence of any other primary piece of evidence, such as oral evidence. Properly collected, preserved, and analyzed forensic evidence merits treatment as primary evidence in itself.

The approach of judicial officers and investigating officials has already been settled vis-à-vis expert evidence, and that settled approach is likely to diminish the important role of forensic evidence in numerous ways. For instance, the non-availability of any expert evidence in a case due to the carelessness of investigating agencies does not prompt the courts to direct them to procure it, as the courts in such a situation do not feel legally obliged to take any punitive action or play an active role to ensure the availability of expert evidence. This approach is shaped by the fact that if any particular piece of evidence is not brought before them, its unfavourable implications will have to be borne by the concerned party, and the courts in an adversarial system are not bound to go an extra mile to procure a missing piece of evidence.

The prosecution agencies should take heed and use the latest available technology to trace and locate the actual criminal. Under Article 164 of QSO, a court might allow to produce any evidence available because of modern devices or techniques. Furthermore, the Holy Qur’an and Sunnah did not forbid employing scientific or analytical methods in discovering the truth. It is the fundamental duty of the courts to arrive at the truth without depriving an affected party to establish its point of view.

Whatever worth forensic evidence may promise, its use is dependent on the existing legal framework and scientific infrastructure of a country. On the one hand, forensic evidence’s admissibility is hindered in paternity disputes in Pakistan owing to a statutory conclusive presumption in the favour of legitimacy. On the other hand, forensic evidence is admitted by the courts in sexual offences and is treated as a kind of expert evidence.

The utilization of forensic evidence in other offences is almost negligible in Pakistan. This approach of the judiciary is constructed partly by the present legal framework and partly by the lack of technical expertise and the requisite capacity in crime scene analysis.

Pakistan needs to develop the requisite scientific infrastructure for the extraction and preservation of DNA evidence, failing which would result in miscarriage of justice and a lack of fair play. If we compare the last year of statistical data of murder and rape cases instituted and disposal in the four main districts of Karachi, it is quite clear that due to the incapacity of investigation prosecution failed to establish cases and courts have acquitted the accused.

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