

The Use of Information Gained under RTI Act- 2005 in Forensics and Toxicology- An Indian Perspective

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Abstract

The role of forensic reports are to prove without doubt in the court the cause of death, injury nature of death or accident but courts till date do not fully rely on forensic reports as evidence. A study conducted in 2011 by Supreme Court and High Courts, DNA has played an important role in only 47 cases. Out of these, 23.4% decisions were given by Delhi High Court alone. Furthermore, DNA evidence had been used in merely 4.7% murder cases and 2.3% rape and murder. The Committee on Reforms of Criminal Justice System also signifies that the present stage of applicability of forensic science in crime scene investigation is somewhat low in our country, with only 5-6% of the registered crime cases being referred to the Forensic Science Laboratories (FSLs) and Finger Print Bureau put together.

Article 20(3) of the Indian constitution states that “No person accused of any offence shall be compelled to be a witness against himself but the honourable Supreme Court held otherwise. In the case of *The State of Bombay vs Kathi Kalu Oghad And Others* (AIR 1961), the Supreme Court held that, compelling any person to give any sort of forensic evidence does not violate Article 20(3) of the constitution. The same is given in Section 73 of the Indian Evidence act, which states that any person can be asked to give the fingerprint or DNA examination even to the accused. Similarly, Section 53 of the criminal procedure code states that a person accused of any crime can be asked to undergo a medical examination if the officers feel that the examination can provide some evidence to the crime. Further Section 164A of the procedure allows the medical examiner to examine the victim of the rape case within twenty-four-hours of the crime.

Keywords:- Right to Information, Legal knowledge, Forensic, Toxicology, use of information in Forensic and Toxicology.

Introduction

The Right to Information Act, 2005 was passed by the parliament on 15th June 2005 and the basic objective of enacting this act was:-

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto by the parliament of India.”

It is important to understand the views of Supreme Court with respect to the constitutional right of every citizen to seek information from the public authorities. In the case of *Union of India vs. Association for Democratic Reforms and Another* wherein the Honourable Apex Court referring to its earlier judgment delivered in *Dinesh Trivedi M.P. and Others vs. Union of India and Others*, reiterated the fact that the right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights which is as under:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The RTI since 2005 has been a huge pillar in promoting huge transparency of various departments and helped unveil many scams and foul play by various government departments be it the Adarsh scam, 2G scam, or the Indian red cross scam amongst others. The right to information act of 2005 has given a way to human right activists to hold public departments accountable. These are just a few examples where the RTI has played a key role.

Constitutional validity of forensic reports and limited use by courts

Forensic science is defined as “The application of science to those criminal and civil laws that are enforced by the police agencies in a criminal justice system.” The Indian Evidence Act 1872 defines a forensic report as a “belief” tendered by expert. An expert may be defined as a person who, by practice and observation, has become experienced in any science or in his area of expertise. He is one who has devoted time and knowledge to a special branch of learning, and is thus especially skilled in that field wherein he is called to give his expert judgment.

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the crime. Further Section 164A of the procedure allows the medical examiner to examine the victim of the rape case within twenty-four-hours of the crime.

The role of forensic reports is to prove without doubt in the court the cause of death, injury nature of death or accident but courts till date do not fully rely on forensic reports as evidence. A study conducted in 2011 by Supreme Court and High Courts, DNA has played an important role in only 47 cases. Out of these, 23.4% decisions were given by Delhi High Court alone. Furthermore, DNA evidence had been used in merely 4.7% murder cases and 2.3% rape and murder. The Committee on Reforms of Criminal Justice System also signifies that the present stage of applicability of forensic science in crime scene investigation is somewhat low in our country, with only 5-6% of the registered crime cases being referred to the Forensic Science Laboratories (FSLs) and Finger Print Bureau put together.¹

Why is RTI applicable on forensic reports

Forensic reports and the forensic department come under the ambit of Section 4 of the RTI act where under

sub clause (a) of the section maintain all its records duly catalogued and indexed in a manner and the form which facilitates the RTI and to ensure that all records that are appropriate to be computerized within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated.

Forensic reports are kept under the ambit of the right to information because as one sees it from the above statistics, the courts do not rely on forensic reports. The primary reason of this is the unprofessional conduct of physical evidence, including improper collection, preservation, non-collection of clue evidence, non-maintenances of chain of custody, as well as negligent and delayed dispatch of physical evidence for scientific analysis.

Further Courts don't rely on the process followed like sending an accused for medico-legal examination, non-lifting of fingerprints by the Investigating Officer or when bloodstained mortal object had been sent for chemical examination without covering the same by a

wrapper immediately after the seizure.²

The delayed inspection of biological, serological and viscera exhibit in the cases of poisoning puts a big question mark on the legitimacy of evidence. The decomposition of such exhibits can generate alcohol in the exhibits, on long standing duration and may also not permit the detection of poison and conclusive serological results; likewise, in cases of drunkenness, the blood alcohol or urine alcohol negative samples may test positive for the presence of alcohol due to self-generation of alcohol on the putrefaction of samples and the huge backlog of cases delay in investigation and administration of justice.³

Yet the main objective of the RTI act is to promote accountability and transparency among public departments. The forensic departments also need to take accountability of the backlog of cases and the procedure of testing that takes place. As the job to determine the actual cause of death injury or the nature of death or injury is a job that needs high precision and skill, that may prove vital for investigation and evidence.

RTI making forensic labs accountable

In 2010 The FSL in Maharashtra had a huge backlog on then, to which an official of the forensic laboratory had said "Over the past year, we have been receiving around 15 RTI applications per month, the applications included policemen investigating the case and other concerned parties." The official admitted to the fact that several cases had been pending they were short staffed with lack of chemicals for testing and the laboratory had been attending to high priority cases⁴. Just because of a RTI the FSL had to admit to the delays and lot of cases being pending with the laboratory.

In 2011 the FSL in Delhi would have compromised criminal investigation as over a dozen of scientists were not qualified. They were hired after submitting false documents and false information. At least 15 senior scientific officers that were hired and half of them were appointed in the key facility. The Delhi high court issued notices to the recruiting authority i.e. UPSC after the appointments were questioned and exposed these appointments through a series of RTI in front of the High court.⁵

A RTI reply in the year 2013 revealed that there were a large number of cases that is cases of forensic reports, DNA tests and ballistic tests were pending in the FSL at Rohini in New Delhi, The reply states that the number of cases that were pending with the laboratory at the start of 2013 was 8991, the report also cites shortage of staff as a reason for the backlog where out of total sanctioned posts of 337 at FSL, 194 seats were lying vacant, with 5,443 cases pending with the chemistry department, 2038 case pending with the documentation department, 862 cases with the DNA department, 143 cases pending with the cyber unit and 46 cases with the physics department. As a result, a lower court had directed the Secretary, Home affairs of Delhi government to set up at least 12 forensic labs in the state to cope up with the stress.⁶

Similarly, a RTI reveal that the FSL in Maharashtra examined a total of 31,442 cases. This figure went up to 36,431 cases in 2014 to drastically fall to 26,514 cases being examined by the state laboratory in 2015. As a result of this, while 2013 saw 10,553 cases being carried forward to the next year and 9,013 such cases being forwarded in 2014, the year 2015 saw a drastic rise in the number of cases carried forward to the next year to 24,557. The officials claimed that they had a problem in hiring people in the time period and many of its employees moved to high paying jobs.⁷

In the year 2014-15 questions were being raised on the sanctity of tests conducted by one of the forensic labs after a dispute between the scientists and the CFSIL in Hyderabad led to samples of internal organs of 12 bodies allegedly thrown away. A second set of Viscera from the bodies were tested 16 months later after the home ministry finally decided to get involved in the matter. 15 letters had already been sent before the home ministry decided to jump in as revealed by a RTI, after the Supreme court's judgement that directed the forensic labs to "ensure that the viscera is examined immediately and report is sent to the investigating agencies/courts post haste". The ministry had finally set up a committee on 17th April 2015 to test the samples again.⁸

As of April 2019, 30,125 police cases were pending with 8 forensic laboratories and 2 mini labs. In a reply to an RTI by the Directorate of Forensic Sciences Laboratories has revealed that even though the numbers have slightly reduced in the later half of the year but

still there is a lack of Manpower in these kinds of jobs with only 733 posts filled out of 1500 posts that were sanctioned.⁹

The Right to information is not only making the forensic laboratories accountable for the huge number of cases that are pending with the labs but also in a way highlights the low infrastructure and the shortage of workforce in these laboratories that the government can eventually take action on.

Limitations to the use of Right to information in Forensic cases

One needs to keep in mind that there have been various instances where information has been denied under Section 8(1) which states that notwithstanding anything in this Act, there shall be no obligation to give information under certain circumstances.

In a case that is in the case of Mrs. Vijay Bala v. Central Bureau of Investigation, Central Forensic Science Lab, where the appellant had sought a lot of information from the CFSIL pertaining to a case. The public information officer denied the information under section 8(1) (h). The CIC observed that the reports in question were submitted to the CBI were being used for investigation. Revealing such information under an RTI would indeed compromise the process of investigation. The appellant could instead ask the CBI for such reports and it was up to the discretion of the CBI to provide or not to provide such information.

In yet another case that is Gouranga Paik vs Central Forensic Science the appellant had asked for the following details under the Right to information act

- (1) The authority who did the test and signed the report
- (2) The date and time when the tests were done
- (3) Date and time when samples were provided for the test
- (4) Education qualification of the person who conducted the tests
- (5) Number of tests done by the C.F.S.L out of those tests how many of them were proved wrong and later stood corrected. The particulars of the appellant

authority.

The PIO rejected the RTI stating the reason that the appellant had asked questions from a document held by them for forensic examination the request was rejected under Section 8(1) (g)& (h) and appealed in front of the central information commission.

The CIC held that the CFSIL that the documents in question are under the obligation to the forward authority and are not bound to reply to the RTI, revealing such vital information would lead to compromising the trial, investigation and the source of information

An important case where the power of RTI was limited was in the case of Pritam Kumar vs Forensic Science Laboratory. In this case the appellant was a director of a company and he alleged the other two directors used to forge his signature. The appellant had filed a case under section 420,468,471,120(B) and by the order of the Hon'ble Tis Hazari Court, New Delhi, his forged signature and original signature was sent to the Forensic science laboratory.

He alleged the Forensic science laboratory of corruption and delay. He appealed in the Central information and asked for the following:

- (1) He claimed that even a normal person could tell the difference between the original signature and the forged one.
- (2) The opinion of an expert under the RTI filed
- (3) A Committee and a CBI enquiry to be set up probing the corruption and the procedure of investigation

The CIC dismissed the appeal stating that the commission cannot assume the role of a forensic expert and a public information officer cannot be burdened to create more information than he has just for the sake of the appellant. He can cross examine the information provided in the court but cannot use an RTI to cross examine the information provided.

These are huge limitations on the power of RTI the fact that you cannot crossly examine the information by Filing an RTI and the fact that what is under the ambit of section 8 (1) is not clear in such cases.

Conclusion

The RTI Act of 2005 is a powerful tool given to Citizens of India. Yet RTI on Forensics, doesn't have much role in ensuring the accountability of forensic labs. Given that RTIs have revealed that the Forensic Labs have an acute shortage of manpower and Infrastructure but what next did it solve the problem, did the efficiency of these labs increase? The question remains in one's mind when one looks at the number of cases pending with forensic labs that is 30 As of April 2019, 30,125 police cases were pending with 8 forensic laboratories and 2 mini labs. The power of RTI in the field of health is limited with no way to cross examine the information. The scope of information that one gets is also limited and the ambit of what falls under Section 8(1) in such cases is not clearly defined.

The fact that Courts too don't rely on the process of Forensic Collected and analysed tells us something about the credibility of these forensic labs and reports. In many cases the evidence that would have been crucial evidence in the case is not admitted by the court of law because the chain of custody was broken and yet reports of forensic labs in a case is considered as conclusive evidence in many cases. There is no doubt in my mind that a forensic lab, report plays an important role in determining the cause of death or accident and the nature of death. But with so many cases pending and so many procedural issues that forensic evidence that can help the court reach a decision is rejected makes one think. The RTI Act of 2005 can only point out flaws and prove inefficiency of the public authority. The action that corrects these flaws revealed by an RTI on the Government. Government needs to act on these on an urgent basis because as the phrase goes justice delayed is Justice denied.

Ethical Clearance- Taken from Ph.D guide of Amity Law School, Noida, Uttar Pradesh

Conflict of Interest - NIL

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