The Importance of DNA Evidence in the field of Criminal Law in Sri Sri Lanka

U.A.T. Udayanganie
Department of Public and International Law

Background

The development of the technology leads to the application of DNA (Deoxyribose Nucleic Acid) as a scientific evidence in the field of Criminal Law. Using DNA is an improvement of the traditional system of criminal investigations. Considering on the uses of DNA profiling in Criminal Law are convicting the guilty and exonerating the innocent, excluding suspects and identifying victims of mass murders and assassinations. At present, it is thoroughly recognized that DNA profiling is a very powerful diagnostic technique, which has proved to be highly useful in establishing guilt or innocence.

The importance of DNA is that DNA is unique to each person. In the DNA typing process, the DNA pattern or profile of an individual is first obtained from a tissue sample. This DNA profile is compared with the profile obtained from a sample taken from the scene of crime. If the two profiles match with each other, it can be said that the sample taken from the scene of the crime came from the individual who was being tested.DNA can be identified from analysis of cells, including from tiny samples of blood, saliva, semen, skin or even sweat.

The existing legal framework in Sri Lanka deals with DNA evidence is figuring out Section 122 of CPC amended by 14 of 2005. In addition, the Section 45 of the Evidence Ordinance provides the legal acceptance for DNA evidence in Sri Lankan courts.

This paper attempts to specifically identify following issues with relating to the importance of DNA evidence in the field of Criminal Law.

- What are the difficulties in the existing procedural, evidentiary and substantive laws in dealing with DNA evidence in court and during the investigation stage?
- How to tackle these difficulties in other jurisdictions?
- What kind of defenses can be raised by the suspects in relying on DNA evidence in court and can prosecution use in countering such defenses?
- What are the offences can be used DNA evidence in Criminal Law?

Concerning on Sri Lankan experience, Hokandara Murder Case was the first case in Sri Lanka in which DNA profiling has been used. Aftermath of the Hokandara case, some of the significant incidence such as Sarath Ambepitiya Murder Case and Royal Park Murder Case can be identified as landmark cases in terms of using DNA profiling as expert evidence.

Methodology

The main sources of the research are secondary resources such as library research and internet that include books, journal articles, cases and other related statutes. In addition the author has also interviewed lawyers who had experienced in DNA evidence and doctors who had experienced in DNA profiling examinations, especially in terms of its practical applicability in Sri Lanka. For the purpose of providing recommendations for Sri Lanka, a comparative study was done by the author other jurisdictions including U.K., U.S. A. and India.

Results

It is clearly shown that Sri Lanka has no specific legislation or rules and regulations for governing on DNA evidence other than the section 45 of the Evidence Ordinance and Section 122 of CPC as amended by 14 of 2005and there are certain difficulties in the existing procedural, evidentiary and substantive laws in dealing with DNA evidence .Therefore forensic scientist can also limited by law enforcement officers legal inability to obtain suspects non intimate or intimate body samples for testing.

As well Sri Lanka does not have adequate facilities to deal with DNA experiments and police officers have not adequate technical knowledge to conduct an investigation by obtaining DNA evidence. In addition there are some limitations on using DNA. An adequate amount of undegraded and uncontaminated DNA must be extractable from the crime scene. Concerning on sexual offences, most of rape victims do not report the crime or it is reported too late for effective vaginal smears to be obtained. It reduces the use of DNA profiling. Lack of standardization limits is another problem. It leads to emerge a doubt on reliability of evidence.

According to the study, failing to establish a National Database on DNA has caused to minimize the usage of DNA evidence in the field of Criminal Law. Privacy issues have

arisen and there is a question need to be addressed that how to balance the necessity of using DNA and right to privacy of the suspect, victim and other related parties.

Conclusions

There is no doubt that DNA is used as evidence in relation to many offences in Sri Lanka. But it can be clearly identified that there are substantial and procedural. There is a necessity to enact separate legislation to deal with the issues of governing DNA related experiments, for instance in obtaining samples and governing DNA database of convicted and suspected criminals. In that case, law should be able to establish a balance between rights of victims, suspects and other related parties and necessity of obtaining DNA samples for criminal cases. Therefore the author suggests that obtaining DNA samples with the consent of suspect in minor offences is a necessity and incase of grave offences, there should be a provision to deal with the issue of obtaining samples without the consent of suspects.

Police should be trained for using new techniques and how to investigate of crime scene without contaminates DNA evidence. Therefore, the requirement of giving updated technical knowledge to the law enforcement officers is emphasized. In addition to that the government has a responsibility to improve the facilities with relating to DNA experiments, since the reliability of the evidence is based on the quality and the accuracy of DNA samples.

Furthermore establishing a National DNA Database in Sri Lanka is much important , since it will help not only to identify criminals and to exclude the innocence by matching the evidence of the Crime Scene with existing DNA data, but also to prevent criminals from having many opportunities to commit these crimes such as murder, rape and robbery again.