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ADMISSIBILITY OF CRIMINAL PROFILING **IN INDIAN COURTS**

AUHORED BY - AABHA JAIN

INTRODUCTION

In June 1973, a girl was kidnapped from a Montana campsite. Taking note of the circumstances, the two agents of FBI's behavioural science unit- Agent Howard and agent Patrick made a criminal profile of the perpetrator. This led the investigators to predict that the kidnapper was a young, white male who killed for sexual gratification and also may have kept body parts of his victims as "souvenirs". They also concluded that the killer might have been arrested for other crimes. This led the investigators to the perpetrator David Meirhofer who had killed four people in rural Montana. Also the "souvenirs" were found at his residence.

This was the first case to be solved by FBI by using criminal profiling and David Meirhofer became the first serial killer to be captured by criminal profiling method.

It comes to no surprise that number of crimes committed is increasing at a rapid rate,¹ along with the rapidly changing and constantly evolving society. Many scientific, technical, and other advances are being made. New techniques have often ensured the conviction of the guilty and the acquittal of the innocent and cast light on crimes, the truth of which might otherwise have remained undiscovered. The researcher in this paper will focus on one such technique called criminal profiling.

Under criminal law, before the trial begins, it is necessary that the perpetrator is arrested. This process requires identification of the criminal first. This identification is done by police or other appropriate authorities by a method called investigation. Investigation is a systematic inquiry into a criminal act. Investigation plays a crucial role in the administration of criminal justice system. The term investigation has been defined in the section 2(h) of the Criminal Procedure Code.² It

¹ Statistics- Crime in India 2015, National Crime Records Bureau, Ministry of Home Affairs. Available at <http://ncrb.nic.in/StatPublications/CII/CII2015/FILES/Table%201.2.pdf>.

² "investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf"

starts with the reporting of the crime. It is concluded as a successful investigation when the inquiry has been brought to its logical conclusion. In order to do this, all facts and physical evidence must be considered and put in their logical arrangement.³

Criminal profiling is one such tool to narrow down the field of investigation. Profiling does not provide the specific identity of the offender. Rather, it indicates the kind of person most likely to have committed a crime by focusing on certain behavioural and personality characteristics. Criminal profiling not only helps in investigation of crimes already committed but the process can also be used determine the nexus between the data collected from the crime and characteristics of the offender. It is a multi-disciplinary practice that cuts across many disciplines.

I.1 What is criminal profiling?

Criminal profiling can be understood as a process through which behaviours and/or actions exhibited in a crime are assessed and interpreted to form predictions concerning the characteristics of the probable perpetrator(s) of that crime. It is known by various names such as psychological profiling, offender profiling, criminal investigative analysis, crime scene analysis, behavioural profiling, criminal personality profiling, socio-psychological profiling and criminological profiling.

Criminal profiling has been defined in many ways by various scholars based on their backgrounds. Ainsworth defined offender profiling as “the process of using all the available information about a crime, a crime scene, and a victim, in order to compose a profile of the (as yet) unknown perpetrator.”⁴

For Davies, “offender profiling (more technically known as Criminal Investigative Analysis) is the name given to a variety of techniques whereby information gathered at a crime scene, including reports of an offender's behaviour is used both to infer motivation for an offence and to produce a description of the type of person likely to be responsible.”⁵

³ Gibbons, Redmond P. “Criminal Investigations.” *Journal of Criminal Law and Criminology (1931-1951)*, vol. 33, no. 1, 1942, pp. 84–94., www.jstor.org/stable/1136621.

⁴ Peter .B. Ainsworth, *Offender Profiling and Crime Analysis*, 7 (2001).

⁵ Anne Davies, *Rapists Behaviour: A three Aspect Model as a Basis for Analysis and Identification of a Serial Crime*, *Forensic Science International*, 173 (1992).

Geberth sees a criminal personality profile as “an educated attempt to provide investigative agencies with specific information as to the type of individual who may have committed a certain crime.”⁶

Thus, criminal profiling is the process of using available information about a crime and crime scene to compose a psychological portrait of the unknown perpetrator of the crime.⁷ The information that the criminal profiler uses is often taken from the scene of the crime, and takes into account factors such as the state of the crime scene, what weapons (if any) were used in the crime, and what was done and said to the victim. Other information used in criminal profiling can include the geographic pattern of the crimes, how the offender got to and from the crime scene, and where the offender lives. The actual process of profiling differs from one profiler to another (depending on the training of the profiler), but the aim remains the same: to deduce enough about the behavioural, personality, and physical characteristics of the perpetrator to catch him.

Criminal profiling represents a method for identifying general but distinguishing personal characteristics and psychological personality traits of a yet unknown perpetrator from prior victim–offender interactions, crime scene analysis, geographical analysis, physical evidence, and victimology in an ongoing or closed investigation to help law enforcement direct their investigation and allocate their resources efficiently.⁸

I.2 Rationale for profiling

There are two operating words in criminal profiling: *modus operandi* (method of operation) and behaviour.⁹ The *modus operandi* could lead to clues about the offender. There is the idea that an offender is likely to commit a particular type of crime in a particular or similar pattern. Thus offender profiling is based on the premise that the *modus operandi* may lead to clues about the perpetrator and that the crime scene characteristics may point to the personality of the perpetrator.

Behaviour helps to predict the personality type or the motives for the crime. Therefore, the single most important thing that a profiler looks for at a scene of crime is anything that may point to the

⁶ Vernon J. Geberth, *Practical Homicide Investigations: Tactics, Procedures, and Forensic Techniques*, 4th edition, 46 (1996).

⁷ Damon Muller, “Criminal Profiling Real Science or Just Wishful Thinking?”, *HOMICIDE STUDIES*, Vol. 4 No. 3, August 2000 234-264, 2000 Sage Publications, Inc.

⁸ Id.

⁹ Ebisike, Norbert, "The Use of Offender Profiling Evidence in Criminal Cases" (2007). Theses and Dissertations. Paper 23.

personality of the offender. The rationale behind this approach is that behaviour reflects personality, and by examining behaviour the investigator may be able to determine what type of person is responsible for the offense.¹⁰ When profiling, the profiler notes the physical description, individual traits, any odd behaviour and remarks or records of anything that the offender said or did during the attack. Also to be noted are information about the steps the offender used to avoid being detected, method of killing, or the way he approaches his victims, as well as notes about the offender's gender, age group, race, occupation and criminal records.¹¹

Psychiatrists and psychologists made significant contributions to the early development of criminal profiling. The profiles created by these practitioners were based largely on clinical judgment and prevailing theories of personality and psychopathology.¹² Even then there are issues with regard to the scientific backing and accuracy of such Profiles.

II ACCURACY OF CRIMINAL PROFILING

The use of criminal profiling in criminal investigations has continued, and attempts have been made, at times successfully, to adduce profiling evidence in criminal trials.¹³ However, this has prompted calls for caution and given rise to strong criticism, mostly on the ground that very little empirical research exists that decisively supports profiling as a valid science.¹⁴

The investigators have time and again turned to psychologists and psychiatrists to assist in complex criminal investigations. The method of criminal profiling has evolved from the last few decades from what was once a mere educated guesswork. Scholarly attention has increased and seemingly scientific methodologies have been developed but still is not totally scientific and accurate. The discipline is underpinned by an undeveloped theoretical framework that is yet to be scientifically validated. Also, there are inherent conceptual complexities in defining an appropriate measurement of validity.¹⁵

¹⁰ John. E. Douglas., Ressler, R.K., Burgess, AW., and Hartman, C.R., *Criminal Profiling from Crime Scene Analysis*. Behavioral Sciences and the Law, 403 (1986).

¹¹ Norbert Ebisike, *An Appraisal of Forensic Science Evidence in Criminal Proceedings*, 44 (2001).

¹² Marcus T. Boccaccini, "Perceptions of the Validity and Utility of Criminal Profiling Among Forensic Psychologists and Psychiatrists," *Professional Psychology: Research and Practice*, 2006, Vol. 37, No. 1, 51–58

¹³ Pascale Chifflet, "Questioning the validity of criminal profiling: An evidence-based approach," *Australian & New Zealand Journal of Criminology*, 2015, Vol. 48(2) 238–255.

¹⁴ Id.

¹⁵ Id.

According to Brent Snook and others, the blunt reality is that most of the typologies used to create criminal profiles are in fact false typologies and the majority of CP approaches are based on an outdated theory of personality that lacks empirical support.¹⁶ Even the professional profilers cannot make accurate predictions.

Douglas stated that “The process used by an investigative profiler in developing a criminal profile is quite similar to that used by clinicians to make a diagnosis and treatment plan . . . Investigators traditionally have learned profiling through brainstorming, intuition, and educated guesswork.”¹⁷ This process is reminiscent of psychoanalytic approaches where mental health professionals diagnose their clients through subjective interpretations and unsupported methods. Empirical research shows that clinical experience has a limited effect on the accuracy of psychologists’ and psychiatrists’ judgments across a range of tasks. In addition, when clinicians’ predictions are compared against objectively determinable hard data their error rate often exceeds their accuracy rate.¹⁸

Richard Kocsis has discussed in his book a systematic and empirically based investigation of the skills and accuracy inherent to the proficient construction of criminal profiles.¹⁹ Some evidence suggests that criminal profiles constructed by expert profilers are likely to possess a comparatively higher degree of accuracy in their predictions. Additionally, contrary to rhetoric, it appears the constituent skills most likely to be associated with the accurate construction of a criminal profile are not aligned necessarily with popular conceptions concerning the pre-eminence of investigative experience.¹⁹

There is no compelling scientific evidence to support the positive view of CP that dominates popular opinion. CP approaches are based on typologies that lack empirical support and are often based on an outdated understanding of human behaviour. In addition, professional profilers often produce predictions that are not significantly more accurate than non-profilers. Given this state of affairs, one might wonder why police officers continue to request the assistance of profilers.

¹⁶ Brent Snook & others, “The criminal profiling illusion- What’s Behind the Smoke and Mirrors?” *Criminal Justice and Behavior*, Vol. 35 No. 10, October 2008, 1257-1276, DOI: 10.1177/0093854808321528

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

III ADMISSIBILITY IN INDIAN COURTS

The method of criminal profiling does help in investigation and finding the perpetrator but the question with regard to the admissibility of these criminal profiles remains. The researcher in this chapter would analyse whether criminal profiles can be admitted in the court of law in the light of Indian legislations and cases.

Criminal profiles can be brought under expert evidence which has been incorporated in the Indian Evidence Act, 1872 under Sec 45. Section 45 makes opinion of specially skilled persons relevant. In *Bal Krishna Das v. Radha Devi*,²⁰ “an expert was defined as a person who by his training and experience has acquired the ability to express an opinion”. The purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion.²¹ But expert opinion cannot form the sole basis of conviction of accused,²² unless something inherently defective appears, court cannot substitute opinion of an expert.²³

In general, it may be said that there are two distinct classes of cases in which expert testimony is admissible. In one class of cases, the facts are to be stated by the experts and the conclusion is to be drawn by the courts. In the other group of case the experts states the facts and gives his conclusion in the form of an opinion which may be accepted or rejected by the courts.²⁴ Criminal profiling falls in the latter group as the experts correlate the facts and form an opinion on the characteristics of the perpetrator.

Originally, when this section was enacted words ‘finger impressions’ was not a part of the section. However, they were inserted in the year, 1899 and this insertion is sufficient to indicate that the expression science or art therein is of wide import. It is presumed that parliament intends the court to apply to an ongoing Act, a construction that continuously updates its working to allow for changes since the Act was initially framed. While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it a current law.²⁵

²⁰ AIR 1989 All 133

²¹ *Dayal Singh v. State of Uttaranchal*, 2012(3) RCR (Criminal) 949

²² *S. Rajendran v. State* 2011(4) Madras Law Journal (Criminal) 537

²³ *Mahalakshmi v. State of TN*, 2012(6) RCR (Criminal) 100

²⁴ C.d. Field, “Expert Evidence”, Delhi: Delhi Law House, 4th edition, 2012, p. 1

²⁵ Statutory interpretation by Francis Bennion, quoted in *State v. S.J. Choudhary* 1996 (2) RCR (Criminal) 721

The researcher is of the view that despite the probability of inaccuracies, criminal profiling should be given a shot because half a loaf is better than no bread. In *D.K. Basu v. State of West Bengal*²⁹ in the year 1997 Supreme Court expressed that there is a need to develop scientific techniques and methods for investigation and interrogation of accused as custodial deaths and torture is nothing else but a blow at rule of law.

Right to speedy and fair trial is also a fundamental right available to both accused and victim. In fact, if trial is not quick it cannot be regarded as reasonable, just or fair and it would fall foul of article 21²⁶ and criminal profiling may help in speedy and fair trial. The concept of fair trial and fair investigation is not only to be considered from the point of view of liberty or right of accused only, the victim and the society also suffers where investigation becomes a casualty.²⁷

It is quite unfortunate that many scholars confuse criminal profiling with other forms of profiling and then claim it to be self-incriminating. Criminal Profiles are often confused with racial profiles, intelligence profiles, DNA profiles and personality or psychological profiles.

The use of criminal profiling commonly arises in the context of an on-going criminal investigation into a crime or crime series. Racial profiles, on the other hand, represent aggregated demographic templates of the typical type of individual who is believed to commit certain forms of crime.²⁸

Intelligence profiles contain demographic information pertaining to a particular individual, it should be recognized that these profiles frequently represent a compilation of known and suspected particulars regarding a specific individual who may have been previously apprehended, wanted, or strongly suspected of having committed an offense or offenses.²⁹

DNA profiles represent the DNA coding for some item of organic matter. The use of DNA profiles relates to the discipline of forensic science and involves the matching of DNA samples taken from a suspect with those found at the scene of a crime to establish whether they are likely to originate from the offender.³⁰

²⁶ Mohan Lal v. State of Punjab AIR 2013 SC 2408

²⁷ Gurbax Singh Bains v. State of Punjab 2013(1) Law Herald 652

²⁸ Tyler, T.R. and Wakslak, C.J. (2004). Profiling and police legitimacy: Procedural justice attributions of motive, and acceptance of police authority. *Criminology*, 42(2), 253–281.

²⁹ Bullock J.A., Haddow, G.D., Coppola, D., Ergin, E., Westerman, L., and Yeletaysi, S. (2005). *Introduction to homeland security*. London, UK: Elsevier.

³⁰ Lazer, D., ed. (2004). *DNA and the criminal justice system: The technology of justice*. Boston: MIT Press.

Criminal profiles are distinct from personality or psychological profiles.³¹ Although criminal profiling is sourced in the disciplinary knowledge of psychology and is still frequently referred to as psychological profiling in some quarters, it must be understood that psychological or personality profiles within the clinical practice of psychology often refers to the evaluation and diagnosis of a presenting patient.³² In contrast, criminal profiling does not relate to the examination of a presenting patient. Rather, it is the examination of a crime to interpret the behaviours evident in the commission of that crime and from an analysis of those behaviours generate a description of the individual likely to have exhibited those behaviours.³³

Also, the perfunctory practice of producing documents which may throw light on any of the controversial points does not amount to self-incrimination.³⁸ Therefore, admissibility of criminal profile is not violative of 20(3) and hence can be admitted by courts of law in India.

IV CONCLUSION AND SUGGESTIONS

Criminal profiling is not as straightforward and definite as one might expect. Despite the media glamorization of this method, this method lacks a strong scientific backing and works on the assumption that all the acts done were intended, overlooking the fact of other mitigating factors can also be present. Criminal profiling has various shortcomings and one of them being its inaccuracy. A simple mistake in the profile can make the investigator lose track of the perpetrator totally and therefore cannot be always relied upon.

Nonetheless, it can be worked upon to create an efficient method ease the investigation process. Criminal profiles can be admissible in Indian courts under section 45 of Indian Evidence Act, 1872 as expert evidence. Section 45 does not require complete reliability on the profile rather it depends on the discretion of the court.

Criminal Profiling is not self-incriminating as it is a process to identify a perpetrator and the logic of it is being made admissible in the court. Unlike the common notion, criminal profiling is not congruent to other scientific techniques like brain mapping, narco-analysis and DNA profiling which require the presence of accused beforehand.

³¹ Anastasi, A. (1976). Psychological testing, 4th ed. New York: Macmillan.

³² Morrison, J. (1995). DSM-IV made easy: The clinician's guide to diagnosis. New York: Guilford.

³³ Richard N. Kocsis, "Criminal Profiling Principles and Practice," Humana Press, 2006. ³⁸ State of Bombay v. Kathi Kalu Oghad AIR 1961 SC 1808.

In fact, the researcher is of the view that criminal profiles have always been accepted in the Indian Courts of law by the way of considering it to be circumstantial evidence. All that is required now is proper specialisation and knowledge of criminal profiling to be admissible in court under the banner of criminal profile itself.

