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EVIDENTIARY VALUE OF FORENSIC FINGERPRINTS

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ABSTRACT :

Each person is bound to possess his/her distinctive features. Likewise, each section of the human body has its physical variations. This unique characteristic is the foundation of the notion of individual identity. Fingerprints are a typical method for determining a human's individuality and revealing identification. "Forensic Fingerprints" are becoming a progressively critical component in furthering the interests of the criminal justice system of any state. It has aided numerous investigating agencies and the judiciary in their efforts to identify the true perpetrator of an alleged crime. Even the most clever and crafty culprits leave traces at the crime site, fingerprints being one of them, which have been labeled as "chance fingerprints". Owing to the peculiar characteristics of fingerprints, they are viewed as reliable evidence. They are distinctive, irreversible, identifiable, and can be generally obtained as evidence in criminal cases at the place of commission of crime. It's not disputed that criminals, nowadays, attempt to make use of the improved technology to commit punishable act. This current scenario necessitates that the concerned stakeholders of the criminal justice administration be informed about these new scientific advances and how they can be applied to their quest to find the truth. This necessitates an analysis as to how the Judiciary weighs this vital piece of evidence in determining the guilt of the accused. In this context, the purpose of this article is to study this significant domain of forensic evidence, namely "Forensic Fingerprints I," and how it is evaluated by Indian courts, i.e., its evidential relevance.

INTRODUCTION

In most cases, no crime can be accomplished without the use of the hands, a person's most important bodily component. During the commission of a criminal act, the perpetrator might come in direct connection with the items found at the crime scene. This leaves his unique fingerimpressions, which can be used to identify the perpetrator. In general, "forensic science" is the application of physical and natural science methodologies to issues about civil and criminal law². Even though not all forensic instruments are uniformly precise, they have emerged as a convincing source of evidence in the court of justice. This is certainly relevant for the method of Forensic Fingerprints, since fingerprints, which have been identified in several criminal cases, have contributed to ascertaining the culprit behind a criminal act, amidst numerous safety measures adopted by astute perpetrators in the crime scene to circumvent prosecution.

Furthermore, "Forensic Fingerprints" has received due recognition for its reliability and, in the backdrop of the criminal justice administration, for the prosecution's strong emphasis on it to establish the accused's guilt. It is to be noted that, in all circumstances, the fingerprints of the accused obtained from the crime scene don't need to provide an inference beyond reasonable doubt that he is the actual offender. This may be a relevant fact that could help indetermining the guilt of the accused, provided, it doesn't run contrary to the chain of evidence and aids in further corroboration. Furthermore, excessive or sole reliance on the fingerprint evidence can be detrimental to the interests of the concerned parties since it's not accurate in its entirety and may be contaminated by contextual bias owing to the degree of subjectivity involved. In this context, the perception of the courts with regard to the usage of fingerprint evidence becomes significant.

STATUTORY PROVISIONS DEALING WITH FINGERPRINTS

The Courts have the authority under Section 73 of the Indian Evidence Act, 1872², to "require any individual to scribble any words or figures in furtherance of comparing them with any words or figures alleged to have been written by such person. The provision is further applicable to finger imprints, with any required adjustments." "Resistance to the capturing of finger impressions is regarded an offense under section 186 of the Indian Penal Code, 1860, when this section is read in conjunction with section 6 of the Identification of Prisoners Act, 1920."

When the judiciary needs to clarify a stance about a finger imprint, the viewpoint of a Fingerprint expert becomes significant under Section 45 of Indian evidence act³. In this instance, the expert's judgment becomes a relevant fact. In addition to fingerprint experts, "this provision encompasses

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¹ B.R. Sharma, Forensic Science in *Criminal Investigation & Trial*, (Universal Law Publishing Co. Delhi, 1996)

² The Indian Evidence Act, 1872, S. 73.

³ The Indian Evidence Act, 1872, S.45.

incidents in which the Court needs to form an opinion on a point of foreign law, science, or art, or on the identification of script". When a living person's opinion is relevant under Section 51 of Indian Evidence Act 1872⁴, the considerations on which that viewpoint is founded are also relevant. "An expert may also refresh his or her knowledge by referring to professional scholarly works under Section 159."

Section 293 Cr. P.C states that "the Director of the Finger-Print Bureau's report can be considered as proof without the Director's further examination." The reason why his report is considered as evidence despite his being examined is that finger impression comparison and recognition has now evolved into a science, and the results produced from it have achieved a level of precision.

Section 3 of Identification of Prisoners Act 1920 states that anyone convicted of a crime indictable by stringent punishment for one year or more must submit for his "measurements" and photo to be taken in the "prescribed manner" when required by a police officer.

Section 4 of Identification of Prisoners Act 1920, which deals with taking "measurements" of "non-convicted individuals", states that an individual apprehended on suspicion of an offense punishable in a similar way as those covered by Section 3 of the Identification of Prisoners Act must permit his "measurements" to be captured in the prescribed form if so, requested by a police officer. It is pertinent to note that in regards to the phrasing of the two provisions, there is essentially no divergence between an "accused person" and a "convicted person", particularly in terms of the "manner" in which it is to be accomplished.

Section 5 of Identification of Prisoners Act 1920, on the other side, is concerned with the Magistrate's authority. It states that if a Magistrate is convinced that collecting an arrested person's "measurements" (and photograph) is necessary for any inquiry or procedure under the Code, he can issue an order to that effect.

Consequently, a plain reading of these provisions signifies that the Police can take the fingerprints of any accused individual they have apprehended without the permission of the Magistrate. It has a variety of implications and crucial concerns that the courts must examine. The absence of any "prescribed manner" whereby the Police must obtain the evidence just adds to the concern (and under Section 8⁵ of Identification of Prisoners Act 1920, the term "may" about the State Government's capacity to formulate rules to effect the statutory provisions worsens the situation).

OPINION OF THE FINGERPRINT EXPERT

The expert works in a domain that is beyond the scope of ordinary understanding. In a nutshell, an expert is a person who is competent to voice an opinion due to his or her skills or experience. "A forensic scientist is not a witness for either the prosecution or the defense, but rather a court witness."

The Hon'ble Supreme Court in the case of "Ranjit Singh Brahmajeet Singh Sharma v. the State of Maharashtra"⁶ stated that since judges are not adequately qualified to deduce conclusions from facts in certain technical domains, expert witnesses have an edge of a discernible skill or expertise. In issues involving extensive technical or scientific understanding, specialist evidence is most frequently sought. "The primary goal of such professional opinion is to facilitate the court in reaching a final determination. When the eyewitnesses and other prosecution evidence are reliable, credible, and consistent, the court will be fully within its competence to exclude the expert opinion. In such a case, the court must rigorously evaluate the expert's rationale, methodology, and expertise to ascertain which of the findings can be utilized in course of the proceedings."

The Apex court in *State of Maharashtra v. Sukhdev Singh* further observed that the correctness of the reasoning on which a Fingerprint expert's opinion is based determines the quality of his or her judgment, just as it does for any other specialist.

Notably, a "Fingerprint expert's testimony is not substantive evidence and can only be used to corroborate certain pieces of substantive evidence that are already on the record."⁹ Furthermore, while experts are often cross-examined in the trial, this is particularly relevant if the Fingerprint expert's report is vague and imprecise, and his or her lack of cross-examination in such circumstances leaves his or her conclusion questionable.

The Supreme Court in "*Chandran v. State of Kerala*"⁷ stated that even if the fingerprint expert's judgment is found to be without defects if the finger impressions were collected suspiciously, the expert's view will become irrelevant.

The fingerprint expert in *State of Madhya Pradesh v. Sitaram* neglected to capture magnified images of all the contested impressions. The Madhya Pradesh High Court emphasized that the court's duty is made relatively easy when a fingerprint expert takes an enlarged snapshot of the disputed and specimen finger impressions and highlights the unique commonalities. The court further stated that it cannot abdicate its authority to the expert and that it must determine the value of any additional evidence. The court must eventually examine the reasons presented by the specialist in reaching the decision and convince itself that the determination is valid by comparing the prints. The Supreme Court in *State (Delhi Administration) V Pali Ram* opined that in the case of Section 73 of Indian Evidence Act 1872, the court can appoint an expert in the lack of one, but it must make its judgment based on its observations rather than the experts.

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The Supreme Court in "*Sonvir v. The State of NCT of Delhi*"⁸ in construing "the Statement of Objects and Reasons of the Identification of Prisoners Act, 1920" remarked, that it is apparent that the purpose of enacting such legislation is to address the issue that the framework by which Indian police recorded finger impressions, photos, and other proof of identity of criminals was devoid of legal backing. The goal of enacting such a statute was to prohibit prisoners from denying to give their measurements (the term "measurements" used in the Act includes finger impressions and footprints).

⁴ The Indian Evidence Act, 1872, S.51.

⁵ The Identification of Prisoners Act, 1920, S.8.

⁶ *Ranjit Singh Brahmajeet Singh Sharma v. the State of Maharashtra* A.I.R. 1972 S.C.4.

⁷ *Chandran v. State of Kerala* (2010) 2 SCC 748

⁸ *Sonvir v. The State of NCT of Delhi* AIR 2019 SC 546

The Supreme Court in this case ruled that “the State Government's inability to frame any regulations under Section 8 of Identification of prisoners act 1920 does not preclude the authority granted under Sections 3 and 4 of Identification of prisoners act 1920 . It further held that, while Sections 3 and 4 are subjected to the condition of "prescribed manner," in the absence of such stipulated guidelines, the officials as equipped under Sections 3 and 4 of Identification of prisoners act 1920 are not devoid of their abilities to act under the aforementioned sections.” The exclusion of regulations under Section 8 doesn't imply that Magistrate's approval is compulsory. This further implies that the power conferred on the officials by these sections is vulnerable to misuse in absence of any established prescribed procedure to exercise the same.

According to the Supreme Court in “*Mohd. Aman v. State of Rajasthan*”⁹ there was an obvious missing component that the prosecutor failed to demonstrate in the context of that trial. The prosecution was not successful in proving that confiscated items had not been altered

or manipulated before they arrived at the Bureau for evaluation. In this instance, the confiscated item is a metal jar on which the accused's finger impressions were identified and validated by the Forensic Bureau. Furthermore, the Court added that the fact that the suspect was in police detention at the time of the confiscation won't rule out the potential of evidence being fabricated. This is particularly essential if the Court determines that the fingerprint was not submitted wilfully but forcibly by the accused and was obtained by a deceptive method.

The lifting of purported finger impressions was found to be extremely suspicious in *Rohit Dhingra and Ors. v State*¹⁰ since, the expert's report asserted that “the suspect's palm prints matched what's been found on the evidence in issue (beer cans), the prosecution did not establish when and who ended up taking the sample prints for matching the same. Furthermore, not a single prosecution witness testified in the Trial Court on when and how the accused's finger impressions were obtained.” As a result, it was decided that relying on the fingerprint expert's assessment would be imprudent. As a result, if done in front of a Magistrate, the aforesaid reliability as to authentic character appears to go uncontested.

While acknowledging that the order of a Magistrate required under Section 5 does not apply to Section 4, the Supreme Court in *Ashish Jain v Makrand Singh* held that “it is eminently preferable that the evidence be captured before or under the order of a Magistrate to negate skepticism about its credentials and to rule out fabrication of evidence.” As a result, while the Supreme Court could not rule out the potential of manipulation and post-facto finger impressions addition, it agreed with the High Court in dismissing fingerprint evidence. Furthermore, the case further fortifies the legal position that the bare absence of a magisterial directive authorizing the collection of the fingerprint evidence cannot be cited to argue that it was collected illegally.

Whether acquired voluntarily or involuntarily, the collection of finger impressions and footprints of the suspect for the comparison purpose with imprints recovered at the crime site does not diminish their probative value.

The Gauhati High Court stated in *Gopal Chandra Mahanta v. the State of Assam*¹¹ that convicting a person accused of a severe crime exclusively and entirely based on fingerprint similarities is potentially dangerous without any corroboration. In contrast, the Patna High Court in the case of *State v. Karugope* recognized the fingerprint expert's assessment as substantial proof for sustaining the accused's conviction. The Court simply stated that the expert must provide explanations for the report's conclusions. The Court determined that it would be preferable if the fingerprint evidence reports included justifications that would aid the court in clarifying the issues.

“The core issue with fingerprint analysis is subjectivity, which is also a concern in several other domains of forensic science. The process is largely dependent on the analyst's subjective judgments. The technique is kept subjective on purpose so that the examiner can analyze the trait of each ridge in the impressions under examination, but it is prone to yield incorrect conclusions. According to the National Academy of Sciences, while fingerprint analysis is likely to be valuable in the courts, claiming that technology has no error rate is simply incorrect.”

“Contextual bias arises in forensic science when well-intentioned forensic analysts are exposed to external information and are prone to making mistakes.”

The relevant case to further deliberate on this issue is Brandon Mayfield Case. The FBI detained Oregon lawyer Brandon Mayfield in May 2004 premised on a false finger impression match. A fingerprint left inside a plastic bag associated with the Madrid train bombing was mistakenly identified as belonging to Mr. Mayfield by FBI experts. Mayfield was detained for 17 days until Spanish Police Authority began their investigation and located the actual perpetrator: an Algerian national who organized the terrorist act with others. Mayfield received an apology from the FBI, which also conducted an exhaustive examination of its fingerprint analysis techniques. One main point of contention which was raised in the wrongful identification was that the religion of the suspect was in the knowledge of the examiners which influenced them. In light of this context, the evidentiary value of fingerprints has become a subject of deliberation.

CONCLUSION

The science of fingerprint recognition has been around for over a century. It has been assumed that it has acquired a level of precision that excludes any possibility of error. But this assumption is not backed by any credible scientific testing and analysis. Therefore, excessive or sole reliance on the fingerprint evidence can be detrimental to the interests of the concerned parties since it's not accurate in its entirety and may be contaminated by contextual bias owing to the degree of subjectivity involved.

At the same time, the merits of this evidence can't be overlooked. One of the benefits of using finger expressions to identify a person's identity is that it takes very little time and energy. This will expedite the investigative process. As a result, it has the potential to be a robust and powerful instrument in the arsenal of justice administration. Fingerprint evidence can be used to fill in a gap in an investigative chain and consequently strengthen it. Furthermore, while a Fingerprint expert is an effective component in the Court's arsenal, his or her findings can be promptly dismissed if it is deemed suspicious or not up to the Court's satisfaction. The prosecution is also expected to give a justifiable account of the Fingerprint evidence appropriately in conformity to the sequence of events occurring in a criminal case.

⁹ *Mohd. Aman v. State of Rajasthan* 1978 Cri. L.J. 1220

¹⁰ *Dhingra and Ors. v State* [1992] 2 S.C.R. 9

¹¹ *Gopal Chandra Mahanta v. the State of Assam*, A.I.R. 1972 S.C.487

The expert opinion is submitted to assist and inform the court, not to conclude the dispute. In the end, the court should make its judgment on the concerned issues. The court must take note of the individualistic nature of the finger impressions, and how their appearance should never be overlooked because they can firmly determine a person's identification. Courts need not tolerate dubious methods of handling finger impressions. This is certainly relevant when a piece of evidence allegedly containing an accused's fingerprint is seized while the accused is in police custody. In several instances, with conspicuous missing links in their cases over the management of the Fingerprint Evidence, the Apex Court has correctly rejected and not depended on the Fingerprint evidence. Notably, the judicial tendency of casting aspersions on the legitimacy of fingerprint evidence in the lack of a Magisterial order directing the police to acquire finger impression evidence and acknowledging the potential of post-facto addition of fingerprints is to be appreciated.

Furthermore, another well-established court ruling in “The State of Bombay v. Kathi Kalu Oghada and Ors.” is that “under Article 20(3) of the Constitution of India¹², 1950, giving thumb imprints, impressions of the foot, palm, or fingers, or specimen handwriting are not included in the word “to be a witness” against himself/herself.” This position has now been reaffirmed in “State of U.P. v. Sunil”¹³ where the court went a step further to state that “even forcing an accused to give his or her fingerprints by the police is outside the scope of Article 20(3).”

The aforementioned judgments reflect the pragmatic approach of the Indian judiciary in giving teeth to the Indian criminal justice administration. Such judicial pronouncements facilitate the Courts to catch hold of those offenders who under the guise of privacy rights, seek to escape criminal prosecution.

¹² The Constitution of India, art.20(3).

¹³ State of U.P. v. Sunil [1992] 2 S.C.R. 92.