

## **Applicability of Fingerprints in Indian Criminal Justice System**

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### **Abstract**

An effort has been made to investigate the function of fingerprints in the decision-making process of Indian Superior Courts from 1987 to 2015, a period of 29 years, in order to quantify the rate of conviction and acquittal where fingerprint evidence was used. The use of fingerprints as a form of identification is accepted by the judiciary all around the world. Because of the following characteristics of fingerprints, they are valuable as evidence.

### **INTRODUCTION**

An effort has been made to investigate the function of fingerprints in the decision-making process of Indian superior courts from 1987 to 2015, a period of 29 years, in order to quantify the rate of conviction and acquittal where fingerprint evidence was used. The cases are described as "criminal cases in which fingerprint evidence was used for recording conviction or indication" in broad terms. The use of fingerprints as a form of identification is accepted by the judiciary all around the world. Because of the following characteristics of fingerprints, they are valuable as evidence. They are one-of-a-kind, permanent, universal, inimitable, classifiable, and frequently available as evidence in criminal cases.<sup>1</sup>

**Fingerprints are classified based on how they formed on the crime scene.**

**There are three sorts of fingerprints according to this classification -**

**Moulded or Indented Finger-mark:** A three-dimensional fingertip impression found in a malleable item such as putty or candle wax. Oblique lighting can help to reinforce such impressions.

**Visible Finger-mark:** It can be positive or negative depending on whether the fingers were contaminated with a coloured material, such as blood, or whether the fingerprint ridges removed a coloured material, such as dust or soot, off the surface. Depending on the qualities of the contaminant, this form of mark can be increased optically.

**Latent Fingerprint:** This is the most prevalent sort of fingerprint evidence, yet it is the most difficult to detect. To distinguish them from substrate materials, they usually require some physical or chemical treatment. A typical latent fingerprint deposit is made up of a complicated mix of natural secretions and environmental pollutants. Effective fingerprint detection requires knowledge of the deposits' primary constituents.<sup>2</sup>

Using their skills, a Latent Print Examiner compares latent prints to exemplars. Examining latent prints is a difficult task since they are frequently small, deformed, overlapped, and can be modified at the crime scene. Experts in working with the different problematic attributes of latent fingerprints must be taught to deal with such complexity. A latent is compared to one or more exemplars during examination. Exemplars are usually gathered from persons of interest who had legitimate access to the crime scene or through a database known as the Automated Fingerprint Identification System in a specific case (AFIS). For comparison with the latents, AFIS offers a list of candidate exemplars. The AFIS selects exemplars that are considerably more likely to be comparable to the latent than

exemplars chosen by other methods, resulting in a much more accurate outcome. The FBI conducts investigations by comparing latent fingerprints with exemplars obtained from the AFIS database.<sup>3</sup>

The ACE System is a common method for fingerprint examination. The latent fingerprint is determined using this system of fingerprint inspection, which includes analysis, comparison, assessment, and verification. **There are three types of outcomes that can be obtained from such an investigation:**

1. inappropriate for comparison
2. appropriate for comparison
3. exclusion or inconclusive, which indicates it comes from a separate source that isn't in dispute and doesn't render the result unfit for comparison or acceptable for comparison.

When latent-exemplar image pairs gathered under controlled settings match of the same source, they are known to be mated, and when they do not match because the sources are different, they are known to be nonmated. Individualization based on mated prints is a genuine positive, whereas it is a false positive or error if based on nonmated prints. An exclusion decision based on mated prints is a false negative, whereas one based on nonmated prints is a real negative. Both false positive and false negative are considered errors.

#### **LEGAL REQUIREMENTS FOR THE USE/REFERENCE OF FINGERPRINT EVIDENCE**

1. Section 4 of the Act allows a police officer above the rank of sub-inspector or an investigating officer (in offences covered by Chapter XIV of the Cr.P.C.) to take the fingerprints of an accused who has been apprehended for a crime punishable by at least one year of solitary confinement.
2. A first-class magistrate can order someone to produce his fingerprints under Section 6 if the magistrate believes it will speed up the investigation of the case. It is legal to employ any means required to secure the taking of the property.
3. Fingerprinting is likewise covered by Section 73 of the Indian Evidence Act of 1872. If the court requires fingerprints to be compared to a questioned fingerprint, the court may order any person present in the court to produce his fingerprints.
4. The evidence of a fingerprint specialist, a person who is specially knowledgeable in fingerprints, is relevant under section 45 of the Indian Evidence Act, 1872.
5. The report of the head of the fingerprint bureau is admissible as evidence under Section 293 of the Code of Criminal Procedure, 1973. The expert may be called to testify in court.

#### **Examples of cases and laws in which fingerprint as a evidence in crime:**

Murder, rape, unnatural offences, theft, dishonest misappropriation of property, kidnapping or abducting in order to murder, robbery, dacoity, making preparations to commit dacoity, criminal conspiracy, kidnapping, attempt to murder, rioting, unlawful assembly, causing hurt, grievous hurt, assault or criminal force to a woman with the intent to outrage her modesty, cheating, forgery, falsification of accounts, dish

1. Section 5 of the 1988 Prevention of Corruption Act outlines the procedure and powers of a special judge. Criminal Misconduct by a Public Employee (Section 13(1)(d)).
2. Section 5 of the Identification of Prisoners Act of 1920 gives the magistrate the authority to require a person to be measured or photographed.
3. Section 25 of the Arms Act of 1959: Penalties for various offences, Section 27: Penalties for utilising arms, and so forth.

4. Section 73 of the Indian Evidence Act of 1872 deals with the comparison of a signature, writing, or seal with others who have been accepted or proven.
5. Section 311 of the 1973 Code of Criminal Procedure grants the authority to summon material witnesses or investigate those present.
6. Section 5 - Possession of Certain Unauthorized Arms, etc. in Specific Areas of the Terrorist and Disruptive Activities (Prevention) Act of 1987

A careful examination of the cases reveals that fingerprint evidence is corroborative, yet the courts acknowledged that "Fingerprint evidence is a very valuable piece of evidence in any criminal inquiry, and its importance should never be underestimated."

It is also a well-established legal concept that when material objects collected from the scene of the crime are forwarded for comparison with fingerprints taken from the accused, the accused's fingerprints must be taken properly. 8 Nonetheless, the Supreme Court held that while the existence of a fingerprint at the site of an incident is positive evidence, the absence of a fingerprint does not rule out the presence of the persons in question.<sup>4</sup>

#### **FINGERPRINT EVIDENCE WAS USED/REFERRED FOR RECORDING CONVICTION OR ACQUITTAL IN CRIMINAL CASES**

##### **OUSEPH ALIAS JOHNY V. STATE OF KERALA (12.08.1987 – KERHC) MANU/KE/0515/1987**

The appellant was found guilty of house trespassing and murder under sections 449 and 302 of the Indian Penal Code. As a result, this appeal has been made. Fingerprints were taken from the scene of the crime and from the accused as well. The courts accept fingerprint evidence based on the presumption that no two people have the same fingerprints. The possibility of finding two identical fingerprint patterns in the world's population is exceedingly minimal, according to scientific research and analysis. The following are the basic principles of fingerprints: i) A fingerprint is a unique feature; no two fingers have ever been found with identical ridge features. ii) A fingerprint will not change throughout the course of a person's life. iii) Fingerprints contain general ridge patterns that allow them to be categorised systematically. In any criminal investigation, fingerprint evidence is extremely useful, and its significance should never be overlooked. Other evidence also pointed to the defendant's guilt. The conviction was maintained when the appeal was dismissed.<sup>5</sup>

##### **DEBAR KUNDU RAMA KRISHNA RAO V. STATE OF WEST BENGAL (29.06.1987 – CALHC) MANU/WB/0265/1987**

Session Extensions The judge found the appellant guilty of murdering his wife under section 302 of the Indian Penal Code. As a result, this appeal has been made. There was no eye witness in the case. PW9's medical evidence indicated that the deceased died as a result of the effects of manual strangulation, which was connected with ligature strangling, ante-mortem, and homicidal in nature, indicating that the accused intended to kill the victim. PW-9 identified the odour of alcohol in the victim's stomach, indicating that she was under the influence of alcohol, rendering her powerless to resist. However, before calling PW2 and 4, the accused did not remove the wrapping around the victim's neck. The evidence of PW2, who had deposed in order to spare an accused who was a coworker in the workplace, could not be trusted. The Fingerprint Expert was summoned, but no similar finger print could be found. On the evidence before the court, the accused had failed to substantiate his alibi plea.<sup>6</sup>

a result, the circumstances proved the accused's guilt beyond a reasonable doubt. The accused's conviction under section 302 was upheld, and the appeal was denied.<sup>7</sup>

##### **AJIT SINGH CHOUDHARY AND ETC. V. STATE OF RAJASTHAN AND ETC. (22.07.1991- RAJHC) MANU/RH/0094/1991**

The appellants were found guilty under sections 302, 149, and 307 of the Indian Penal Code. As a

result, this appeal has been made. The presence of knives with the accused persons, according to the prosecution, establishes their intent to cause death. The victims were whipped viciously with wire whips throughout the night, and it was proven that the injuries were sufficient in the usual course of nature to cause death, and the case fell under clause third of section 300 of the IPC. The prosecution's story was refuted by the appellants. Appellant A rejected the knife's recovery and seizure at his request, claiming that he was only implicated because he used to visit accused M's house. He also claimed that the IO had fingerprinted him on a bottle. However, the court found that the convicted accused persons were guilty of murder because there was no doubt that they had organised an unlawful assembly and abducted and fatally wounded RJ and D. They were correctly convicted under sections 302 and 149 of the Indian Penal Code. Because the victim, RJ, did not die as a result of his injuries, the accused defendants were not found guilty under section 307 of the Indian Penal Code. As a result, the accused persons' appeals were dismissed, and the conviction was upheld.<sup>8</sup>

**PANDURANG DHONDU BHUWAD AND ETC. V. STATE OF MAHARASHTRA (26.04.1991 – BOMHC) MANU/MH/0180/1991**

The appellant was found guilty of violating sections 302 and 392 read along with section 34. In the absence of an eyewitness to the incident, this is essentially an instance of circumstantial evidence. The prosecution's evidence is divided into several categories, the first of which is the testimony of particular witnesses, which the prosecution utilised to demonstrate the presence of the current accused at the scene of the crime. Following that, there was proof of the police discovering, recovering, and seizing the property, as well as the simultaneous arrests of A2 through A5 from their various native locations, all of which occurred in short succession in the days following the occurrence. Following that, the prosecution attempted to rely on fingerprint evidence, particularly the one assigned to A-2 and found on a bottle in the deceased's flat, according to the prosecution. Following a review of the evidence that suggested the commission of the crime, the court reversed the judgement and found appellant guilty and sentenced under sections 394 and 34 of the Indian Penal Code for voluntarily causing harm in committing robbery.<sup>9</sup>

**BOBAN @ JACOB CHERIAN V. STATE OF KERALA (11.03.1992 – KERHC) MANU/KE/0278/1992**

The appellant was found guilty under section 302 of the IPC, while his cousin was found guilty under section 201/34. While the appellant was found guilty and sentenced to life in prison, the second accused was found not guilty. The victim was discovered dead in a pool of blood by PW1, the maid servant. The Sessions Court convicted him based on circumstantial evidence presented by the prosecution, such as the motive for the crime, the presence of the accused near the scene of the crime at an untimely hour, the TIP, the fingerprint on the door handle, and the blood soiled clothes of the accused. In this appeal, the court's decision is being challenged. When the prosecution uses a key piece of evidence against the accused, the court has a duty to interrogate him about it and get an explanation from him. The prosecution cannot utilise such evidence against the accused; thus, the Court must ask him about it and obtain his answer. The prosecution cannot rely on evidence that was not presented to the accused. While the accused is being questioned under section 313 of the Criminal Procedure Code, that piece of evidence must be presented to him. Though the accused is not obligated to explain or refuse to explain any incriminating event against him, it is required to draw his attention to the damning substance against him. It was not done in this circumstance. As a result, the appeal was granted, and the defendant was found not guilty.<sup>10</sup>

**STATE OF MAHARASHTRA V. SUKHDEO SINGH AND ANOTHER (15.07.1992 – SC) MANU/SC/0416/1992**

The issue in this appeal was whether A-1 and A-5 were correctly convicted under sections 302 and

307 of the Indian Penal Code. Held, the court may, at any stage of the investigation or trial, after the prosecution's witnesses have been interviewed and before the accused has been called upon by his defence, ask the accused questions to enable him to clarify facts that have been presented in evidence against him. If the accused admits to the commission of the crime charged against him during his examination, the court may use such confession to convict him. PW150, Vijay Tote, took a fingerprint from a bottle, which was afterwards compared to the fingerprints of A-1 by PW122, Fingerprint Expert, and they matched. A-1 and A-5 both chose to enter guilty pleas. As a result, the convictions under sections 302 and 307 were upheld.<sup>11</sup>

**JAIVIR SINGH V. STATE (DELHI ADMINISTRATION) (06.01.1995 – DELHC) MANU/DE/0572/1995**

The accused/appellant was found guilty under section 302 of the Indian Penal Code. As a result, the appeal has been filed. The impact of non-compliance with section 100(4) of the CrPC, 1973 in relation to search and seizure was discussed in this case. It was discovered that two respectable residents in the area were not joined before the search was carried out. The joining of only one witness was found to be insufficient. As a result, the recovery was dubious and could not be said to have been undertaken at the accused's request. The case revolved around the credibility of the murder weapon, which was discovered in an open place in accordance with section 27 of the Evidence Act of 1872. A large number of people were able to enter the location. It was discovered that there was no proof that the weapon was hidden and not apparent to the naked eye. As a result, it was decided that the recovery could not be given priority. The accused's fingerprint impressions were also taken. As a result, the conviction was overturned and an acquittal was issued, though not on the basis of fingerprint evidence.<sup>12</sup>

**SMT. CHHANNO AND OTHERS V. STATE OF HARYANA (24.04.1996 – SC) MANU/SC/0872/1996**

The appellant was found guilty under both Sections 302 and 460. In the FIR, PW4 testified that he saw appellant leave the deceased's house with a knife in his hand. PW1's testimony that appellant, who was her husband, was false cannot be questioned because no justification has been presented as to why a wife would falsely depose against her spouse. Knife was retrieved as a result of appellant's statement. On the mirror and lock of PW4's dwelling, appellant's fingerprints were discovered. Appellant's alibi plea was tainted by evidence from his wife, PW1. The prosecution established a case against the appellant that was beyond a reasonable doubt. On the basis of the evidence presented, the appellant's conviction was upheld.<sup>13</sup>

**ANALYSIS OF THE CASE STUDIES IN WHICH FINGERPRINT EVIDENCE WAS USED TO RECORD CONVICTION AND ACQUITTAL**

Out of various instances reviewed and referenced from 1987 to 2015 (28 years), major were convictions and acquittals were merely 40% as recorded under this chapter, where fingerprint evidence was used to record conviction and acquittal.

**Reasons for Not Guilty**

When incriminating substances, such as fingerprints, are discovered and lead to the accused's guilt, the evidence should be brought to the accused's attention so that the court can examine him under section 313 CrPC. In this instance, the accused is not obligated to explain any incriminating evidence against him and may even refuse to do so. However, he must be alerted of the incriminating evidence against him, which was not done in this case. As a result, acquittal was recorded.<sup>14</sup>

In a situation where the search was undertaken in violation of section 100(4) of the Code of Criminal Procedure, 1973, the recovery was not considered as corroborative to the fingerprints

acquired. The legitimacy of the murder weapon seized was also a point of contention in the investigation. As a result, the accused's fingerprint impression could not be verified because the search and recovery were suspect.

According to section 5 of The Identification of Prisoners Act, 1920, the accused's fingerprints must be acquired, although this was not done in this case. The accused's fingerprints were discovered on the brass jug confiscated from the deceased's home, but it was not displayed during the trial. For no apparent reason, seized items were stored in the police station for five days. The date of dispatch on the letter conveying the seized materials to the Bureau had been overwritten. Since there was no link between the identity of the goods confiscated and the identity of the articles inspected by the Fingerprint Bureau. As a result, the appellant's fingerprints could not be trusted, and he was found not guilty.

Acquittal was recorded after fingerprints of the accused were taken by an expert and no attempt was made by the prosecution to prove that the fingerprints were those of the appellants. The court expressed sadness that the fingerprint expert's testimony would have gone a long way toward proving the prosecution case, which they were unable to do.

The Supreme Court discussed the importance of accepted specimen fingerprints and compared the ballistic expert's view to the fingerprint expert's conclusion.<sup>15</sup>

Although fingerprints were not obtained from the scene of the crime, the Supreme Court held in *Kashinath Mondal v. State of West Bengal* that "recklessness and inefficiency of the investigating agency should not be grounds to acquit a person if there is enough evidence on record to establish his guilt beyond reasonable doubt."

Acquittal was recorded since the prosecution failed to produce the fingerprints and no questions were asked of the accused under section 313 CrPC. Furthermore, the Sub-Divisional Magistrate who supposedly took the samples fingerprints was not called as a witness.

Acquittal was recorded if fingerprints were lifted but not sent for examination, witnesses were cited but not examined, relevant materials were cited but not examined, and acquittal was recorded if fingerprints were lifted but not sent for inspection.

Acquittal was recorded when specimen fingerprints were not taken on the order of the Magistrate or gathered in the presence of the Magistrate, as required by Section 5 of the Identification of Prisoners Act.

The court stated that in order to prove the accused's guilt, motive must be proven. In the situation where the appellant, accused, worked as a domestic help in the deceased's home, it is natural and customary to find the domestic help's fingerprints on the household objects, and the court acquitted the appellant on that basis. Although fingerprints were taken, they were not compared to the accused person's specimen fingerprints. The court had thrown aside the conviction and recorded acquittal in cases where the appellant's specimen fingerprints were taken but did not match with the appellant's fingerprint. If the prosecution claims that a document contains the deceased's thumb impression, it must be proven that the thumb impression on the document belongs to the deceased. The comparison of the deceased's fingerprints with the thumb impression was of no relevance unless such a thing was shown. As a result, the court determined that the prosecution had failed to prove that the dead corpse belonged to the deceased. As a result, acquittal was recorded. Acquittal was recorded in situations where fingerprints were lifted but not compared. It is self-evident that fingerprints constitute corroborative evidence, and that the appellant's fingerprints, while obtained, were of no help because there was no additional evidence to demonstrate the appellant's culpability in the crime. The Supreme Court agreed with this assessment, ruling that fingerprint expert

testimony is not significant evidence. Such evidence can only be used to back up certain pieces of substantive evidence that are already on the record. It was never stated in this instance that the deceased and the accused had a physical altercation at the scene of the crime, or that the accused had any physical contact with the deceased. Deceased was shot at point-blank range and instantly fell to the ground, half inside a car. As a result, there is no evidence that A-4 and A-5 had any reason to touch the car, let alone with their ring fingers. As a result, the fingerprint expert's evidence on the car was irrelevant. Even if the fingerprint expert's testimony on the scooter was accepted, it was inadequate to establish a link to the crime. He also failed to produce any proof of a fingerprint on the purported weapon of crime, which was uncovered as a result of the accused's admission. The appellants' appeal was approved for the grounds stated, and the accused A-4 and A-5 were acquitted. Although fingerprints were acquired and the fingerprint expert's report appeared to be conclusive, it could not be trusted since prosecution witnesses failed to testify when and how the accused's samples fingerprints and palm prints were obtained. Furthermore, simply lifting fingerprints and sending a report will not be sufficient unless the lifting and report can be proven. Fingerprints should be provided freely by the accused or obtained in a fair and reasonable manner by the IO.16

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