

ISSN: 2582 - 2942



# LEX FORTI

---

LEGAL JOURNAL

VOL- I ISSUE- III

APRIL 2020

## DISCLAIMER

---

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

# EDITORIAL BOARD

---

**EDITOR IN CHIEF**

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

**EDITOR IN CHIEF**

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE  
OF ARBITRATORS

PHONE - +91-8500832102

**EDITOR**

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+ YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK EXPERIENCE IN BANKING SECTOR; CONTENT WRITER FOR BUSINESS TIMES AND ECONOMIC TIMES; EDITED 50+ BOOKS ON MANAGEMENT, ECONOMICS AND BANKING;

**EDITOR**

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS INTERNATIONAL UNIVERSITY) - MARKETING MANAGEMENT

ISSN: 2582 - 2942

# EDITORIAL BOARD

---

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL AND  
ADMINISTRATIVE LAW)., NET (TWICE) AND SET (MAH.)

EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

EDITOR

MS. P SAI SRADDHA SAMANVITHA

STUDENT EDITOR

## ABOUT US

---

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



**Admissibility of Forensic Evidence in Courts**

**A Swathi Radhakarishnan**

## **ABSTRACT**

---

The Forensic evidence plays an important role in solving a crime. This evidence include finger print, handwriting, bite mark, blood test, DNA test etc. Forensic science is mainly used for criminal related cases such as murder, robbery, assault, rape, kidnapping etc. It helps to identify how the person died whether its due to poison or any violence or accident. The accountability of forensic evidence is mainly in question because the error made in the laboratories when the evidence is collected without proper care then the entire case will change upside down. Dishonest medical examiner is also a problem in this field. Proper care should be taken for the forensic evidence some evidence shall not be exposing to sunlight or moisture content shall not be there for these proper labs shall be provided by the government. Therefore in courts the forensic evidence shall not be taken as conclusive evidence in many cases. Medical field is trying their level best to increase their efficiency. In many of the counties citizens ID card also consist of finger print. In India we have Aadhaar card all the citizen's information is consisted in that card including our finger print. For the passport also we are providing our finger print. This paper mainly aims at the accountability of forensic evidence in court and also why does it not consider as conclusive evidence. Also try to incorporate the initial stages of forensic evidence with cases.

Keywords; Forensic evidence, Laboratories, Finger print, Murder

## **INTRODUCTION**

---

In our society different types of crimes are happening. Murder, kidnap, rape etc are taking place for money or because of mental health etc. When the suspect did the crime there will be some evidence left behind from there the investigation starts. Mainly no one is allowed to enter into the crime scene except the investigator and forensic technician. By analysing the crime scene they find out the finger prints or any other forensic evidence in the scene. Types of Forensic evidence DNA, Blood stains, Finger prints etc. There is a confusion regarding whether the forensic evidence should be consider as only circumstantial evidence. But it is purely based on other facts of the case. The reason it to be consider as circumstantial evidence is because when the crime was committed there were no eye witness therefore it also consider as a circumstantial evidence. Finger print is also used in many countries for documentation. For example in Aadhar card also we are providing all our information including the photograph and finger print.

## **CASES WHICH LEADS TO FORENSIC AS EVIDENCE**

---

Francisca Rojas is the 1<sup>st</sup> person who found guilty for the crime through fingerprint evidence. The thumb impression was not taken into consideration earlier. The case was happened in Argentina on 1892. Facts of the case is Lady Francisca Rojas committed an offence of killing her two children. At the first stage of investigation she completely denied the facts and told that he is suspicious of her neighbour. There were no leads for this case. Investigator who visits the crime scene found a blood stain finger print in the door. The neighbour gave an alibi that he was with his friends when the time of crime. He also overheard the conversation between Francisca Rojas and her boyfriend saying that he would marry her except those two brats.

Kangali Charan is the person who convicted for murdering his master. The crime was happened in India at 1898 and it was the first case in India which incorporates forensic science as evidence. Sir Edward Richard Henry investigated the crime. The deceased person was lying near the tea garden by his throat cut. Near to his body there was a dispatch box were there inside the box a calendar with a light blue paper on which were noticed two faint brown smudges. This impression was one person's right arm. There were many suspects in this case therefore police took all the suspects finger print and found that the person who killed was the ex servant of deceased. He also committed theft therefore he is convicted foe theft and murder.

The Belper committe is basically to consider the importance of finger print for identifying the suspects and solving the problem. The Kangali Charan case is one of the examples. Edward



Henry is one of the members in this committee also he solves the case using the finger print of the suspect.

John Herbert dillinger was an American gagster in USA. He commits offences such as robbing banks and causing hurt to people. He had a big gang full of criminals who were engaged in different crimes. He escaped from prison and was charged for murdering a police officer but wasn't convicted for the offence. Dillinger was also popular by media because a book was published about the gagster and the title was“ THE DILLINGER DAYS ” . He was in the wanted list of police and he was injured in by the police many times and killed in an encounter. Later it was found out that he used acid in his finger to remove the finger prints.<sup>1</sup>

Frye standard is the test conducted by the court to decide on the admissibility of scientific evidence into a trial. It is also known as the general acceptance test. In the case of Frye Vs United States has generated much discussion over the acceptability of polygraph test result as scientific evidence. But the court held that the test is unreliable and not acceptable as entirely dependable within the scientific community. Therefore the test could be legally enter into the court and consider as scientific proof. Under the Frye standard of evidence the scientific law in a court must be sound by the majority of experts in the field. It is not consider as just a physical evidence it is also apply to expert testimony. In the cross -examination the court didn't find the testimony convincing then this Frye test is applicable.<sup>2</sup>

In the case of rape or sexual assault the forensic evidence plays an important role. Police in Ontario, Canada had collect a data from 187 female who are victims of sexual assault and rape for understanding whether the medico legal evidence help in solving the problem. For rape the evidence such as blood, sperm, semen or saliva is taken and accordingly the charges are filed against him.

Sexual Assault Care and Treatment Centre in Canada are functioning for the betterment of victims. It provides all the medical treatment, collecting of evidence for the charging of offence, long term counselling, court support is also provided.

Even in India there are such facilities functioning efficiently. The Protection for Women and Children home are there. The victims who come under the POCSO (Protection of Children from Sexual Abuse) Act and the women above the age of 18 will provide shelter.

---

<sup>1</sup> <http://ncrb.gov.in/BureauDivisions/CFPB/pdf/Misc/Land%20mark%20cases.pdf>

<sup>2</sup>Author(s): Geoffrey Fryer, John Fryer, F.R.S. and His Scientific Observations, Made Chiefly in India and Persia between 1672 and 1682 Vol. 33, No. 2 (Mar., 1979), pp. 175-206

As stated before the victims study in detail consist that most of the victims are below 21 years of age, unemployed, consume alcohol are the irony. Because of the forensic evidence they find out that the measure of injury some of the victims were brutally, moderate, mild being assaulted. Also the biological sample collection includes seminal or saliva stains on the skin and in pubic hair etc. They document all the important factors such as non motile sperm, whether HIV infected or not etc.

The important fact is that we can identify that whether the victim try to resist the assault or it is when the victim was unconscious or under the alcohol all these factors can be identify by the help of forensic evidence.<sup>3</sup>

Selvi v State of Karnataka is a land mark case under forensic evidence. Lie detector test, polytrophic test, DNA test should be held voluntarily no one shall compel l them to do so. Under Art 20(3) deals with Doctrine against self incrimination means “No person accused of any offence shall be compelled to be a witness against himself”. Therefore whenever the lie dictator test is conducting the consent of the accused is necessary. Also it should be record by the Judicial Magistrate.<sup>4</sup>

In Nirbhaya murder and rape case the turning point was the forensic evidence. The evidence were finger prints of the four people and the bite mark of them. In this case the bench, also comprising Justices R Banumathi and Ashok Bhushan, said “DNA technology not only provided guidance to investigation, but also supplied the court accrued information about the "tending features" of identification of criminals, and such evidence was increasingly relied upon by the courts.”

There are many reasons why the accountability of forensic evidence is not taken in to consideration. One of the main reasons is if any error or mistake happens in the side of forensic scientist it will change the entire thing. Earlier finger print was identifying in the crime scene which was visible and mostly with blood stains in it. But now a day the technology is more advanced with the help of latent fingerprint we identify. Which is basically sometimes finger print is unable to see due to some reason therefore they use special methods such as dusting it with fine power or lifting the pattern with transparent tape.<sup>5</sup>

---

<sup>3</sup> Janice Du Mont\* and Deborah Parnis, Sexual Assault and legal Resolution; Querying the medical collection of forensic evidence,19:779-792

<sup>4</sup> MANU/SC/0157/2017

<sup>5</sup> Jennifer L. Mnookint ,The Courts, the NAS, and the Future of Forensic Science

The examiners generally look for comparison, for example if they found a bite mark in the body they will analyse it as who deep the wood is how sharp the teeth was with a normal teeth sample. There are no criteria for comparing it. Therefore in case of finger print it is completely deferent because it is the most advance one in this field. Even ACE-V (Analysis, Comparison, Evaluation and Verification) is the scientific method used in latent finger print. It is basically a method examiners compare a latent finger print with mention of sample by gathering relevant data from the two different fingerprints, such as the pattern of ridges or aim of loops in the finger<sup>6</sup>

Forensic based movies and stories are very interesting and it proceeding in a speedy way. But in reality it is entirely different. The process is comparatively slow and high chance of destroying the evidence. In the field of forensic science there are many experts and experienced people but the quality of work differs and it will effect greatly as

1. Lack of proper laboratories
2. Absents of mandatory certification for the practitioners
3. Absence of newly research and new technology
4. Lack of productive oversight
5. Lack of proper and adequate training for the practitioners

The accountability of forensic evidence is questioning on the basis of conflicting practises in criminal laboratories which are untraded practitioners, submitting fraud evidence, absence in quality checking of evidence. When there is no good scientific explanation for the forensic evidence produced in court then it does not have validity in the eyes of law.<sup>7</sup>

## **FORENSIC EXAMINER AND COURT PROCEEDINGS**

---

Mainly the police officials relay on forensic evidence is not in a proper way or they does not weigh the evidence appropriately. The examiner shall provide the evidence as in the form of photograph, audio, video or handwritten scripts also. But they shall be provided with proper scientific explanation. In the process of testifying the examiners type of language they use is very important. They shall not use scientific language it should understand by the court of law. The

---

<sup>6</sup>Author(s): Jonathan J Koehler and John B Meixner JR.,An Empirical Research agenda for the Forensic Science, Vol. 106, No. 1, pp. 1-33

<sup>7</sup> Author(s): Harry T. Edwards ,Solving the Problem that Plague the forensic science community Vol. 50, No. 1 (FALL 2009), pp. 5-19

statement which is given in court by the practitioner shall not be misleading, exaggerated or false. This is how the examiners should testify and the evidence be brought before the court.<sup>8</sup>

## **CONCLUSION**

---

The value of Forensic evidence in court is kind of increasing but still investigators can't completely rely on the evidence. The reason is because there is high chance of getting the evidence destroyed. Even if the examiner is slightly careless about the collecting evidence then it cannot be produced before the court of law. There are many cases pertaining to the forensic law. In Indian Courts the forensic evidence is still in the process to consider as conclusive evidence. But we cannot completely say that it is not consider as conclusive evidence in cases like Nirbhaya and Selvi v State of Karnataka the forensic evidence place an important role.

---

<sup>8</sup> Author(s): Jonathan J Koehler and John B Meixner JR.,An Empirical Research agenda for the Forensic Science, Vol. 106, No. 1, pp. 1-33