

### CHAPTER III

#### FINGERPRINTS AND FOOTPRINTS

Use of fingerprints for investigation of crimes is now a common method. It is stated:

“Although the use of finger prints for identification is said to have been known to the ancient Egyptians, its place in Anglo-Saxon jurisprudence was not established until after the middle of the nineteenth century. The Bertillon system of identification which includes photographs, finger prints, and measurements of the body, is of a still more recent date. This system in Criminal Law has two main proposes. The first is the identification of an accused as the person who committed the crime with which he is charged, and the second is the identification of an accused as the same person who has been charged with, or convicted of, other crimes. For this second purpose the police of most of the cities of this country and Europe attempt to keep the description of every person arrested by them, in permanent records. These records are popularly known as ‘rogues’ galleries.’”

Because of their comparative accuracy, fingerprints are universally admitted by courts. Of course, the weight to be attached to the identity of fingerprints and the testimony of experts with regard to them will depend on various circumstances, like the clearness of the impression, experience of the expert, etc. It has been thought by many that fingerprints are unalterable. But Prof. Burks points out that fingerprints can be changed by surgery and cases have occurred where it has been done. He states:

“The obstacles that might prevent a criminal from carrying out the procedure [for changing fingerprints] himself are not as great as they may seem. Most successful dermabrasion requires special medical knowledge and technical skill, but varying degrees of success may be achieved by amateurs, who can readily acquire a published (cookbook type, giving step-by-step) description of the technic and nonmedical,

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1. *Annotation, Right to Take Finger Prints and Photographs of the Accused*, 83 A. L. R. 127 (1933).

inexpensive (cost \$24.00) abrasive equipment<sup>2</sup> by mail order.”<sup>3</sup>

However, there is no danger of an innocent person being convicted by such alteration: at most a criminal may be exculpated, hence the admissibility of fingerprints should not be barred on that account.

In India Section 4 of the Identification of Prisoners Act, 1920 authorises a police officer to take measurements (including finger and footprint impressions) from any person arrested for an offence punishable with rigorous imprisonment for a term of one year or upwards.<sup>3</sup> Section 5 of the same Act gives power to a magistrate to direct any person to allow his measurements (including finger and footprint impressions) to be taken for purposes of any investigation or proceeding under the Code of Criminal Procedure.<sup>4</sup> Section 73 of the Indian Evidence Act also empowers the court to direct any person present in the court to give his finger impressions for the purpose of comparison by the court.<sup>5</sup> It appears that the section applies to the accused as was held by the Calcutta High Court in *Sailendra v. State*.<sup>6</sup> However, the word “direct” in the section had been held by the various High Courts to be merely of a permissive nature and not importing any power to compel the accused to give his fingerprints.<sup>7</sup> However, the Supreme Court in its judgment *State of Bombay v. Kathi Kalu Oghad*<sup>8</sup> seems to have assumed otherwise.<sup>9</sup>

Before the Supreme Court decision in the *Oghad* case<sup>10</sup> there had been a conflict of judicial opinion amongst the various

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2. *Alteration of Fingerprints by Dermabrasion*, 31 Temp. L.Q. 352, 356 (1957-58).
  3. See *infra* appendix for the section.
  4. *Ibid.*
  5. *Ibid.*
  6. A. I. R. 1955 Cal. 247. Also see *State v. Parmeswaran Pillai*, A. I. R. 1952 T. C. 482.
  7. Note the following cases: *State v. Parameswaran*, A. I. R. 1952 T. C. 482; and *Sailendra Nath v. State*, A. I. R. 1955 Cal. 247. Also see *Badrilal v. State*, A. I. R. 1960 Raj. 184; and *Ram Sarup v. State*, A. I. R. 1958 All. 119. Contra: *Brij Bhushan v. State*, A. I. R. 1957 M. P. 106; *Rajamuthukoil Pillai v. Nadar*, A. I. R. 1956 Mad. 632.
  8. A. I. R. 1961 S. C. 1808.
  9. The very fact that the learned judges considered the constitutionality of Section 73 of the Evidence Act suggests that they took the word “direct” in that section to mean “compel”.
  10. *Supra* note 8.

High Courts as to the question whether compulsory taking of fingerprints from the accused violated Art. 20 (3) of the Constitution.<sup>11</sup> In the *Oghad* case Supreme Court held that when an accused person was called upon by the court or any other authority holding an investigation to give his finger impressions he was not giving any testimony in the nature of a "personal testimony" which must depend upon his volition,<sup>12</sup> and therefore Art. 20 (3) was not violated.

In America there is almost unanimity of opinion that compulsory taking of fingerprints from the accused does not violate the privilege against self-incrimination.<sup>13</sup> Holding the compulsory taking of fingerprints from the accused to be valid, the court in *People v. Swallow*<sup>14</sup> pointed out:

"No volition—that is, no act of willing—on the part of the mind of the defendant is required. Finger prints of an unconscious person, or even of a dead person are as accurate as are those of living.... By the requirement that the defendant's finger prints be taken there is no danger that the defendant will be required to give false testimony. The witness does not testify—the physical facts speak for themselves; no fears, no hopes, no will of the prisoner to falsify or to exaggerate could produce or create a resemblance of her finger prints or change them in one line, and therefore there is no danger of error being committed or untruth told."

In *U. S. v. Kelly*,<sup>15</sup> the Federal Court of Appeals also held that the taking of fingerprints by force did not violate any of the defendant's constitutional rights, even in the absence of a

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11. Some of the cases which upheld compulsory taking of finger impressions of the accused are: *Pakhar Singh v. State*, A. I. R. 1958 Punj 294; *Mahal Chand v. State*, A. I. R. 1961 Cal. 123. For contrary cases, see, *Damodaran v. State*, A. I. R. 1960 Kerala 29; *Brij Bhushan v. State*, A. I. R. 1957 M. P. 106; *Rajamuthukoil Pillai v. Periyasami Nadar*, A. I. R. 1956 Mad. 632; *Bhaluka Behara v. State* A. I. R. 1957 Orisa 172; *Balraj v. Ramesh Chandra* A. I. R. 1960 All. 159. In some cases a distinction was made between compelling the accused to give his finger impression and taking it by force from him. The latter was held not to be violative of the Article, even though the former was. See, *In re Palani Goundan*, A. I. R. 1957 Mad. 546; *Nazir Singh v. State*, A. I. R. 1959 M. P. 411; and *In re Govinda Reddy*, A. I. R. 1958 Mys. 150.
  12. See *supra* chap. II, pp. 14-15.
  13. See cases cited in *Annotation, Finger prints as Evidence*, 16 A. L. R. 370 (1922); *Annotation, Finger prints as Evidence*, 63 A. L. R. 1324 (1929); *Annotation, supra* note 1; Inbau, *Self-Incrimination*, p. 32 (1950).
  14. 165 N. Y. Supp. 915 (1917), quoted in 16 A. L. R., *ibid.* at 371-72.
  15. 55 F. 2d 67 (1937).

state or a federal statute authorizing them to be taken. The court stated: "Any restraint of the person may be burdensome. But some burdens must be borne for the good of the community . . . . The slight interference with the person involved in finger printing seems to us one which must be borne in the common interest."<sup>16</sup> The court also pointed out that as a humiliation fingerprinting could never amount to as much as the publicity attending a sensational indictment, to which innocent people may have to submit.

### Footprints

Identification of footprints and shoe marks may occasionally help in investigation. In regard to footprints evidence, a distinction can be made between (i) forcibly taking the shoes of the accused from him for the purpose of comparing them with the prints or tracks at the scene of the crime, and (ii) compelling him to place his feet into the previous tracks so that a comparison may be made.

Under Section 51 of the Criminal Procedure Code the police can search an arrested person and place in safe custody all articles, other than necessary wearing apparel found upon him. It is thus clear that under the section shoe of the accused can be taken from him against his will for the purpose of comparison. No volition is involved in such a case and Art. 20 (3) of the Constitution is not violated.<sup>17</sup> The American cases are practically unanimous to the effect that compulsory taking of the shoes from the accused does not infringe the privilege against self-incrimination.<sup>18</sup>

An accused person can be compelled to place his feet into the previous tracks at the investigation stage under Sections 4 and 5 of the Identification of Prisoners Act.<sup>19</sup> However, there is no provision in the Indian Evidence Act which gives such a power to the court at the trial stage. Section 73 of the Evidence Act only mentions finger impressions and not footprints. The weight of authority in America supports the view that compelling a person to place his foot into a print does not violate the privilege, for the reason that the accused in such instances is "not testifying as a witness" or "delivering any testimonial utterance". As a matter of substance there is no difference between finger impressions and footprints, and the observations made with regard to the former also apply to the latter.

16. *Ibid.*, p. 68.

17. *Cf. In re Palani Goundan*, A. I. R. 1957 Mad. 546; *Nazir Singh v. State*, A. I. R. 1959 M. P. 411; and *In re Palani Moopan*, A. I. R. 1955 Mad. 495.

18. See Inbau, *Self-Incrimination*, *op. cit.*, p.9. Also *Annotation, Footprint Evidence as Violating Rule Against Self-incrimination*, 64 A. L. R. 1089 (1929).

19. See *infra* appendix for the sections.