
AN ANALYSIS OF THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022

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INTRODUCTION

The Criminal Procedure (Identification) Act, 2022 was passed with the objective of enabling law enforcement authorities to take measurements of prisoners and other people in order to identify them and carry out criminal investigations. The Act went into effect on August 4th, 2022, after receiving the assent of the President on April 18th, 2022. The Identification of Prisoners Act, 1920 which was a colonial statute that allowed for the collecting of criminals' fingerprints, footprint imprints, and pictures, was abolished by the Criminal Procedure (Identification) Act, 2022.

Overall, there has been a significant change from the earlier 1920 Act. It is crucial to remember that the 2022 Act digitalizes criminal records and makes it possible for data on offenders to be freely accessible through a centralized database, making it compliant with international standards embraced by many other nations. However, the 2022 Act must be carefully re-examined and re-considered, to strike an equilibrium between the fundamental rights of persons under investigation and the goal of the state to carry out criminal investigations adequately.

KEY FEATURES OF THE ACT

The adoption of the Criminal Procedure (Identification) Act, 2022, broaden the definition of the term "measurement," which will help the investigating authorities compile sufficient, admissible evidence and prove the crime of the accused. In addition to assisting our law enforcement officials, the legislation also encourages prosecution. The number of court convictions may rise as a result of this.

The new Act expands the definition of the term "measurement" by redefining it to now also include iris and retina scans, behavioral attributes, including signatures, handwriting, and physical as well as biological samples. This is in contrast to the 1920 Act, which was limited to the collection of photographs, footprints, and fingerprint impressions.

The 1920 Act restricted the scope of collecting measurements, and only in situations where the individual is charged with, convicted of, or out on bail for an offense that has a rigorous minimum sentence of one year or more, measurements were taken. The word "any individual" used in Section 3 of the new Act, on the other hand, obfuscates the distinction between a convict, arrestee, detainee, and undertrial in the event of any offense punishable under any law enforced in India.

Furthermore, it also covers preventative prisoners as a group of individuals whose measurements could be collected in accordance with the terms of this Act. Notably, Section 3 includes a safeguard attached to it that exempts anybody convicted of, arrested for, or imprisoned for any offense punishable under any law apart from offenses against women and children from having to provide their measurements. The offender in such a crime may give measurements at their discretion.

However, it is argued that this proviso is poorly drafted and hence open to abuse. Since it uses the term "may" rather than "must," it suggests that it is at the officer's discretion whether he may compel a person to provide his measurement. Secondly, because the proviso only states that the person may not be required to provide his "biological samples," it only extends its application to the extraction of biological samples and not to any other measurements mentioned in this Act. As a result, other measurements may still be taken forcibly.

According to Section 5 of the Act, the magistrate, whether judicial or executive, has the authority to order anybody to disclose their measurements if they are certain that doing so will help with the prevention, investigation, or identification of the crime.

In accordance with Section 6(2), if the person thus directed refuses to abide by the magistrate's order, Section 186 of the Indian Penal Code (obstructing public servant in discharge of public functions) may apply. Section 3 of the Act has been said to be nullified by Section 5 as a magistrate might pass an order to take measurements of those who were granted immunity from furnishing their biological samples under Section 3 of the Act, thereby, nullifying the protection offered by the previous section.

The Act also seeks to create a national database for all the data gathered, which will be maintained by the National Crime Records Bureau (NCRB). For 75 years, the NCRB is permitted to save, maintain, process, distribute, disseminate, and delete any records that it may have for crime prevention and investigation. Additionally, state governments have the freedom

to create their own data repositories and rely on governmental institutions like the NCRB to protect and maintain data.

However, it is required to erase the records of any offender who, in the past, was not found guilty of any crime and who was released from custody or found not guilty by the court after exhausting all of his legal options, unless a court or magistrate orders contrary.

The Criminal Procedure (Identification) Rules, 2022, which are already in effect, permit a registered medical professional, any person experienced in taking measurements, or an authorized person to take a person's measurements. The prior written approval of a police officer not below the rank of Superintendent of Police is required in order to take measurements for a person arrested in connection with an offense under Chapter IXA (offenses relating to elections) or Chapter X (contempt of the lawful authority of public servant) of the IPC.

A person charged with violating a prohibition order issued under Section 144 or Section 145 or arrested under Section 151 (preventive arrest) of the Code of Criminal Procedure, 1973, is not required to have their measurements taken unless they are also being held in connection with another offense that is punishable by another law. The same remedy is provided to a person upon the commencement of proceedings against him under Sections 107–110 unless, under Section 117 of the CrPC, they have been ordered to give security for their good behavior or maintaining peace. The authorized person may take the measurements in compliance with Sections 53 and 53 A of the CrPC if a person opposes and does not want his measurements to be taken.

RIGHT TO PRIVACY AND RIGHT AGAINST SELF-INCRIMINATION

The 87th Law Commission of India considered that Section 5 of the 1920 Act had a broad enough reach and that it was susceptible to misuse because it granted the magistrate coercive powers. The commission suggested that this provision be amended to require the magistrate to record in writing the circumstances that led to the person's arrest under that section in order to safeguard a person's physical integrity. The report further advised that, in drafting such ideas, the legislation should attempt to strike a balance between social requirements and a person's privacy.

The Act has widened the scope, as in accordance with Sections 53 and 53A of the Code of Criminal Procedure, police officers may examine any arrested individual, or convict, and take their fingerprints, footprints, biological samples, and behavioral characteristics, including

signatures, handwriting, and fingerprints. Blood, semen, hair, and swab samples are also included in this data, in addition to analyses like DNA profiling.

A person arrested under any law will not be required to submit such data, except for when they are arrested for an offense against women or children, even though refusing to share such data is against the law under this Act. Article 20(3) of the Constitution provides the right against self-incrimination, and such criminalization as mentioned above amounts to coercive testimony, which further infringes on an individual's right to life and liberty under Article 21 of the Constitution. The exception becomes irrelevant given Section 6(1) of the Act authorizes the police officer or jail officer to take the measurements in the prescribed manner if any individual who is required to let the measurements be taken under this Act opposes or refuses to allow the taking of such measurements; particularly when Section 6(2) criminalizes it under Section 186 of the Indian Penal Code and Section 7 absolves the authorities from any prosecution for acting in accordance with the Act.

The right to a fair trial and substantive due process is also protected under the right against self-incrimination under Article 20(3) of the Constitution, and this right extends to all situations where the charge may result in prosecution.¹ Therefore, when such coercive criminalization of a person continues without having any repercussions for the authorities, it deprives that person of their right to a free and fair trial and, as a result, violates their right to life and liberty as guaranteed by Article 21 of the Constitution.

A convicted prisoner still has the right to life and liberty under Article 21 of the Constitution, even if confined to a jail, and jail officials cannot punish, torture, or otherwise discriminate against them without the court's express consent or instructions.² However, when a provision grants a warder the authority to collect samples from prisoners in the jail under their supervision without clearly clarifying how they might do so, it essentially gives them carte blanche to do anything they want.

The Supreme Court ruled in *Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)*³ that the right to privacy is a fundamental right protected by Article 21 and that any actions taken to violate that right must be reasonable and proportional to be lawful. It was explicitly mentioned that this includes having freedom over one's own decisions, maintaining one's physical

¹ Selvi v. State of Karnataka AIR 2010 SC 1974

² Sunil Batra v. Delhi Administration 1980 AIR 1579

³ (2017) 10 SCC 1

integrity, and maintaining one's privacy. It was noted at the time that consent is required for the sharing of any information that is essentially personal, such as a piece of medical information.

The Act also disobeys the three-part criteria that the Supreme Court had maintained in *Jacob Puliye v. Union of India*⁴ upon consideration of *K.S. Puttaswamy* (supra), The first requirement stipulates that legitimate legislation must exist in order to encroach on anyone's privacy, and the second requirement stipulates that the type and substance of such a law must be reasonable, as required by Article 14. Lastly, it states that the methods used by the legislature must be appropriate for the goal and necessity it is pursuing. While it is possible to argue that the current situation is consistent with the protection of an individual's privacy, it does not change the fact that the collection and analysis of such data veer into executive arbitrary behavior when an individual's choice to withhold such data is explicitly criminalized.

The issues raised by the Law Commission are blatantly ignored by the proposed legislation. As a result, the government's current posture is far more regressive than it was in the past and shows disregard for the recommendations made by the 87th Law Commission of India.

CONCLUSION

This Act is an instance of the extension of powers that provide law enforcement authorities with a strong stand in the detection and prosecution of crime. However, in a democracy, the augmentation of protections for people's rights must go hand in hand with the increase of authority.

Although this Act intends to encourage the use of contemporary technologies to speed up the criminal justice system's investigative process, it leaves some decisions up to the discretion of the authorities, which makes them ambiguous and has a more extensive reach. Such broader implications run the risk of making it an administrative target of impunity, which would be disproportional and unsafe for the public at large.

The Indian data protection system is still in development, and there isn't yet specific legislation that addresses it. India needs a strong and exceptional data protection strategy that is controlled integrally by legislation to secure people's sensitive data from leaks, given the amount of its population's data.

⁴ 2022 SCC OnLine Sc 533

The government will also be helped by such a data protection mechanism to use the data securely so that justice may be served quickly. It is the goal of the Criminal Procedure (Identification) Act, 2022 to gather very private information. Therefore, it is essential to have a well-developed data protection structure and suitable regulations in place to control the same to ensure that it is protected from exploitation.