
NAVIGATING CRIMINAL IDENTIFICATION LAWS: A COMPREHENSIVE ANALYSIS

Renganayaki. P, B.Sc., LL.M, Assistant Professor, Dhanalakshmi Srinivasan University,
Tiruchirappalli, Tamil Nadu

ABSTRACT

The Criminal Procedure (Identification) Act of 2022, replacing the outdated Identification of Prisoners Act of 1920, aims to modernize the process of identifying accused and convicted persons in India. This legislation expands the scope of permissible measurements to include advanced biological data, raising concerns about potential violations of constitutional rights, particularly regarding self-incrimination and privacy. This study compares the old and new identification legislations, analyzing their legal implications and ethical considerations. Through a doctrinal approach, it examines the provisions of the new legislation alongside the repealed one to assess the effectiveness of addressing previous shortcomings. Additionally, the study reviews literature related to criminal record maintenance, technological advancements in criminal investigation, and ethical implications of data privacy. It draws insights from scholarly works to contextualize the historical background and contemporary challenges surrounding the identification of criminals in India. Key constitutional issues, including self-incrimination and privacy concerns, are scrutinized in light of landmark cases and legal interpretations. While certain forms of testimonial acts are subject to constitutional protections, the collected biological data under the new legislation may not qualify as compelled personal testimony, as per the precedents set by the Indian judiciary. However, ongoing vigilance and adherence to constitutional principles are essential to ensure the rights of accused individuals are adequately safeguarded within the evolving legal framework. Furthermore, the study highlights the need for proactive implementation of data protection measures, such as the Digital Data Protection Act of 2023, to mitigate risks of data breaches and ensure compliance with privacy standards. It emphasizes the importance of balancing justice with privacy rights, particularly in the context of emerging scientific investigation techniques and digital data management. In conclusion, while the new legislation represents a step towards modernization, continued scrutiny and ethical considerations are imperative to maintain the integrity of the criminal justice system and uphold

constitutional principles in India.

Keywords: Criminal Procedure (Identification) Act, Self-incrimination, Rights of accused persons, Right to privacy, Digital Data Protection

INTRODUCTION

According to the Crime in India, 2021 report released by the National Crime Records Bureau, a total of 58,09,380 persons were arrested under the Indian Penal Code and other special penal legislations, out of which 22,14,307 persons were convicted across the country.¹ Identification of the accused and convicted persons for investigation purpose is one of the crucial parts in administering criminal justice. Given the huge population of India, identifying the criminals and maintaining those records is a challenging task.

The enactment of the Criminal Procedure (Identification) Act, 2022 which repealed the previous Identification of Prisoners Act, 1920, sets out to bring the identification of accused persons in line with the modern technological improvements. This Act empowers the appropriate authorities to collect and retain measurements, including biological information, of the accused and convicted persons. However, the legislation also raises concern about breach of fundamental rights available to accused persons guaranteed under the Indian Constitution.

The current study aims to compare the old and new legislations on identification of accused and convicted persons. It further seeks to analyse the issues emerging from the Criminal Procedure (Identification) Act, 2022. Finally, it goes on to study the ethical and constitutional issues in collecting and retaining the information, particularly biometric and biological, of accused persons.

MATERIALS AND METHODS

This article employs doctrinal method to analyse the legal implication of identification of criminals and retention of the collected data from arrested persons as per the Criminal Procedure (Identification) Act, 2022. Further a comparative approach has been used to identify the differences between the old and new legislation i.e, Identification of Prisoners Act, 1920

¹ Crime in India- 2021, Statistics, National Crime Records Bureau, 21.922, 8.06am, <https://ncrb.gov.in/sites/default/files/CII-2021/CII%202021%20SNAPSHOTS%20STATES.pdf>

and Criminal Procedure (Identification) Act, 2022.

REVIEW LITERATURE

The scholarly work relating to the identification of prisoners is limited. However, works in maintaining criminal records, technological development in criminal investigation and their implications which are relevant for the present paper has been analysed.

Basu (2019)² analyses the origin of the system of identification of crime and criminals in British India. British introduced the use of modern forensic scientific methods of analysis involving analysis of anthropometric data, finger prints, chemicals and handwritings to improve criminal justice. The prime intention behind establishing those mechanism was to impose superiority in addition to providing credible, consistent and authoritative message in the courtroom. Basu does not touch upon the legal discourse of introducing new technique, only historical aspects were analysed.

Verma and Gupta (2014)³ studied the perspective of stakeholders in the digital forensic investigation including investigators, cyber lawyers and general public about the data privacy of the accused through survey method. The findings reflected the lack of professional ethics among investigators, lack of legal support for lawyers to protect data privacy during investigation and confusion among public related to the privacy rights. Hence Verma and Gupta stressed the need for privacy preserving digital forensic investigation framework which would enable the investigation process to proceed without compromising the efficiency and performance.

Bhandari (2022)⁴ analysed the impacts of the Criminal Procedure (Identification) Bill, 2022. Bhandari discussed *The Van der Velden vs the Netherlands* case in detail to highlight the violation of privacy while authorities refuse to destroy the recorded information of acquitted persons. The necessity of enacting the data protection legislations has been emphasised. It further proposed to use a specific portion of DNA for the purpose of profiling in order to not

² Saumitra Basu, "Forensic Science and Scientific Measures of Criminal Identification in British India" 189 *IJHS* 2019.

³ Robin Verma & Gaurav Gupta, "Perception of Data privacy in Digital Forensic Investigation", Preprint submitted to IIITD portal 2014

⁴ Aastha Bhandari, "The Criminal Procedure (Identification) Bill flies in the face of legal precedents", *The Leaflet*. <https://theleaflet.in/the-criminalprocedure-identification-bill-flies-in-the-face-of-legal-precedents/> (Last modified on April 12, 2022).

reveal any additional information about the individual, which is widely practised in many countries. The Article concludes with the caution of mismanagement of DNA evidence, contamination, false positives and other errors that could potentially degrade the quality of the DNA.

ORIGIN OF THE PRACTICE

The system of identification of criminal has been introduced to India during the British Colonisation period. In Britain, according to the Regulation of 1896, any individual who is remanded in custody or convicted can be required to provide body measurements, fingerprints, and photographs to keep tracks of criminal records.⁵ These records will be accessed by the law enforcement agencies. This system of developing criminal records further spread into the British colonies. The resultant of such practice is the enactment of the Identification of the Prisoners Act, 1920 in India.

NEED FOR THE STATUTE ON IDENTIFICATION OF CRIMINALS

The fingerprints and such other physical and biological samples collected by the police play a vital role in connecting the accused person to the crime. In the wake of technology, new scientific methods are being employed in criminal investigation procedure. These procedures ranges from analysing DNA profile to dental structure of a person.

Specific provisions related to examination of accused persons are present in Criminal Procedure Code, 1973 as well. Section 53 provides for examination of an accused person for collecting biological specimens if such examination will bring out evidence for the commission of offence. The scope of examination allowed under S.53 is quite wide, it includes examination of blood, semen, sputum, sweat, hair, nail clippings, DNA profiling and other necessary tests suggested by the medical practitioner in a given case. The section states that a registered medical practitioner, in case of female accused female medical practitioner, shall perform examinations on the accused person at the request of a police officer not below the rank of sub-inspector. Further the section also allows the use reasonable necessary force to effect the examination.

⁵ Law Commission of India, 87th Report on Identification of Prisoners Act, 1920, 1980

Further the measurement collected by the police officer is admissible in the court of law during the process of trial.⁶One of the prime case which stressed out the importance of scientific techniques in criminal investigation is *Mukesh & Anr Vs State of NCT Delhi & Ors*,⁶ widely known as the Nirbhaya case. The Court scrutinised the credibility of the DNA analysis and odontology⁷ report which analysed the evidences obtained from accused persons and victim. The accused persons were convicted based on the synergy of traditional and scientific evidences. Hence an established legal procedure is required to collect the measurements and other relevant data from the accused persons for an effective criminal justice system.

COMPARISON OF THE OLD AND NEW STATUTE

The authorisation to the police officers to take the measurements of convicts and accused persons has been granted through the Identification legislations. These legislations further allowed for retention of such records as well. However, the decades old 1920 Act was inadequate in many ways. The need to bring the Identification of Prisoners Act,1920 in line with the improved technology has been suggested by the 87th report of Law Commission of India on 1980. Hence it is imperative to compare both the legislations to assess the effectiveness of it in addressing the shortcomings of the previous legislation.

Measurements authorised to be taken

The Identification of Prisoners Act of 1920 lays the groundwork for authorized measurements to be taken in the process of identifying individuals involved in criminal proceedings. Under this act, the permissible parameters for identification include fingerprints, footprints impressions, and photographs.

In contrast, the Criminal Procedure (Identification) Act of 2022 expands the scope of authorized measurements for identification purposes. The Act now includes a broader range of biometric data and technological advances. Specifically, it authorizes the collection of fingerprints, palm-print impressions, foot-print impressions, photographs, iris and retina scans, physical and biological samples, along with their subsequent analysis. Additionally, this

⁶ *Mohd Aman, Babu Khan & Anr. Vs. State of Rajasthan*, AIR 1997 SC 2960

⁷ A branch of forensic science which deals with dental knowledge in assisting the criminal justice delivery system

modern legislation allows for signatures, handwriting analysis, and other examinations as outlined in section 53 or 53A of the Code of Criminal Procedure, 1973.

These examinations encompass the scrutiny of various substances, such as blood, bloodstains, semen, sputum, sweat, and hair samples. Notably, advancements in forensic technology have enabled more sophisticated tests, including DNA profiling, which can be applied to finger nail clippings and other relevant specimens. The legislation thus reflects an evolution in the methods and tools available for the identification and analysis of individuals involved in criminal cases.

Persons whose data may be collected

The old legislation provided to collect measurement and identification from persons convicted with rigorous imprisonment for term of one year or above, persons convicted for offences which would render them liable for enhanced punishment on further conviction and persons ordered to give security for good behaviour or for maintaining peace. While the new legislation expands the scope of persons from whom data may be collected. These include persons convicted of an offence punishable under any law in force, persons ordered to give security for good behaviour or for maintaining peace under s.107 to 110 CrPC, persons arrested under any preventive detention law. Further the Act mandates the collection of biological samples from persons arrested for offences committed against women or children or punishment not less than seven years.

Persons who are authorised to direct data collection

The Old legislation empowered any magistrate to order for taking measurement a person, however a direction to capture photograph of a person can only be ordered by a magistrate of first class. While the new legislation empowers Judicial Magistrate of first class or Metropolitan Magistrate of respective jurisdictions. Further the Executive Magistrate is empowered to authorise data collection for persons who are ordered to give security for good behaviour or maintaining peace.

Persons who are authorised to undertake data collection

The Old legislation authorised police officer in charge of a police station or investigation

officer or any other police officer not below the rank of Sub Inspector. While the new Act authorises the police officer of a police station or officer not below the rank of head constable and prison officer not below the rank of Head Warder.

Authorised agency to maintain record

The Former legislation had not assigned any particular agency to maintain record and the power to appoint specific authority for maintaining records was entrusted with the state governments. Current legislation specifically appointed National Crime Records Bureau at national level for maintaining records.

COMPLICATIONS SURROUNDING THE STATUTE

The Criminal Procedure (Identification) Act, 2022 sparks debate with issues involving constitutional matters as well as ethical considerations. The constitution of India provides rights such as right against self incrimination, right to privacy, right to be forgotten, right to life with dignity aiming to safeguard the dignity and autonomy of its citizens. These rights also extend to accused persons facing the brunt of legal proceedings as well. In the wake of Criminal Procedure (Identification) Act, 2022, which provides for the collection and storage of measurements including biological sample of the accused persons, questions of violation of those constitutionally enshrined rights arise. Hence it is imperative to scrutinize the implications of this legislation on the principles laid down in the Indian Constitution.

SELF-INCRIMINATION

Challenges arise concerning the use of personal information such as DNA analysis, handwriting and signatures, which have been argued to be self-incriminatory towards the accused persons, affecting their right under Article 20(3) of the Constitution of India.

In the *Kathi kalu Oghad vs. State of Bombay*⁸, the Supreme court interpreted the scope of being a witness under Article 20(3) of the Indian Constitution. It held that being a witness was confined to providing oral or written statements that conveyed the personal knowledge of the

⁸ 1961 AIR 1808

accused. Therefore, the protection of Article 20(3) was extended solely to compelled personal testimony of such nature.

The Court excluded physical characteristics such as fingerprints, footprints, palm imprints, and specimens of writing or signature from being considered personal testimony. It reasoned that since these features do not convey any personal knowledge and were unalterable by the accused, thus they were excluded from the protection of Article 20(3).

Subsequently, in *Sapan Haldar & Anr vs State*⁹, it was contented that the handwriting, signature and such other personal information extracted by the investigators are to be treated as testimonial compulsions, and thus protected under Art 2(3). However, the High court of Delhi did not consider it as such.

Further, the Supreme court in *Selvi vs. State of Karnataka*⁹, analysed the precedents dealing with testimonial compulsions. It held that certain forms of testimonial acts are beyond the scope of Article 20(3) such as things like getting someone's signature or handwriting might not be seen as incriminating if they're just used to confirm information that investigators already know. The important thing to decide if Article 20(3) applies is whether the evidence could directly make someone look guilty or if it just helps to connect other evidence together. So, using testimony that's forced from someone is not allowed under Article 20(3), but investigators are not barred from obtaining such compelled testimonial for the purpose of identification and corroboration of facts which are already known to them.

PRIVACY

The Issue of right to privacy being affected by the collection of personal data of individuals has been raised subsequent to the enactment of the Act.¹⁰ The Right to Privacy is now identified by the Supreme Court of India as a fundamental right under Article 21 in a nine judge bench *Justice K.S. Puttaswamy (Retd) vs. Union of India*,¹¹The Court further laid out certain principles to regulate any law which may restrict this right of privacy. These principles include having a public purpose, a logical connection between the law and that purpose, and using the

⁹ 181 (2012) DLT 225

⁹ AIR 2010 SC 1974

¹⁰ The Criminal Procedure (Identification) Bill, 2022, PRS Legislative Research, <https://prsindia.org/billtrack/the-criminal-procedure-identification-bill-2022>

¹¹ (2017) 10 SCC 1

least intrusive method to achieve it. Essentially, this means that any intrusion on privacy should be necessary and proportional to the purpose it serves.

Additionally, the Supreme court has ruled that requiring fingerprints and iris scans does not violate the fundamental right to privacy.¹² These methods are seen as the most accurate and least invasive ways to identify an individual.

Further in the case of *Bhabani Prasad Jena v Convenor Secretary, Orissa State Commission for Women*¹³, the apex court analysed the significance of the DNA test in the process of criminal justice administration. The Court held that when there is a conflict between the right of privacy guaranteed under the constitution to the person not to submit themselves forcibly to medical examination and the duty of the court to reach the truth, the court must exercise discretion only subsequent to balancing the interests of the parties and the just decision in the matter whether such examination is needed.

The Constitution of India through the Article 39A ordains the state to secure the operation of a legal system which promotes justice. This provision for promoting justice should be harmoniously construed with the right to privacy as fundamental rights. The use of modern scientific investigation procedures requires personal data of accused persons to uphold justice and the courts admit those procedures and their analysis only after intense scrutiny of those data.

Even the collection of such data has not been made mandatory for every accused person except in the case of persons committing offences against women or children or offence which may impose imprisonment not below seven years. The data collection will be proceeded after the order of Magistrate after consideration of the case¹⁴.

RETENTION OF DATA

As no express provision for the period for retaining data has been given in the old legislation, there seemed to be no uniform practice was followed by the state governments. To remove this difficulty and to bring in uniform procedure the 2022 Act mandates the retention of collected

¹² *Justice K.S. Puttaswamy (Retd) & Anr vs. Union of India & Ors* AIR 2018 SC (SUPP) 1841

¹³ 2010 (8) SCC 633

¹⁴ The Criminal Procedure (Identification) Act, 2022, s.5, No. 11 Act of Parliament 2022 (India)

data in digital or electronic format for a period of seventy-five years from collection of measurements. In Justice Puttaswamy case, Justice DY Chandrachud emphasized the importance of justifying the retention period for collected data, including biometrics.¹⁵ However, the retention of data for 75 years from accused persons and convicts lacks justification. This extended period is particularly concerning given that the life expectancy of Indians is only around 70.8 years.¹⁶

DATA PROTECTION

Around 70 countries across the globe maintain DNA database for criminal investigation purposes.¹⁷ Those databases are supported by the Data protection legislations, which facilitates the protection of individuals while upholding justice. In India, the Digital Data Protection Act of 2023 has been enacted on August 2023. This Act introduces crucial measures to safeguard personal data processed by data fiduciaries.¹⁸ In case of breaches, individuals, referred to as data principals, have the right to lodge complaints with the Data Protection Board of India, as stipulated in the Act. Section 7(c) delineates legitimate uses of processing personal data, including actions performed by the State or its instrumentalities, ensuring compliance with existing laws or safeguarding the sovereignty, integrity, or security of the nation.

Moreover, Section 8 imposes specific obligations on data fiduciaries to protect personal data by implementing appropriate technical and organizational measures. Notably, Section 10(1) grants the central government the authority to designate certain data fiduciaries as significant, taking into account various factors, including public order. Subsequently, Section 10(2)(a) mandates significant data fiduciaries to appoint data protection officers to represent them before the Data Protection Board in cases of breaches or grievances. Additionally, Section 10(2)(b) necessitates the appointment of independent data auditors to assess compliance with data protection standards, alongside conducting periodic audits and data protection impact assessments. Additionally, the schedule of the Act imposes penalties of up to one hundred and fifty crore rupees on failure to fulfill additional obligations by a significant data fiduciary.

¹⁵ *Justice K.S. Puttaswamy (Retd) & Anr vs. Union of India & Ors AIR 2018 SC (SUPP) 1841*

¹⁶ World Health Organization 2024 data.who.int, India. (Accessed on 4 April 2024)

¹⁷ Ibid

¹⁸ As per S. 2(i) of Digital Personal Data Protection Act, 2023, data fiduciary is any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data;

Despite the enactment of the Act in August 2023, the notification regarding significant data fiduciaries is still pending. The National Crime Records Bureau which has been designated as the repository for maintaining and retaining records and there will be dissemination of such data to law enforcement agencies across India. Therefore, it is imperative to take immediate and proactive steps to implement the provisions of the Digital Data Protection Act without further delay to curb data breach and further issues.

In addition to that the digital or electronic form of preserving and maintaining database needs heavy security against potential cyber-attacks. Cyber security is an emerging field of study, hence the apprehension of being not adequate to tackle the unseen issues is material.

APPEAL MECHANISM

There is no recourse available for appeal of the order of magistrate ordering the collection of measurements. As the Act provides to obtain measurements including persons arrested for preventive detention, it will lead to providing personal information even before any act of criminality. An appeal procedure should have been included to remedy any misconception or error committed by the magistrate.

CONCLUSION

In conclusion, the comparison between the old Identification of Prisoners Act, 1920 and the new Criminal Procedure (Identification) Act, 2022 reveals significant advancements in the identification and data collection processes for accused and convicted persons in India. While the former Act laid the groundwork for authorized measurements, the latter expands the scope to include a broader range of biometric data and technological advances, reflecting the evolution of forensic science and criminal investigation methods.

However, the implementation of the Criminal Procedure (Identification) Act, 2022 raises several constitutional and ethical concerns. Constitutional issues, including the right against self-incrimination and the right to privacy, necessitate a careful examination of the legislation's compliance with the principles enshrined in the Indian Constitution. While the Supreme Court has ruled that certain methods of identification, such as fingerprints and iris scans, do not violate the right to privacy, questions remain regarding the collection and retention of sensitive personal data, particularly in light of the Digital Data Protection Act of 2023.

Furthermore, the retention period of data collected under the new Act, set at 75 years, lacks justification and raises concerns about privacy and data protection. The need for a uniform procedure for data retention, as well as the establishment of safeguards against data breaches and cyber-attacks, is imperative to ensure the protection of individuals' rights while upholding justice.

Moreover, the absence of a recourse for appeal against the magistrate's order for data collection underscores the need for procedural safeguards and accountability mechanisms within the legal framework. A transparent and accountable appeal mechanism would help address any misconceptions or errors in the data collection process, thereby safeguarding the rights of individuals accused or arrested under preventive detention laws.

In light of these complexities and challenges, it is essential for policymakers, legal experts, and stakeholders to engage in a comprehensive dialogue to address the ethical, legal, and procedural issues surrounding the identification and data collection of accused and convicted persons. By upholding the principles of justice, fairness, and respect for individual rights, India can ensure a robust and equitable criminal justice system that serves the interests of society while safeguarding the dignity and autonomy of its citizens.

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